

AGREEMENT AND UNDERTAKING**The Competition and Consumer Protection Commission****-And-****Paul Byrne and Paul Byrne Car Sales Limited**

This Agreement and Undertaking (the "Undertaking") is made by and between the Competition and Consumer Protection Commission ("CCPC") and Paul Byrne and Paul Byrne Car Sales Limited on the date set forth below. The CCPC, Paul Byrne and Paul Byrne Car Sales Limited 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. Paul Byrne Car Sales Limited being a company incorporated within the State having its registered office and trading premises at Timolin, Athy Road, County Kildare and its director Paul Byrne of Knocknagee, Castledermot, County Kildare makes available in the course of business used vehicles for sale to consumers, and are both deemed a "trader" for the purposes of the 2007 Act.
- C. On 1 October 2018, Paul Byrne in his capacity as a director of Paul Byrne Car Sales Limited sold a used vehicle to a consumer (the "Consumer") at or within the vicinity of the trading premises of Paul Byrne Car Sales Limited (the "Transaction").
- D. On 8 February 2019, the CCPC commenced an investigation arising from a complaint made by the Consumer in relation to the Transaction.

- E. Following its investigation, the CCPC has reason to believe that Paul Byrne and/or Paul Byrne Car Sales Limited had committed or engaged in a misleading commercial practice prohibited by section 42, as described by sections 43(2) and 43(3)(b)(vii) and contrary to section 47 of the 2007 Act, namely that they deceived and/or misled the Consumer in relation to the usage and prior history of the Vehicle which caused the Consumer to make a transactional decision they would not have otherwise made
- F. As a result of the CCPC's investigation, Paul Byrne and Paul Byrne Car Sales Limited have agreed to enter into this Undertaking and to give the undertakings set out in paragraph 1 below.

IT IS HEREBY AGREED AS FOLLOWS:

1. Paul Byrne and Paul Byrne Car Sales Limited undertake to:
 - a) comply with the prohibition on engaging in misleading commercial practices as provided by section 42 of the 2007 Act;
 - b) refrain from committing or engaging in misleading commercial practices in the course of its business, as described by sections 43(2) and 43(3)(b)(vii) of the 2007 Act, to wit, in respect of a vehicle's usage or prior history;
 - c) carry out appropriate due diligence on the usage and prior history of every vehicle offered for sale in the course of trade;
 - d) ensure that they shall at all times exercise the standard of skill and care that may reasonably be expected of them in respect of consumers;
 - e) maintain records of due diligence carried out on the usage or prior history referred to above, for a period of three years from the date of advertisement or the date of sale whichever is later, of every used vehicle they advertise or offer for sale;
 - f) compensate the Consumer by providing a refund for the sum of €3,000, (the amount of the overpayment that he had paid for the vehicle), by 1 September 2020.
2. In consideration of Paul Byrne and Paul Byrne Car Sales Limited entering into this Undertaking, the CCPC agrees that it will not initiate criminal proceedings or take any further action against Paul Byrne or Paul Byrne Car Sales Limited in relation to

the misleading commercial practice engaged in at the time of the Transaction dated 1 October 2018 as described herein, for so long as the Trader 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 Paul Byrne or Paul Byrne Car Sales Limited fail to comply with the terms and conditions 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 assignee of Paul Byrne Car Sales Limited 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 August 2020.

Dated this 16th day of ~~August~~ ^{September} 2020

AGREED TO AND ACCEPTED BY:

Signed: _____
Eksteen Maritz

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

Signed: _____
Paul Byrne

Signed: _____
Paul Byrne

Director for and on behalf of Paul Byrne Car Sales Limited