



DETERMINATION OF MERGER NOTIFICATION M/21/049 – NISSAN/AUTOLEASE FLEET MANAGEMENT

Section 21 of the Competition Act 2002

Acquisition by Nissan Ireland Limited of sole control of Autolease Fleet Management Limited.

Dated 27 October 2021

Introduction

1. On 17 September 2021, the Competition and Consumer Protection Commission (the “Commission”) received a notification of a transaction to which section 18(1) of the Competition Act 2002, as amended (the “Act”) applies, namely the acquisition by Nissan Ireland Limited (“Nissan”) of sole control of Autolease Fleet Management Limited (“AFML”) (the “Transaction”).

Putting the Transaction into Effect Prior to Commission Clearance

2. In August 2021, the Commission became aware that Nissan may have acquired sole control of AFML without notifying the acquisition to the Commission. 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 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.
3. 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. On 21 September 2021, the Commission announced that it had decided to accept the notification of the Transaction in accordance with section 18(12A) of the Act and proceeded to review the notification in accordance with the relevant provisions of the Act.

The Transaction

4. The Transaction was implemented pursuant to a share purchase agreement dated 22 December 2020 between Nissan and Irish Bison Limited (“Bison”) (the “SPA”). Prior to the implementation of the Transaction, AFML was jointly controlled by Nissan through its subsidiary Windsor Motors Unlimited Company (“Windsor Motors”) and Bison.¹ Pursuant to the SPA, Nissan acquired the 50% shareholding held by Bison in AFML, and thereby sole control of AFML.

The Undertakings Involved

The Acquirer – Nissan

5. Nissan is the distributor for *Nissan* motor vehicles in Ireland, supplying *Nissan* products to motor dealers and retailers nationwide. Nissan is the parent company of Windsor Motors, owning 86% of the shares in Windsor Motors. Nissan is ultimately controlled by private investors, the AI-Babtains, whose sole investments that amount to controlling interests in Ireland are Windsor Motors and Nissan.
6. Windsor Motors operates 18 car dealerships on 12 sites in Dublin and Galway. The company retails new *Nissan, Opel, Peugeot, Renault* and *Mazda* cars. Windsor Motors also sells used cars from its various dealerships.
7. Windsor Motors arranges car finance with a variety of financial institutions for consumers and sells car accessories from its dealerships. Each dealership operates a service department where routine car maintenance and repairs are carried out.

¹ Windsor Motors and Bison acquired joint control of AFML in 2015. This acquisition of joint control was approved by the Commission on 13 November 2015. See the Commission’s determination in *M/15/053 - Windsor Motors / Irish Bison / Autolease Fleet*, available at: https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M_15_053-Windsor-Motors_Irish-Bison-Public-Version.pdf.



Windsor Motors operates two body shops where body work repairs are undertaken for the whole group.

8. For the financial year ending 31 December 2019, Nissan's worldwide turnover was approximately €[...] million, all of which was generated in the State.

The Target Company – AFML

9. Prior to the implementation of the Transaction, AFML was jointly controlled by Nissan, through Windsor Motors, and Bison, each of which owned 50% of the issued share capital of AFML.
10. AFML provides commercial fleet leasing and fleet management services to businesses. Typically, AFML provides a vehicle to a business/corporate customer on foot of a lease agreement for a specified term (usually 3 years or more) at a monthly fee which may also include a fee for ongoing maintenance and repair of the vehicle. Where AFML acquires a vehicle and enters into a lease agreement with a customer in respect of that vehicle, the vehicle is an asset of AFML and ownership is retained by AFML.
11. AFML has an agency agreement with BMW Financial Services (Ireland) Limited ("BMW Financial Services") dated 4 November 2015 under which AFML:
 - sources potential customers to enter into a vehicle lease agreement with BMW Financial Services;
 - collects information from the potential customer to enable BMW Financial Services to perform necessary credit checks on such customer and determine the terms on which BMW Financial Services will contract with the customer;
 - places orders for vehicles with vehicle suppliers on behalf of BMW Financial Services²;

² The Commission understands that, when the vehicle supplier indicates that the vehicle is ready for delivery, AFML arranges to register the vehicle and is listed as the vehicle owner for the purposes of registration. Once the customer has entered into a lease agreement with BMW Financial Services, BMW Financial Services releases funds



- facilitates the completion of a lease agreement between BMW Financial Services and the customer; and
 - collects monthly payments from the customer on behalf of BMW Financial Services and remits those payments to BMW Financial Services.
12. For many, but not all, customers, AFML also provides maintenance and fleet management services, whereby customers may outsource the management of a fleet of vehicles to AFML. This may include ongoing servicing and maintenance of the leased vehicles, arranging bookings with service suppliers, ensuring that replacement vehicles are provided to keep drivers on the road, managing accidents and providing helpdesk support for drivers.
13. Additionally, AFML sells pre-owned vehicles via public auction. AFML does not retail vehicles to consumers, instead, AFML sells vehicles through a third-party auction house to car dealers.
14. For the financial year ending 31 December 2019, AFML's worldwide turnover was approximately €[...] million, all of which was generated in the State.

The Vendor – Bison

15. Bison is a private company limited by shares that is engaged in various investments and controlled by a private individual, Mr Raymond Coyle. Bison's principal subsidiary is Ashbourne Visitor Centre Limited, which operates Tayto Park in County Meath. Bison also has a 50% interest in FE Finance Limited, a car leasing and finance business.

Rationale for the Transaction

16. The parties state in the notification:

“Bison had acquired its 50% interest in AFML in 2015 as an investor and with a view to a planned and structured exit at some point. In order to develop the

to AFML which AFML then uses to pay the supplier for the vehicle. On termination of the lease agreement for that vehicle, AFML purchases the vehicle from BMW Financial Services at an agreed price.



AFML business, further investment and capital funding was required and in discussions between Irish Bison and Nissan Ireland it was agreed that Irish Bison would not make a further investment but instead would sell its shares to Nissan Ireland at a negotiated price. This was done to facilitate full control by Nissan Ireland of AFML and to enable Nissan Ireland to make decisions relating to the continued funding of the business of AFML.”

Third Party Submissions

17. No submission was received.

Competitive Analysis

Horizontal Overlap

18. 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 product and geographic markets since there is no horizontal overlap in the State between the activities of the parties.
19. There is no horizontal overlap between the activities of Nissan and AFML in the State. Similarly, there is no horizontal overlap between the activities of Windsor Motors and AFML in the State. Although Windsor Motors and AFML both sell used vehicles, AFML does not sell pre-owned vehicles directly to consumers, selling used vehicles through a third-party auction house to car dealers who deal primarily in used vehicles. Windsor Motors' core business is the retail sale of vehicles, new and used, to consumers.
20. In light of the above, the Commission considers that the Transaction does not raise any horizontal competition concerns in the State.

Vertical Relationship

21. There is no vertical overlap between the activities of Nissan and AFML in the State. There is, however, an existing vertical relationship between the activities of Nissan's subsidiary Windsor Motors and AFML, as some Windsor Motors dealerships provide vehicles and vehicle maintenance and servicing services to AFML. Therefore, Windsor



Motors is active upstream in the retail sale of vehicles and vehicle maintenance and servicing services, whereas AFML is active downstream in the provision of commercial fleet leasing and fleet management services.

22. In M.9730 - Fiat Chrysler Automobiles N.V. ('FCA') and Peugeot S.A., the European Commission considered the retail distribution of passenger cars and light commercial vehicles at EEA, national and local levels.³ The Commission has also previously considered the retail distribution of motor vehicles, and has conducted its competitive assessment by reference to the sale of new and demonstration passenger cars and light commercial vehicles.⁴
23. In the market for the sale of new and demonstration passenger cars and light commercial vehicles in the State, Windsor Motors accounts for a share of supply of [0-5]%.⁵ For the sale of commercial fleet leasing and fleet management services in the State, AFML's share of supply is approximately [0-5]%.⁶ AFML's expenditure on vehicle procurement with Windsor Motors represents [...] % of AFML's total annual expenditure on vehicle procurement.
24. For the provision of maintenance and servicing services of passenger cars and light commercial vehicles in the State, Windsor Motors services approximately 50,000 units per annum, equating to a share of supply of [0-5]%.⁷ AFML's purchase of maintenance and servicing services from Windsor Motors accounts for approximately [5-10] % of AFML's total annual expenditure on maintenance and servicing services. AFML also sources maintenance and servicing services from Spirit Motor Group and Tom Harvey Motors.

³ See M.9730 paragraph 1646, available at: https://ec.europa.eu/competition/mergers/cases1/202142/M_9730_7959952_4150_3.pdf.

⁴For example, see M/18/080 JDM Automotive/Assets of T.K.F. Autos, available at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/10/Determination-M-18-080-JDM-Automotive-T.K.F.-Autos.pdf> and M/18/086 – Brightstone Trading/Fitzpatrick Motors (Bray), available at: <https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/11/M-18-086-Brightstone-Fitzpatrick-Motors-Public-Determination.pdf>.

⁵ Figures based on statistics available from the Society of the Irish Motor Industry for sales up to 30 September 2021.

⁶ The Commission's estimate based on information provided by the parties and Frost & Sullivan Report dated February 2020, "Light Vehicle Leasing Market in Ireland, Forecast to 2023".

⁷ Parties' estimate based on Windsor Motors' servicing data.



25. The Commission considers that the Transaction will not lead to competitor or customer foreclosure in the State for the following reasons:

- There are several large and varied (in size) competitors to the merged entity in (i) the sale of new and demonstration passenger cars and light commercial vehicles; and (ii) the provision of maintenance and servicing services of passenger cars and light commercial vehicles, such as Gowan Motor Group, Spirit Motor Group and Frank Keane Motors. The presence of these competitors will likely continue to constrain the activities of the merged entity following implementation of the Transaction; and
- There remain several larger and similarly sized competitors to the merged entity in the sale of commercial fleet leasing and fleet management services in the State, such as Leaseplan, Ald Merrion, Johnson & Perrot, Hertz and Avis.

26. Based on the above, the Commission considers that the Transaction does not raise any vertical competition concerns in the State.

Conclusion

27. 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

28. No ancillary restraints were notified.



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 Nissan Ireland Limited of sole control of Autolease Fleet Management 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