



EUROPEAN COMMISSION  
DG Competition

***Case M.9462 - EMIL FREY GROUP / AUTOCOMMERCE /  
AVTO TRIGLAV / AC-MOBIL***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERGER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 18/10/2019

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EUROPEAN COMMISSION

Brussels, 18.10.2019  
C(2019) 7596 final

## PUBLIC VERSION

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

### To the notifying party

**Subject: Case M.9462 - EMIL FREY GROUP / AUTOCOMMERCE / AVTO TRIGLAV / AC-MOBIL  
Commission decision pursuant to Article 6(1)(b) of Council Regulation No 139/2004<sup>1</sup> and Article 57 of the Agreement on the European Economic Area<sup>2</sup>**

Dear Sir or Madam,

- (1) On 25 September 2019, the European Commission received the notification of a proposed concentration pursuant to Article 4 of Council Regulation (EC) No 139/2004 by which the Emil Frey Group acquires within the meaning of Article 3(1)(b) of the Merger Regulation, control of the whole of Autocommerce, Avto Triglav and AC-Mobil.<sup>3</sup> Autocommerce, Avto Triglav, AC Mobil are referred to as the "Target" and together with Emil Frey Group (the "Notifying Party") as the "Parties".

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 (the "Merger Regulation"). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ("TFEU") has introduced certain changes, such as the replacement of "Community" by "Union" and "common market" by "internal market". The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> OJ L 1, 3.1.1994, p. 3 (the "EEA Agreement").

<sup>3</sup> Publication in the Official Journal of the European Union No C 332, 3.10.2019, p. 19.

## **1. THE PARTIES**

- (2) **Emil Frey** is active in the import and distribution of new and used motor vehicles of different brands in a number of Member States.
- (3) **Autocommerce** sells new and second-hand passenger cars ("PCs") and light commercial vehicles ("LCVs") as well as new trucks and buses, mainly through the retail channel in Slovenia.
- (4) **Avto Triglav** sells new and second-hand PCs and LCVs through retail and wholesale channels predominantly in Slovenia and to Croatia.
- (5) **AC-Mobil** sells new and second-hand PCs and LCVs through retail and wholesale channels in Slovenia.

## **2. THE OPERATION**

- (6) Under the terms of the Sales and Purchase Agreement, dated 8 July 2019, Emil Frey will acquire all of the issued and outstanding membership interests of Autocommerce, Avto Triglav and AC-Mobil ("the Transaction").

## **3. THE CONCENTRATION**

- (7) The Transaction represents an acquisition of sole control within the meaning of Article 3(1)(b) of the Merger Regulation by Emil Frey over Autocommerce, Avto Triglav and AC-Mobil.

## **4. EU DIMENSION**

- (8) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million<sup>4</sup> (Emil Frey: [...] million, Target Companies [...] million). Each of them has an EU-wide turnover in excess of EUR 250 million (Emil Frey: [...] million, Target Companies [...] million), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.
- (9) The notified Transaction therefore has an EU dimension within the meaning of Article 1(2) of the Merger Regulation.

## **5. MARKET DEFINITION**

- (10) The activities of the Parties give rise to horizontal overlaps and vertical links in the markets for the wholesale distribution of new LCVs and PCs in Slovenia and Croatia and the retail markets for new LCVs and PCs in Slovenia and Croatia.

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<sup>4</sup> Turnover calculated in accordance with Article 5 of the Merger Regulation.

## 5.1. Product market definition

### 5.1.1. The markets for the wholesale distribution of new LCVs and PCs

- (11) The Notifying Party considers that there is only one wholesale distribution market for both PCs and LCVs for the following reasons. From the supply side, all the competitors of Emil Frey both propose and sell PCs and LCVs. From the demand side, retailers usually buy both LCVs and PCs, and the wholesale and retail distribution agreements with the car manufacturers usually concern both PCs and LCVs. Finally, at the product level, the Notifying Party argues that there is a trend for less differentiation between PCs and LCVs.
- (12) The Notifying Party agrees with the Commission's previous decisional practice that the markets for wholesale distribution of PCs and LCVs should not be further sub-segmented based on "classes" of cars (e.g. mini cars, small cars, medium cars, etc.).
- (13) In previous decisions, the Commission has left open whether the market for the wholesale distribution of new PCs and LCVs should be combined or separated between PCs and LCVs.<sup>5</sup> Therefore, the Commission considered the following potential markets (i) an overall market for the wholesale distribution of new LCVs and PCs, (ii) a market for the wholesale distribution of new PCs only and (iii) a market for the wholesale distribution of new LCVs only.
- (14) The Commission found that these markets should however not be further sub-segmented based on "classes" of cars (e.g. mini cars, small cars, medium cars, etc.), given that manufacturers normally distribute a model range which covers different market segments under the same distribution channel.<sup>6</sup>

### 5.1.2. The markets for the retail distribution of new LCVs and PCs

- (15) The Notifying Party claims that the market for retail distribution of new PCs and LCVs could be further sub-segmented between LCVs and PCs.
- (16) In previous decisions, the Commission has considered a distinction between the retail distribution of PCs and LCVs. Similarly to the wholesale distribution, it found that further sub-segmentation by classes of cars is not appropriate.<sup>7</sup> Therefore, the Commission considered the following potential markets (i) an overall market for the retail distribution of new LCVs and PCs, (ii) a market for the retail distribution of new PCs only and (iii) a market for the retail distribution of new LCVs only.

### 5.1.3. Conclusion

- (17) For the purpose of this decision the Commission considers that the question of the exact product market definition at the wholesale level can be left open between (i) an

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<sup>5</sup> See cases COMP/M.8449 – Peugeot / Opel, paragraphs 28-33 (2017), COMP/M.2832 – General Motors / Daewoo Motors, paragraph 20 and 36 (2002), COMP/M.3388 – Ford Motor Company / Polar Motor Group, paragraph 7 (2004), COMP/M.5250 – Porsche/Volkswagen, paragraphs 26-28 (2008).

<sup>6</sup> See cases COMP/M.8449 – Peugeot / Opel, paragraphs 28-33 (2017), COMP/M.7747 PGA/MSA, paragraph 11 (2015); COMP/M.6403 Volkswagen / KPI Polska / Skoda Auto Polska / VW Bank Polska / VW Leasing Polska, paragraph 22 (2011); COMP/M.182 Inchape / IEP, paragraph 9 (1992).

<sup>7</sup> See cases COMP/M.8449 – Peugeot / Opel, paragraph 36 (2017), COMP/M.7747 PGA / MSA, paragraph 11 (2015); COMP/M.6403 Volkswagen / KPI Polska / Skoda Auto Polska / VW Bank Polska / VW Leasing Polska, paragraph 27 (2011).

overall market for the wholesale distribution of new LCVs and PCs, (ii) a market for the wholesale distribution of new PCs only and (iii) a market for the wholesale distribution of new LCVs only. For the purpose of this decision the Commission also considers that the question of the exact product market definition at the retail level can be left open between (i) an overall market for the retail distribution of new LCVs and PCs, (ii) a market for the retail distribution of new PCs only and (iii) a market for the retail distribution of new LCVs only on the other hand. This is because the Transaction does not give rise to serious doubts as to its compatibility with the internal market under any of these possible market definitions.

## **5.2. The relevant geographic markets**

- (18) The Notifying Party considers that the wholesale and retail distribution markets should be national in scope.
- (19) In previous decisions, the Commission has considered that the markets for wholesale distribution for new PCs and LCVs, is at least national ultimately leaving the question open whether it is EEA-wide or national in scope.<sup>8</sup>
- (20) As for the retail distribution of new PCs and LCVs, in previous decisions the Commission has left open whether the geographic market is EEA-wide, national, or local in scope.<sup>9</sup>
- (21) For the purpose of this decision the Commission considers that the question of the exact geographic market definition can be left open between (i) EEA-wide and (ii) national for the wholesale level and between (i) EEA-wide, (ii) national or (iii) local for the retail level, as the Transaction does not give rise to serious doubts as to its compatibility with the internal market under the narrowest plausible market definition.

## **6. COMPETITIVE ASSESSMENT**

- (22) On the basis of the product market definitions discussed in Section 5, the activities of the Parties lead to the following affected markets:<sup>10</sup>
- (a) Horizontal overlaps: (i) wholesale distribution of new LCVs in Croatia, (ii) wholesale distribution of new LCVs in Slovenia, and (iii) wholesale distribution of new PCs and LCVs combined in Slovenia.

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<sup>8</sup> See cases COMP/M.8449 – Peugeot / Opel, paragraph 32 (2017), COMP/M.6958 - CD&R / We buy any car, paragraph 18 (2013); COMP/M.5250 - Porsche / Volkswagen, paragraph 42 (2008)

<sup>9</sup> See cases COMP/M.8449 – Peugeot / Opel, paragraphs 37 (2017), COMP/M.7747 - PGA/MSA, paragraph 16 (2015); COMP/M.6718 - Toyota Tsusho Corporation / CFAO, paragraph 12 (2012); COMP/M.6403 - Volkswagen / KPI Polska / Skoda Auto Polska / VW Bank Polska / VW Leasing Polska, paragraph 28 (2011); COMP/M. 5709 - Volkswagen / Mahag, paragraph 20 (2009); COMP/M.5250 - Porsche / Volkswagen, paragraph 42 (2008); COMP/M.3388 - Ford Motor Company Ltd / Polar Motor Group Ltd, paragraph 11 (2004); COMP/M.3352 - VW / Hahn + Lang, paragraph 15 (2004).

<sup>10</sup> For completeness, it should be noted that the Parties' activities also overlap on the following markets: retail distribution of new PCs and LCVs in Slovenia and Croatia, retail distribution of used LCVs and PCs, wholesale and retail distribution of OE spare parts for PCs and LCVs in Slovenia and Croatia, car repair and maintenance services. As these overlaps do not lead to affected markets, they are not further discussed.

- (b) Vertical links: (i) between the upstream market for wholesale distribution of new LCVs in Croatia and the downstream market for the retail distribution of new LCVs in Croatia, and (ii) between the upstream market for wholesale distribution of new LCVs in Slovenia and the downstream market for the retail distribution of new LCVs in Slovenia.<sup>11</sup>

## 6.1. Competitive assessment - Horizontal overlaps

### *The wholesale distribution of new LCVs in Croatia*

- (23) Due to the limited combined market shares ([30-40]%) of the Parties, the small increment ([5-10]%) brought by the Transaction, as well as the existence of a number of credible competitors on this market,<sup>12</sup> it is unlikely that the Transaction will raise serious doubts as to its compatibility with the internal market. The market investigation also supported this conclusion.<sup>13</sup>

### *The wholesale distribution of new LCVs in Slovenia*

- (24) Due to the limited combined market shares of the Parties ([30-40]%),<sup>14</sup> as well as the existence of a number of credible competitors on this market,<sup>15</sup> it is unlikely that the Transaction will raise serious doubts as to its compatibility with the internal market. The market investigation also supported this conclusion.<sup>16</sup>

### *The wholesale distribution of new PCs and LCVs in Slovenia*

- (25) Due to the limited combined market shares of the Parties ([20-30]%), the Transaction is unlikely to raise serious doubts as to its compatibility with the internal market. The market investigation also supported this conclusion.<sup>17</sup>

### *Conclusion*

- (26) In view of the above, the Commission considers that the Transaction does not raise serious doubts as to its compatibility with the internal market as a result of horizontal effects.

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<sup>11</sup> With regard to the potential vertical links between the upstream wholesale level in Croatia and Slovenia and the downstream local markets at retail level, it should be noted that the Parties confirmed that market shares at local level do not exceed 20%. Therefore, as market shares are expected to be limited and as the same factors and market dynamic apply, the competitive assessment conducted in Section 6.2, also applies to any such vertical links with local downstream markets.

<sup>12</sup> Namely, Renault Nissan Hrvatska ([20-30]%), Porsche Croatia d.o.o. ([10-20]%), Opel South East Europe Ltd. ([10-20]%), etc.

<sup>13</sup> Non-confidential replies to questionnaire Q1 – Customers and Q1 - Competitors.

<sup>14</sup> The increment for this market is not negligible ([10-20]%), however, due to the limited combined market share of the Parties and the strong number of competitors, the Transaction does not raise serious doubts as to its compatibility with the internal market.

<sup>15</sup> Namely, Renault Nissan Slovenija ([20-30]%), Porsche Slovenia d.o.o. ([10-20]%), Summit Motors Ljubljana d.o.o. ([10-20]%), etc.

<sup>16</sup> Non-confidential replies to questionnaire Q1 – Customers and Q1 - Competitors.

<sup>17</sup> Non-confidential replies to questionnaire Q1 – Customers and Q1 - Competitors.

## 6.2. Competitive assessment – Vertical links

### *Vertical link between the Parties activities in Croatia*

- (27) The Parties activities give rise to an affected vertical link between Emil Frey's activities on the upstream market for wholesale distribution of new LCVs in Croatia and the Target's activities on the downstream market for the retail distribution of LCVs in Croatia.
- (28) With regard to input foreclosure, the market shares of the Parties are not very high ([30-40]%) on the upstream markets. Moreover, the number of strong competitors that have similar market shares would make any attempt of foreclosure difficult. Finally, due to the low market shares on the downstream market ([5-10]%), the merged entity would also have no incentive to foreclose input.
- (29) As for customer foreclosure, the Parties' market shares are limited on the downstream markets ([5-10]%) which would effectively prevent the merged entity from engaging in customer foreclosure.
- (30) The market investigation showed that the majority of respondents to the market investigation do not expect any effects resulting from the Transaction.<sup>18</sup>

### *Vertical link between the Parties activities in Slovenia*

- (31) The Parties activities give rise to an affected vertical link between Emil Frey's activities on the upstream market for wholesale distribution of new LCVs in Slovenia and the Target's activities on the downstream market for the retail distribution of LCVs in Slovenia.
- (32) With regard to input foreclosure, the market shares of the Parties are not very high ([30-40]%) on the upstream markets. Moreover, the presence of competitors that have similar market shares would make any attempt of foreclosure difficult.
- (33) The Parties' market shares are limited on the downstream markets ([10-20]% in Slovenia) which would effectively prevent the merged entity from engaging in customer foreclosure.
- (34) The market investigation showed that the majority of respondents to the market investigation do not expect any effects resulting from the Transaction.<sup>19</sup>

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<sup>18</sup> Non-confidential replies to question iv of questionnaire Q1 – Customers: the majority of the customers asked stated the Transaction will have a neutral or positive impact both on their own companies, that the level of competition in the affected markets and the majority of the customers asked stated the price level in the different segments will also remain the same. See also Non-confidential replies to question ii of questionnaire Q1 – Competitors: The results of the market investigation further indicated that competitors consider that the price level will not be affected as a result of the Transaction.

<sup>19</sup> Non-confidential replies to question iv of questionnaire Q1 – Customers: the majority of the customers asked stated the Transaction will have a neutral or positive impact both on their own companies, that the level of competition in the affected markets and the majority of the customers asked stated the price level in the different segments will also remain the same. See also Non-confidential replies to question ii of questionnaire Q1 – Competitors: The results of the market investigation further indicated that competitors consider that the price level will not be affected as a result of the Transaction.

**7. CONCLUSION**

- (35) For the above reasons, the European Commission has decided not to oppose the notified Transaction and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation and Article 57 of the EEA Agreement.

*For the Commission*

*(Signed)*  
*Margrethe VESTAGER*  
*Member of the Commission*