



DETERMINATION OF MERGER NOTIFICATION M/14/041 - JDM AUTOMOTIVE / COMMONS ROAD CARS

Section 21 of the Competition Act 2002

Proposed acquisition by JDM Automotive Limited of Commons Road Cars Limited

Dated 22 January 2015

Introduction

1. On 30 December 2014, in accordance with section 18(1) of the Competition Act 2002, as amended¹ (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed transaction whereby JDM Automotive Limited (“JDM Automotive”) would acquire the entire issued share capital and therefore sole control of Commons Road Cars Limited (“Commons Road Cars”).

The Transaction

2. On 10 December 2014, [...].
3. A draft share purchase agreement was subsequently received by the Commission². In the circumstances, the Commission considers that the undertakings involved have demonstrated to the Commission a good faith intention to conclude an agreement for the purposes of section 18(1A)(b)(ii) of the Act.
4. It is proposed that the entire issued share capital of Commons Road Cars will be acquired by JDM Automotive.

The Undertakings Involved

The Acquirer – JDM Automotive

5. JDM Automotive is a company incorporated in the State in 2006 with its registered office at Exit 5, M50, North Road, Dublin 11. JDM Automotive is the holding company for the Joe Duffy Automotive Motor Group.³

¹ It should be noted that the Competition and Consumer Protection Act 2014 made a number of important amendments to the merger review regime set out in the Competition Act 2002.

² On 09 January 2015, in response to a query by the Commission.

³ See <http://www.joeduffy.ie/>.



6. JDM Automotive has eight wholly owned subsidiaries⁴ active in the retail sale of specific brands of new and demonstration motor vehicles and in the provision of aftersales services and the sale of parts and accessories for these brands:
 - i. Joe Duffy (Motors) Limited, Dublin – BMW, MINI, BMW Motorrad⁵;
 - ii. Mainway North Road Limited, Dublin – Audi;
 - iii. Mainway Limerick Limited, Limerick – Audi;
 - iv. Joe Duffy Dun Laoghaire Limited, South Dublin – Porsche & SEAT;
 - v. JDM Specialist Cars Limited, Dublin – Mazda;
 - vi. JDM Premium Cars Limited, North Dublin – Land Rover & Volvo;
 - vii. JBDL Limited, Dublin – Ford; and
 - viii. McAllisters Garage Limited, North Dublin – Volkswagen.
7. JDM Automotive also sells pre-owned motor vehicles and offers intermediary finance and insurance services.
8. JDM Automotive's turnover for the year ended 31 December 2013 was €113.4 million, the entirety of which was generated in the State.

The Target – Commons Road Cars

9. Commons Road Cars is a company limited by shares incorporated in the State in 1990 and operates a car dealership in Commons Road, Navan, County Meath.
10. Commons Road Cars is an authorised Volkswagen dealer⁶, which sells new and demonstration passenger vehicles, provides Volkswagen aftersales and repair services and sells Volkswagen spare parts and accessories. It also sells pre-owned motor vehicles and offers finance services through Volkswagen Bank.
11. Commons Road Cars was also appointed as a SEAT Aftersales Dealer in 2011 and as such provides SEAT maintenance and repair services and warranty requirements and sells SEAT spare parts and accessories.
12. Commons Road Cars' turnover for the financial year ended 31 December 2013 was €[...], the entirety of which was generated in the State.

The Vendor

13. The sole shareholder in Commons Road Cars is an individual⁷ who is also a co-director in the company.

⁴ A ninth subsidiary, Joe Duffy Property Company Limited, is a non-trading company, managing the group's property investments.

⁵ i.e. BMW motorcycles.

⁶ Commons Road Cars is an authorised Volkswagen dealer in accordance with the terms of a franchise agreement between Commons Road Cars and Volkswagen Group Ireland, which is renewable every two years provided that certain targets and conditions are met.

⁷ Nancy Callaghan of Navan, Co. Meath.



Rationale for the Proposed Acquisition

14. The notification states:

“The commercial objective sought to be achieved by Commons Road Cars Limited by the proposed transaction is the continuity of its business as a going concern.

The commercial objective sought to be achieved by JDM Automotive Limited by the proposed transaction is the continuity of its future growth strategy as a leading motor sales and sales support group.”

Third Party Submissions

15. No submission was received.

Competitive Analysis

16. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define precise relevant markets.
17. JDM Automotive owns dealerships that sell and service the following brands of new and demonstration motor vehicles: BMW, MINI, Audi, Ford, Mazda, Porsche, SEAT and Volkswagen. It also sells pre-owned motor vehicles and branded parts and accessories and offers intermediary finance and insurance services.
18. Commons Road Cars holds the exclusive Volkswagen franchise for the sale of new and demonstration Volkswagen passenger vehicles in County Meath. It also sells pre-owned motor vehicles and offers finance services through Volkswagen Bank. Commons Road Cars also holds Volkswagen and SEAT service dealer contracts and as such provides services and sells parts and accessories for these specific brands of motor vehicles, which respectively makes up approximately 6% (services) and 12% (parts and accessories) of the annual turnover of Commons Road Cars.
19. There are three minor horizontal overlaps in the activities of the parties within the State:
- with regard to the sale of new and demonstration Volkswagen passenger vehicles, including finance services through Volkswagen Bank, and aftersales and repair services and the sales of parts and accessories for Volkswagen motor vehicles, JDM Automotive owns a Volkswagen dealership, McAllisters Garage, in Swords, County Dublin, approximately 38km away from the Commons Road Cars dealership in Navan, County Meath. The McAllisters Garage dealership in Swords however only accounts for approximately 9.18% of JDM Automotive’s annual turnover. In addition, there are 18 other Volkswagen dealerships within a radius of 90km from the Commons Road Cars dealership. Volkswagen Ireland determines recommended retail list prices for its new motor vehicles on a national basis, which



- is circulated and used by its dealers countrywide⁸. Nationally, in 2013, Volkswagen held a market share of new vehicle registrations, including imports, of 12.79%⁹;
- ii. with regard to the provision of SEAT aftersales and repair services and the sale of parts and accessories for that specific brand of motor vehicle, JDM Automotive owns a SEAT dealership in South Dublin (i.e. Joe Duffy Dun Laoghaire), approximately 55km away from the Commons Road Cars dealership in Navan, County Meath. This specific dealership however only accounts for approximately 5.18% of JDM Automotive's annual turnover and because it is a branded SEAT and Porsche vehicle dealership, vehicle servicing and the sale of spares and accessories make up only 7.98% and 9.46% of the dealership turnover respectively. In addition, there are 10 other SEAT dealerships within a radius of 90km from the Commons Road Cars dealership authorised to provide aftersales and repair services and to sell SEAT spares and accessories; and
 - iii. with regard to the sale of pre-owned motor vehicles, which made up approximately 50% of vehicle sales by Commons Road Cars in the last financial year, the Commission notes that most, if not all, motor dealerships in the State sell pre-owned motor vehicles.
20. In all of the above areas of overlap, there are a large and varied (in size) number of competitors whose presence will constrain the activities of the merged entity post-transaction. For example in the overall, national, market for retail sales of passenger vehicles and the provision of aftersales and repair services, parts and accessories, the parties estimate that Commons Road Cars and JDM Automotive hold an estimated market share of 0.21% and 3.19% respectively. The increment post transaction will therefore be minimal.
21. In light of the above, the Commission considers that the proposed acquisition will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

22. The proposed transaction contains covenants restricting the vendor from carrying on any business which competes with Commons Road Cars in the State and Northern Ireland for a period of two years following completion of the proposed transaction.
23. The vendor is also restricted from soliciting the custom of any existing customer or supplier and/or offering employment to any existing employee of Commons Road Cars, for a period of two years following completion of the proposed transaction.
24. The parties state that the covenants are typical of a transaction of the nature of the proposed transaction, i.e. transferring a business as a going concern, in order to protect the full value of the business, goodwill and trade names being transferred and the parties view them to be fair and reasonable.

⁸ The parties state that dealers are however absolutely free to determine their own resale prices and that dealers also determine their own prices in respect of the sale of used vehicles and for services and spare parts.

⁹ Society of the Irish Motor Industry (SIMI) Motorstats: <http://www.beebweep.ie/stats/>



25. The Commission considers these restrictions to be directly related and necessary to the implementation of the proposed transaction.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, has determined that, in its opinion, the result of the proposed acquisition whereby JDM Automotive Limited would acquire the entire issued share capital and thus sole control of Commons Road Cars Limited, will not be to substantially lessen competition in any market for goods or services in the State, and accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Gerald FitzGerald
Member
Competition and Consumer Protection Commission