



DETERMINATION OF MERGER NOTIFICATION M/18/093 – SPIRIT MOTOR / CERTAIN ASSETS OF BURTON CAR SALES

Section 21 of the Competition Act 2002

Acquisition by Armalou Holdings Limited, through its wholly-owned subsidiary, Spirit Motor Group Limited, of certain assets of Derek Burton Car Sales Limited

Dated 23 January 2018

Introduction

1. On 11 of December 2018, the Competition and Consumer Protection Commission (“the Commission”) received a notification of a transaction made pursuant to section 18(12A) of the Competition Act 2002, as amended (“the Act”) namely the acquisition by Armalou Holdings Limited (“Armalou”)¹, through its wholly-owned subsidiary, Spirit Motor Group Limited (“Spirit Motor Group”) of certain assets, including equipment, goodwill, records, stock and intellectual property, (the “Target Assets”) of the business of Derek Burton Car Sales Limited (“Derek Burton Sales”) (the “Transaction”). Armalou is ultimately jointly owned by Gabriel C. Hogan; Declan McCourt; and the estate of Conal O’Brien (deceased).

Putting the Transaction into Effect Prior to Commission Clearance

2. In November 2017, the Commission became aware that Spirit Motor Group, may have acquired the Target Assets without notifying the acquisition to the Commission.
3. Pursuant to section 19(1) of the Act, any proposed merger or acquisition that is required to be notified to the Commission pursuant to section 18(1) of the Act shall not be put into effect until the Commission has made a determination in relation to such merger or acquisition (or until the statutory period for the Commission to make a determination in relation to such merger or acquisition has elapsed). If a proposed merger or

¹ Armalou is part of the OHM group of companies (the “OHM Group”) operating in the State. For more information regarding the OHM Group, please see paragraph 7 to paragraph 13.



acquisition is purportedly put into effect in contravention of section 19(1) of the Act, such merger or acquisition is void under section 19(2) of the Act.²

4. Section 18(12A) of the Act provides that the Commission may accept notification of a merger or acquisition which is required to be notified to the Commission pursuant to section 18(1) of the Act but which was purported to have been put into effect without having been notified to the Commission. The Commission has accepted the notification of the Transaction in accordance with section 18(12A) of the Act and has reviewed the acquisition in accordance with the relevant provisions of the Act.

The Transaction

5. The Transaction was implemented pursuant to an asset purchase agreement (the “Agreement”) between: Spirit Motor Group; Derek Burton Sales; and Derek Burton and Alison Burton (collectively, the “Covenantors”)³ dated 7 January 2015.
6. A number of individuals⁴ own the site located at Kilpedder, Co. Wicklow from which the Target Assets operate. Following implementation of the Transaction, such individuals entered into a lease agreement with Spirit Motor Group in respect of the site on which the Target Assets operate at Kilpedder, Co. Wicklow.⁵

The Undertakings Involved

OHM Group

7. The OHM Group has two main business divisions namely, motor retail and commercial.

(i) Motor Retail Division

8. Armalou operates within the OHM Group’s motor retail division. Armalou is a private company limited by shares, incorporated in the State, which has a registered address at Clonlara Avenue, Baldonnell Business Park, Dublin 22.

² [...].

³ The Covenantors hold an equal shareholding in Derek Burton Sales.

⁴ The individuals are as follows: [...].

⁵ The parties informed the Commission that the period granted for the lease is for a period of [...].



9. Armalou is involved in the retail sale of new and pre-owned passenger cars and light commercial vehicles in the State. It provides intermediary financial services and a range of manufacturer-approved aftersales products and services for passenger cars and light commercial vehicles. Armalou is also involved in the importation and distribution of *Jaguar* and *Land Rover* branded passenger cars, as it is the sole importer and distributor of *Jaguar* and *Land Rover* branded vehicles in the State.
10. Armalou is principally active in the motor retail sector in the State through the following dealerships:
 - a) *Spirit Jaguar and Spirit Land Rover* – a *Jaguar* and *Land Rover* motor dealership located at Arena Road, Sandyford Business Park, Dublin 18;⁶
 - b) *Spirit Volvo* – a *Volvo* motor dealership located in Sandyford, Co. Dublin;⁷
 - c) *Spirit Ford* – a *Ford* motor dealership located at Sandyford, Co. Dublin;⁸
 - d) *Spirit Lillis O'Donnell* – a *Ford* motor dealership and a *Ford* transit centre located on the Naas Road, Co. Dublin and Baldonnell, respectively.
 - e) *Spirit Premium* – a second hand dealership located at Maple Avenue, Sandyford Business Park, Dublin 18;

⁶ *Spirit Jaguar and Spirit Land Rover* is involved in the retail sale of new and demonstration *Jaguar* and *Land Rover* branded passenger cars and pre-owned *Jaguar* and *Land Rover* branded passenger cars. Furthermore, *Spirit Jaguar and Spirit Land Rover* provides aftersales services, repair services and sell parts and accessories for *Jaguar* and *Land Rover* branded passenger cars at the *Spirit Jaguar and Spirit Land Rover* Service & Parts service centre located at Unit 48, Furze Road, Sandyford Business Park, Dublin 18.

⁷ *Spirit Volvo* is involved in the retail sale of new and demonstration *Volvo*-branded passenger cars and pre-owned *Volvo*-branded passenger cars. Furthermore, *Spirit Volvo* provides aftersales services, repair services and sells parts and accessories for *Volvo*-branded passenger cars. At the time of the Transaction, *Spirit Volvo* provided these services at Unit 48, Furze Road, Sandyford Business Park, Dublin 18 and sold new and demonstration *Volvo*-branded passenger cars and pre-owned *Volvo*-branded passenger cars at Arena Road, Sandyford Business Park, Dublin 18. In 2017, *Spirit Volvo* moved both its *Volvo* sales and services premises to Birch Avenue, Sandyford Business Park, Dublin 18.

⁸ *Spirit Ford* is involved in the retail sale of new and demonstration *Ford*-branded passenger cars, new and demonstration *Ford*-branded light commercial vehicles, pre-owned *Ford*-branded passenger cars and pre-owned *Ford*-branded light commercial vehicles. Furthermore, *Spirit Ford* provides aftersales services, repair services and sells parts and accessories for *Ford*-branded passenger cars and *Ford*-branded light commercial vehicles at Maple Avenue, Sandyford Business Park.



- f) *Spirit Foster* – an authorised *Volkswagen* repairer located at 1-3 Blackthorn Close, Sandyford Business Park, Dublin 18;
- g) *Spirit Seat* – a *Seat* motor dealership located at Maple Avenue, Stillorgan Industrial Park, Co Dublin; and
- h) *Spirit Skoda* – a *Skoda* motor dealership located at Rowan Avenue, Sandyford Business Park, Dublin 18.⁹

(ii) Commercial Division

- 11. Armalou's sister companies, Armalou Limited and Man Importers Ireland Limited, are involved in the distribution of *DAF*-branded trucks and *MAN*-branded commercial vehicles in the State through a number of subsidiaries and participating interests. Armalou Limited also supplies *DAF*-branded engines, *DAF*-branded bus chassis and complete bus units to bus and coach manufacturers in the State.
- 12. Armalou Limited, through its subsidiary, DE Power Solutions Limited, is the exclusive distributor of *SDMO*-branded generating sets in the State, e.g., emergency, prime and standby power generator installations.
- 13. For the financial year ended 31 December 2014 (i.e., the most recent financial year at the time of the Transaction), Armalou's worldwide turnover was approximately €[...], all of which was generated in the State.

The Target Assets

- 14. Prior to implementation of the Transaction, Derek Burton Sales owned and operated the business of the retail sale, servicing and maintenance of new and second hand motor vehicles and the sale of parts and accessories carried on by Derek Burton Sales at Kilpedder, Co. Wicklow (the "Burton Business"). Derek Burton Sales is a private company limited by shares which is jointly owned by the Covenantors. Derek Burton

⁹ *Spirit Skoda* is involved in the retail sale of new and demonstration *Skoda*-branded passenger cars and pre-owned *Skoda*-branded passenger cars. Furthermore, *Spirit Skoda* provides aftersales services, repair services and sells parts and accessories for *Skoda*-branded passenger cars. *Spirit Skoda*'s service premises moved from Maple Avenue, Sandyford Business Park, Dublin to 3 Blackthorn Close, Stillorgan Industrial Park, Stillorgan, Co. Dublin in February 2016.



Sales is a company incorporated in Ireland and has its registered address at Curtlestown, Enniskerry, Co. Wicklow.¹⁰

15. Prior to the Transaction, the Burton Business involved the retail sale, servicing and maintenance of predominantly second-hand motor vehicles and the sale of parts and accessories from premises in Kilpedder, Co. Wicklow.
16. The Burton Business also had a formal franchise agreement in place with *SsangYong* whereby it sold new and pre-owned *SsangYong* branded passenger cars and light commercial vehicles. In addition, the Burton Business had an informal arrangement with Isuzu Ireland (the importer of Isuzu vehicles) whereby Burtons Car Sales sourced new *Isuzu* branded vehicles directly from Isuzu Ireland.¹¹
17. Following implementation of the Transaction, the Target Assets are now branded as *Spirit Burton* which operates within the OHM motor retail division. *Spirit Burton* is currently involved in the sale of pre-owned passenger cars and light commercial vehicles and the provision of aftersales services (including the sale of parts and accessories) at Kilpedder, Co. Wicklow.
18. For the financial year ended 31 December 2014 (i.e., the most recent financial year at the time of the Transaction), Derek Burton Sales' worldwide turnover was approximately €4.88 million, all of which was generated in the State.

Rationale for the Transaction

19. The parties state in the notification that the purpose of the Transaction was:

¹⁰ Armalou informed the Commission that *Derek Burton Sales* solely exists "to collect the balance of consideration due from our client [Armalou] for the assets. The consideration was €[...] payable in equal annual instalments of €[...] each."

¹¹ The Commission notes that in addition to selling new *SsangYong* branded vehicles and new *Isuzu* branded vehicles, the Burton Business also sold a limited number of other branded new vehicles prior to the Transaction. In 2013, the Burton Business "sold a total of 9 new same brand vehicles, 5 of which were an OHM franchise brand and 4 were a non-franchise brand for both businesses". These "included 5 Land Rover Discovery light commercial vehicles, which were originally sourced from the Spirit Land Rover dealership, 4 Toyota light commercial vehicles, 3 Land cruisers and 1 Hi Lux". In addition, in 2014 "the Burton Business sold total five of the same new branded vehicles as the OHM Group. Those vehicles were four Land Rover Discovery light commercial vehicles, sourced from the Spirit Land Rover dealership and one Range Rover Sport Passenger vehicle also sourced from the Spirit Land Rover dealership."



“To facilitate the sale of used motor vehicles sourced by the Purchaser Group. The Purchaser’s intention was to incorporate the Target Assets into the Purchaser’s existing business as part of which the Target Assets would be used to retail cars, 4x4s and SUVs supplied through the Purchaser’s existing business.”

Third Party Submissions

20. No submission was received.

Competitive Analysis

Horizontal Overlap

21. Prior to implementation of the Transaction, Armalou operated one dealership which was predominantly focused on selling pre-owned vehicles, i.e., *Spirit Premium*, located at Maple Avenue, Sandyford Business Park, Dublin 18. In addition, the Commission notes that Armalou also supplied pre-owned vehicles in a number of other dealerships, i.e., *Spirit Volvo; Spirit Ford; Spirit Skoda; Spirit Jaguar* and *Spirit Land Rover; Spirit Lillis O’Donnell*; and, *Spirit Seat*. As previously mentioned, prior to implementation of the Transaction, Derek Burton Sales was active in the supply of pre-owned passenger cars and light commercial vehicles through the Burton Business in Kilpedder, Co. Wicklow.¹²
22. There is one potential horizontal overlap between the activities of the parties within the State, i.e., the sale of pre-owned passenger cars and pre-owned light commercial vehicles.
23. The Commission has previously examined transactions which have been put into effect prior to notification of said transaction to the Commission.¹³ In the Commission’s analysis of M/18/020: Armalou-Spirit Ford/Lillis O’Donnell, the Commission referred to

¹² In addition, the Commission notes that prior to implementation of the Transaction, the Burton Business was also involved - to a minor extent - in the retail sale of a number of new passenger cars and light commercial vehicles. Please see footnote 11 for more information. The Commission notes that while the Burton Business sold a very small number of new passenger cars and light commercial vehicles which were the same brand as those sold by Armalou, this does not impact the Commission’s assessment of the Transaction. As such, the Commission will not be examining this potential market any further.

¹³ Please see Commission decision in M/18/020: Armalou-Spirit Ford/Lillis O’Donnell which is accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M.18.020-Public-Determination.pdf>



the European Commission's two stage competitive analysis adopted in its Sony/BMG¹⁴ decision:

*"In the European Commission's review of the Sony/BMG merger, the merger was approved by the European Commission in 2004. However, following an annulment of the European Commission's decision by the European Court of First Instance in 2006, the European Commission conducted an in-depth re-assessment of the merger. In the European Commission's second review of the merger, it applied a two-stage competitive analysis by assessing the impact of the merger on competition both at the time of the original notification of the merger and at the time of the re-notification of the merger."*¹⁵

24. 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 the precise product markets because doing so will not alter the Commission's assessment of the likely competitive effects of the Transaction in the State.
25. In this instance, the Commission sees no reason to depart from its position in M/18/020: Armalou-Spirit Ford/Lillis O'Donnell. Therefore, for the purposes of the Commission's assessment of the competitive effects of the Transaction, the Commission followed the European Commission's approach in Sony/BMG and conducted, to the extent possible, a two-stage competitive assessment of the Transaction, i.e., in light of the market conditions operating at the time of the implementation of the Transaction in January 2015 and in light of the current market conditions, i.e., operating at the time of the notification of the Transaction to the Commission.
26. In addition, the Commission has previously examined¹⁶ *"the sale of pre-owned passenger cars and pre-owned light commercial vehicles"*. In this instance, the

¹⁴Please see European Commission Case No COMP/M.3333 Sony/BMG, which can be accessed at http://ec.europa.eu/competition/mergers/cases/decisions/m3333_20071003_590_en.pdf

¹⁵ Please see paragraph 21 in the Commission's decision in M/18/020: Armalou-Spirit Ford/Lillis O'Donnell which is accessible at: <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M.18.020-Public-Determination.pdf>

¹⁶ For example, please see Commission decision in M/18/019: JDM Automotive/Motorpark which is accessible in <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M.18.019-JDM-Automotive-Motorpark-public-version.pdf>; the Commission's decision in M/18/073 – Alavina Investments (MMM Limited)/Assets of J.Donohoe (Motors) Limited which is accessible at <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/09/M-18-073-Determination-Alavina-J-Donohoe-Motors-1.pdf>; and the



Commission sees no reason to depart from its previous position and therefore, the Commission will examine the competitive effects of the Transaction with respect to the sale of pre-owned passenger cars and pre-owned light commercial vehicles.

27. Similarly, it is not necessary for the Commission to define the precise geographic markets because doing so does not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, for the purpose of its assessment, the Commission assessed the likely impact of the Transaction in the narrowest potential geographic market of the Greater Dublin Area, i.e., Dublin city and county Dublin, and county Wicklow (the “GDA and Wicklow”).

Competitive Assessment

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

28. 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. The Commission notes that most, if not all, motor dealerships in the State sell pre-owned passenger cars and light commercial vehicles.
29. As part of its assessment of the competitive effects of the Transaction, the Commission contacted the Society of the Irish Motor Industry (“SIMI”) to obtain an estimate for the number of dealers that sell pre-owned vehicles in the GDA and Wicklow.¹⁷ In 2014, there were 253 dealers selling pre-owned vehicles in the GDA and Wicklow who were registered with SIMI and there were 273 such dealers registered in 2018. These dealers, amongst others, will continue to act as a competitive constraint on Armalou following implementation of the Transaction.
30. In light of the above, the Commission considers that the Transaction does not raise any horizontal competition concerns in respect of the sale of pre-owned passenger cars and light commercial vehicles either in the GDA and Wicklow, either at the time of

Commission’s decision in M/18/020: Armalou-Spirit Ford/Lillis O’Donnell which is accessible at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/02/M.18.020-Public-Determination.pdf>

¹⁷ The Commission notes that dealers and/or franchises that operate in the State are not obliged to register with SIMI.



implementation the Transaction or at the time of notification of the Transaction to the Commission.

Vertical Relationship

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

Conclusion

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

Ancillary Restraints

33. The Agreement contains covenants restricting the Covenantors and Derek Burton Sales from directly or indirectly carrying on the sale, service and/or repair of new and/or second-hand motor vehicles and the sale of parts associated with such vehicles within a 25 mile radius of the premises located at Kilpedder, Co. Wicklow for a period of 2 years from the date of completion of the Transaction. The Agreement also contains a number of non-solicitation obligations regarding employees, customers and suppliers.
34. The restrictive covenants and non-solicitation obligations contained in the Agreement had expired by the date of notification. For this reason, the Commission has not considered whether the restrictive covenants and non-solicitation obligations imposed on the Covenantors and Derek Burton Sales in the Agreement were directly related and necessary to the implementation of the Transaction. As a result, the restrictive covenants and non-solicitation obligations in the Agreement will not benefit from the protection offered by sections 4(8) and 5(3) of the Act.



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 acquisition by Armalou Holdings Limited, through its wholly-owned subsidiary, Spirit Motor Group Limited of certain assets, including equipment, goodwill, records, stock and intellectual property, of the business of Derek Burton Car Sales 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