

Anticipated acquisition by LKQ Corporation of Uni-Select Inc.

Decision that undertakings might be accepted

ME/7039/23

The CMA's decision under section 73A(2) of the Enterprise Act 2002 that undertakings might be accepted, given on 28 July 2023. Full text of the decision published on 18 August 2023.

Introduction

1. LKQ Corporation (**LKQ**) has agreed to acquire Uni-Select Inc. (**Uni-Select**) (the **Merger**). LKQ and Uni-Select are together referred to as the **Parties**.
2. On 21 July 2023, the Competition and Markets Authority (**CMA**) decided under section 33(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger consists of arrangements that are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation, and that this may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On the date of the SLC Decision, the CMA gave notice pursuant to section 34ZA(1)(b) of the Act to the Parties of the SLC Decision. However, the CMA did not refer the Merger for a phase 2 investigation pursuant to section 33(3)(b) on the date of the SLC Decision in order to allow the Parties the opportunity to offer undertakings to the CMA in lieu of such reference for the purposes of section 73(2) of the Act.
4. Pursuant to section 73A(1) of the Act, if a party wishes to offer undertakings for the purposes of section 73(2) of the Act, it must do so within the five working day period specified in section 73A(1)(a) of the Act. Accordingly, on 21 July 2023, LKQ offered undertakings to the CMA for the purposes of section 73(2) of the Act.
5. The CMA now gives notice, pursuant to section 73A(2)(b) of the Act, to the Parties that it considers that there are 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 and that it is considering the offer.

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which has or may have resulted from it or may be expected to result from it, accept from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.
7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC arising from horizontal unilateral effects in:
 - (a) the supply of car parts¹ to local independent motor trade (**IMT**) customers² in 145 of 172 local overlapping areas;
 - (b) the supply of car parts to Key Account customers³ nationally;
 - (c) the supply of car parts to retail customers in all 172 local overlapping areas; and
 - (d) the supply of garage equipment⁴ to local IMT customers in 145 of 172 local overlapping areas.
8. To address these SLCs, LKQ has offered to give undertakings in lieu of a reference to divest, following completion of the Merger, Uni-Select's entire UK business, GSF Car Parts (the **Divestment Business**) (the **Proposed Undertakings**). Specifically, the divestment comprises all the shares in 121222 Holdco Limited (and each of its direct and indirect subsidiaries), the holding company for GSF Car Parts. The Divestment Business includes all assets, intellectual property, operational functions, customer and supplier contracts, and key staff used in the running of GSF Car Parts.
9. LKQ has proposed that the CMA accept the Proposed Undertakings without an upfront buyer condition.

The CMA's provisional views

10. The CMA considers that undertakings in lieu of a reference are appropriate when they are clear-cut and capable of ready implementation. The CMA's starting point when assessing undertakings is to seek an outcome that restores competition to the

¹ 'Car parts' refer to parts for cars and other light commercial vehicles.

² 'Independent motor trade' or 'IMT' customers include independent (or franchised) garages, workshops, car dealers and fast-fit centres that purchase car parts to repair and service vehicles.

³ 'Key Account' customers refer to IMT customers active on a national or multi-regional basis, such as national garage chains, vehicle fleets associated with county councils or the emergency services, or specialist and commercial fleets.

⁴ 'Garage equipment' refers to products used by garages for the repair and maintenance of vehicles.

level that would have prevailed absent the merger.⁵ When considering whether to accept undertakings in lieu of a reference, the CMA has an obligation under the Act to have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any resulting adverse effects.⁶

11. The CMA believes that the Proposed Undertakings, or a modified version of them, might be acceptable as a suitable remedy to the SLCs identified by the CMA, given that they would eliminate all horizontal overlaps between the Parties in the UK in which the CMA identified an SLC. As such, the Proposed Undertakings may result in replacing the competitive constraint provided by Uni-Select that would otherwise be lost following the Merger.
12. The CMA currently believes that the Proposed Undertakings are capable of amounting to a sufficiently clear-cut and effective resolution of the CMA's competition concerns and capable of ready implementation. This is because the CMA understands that the Divestment Business operates largely as a standalone business, with minimal operational links to Uni-Select.⁷ The Divestment Business will include all assets, intellectual property, operational functions, customer and supplier contracts, and key staff (including GSF Car Parts' current senior management team) required for the Divestment Business to operate on the same basis as it does currently. Furthermore, based on the latest financial information provided to the CMA, the Divestment Business is profitable.
13. The CMA considers that an upfront buyer is not required in this case. The Parties have provided the CMA with evidence that the market is liquid, with a number of acquisitions in the market for car parts having taken place in the UK in recent years. The Parties have also provided the CMA with evidence that the Divestment Business is an attractive acquisition prospect. The CMA understands that a large number of bidders (both financial and strategic) have expressed interest in acquiring the Divestment Business, and discussions with several of these are at an advanced stage. The CMA understands that the Divestment Business is profitable and a largely standalone business that will be able to operate on the same basis as it currently does post-divestment. The structure of the divestment as a share sale will also facilitate a straightforward sales process.
14. For these reasons, the CMA currently thinks that there are reasonable grounds for believing that the Proposed Undertakings, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act.

⁵ [Mergers remedies \(CMA87\)](#), December 2018, Chapter 3 (in particular paragraphs 3.27, 3.28 and 3.30).

⁶ Section 73(3) of the Act and [Mergers remedies \(CMA87\), December 2018](#), paragraph 3.30.

⁷ The Divestment Business currently receives legal and financial direct services and guidance, and some global insurance policies, from Uni-Select. The CMA understands that the Divestment Business will take over these functions post-divestment.

15. The CMA's decision on whether ultimately to accept the Proposed Undertakings or refer the Merger for a phase 2 investigation will be informed by, among other things, third party views on whether the Proposed Undertakings are suitable to address the competition concerns identified by the CMA.

Consultation process

16. Full details of the undertakings offered will be published in due course when the CMA consults on the undertakings offered as required by Schedule 10 of the Act.⁸

Decision

17. The CMA therefore considers that there are reasonable grounds for believing that the Proposed Undertakings offered by LKQ, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act. The CMA now 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. If no undertakings are accepted, the CMA will refer the Merger for a phase 2 investigation pursuant to sections 33(1) and 34ZA(2) of the Act.

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28 July 2023

⁸ [CMA2](#), paragraph 8.29.