INDEPENDENT CONSUMER & COMPETITION COMMISSION

DETERMINATION

CLEARANCE APPLICATION FOR BUSINESS ACQUISITION OF THE AUTO CLINIC LIMITED

BY

**TOYOTA TSUSHO (PNG) LIMITED
"ELA MOTORS"**

Application Lodged Date : 28 November 2008

Public Register Number : C2008/10

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1. Background

1.1 Parties to the Acquisition Proposal

Toyota Tsusho (PNG) Limited (Ela Motors)– Toyota Tsusho (PNG) Ltd carries on business in Papua New Guinea (**PNG**) under the name "**Ela Motors**". 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 that operates a diverse range of businesses globally. Ela Motors has 15 branches in PNG and engages in the following business activities:

- 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;
- 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;
- Marketing and supply of mechanical and panel shop services (including safety certificates); and
- Marketing and supply of Toyota and non-Toyota brand spare parts.

The Auto Clinic Limited (TAC)– TAC carries on the business of general motor vehicle maintenance and servicing in Port Moresby. It also provides 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. In addition to these services, TAC supplies a number of used vehicles to the market with approximately 10 vehicles per month.

2. Rationale of the acquisition

Ela Motors contended that the rationale of the proposed acquisition is to find additional space for vehicle servicing currently undertaken at the Ela Motor Badili facility. The significant increase in vehicle sales has required Ela Motor to devote more of its workshop capacity to preparing and servicing new vehicles under contractual warranties. The applicant argued that this means that there has been less capacity available to service other clients therefore resulting in loss of customers and business. It submitted that under these circumstances, Ela Motors is being artificially constrained from competing in the service market.

The applicant asserted that the proposed acquisition would not lessen competition in the market. It would increase competition by enabling Ela Motors to service a wider geographical area and become effectively competitive in the market as it will no longer have those capacity constraints.

3. Application for Clearance

On 28 November 2007, Ela Motors lodged its application for clearance of the proposed acquisition of assets in TAC pursuant to section 81 of the ICCC Act. The Commission is required to make a determination on whether or not to grant clearance of the proposed acquisition within 20 days of receipt of the application. The Commission is therefore required to make a determination on or by 18 December 2008.

4. Elements of a Clearance

The applicant applied for a clearance of the proposed acquisition under Section 81 of the ICCC Act. Section 81(3) of the ICCC Act provides that the Commission shall;

- *if it is satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, give a clearance; or*

- *if it is not satisfied that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market, by notice in writing to the person by or on whose behalf the notice was given, decline to give a clearance for the acquisition.*

In order for the Commission to decide whether to grant a clearance or not, it is required to assess the competition effect of the proposed acquisition in the relevant market. The detailed discussion is outlined in section 9 of this report.

5. Facts and Contentions in support of the application

In arguing that the business acquisition will not have or would not be likely to have the effect of substantially lessening competition in the market, the applicant submitted that;

Firstly, the acquisition will not substantially lessen competition in the 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.

Secondly, the acquisition will not substantially lessen competition in the market for mechanical services, repairs and spare parts in Port Moresby. The applicant briefly put forward the following in support of its contention.

- 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 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.

- the acquisition will not result in the removal of a vigorous and effective competitor; and
- there are no significant vertical integration issues.

6. Views from Industry Players and other Stakeholders

6.1 ***PNG Motors*** **–** PNG Motors submitted that there will be no adverse impact on competition in the market, and therefore have no objection to the application.

6.2 ***Bishop Brothers Limited (Bishop Brothers)*** **–** Bishop Brothers does not have any concern regarding the acquisition of TAC. Bishop Brothers submitted that it is not in competition with either company and that the acquisition will not impede its business in any way. It supports the move as this will provide a necessary service on "this side of town".

6.3 ***Seven Motors Limited (Seven Motors)*** **–** Seven Motors submitted that Ela Motors is a leading vehicle dealer in PNG. It provides effective and efficient service for decades. It expressed that Ela Motors is in a better position to extend its operations or venture into similar and /or other business in PNG. Seven Motors submitted that, it is fair to say that Ela Motors does not control the car/truck dealing industry.

6.4 ***AutoZeal International Limited (AutoZeal)*** **–** AutoZeal submitted that the impending acquisition will be detrimental to the market as it will result in the market been manipulated by a single entity. It expressed the following concern:

The acquisition can be viewed as manipulation of the market by a major company within the country, which would limit competition. In limiting competition, small service providers, such as AutoZeal will be greatly affected in their ability to develop and grow their business. This would affect investment and growth in the country's economy.

It argued that should Ela Motors acquire TAC; the number of competitors in the industry will be reduced by one. Ela Motors will eventually be the only service provider in the market; and therefore will have a greater power in dictating the price of goods, and controlling the market as a monopoly.

The acquisition would result in increased dependence by the other service providers on Ela Motors for specific services relating to the Toyota brand and model.

The Commission acknowledges comments by the above parties. The Commission will consider the relevant factors raised and assess these on their merit.

If clearance is granted, this provides the applicant the legal certainty for Ela Motors to proceed with its proposed acquisition without risking a contravention of the ICCC Act. But it needs to be noted that the Commission's clearance decision relates only to an assessment of any lessening of competition which may arise from the acquisition. The Commission is not permitted to take into account whether the acquisition would be in, or contrary to, the national interest or would provide positive or negative public benefits. These are issues which may arise if authorization were sought, but not where a clearance only is applied for, where competition is the only relevant issue.

The Commission's decision is independent of other regulatory approvals and does not stop any other party from bidding to acquire TAC or opposing the acquisition. This is a private commercial and independent arrangement between the parties concerned.

7. Characteristics of the motor vehicle industry

In its submission, the applicant stated that the characteristic of the market encompasses a market for both new and used vehicles; and a market for mechanical services, repairs and spare parts. Ela Motors submitted that the market characteristic is such that:

- The markets are very competitive with three or four larger participants in each of the market and a large number of smaller firms operating in Port Moresby;
- 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);
- 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;
- 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
- Significant cross-servicing of brands amongst the three main franchise dealers (Ela Motors, Boroko Motors and PNG Motor/Niu Ford) and cross-selling of branded and non-branded spare parts amongst spare parts suppliers.

The Commission notes that motor vehicle industry in Papua New Guinea consists of a number of main and sub markets which are to a greater extent complementary; because of the nature and the functionality of the market. The Commission notes that the markets consist of:

i. sale of new motor vehicles (including light commercial vehicles and trucks);
ii. sale of used motor vehicles; and
iii. provision of after sales services which include general maintenance/repair, supply of genuine and non-genuine parts, issuance of safety certificate, spray painting, panel beating, supply of automotive lubricants and towering services.

The Commission also notes that the industry comprises the four franchise vehicle dealers and 6 main independent used vehicle dealers (Wheels PNG Limited, Reliance Motors, Auto Zeal, Progress Auto Machinery, Freeway Motors, and Best Cars) providing either a completed range of service and/or a combination of these different services.
The Commission observes that the supply of new vehicles is predominantly undertaken by the four franchisees that supply specific models of new vehicles, light commercial fleet and trucks and other plant. These include:

1. Ela Motors – Toyota, Daihatsu, Hino Trucks, Renault trucks and Mack trucks;
2. Boroko Motors - Nissan, Isuzu, Mercedes Benz and Mitsubishi;
3. PNG Motors – Mazda, Hyundai and Ford;
4. Niu Ford- Ford.

The franchise vehicle distributors also supply imported used vehicles and provide a complete range of after sales service which includes the supply of genuine parts associated with their franchise brands and other competing franchise brands and non-genuine parts. In addition, they re-sale trade-in vehicles as used vehicles. Moreover, the franchisees and the main used vehicle dealers import and sell used vehicles of various brands (make and model) and also cross-service different makes and models. The non-franchise used car dealers, however, mainly supply non- genuine parts.

Apart from the franchise vehicle distributors and the 6 main used vehicle dealers, the Commission understands that there are a large number of independent workshops and spare parts suppliers/distributors that import vehicle accessories and mainly non-genuine spare parts either directly or through intermediaries and resell these in the market. Moreover, the group of independents, including numerous backyard repair shops, provides mechanical and auto electrical repairs, panel beating, spray painting service in the market.

The Commission understands that new and used car dealers are licensed by the Department of Transport. A single vehicle trading license permits an industry participant to import and sell new and used cars. Workshop, retail outlets for parts and accessories are licensed in Port Moresby by the National Capital District Commission.

8. Commission Assessment

8.1 The Market

For the purposes of the ICCC Act, the market is defined under Section 45 (2) as;

"…a reference to a market in the whole of Papua New Guinea for goods and services as well as other goods and services that, as a matter of fact and commercial common sense, are substitutable for them, including imports".

The applicant submitted that there are two relevant markets which can be classified as primary and secondary markets. It further submitted that since the proposed acquisition is confined to Port Moresby, the geographical dimension of the market is likely to be Port Moresby. The specific arguments advanced by the applicant are as follows:

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

Ela Motors submitted that there is a market for the supply of new and used vehicles in each major PNG province. That, there is strong supply side substitutability between new vehicles and used vehicles; where 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. It claimed that, 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.

It further submitted that there is very strong demand side substitutability between new vehicles and used vehicles, where if the price of new vehicles increased by 5%, customers would switch to acquiring used vehicles. It argued that there is evidence that many customers will consider comparing the make, model and price of both new and used vehicles before making a transaction in the market.

It also asserted that almost all new vehicles are imported and sold through distributorship franchisees 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 brands of used vehicles.

Ela Motors also expressed the view that the geographic dimension of the market is likely to be provincial. It argued that although 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

In regard to this segment of the market, the applicant submitted that 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. It claims that 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 applicant claimed that 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 characterized as being a "secondary market" to the market for new and used vehicles. In addition, the applicant advanced that the geographic dimension of the market is likely to be Port Moresby.

(c) The Commission's position

As discussed above, the Commission notes that the market is characterized by three (3) main business activities.

The Commission notes that there are at least four (4) franchise vehicle distributors or new motor vehicle dealers that compete with each other for the sale of new but competing brands of vehicles. In addition, the franchise vehicle distributors also compete with six (6) second hand motor vehicle dealers for the supply of used cars of various brands, makes and models.

For the purpose of the proposed acquisition, the Commission understands that motor vehicle dealers would need a motor vehicle dealer license in order to sell motor vehicles. Most franchisee dealers sell both new and used vehicles. As part of this business, they also operate workshops to refit new vehicles and attend to service warrantees; and in addition, provide after sales services using their workshop facilities. These business activities are licensed by the Department of Transport and the regulatory arm of the National Capital District Commission, respectively.

In view of this information, Commission understands that Ela Motors and TAC are competitors in the market; in particular, the Commission notes that both parties are licensed to operate to sell new and used cars and provide after sales workshop services.

The Commission however notes that, the applicant sells new and used vehicles and provides a full suite of after sales services in the market. In contrast, TAC only supplies used vehicles and provide a full suite of after sales services. Accordingly, their competition is limited only to Port Moresby, and only to sale of used vehicles and vehicle servicing and spare parts; they do not compete in the new vehicle sales market.

In view of the above, the Commission is required to establish whether the wider PNG motor vehicle industry market should be considered as the relevant market for the purpose of the proposed acquisition.

In regard to the market for new and used vehicles, the Commission agrees that there is strong supply side substitutability between new vehicles and used vehicles in the market. The Commission considers that new and used vehicle dealers operate workshops and associated after sales services to complement their vehicle sales and therefore if there is a reasonable price incentive for suppliers to switch between operating a new and or used vehicle (or vice versa), it is very likely that they would switch if there are no other significant. The Commission is of the view that whilst there may be switching costs, these would not be significant.

The Commission further notes that competition in the new and used vehicle segments of the markets is determined by the availability of the range of vehicle make and model, prices, service warrantee and after sale service such as availability of genuine and or alternative spare parts. In terms of this information, the Commission agrees that there is very strong demand side substitutability between new and used vehicles. The Commission considers that consumers are very likely to switch between new and used cars given a price incentive and/or other factors affecting consumer preference such as vehicle fuel efficiency.

This suggests that the sales of new and used vehicles, provided by Ela Motors and TAC are substitutes, at least on the demand side.

In regard to the market for vehicle service and spare parts, the Commission notes that the four vehicle franchise dealers often cross-service competing brands at their workshop facility. They also compete with used car dealers that sell and service various vehicle brands, provide mechanical/repair services and supply genuine and/or non-genuine parts. The Commission further notes that there are established workshops and backyard repair shops that provide either a range or specific vehicle mechanical/repair services and/or supply vehicle parts. These groups of firms therefore compete with both the franchise and used car dealers in providing an extended service to the sale of new and used vehicles.

In view of this consideration, the Commission considers that there is some demand side substitutability between vehicle service and spare parts; however this is limited to a certain extent, due to the specific technical requirements of mechanical services and spares for the different vehicle brands, makes and models. On the supply side, the Commission notes that there is strong supply side substitutability due to various participants providing either a full suite or a combination of the services in this segment of the market.

The Commission therefore considers that the dealers of new and used vehicles operate in the same market, whilst the provision of vehicle service and spare parts although is a related market, is a separate functional market in the overall motor vehicle industry. The Commission considers that the demand for vehicle services and spare parts is dependent on there being vehicles in the market.

Within the meaning of section 45(2), the Commission considers that the acquisition is likely to have an impact on the domestic market, more particularly in Port Moresby for both the market for the supply of new and used cars; and the market for vehicle services and spare parts where both parties are established competitors. The Commission therefore considers these markets as relevant markets for the purpose of its competition effect analysis.

9. Effects of Competition in the Market

9.1 Market for the supply of new and used cars

Ela Motors argued that since TAC does not currently supply new vehicles in PNG, the proposed acquisition will not have any effect in the market for new vehicles in PNG.

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

As discussed, competition in the market for new and used vehicle is determined by the availability of the range of vehicle brand, make and model, prices, service warrantee and after sale service such as the availability of genuine and or alternative spare parts.

The Commission notes that TAC competes with Ela Motors in this relevant market, however, its competition is limited to the supply of used vehicles in Port Moresby. In addition, the Commission also notes that competition between the parties is negligible due to the minimal number of used vehicles sales by TAC in comparison to the volume of sales by Ela Motors.

The Commission is of the view that the main competitors to Ela Motors are the other franchise vehicle dealers namely, Boroko Motors, PNG Motors and Niu Ford, including the six (6) main used vehicle dealers.

The Commission considers that the effect on competition in this market stemming from the proposed acquisition would be quite limited, if any.

9.2 Market for vehicles services and spare parts

The Commission notes that the applicant did not comment on the effects of the proposed acquisition in this relevant market. Instead, it submitted supporting arguments in regard to the statutory factors under section 10 of this Determination, hereunder.

As discussed the Commission notes that, Ela Motors and TAC both operate workshops to refit new vehicle and/or used vehicles, including after sales services such as undertaking maintenance/repair of vehicles and/or sale of vehicle parts.

The Commission notes that these services are also undertaken by the other (3) competing franchise vehicle dealers, as well as the 6 main used car dealers, various spare parts dealers/distributors and stand-alone workshops and backyard repair shops.

In this regard, the Commission is of the view that whilst the proposed acquisition will result in one less competitor in this segment of the market, the acquisition would not limit competition in the market. The Commission notes that there are numerous workshops that cater for the service of vehicles, including market participants that source and supply genuine Toyota parts, non-Toyota parts/non-genuine parts either directly or through intermediaries.

The Commission notes that the franchise vehicle dealers distribute and supply genuine parts associated to their respective franchise brands, Toyota genuine parts and non-genuine parts. Moreover, the Commission is aware that the supply of spare parts, especially non-genuine parts in the market is very competitive due to the proliferation of numerous small to medium "trade store" style spare part outlets throughout the country.

The Commission also notes that the franchise dealers compete amongst themselves and other industry participants by cross-servicing competing vehicle brands.

As such, the Commission considers that competition in this market is strong; due to the large number of service providers such that there is some competitive constraint on the behaviour of service providers; and that buyers have various firms and thus prices and service quality to choose from to service their vehicles and/or source vehicle parts.

The Commission considers that the proposed acquisition would not significantly affect the level of competition in this market.

10. Statutory Factors taken into account in assessing Competition

In addition to the assessment of the application, the Commission is required under Section 69(5) of the ICCC Act to take into account the following statutory matters. These are as follows:

- *[a] the actual and potential level of import competition in the market;*
- *[b] the Nature and effect of barriers to entry in the market;*
- *[c] the number of buyers and sellers in the market;*
- *[d] the degree of countervailing power in the market;*
- *[e] the likelihood that the acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins;*
- *[f] the extent to which substitutes are available, or are likely to become available, in the market;*
- *[g] the dynamic characteristics of the market, including growth, innovation and product differentiation;*
- *[h] the likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor;*
- *[i] the nature and extent of vertical, integration in the market.*

In its submission to the Commission, Ela Motors addressed these statutory matters. The Commission however notes that Ela Motors provided arguments in regard to the market for vehicle service and spare parts and not the market for the supply of new and used vehicles. The Commission notes that this is attributed to Ela Motors's comment that since TAC does not currently supply new vehicles in PNG and that is sales of used vehicles is minimal; the proposed acquisition will not have any effect in the market for new and used vehicles.

10.1 Actual and potential level of import competition

The applicant submitted that given the nature of mechanical repairs and services, there is no import competition that could effectively constrain the merged entity in this respect. It also submitted that there is insubstantial level of directly imported vehicle spare parts by vehicle owners.

The Commission notes that all vehicles, both new and used are imported into the market by the four franchisee vehicle dealers and used car dealers. In addition, the Commission notes that individual buyers also import for their personal use, used cars either directly or through overseas intermediaries.

The Commission also notes that all vehicle spare parts are imported. In regard to mechanical service of vehicles, the Commission notes that import competition is nil. Service of vehicles is undertaken in country where there are numerous workshops, including backyard service shops; and unlimited qualified motor vehicle mechanics.

The Commission considers that the proposed acquisition will not affect the level of import competition in the relevant markets which is predominantly the source of the supply of new and used vehicles and vehicle spare parts.

10.2 Nature and effect of barriers to entry

Ela Motors submitted that there are very few barriers to entry to the market for mechanical services, repairs and spare parts in Port Moresby. It submitted that formal licensing is required for vehicle dealers and workshop operators, both administered by the Department of Transport and the city authority. 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.

It further submitted that 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 PNG Limited, Reliance Motors, Freeway Motors, Auto Zeal, Best Cars), two of which have also established a servicing business (Reliance Motors & Wheels). Ela Motors assert that given the dynamic nature of this market, there are likely to be clear incentives for firms to enter the market in the future.

The Commission accepts the argument that there are few barriers to entry and notes that these are not onerous and can be easily overcome. The Commission notes that both the market for the supply of new and used vehicles; and vehicle service and spare parts has grown over the years. The Commission observes that whilst there was a modest increase in the number of the franchisee vehicle dealers from three to four in the recent past, there has been a significant increase in the number of used vehicle dealers importing mainly from Japan and Singapore. Consequently, as demand for vehicles increases, the Commission notes that there has been an increase in the number of established workshops and spare parts dealers/distributors.

The Commission is of the view that there is scope for further growth in the market and therefore does not discount that likely entry in future is possible.

10.3 Number of buyers and sellers

The applicant asserted that there are a number of strong competitors in the vehicle servicing market, comprising the other franchises vehicle dealers (Boroko Motors – (Nissan), PNG Motors/Niu Ford (Suzuki, Mazda and Ford). There are also approximately 12 other substantial independent service centres (including Wheels Limited 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 applicant also submitted that 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.

As discussed above under section 10.2, there are three other franchisee vehicle dealers and 6 main used car dealers that compete against Ela Motors in the market for the sale of new and used vehicles, respectively. The Commission also notes that overseas dealers, mainly used cars dealers also sell vehicles directly to individual buyers in PNG; however, the number of vehicles sold through this arrangement is insignificant.

In terms of vehicle service and spare parts, the Commission notes that there are numerous vehicle service centres and workshops operating in the market. The Commission notes that all new and used vehicle dealers provide after sales services which include vehicle maintenance/repair, spray paint, panel beating and engine repair. In addition, there are numerous small to medium backyard establishments that operate similar after sales businesses and provide either a complete range of these services and/or specialise in one or two of these services.

In addition, all new and used vehicle dealers also supply and distribute genuine and non-genuine parts associated with their franchisee brands, and to some extent, those of other brands. For example, the Commission understands that there is no restriction on other franchise dealers importing genuine Toyota parts to service Toyota vehicles. The Commission however does not discount that most genuine parts are sourced from the domicile parts distributor (Ela Motors).

Moreover, the Commission notes that there are numerous non-genuine spare part dealers (U-Parts Ltd, Progress Auto Machinery, Auto Tech Ltd, V-Tech Engineering Ltd, Dafong Trading Ltd, Ideal Auto parts, Henshi Engineering) ranging from well established parts centres to small "tucker shop" type set up. These participants compete with Ela Motors to supply non-Toyota/non-genuine parts in the market.

10.4 Degree of countervailing power

Countervailing power refers to the ability of the buyer(s) or the seller(s) of a product or service to by-pass a particular seller or customer in the supply chain. Where there is potentially only one supplier, the countervailing power of customers may be very small.

The applicant expressed that 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 over a reasonable period of time. It argued that for the reasons given in its application, the degree of "capture" of repeat customers for servicing and spare parts is relatively low (for example, 35% in the case of Ela Motors).

On the supply side of new and used vehicles, the Commission notes that the applicant is the only supplier of new Toyota brand of vehicles. The Commission attributes this to the exclusivity of the franchise arrangement limiting the ability of other market participants from importing and selling brand new Toyota vehicles under the current circumstances where Ela Motors is the sole franchisee. The Commission considers that suppliers' countervailing power to source new Toyota vehicles abroad is negligible.

The applicant also sells used Toyota and other competing brand used vehicles. In this segment of the market, it faces competition from other franchise vehicle dealers that sell new and used competing brands, including used Toyota vehicles. The Commission notes that Ela Motors faces further competition from the 6 main used vehicle dealers that also sell alternative used brands and used Toyota vehicles. The Commission considers that these suppliers' have a strong countervailing power to source directly from abroad used Toyota and competing vehicle brand.

In regards to vehicle service and spare parts, the Commission notes that the applicant is the main domicile supplier and distributor of genuine Toyota spare. It also distributes non-Toyota parts and services the Toyota brand of vehicles, including other competing vehicle bands from time to time. As discussed above, there is some competition from the other vehicle franchises that import genuine Toyota parts and non-genuine parts for their respective service centers and workshops where cross-servicing of vehicle brand is common. As discussed through this determination, there are competing firms, comprising of small to medium independent dealers supplying competing non-genuine parts in the market. The Commission considers that there is some countervailing power on the part of competing suppliers to source directly from abroad genuine Toyota parts, non-Toyota/non-genuine parts. The Commission considers that countervailing power does not exist in regard to vehicle service.

On the demand side, because of the reasons discussed above, countervailing power is negligible in regard to import of new Toyota vehicles and genuine Toyota parts. The Commission considers that because of the franchise arrangements, buyers are unable to source new Toyota vehicles and new vehicles of other competing brands. The Commission understands that there is however competition in the market for import of genuine Toyota and non-genuine Toyota parts. The Commission further notes that annually an insignificant number of buyers arrange to import mainly used vehicles and spare parts from overseas dealers.

The Commission, however, notes that buyers can exercise some bargaining power (ability to negotiate on price, quality and service arrangements with suppliers) in view of competing brands of new and used vehicles, genuine Toyota parts, including parts of other franchise brands and non-genuine parts and associated vehicle services. The bargaining power, however, varies between buyers depending on the volume of their purchase and service contracts. Smaller and individual buyers would possess limited bargaining power compared to large buyers, such as mining companies. In respect of long-term service contracts of Toyota vehicles, the Commission does not discount that large buyers may be able to exert bargaining power on prices offered by the applicant given the benefits of long-term exclusivity arising from such contracts.

Overall, the Commission considers that the proposed acquisition will not affect the countervailing and bargaining power of consumers and suppliers where this can be exercised in the respective markets.

10.5 Likelihood that acquisition would result in the acquirer being able to significantly and sustainably increase prices or profit margins

Ela Motors claims that 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. It argued that this is because the merged entity will:

- not have substantial market power in the market;
- 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
- face new entry and increased competition because of the growing market.

The Commission accepts that the acquisition would not directly result in the applicant significantly and sustainably increasing its prices and profit margins. The Commission notes that prices of new and used vehicles, vehicle service fees and spare part costs are driven by market forces of supply and demand, substitutes and other factors affecting consumer choice. The Commission finds that the market is competitive and is of the view the buyers can easily and readily switch between suppliers in the market due to availability of a wide range of competing products and service, price range, quality of service and warrantee.

10.6 The extent to which substitutes are available, or are likely to become available, in the market.

The applicant expressed the view that 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. It submitted that 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.

The Commission notes that there is demand side substitutability for similar make/model of new and used vehicles. For example, buyers can choose to buy a new and or a used station wagon such as a new and or used Toyota Prado, or other alternative station wagon such as Nissan Patrol, Honda CRV, Hyundai Tuscan or Mitsubishi Outlander. These vehicles are readily supplied by the competing franchise dealers and used vehicle dealers.

In addition, the Commission notes the number of new and used vehicle dealers; and vehicle service and spare parts suppliers and considers that buyers in the market can easily and readily switch between these competitors when sourcing their requirements. However, the Commission acknowledges that spares parts between the different brands of vehicles, including different makes and models cannot be readily substituted because of the difference in parts specifications.

Generally, the Commission considers that substitutes are available in the market. The proposed acquisition would not impact on the availability of substitutes.

10.7 Dynamic characteristics of the market, including growth, innovation and product differentiation

The applicant submitted that 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. 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.

The Commission would agree that in the recent past there has been an increase in the number of participants in the market. The improved economic activity has fuelled the demand for vehicles, including after sales services. The Commission notes that product innovation and differentiation exists in the market and considers that this is predominantly imported. For example, there has been upgrading of various vehicle brands physical features, capability and performances, including introduction of new parts, accessories and lubricants. The Commission understands that there are a few innovation work undertaken in-country where certain workshops modify and accessorise vehicles.

10.8 Likelihood that the acquisition would result in the removal from the market of a sustainable, vigorous and effective competitor

Ela Motors submitted that 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 existing firm continue to operate in the market.

It argued that the acquisition would enable Ela Motors 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 franchise dealers. It further submitted that given the existence of at least three other substantial service centres in Port Moresby of a size comparable to Ela Motors (i.e. Boroko Motors, PNG Motors/Niu Ford and Wheels PNG Limited) there will be no substantial impact as a result of the acquisition.

The Commission considers that whist the acquisition will result in the removal from the market a competitor; there is no information to suggest that TAC is a sustainable, vigorous and effective competitor in the market. The Commission however, does not discount TAC's ability to become a sustainable, vigorous and effective competitor over time.

The Commission notes that the economies of scale and scope likely to be achieved through the acquisition would potentially result in the applicant becoming a sustainable, vigorous and effective competitor. The Commission however considers that the presence of other competitors providing competing products, alternative price and service quality would continue to constraint the applicant from engaging in monopolistic practices.

The Commission further notes that the fundamental reason for the proposed acquisition is for Ela Motors to increase its vehicle service capacity which is currently constrained due to its workshop space been dedicated to preparing and servicing new vehicles under contractual warranties. The Commission understands that under these circumstances, customers that required Ela Motors vehicle servicing and repairs are often re-scheduled and/or lost.

In view of this, the Commission understands that TAC is likely to exit the market regardless of whether the proposed acquisition proceeds or otherwise. The Commission understands that the proprietor operates a similar business abroad where this has become the focus of his business. As such, the Commission understands that the proprietor intents to sells TAC to interested parties who wish to continue operating the business. Alternatively, the TAC workshop site is likely to be developed into a commercial block.
In this regard, the Commission considers that the proposed acquisition at least in part allows for the continuation of vehicle service and spare parts by the applicant from the TAC site.

In view of the above consideration and information available, the Commission considers that the proposed acquisition would not remove a sustainable, vigorous and effective competitor from the market.

10.9 Nature and extent of vertical, integration

The applicant submitted that Ela Motors is a member of the group of companies that manufactures and supplies Toyota motor vehicles and Toyota spare parts. Although it 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). It argued that this means there is some amelioration of vertical integration as Ela Motors will focus on product distribution and after-sales service. It further expressed that Ela Motors is not vertically integrated to selling and servicing the Toyota brand of products because there is significant crossover in supply of spare parts and servicing amongst the franchisees in Port Moresby.

For the reasons discussed through this determination, the Commission considers that this is not a strongly vertically integrated market as all products are fully imported, except for vehicle servicing which is undertaken in country.

As noted, all the franchisees and used vehicle dealers are partially vertically integrated only at the retail level whereby their respective vehicle sales business is supported by after sales services rendered from service centers and workshops, including the supply and distribution of vehicle spare parts.

The Commission considers that the acquisition would therefore not of itself, result in a vertical integration between the parties concerned.

11. Summary and Conclusion

To grant a clearance under Section 81(3) of the ICCC Act, the ICCC must be satisfied on the basis of the facts given, that the acquisition will not have, and will not be likely to have, the effect of substantially lessening competition in a market.

This requires analysis of the competition effects, if any, in the relevant market(s). Section 45(2) of the *ICCC Act 2002* defines the relevant market as;

"a reference to a market in the whole of PNG for goods and services as well as other goods and services that as a matter of fact and commercial common sense, are substitutable for them, including imports".

The applicant defined the relevant markets as (1) the Market for the new and used vehicles, and (2) the market for vehicle service and spare parts. The Commission accepts that these market definitions are reasonable for the purpose of this clearance application.

The Commission's assessment shows that whilst both parties are competitors in these markets, their rivalry is limited only to the supply of used vehicles, vehicle service and spare parts.

The Commission found that there is contestability in the relevant markets and that the competitive effect has been found to be negligible, mainly due to many competing suppliers, low barriers to entry, availability of substitutes and the fact that there are no import restriction that restrict interested parties from importing new and used vehicles and genuine and non- genuine spare parts

The Commission however acknowledges that due to the nature of the market in regard to vehicle services and spare parts, there are some limitations in regard to import competition and substitutability.

In addition, the Commission notes that although the acquisition will remove from the market a used vehicle and spares parts competitor, it will not affect the number of the new vehicle dealers in the market.

The Commission however acknowledges that the circumstance is such that TAC is likely to exit the market for the reasons discussed above under section 10.8 of this Determination. The arrangement therefore ensures the continuation of the services provided from the TAC site post acquisition by Ela Motors.

While the acquisition will increase Ela Motors's existing market share in both relevant markets, there are a number of factors which mitigate against a conclusion that the acquisition would result in a substantial lessening of competition. In particular, the non-exclusive factors set out under section 69(5) of the Act have been taken into account and are worth noting:

- The actual and potential level of import is not an issue as all products are imported. There is adequate import competition in both relevant markets, except for vehicle services which is undertaken in country. Other segments of the relevant markets are open to import competition and are competitive;

- The nature and effect of barriers to entry into the relevant market are considered to be low. There is scope for existing and new players to enter and or expand their operations in either relevant market;

- Whilst there is a large number of buyers in the market, the number of sellers has increased in the recent past and is not limited;

- Buyers posses some bargaining power (though limited countervailing power);

- Ela Motors's ability to significantly and substantially increase prices or profit margins in the relevant markets is constrained by competing franchise vehicle dealers, used vehicle dealers and spare parts suppliers/distributors;

- There are a number of readily available substitutes in both relevant markets but the practicability of these substitutes in some case is limited due mainly to the technical specification of the different vehicle brands and spare parts;

- There is product innovation, differentiation and growth in the relevant markets;

- The acquisition will not remove from the relevant markets a sustainable, vigorous and effective competitor. Although the acquisition would result in there being one less competitor, especially in the used vehicle, vehicle service and spare parts segment of the market, post acquisition, the number of used vehicle suppliers participating in the market will not be significantly affected. The acquisition would not affect the number of new vehicle dealers or the number of vehicle service and spare parts dealers; though vigorous competition will remain;

- The acquisition will not add to existing vertical integration in the relevant markets.

Overall, while the acquisition may result in some lessening of competition in one or more markets, any such reduction in competition will be small, and would certainly no amount to a substantial lessening of competition.

12. Decision

In view of the above factors, analysis and considerations, and the views of industry stakeholders, the Commission is satisfied that the acquisition of TAC's assets by ELA Motors, will not have and will not be likely to have, the effect of substantially lessening competition in the relevant markets identified above, accordingly, the Commission grants clearance for the proposed acquisition to proceed pursuant to Section 81(3) of the *Independent Consumer and Competition Act 2002*.

Thomas Abe	**David Dawson**	**Dr. Billy Manoka**
(Commissioner)	*(Associate Commissioner)*	*(Associate Commissioner)*

18 December 2008