

# COMPLETED ACQUISITION BY EURO CAR PARTS LIMITED OF THE ASSETS OF THE ANDREW PAGE BUSINESS

## Statement of issues

**15 June 2017**

### The reference

1. On 22 May 2017, the Competition and Markets Authority (CMA), in exercise of its duty under section 33(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Euro Car Parts Limited (ECP) of certain assets of Andrew Page Limited, Solid Auto (U.K.) Limited and Colton Parts Company Limited (collectively referred to as AP) for further investigation and report by a group of CMA panel members (the Inquiry Group).
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
  - (a) whether a relevant merger situation has been created, and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the UK for goods or services.
3. A merger will give rise to an SLC if it is expected to have significant effects on rivalry over time and, as a result, on the competitive pressure on the firms to improve their offer to customers and/or become more efficient or innovative. In answering the two questions, we will apply a 'balance of probabilities' threshold to our analysis, that is, we will decide whether it is more likely than not that an SLC will result from the merger situation.<sup>1</sup>
4. In this statement, we set out the main issues we are likely to consider in reaching our decisions, having had regard to the evidence currently available to us including the evidence set out in the phase 1 decision<sup>2</sup> to refer the

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<sup>1</sup> [Merger Assessment Guidelines](#) (CC2/FT1254), paragraph 2.12.

<sup>2</sup> [Phase 1 decision](#).

acquisition for further investigation (the phase 1 decision) together with the written response by ECP to the phase 1 decision.<sup>3</sup>

5. We are publishing this statement in order to assist all parties submitting evidence to focus on the issues we currently envisage being relevant to our inquiry and to invite parties to notify us with reasons if there are other relevant issues which they believe we should consider. The points in this document should be seen only as potential topics for investigation rather than the CMA's views, let alone its findings or conclusions.
6. In addition to inviting all parties to respond to this statement, we are contacting and/or holding meetings with a number of interested parties as well as gathering information from a variety of sources. A copy of our administrative timetable has been published on the [inquiry webpage](#).
7. The remainder of the document is structured as follows:
  - (a) we first set out the background to the acquisition and the merger parties and then consider the markets in which ECP and AP operate; and
  - (b) we then describe our proposed approach to assessing the competitive effects of the acquisition including the possible ways in which an SLC could arise as a result of the acquisition (theories of harm) and whether there are any countervailing factors that could mitigate against an SLC.
8. Throughout this document, where appropriate, we refer to ECP and AP collectively as the Parties.

## **Background**

9. On 4 October 2016, ECP acquired certain assets of AP out of administration. These assets comprise in particular licences to occupy and an option to purchase the leaseholds of 101 AP local depots. In addition, ECP acquired a temporary licence to occupy and an option to purchase the leaseholds of AP's distribution centre in Markham Vale and its head office in Leeds. AP's chattels (for example plant, machinery, computers, fittings and fixtures), brands, stock and certain customer and supply contracts were also acquired and most of AP's employees also transferred to ECP.

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<sup>3</sup> [Response to phase 1 decision](#).

10. ECP is a wholly owned subsidiary of LKQ Euro Limited, whose ultimate parent is LKQ Corporation, a public company incorporated in Delaware. ECP's UK annual turnover in 2015 was approximately £905 million.
11. AP was founded in 1917 and was run as a family business until 2010 when Phoenix Equity Partners invested in the company, followed by Endless LLP in 2014. AP went into administration in September 2016. Its turnover for the financial year ended September 2016 was approximately £167 million (excluding turnover from assets not acquired by ECP).
12. The Parties' activities in the UK overlap in the supply of:
  - (a) **Independent aftermarket (IAM) car parts<sup>4</sup> to the independent motor trade (IMT):** this is the principal part of both Parties' businesses. IAM car parts are replacement car parts that are not specific to one particular manufacturer. They are used when a vehicle owner takes a vehicle to be repaired at an independent (or franchised) garage, car dealer or fast-fit centre.
  - (b) **IAM car parts to consumers:** both Parties also supply IAM car parts directly to consumers either from their depots or online. However, AP's activities in this area are minimal and, subject to responses to this statement, we do not propose to undertake any further analysis in relation to these activities as part of our investigation.
  - (c) **Garage equipment to the IMT:** both Parties supply a range of tools and equipment used by the IMT. These include large high value pieces of equipment (which we refer to as heavy garage equipment) such as hydraulic lifts, rolling roads and air compressors which are heavy items usually installed into a garage building at the time the garage is being fitted out or being refurbished. 'Lighter' garage equipment, such as hand tools, power tools and measuring equipment, is generally less expensive, bought and replaced more regularly and IMT customers typically have several of each type.
  - (d) **Private label car parts:** ECP designs and sells IAM car parts under 20 private label brands in the UK, the manufacture of which is outsourced to third parties. AP also markets one private label brand which specialises primarily in a range of starter motors and alternators. Like ECP, the manufacture of these products is outsourced to third parties. In light of the

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<sup>4</sup> The Parties' activities overlap primarily in the supply of car parts for passenger cars and light vehicles. AP has minimal sales from one of its depots of parts for heavy vehicles and ECP sells a very limited range of parts for such vehicles. For the purposes of our investigation and this statement, all references to car parts are to car parts for cars and light vehicles.

minimal overlap of the Parties' activities in the supply of private label car parts, we do not propose, subject to responses to this statement, to undertake any further analysis in relation to these activities as part of our inquiry.

13. Further details on the Parties and the acquisition can be found at paragraphs 11 to 16 of the phase 1 decision.

### **The markets in which ECP and AP operate**

14. As part of its analysis, the CMA will identify the relevant market(s) in which the parties to a merger operate. Defining the relevant market is a useful analytical tool but not an end in itself. In assessing whether a merger gives rise to one or more SLCs, the boundaries to the relevant market are not applied in a mechanistic way and the CMA may take into account competitive constraints from outside the relevant market, segmentation within the relevant market and other ways in which some competitive constraints are more important than others.<sup>5</sup>

### ***Supply of IAM car parts to the IMT***

15. The main area of overlap between the Parties is in the supply of IAM car parts to the IMT for cars and light vehicles. Both Parties purchase IAM car parts from manufacturers located in the UK and continental Europe, distributing them across the UK from local, regional and national distribution centres and depots.
16. The Parties submitted during phase 1 that the relevant product market should be the supply of car parts for cars and light vehicles, including both original equipment manufacturer car parts (OEM car parts) as well as IMT car parts. They argued that OEMs and their dealers competed with IAM car part suppliers for the same customers, noting that IMT customers used OEM car parts and, conversely, OEM dealers used IAM parts. In addition, they argued that IAM and OEM car parts could be physically the same and could have identical recommended retail prices. The Parties also submitted that specialist suppliers that only supplied specific types of car parts competed against full line IAM car parts suppliers such as the Parties.
17. IAM car parts are supplied primarily to small, independent IMTs (mostly garages or workshops) that operate locally (hereafter referred to as 'local IMT customers'). The CMA understands that local IMT customers mainly consider

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<sup>5</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

price, quality, product range and delivery capability when deciding from which supplier to order car parts. In particular, such customers appear to require a supplier to supply a broad range of products suitable for a range of vehicle brands which can be delivered within approximately 60 minutes of placing an order. This may suggest that OEMs/their dealers and specialist parts suppliers are not viewed by such customers as close substitutes for full line IAM car parts suppliers such as the Parties.

18. IAM car parts are also supplied to a range of larger IMT customers with multiple sites across a region(s) or across the UK (Key Accounts). The CMA understands that, like smaller local IMT customers, Key Accounts generally require car part delivery within a short period of time and require a range of parts for all vehicle brands. However, such customers also value dealing with a single or limited number of suppliers that have a broad coverage of sites and parts and can administer their accounts centrally.
19. During phase 1, the Parties told us that the geographic market for the supply of car parts to Key Accounts was national because Key Accounts had sites across different regions of the UK and would not consider a supplier that did not have depots across the UK/several regions. For local IMT customers, the Parties submitted that the markets were local and that an appropriate catchment area for a depot was about 5 miles (due to the need to deliver products to such customers within an hour of an order being placed). Analysis by the CMA during phase 1 suggested that catchment areas varied between depots and identified three different catchment areas (4, 6 and 9 miles) depending on whether the depot is located in a conurbation/city, a city/town or is rural.
20. More details on the Parties' arguments and the evidence gathered in phase 1 on the geographic frame of reference is set out in paragraphs 39 to 61 of the phase 1 decision.
21. Our initial view is that the appropriate relevant product market is no narrower than the supply of IAM car parts for cars and light vehicles and that separate customer markets exist for local and Key Account IMT customers respectively.<sup>6</sup> We will consider whether OEM car parts and/or specialist car parts are within the relevant markets and/or otherwise provide an effective constraint. Our initial view is also that the relevant geographic market is national for the supply of IAM car parts to Key Accounts, albeit that the competitive strength of any supplier may vary between different areas of the UK. For the supply of car parts to local IMT customers, our initial view is that

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<sup>6</sup> Based on the evidence available, we also do not currently consider that the product market should be widened to include car parts for heavy vehicles.

the relevant geographic market is local. We will analyse further the relevant catchment areas of the depots in the overlap areas in which the Parties operate.

### ***Supply of garage equipment to the IMT***

22. The Parties also compete in the supply of a range of garage equipment to both local IMT customers and Key Accounts. As described above, garage equipment includes a range of equipment from heavy fixed equipment to simple tools. IMT customers' requirements are likely to vary significantly depending on the nature of the garage equipment required. For example, in relation to heavy equipment, purchases are infrequent and lead times are likely to be significantly longer potentially requiring site visits and the need to co-ordinate with other professionals whose services are required to install such equipment. In addition, we understand that, for heavy equipment in particular, suppliers of IAM car parts will often introduce a customer to a garage equipment manufacturer rather than supplying, installing and/or maintaining it themselves.
23. For lighter equipment, delivery requirements may be similar to those for car parts and it may be convenient for an IMT customer to order lighter garage equipment and IAM car parts from the same supplier. However, delivery times appear to be less time critical than in relation to car parts, potentially providing customers with a broader choice of suppliers than for car parts.
24. In their response to the phase 1 decision,<sup>7</sup> the Parties highlighted the different requirements of IMT customers depending on the nature of the garage equipment being supplied. They also submitted that, for all types of garage equipment, unlike the purchase of car parts, delivery times were not a key factor as purchases were generally planned. They considered that for all types of garage equipment and types of customer (whether local IMT customers or Key Accounts) the market was therefore national in scope or, at its narrowest, regional.
25. At this stage we have not seen enough evidence to reach a preliminary view as to the appropriate relevant product or geographic market in relation to the supply of garage equipment. In the phase 1 decision,<sup>8</sup> the CMA identified a number of factors which suggest that competition concerns arising from the overlap between the Parties in the supply of garage equipment may not arise

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<sup>7</sup> [Response to phase 1 decision](#), Section 5.

<sup>8</sup> [Phase 1 decision](#), Footnote 19 at paragraph 61.

and/or may be addressed within the analysis of the supply of IAM car parts. This is considered further at paragraphs 37 to 41 below.

## **Assessment of the competition effects of the acquisition**

### ***Counterfactual***

26. We will assess the potential effects of the acquisition on competition compared with conditions in the counterfactual situation (ie the competitive situation that would be most likely to prevail absent the acquisition). For completed acquisitions, the CMA generally adopts the pre-merger conditions of competition as the counterfactual against which to assess the impact of a merger. However, where, based on the evidence available to it, the CMA believes that, in the absence of the merger, the prospect of those conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions, the CMA will assess against that alternative counterfactual.
27. As part of our assessment, we will consider what would have been likely to happen in the foreseeable future if the Parties had not completed the transaction, in particular whether:
- (a) AP or parts of AP would have been likely to continue to operate as before or would have been likely to have exited; and/or
  - (b) AP would have been likely to have been sold, in whole or in part, to another buyer or buyers; and
  - (c) to the extent that AP, or parts of AP, would have exited the relevant market(s), what would have happened to the sales of AP, or these parts of AP.<sup>9</sup>
28. The Parties argued that the appropriate counterfactual was that AP would have exited absent the acquisition by ECP. The phase 1 decision found that AP would have become insolvent, ceased operating and exited the market absent its acquisition by ECP or by another party.<sup>10</sup> Based on the evidence currently available, we anticipate coming to the same view. We note however that, whilst ECP was the only bidder for substantially the whole of AP, there were alternative bidders for parts of the AP business. We will therefore, in making our assessment as to the appropriate counterfactual, consider the

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<sup>9</sup> See in particular [Merger Assessment Guidelines](#), paragraph 4.3.8 to 4.3.18.

<sup>10</sup> [Phase 1 decision](#), paragraph 2.7.

possible alternative scenarios in respect of each relevant market identified and decide upon the appropriate counterfactual situation for each relevant market identified based on the facts available to us and the extent to which events or circumstances and their consequences are foreseeable.<sup>11</sup>

### ***Theories of harm***

29. By identifying possible ways in which an SLC could arise as a result of an acquisition, theories of harm provide a framework for our analysis of the competitive effects of a merger. We set out below the theories of harm that we are currently minded to investigate. As our inquiry progresses we may revise our theories of harm and the identification of a theory of harm does not preclude an SLC from being identified on another basis following further work by us, or the receipt of additional evidence.
30. We identified three possible horizontal theories of harm. The concern under a horizontal (unilateral) effects theory of harm is that the removal of one party as a competitor could allow the merged entity to increase prices, lower quality, reduce the range of its services and/or reduce innovation, all relative to the appropriate counterfactual. Horizontal unilateral effects are more likely where the merger parties are close competitors.
31. We welcome views on the planned scope of our investigation.

#### ***Theory of harm 1: Unilateral horizontal effects arising from the loss of actual competition in the supply of IAM car parts to local IMT customers***

32. In all or some of the local areas where ECP's and AP's depots overlap, the merger could allow ECP to increase prices, lower the quality and/or range of the products available and/or reduce the range or level of services it provides to locally based independent customers. This is because ECP will no longer face competition from an existing competitor, AP. Customers may be unable or unwilling to source car parts from alternative suppliers because of, for example, longer delivery times and/or limited product ranges and new or existing suppliers may not be able to enter and/or expand to provide an effective constraint on ECP.
33. The Parties argued<sup>12</sup> in particular that AP and ECP were not close competitors prior to the acquisition and that the CMA had in its phase 1

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<sup>11</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

<sup>12</sup> [Response to phase 1 decision](#).



decision significantly underestimated the constraint posed by other suppliers in each local area.

*Theory of harm 2: Unilateral horizontal effects arising from the loss of actual competition in the supply of IAM car parts to Key Account customers*

34. Both ECP and AP also compete to supply Key Accounts. The phase 1 decision<sup>13</sup> found that ECP and AP have similar and strongly competing service propositions for the supply to Key Accounts. The CMA identified only one other supplier with sufficient geographic coverage to be an effective competitive constraint on AP and ECP for supplying Key Accounts.
35. As for local IMT customers, the loss of AP could allow ECP to increase prices, lower the quality and/or range of products available and/or reduce the range or level of services it provides to Key Accounts because ECP will no longer face competition from AP and Key Accounts may be unable or unwilling to source supplies from alternative suppliers.
36. The Parties argued<sup>14</sup> that AP and ECP prior to the merger were not close competitors for Key Accounts. They submitted that, whether AP had been acquired by ECP or had exited the market, the loss of AP as a competitive constraint on ECP would not significantly impact on competition. In addition, the acquisition of a limited number of branches of AP by existing alternative competitors would not have significantly increased the competitive constraints existing prior to the merger on ECP.

*Theory of harm 3: Unilateral horizontal effects arising from the loss of actual competition in the supply of garage equipment to IMT customers*

37. The phase 1 decision left open whether a separate frame or frames of reference exist for garage equipment.<sup>15</sup> It identified the potential for separate frames of reference for local IMT customers and for Key Accounts but did not explore whether separate frames of reference may arise for example in relation to different types of garage equipment.
38. In relation to the supply of all types of garage equipment to Key Accounts, based on the evidence received to date, our understanding is that AP's activities are limited and that there are a large number of suppliers including manufacturers of garage equipment which supply Key Accounts directly. Our initial view therefore is that the acquisition is unlikely to raise competition

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<sup>13</sup> [Phase 1 decision](#), paragraphs 117 to 144.

<sup>14</sup> [Response to phase 1 decision](#).

<sup>15</sup> [Phase 1 decision](#), Footnote 19.

concerns in relation to the supply of garage equipment to Key Accounts. Therefore, subject to further evidence being submitted in response to this statement, we do not propose to investigate the competitive effects of the acquisition on the supply of garage equipment to Key Accounts.

39. In relation to the supply of garage equipment to local IMT customers, our initial view is that the conditions of competition, for the supply at least of light garage equipment, present some similarities to the supply of car parts to such customers. In particular, many suppliers of IAM car parts locally including the Parties also supply garage equipment in particular lighter equipment as a complementary product range. Some such suppliers also offer loyalty rebates on purchases of car parts that can only be used for purchases of garage equipment. We also understand that local IMT customers find it convenient to source equipment from their local IAM car part supplier with which they have an existing relationship.
40. However, as with Key Accounts, we also understand that additional suppliers, including manufacturers, are present at a local level for many types of garage equipment and that the supply of garage equipment is generally less time critical than the supply of IAM car parts, potentially providing a broader choice of supplier. Moreover, as noted above, the supply of garage equipment to local IMT customers is a relatively small part of AP's activities, complementary to its main activities (namely the supply of IAM car parts), further reducing the prospect that the acquisition gives rise to an SLC in respect of the supply of garage equipment. In light of this, subject to further evidence being submitted in response to this statement, we do not propose to investigate the competitive effects of the acquisition on the supply of garage equipment to local IMT customers.
41. We do however welcome reasoned submissions from third parties on our proposal not to investigate garage equipment.

#### *How we will assess our theories of harm*

42. To assess our theories of harm, we will consider:
  - (a) The extent to which the Parties prior to the acquisition were close competitors from the perspective of local IMT customers in specific local areas and of Key Accounts at the national level. In particular, we will consider:
    - (i) Customer requirements and preferences at the local and national levels. For example, we will examine the degree to which delivery

times and/or product range and/or price and/or other factors determine the choice of supplier.

- (ii) The extent to which customers perceive other types of supplier, for example OEM part suppliers or suppliers that specialise in particular types of car parts, as alternative suppliers to the Parties.
- (b) The extent to which existing competitors are close alternatives to the Parties from the perspective of local IMT customers in specific local areas and for Key Accounts at the national level.
- (c) The ability and incentives of existing and potential competitors to the Parties post-acquisition to render unprofitable any price increases or deterioration in service quality or other non-price aspects of competition.
- (d) Whether alternative purchasers were or were not present in each local area or already able to compete for Key Accounts and, if there was no alternative purchaser, what would have happened to AP's sales if AP exited, including the proportion of sales that would have been likely to be claimed by ECP.

### ***Countervailing factors***

43. Should we identify harmful effects to competition that may give rise to an SLC, we will also consider whether countervailing factors would mitigate against such effects so that the merger does not result in an SLC:
- (a) Entry and expansion: we will consider whether entry or expansion by effective competitors could be expected to be timely, likely and sufficient to prevent any SLC that might otherwise arise.
  - (b) Countervailing buyer power: we will examine any arguments made in relation to buyer power, and whether the buyer power of customers (or types of customer) would be sufficient to protect customers from any increase in market power resulting from the acquisition.
  - (c) Efficiencies: we will examine any evidence available to us in relation to any efficiencies directly arising from the acquisition. To form a view that any claimed efficiencies will enhance rivalry so that the merger does not result in an SLC, we must be satisfied that such efficiencies are merger specific, timely, likely and sufficient to prevent an SLC from arising.

### **Possible remedies and relevant customer benefits**

44. Should we provisionally conclude that the acquisition may be expected to result in an SLC in one or more markets, we will consider whether, and if so what, remedies might be appropriate, and will issue a further statement.
45. In any consideration of possible remedies, we will take into account whether any relevant customer benefits might be expected to arise as a result of the acquisition and, if so, what these benefits are likely to be and which customers would benefit.

## Responses to this statement

46. Any party wishing to respond to this statement should do so in writing by no later than **5 pm on Thursday 29 June 2017**. Please email [EuroCarParts/AndrewPage@cma.gsi.gov.uk](mailto:EuroCarParts/AndrewPage@cma.gsi.gov.uk) or write to:

Project Manager  
ECP/AP merger inquiry  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD

**15 June 2017**