

The Competition and Consumer Protection Commission

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Pat O'Connell Cars and Commercials Limited

AGREEMENT AND UNDERTAKING

This Agreement and Undertaking ("the Undertaking") is made by and between the Competition and Consumer Protection Commission ("CCPC") and Pat O'Connell Cars and Commercials Limited ("Pat O'Connell Cars") on the date set forth below. The CCPC and Pat O'Connell Cars are referred to collectively herein as the "Parties." The Undertaking contained herein is accepted by the CCPC pursuant to Section 73 of the Consumer Protection Act 2007 (the "2007 Act").

WHEREAS:

- A. The CCPC is a statutory body and its functions pursuant to section 10 of the Competition and Consumer Protection Act 2014 (the "2014 Act") include *inter alia*:
- (i) to promote and protect the interests and welfare of consumers;
 - (ii) to carry out an investigation into any suspected breach of the 2007 Act;
 - (iii) to enforce the 2007 Act;
 - (iv) to encourage compliance with the 2007 Act.
- B. Pat O'Connell Cars, a company incorporated within the State having its registered office at Garryglass Road, Ballysimon, Limerick makes available in the course of business used vehicles for sale to consumers. Pat O'Connell Cars is a trader for the purposes of the 2007 Act.
- C. On 6 October 2016, Pat O'Connell Cars sold a used car, an Audi A4 with registration number 10 D 7182, ("the Vehicle") to a consumer ("the Consumer") at the premises of Pat O'Connell Cars at Ballysimon, Limerick.

- D. On 3 April 2017, the CCPC commenced an investigation arising from a complaint made by the Consumer alleging a misleading commercial practice in respect of the sale of the Vehicle, namely that the Vehicle's odometer displayed an incorrect measurement of mileage on the date of its sale to the Consumer.
- E. Following its investigation, the CCPC has reason to believe that Pat O'Connell Cars had committed or engaged in a misleading commercial practice prohibited by section 42 (and as described by sections 43(1) and 43(3)(b)(vii)) and contrary to section 47 of the 2007 Act.
- F. As a result of the CCPC's investigation, Pat O'Connell Cars has agreed to enter into this Undertaking and to give the undertakings set out in paragraph 1 below.

IT IS HEREBY AGREED AS FOLLOWS:

1. Pat O'Connell Cars undertakes:
 - a) to comply with the prohibition on misleading commercial practices provided by section 42 of the 2007 Act;
 - b) to refrain from committing or engaging in misleading commercial practices in the course of its business, in particular, as described by section 43(1) and 43(3)(b)(vii) of the 2007 Act;
 - c) to carry out appropriate due diligence on the history and usage of every used vehicle advertised or offered for sale by Pat O'Connell Cars;
 - d) to maintain records of all such due diligence referred to in paragraph (c) for a period of three (3) years from the date of sale of any such vehicle; and
 - e) to provide consumers in all communications, advertisements and on all odometer displays with a correct and accurate mileage reading of every vehicle advertised or offered for sale by Pat O'Connell Cars.
2. In consideration of Pat O'Connell Cars entering into this Undertaking, the CCPC agrees that it will not initiate criminal proceedings or take any further action against Pat O'Connell Cars in relation to the misleading commercial practice on 16 October 2016 as described herein, for so long as Pat O'Connell Cars remains in compliance with this Undertaking. Nothing in this Undertaking shall be construed so as to impair the CCPC's right to institute civil or criminal proceedings for any matter not specifically described herein.
3. This Undertaking shall be and is intended by the Parties to be a binding agreement. Pursuant to section 73(7) of the 2007 Act should Pat O'Connell Car Sales and

Commercials Limited fail to comply with the terms and condition of the Undertaking, the CCPC may apply to the Circuit Court or the High Court for a prohibition order pursuant to section 71 of the 2007 Act.

4. This Undertaking shall be binding on the successors and assigns of Pat O'Connell Cars and on its employees, servants and agents.
5. The terms "and" and "or" as used herein have both conjunctive and disjunctive meanings.
6. The Undertaking will take effect on 13 September 2018.

Dated this 13 day of September 2018

AGREED TO AND ACCEPTED BY:

Signed:


Eksteen Maritz

Director for and on behalf of the Competition and Consumer Protection Commission

Signed:


Pat O'Connell

For and on behalf of Pat O'Connell Car Sales and Commercials Limited