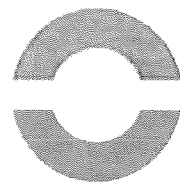


General Notice No. 505 of 2023



**competition  
commission**

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## **Decision of the Commission**

**CC/DS/0056**

Non-Confidential

**INV 061 – Report of Undertakings offered by  
Bamyris Motors Ltd**

**30 March 2023**

CC/DS/0056

**Decision of the Commissioners of the Competition Commission  
of 30 March 2023**

**relating to proceedings under section 63 of the Competition Act 2007 further to  
a report from the Executive Director in the matter referred to as  
'INV061 – Report of Undertakings offered by Bamyris Motors Ltd'**

**THE COMMISSION**

|                  |   |               |
|------------------|---|---------------|
| Mr. M. Bocus     | - | Chairperson,  |
| Mrs. V. Bikhoo   | - | Commissioner, |
| Mrs. S. Dindoyal | - | Commissioner, |
| Mr. M. Lennon    | - | Commissioner  |

Having regard to the Competition Act 2007,

Having regard to the Competition Commission Rules of Procedure 2009,

Having regard to undertakings offered by Bamyris Motors Ltd on 20<sup>th</sup> January 2023 (hereinafter the 'Undertakings'),

Having regard to a report of the Executive Director of the Competition Commission on the Undertakings submitted to the Commission on 23<sup>rd</sup> February 2023 (hereinafter the 'Report'),

**WHEREAS:****1. Introduction**

- 1.1 This Decision relates to Undertakings, which have been offered to the Commission by Bamyris Motors Ltd (hereinafter 'Bamyris Motors') during an investigation (INV 061) opened by the Executive Director into the conduct on the part of Bamyris Motors potentially reviewable as a monopoly situation pursuant to Section 46 of the Competition Act 2007 (the 'Act').
- 1.2 Having taken cognizance of the said Undertakings and the Executive Director's Report thereon, the Commission has determined the case on the basis of the Undertakings, pursuant to section 63(3) of the Act.

**2. Background to the Executive Director's Investigation**

- 2.1. The Executive Director opened the investigation, INV 061, upon receipt of a complaint and following an enquiry into the matter. Bamyris Motors was notified of the start of the investigation on 14<sup>th</sup> December 2021.

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- 2.2. The investigation sought to assess whether Bamyris Motors by charging Rs. 2000 to repairs and maintenance workshops upon request for motor vehicle spare parts and being the sole distributor of Hyundai spare parts could be distorting competition in the market for the supply of Original Equipment ('OE') parts for Hyundai make motor vehicles in Mauritius. In so doing, Bamyris Motors could impede the ability of the private repairs and maintenance garages, actual and potential, to compete in the aftermarket for repairs and maintenance.
- 2.3. During the investigation, Bamyris Motors offered undertakings pursuant to Section 63 of the Act and rule 28 of the Competition Commission Rules of Procedure 2009. The Undertakings are reproduced as an **Annex** to the present Decision.
- 2.4. In his assessment, the Executive Director has concluded that the Undertakings given by Bamyris Motors are likely to allay the competition concerns arising from the imposition of a fee for the provision of price lists/quotation for Hyundai spare parts. The Executive Director is therefore recommending that the Commission determines the case on the basis of the Undertakings offered by Bamyris Motors and accepts the Undertakings so submitted.

**(i) Main Party**

- 2.5. The Executive Director identified the main party to be Bamyris Motors. Bamyris Motors is a subsidiary of Groupe Barnard Hayot (GBH) and operates as the exclusive distributor of Hyundai and Volvo motor vehicles in Mauritius. Bamyris Motors purchased the distributorship of the Hyundai brand from CFAO Motors Ltd around 2018 and has been the distributor of Volvo since around 2019.<sup>1</sup>
- 2.6. Bamyris Motors is involved in the sale of passenger motor vehicles (Hyundai, Volvo) as well as light-duty trucks (Hyundai) and their respective after-sales services. Hyundai features amongst the top 6 brands of motor vehicles registered in Mauritius after Toyota, Kia, Nissan, Mitsubishi, and Suzuki. Bamyris Motors imports the genuine (OE parts) of Hyundai from the manufacturer, more precisely Hyundai Mobis Dubai for use in its own workshop and supply on the local market. It is the exclusive distributor of OE Hyundai spare parts and other related accessories.<sup>2</sup>

**(ii) The alleged conduct and competition concerns identified**

- 2.7. As previously set out, the conduct complained of relates to Bamyris Motors' imposition of a Rs. 2000 fee to repairs and maintenance workshops upon request for motor vehicle spare parts.

<sup>1</sup> Paragraph 2.17 of the Report of the Executive Director

<sup>2</sup> Paragraph 2.18 of the Report of the Executive Director

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- 2.8. The Executive Director was of the view that there could be competition law concerns in relation to the quotation fee applied by Bamyris Motors for OE spare parts, the more so as this practice appeared not to have any economic justification. Bamyris Motors, as the sole distributor of Hyundai spare parts should have been providing the pricing list (quotation) without any additional cost. It ought also to have been displaying the prices of those spare parts.
- 2.9. The Executive Director also noted inconsistencies during the investigation from information gathered from Bamyris Motors and from a few private repairs and maintenance workshops which tended to indicate the likely existence of the impugned conduct. For instance, three out of the seven operators confirmed that they had previously been charged the quotation fee by Bamyris Motors. The other 4 operators stated that they did not face such a situation.<sup>3</sup>
- 2.10. The Executive Director viewed that in the circumstances, the alleged conduct on the part of Bamyris Motors could constitute a potential:
- a) exploitative conduct in terms of end-customers having to pay the quotation fee or private garages and repairs and maintenance workshops passing on the quotation fee on end-customers when providing them with devis/estimation of costs;
  - b) exclusionary conduct, whereby the quotation fee may raise the cost of the private workshops and garages, impeding the latter's ability to compete effectively in the aftermarket for repairs and maintenance with Bamyris Motors.

### 3. Undertakings offered by Bamyris Motors

- 3.1. On being notified of the launch of the investigation and further to procedural meeting held in the context of the investigation, Bamyris Motors voluntarily but without admitting any infringement of the Act offered undertakings to address the likely competition concern that could arise from the impugned conduct. The said undertakings (the 'Undertakings') are hereto fully reproduced as annex to the present decision.
- 3.2. Bamyris Motors undertakes –
- c) not to impose any quotation fee upon the request for list of prices for Hyundai OE spare parts for the purpose of estimation of repairs; and
  - d) inform the clients of Bamyris Motors through a notice on its website of the non-applicability of any quotation fee on request for price list. The

<sup>3</sup> Paragraph 4.12 of the Report of the Executive Director



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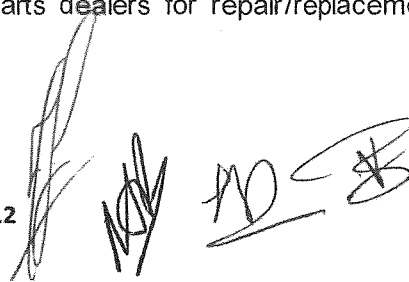
notice will be published within a period of 2 weeks from the date on which the undertakings are accepted by the Commission.

#### 4. The Executive Director's Assessment of the Undertakings

- 4.1. The Executive Director's assessment of case facts serves the principal purpose of assessing the Undertakings provided (as opposed to providing conclusive findings as is the case in a full-fledged investigation). To this effect, the Executive Director has set out his views on the relevant market against which to assess the alleged conduct considering the market share of Bamyris Motors and the potential for Bamyris Motors to exercise dominance within the defined market.
- 4.2. Automotive spare parts can be classified into three categories: original spare parts (branded) referred to as Original Equipment (OE) parts, Original Equipment Manufacturer (OEM) parts (genuine parts, at times unbranded), and aftermarket spare parts.
- 4.3. The OE parts are the genuine branded spare parts from the motor vehicle manufacturers that the motor vehicle is equipped with originally and which are often supplied by the dealerships of different makes. The OEM parts are replacement parts which are made by the same company that makes the motor vehicle and provide the second best fit after OE parts for replacement, ensuring quality, and performance to some extent. The OEM parts can be branded or unbranded. On the other hand, aftermarket spare parts are produced by a different parts company and are often designed to be compatible with as many makes and/or models as possible.<sup>4</sup>
- 4.4. There are three main types of operators in the automotive industry who deal in spare parts. These are motor vehicle dealers, auto parts dealers and auto repair and maintenance workshops/garages.
- 4.5. Motor vehicle dealers, who are often the exclusive/sole authorised distributor of the motor vehicle make and the original spare parts of the respective brands in which they deal, have as primary activity the sales and marketing of the branded new motor vehicles. These motor vehicle dealers procure the spare parts from the vehicle manufacturers to supply to their own repair and maintenance workshops as well as other private repair and maintenance garages and individuals.
- 4.6. Auto parts dealers, on the other hand, import spare parts (OEM parts, second-hand original spare parts, and aftermarket spare parts) for resale. Repair and maintenance workshops as well as individual customers purchase spare parts from auto parts dealers for repair/replacement or maintenance purposes.

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<sup>4</sup> Paragraph 2.22 of the Report of the Executive Director

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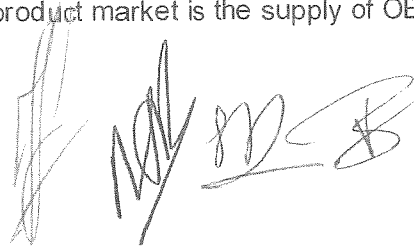
- 4.7. There are also other smaller auto spare parts dealers which service different regions across the country. The auto parts dealers at times also specialize in the supply of genuine/OEM parts or original second-hand parts for specific makes.
- 4.8. Lastly, auto parts repairs and maintenance workshops/garages are directly concerned with spare parts for repairs and maintenance purposes. These workshops/garages mostly procure spare parts from the concerned motor vehicle dealers and/or auto parts dealers or are also involved in the importation of spare parts.
- 4.9. The Executive Director found that in so far as the Hyundai make is concerned, it is unlikely that auto spare parts dealers import OE parts. Bamyris Motors has, as of January 2021, been designated as the exclusive distributor of Hyundai spare parts and accessories.<sup>5</sup>

Market Definition (Relevant Market)

- 4.10. The Executive Director identified the focal product to be the supply of original spare parts for the Hyundai make. The Executive Director firstly considered the functional dimension of the market in relation to the supply of spare parts generally inasmuch as the supply of auto parts is likely to be segmented into the upstream and downstream market.
- 4.11. The upstream market consists of the suppliers of the spare parts which normally includes the importers and distributors of the spare parts i.e., motor vehicles dealers and auto parts dealers supplying spare parts to workshops for repair and maintenance. While the downstream market consists of the auto repair workshops which ensures the repair and maintenance for the motor vehicle owners.<sup>6</sup>
- 4.12. From the functional dimension, the focal product identified is in relation to the upstream market for the supply of original spare parts for Hyundai make motor vehicles by Bamyris Motors. These original spare parts are likely to be demanded by private repairs and maintenance workshops for mostly off-warranty motor vehicles.
- 4.13. From a demand-side substitution perspective, the Executive Director considered that the extent to which OEM parts can provide competitive constraints will very much depend on availability of those parts but more importantly customers' willingness to substitute original equipment (OE) parts for OEM parts.
- 4.14. The Executive Director concluded for the purposes of the assessment of the undertaking, that the likely relevant product market is the supply of OE

<sup>5</sup> Paragraph 2.36 of the Report of the Executive Director

<sup>6</sup> Paragraphs 3.7 of the Report of the Executive Director



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Hyundai make part with Bamyris Motors Ltd being exclusive distributor. OEM parts and aftermarket parts supplied by other operators could potentially be presumed to be in a separate market.<sup>7</sup>

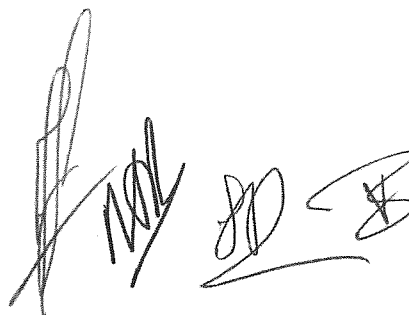
- 4.15. As far as a potential supply-side substitution is concerned, it has been considered that it is unlikely that auto parts suppliers can switch to distribution of OE Hyundai parts. Bamyris Motors is the sole distributor by virtue of the exclusive distributorship agreement it has concluded with Hyundai Mobis Dubai.
- 4.16. As far as the geographic market is concerned, the Executive Director viewed the likely relevant geographic market to be Mauritius, given the defined geographical area in which competition is occurring regarding the supply of spare parts for repairs and maintenance.
- 4.17. In light of the foregoing, the Executive Director has therefore considered the relevant market to be *the market for the supply of OE parts for Hyundai make motor vehicles in Mauritius*.

Market share and Exercise of Dominance

- 4.18. Considering the relevant market and the fact that Bamyris Motors is the exclusive distributor of Hyundai motor vehicles and Hyundai related products (spare parts and accessories), the Executive Director was of the view that there is a likely monopoly situation for the supply of Hyundai OE spare parts and Bamyris Motors is potentially in a de facto monopoly situation in the supply of OE parts for Hyundai motor vehicles, having possibly 100% of the market share.
- 4.19. As regards dominance, the Executive Director considered that this element too appeared to be satisfied, given that Bamyris Motors is the exclusive distributor of OE spare parts of Hyundai and is unlikely to face any competition from actual or potential competitors. The Executive Director further noted that no other supplier can supply Hyundai OE parts given the national exhaustion regime in Mauritius which limits parallel imports.<sup>8</sup>
- 4.20. In the above premises, the Executive Director viewed it likely for Bamyris Motors to be in a monopoly situation and in a position of dominance in the relevant market for the supply of OE parts for Hyundai make motor vehicles in Mauritius.

<sup>7</sup> Paragraph 3.13 of the Report of the Executive Director

<sup>8</sup> Paragraph 3.18 of the Report of the Executive Director



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Assessment of Undertakings

- 4.21. The Executive Director has found the proposed Undertakings by Bamyris Motors to be effective, timely and proportionate and to satisfactorily address the identified competition concerns.
- 4.22. The Executive Director in particular, considers that:
  - a) the undertakings submitted by Bamyris Motors will effectively remove the potential restriction that could arise from the imposition of the quotation fee. With the non-imposition of the quotation fee, the ability of the private repairs and maintenance garages, actual and potential, to compete in the aftermarket for repairs and maintenance, will no more be impeded.
  - b) There will be more competitive constraints in the aftermarket for repairs and maintenance, encouraging more entrants, better incentives for innovation and quality of service. Also choice and convenience for repairs and maintenance will be available to the end-customers.
  - c) the non-imposition of the quotation fee is also likely to benefit end-customers given that they would not have to pay for the quotation fee passed on in the devis/estimation of costs by private garages and repairs and maintenance workshops.
  - d) the fact that Bamyris Motors has already taken action not to impose quotation fee and given commitments to inform its clients through the publication of a notice on its website of the non-applicability of quotation fee on request for price list, within 2 weeks from the decision of the Commission provides a timely resolution of the competition concern identified and
  - e) the cost (if any, regarding administrative costs) of implementing the undertakings is minimal as it only requires the publication of a notice on the website of Bamyris Motors.

**5. Legal Framework**

- 5.1. Having found reasonable grounds to believe that the conduct by Bamyris Motors is likely to amount to a monopoly situation subject to review in accordance with Section 46 of the Act, the Executive Director proceeded to investigate same pursuant to sections 30 (c) and 51 (1) of the Act. However, to the extent that Undertakings were offered during the investigation, the Executive Director's assessment has therefore been guided by the provisions of section 63 of the Competition Act.

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**Determination based on Undertakings**

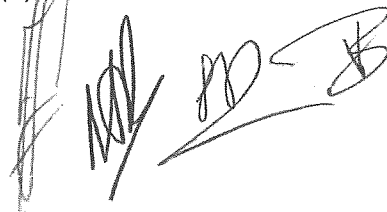
- 5.2. Under section 63(1) of the Act, enterprises may offer undertakings to the Commission *"to address any concern that has arisen, or is likely to arise, during an investigation in respect of a restrictive agreement subject to investigation, a monopoly situation or a merger situation"*. Section 2 of the Act, defines "undertaking" as *"an obligation or commitment given in writing by an enterprise to, and accepted by, the Commissioners, to prevent or terminate a restrictive business practice."*
- 5.3. Pursuant to Section 63(3) of the Act, the Commission may determine a case on the basis of an undertaking. The threshold for the acceptance of undertakings under section 63(3) is that the Commission must be satisfied that the undertaking addresses *"all the concerns it has about any prevention, restriction, distortion or substantial lessening of competition distortion(...) of competition"* which may arise from the matter at hand. The Commission has accordingly confined its ensuing determination to the legal threshold enunciated at section 63(3) of the Act.

**6. Determination**

- 6.1. Having regard to the concerns identified during the investigation, and the Executive Director's assessment thereof as set out in his Report, the Commission finds that the imposition of a Rs. 2000 fee by Bamyris Motors on repairs and maintenance workshops upon request for motor vehicle spare parts may constitute an anti-competitive conduct in breach of the law.
- 6.2. In virtue of section 63(3) of the Act the Commission has accordingly determined the present case on the basis of the Undertaking given by Bamyris Motors. The Commission finds that for the reasons given by the Executive Director (as set out at paragraphs 4.21 and 4.22 above) the behavioural measures set out in the Undertakings satisfactorily address all the concerns which may arise regarding the prevention, restriction, distortion or lessening of competition.

**7. Decision****NOW THEREFORE,**

- 7.1. For the reasons set out in this Decision, the Commission decides as follows:
- 1) We accept the Undertakings given by Bamyris Motors (as herewith annexed), which shall be the decision of the Commission in the present matter, as provided for under section 63(4) of the Act;

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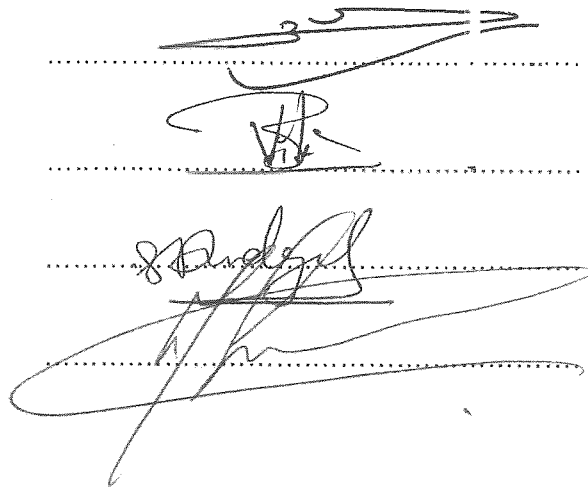
- 2) The said Undertakings shall have the effect of a direction given by this Commission under section 60 of the Act; and
- 3) The Undertakings shall be effective as from the date of the present Decision.

Mr. M. Bocus  
(Chairperson)

Mrs. V. Bikhoo  
(Commissioner)

Mrs. S. Dindoyal  
(Commissioner)

Mr. M. Lennon  
(Commissioner)



Made on 30 March 2023.

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## **ANNEX**

### **Undertakings offered by Bamyris Motors Ltd dated 20<sup>th</sup> January 2023 in relation to INV 06I - Investigation (The 'Undertakings')**

CC/DS/0056



**UNDERTAKINGS GIVEN BY BAMYRIS MOTORS LTD TO THE COMPETITION COMMISSION PURSUANT TO SECTION 63 OF THE COMPETITION ACT AND RULE 28 OF THE COMPETITION COMMISSION RULES OF PROCEDURE 2009**

On the 14<sup>th</sup> December 2021, the Executive Director of the Competition Commission ('the Executive Director') notified Bamyris Motors Ltd ('Bamyris') that he had opened an investigation code-named INV 061 – Motor Vehicle Spare Parts pursuant to Sections 30 (c) and 51 (1) of the Competition Act 2007 (the 'Act'). The investigation was into a potential restrictive business practice on the part of Bamyris in relation to a quotation fee of Rs 2,000 on request for the price lists of Hyundai make OE spare parts.

At the procedural meeting held on 20<sup>th</sup> January 2022 and in its letter dated 03<sup>rd</sup> March 2022, Bamyris indicated that the fee of Rs 2,000 was in relation to an estimation of repairs and not simply for a price list. Bamyris provided for the justifications in terms of cost involved in the preparation of the estimate of repairs and highlighted the economic value of the document for private repairs and maintenance garages.

Bamyris reiterated in its letter 03<sup>rd</sup> March 2022 that there was currently no such practice of charging a quotation fee. It could not, however, deny whether the charging of the quotation had occurred in the past. If that was the case, it would have been by inadvertence.

On 22<sup>nd</sup> November 2022, Bamyris was notified of the competition concerns of the Executive Director through the Statement of Issues ('SOI'), further to which a meeting was held on 08<sup>th</sup> December 2022 at the office of the Competition Commission.

In the SOI, Bamyris was informed that the Executive Director was pursuing the matter and that there were competition law concerns in relation to the request of quotation fee. The Executive Director reached that conclusion based on certain information contained in the submissions of Bamyris and those gathered from private repairs and maintenance garages.

In a spirit of good faith and without any admission on its part of any infringement of the Act, Bamyris is offering the following undertakings, pursuant to Section 63 of the Act and Rule 28 of the Competition Commission Rules of Procedure 2009, to allay the concerns of the Executive Director.

Bamyris undertakes:

- (i) not to impose any quotation fee upon the request for list of prices for Hyundai OE spare parts for the purpose of estimation of repairs; and
- (ii) to inform its clients through a notice on its website on the non-applicability of any quotation fee on request for price list. The notice will be published within a period of 2 weeks from the date on which the undertakings are accepted by the Commission.

Dated this 20<sup>th</sup> of January 2023

Signature \_\_\_\_\_

Mr Laurent Nurbel  
Managing Director & Authorised Signatory  
Bamyris Motors Ltd

**Bamyris Motors Ltd**

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End of decision