



① EMC/MTD

Please review and advise.

② CHQ to EMC/MTD.

③ File.

SAJ
AJ/CEO
28/11/08.

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Mogoru Moto Building
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Port Moresby
Papua New Guinea

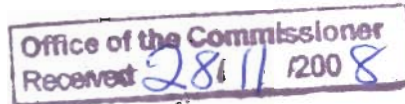
Blake Dawson

Thomas Abe
The Commissioner and CEO
Independent Consumer & Competition Commission (ICCC)
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28 November 2008

Dear Mr Abe

Toyota Tsusho (PNG) Limited - Notice of Application for Clearance of Business Acquisition

We act for Toyota Tsusho (PNG) Limited a company which carries on business in PNG under the name of Ela Motors (**EM**). Our client proposes to enter into a Deed for Sale and Purchase of Stock (**Deed**) and a Contract for Sale of Land (**Contract**) with The Auto Clinic Limited (**TAC**). EM intends to purchase from TAC land, buildings and certain assets located in Wards Road, Hohola (**Acquisition**).

Our reference
TJG MPE 080

Partner
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The Deed and Contract are subject to conditions precedent which includes obtaining clearance from the ICCC for the Acquisition

The Acquisition will enable EM to become more competitive in the vehicle servicing business by offering improved and increased services to a wider geographic area.

We seek clearance for the Acquisition and accordingly enclose a Notice of Application for Clearance of Business Acquisition under section 81 of the *Independent Consumer and Competition Act 2002*. (**Notice**)

We request that the Commission considers the Notice and grants the clearance for the Acquisition accordingly.

Please find **enclosed** a cheque for K20,000.00 (Twenty Thousand Kina) for payment of the application fee.

We also request an appointment to meet with you on 4 December 2008 after 3pm, so we may discuss any matters which arise from the Notice. Please advise whether this is possible, otherwise earlier in the week would suffice.

If you have any questions in relation to the Notice please contact Tim Glenn on 309 0004.

Yours faithfully

Partners
Tim Glenn
Jeff Shepherd
Ian Shepherd OBE
Derek Wood
David Lavery
Richard Flynn
David Frecker
Matthew May

Senior Associates
Thomas Anis
Phillip Wariniki

INDEPENDENT STATE OF PAPUA NEW GUINEA

Independent Consumer and Competition Commission Act 2002

Act Sec 81

Form ICCC 2

NOTICE OF APPLICATION FOR CLEARANCE OF BUSINESS ACQUISITION

A notice is submitted under section 81 of the *Independent Consumer and Competition Commission Act 2002* for clearance of a proposed business acquisition for the purposes of section 69 of the Act.

1. BACKGROUND

(a) **Name of applicant**

Toyota Tsusho (PNG) Ltd

(b) **Address in Papua New Guinea for service of documents**

c/- Mr Tim Glenn/Mr David Lavery
Blake Dawson
4th Floor, Mogoru Moto Building
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(c) **Short description of business carried on by applicant in Papua New Guinea and outside Papua New Guinea**

The Applicant

Toyota Tsusho (PNG) Ltd carries on business in Papua New Guinea (**PNG**) under the name "**Ela Motors**".

The business of Ela Motors includes:

- (i) the marketing and supply of new Toyota brand vehicles, both passenger vehicles and light commercial vehicles such as medium buses (seating up to 30 passengers) and trucks;
- (ii) the marketing and supply of used vehicles including Toyota brand cars, Yamaha brand marine products, motor bike and power products and Hino and Renault brand trucks;
- (iii) the marketing and supply of mechanical and panel shop services (including safety certificates); and
- (iv) the marketing and supply of Toyota and non-Toyota brand spare parts.

Ela Motors has fifteen branches in PNG.

Ela Motors does not carry on business outside of PNG.

Ela Motors is a member of the Toyota Tsusho South Pacific Holdings Pty Ltd (Australia) group of companies which markets and supports the Toyota, Yamaha, Hino and Renault brands, as well as other products, throughout the Oceania region. Ela Motors is also a member of the Toyota Tsusho Corporation (Japan) group of companies which operates a diverse range of businesses globally.

2. ACQUISITION

(a) Description of business of the seller - TAC

TAC carries on the business of general motor vehicle maintenance and servicing in Port Moresby. In particular, TAC's business includes after-sales services including the sale of spare parts, supply of mechanical repairs (including panel and paint works, auto-electrical services, exhaust and radiators) and towing services.

TAC also owns a licence to sell new and used vehicles, however, it only supplies a small number of used vehicles to the market (approximately ten per month).

TAC is seeking to exit the market by sale of its assets.

(b) Description of the proposed acquisition

On 17 October 2008, Ela Motors made a non-binding offer to purchase land, buildings and certain assets located in Wards Road, Hohola (**Acquisition**) from The Auto Clinic Limited (**TAC**). On the same date, TAC accepted Ela Motor's offer.

Ela Motors and TAC propose to enter into a Deed for Sale and Purchase of Stock (**Deed**) and a Contract for Sale of Land (**Contract**), drafts of which are **attached**. The Deed and the Contract are subject to conditions precedent including clearance from the Independent Consumer and Competition Commission (**ICCC**).

(c) Key features of the Agreements

The main features of the Deed are as follows:

(i) **Assets.** The Deed provides for the sale and purchase of the following assets of TAC (**Assets**):

- (A) the land, buildings and fixtures comprising of Allotment 23, Section 34 Hohola, National Capital District, Port Moresby (State Lease Volume 29 Folio 35);
- (B) equipment (subject to itemisation and valuation; Item 3 of the Schedule of the Deed and clause 2.1 of the Deed); and
- (C) stock-in-trade (subject to an agreed stocktake process; clause 2.3 of the Deed),

The following assets are excluded from the sale:

- (D) goodwill; and
- (E) debtors/receivables.

(ii) **Completion.** The Acquisition Date is to occur as soon as possible subject to ICCC clearance and Ministerial approval for sale of land to Ela Motors.

(iii) **Restraint.** TAC, its directors (including Mr Hugh Campbell) and their relatives are to undertake that they will not for a period of up to five years from the Acquisition

Date be involved in any capacity in Port Moresby or Central Province in a business of a similar nature to TAC or in competition with Ela Motors.

(d) **Commercial rationale**

The Acquisition will enable Ela Motors to become more competitive in the vehicle servicing business by offering improved and increased services to a wider geographic area. This is because:

- (i) Ela Motors' current servicing facilities at Scratchley Road, Badili are not very accessible from the Waigani area.
- (ii) Ela Motors estimates that only 50% of its workshop capacity can be utilised for vehicle servicing, due to the need to use the workshop for pre-delivery servicing of new motor vehicles. TAC's site, however, will provide the opportunity to expand the capacity of the vehicle servicing business and provide increased services to customers in a greater geographical area.
- (iii) Ela Motors proposes to invest over K 16 million to substantially rebuild the TAC site. While this may result in the temporary closure of the TAC facility while building works are carried out, it is likely to result in Ela Motors being more competitive and having the capability to offer improved and increased services to customers.

3. GROUNDS FOR GRANT OF CLEARANCE AND FACTS AND CONTENTIONS RELIED ON IN SUPPORT OF THOSE GROUNDS

This submission is divided into three parts:

- Part 1: Summary of submission
- Part 2: Identification of the relevant markets in PNG in which Ela Motors and TAC compete and their characteristics; and
- Part 3: Submissions as to why the acquisition of TAC's assets by Ela Motors will not substantially lessen competition in any market.

1. SUMMARY OF SUBMISSIONS

The Acquisition will not substantially lessen competition in the (primary) market for the supply of new and used cars in Port Moresby because there is negligible or no overlap between the businesses of Ela Motors and TAC in that market.

The Acquisition will not substantially lessen competition in the (secondary) market for mechanical services, repairs and spare parts in Port Moresby for the following reasons:

- with or without the Acquisition, TAC is likely to exit the market;
- post Acquisition, Ela Motors will have a total market share of approximately 24% and will continue to be constrained by:
 - effective competition from two similar sized distributor franchises and approximately 12 other participants offering the same or similar products and services;
 - the absence of restrictions on competitors, including the major distributor franchises, cross-selling parts and cross-servicing Toyota vehicles;
 - low barriers to entry;

- significant consumer countervailing power; and
- a substantial range of available substitutes.
- there will no removal of a vigorous and effective competitor; and
- there will be no significant vertical integration issues.

2. IDENTIFICATION AND CHARACTERISTICS OF MARKET

2.1 Market Definition

(a) Market for the supply of new and used vehicles

There is a market for the supply of new and used vehicles in each major PNG province.

There is strong supply side substitutability between new vehicles and used vehicles. For example, if the price of new vehicles increased by 5%, a supplier of new vehicles would switch to supplying used vehicles (or both new and used vehicles). There are no significant investments involved in switching to selling used cars. Likewise, a supplier of used cars could, given a sufficient price incentive, switch to supplying new cars. In these circumstances, some additional investment may be required to switch to new car sales but it would not be prohibitive.

There is very strong demand side substitutability between new vehicles and used vehicles. For example, if the price of new vehicles increased by 5%, customers would switch to acquiring used vehicles. Indeed, there is evidence that many customers will consider purchasing both new and used vehicles before making a transaction in the market. For instance, a used vehicle may be the same make and model as a new vehicle but is more attractive to a consumer because of its lower price.

Almost all new vehicles are imported and sold through distributorship franchises (being Boroko Motors (Nissan), PNG Motors/Niu Ford (Suzuki, Mazda and Ford) and Ela Motors (Toyota)). There are also a number of other dealers (Wheels, Reliance Motors, Auto Zeal, Freeway, and Best Cars) who import Toyota and other brand used vehicles.

The geographic dimension of the market is likely to be provincial. Even though suppliers of new and used vehicles could, given a sufficient price incentive, establish a business anywhere in PNG (subject to obtaining a vehicle trading licence, which is readily obtainable) consumers of such vehicles are unlikely to switch to other provinces to purchase a vehicle.

(b) Market for vehicle services and spare parts

There is a market for the supply of mechanical repairs, servicing and spare parts.

Mechanical repairs, servicing and spare parts (and safety certificates) are services and products that are economic complements within the same market. That is, a supplier of one of these services or products will generally supply the entire suite of services and products. Likewise, a customer of these services and products would generally expect to be provided with the entire suite of all services and products for vehicles.

The geographic dimension of the market is likely to be Port Moresby.

While there are a number of companies that operate in both the market for new and used vehicles and the market for mechanical services, repairs and spare parts, these markets are functionally separate such that the market for mechanical services, repairs and spare

parts is best characterised as being a "secondary market" to the market for new and used vehicles.

2.2 Market Shares

There are no comprehensive market share statistics available from official sources. However, the following estimates provide a reliable and accurate guide to the percentage of market share held by the relevant participants in the relevant markets below.

(a) New and used motor vehicles

The major franchisees are members of the Motor Traders Association. As a result of their membership, these franchisees are obliged to publish information on new and used car sales.

The following table provides the number of new and used cars sold between January and September 2008 by the three major franchisees in the market for the supply of new and used motor vehicles:

COMPETITOR	NUMBER OF NEW CARS SOLD	NUMBER OF USED CARS SOLD
Ela Motors	772	130
Boroko Motors	546	112
PNG Motors/Niu Ford Motors	338	203
Total	1,656	445

The following non-franchisees also compete vigorously in the market for the supply of new and used cars even though they are not obliged to publish information on new and used car sales: Wheels, Reliance Motors, Auto Zeal, Freeway and Best Cars. TAC does not effectively compete in the market for the sale of new and used cars as it typically sells less than 10 used cars per year.

(b) Vehicle services and spare parts

Although there are no formal statistics available, Ela Motors understands that its share of the market for vehicle servicing is less than 17%, while that of TAC is approximately 7%, such that the Acquisition would give Ela Motors a theoretical total market share of approximately 24%. That is, the Acquisition would not materially increase Ela Motor's market share in the secondary market.

Non-franchisees are not obliged to and have not published any information on vehicle services and spare parts.

In this regard, Ela Motors considers that approximately 35% of its new vehicle customers subsequently obtain servicing from Ela Motors. This figure is comparatively low and suggests that the majority of new Toyota vehicles are serviced by other service centres.

Ela Motors statistics on spare parts sales supports this view with annual sales of spare parts (genuine and non-genuine spare parts for Toyota vehicles) of some 11,826 items over a 12 month period.

2.3 Market characteristics

The following market characteristics apply to the market for both new and used vehicles and the market for mechanical services, repairs and spare parts:

- (a) These markets are very competitive with three or four large participants in each of the markets and a large number of smaller firms operating in Port Moresby;
- (b) The larger participants in the markets do not hold substantial market power and are effectively constrained by the other participants in the markets (larger and smaller firms);
- (c) In the market for new and used vehicles, some firms offer a range of brands of vehicles while others offer selected brands of vehicles. Likewise, in the market for mechanical services, repairs and spare parts suppliers offer either the full suite of services and products or selected services and products;
- (d) Increased demand for cars through increased economic stability and productivity in PNG has stimulated the emergence of a number of used car dealers as well as automotive repair and spare parts businesses; and
- (e) Significant cross-servicing of brands amongst the three main franchise dealers and cross-selling of branded and non-branded spare parts amongst spare parts suppliers.

3. NO SUBSTANTIAL LESSENING OF COMPETITION

3.1 Negligible or no overlap in new and used vehicles

As TAC does not currently supply new vehicles in PNG, the Acquisition will not have any effect on the market for new vehicles in PNG.

In relation to the market for the supply of used cars, the Acquisition will have negligible competitive effect as TAC is not an effective competitor in this market as it sells approximately ten used vehicles per month.

3.2 Market for mechanical services, repairs and spare parts in Port Moresby

(a) Market share of merged entity

As estimated, Ela Motors has a market share of approximately 17% while TAC has a market share of approximately 7%. The merged entity would thus have a market share of approximately 24%.

(b) Import competition

Given the nature of mechanical repairs and services, there is no import competition that could effectively constrain the merged entity in this respect. Further, there is understood to be insubstantial levels of directly imported vehicle spare parts.

(c) Barriers to entry

There are very few barriers to entry to the market for mechanical services, repairs and spare parts in Port Moresby. Formal licensing is required for vehicle dealers and workshop operators, both administered by the Department of Transport. Licenses are readily obtainable and there is an adequate supply of staff and premises for vehicle servicing in Port Moresby such that the barriers to entry to the vehicle sales and servicing markets are low.

This is evidenced by the number of recent entrants to the vehicle servicing and spare parts market during the period 1998-2004, most of which are non-franchised dealers importing

used cars (Wheels, Reliance, Freeway, Auto Zeal, Best), two of which have also established a servicing business (Reliance Motors & Wheels).

Further, given the dynamic nature of this market, there are likely to be clear incentives for firms to enter the market in the future.

(d) **The number of buyers and sellers in the market**

There are a number of strong competitors in the vehicle servicing market, comprising the other major vehicle franchises (Boroko Motors – (Nissan), PNG Motors/Niu Ford (Suzuki, Mazda and Ford). There are also approximately 12 other substantial independent service centres (including Wheels and Pit-Stop)). All of these franchises service Toyota vehicles, and Ela Motors supplies genuine and non-genuine Toyota spares to all service centres, including spare parts sellers such as Repco and Highway Motors.

The number of buyers in the market is very extensive given that all consumers who own or utilise a motor vehicle in Port Moresby are actual and potential buyers.

The numbers of sellers and buyers in the market is likely to grow given the dynamic nature of the market and the increasing demand for motor vehicles in PNG.

(e) **Countervailing power**

Given the number of suppliers in the market and the ready alternative sources of supply, buyers are readily able to switch to other suppliers if the merged entity sought to significantly and sustainably increase its prices for a reasonable period of time.

As noted above, the degree of "capture" of repeat customers for servicing and spare parts is relatively low (for example, 35% in the case of Ela Motors).

(f) **Ability to increase price significantly and sustainably**

The merged entity will not be in a position to sustain a significant increase in prices or profit margins because the competitive state of the market effectively will not change due to the Acquisition.

This is because the merged entity:

- (i) will not have substantial market power in the market;
- (ii) will be constrained by alternative suppliers in the market and the ability of buyers to switch easily to acquiring services and products from those suppliers; and
- (iii) will face new entry and increased competition because of the growing market.

(g) **Availability of substitutes**

There are a range of substitutes available with respect to the merged entity's products and services in the market for mechanical services, repairs and spare parts in Port Moresby. These include the services and products provided by other suppliers in the market, the second hand market for "used spare parts", and smaller and independent "backyard" mechanics.

(h) **Dynamic characteristics of the market**

In recent years in Port Moresby, there has been increased economic stability and productivity which has generated a resultant increase in demand for basic consumer goods

and accessories including cars.¹ This increase in demand has in turn stimulated the emergence of a number of new and used car dealers as well as automotive repair and spare parts businesses.

(i) **Removal of a sustainable, vigorous and effective competitor**

The Acquisition will not result in the removal of a sustainable, vigorous and effective competitor from the market but will ensure that the competitive effects of an exiting firm continue to operate in the market.

As a result of the Acquisition, Ela Motors is likely to be a more sustainable, vigorous and effective competitor in the market as it will be able to offer a broader range of products and services in competition with the other major participants.

Given the existence of at least three other substantial service centres in Port Moresby of a size comparable to Ela Motors (ie. Boroko Motors, PNG Motors/Niu Ford and Wheels) it is submitted there will be no substantial impact as a result of the Acquisition.

(j) **Vertical integration**

Ela Motors is a member of the group of companies that manufactures and supplies Toyota motor vehicles and Toyota spare parts.

Although Ela Motors is a member of the Toyota Group, it is owned by a subgroup (Toyota Tsusho) that is administered separately from the manufacturing arm (Toyota Motor Corp). This means there is some amelioration of vertical integration as Ela Motors will focus on product distribution and after-sales service.

As noted above, there is significant crossover in supply of spare parts and servicing amongst the major franchisees in Port Moresby.

¹ Bank of Papua New Guinea quarterly economic bulletin, March 2007.