



DETERMINATION OF MERGER NOTIFICATION M/18/019 – JDM AUTOMOTIVE/MOTORPARK

Section 21 of the Competition Act 2002

Proposed acquisition by JDM Automotive Limited of the entire issued share capital and thereby sole control of Motorpark Limited

Dated 22 March 2018

Introduction

1. On 14 February 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (“the Act”), the Competition and Consumer Protection Commission (“the Commission”) received a notification of a proposed acquisition whereby JDM Automotive Limited (“JDM Automotive”) would acquire the entire issued share capital and thereby sole control of Motorpark Limited (the “Target”) from Higgins Motorpark Limited (“Higgins Motorpark”) (“the Proposed Transaction”).

The Proposed Transaction

2. At the time of the notification, the parties informed the Commission that they had not yet executed a formal written agreement relating to the Proposed Transaction. The parties submitted to the Commission, together with the notification, a copy of the signed Draft Heads of Terms between JDM Automotive and Higgins Motorpark dated 28 December 2017. In addition, the parties provided, at the request of the Commission, a copy of the unsigned draft Share Purchase Agreement between Higgins Motorpark, JDM Automotive, [...] on 13 March 2018 (“Proposed SPA”).
3. In the circumstances, the Commission considers that the undertakings involved have demonstrated a good faith intention to conclude an agreement for the purpose of section 18(1A)(b)(ii) of the Act.

The Undertakings Involved



The Acquirer – JDM Automotive

4. JDM Automotive is a private company limited by shares¹, incorporated in the State in 2006, with its registered office at Exit 5, M50, North Road, Dublin 11.
5. JDM Automotive has 11 wholly-owned subsidiaries² active in the retail sale of branded new and demonstration motor vehicles, and in the provision of aftersales services, and the sale of parts and accessories for a number of its affiliated brands. These subsidiaries, and the branded goods and services which they supply, are as follows:
 - i. Joe Duffy (Motors) Limited - Finglas, Dublin – *BMW, BMWi, MINI, BMW Motorrad*³;
 - ii. Mainway North Road Limited - Finglas, Dublin – *Audi*;
 - iii. Mainway Limerick Limited - Limerick – *Audi*;
 - iv. Joe Duffy Dun Laoghaire Limited - Dun Laoghaire, Dublin – *Porsche*;
 - v. JDM Specialist Cars Limited - Finglas, Dublin – *Mazda*;
 - vi. JDM Premium Cars Limited - Swords, Dublin – *Kia & Volvo*;
 - vii. Karmann Auto Limited - Finglas, Dublin – *Volkswagen*;
 - viii. JDM Airside Limited - Swords, Dublin - *Jaguar & Land Rover*
 - ix. JBDL Limited – Finglas, Dublin - *Ford*;
 - x. McAllister’s Garage Limited – Swords, Dublin – *Volkswagen*;
 - xi. Commons Road Cars Limited – Navan, Meath - *Volkswagen*.
6. JDM Automotive also sells pre-owned motor vehicles and offers intermediary finance and insurance services.
7. For the financial year ending 31 December 2016, JDM Automotive’s turnover was approximately €281 million, all of which was generated in the State.

The Target – Motorpark Limited

¹ The individual shareholders and their respective shareholdings in JDM Automotive are [...].

² Three subsidiaries of JDM Automotive are currently non-trading companies, namely, Joe Duffy Property Company Limited, JDM Eastgate Limited and JDM Services Limited.

³ BMW Motorrad is the BMW motorcycle brand.



8. The Target is a wholly owned subsidiary of Higgins Motorpark⁴, which has its registered office at Motorpark, Headford Road, Galway. The Target operates a dealership at New Tuam Road, Monksland, Athlone, Co. Roscommon, which consists of a *Ford/Volvo* dealership which principally sells new and demonstration *Ford*- and *Volvo*-branded passenger cars and *Ford*-branded light commercial vehicles as well as pre-owned (mostly *Ford*- and *Volvo*-branded) passenger cars and light commercial vehicles. From time to time, the Target accepts trade-ins of other car brands which it then sells on. The Target also offers *Ford*- and *Volvo*-branded aftersales services and vehicle repair services from its premises at New Tuam Road, Monksland, Athlone, Co. Roscommon.
9. For the financial year ending 31 December 2016, the Target's turnover was approximately €11 million, all of which was generated in the State.

Rationale for the Proposed Transaction

10. The notification states:

“The commercial objective sought to be achieved by Higgins Motorpark Limited by the proposed transaction is the continuity of the Motorpark Limited business as a going concern.

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

Third Party Submissions

11. No submission was received.

Competitive Analysis

12. 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

⁴ The individual shareholders and their respective shareholdings in Higgins Motorpark are Snipe Investments Limited (99.5%) and Michael Barry (0.5%). Snipe Investments Limited is owned by Michael Barry (99.999%) and Breda Barry (0.001%).



to define the precise markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State.

13. Similarly, it is not necessary for the Commission to define the precise geographic markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Transaction in the State. However, for the purpose of its assessment, the Commission will assess the likely impact of the Transaction with respect to the State. The Commission notes that there is no horizontal overlap between the parties on a local level as the Target operates in Athlone and the closest JDM dealership to the Target is *Joe Duffy Volkswagen (Navan)* located in Navan, Meath approximately 110 kilometres away.

Horizontal Overlap

14. There are three potential horizontal overlaps within the State between the activities of the parties:
 - i. the sale of new and demonstration *Ford*-branded passenger cars and light commercial vehicles - including the supply of intermediary financial services, aftersales services and repair services - and the sale of parts and accessories for *Ford*-branded passenger cars and light commercial vehicles (“sale of *Ford*-branded new passenger cars and light commercial vehicles”);
 - ii. the sale of new and demonstration *Volvo*-branded passenger cars - including the supply of intermediary financial services, aftersales services and repair services - and the sale of parts and accessories for *Volvo*-branded passenger cars and light commercial vehicles (“sale of *Volvo*-branded new passenger cars”); and
 - iii. the sale of pre-owned passenger cars and light commercial vehicles.

The sale of Ford-branded new passenger cars and light commercial vehicles

15. There is a horizontal overlap between the activities of the parties in relation to the sale of *Ford*-branded new passenger cars and light commercial vehicles in the State. As previously mentioned in paragraph 13, there is no horizontal overlap between the



activities of the parties in relation to the sale of *Ford*-branded new passenger cars and light commercial vehicles on a local level.

16. In 2017, *Ford* held an estimated market share of approximately 10.5% for all new and demonstration branded passenger cars sold in the State.⁵ In 2017, the parties held the following estimated market shares, respectively, in relation to the total retail sale of new and demonstration *Ford*-branded passenger cars in the State: Target – [0-5]% and JDM Automotive – [0-5].⁶
17. Therefore, following implementation of the Proposed Transaction, JDM Automotive's estimated share of the total retail sale of new and demonstration *Ford*-branded passenger cars in the State will be approximately [5-10]%, representing an increase of [0-5].
18. In 2017, *Ford* held a market share of 23.8% for all new and demonstration branded light commercial vehicles sold in the State.⁷ In 2017, the parties held the following estimated market shares, respectively, in relation to the total retail sale of new and demonstration *Ford*-branded light commercial vehicles in the State: Target – [0-5]% and JDM Automotive – [5-10].⁸
19. Therefore, following implementation of the Proposed Transaction, JDM Automotive's estimated share of the total retail sale of new and demonstration *Ford*-branded light commercial vehicles in the State will be approximately [5-10]%, representing an increase of [0-5].⁹

⁵ Market shares estimates were provided by the parties and were sourced from statistics gathered by www.beeper.ie. The Commission notes that "*SIMI's statistical service new registrations*" in 2017 notes that *Ford* held an estimated market share of approximately 9.32% for all new and demonstration branded passenger cars sold in the State which can be accessed at: <http://www.simi.ie/Statistics/National+Vehicle+Statistics.html>. However, the Commission notes that this difference is minimal and unlikely to impact the Commission's assessment.

⁶Market share figures were provided by the parties and were based on the parties' own internal sales figures.

⁷Market shares estimates were provided by the parties and were sourced from statistics gathered by www.beeper.ie. The Commission notes that "*SIMI's statistical service new registrations*" in 2017 notes that *Ford* held an estimated market share of approximately 23.74% for all new and demonstration branded light commercial vehicles sold in the State which can be accessed at: <http://www.simi.ie/Statistics/National+Vehicle+Statistics.html>. However, the Commission notes that this difference is minimal and unlikely to impact on the Commission's assessment.

⁸ Market share figures were provided by the parties and were based on the parties' own internal sales figures.

⁹ In addition, the Commission notes that there are at least 4 other *Ford* dealerships and 4 other-branded dealerships within an hour's journey from the Target Business dealership which are active in the retail sale of new and



20. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of new and demonstration *Ford*-branded passenger cars - including the supply of intermediary financial services, aftersales services and repair services - and the sale of parts and accessories for *Ford*-branded passenger cars and light commercial vehicles in the State.

The sale of Volvo-branded new passenger cars

21. There is a horizontal overlap between the activities of the parties in relation to the sale of *Volvo*-branded new passenger cars in the State. As previously mentioned, there is no horizontal overlap between the activities of the parties in relation to the sale of *Volvo*-branded new passenger cars on a local level.
22. In 2017, *Volvo* held a market share of 1.4% for all new and demonstration branded passenger cars sold in the State.¹⁰ In 2017, the parties held the following estimated market shares, respectively, in relation to the total retail sale of new and demonstration *Volvo*-branded passenger cars in the State: Target – [0-5]% and JDM Automotive – [15-20]%.¹¹ Therefore, following implementation of the Proposed Transaction, JDM Automotive’s estimated share of the total retail sale of new and demonstration *Volvo*-branded passenger cars in the State will be approximately [15-20]%, representing an increase of [0-5]%.¹²

demonstration branded passenger cars and light commercial vehicles which will continue to act as a competitive constraint on JDM Automotive following implementation of the Proposed Transaction. The 4 *Ford* dealerships include: *Fred Kilmartin Limited* located at Athlone Road, Ballinasole, Co. Galway; *Casey’s Roscommon* located at Lanesboro Road, Roscommon; *Colton Ford* located at Clara Road, Tullamore, Co. Offaly; and *GA Claffey Limited* located at Portumna Bridge Portland, Co. Tipperary. The 4 other-branded dealerships include: *Michael Moore Car Sales Ltd* an authorised Audi, Mercedes and Volkswagen dealership which is located at Dublin Road, Creggan Upper, Athlone, Co. Westmeath; *Joe Lynch & Sons Ltd*, an authorised Toyota dealership which is located at Lakeview, Athlone, Co. Westmeath; *Colm Quinn BMW Athlone*, an authorised BMW dealership which is located at Glasson Road, Athlone, Co. Westmeath; *Sean White Car Sales*, an authorised Renault dealership which is located at 11 Roscommon Rd, Bogganfin, Athlone, Co. Westmeath.

¹⁰ Market shares estimates were provided by the parties and were sourced from statistics gathered by www.beepeep.ie.

¹¹ Market share figures were provided by the parties and were based on the parties’ own internal sales figures.

¹² In addition, the Commission notes that there are at least 4 other-branded dealerships within an hour’s journey from the Target Business dealership which are active in the retail sale of new and demonstration branded passenger cars and light commercial vehicles which will continue to act as a competitive constraint on JDM Automotive following implementation of the Proposed Transaction. The other branded dealerships include: *Michael Moore Car Sales Ltd* an authorised Audi, Mercedes and Volkswagen dealership which is located at Dublin Road, Creggan Upper, Athlone, Co. Westmeath; *Joe Lynch & Sons Ltd*, an authorised Toyota dealership which is



23. Therefore, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of new and demonstration *Volvo*-branded passenger cars - including the supply of intermediary financial services, aftersales services and repair services - and the sale of parts and accessories for *Volvo*-branded passenger cars and light commercial vehicles in the State.

The sale of pre-owned passenger cars and light commercial vehicles

24. There is a horizontal overlap between the activities of the parties in relation to the sale of pre-owned passenger cars and light commercial vehicles in the State, although the Commission notes that most, if not all, motor dealerships in the State sell pre-owned passenger cars and light commercial vehicles. As part of its assessment, the Commission contacted the *Society of the Irish Motor Industry* (“SIMI”) to obtain a proxy for the number of dealers that sell pre-owned vehicles in the State.¹³ In 2017, 719 dealers selling pre-owned vehicles in the State were registered with SIMI. These dealers, amongst others, will act as a competitive constraint on the merged entity following implementation of the Proposed Transaction.
25. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of pre-owned passenger cars and light commercial vehicles within the State.

Vertical Relationship

26. The parties have stated in the notification that there is no vertical relationship between JDM Automotive and the Target. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

Conclusion

located at Lakeview, Athlone, Co. Westmeath; *Colm Quinn BMW Athlone*, an authorised BMW dealership which is located at Glasson Road, Athlone, Co. Westmeath; *Sean White Car Sales*, an authorised Renault dealership which is located at 11 Roscommon Rd, Bogganfin, Athlone, Co. Westmeath.

¹³ The Commission notes that dealers and/or franchises which operate in the State are not obliged to register with SIMI.



27. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

28. The parties informed the Commission that the Proposed SPA contains a number of restrictive covenants on Higgins Motorpark and its owners, preventing them from engaging in a competing business within a [...] -mile radius of Athlone town for a specified period. The Proposed SPA also contains a number of non-solicitation obligations regarding employees, customers and suppliers.
29. These restrictive obligations do not exceed the maximum duration acceptable to the Commission.¹⁴ The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction.

¹⁴ In this respect, the Commission follows the approach adopted by the EU Commission in paragraphs 20 and 26 of its “Commission Notice on restrictions directly related and necessary to concentrations” (2005). For more information see [http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305\(02\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52005XC0305(02)&from=EN)



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby JDM Automotive Limited would acquire the entire issued share capital and thereby, sole control of Motorpark Limited from Higgins Motorpark 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

Brian McHugh
Member
Competition and Consumer Protection Commission