

## INITIAL ENFORCEMENT ORDER

### Case ME/7039/23

#### ACQUISITION BY LKQ CORPORATION OF UNI-SELECT INC.

#### Initial Enforcement Order made by the Competition and Markets Authority pursuant to section 72(2) of the Enterprise Act 2002 (the Act)

Whereas:

- (a) on 21 July 2023, the CMA issued a decision finding that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in LKQ and Uni-Select ceasing to be distinct (the **Transaction**), and that this may be expected to result in a substantial lessening of competition in certain markets in the United Kingdom;
- (b) on 21 July 2023, LKQ offered undertakings in lieu of reference to the CMA for the purposes of section 73(2) of the Act;
- (c) on 28 July 2023, the CMA gave notice pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act;
- (d) the CMA has until 2 October 2023 pursuant to section 73A(3) of the Act to decide whether to accept the undertakings with the possibility to extend this timeframe pursuant to section 73A(4) of the Act to 27 November 2023 if it considers that there are special reasons for doing so;
- (e) if no undertakings are accepted, the CMA will refer the Transaction for a phase 2 investigation pursuant to sections 22(1) or 33(1) and 34ZA(2) of the Act;
- (f) the CMA wishes to ensure that no action is taken pending final determination of any reference under sections 22 or 33 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the

Act which might be justified by the CMA's decisions on the reference;

- (g) in the particular circumstances of this investigation, the CMA has decided it is willing to impose a tailored IEO (as provided for in paragraphs 2.33 to 2.37 of its guidance CMA108: Interim measures in merger investigations); and
- (h) the circumstances set out in section 72(6) of the Act do not apply and the reference has not been finally determined in accordance with section 79(1) of the Act.

Now for the purposes of preventing pre-emptive action in accordance with section 72(2) of the Act the CMA makes the following order addressed to LKQ, ECP and GSF.

### **Commencement, application and scope**

1. This Order commences on the commencement date: being the date of completion of the Transaction.
2. This Order applies to LKQ and ECP (together, **LKQ**) and GSF.
3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige LKQ or GSF to reverse any act or omission, in each case to the extent that it occurred or was completed prior to the commencement date.
4. This Order does not prohibit the completion of the Transaction provided that LKQ and GSF observe the restrictions set out below.

### **Management of the LKQ and GSF Businesses until determination of proceedings**

5. Except with the prior written consent of the CMA, LKQ and GSF shall not, during the Specified Period, take any action which might prejudice a reference of the transaction under sections 22 or 33 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:
  - (a) lead to the integration of the GSF Business with the LKQ Business;
  - (b) transfer the ownership or control of the GSF Business or any of its subsidiaries except to the extent any change or transfer of ownership or control arises in connection with the completion of the Transaction; and
  - (c) otherwise impair the ability of the GSF Business to compete independently in any of the markets affected by the Transaction.

6. Further and without prejudice to the generality of paragraph 5 and subject to paragraphs 3 and 4, LKQ and GSF shall at all times during the Specified Period take all necessary steps to ensure that, except with the prior written consent of the CMA:
- (a) the GSF Business is carried on separately from the LKQ Business and the GSF Business's separate sales or brand identity is maintained;
  - (b) the GSF Business is maintained as a going concern and sufficient resources are made available for the development of the GSF Business, on the basis of its pre-merger business plans;
  - (c) except in the ordinary course of business, no significant changes are made to the organisational structure of, or the management responsibilities within, the GSF Business;
  - (d) the nature, description, range and quality of goods or services (or both) supplied in the UK by the GSF Business is maintained and preserved;
  - (e) except in the ordinary course of business through the separate operation of the two businesses:
    - (i) all of the assets of the GSF Business are maintained and preserved, including facilities and goodwill;
    - (ii) none of the assets of the GSF Business are disposed of; and
    - (iii) no interest in the assets of the GSF Business is created or disposed of;
  - (f) there is no integration of the information technology of the GSF Business with the LKQ Business, and the software and hardware platforms of the GSF Business shall remain essentially unchanged, except for routine changes and maintenance or necessary changes to prepare for the transfer of systems to a proposed purchaser of GSF or the creation of standalone systems in anticipation of such transfer;
  - (g) the customer and supplier lists of the GSF Business and LKQ Business shall be operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GSF Business will be carried out by the GSF Business alone and for the avoidance of doubt the LKQ Business will not negotiate on behalf of the GSF Business (and vice versa) or enter into any joint agreements with the GSF Business (and vice versa);
  - (h) all contracts of the GSF Business and LKQ Business continue to be

serviced by the business to which they were awarded;

- (i) no changes are made to key staff of the GSF Business;
- (j) no key staff are transferred between the GSF Business and the LKQ Business;
- (k) all reasonable steps are taken to encourage all key staff to remain with the GSF Business; and
- (l) no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses shall pass, directly or indirectly, from the GSF Business (or any of its employees, directors, agents or affiliates) to the LKQ Business (or any of its employees, directors, agents or affiliates), or vice versa, except where strictly necessary in the ordinary course of business (including, for example, where required for compliance with external regulatory or accounting obligations or for due diligence, integration planning or the completion of any merger control proceedings relating to the Transaction) and on the basis that, should the Transaction be prohibited, any records or copies (electronic or otherwise) of such information that have passed, wherever they may be held, will be returned to the business to which they relate and any copies destroyed.

## **Compliance**

- 7. LKQ and GSF shall take all necessary steps to ensure that each of their subsidiaries complies with this Order as if the Order had been issued to each of them.
- 8. LKQ and GSF shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance of LKQ and GSF and their subsidiaries with this Order. In particular, on the date falling two weeks from the commencement of this Order and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter) the Chief Executive Officer of LKQ and GSF or other persons of LKQ and GSF as agreed with the CMA shall, on behalf of LKQ and GSF, provide a statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.
- 9. At all times, LKQ and GSF will actively keep the CMA informed of any material developments relating to the GSF Business, which includes, but is not limited to:

- (a) details of key staff who leave or join the GSF Business;
  - (b) any interruption of the GSF Business (including without limitation its procurement, production, logistics, sales and employee relations arrangements) that has prevented it from operating in the ordinary course of business for more than 24 hours;
  - (c) all substantial customer volumes won or lost or substantial changes to the customer contracts for the GSF Business including any substantial changes in customers' demand; and
  - (d) substantial changes in the GSF Business' contractual arrangements or relationships with key suppliers.
10. If LKQ or GSF has any reason to suspect that this Order might have been breached it shall immediately notify the CMA and any monitoring trustee that LKQ or GSF may be directed to appoint under paragraph 11.
11. The CMA may give directions to a specified person or to a holder of a specified office in any body of persons (corporate or unincorporated) to take specified steps for the purpose of carrying out, or ensuring compliance with, this Order, or do or refrain from doing any specified action in order to ensure compliance with the Order. The CMA may vary or revoke any directions so given.
12. LKQ or GSF shall comply in so far as they are able with such directions as the CMA may from time to time give to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with this Order.

### **Interpretation**

13. The Interpretation Act 1978 shall apply to this Order as it does to Acts of Parliament.
14. For the purposes of this Order:

**'the Act'** means the Enterprise Act 2002;

**'an affiliate'** of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on from time to time and any enterprise that the second person carries on from time to time

would be regarded as being under common control for the purposes of section 26 of the Act;

**'business'** has the meaning given by section 129(1) and (3) of the Act;

**'the CMA'** means the Competition and Markets Authority;

**'commencement date'** means the date (Canadian local time) of completion of the Transaction;

**'control'** includes the ability directly or indirectly to control or materially to influence the policy of a body corporate or the policy of any person in carrying on an enterprise;

**'the CMA's decisions'** means the decisions of the CMA on the questions which it is required to answer by virtue of sections 35 or 36 of the Act;

**'GSF'** means 121222 Holdco Limited, company number 10787992 and its subsidiaries;

**'the GSF Business'** means the business of GSF and its subsidiaries in the UK carried on as at the commencement date;

**'key staff'** means staff in positions of (i) executive or managerial responsibility or (ii) whose performance affects the viability of the business;

**'ECP'** means Euro Car Parts Limited, company number 02680212;

**'LKQ'** means LKQ Corporation, employer identification number 36-4215970 and its subsidiaries;

**'the LKQ Business'** means the business of LKQ and its subsidiaries (including Euro Car Parts Limited) in the UK carried on as at the commencement date;

**'the ordinary course of business'** means matters connected to the day-to-day supply of goods and services by GSF and does not include matters involving significant changes to the organisational structure or related to the post-merger integration of Uni-Select and LKQ;

**'Specified Period'** means the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act;

**'subsidiary'**, unless otherwise stated, has the meaning given by section 1159

of the Companies Act 2006;

**'the Transaction'** means the transaction by which LKQ and Uni-Select will cease to be distinct within the meaning of section 23 of the Act; and

**'Uni-Select'** means Uni-Select Inc., registry ID 1144728806;

unless the context requires otherwise, the singular shall include the plural and vice versa.

**Alex White**  
**Assistant Director, Mergers**

## Compliance statement for LKQ

I [insert name] confirm on behalf of LKQ and ECP that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the “**Relevant Period**”):
  - (a) LKQ Corporation (LKQ) and Euro Car Parts Limited (ECP) has complied with the Order made by the CMA in relation to the transaction on [insert date of this Order] (the Order).
  - (b) LKQ's subsidiaries have also complied with this Order.
2. Subject to paragraphs 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by LKQ that might prejudice a reference of the Transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the GSF Business with the LKQ Business;
    - (ii) transfer the ownership or control of the GSF Business or any of its subsidiaries, except to the extent any change or transfer of ownership or control arises in connection with the completion of the Transaction; or
    - (iii) otherwise impair the ability of the GSF Business to compete independently in any of the markets affected by the transaction.
  - (b) The GSF Business has been carried on separately from the LKQ Business and the GSF Business's separate sales or brand identity has been maintained.
  - (c) The GSF Business has been maintained as a going concern and sufficient resources have been made available for the development of the GSF Business, on the basis of its pre-merger business plans.
  - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the GSF Business, except in the ordinary course of business.



- (e) The nature, description, range and quality of goods and services supplied in the UK by the GSF Business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the GSF Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the GSF Business have been disposed of; and
  - (iii) no interest in the assets of the GSF Business has been created or disposed of.
- (g) There has been no integration of the information technology of the GSF Business, and the software and hardware platforms of the GSF Business have remained essentially unchanged, except for routine changes and maintenance or necessary changes to prepare for the transfer of systems to a proposed purchaser of GSF or the creation of standalone systems in anticipation of such transfer.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the GSF Business and LKQ Business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GSF Business have been carried out by the GSF Business alone and, for the avoidance of doubt, the LKQ Business has not negotiated on behalf of the GSF Business (and vice versa) or entered into any joint agreements with the GSF Business (and vice versa).
- (i) All contracts of the GSF Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the GSF Business.
- (k) No key staff have been transferred between the GSF Business and the LKQ Business.
- (l) All reasonable steps have been taken to encourage all key staff to remain with the GSF Business.
- (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other

information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the GSF Business (or any of its employees, directors, agents or affiliates) to the LQK Business (or any of its employees, directors, agents or affiliates), or vice versa.

- (n) Except as listed in paragraph (o) below, there have been no:
- (i) key staff that have left or joined the GSF Business;
  - (ii) interruptions of the GSF Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
  - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the GSF Business; or
  - (iv) substantial changes in the GSF Business's contractual arrangements or relationships with key suppliers.

(o) *[list of material developments]*

3. LKQ and its subsidiaries remain in full compliance with the Order and continue actively to keep the CMA informed of any material developments relating to the GSF Business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

### **I understand that:**

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **fining, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or

controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF LKQ and

ECP

Signature .....

Name .....

Title .....

Date

## Compliance statement for GSF

I [insert name] confirm on behalf of GSF that:

### Compliance in the Relevant Period

1. In the period from [insert date] to [insert date] (the Relevant Period):
  - (a) 121222 Holdco Limited (GSF) and its subsidiaries have complied with the Order made by the CMA in relation to the transaction on [insert date of this Order] (the Order).
  - (b) GSF's subsidiaries have also complied with this Order.
  
2. Subject to paragraphs 3 and 4 of the Order, and except with the prior written consent of the CMA:
  - (a) No action has been taken by GSF that might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action by the CMA which may be justified by its decision on such a reference, including any action which might:
    - (i) lead to the integration of the GSF Business with the LKQ Business;
    - (ii) transfer the ownership or control of the GSF Business or any of its subsidiaries, except to the extent any change or transfer of ownership or control arises in connection with the completion of the Transaction; or
    - (iii) otherwise impair the ability of the GSF Business to compete independently in any of the markets affected by the Transaction.
  - (b) The GSF Business has been carried on separately from the LKQ Business and the GSF Business's separate sales or brand identity has been maintained.
  - (c) The GSF Business have been maintained as a going concern and sufficient resources have been made available for the development of the GSF Business, on the basis of its pre-merger business plans.
  - (d) No significant changes have been made to the organisational structure of, or the management responsibilities within, the GSF Business, except in

the ordinary course of business.

- (e) The nature, description, range and quality of goods and services supplied in the UK by the GSF Business have been maintained and preserved.
- (f) Except in the ordinary course of business for the separate operation of the two businesses:
  - (i) all of the assets of the GSF Business, including facilities and goodwill, have been maintained and preserved as at the start of the Relevant Period;
  - (ii) none of the assets of the GSF Business have been disposed of; and
  - (iii) no interest in the assets of the GSF Business has been created or disposed of.
- (g) There has been no integration of the information technology of the GSF Business, and the software and hardware platforms of the GSF Business have remained essentially unchanged, except for routine changes and maintenance or necessary changes to prepare for the transfer of systems to a proposed purchaser of GSF or the creation of standalone systems in anticipation of such transfer.
- (h) Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the GSF Business and LKQ Business have been operated and updated separately and any negotiations with any existing or potential customers and suppliers in relation to the GSF Business have been carried out by the GSF Business alone and, for the avoidance of doubt, the LKQ Business has not negotiated on behalf of the GSF business (and vice versa) or entered into any joint agreements with the GSF Business (and vice versa).
- (i) All contracts of the GSF Business have been serviced by the business to which they were awarded, except to the extent novated, assigned or subcontracted prior to the commencement date.
- (j) No changes have been made to key staff of the GSF Business.

- (k) No key staff have been transferred between the GSF Business and the LKQ Business.
  - (l) All reasonable steps have been taken to encourage all key staff to remain with the GSF Business.
  - (m) Except as permitted by the Order, no business secrets, know-how, commercially-sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to either of the two businesses, has passed, directly or indirectly, from the GSF Business (or any of its employees, directors, agents or affiliates) to the LKQ Business (or any of its employees, directors, agents or affiliates), or vice versa.
  - (n) Except as listed in paragraph (o) below, there have been no:
    - (i) key staff that have left or joined the GSF Business;
    - (ii) interruptions of the GSF Business (including without limitation procurement, production, logistics, sales and employee relations arrangements) that have prevented it from operating in the ordinary course of business for more than 24 hours;
    - (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the GSF Business; or
    - (iv) substantial changes in the GSF Business's contractual arrangements or relationships with key suppliers.
  - (o) *[list of material developments]*
3. GSF and its subsidiaries remain in full compliance with the Order and continue actively to keep the CMA informed of any material developments relating to the GSF Business in accordance with paragraph 9 of the Order.

### **Interpretation**

4. Terms defined in the Order have the same meaning in this compliance statement.

**I understand that:**

5. It is a criminal offence under section 117 of the Enterprise Act 2002 for a person recklessly or knowingly to supply to the CMA information which is false or misleading in any material respect. Breach of this provision can result in **finances, imprisonment for a term not exceeding two years, or both.** (Section 117 of the Enterprise Act 2002.)
  
6. Failure to comply with this order without reasonable excuse may result in the CMA imposing a **penalty of up to 5% of the total value of the turnover** (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom the penalty is imposed. (Section 94A of the Enterprise Act 2002.)

FOR AND ON BEHALF OF GSF

Signature .....

Name .....

Title .....

Date