



## DEROGATION CONSENT LETTER

CASE ME/7039/23

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

**IN RESPECT OF INITIAL ENFORCEMENT ORDERS ISSUED PURSUANT TO  
SECTION 72(2) ENTERPRISE ACT 2002**

**Consent under section 72(3C) of the Enterprise Act 2002 to certain actions for the purposes of the Initial Enforcement Order made by the Competition and Markets Authority (CMA) on 31 July 2023**

Dear Slaughter and May

We refer to your submissions dated 31 July 2023 and 1 August 2023 requesting that the CMA consents to derogations to the Initial Enforcement Order of 31 July 2023 (the **Initial Order**). Unless otherwise stated, the terms defined in the Initial Order have the same meaning in this letter.

Under the Initial Order, save for written consent by the CMA, LKQ Corporation and its subsidiaries (including Euro Car Parts Limited) (**LKQ Business**) is required to hold separate the LKQ Business from the business of 121222 Holdco Limited and its direct and indirect subsidiaries in the UK (**GSF Business**) and refrain from taking any action which might prejudice a reference under section 22 or 33 of the Act or impede the taking of any remedial action following such a reference.

After due consideration of your request for derogations from the Initial Order, based on the information received from you and in the particular circumstances of this case, the CMA consents to the LKQ Business and the GSF Business carrying out the following actions, in respect of the specific paragraphs:

### **1. Paragraphs 5(a) and 6(a) of the Initial Order**

LKQ submits that it requires consent from the CMA to permit implementation of certain steps required for the closing of the Transaction.

First, LKQ submits that it has a contractual obligation to disburse certain funds to Uni-Select Inc. (**Uni-Select**) (in the form of loans) under the Plan of Arrangement at Schedule A to the Arrangement Agreement between LKQ and Uni-Select dated 26

February 2023 (the **Plan of Arrangement**) upon the completion of the Transaction. A portion of the funds will be subsequently directed to the GSF Business to cover Transaction-related expenses, employee payroll taxes and various share option and share unit awards.

LKQ submits that GSF will be responsible for distribution of the funds to the share option holders and employees, and that LKQ will not have any visibility into how GSF uses the funds or receive any other confidential or commercially sensitive information in connection with the funds.

Second, LKQ submits that it is necessary for GSF to retain access to Uni-Select's credit facility (and related guarantees) in respect of certain vendor finance obligations incurred prior to closing of the Transaction. In particular:

- (a) GSF currently has access to Uni-Select's vendor credit facility (**Vendor Financing Program**) which serves as a credit facility for payment of supplier invoices.
- (b) As of the date of the closing of the Transaction, GSF will cease to submit any new invoices (or incur additional liability) under the Vendor Financing Program. However, LKQ intends on closing of the Transaction to guarantee all obligations outstanding at that date under the Vendor Financing Program. This mainly relates to the Uni-Select businesses FinishMaster (North America) and Automotive Group (Canada), but will also include some GSF invoices that are currently outstanding under the facility.
- (c) The total amounts outstanding under the Vendor Financing Program for GSF amount to [x]. These amounts are due to be paid by GSF [x] although LKQ understands that GSF's liability under this facility will be extinguished at closing of the Proposed Divestment. [x].
- (d) GSF intends to make the payments from its own funds [x]. LKQ will [x] under the Vendor Finance Program.
- (e) GSF's access to the facility is important because without access, GSF's pre-closing liabilities will fall due at the time of closing, creating additional financial burden on GSF.
- (f) GSF will be able to access information about the outstanding balances through an external portal operated by the [x]. GSF accesses [x] via a login which has a unique GSF user ID. [x]. As such, at closing, Uni-Select and other entities that benefit from the Vendor Financing Program will lose access to GSF's [x] account and GSF information. Therefore, after closing, LKQ and its subsidiaries will not have access to information relating to GSF's

obligations under the Vendor Financing Program (which is administered by the [X]).

Third, LKQ submits that it is necessary for certain LKQ group insurance coverage policies to be extended to GSF at closing of the Transaction. In particular:

- (a) It is envisaged that all Uni-Select's entities (including GSF) will automatically, upon closing of the Transaction, be included in LKQ's group insurance policies in respect of directors and officers, crime, employment practices, fiduciary and cyber liability. GSF's insurance coverage in respect of some of these risks will automatically terminate at closing.
- (b) The insurance coverage is required in order for the GSF business to continue operating as a going concern. Without this coverage, GSF would be exposed to material liability that could endanger the ongoing viability and profitability of the GSF business.
- (c) No exchange of information (between LKQ and GSF/any other Uni-Select entity) is required in order to put the insurance coverage in place. LKQ will not be provided with any information from GSF in order to put the arrangements in place – to the extent that any information from GSF is required to extend the policies, such information will be provided by GSF directly to LKQ's insurers.

Fourth, LKQ submits that it is necessary for GSF to continue to benefit from Uni-Select's corporate guarantee in respect of GSF's local banking arrangements and the local overdraft facility held by GSF. In particular:

- (a) GSF currently benefits from a corporate guarantee provided by Uni-Select. [X] (**Corporate Guarantee**).
- (b) Uni-Select intends to continue to provide the Corporate Guarantee to GSF after the closing of the Transaction until LKQ's proposed divestment (the sale of the GSF Business) completes.
- (c) GSF will remain fully responsible for all payments as and when they fall due. [X].
- (d) No competitively sensitive information will be shared with Uni-Select in relation to the Corporate Guarantee. Effective from the completion of the Transaction, GSF will have disconnected itself from Uni-Select treasury and will no longer share its daily bank position reporting or rolling 13-week cashflow forecasting with Uni-Select. For the sake of completeness, LKQ also note that Uni-Select does not have access to the Barclays' banking portal

that GSF uses to manage the banking arrangements covered by the Corporate Guarantee.

The CMA consents to a derogation from paragraphs 5(a) and 6(a) of the Initial Order to permit the following:

- (a) LKQ (or its subsidiaries) transferring funds to GSF following payment of the loans contemplated by the Plan of Arrangement;
- (b) GSF's continued participation in a group vendor credit facility (and inclusion in the related guarantees in respect of this facility);
- (c) the extension of certain LKQ group insurance policies to include the GSF Business; and
- (d) continued inclusion of GSF's local banking arrangements and overdraft facility in Uni-Select's corporate guarantee.

The CMA consents to the above strictly on the understanding that:

- (a) The derogation shall not involve the exchange of any confidential information between the LKQ Business and the GSF Business.
- (b) The derogation will not affect the viability of the GSF business.
- (c) The derogation will not result in any integration between the GSF business and the LKQ business.
- (d) The derogation will not prevent any remedial action which the CMA may need to take regarding the Transaction.

Alex White

**Assistant Director, Mergers**

1 August 2023