

# **REFERENCE RELATING TO THE COMPLETED ACQUISITION BY EURO CAR PARTS LIMITED OF ASSETS OF THE ANDREW PAGE BUSINESS**

## **Notice of possible remedies under Rule 12 of the Competition and Markets Authority Rules of Procedure<sup>1</sup>**

### **Introduction**

1. On 22 May 2017, the Competition and Markets Authority (CMA), in accordance with section 22 of the Enterprise Act 2002 (the Act), referred<sup>2</sup> the completed acquisition by Euro Car Parts Limited (ECP) of certain assets of Andrew Page Limited, Solid Auto (U.K.) Limited and Colton Parts Company Limited (collectively AP) (the Merger) for further investigation and report by a group of CMA panel members (the Inquiry Group).
2. On 12 October 2016, the CMA served an initial enforcement order under section 72(2) of the Act on ECP, ECP Newco Limited, LKQ Euro Limited and LKQ Corporation, to prevent pre-emptive action which requires ECP to hold the AP business separate until the inquiry is finally determined.<sup>3</sup>
3. In its notice of provisional findings on the reference notified to ECP and AP (the Parties) on 14 September 2017, the Inquiry Group provisionally concluded that the Merger has resulted in the creation of a relevant merger situation and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) in the supply of independent aftermarket (IAM) car parts by general motor factors to local independent motor trade (IMT) customers in ten local areas; and that this may be expected to lead to adverse effects for customers in terms of an increase in prices and/or a reduction in the quality of service in those ten local areas.

---

<sup>1</sup> See [Rules of procedure for merger, market and special reference groups: CMA17](#).

<sup>2</sup> Under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

<sup>3</sup> [Initial enforcement order](#).

4. The Inquiry Group's provisional findings and its reasons are set out in full in the provisional findings report (Provisional Findings Report), which will be published on the CMA website shortly, and are summarized in the summary of the Provisional Findings Report (see note (i)).<sup>4</sup>
5. This notice of possible remedies (Remedies Notice) sets out the actions which the Inquiry Group considers it might take for the purpose of remedying the SLC in each relevant market and resulting adverse effects identified in the Provisional Findings Report.
6. The Inquiry Group invites comments on the possible remedies by **28 September 2017**.

## Criteria

7. In choosing appropriate remedial action, the CMA shall have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>5</sup> When deciding on an appropriate remedy, the CMA will consider the effectiveness of different possible remedies and their associated costs and will have regard to the principle of proportionality. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction.
8. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Within this context, the CMA will not normally take account of the costs or losses that will be incurred by the merged parties as a result of a divestiture remedy.<sup>6</sup>

## The provisional SLC(s)

9. The CMA has provisionally found that the Merger has resulted, or may be expected to result in a SLC in the following local areas (overlap areas):
  - (a) Blackpool;
  - (b) Brighton;
  - (c) Gloucester;

---

<sup>4</sup> [CMA website](#).

<sup>5</sup> Section 36(3) of the Act.

<sup>6</sup> [CC8 – Merger Remedies](#) (November 2008), paragraphs 1.9 and 1.10. CC8 has been adopted by the CMA Board.

- (d) Liphook;
- (e) Scunthorpe;
- (f) Sunderland;
- (g) Swindon;
- (h) Wakefield;
- (i) Worthing; and
- (j) York.

### **Possible remedies on which views are sought**

10. Remedies are conventionally categorised as either structural or behavioural.<sup>7</sup> Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market. Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of the merged entity.<sup>8</sup>
11. In merger inquiries, the CMA generally prefers structural remedies rather than behavioural remedies because:
  - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
  - (b) structural remedies do not normally require monitoring and enforcement once implemented;<sup>9</sup> and
  - (c) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes.
12. The Inquiry Group has provisionally identified only one possible structural remedy option, namely requiring the divestiture by the Parties of the operations in respect of some of their depots in the local areas in which a SLC has provisionally been found (overlap depots), with the aim of restoring the competitive constraint that will be lost as a result of the Merger.

---

<sup>7</sup> [CC8 – Merger Remedies](#), paragraph 2.2.

<sup>8</sup> Behavioural remedies include (i) enabling measures that seek to remove obstacles to competition or stimulate competition, for example preventing merger parties from restricting access to their customers and (ii) measures that control outcomes for example, price caps. [CC8 – Merger Remedies](#), paragraphs, 2.2, 2.8, 2.11.

<sup>9</sup> [CC8 – Merger Remedies](#), paragraph 2.14.

13. At this stage, the Inquiry Group considers that a divestiture of overlap depots by the Parties would be likely to be an effective remedy to each SLC and the resulting adverse effects that it has provisionally identified.
14. In light of the various dimensions over which competition takes place in the supply of IAM car parts to local IMT customers, the Inquiry Group does not, at this stage, consider that behavioural remedies would be effective in addressing the SLCs provisionally found.
15. The Inquiry Group will consider any other practicable remedies that the Parties, or third parties, may propose in order to address the SLCs and any resulting adverse effects, including any behavioural remedies that could be required in a supporting role to safeguard the effectiveness of the proposed structural remedy.
16. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in remedying, mitigating or preventing the SLCs or any resulting adverse effects that have been provisionally identified. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution, and will evaluate the cumulative impact of any such combination of measures on the SLCs or any adverse effects resulting from the SLCs.

#### **Structural remedy – divestiture of overlap depots**

17. The sale and transfer of the Parties' operations in respect of one or more of the overlap depots in each overlap area to a suitable purchaser would remove at source the SLCs that the Inquiry Group has provisionally identified. It would therefore represent a comprehensive solution to all aspects of the identified SLC in each local area and present very few risks in terms of effectiveness. The Inquiry Group therefore takes the view that such a remedy is capable of providing a comprehensive solution to the SLCs and the resulting adverse effects it has provisionally found.
18. Therefore, in each of the local areas in which the CMA provisionally found an SLC, an effective remedy to the SLC will require divestiture in each overlap area to a suitable purchaser.
19. The Inquiry Group will consider which overlap depot(s) need to be divested in each of the overlap areas in order to remedy the SLCs it has provisionally found. The Inquiry Group will also consider whether the Parties should be given the choice of which overlap depot they are required to divest in each of the relevant areas. The Inquiry Group would in this case specify which divestments would address the SLC in each local area and the Parties would

be able to select from that list. There may be some areas in which only the divestment of one (or more) specific overlap depot would effectively remedy the SLC.

### **Divestiture remedy: design elements**

20. In evaluating a divestiture as a remedy to the provisional SLC identified, the Inquiry Group will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, the Inquiry Group will have regard to the following critical elements of the design of a divestiture remedy:
- (a) *The scope and composition of the divestiture package:* in order to be effective in remedying the provisional SLCs, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as an independent competitor.
  - (b) *Identification of a suitable purchaser:* the Inquiry Group will wish to satisfy itself that a prospective purchaser is independent of the Parties, has the necessary financial and reputational capability to compete, is committed to competing in the relevant markets and that divestiture to the purchaser will not create further competition concerns.<sup>10</sup>
  - (c) *An effective divestiture process:* the Inquiry Group will consider the appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimize the risk associated with this remedy option.

### **Scope and composition of the divestiture package**

21. In relation to the scope of the divestiture package, the Inquiry Group's current view is that an effective divestiture package would need to include (but may not be limited to) the following:
- (a) the rights to enter into, or assign, the lease of the overlap depot property;
  - (b) transfer of the relevant staff;
  - (c) transfer of any existing customer contracts and the rights to fulfil these;
  - (d) access to relevant customer data;

---

<sup>10</sup> CC8, paragraph 3.15.

- (e) transfer of existing supplier contracts;
  - (f) option to acquire (or to assign the lease of) the fleet of delivery vehicles at the overlap depot;
  - (g) plant, machinery, computers, fixtures and fittings of the overlap depot;
  - (h) rights to receive services and utilities currently being provided at the divested sites, eg telecoms, gas, electricity, building access and services;  
and
  - (i) an option to acquire the stock/inventory.
22. It is the Inquiry Group's current view that given the relatively small number of overlap depots being divested, and the likely expectation that a potential purchaser would be an existing market operator with its own infrastructure and distribution model, we do not envisage that the divestiture package should include a regional or national distribution centre (eg AP's national distribution centre at Markham Vale), or AP's head office in Leeds.
23. It may be necessary for ECP to provide certain support services on a transitional basis, depending on the requirements of the purchaser, for example:
- (a) provision of central support services such as finance, IT and procurement;  
and
  - (b) access to any database or software, for example related to customers served from the depots being divested.
24. The Inquiry Group welcomes all views in relation to the scope of the local divestiture remedy and any issues that might arise as a result of such a divestiture, but it specifically invites feedback on the following areas, explaining how it affects the effectiveness of the remedy:
- (a) Will divestiture be an effective remedy to remedy the SLCs provisionally found and any resulting adverse effects?
  - (b) Which overlap depots should be divested by the Parties to address the SLC provisionally found, and any resulting adverse effects? Should the Parties be given the choice of which overlap depots they are required to divest in each relevant local area?
  - (c) What is the appropriate scope of any divestiture package of an overlap depot? Should the divestiture package include an option for the potential

purchaser to acquire a regional or national distribution centre, and/or AP's head office building in Leeds?

- (d) The Parties are currently occupying the AP depots under temporary licences to occupy, which were granted by the administrators to AP as part of the administration process, and recently extended. The Inquiry Group invites views on how this remedy should specify the transfer of the AP depot lease(s) to a suitable purchaser(s).
- (e) What practical issues may arise from the divestiture of certain overlap depots, and how might these issues be addressed?
- (f) What transitional arrangements, if any, should be put in place, and what should the duration be of these arrangements?

### **Identification and availability of suitable purchasers**

25. In relation to purchaser suitability, the Inquiry Group welcomes views in relation to the identification of a suitable purchaser and specifically invites feedback on:
- (a) the profile of a suitable purchaser, for example, whether the CMA should specify that the purchaser is a larger operator with national coverage or a local operator with local knowledge;
  - (b) whether there should be a single purchaser of all overlap depots and if not should there be a limit to the number of purchasers to aid the divestiture process; and
  - (c) whether there are competitors that should be prohibited from acquiring specific divested overlap depots due to competition concerns or any other reason.

### **Effective divestiture process**

26. The Inquiry Group welcomes views on the appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimise the risk associated with this remedy option, eg should ECP be required to appoint an external monitor (eg a divestiture trustee) to oversee the divestiture process within a certain timeframe?

## **Local divestiture remedy: costs**

27. The Inquiry Group welcomes views in relation to the proportionality of the proposed structural remedy, including on the likely cost of implementing and (if required), monitoring the proposed structural remedy.

## **Structural remedy – prohibition**

28. Prohibition of the Merger would prevent an SLC from arising in any relevant local area. It would therefore represent a comprehensive solution to all aspects of the SLC which the Inquiry Group has provisionally found and has very few risks in terms of effectiveness.
29. However, at this stage the Inquiry Group's provisional view is that divestiture(s) in the overlap areas alone may also be effective in remedying the SLC and would therefore represent a more proportionate remedy to the provisional SLCs as the number of local areas in which we have provisionally found that the Merger may be expected to result in an SLC is small in relation to the total number of depots that had been acquired.

## **Relevant customer benefits**

30. The Inquiry Group will have regard to the effects of remedial action on any relevant customer benefits (RCBs), within the meaning of section 30 of the Act, arising from the Merger situation. Such benefits might comprise lower prices, higher quality, or greater choice of goods or services, or greater innovation in relation to such goods or services. A benefit is only an RCB if the CMA believes that:
  - (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and
  - (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
31. The Inquiry Group so far is not aware of any such RCBs within the meaning of the Act arising from the Merger.
32. The Inquiry Group welcomes views supported by evidence on the nature of any RCBs and on the scale and likelihood of such benefits, and the extent to which these are preserved by the remedies we are considering.



## Next steps

33. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the Inquiry Group to consider, by **28 September 2017** (see note (ii)).
34. A copy of this notice will be posted on the CMA website.

### Notes

(i) This notice of possible actions to remedy the SLCs and any resulting adverse effects is given having regard to the Provisional Findings Report. The Parties have until **5 October 2017** to respond to the Provisional Findings Report. The Inquiry Group's findings may alter in response to comments it receives on its Provisional Findings Report, in which case the Inquiry Group may consider other possible remedies, if appropriate.

(ii) Comments should be made by email to [EuroCarParts/AndrewPage@cma.gsi.gov.uk](mailto:EuroCarParts/AndrewPage@cma.gsi.gov.uk) or in writing to:

Project Manager  
Euro Car Parts/Andrew Page merger inquiry  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD