



DETERMINATION OF MERGER NOTIFICATION M/18/073 – ALAVINA INVESTMENTS (MMM LIMITED)/CERTAIN ASSETS OF J. DONOHOE (MOTORS) LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Alavina Investments Limited of certain assets comprising part of the property, stock and business assets associated with J. Donohoe (Motors) Limited located at Enniscorthy, Co Wexford.

Dated 12 October 2018

Introduction

1. On 04 September 2018, in accordance with section 18(1)(a) of the Competition Act 2002, as amended (the “Act”), the Competition and Consumer Protection Commission (the “Commission”) received a notification of a proposed acquisition whereby MMM Limited (trading as Bolands Waterford City) (“MMM”), through its wholly-owned subsidiary Alavina Investments Limited (“Alavina”) (collectively the “Acquirer”), would acquire certain assets comprising part of the property, stock and business assets associated with the BMW/MINI dealership of J. Donohoe (Motors) Limited (“J. Donohoe”), located at Enniscorthy, Co Wexford (the “Target Assets”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Target Assets comprise the site and premises at which the BMW/MINI motor showrooms are located and the stock, parts and employees associated with the BMW/MINI dealership of J. Donohoe. Alavina will also enter into a four-year letting agreement with Daniel M Kickham, Patrick Kickham and Prosper Kickham (collectively the “Site and Buildings Owners”) for a separate workshop building, with an option to purchase this workshop building upon expiry of the term of the letting agreement.
3. The Proposed Transaction is to be implemented pursuant to heads of agreement signed by the parties on 16 August 2018, the contents of which include: (i) Particulars and



Conditions of Sale Agreement dated 16 August 2018 between the Site and Buildings Owners and Alavina; (ii) an asset purchase agreement dated 16 August 2018 between Alavina, J. Donohoe and the Site and Buildings Owners; (iii) a draft letting agreement between the Site and Buildings Owners and Alavina and (iv) a draft option agreement between the Site and Buildings Owners and Alavina.

4. Pursuant to the above agreements, Alavina will acquire ownership and, thus, sole control of the Target Assets.

The Undertakings Involved

The Acquirer

5. Alavina, a newly incorporated company, is a wholly owned subsidiary of MMM. MMM is 100% owned by James Boland. MMM, trading as Bolands Waterford City, is a retailer of new and pre-owned passenger cars and light commercial vehicles, located at Butlerstown Roundabout, Cork Road, Waterford. Alongside its retail business, it also offers finance options on (supplied by third parties), and has a range of manufacturer-approved aftersales products and services for, passenger cars and light commercial vehicles. MMM is an authorised BMW, Mini, Citroen and Hyundai dealer.
6. In addition, John Kelly (Waterford) Limited is a 100% owned subsidiary of MMM and is an authorised Opel dealer located on the Cork Road, Waterford.
7. For the financial year ending 31 December 2017, MMM's worldwide turnover was approximately €53.2 million, all of which was generated in the State.

J. Donohoe

8. J. Donohoe is a BMW/MINI motor retailer with premises at Enniscorthy, Co Wexford. The directors of J. Donohoe are Daniel M Kickham and Prosper Kickham. J. Donohoe is the majority shareholder in a company called Linden Copse Limited, which has a Skoda dealership for Co Wexford and trades from the same business premises as J. Donohoe.¹

¹ The proposed acquisition by a separate company, Quarry Park Motors Limited, of certain assets comprising part of the property, stock and business assets associated with the Skoda dealership of Linden Copse Limited is the subject of a separate notification to the Commission, M/018/074 – Quarry Park Motors/Certain Assets of Linden Copse.



Target Assets

9. The Target Assets comprise the site and premises at Quarry Park, Enniscorthy, Co Wexford, where the BMW/MINI motor showrooms are located, as well as the stock, parts and employees associated with the BMW/MINI dealership of J. Donohoe.
10. For the financial year ending 31 October 2017, J. Donohoe's worldwide turnover was approximately €[...], all of which was generated in the State.²

Rationale for the Proposed Transaction

11. The Acquirer states in the notification that:

“The commercial objective by this proposed transaction is the future growth strategy of the business of Alavina Investment Limited in terms of retail vehicle sales, after sales, intermediary services & repairs. The proposed purchase is also in line with Alavina Investment Limited's objective of supporting local employment in the South East Region of Ireland.”

Third Party Submissions

12. The Commission received two submissions from individual consumers raising competition concerns in relation to the proposed transaction. The concerns raised were assessed as part of the review process.

Competitive Analysis

Horizontal Overlap

13. There are three potential horizontal overlaps between the activities of the parties within the State:³
 - a. the sale of new and demonstration BMW-branded passenger cars, including the supply of intermediary financial services, aftersales services, repair services and the

² The exact turnover attributable to the Target Assets for 2017 was not provided to the Commission but it is understood to have exceeded €3 million, all of which was generated in the State.

³ The Commission notes that, according to statistics compiled by the Society of the Irish Motor Industry (“SIMI”), there were no sales of either BMW or MINI light commercial vehicles in the State in 2017.



- sale of parts and accessories for BMW-branded vehicles (“the sale of BMW-branded new passenger cars”);
- b. the sale of new and demonstration MINI-branded passenger cars, including the supply of intermediary financial services, aftersales services, repair services and the sale of parts and accessories for MINI-branded vehicles (“the sale of MINI-branded new passenger cars”); and
 - c. the sale of pre-owned passenger cars and pre-owned light commercial vehicles.
14. The Commission defines markets to the extent necessary depending on the particular circumstances of a given case. In this instance, it is not necessary for the Commission to define the precise product markets because doing so does not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. Nonetheless, the Commission assessed the likely impact of the Proposed Transaction in respect of the product areas in which the activities of the parties overlap in the State as described in paragraph 13 above.
15. Similarly, it is not necessary for the Commission to define the precise geographic markets because doing so does not alter the Commission's assessment of the likely competitive effects of the Proposed Transaction in the State. However, for the purpose of its assessment, the Commission assessed the likely impact of the Proposed Transaction with respect to both the State and the narrower geographic market⁴ of counties Carlow, Kilkenny, Tipperary, Waterford, Wexford and Wicklow (the “South East Area”).

The sale of BMW-branded new passenger cars in the State

16. In 2017, BMW held an estimated market share of approximately 3.54% for all new and demonstration branded passenger cars sold in the State.⁵ The parties submitted that they held the following estimated market shares in 2017 in relation to the total retail

⁴ See previous Commission decisions https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-071-Determination-JDM-Automotive_Karmann-Auto.pdf, <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2017/05/M-14-041-JDM-Automotive-Commons-Road-Cars-Determination.pdf> and <https://www.ccpc.ie/business/wp-content/uploads/sites/3/2018/02/M.18.020-Public-Determination.pdf> for a similar approach.

⁵ Market shares estimates were sourced from statistics gathered by SIMI, available at <https://stats.beepbeep.ie>.



sale of new and demonstration BMW-branded passenger cars in the State: Target Assets – 3.65% and Acquirer – 3.9%.⁶

17. Therefore, following implementation of the Proposed Transaction, The Acquirer's estimated share of the total retail sale of new and demonstration BMW-branded passenger cars in the State will be approximately 7.55%, representing an increase of 3.65 percentage points. Additionally, there are a number of competitors (including Frank Keane, Joe Duffy Group, Morrison BMW, N Conlon & Sons and Kearys Motor Group) which will continue to exert a competitive constraint on the Acquirer in the sale of BMW-branded new passenger cars in the State following the implementation of Proposed Transaction.
18. The Commission also considered the likely impact of the Proposed Transaction in the narrower geographic market of the South East Area. Based on information provided by the parties, the majority of the parties' new BMW vehicles are sold to customers outside this area, MMM realised 65% of its BMW sales outside the South East Area. J. Donohoe realised 75% of its BMW sales outside the South East Area. The parties submitted that they held the following estimated market shares in 2017 in relation to the total retail sale of new and demonstration BMW-branded passenger cars in the South East Area: Target Assets – 15.7% and Acquirer – 24.1%, giving a combined market share of 39.8%. However, although post transaction the acquirer would have almost 40% of market share, the Commission considers that there is substantial amount sales into and out of the area.
19. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of new and demonstration BMW-branded passenger cars – including the supply of intermediary financial services, aftersales services and repair services – and the sale of parts and accessories for BMW-branded passenger cars in the State and in the South East Area.

⁶ Market share figures were provided by the parties and were based on the parties' own internal sales figures.



The sale of MINI-branded new passenger cars in the State

20. In 2017, MINI held an estimated market share of approximately 0.44% for all new and demonstration branded passenger cars sold in the State.⁷ The parties submitted that they held the following estimated market shares in 2017, respectively, in relation to the total retail sale of new and demonstration MINI-branded passenger cars in the State: Target Assets – 3.2% and Acquirer – 13.6%.⁸
21. Therefore, following implementation of the Proposed Transaction, The Acquirer's estimated share of the total retail sale of new and demonstration MINI-branded passenger cars in the State will be approximately 16.8%, representing an increase of 3.2 percentage points. Additionally, there are a number of competitors (including Frank Keane, Joe Duffy Group, Morrison BMW, N Conlon & Sons and Kearys Motor Group) which will continue to exert a competitive constraint on the Acquirer in relation to the sale of MINI-branded new passenger cars in the State following the implementation of Proposed Transaction.
22. The Commission also considered the likely impact of the Proposed Transaction in the narrower geographic market of the South East Area. Based on information provided by the parties, the majority of the parties' new MINI cars are sold to customers outside this area.⁹ In addition, the majority of new MINI car sales (over 70%) to customers in the South East Area are provided by other dealers in the area or from dealers outside the area.
23. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of new and demonstration MINI-branded passenger cars – including the supply of intermediary financial services, aftersales services and repair services – and the sale of parts and accessories for MINI-branded passenger cars in the State and in the South East Area.

⁷ Market shares estimates were sourced from statistics gathered by SIMI, available at <https://stats.beebpeep.ie>.

⁸ Market share figures were provided by the parties and were based on the parties' own internal sales figures.

⁹ MMM realised nearly 90% of its MINI sales outside the South East Area, and J. Donohoe realised 90% of its MINI sales outside the South East Area.



The sale of pre-owned passenger cars and pre-owned light commercial vehicles

24. There is a horizontal overlap between the activities of the parties in the sale of pre-owned passenger cars and pre-owned light commercial vehicles in the State. The Commission notes, however, that most, if not all, motor dealerships in the State sell pre-owned passenger cars and light commercial vehicles. Based on information provided by SIMI, there were 719 SIMI-registered dealers¹⁰ selling pre-owned vehicles in the State in 2017. These dealers, along with other non-SIMI registered dealers and importers, will exert a strong competitive constraint on the merged entity following implementation of the Proposed Transaction.
25. Even if the relevant geographic market were to be defined more narrowly to comprise the South East Area, SIMI figures indicate that there are currently 223 dealers located in the South East Area which offer pre-owned passenger cars and pre-owned light commercial vehicles for sale. These dealers, along with other non-SIMI registered dealers and importers, will exert a strong competitive constraint on the merged entity following implementation of the Proposed Transaction.
26. In the light of the above, the Commission considers that the Proposed Transaction is not likely to lead to any negative horizontal competitive effects in respect of the sale of pre-owned passenger cars and pre-owned light commercial vehicles within the State and in the South East Area.

Vertical Relationship

27. The parties have stated in the notification that there is no vertical relationship between the Acquirer and the Target Assets. The Commission has not identified any vertical relationship between the parties. On this basis, the Commission considers that the Proposed Transaction does not raise any vertical competition concerns in the State.

¹⁰ The Commission notes that dealers and/or franchises which operate in the State are not obliged to register with SIMI.



Conclusion

28. In light of the above, the Commission considers that the Proposed Transaction will not substantially lessen competition in any market for goods or services in the State.

Ancillary Restraints

29. No ancillary restraints were notified.



Determination

The Competition and Consumer Protection Commission, in accordance with section 21(2)(a) of the Competition Act 2002, as amended, has determined that, in its opinion, the result of the proposed acquisition, whereby MMM Limited, (trading as Bolands Waterford City), through its wholly-owned subsidiary Alavina Investments Limited would acquire certain assets comprising part of the property, stock and business assets associated with the BMW/MINI dealership of J. Donohoe (Motors) Limited, located at Enniscorthy, Co Wexford, will not be to substantially lessen competition in any market for goods or services in the State, and, accordingly, that the acquisition may be put into effect.

For the Competition and Consumer Protection Commission

Brian McHugh
Member
Competition and Consumer Protection Commission