



DETERMINATION OF MERGER NOTIFICATION M/18/086 – BRIGHTSTONE TRADING LIMITED/FITZPATRICK MOTORS (BRAY) LIMITED

Section 21 of the Competition Act 2002

Proposed acquisition by Brightstone Trading Limited of [...] shareholding in Fitzpatrick Motors (Bray) Limited.

Dated 7 December 2018

Introduction

1. On 01 November 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 Brightstone Trading Limited (“Brightstone”) would acquire a controlling shareholding interest in Fitzpatrick Motors (Bray) Limited (“Fitzpatrick Motors”) (the “Proposed Transaction”).

The Proposed Transaction

2. The Proposed Transaction is to be implemented by way of a share sale and purchase agreement (the “Agreement”) between Desmond Thomas Fitzpatrick and Teresa Fitzpatrick (collectively the “Vendors”), and Brightstone. Pursuant to the Agreement, Brightstone will acquire a controlling [...] shareholding in Fitzpatrick Motors.
3. The proposed shareholding in Fitzpatrick Motors following completion of the Proposed Transaction is: Brightstone – [...] controlling shareholding and Desmond K. Fitzpatrick – [...] shareholding.

The Undertakings Involved

Brightstone



4. Brightstone is a private company limited by shares, incorporated in the State in 1997, with its registered office at 305 North Circular Road, Dublin 7.¹ Brightstone is the parent company of six wholly-owned subsidiaries through which it sells new and pre-owned passenger cars and light commercial vehicles on the retail market. It also offers finance options (supplied by third parties) on, and has a range of manufacturer-approved aftersales products and services for, the passenger cars and light commercial vehicles sold by Brightstone.
5. The business activities of the six subsidiaries are described as follows:
 - i. Tapisan Limited trading as Airside Ford, which operates a Ford motor dealership located at Airside Motor Park, Swords, Co. Dublin;
 - ii. Kitale Limited trading as Ashley Ford, which operates a Ford motor dealership located at North Circular Road, Phibsborough, Dublin 7;
 - iii. Aircom Ford Limited trading as Canavan Ford and Canavan Seat, which operates a Ford and Seat motor dealership located at East Wall Road, Dublin 3
 - iv. Canalford Limited trading as Rialto Ford, which operates a Ford motor dealership located at Herberton Road, Rialto, Dublin 12.
 - v. Portside Investments Limited, which operates a property development company and owns the premises from which Aircom Ford Limited trades as Canavan Ford; and
 - vi. Avanacar Limited trading as Airside Seat, Airside Citroen and Airside Suzuki, which operates a Seat, Citroen and Suzuki motor dealership located at Block B Airside Motor Park, Swords, Co. Dublin.
6. For the financial year ending 31 December 2017, Brightstone's worldwide turnover was approximately €[...], all of which was generated in the State.

¹ The shareholders in Brightstone are as follows: a 25% interest in Brightstone is held by Flanagan Management & Investments Limited (which itself is owned by Henry Flanagan and Emer Hoey, each of whom hold a 50% interest), a 50% interest in Brightstone is held by Damajo Management & Investments Limited (which itself is owned by Matthew Smyth and Joan Smyth, each of whom hold a 50% interest) and a 25% interest in Brightstone is held by O'Riordan Management & Investments Limited (which itself is owned by Ciaran O'Riordan and Mary O'Riordan, each of whom hold a 50% interest).



Fitzpatrick Motors

7. Fitzpatrick Motors is a private company limited by shares, incorporated in the State in 1988, with its registered office at Corke Abbey, Dublin Road, Bray, Co. Wicklow. The directors and shareholders of Fitzpatrick Motors are Desmond Thomas Fitzpatrick, Teresa Fitzpatrick and Desmond K. Fitzpatrick.²
8. Fitzpatrick Motors operates a Ford motor dealership at a premises at Dublin Road, Bray, Co. Wicklow. It also offers finance options (supplied by third parties) on, and has a range of manufacturer-approved aftersales products and services for, the passenger cars and light commercial vehicles that it sells.
9. For the financial year ending 30 September 2017, Fitzpatrick Motors' worldwide turnover was approximately €[...], all of which was generated in the State.

Rationale for the Proposed Transaction

10. The Parties states in the notification that:

“The commercial objective sought to be achieved by the Seller by the Proposed Transaction is the continuity of the Target Business as a going concern at Dublin Road, Bray, County Wicklow and for the protection of the jobs of the staff of the Target Business.

The commercial objective sought to be achieved by the Buyer by the Proposed Transaction is the continuity of the future growth strategy of the Buyer Group as a leading motor sales retailer and aftersales service provider.”

Third Party Submissions

11. No submission was received.

Competitive Analysis

Horizontal Overlap

² The current shareholding in Fitzpatrick Motors is as follows: Desmond Thomas Fitzpatrick – [...], Teresa Fitzpatrick – [...] and Desmond K. Fitzpatrick – [...].



12. There are two potential horizontal overlaps between the activities of the parties within the State:
 - a. the sale of new and demonstration Ford-branded passenger cars and light commercial vehicles, including the supply of intermediary financial services, aftersales services, repair services and the sale of parts and accessories for Ford-branded vehicles; and
 - b. the sale of pre-owned passenger cars and pre-owned light commercial vehicles.
13. 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 12 above.
14. 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 in respect of the narrow geographic market³ of County Wicklow ("Co. Wicklow"). For the sake of completeness, the Commission also assessed the likely impact of the Proposed Transaction with respect to the State.

The sale of Ford-branded new passenger cars and light commercial vehicles in Co. Wicklow

15. In 2017, Ford held an estimated market share of approximately 11.5% for all new and demonstration branded passenger cars and light commercial vehicles sold in Co. Wicklow.⁴ In 2017, Fitzpatrick Motors⁵ sold [...], whereas Brightstone, which is located

³ For a similar approach, see previous Commission determinations in cases M/15/071 JDM Automotive/Karmann Auto (<https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/04/M-15-071-Determination-JDM-Automotive-Karmann-Auto.pdf>), M/14/041 JDM Automotive/Commons Road Cars (<https://www.cpc.ie/business/wp-content/uploads/sites/3/2017/05/M-14-041-JDM-Automotive-Commons-Road-Cars-Determination.pdf>) and M/18/020 Armalou-Spirit Ford/Lillis O'Donnell (<https://www.cpc.ie/business/wp-content/uploads/sites/3/2018/02/M.18.020-Public-Determination.pdf>).

⁴ Market shares estimates were sourced from statistics gathered by SIMI, available at <https://stats.beepbeep.ie>.

⁵ Note Fitzpatrick Motors is the authorised Ford Dealership for Co. Wicklow.



in the Dublin area, sold less than [...] new and demonstration Ford-branded passenger cars and light commercial vehicles into Co. Wicklow. Information provided by Brightstone indicates that the vast majority of its sales of new Ford-branded passenger cars and light commercial vehicles, approximately [...], are to customers located in the Dublin area.

16. In addition the Commission notes there are a number of competitors (including Frank Keane, Joe Duffy Group, Spirit Motor Group, Fort Motors, Bolands Wexford and Finlay Motor Group, Naas.) which will continue to exert a competitive constraint on Brightstone in the sale of Ford-branded new passenger cars and light commercial vehicles, including the supply of intermediary financial services, aftersales services, repair services and the sale of parts and accessories for Ford-branded vehicles, in Co. Wicklow following the implementation of Proposed Transaction.
17. The Commission therefore considers that the Proposed Transaction does not raise horizontal competition concerns due to the minimal overlap between the parties' activities in Co. Wicklow.

The sale of Ford-branded new passenger cars and light commercial vehicles in the State

18. In 2017, Ford held an estimated market share of approximately 11.6% for all new and demonstration branded passenger cars and light commercial vehicles sold in the State.⁶ The parties submitted that they held the following estimated market shares in 2017 in relation to the total retail sale of new and demonstration Ford-branded passenger cars and light commercial vehicles in the State: Fitzpatrick Motors – [...] and Brightstone – [...].⁷
19. Therefore, following implementation of the Proposed Transaction, Brightstone's estimated share of the total retail sale of new and demonstration Ford-branded passenger cars and light commercial vehicles in the State will be approximately [...]. Following implementation of the Proposed Transaction, there will remain a number of competitors (including Frank Keane, Joe Duffy Group, Spirit Motor Group, Fort Motors, Bolands Wexford and Finlay Motor Group, Naas) which will continue to exert a

⁶ Market shares estimates were sourced from statistics gathered by SIMI, available at <https://stats.beepbeep.ie>.

⁷ Market share figures were provided by the parties and were based on the parties' own internal sales figures.



competitive constraint on the Brightstone in the sale of Ford-branded new passenger cars and light commercial vehicles in the State.

20. 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 Ford-branded passenger cars and light commercial vehicles – including the supply of intermediary financial services, aftersales services and repair services – and the sale of parts and accessories for Ford-branded passenger cars in the State or in Co. Wicklow.

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

21. 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 dealers⁸ 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.
22. Even if the relevant geographic market were to be defined more narrowly to comprise Co. Wicklow, SIMI figures indicate that there are approximately 46 dealers located in Co. Wicklow 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.
23. In 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 or Co. Wicklow.

⁸ The Commission notes that dealers and/or franchises which operate in the State are not obliged to register with SIMI.



Vertical Relationship

24. The parties have stated in the notification that there is no vertical relationship between Brightstone and Fitzpatrick Motors. 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.

Conclusion

25. 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

26. 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 Brightstone Trading Limited would acquire a controlling shareholding in Fitzpatrick Motors (Bray) Limited, 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