



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 and Linklaters

We refer to your submission dated 4 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**) are required to hold separate the LKQ Business from the business of 121222 Holdco Limited (**GSF**) and its direct and indirect subsidiaries in the UK (including GSF Car Parts) (**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 LKQ Business and the GSF Business carrying out the following actions, in respect of the specific paragraphs:

1. Paragraphs 5(a), 6(a), 6(f), and 6(l) of the Initial Order: Derogation 1

GSF has requested a derogation from the above paragraphs of the IEO to permit the GSF Business to continue accessing and using: (i) [X] consolidation software; and (ii) [X] software (together, the **Accounting Software**) during the period between closing of the Transaction and the completion of the of the divestment of the GSF Business (the **Proposed Divestment**) (the **Interim Period**). The Accounting Software is provided by Uni-Select and, following the closing of the Transaction, by LKQ via Uni-Select, during the period in which the IEO is in force.

GSF submits that it is necessary for the GSF Business to be able to continue using the Accounting Software to complete its consolidated group financial reporting (i.e. of GSF and its subsidiaries).

GSF submits that the [X] software is required to ensure that it can consolidate the journal entries of its various subsidiaries in the most efficient and accurate manner. Similarly, GSF submits that the [X]

software is required to calculate the capitalisation of all of GSF's real estate leases for the purposes of its financial accounting on an IFRS basis.

GSF further submits that continued access to the Accounting Software will ensure that GSF can continue preparing its financial accounts in the most efficient manner. It will also allow for consistency in the financial reporting of the GSF Business pre- and post-closing, which would also be expected by the prospective purchasers of the GSF Business.

GSF submits that access to the GSF information gained as a result of this derogation be restricted to a limited number of individuals in Uni-Select's corporate accounting team, corporate IT team, and IT administration teams (the **Uni-Select Clean Team**) as set out in **Annex I**, for whom access to this information is strictly necessary for LKQ via Uni-Select to continue providing the Accounting Software to GSF.

The CMA consents to a derogation from paragraphs 5(a), 6(a), 6(f), and 6(l) to permit GSF to continue accessing and using the Accounting Software currently provided by Uni-Select.

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

- (i) the GSF Business will not have access to any LKQ or Uni-Select confidential information;
- (ii) access by LKQ to GSF's accounting data, resulting from its access to the Accounting Software, will be restricted to the Uni-Select Clean Team (unless otherwise permitted with the prior written consent of the CMA, which can be provided via email);
- (iii) any changes to the Uni-Select Clean Team will be subject to the CMA's prior written consent (which can be provided via email); and
- (iv) each member of the Uni-Select Clean Team will sign a confidentiality undertaking in a form submitted to the CMA relating to the commercially sensitive information they will receive as a result of the GSF Business using the Accounting Software.

2. Paragraphs 6(a) and 6(l) of the Initial Order: Derogation 2

Uni-Select submits that it requires consent from the CMA to access and use certain GSF accounting information (**GSF Information**) uploaded to the Accounting Software for the following reasons:

- (i) The IT administration/security team members of the Uni-Select Clean Team (as listed in **Annex I**) require access to the Accounting Software in order to ensure that GSF's use of the Accounting Software and concomitant exchanges of information are secure. The corporate IT team members of the Uni-Select Clean Team (as listed in **Annex I**) are technical personnel who need access to the Accounting Software to (a) facilitate access to the Accounting Software by GSF staff, (b) provide technical support to GSF staff where required, including clarification of GSF staff queries, and (c) undertake other administrative tasks, such as the deletion of GSF data when access to it is no longer necessary.

- (ii) The corporate accounting team members of the Uni-Select Clean Team will require access to the GSF Information for the purposes of preparing Uni-Select group consolidation accounts.
- (iii) To make Derogation 3 workable, the Uni-Select Clean Team will also need to be able to have limited interactions (including via email or calls) with the LKQ Accounting Clean Team, strictly to the extent that this is required for the LKQ Permitted Purposes and in compliance with the terms of any derogation granted by the CMA in respect of Paragraph 6(l) of the IEO.

(together, the **Uni-Select Permitted Purposes**).

Uni-Select submits that LKQ will not have access to information uploaded to the Accounting Software.

Uni-Select submits that the Uni-Select Clean Team members are not in client-facing roles, are not involved in commercial decision-making (their roles relate solely to financial, accounting, and tax functions), and are the minimum number necessary to effectively carry out the Uni-Select Permitted Purposes.

Uni-Select submits that any interactions between the Uni-Select Clean Team and the GSF Business will be solely for the Uni-Select Permitted Purposes, and any information exchanged in this context will comply with the safeguards outlined below. As such, Uni-Select submits that this derogation will not in any way impair the independence of LKQ/Uni-Select or the GSF Business.

The CMA consents to a derogation from paragraphs 6(a) and 6(l) to permit:

- (i) access to, and use by the Uni-Select Clean Team of the GSF Information (as uploaded to the Accounting Software) for the Uni-Select Permitted Purposes;
- (ii) limited interactions (including via email or calls) between the Uni-Select Clean Team and the GSF Business for the Uni-Select Permitted Purposes (e.g. in order to provide technical support to the GSF Business when using the Accounting Software); and
- (iii) limited interactions (including via email or calls) between the Uni-Select Clean Team and LKQ Accounting Clean Team, strictly to the extent that this is required for the LKQ Permitted Purposes and in compliance with the terms of any derogation granted by the CMA in respect of Paragraph 6(l) of the IEO.

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

- (i) the GSF Information will be limited to what is strictly necessary to achieve the Uni-Select Permitted Purposes;
- (ii) the members of the Uni-Select Clean Team do not have, and will not have for the duration of the Initial Order, either client-facing roles or involvement in strategic or commercial decision making in relation to Uni-Select or LKQ (including ECP);
- (iii) the Uni-Select Clean Team members will each sign a confidentiality undertaking in the form submitted to the CMA preventing them from sharing the GSF Information with

anyone other than members of the Uni-Select Clean Team or using the information for purposes other than the Uni-Select Permitted Purposes;

- (iv) no additions or changes to the Uni-Select Clean Team shall be made under this derogation without the prior written consent of the CMA (which can be provided via email);
- (v) all GSF Information received by the Uni-Select Clean Team will be securely stored (e.g. in a virtual data room run by a third-party provider) and LKQ or Uni-Select employees outside the Uni-Select Clean Team will not have access to the information;
- (vi) Uni-Select will keep a record in a relevant format of the GSF Information shared by the GSF Business in accordance with this derogation which will be made available to the CMA at its request;
- (vii) on completion of the Proposed Divestment, Uni-Select will take all reasonable steps to procure that any records or copies (electronic or otherwise) of business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received by the Uni-Select Clean Team for the purposes of this derogation will be returned to the GSF Business and any copies destroyed, except to the extent that record retention is required by law or regulation (including satisfying relevant accounting, filing and reporting obligations);
- (viii) the derogation will not result in any disruption to or affect the viability of the GSF Business; and
- (ix) the derogation will not result in any pre-emptive action which might prejudice the outcome of a reference or impede the taking of any action which may be justified by the CMA's decisions on a reference.

3. Paragraphs 6(a) and 6(l) of the Initial Order: Derogation 3

LKQ submits that it requires consent from the CMA to access and use certain GSF accounting information for the purposes of:

- (i) satisfying relevant Securities and Exchange Commission (**SEC**) filing obligations relating to the Transaction (including to accurately report the value of the acquired businesses as at the point of closing of the Transaction, and as at the point of the completion of the Proposed Divestment);
- (ii) ordinary course accounting activities and reporting obligations during the (i) Interim Period (given LKQ will be the legal owner of GSF for that period), including to ascertain whether GSF requires any limited, ad hoc financial support from LKQ (see Derogation 5) and (ii) following the Proposed Divestment for purposes of preparing financial accounts; and
- (iii) financial reporting relating to closing of the Transaction, including preparation of completion accounts for the Transaction

(together, the **LKQ Permitted Purposes**).

The GSF accounting information LKQ requires amounts to:

[~~§~~]

(together, the **GSF Accounting Information**).

LKQ submits that no employee or officer of LKQ or Uni-Select will have access to the GSF Accounting Information other than in accordance with the safeguards below (or as provided for in Derogation 2).

LKQ submits that the LKQ Accounting Clean Team members (as set out in **Annex II**) are not in client-facing roles, are not involved in commercial decision-making and are the minimum number necessary to effectively carry out the LKQ Permitted Purposes.

LKQ also submits that it may be necessary from time to time for the LKQ Accounting Clean Team to make financial reports to senior executives ([~~§~~]). LKQ submits that any such information would be provided at a high level and aggregated such that it does not comprise commercially sensitive information.

LKQ submits that any interactions between the LKQ Accounting Clean Team, Uni-Select Clean Team and GSF will be solely for the LKQ Permitted Purposes, and any information shared in this context will comply with a number of safeguards (as outlined below).

The CMA consents to a derogation from paragraphs 6(a) and 6(l) to permit (i) LKQ to access, exchange and use financial accounting information from the GSF Business for the LKQ Permitted Purposes and (ii) limited interactions (including via email or calls) between the LKQ Accounting Clean Team, Uni-Select Clean Team and GSF strictly for the LKQ Permitted Purposes and in compliance with the terms of any derogation granted by the CMA in respect of Paragraph 6(l) of the IEO. This derogation is granted based on the representations made by GSF to the CMA that a derogation is proportionate and in line with the aims of the Initial Order and strictly on the basis of the following:

- (i) the GSF Accounting Information will only be provided to the LKQ Authorised Individuals in the LKQ Accounting Clean Team, and will be limited to what is strictly necessary for the LKQ Permitted Purposes;

the GSF Accounting Information to be shared with the LKQ Authorised Individuals for the LKQ Permitted Purposes will be limited to the information contained in templates to be agreed with the CMA in advance;
- (ii) any GSF Accounting Information shared by the LKQ Accounting Clean Team in preparing financial reports to LKQ senior executives ([~~§~~]) shall be limited to what is strictly necessary for preparing LKQ financial reports, provided at a high level and aggregated such that it does not comprise GSF commercially sensitive information, and limited to the information contained in templates to be agreed with the CMA in advance;
- (iii) the LKQ Authorised Individuals do not have, and will not, for the duration of the Initial Order, have any commercial or strategic responsibility for the LKQ Business;
- (iv) the LKQ Authorised Individuals shall enter into confidentiality undertakings in a form approved by the CMA;

- (v) all GSF Accounting Information received by the LKQ Accounting Clean Team will be securely stored and LKQ or Uni-Select employees outside the LKQ Accounting Clean Team will not have access to the GSF Accounting Information;
- (vi) no additions or changes to the LKQ Accounting Clean Team shall be made under this derogation without the prior written consent of the CMA (which can be provided via email);
- (vii) LKQ will keep a record in a relevant format of the GSF Accounting Information shared by the GSF Business in accordance with this derogation which will be made available to the CMA at its request; and
- (viii) should the Transaction be prohibited, or on completion of the Proposed Divestment, any records or copies (electronic or otherwise) of business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature, wherever they may be held, that were received by the LKQ Business for the purposes of this derogation will be returned to the GSF Business and any copies destroyed, except to the extent that record retention is required by law or regulation.

4. Paragraph 6(I) of the Initial Order: Derogation 4

GSF has requested a derogation from the above paragraph of the IEO to permit the GSF Business to receive certain financial information that is maintained by Uni-Select on GSF's parent companies (121222 Holdco Limited and 121333 Limited and together, the **GSF Parent Companies**).

Because the full extraction of the accounting data on the GSF Parent Companies from Uni-Select's systems will not complete prior to closing of the Transaction, GSF submits that it is necessary, proportionate, and in line with the aims of the IEO for GSF to receive these accounting records from LKQ/Uni-Select post-closing of the Transaction to prepare the financial accounts for each of the GSF Parent Companies.

GSF submits that the receipt of this accounting information will be no more than a transfer of GSF's own accounting information to GSF and will not amount to sharing of GSF's commercially sensitive information with LKQ, or vice versa. Therefore, GSF submits that no safeguards will be required for the transfer of data envisaged by this derogation.

The CMA consents to a derogation from paragraph 6(I) to permit the GSF Business to receive from Uni-Select the accounting records of the GSF Parent Companies, which are currently maintained by Uni-Select and housed in its IT systems.

5. Paragraphs 5(a) and 6(a) of the Initial Order: Derogation 5

The Parties have requested a derogation from the above paragraphs of the IEO to permit GSF to contact members of the LKQ Accounting Clean Team to specify that GSF requires a funds transfer and the amount required and the LKQ Accounting Clean Team to evaluate this request.

Provided the LKQ Accounting Clean Team finds the funds transfer is required, the Parties will request from the CMA a separate derogation for the transfer of relevant funds to GSF.

The Parties submit that this derogation is necessary to enable GSF to meet its ordinary course liabilities and obligations until the Proposed Divestment. The Parties submit that this is important to ensure that GSF is able to remain a profitable and viable business.

This measure is intended to ensure that GSF continues as a going concern and has the funds to continue to operate competitively. The Parties submit that the measure will have no impact on the commercial direction of the GSF Business.

The CMA consents to a derogation from paragraphs 5(a) and 6(a) to permit limited engagement and sharing of information between the LKQ Accounting Clean Team and GSF for purposes of determining if additional funds are required by GSF.

The CMA consents to the above strictly on the understanding that no confidential information will be exchanged under this derogation between GSF and LKQ beyond the LKQ Accounting Clean Team receiving information relating to the value of funds required by GSF (which is covered by Derogation 3).

Alex White

Assistant Director, Mergers

11 August 2023

ANNEX I
THE UNI-SELECT CLEAN TEAM



ANNEX II

THE LKQ ACCOUNTING CLEAN TEAM

