



# DETERMINATION OF MERGER NOTIFICATION M/22/048 – FRANK KEANE/DORAN MOTORS

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## Section 21 of the Competition Act 2002

**Proposed acquisition by Nonivak Ventures Unlimited Company of sole control Doran Motors Holdings Limited and certain assets of Drogheda Car Sales Limited.**

**Dated: 20 October 2022**

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### Introduction

1. On 9 September 2022, 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 transaction whereby Nonivak Nominees Unlimited Company (“NN”), through its subsidiary Nonivak Ventures Unlimited Company, would acquire the entire issued share capital and thus sole control of Doran Motors Holdings Limited (“Doran Motors”) and certain assets of Drogheda Car Sales Limited (“Drogheda Car Sales”) (the “Proposed Transaction”). Doran Motors and Drogheda Car Sales are collectively referred to as the “Target Business”. The Target Business and NN are collectively referred to as the “Parties”.

### The Proposed Transaction

2. In the notification form submitted to the Commission on 9 September 2022 (the “Notification”), the Parties state that the Proposed Transaction will be implemented pursuant to a Share Purchase Agreement between Peter Doran, Angela Doran,<sup>1</sup> Doran Motors Limited and NN dated 1 September 2022 (the “SPA”), a Property Contract between Doran Motors and Doran Motors Holding Limited dated 1 September 2022 (the “Drogheda Property Contract”) and a Business Transfer Agreement between Drogheda Car Sales, Peter Doran, Angela Doran,

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<sup>1</sup> Peter Doran and Angela Doran are both Managing Directors of Doran Motors Limited and legal and beneficial owners of the entire issued share capital of Doran Motors Holdings Limited.



Doran Motors and NN (the “Drogheda BTA”),<sup>2</sup> which is currently an advanced draft and which will be signed prior to completion of the Proposed Transaction.<sup>3</sup>

3. Pursuant to the SPA, NN will acquire the entire issued share capital of Doran Motors from the Sellers, and pursuant to the Drogheda BTA and Drogheda Property Contract, NN will acquire certain assets of Drogheda Car Sales from Doran Motors Limited and Drogheda Car Sales.<sup>4</sup> Following the implementation of the Proposed Transaction, NN will have sole control of Doran Motors and of certain assets of Drogheda Car Sales.<sup>5</sup>

## The Undertakings Involved

### *The Acquirer – NN*

4. NN and Frank Keane (Holdings) Unlimited Company<sup>6</sup> (“FKH”), are together referred to as the Frank Keane Group in this determination. The Notification states that both NN and FKH are beneficially owned by Frank A Keane, a private individual.
5. In the Notification, the Parties state that NN is an investment holding company which holds a number of investments in a number of entities.<sup>7,8</sup> FKH is active in the sale of new and demonstration passenger cars (specifically, under the as *BMW, MINI, Volkswagen, and MG* brands), light commercial vehicles<sup>9</sup> (specifically, those under the *Volkswagen* brand), and a wide range of pre-owned cars and commercial vehicles involving various brands. FKH is a wholesale distributor of *FUSO* trucks and *MG* passenger cars and parts. FKH is also involved in the supply of associated financial services, aftersales services, repair services, and the sale of parts and accessories.
6. FKH currently operates the following outlets listed in Table 1 below. All of the outlets are located in co. Dublin.

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<sup>2</sup> The Drogheda BTA is named the Business Purchase Agreement on the face of the agreement, but is referred to as the Business Transfer Agreement in the SPA and Notification.

<sup>3</sup> The CCPC notes that the completion of the SPA is conditional on the exchange of the Drogheda Property Contract and the Drogheda BTA, as stated in clause 3.1(b) and (c) of the SPA.

<sup>4</sup> The “Sellers” in the SPA are Peter Doran and Angela Doran.

<sup>5</sup> Clause 2.1 of the Draft Business Transfer Agreement (the “Draft BTA”) lists the assets included in the scope of the Proposed Transaction as: goodwill; fixed assets; moveable assets; the benefit of business contracts; business information; records; business intellectual property rights; book debts; domain names and social media accounts; and, any other assets, property or rights of the Seller pertaining to the Business which are not listed in Clauses 2.1 or 2.2.

<sup>6</sup> FKH’s legal address is John F. Kennedy Drive, Naas Road, Dublin 12, with company registration number 62328.

<sup>7</sup> With the exception of those entities specifically discussed in this determination, none of these investments are relevant to the Commission’s assessment of the Proposed Transaction.

<sup>8</sup> NN’s legal address is The Frank Keane Group, John F. Kennedy Drive, Naas Road, Dublin 12, with company registration number 724032.

<sup>9</sup> ‘Light commercial vehicles’ are defined as “vehicles which have a design gross vehicle weight (DGVW) or maximum authorised mass (MAM) not exceeding 3.5 tonnes”, such as jeeps, light vans and light trucks (see [https://www.rsa.ie/road-safety/road-users/professional-drivers/vehicle-safety-legislation/light-commercial-vehicles#:~:text=Light%20commercial%20vehicles%20\(LCVs\)%20are,MAM\)%20not%20exceeding%203.5%20tonnes](https://www.rsa.ie/road-safety/road-users/professional-drivers/vehicle-safety-legislation/light-commercial-vehicles#:~:text=Light%20commercial%20vehicles%20(LCVs)%20are,MAM)%20not%20exceeding%203.5%20tonnes)).



Table 1: Overview of FKH outlets in the State

Number	Dealership	Outlet Address	New Vehicle Brands Sold
1	BMW Naas Road	John F. Kennedy Drive, Naas Road, Dublin 12	BMW
2	BMW Blackrock	Temple Road, Blackrock, Co. Dublin	BMW
3	MINI Naas Road	John F Kennedy Drive, Naas Road, Dublin 12	MINI
4	Volkswagen Liffey Valley	Liffey Valley Motor Mall, Dublin 22	Volkswagen
5	Volkswagen Deansgrange	Deansgrange Road, Deansgrange, Co Dublin	Volkswagen
6	Bluegate Motor Company	Turnpike Road, Ballymount, Dublin 22	Used cars of various brands

7. For the financial year ending 31 December 2021, FKH had worldwide turnover of [...], of which [...] was generated in the State.

8. For the year ending 31 December 2021, NN had a turnover of [...] in the State.<sup>10</sup>

#### *The Target Business*

9. Doran Motors, based in Co. Monaghan,<sup>11</sup> sells new and demonstration passenger cars under the *Hyundai* and *Skoda* brands, new *LDV/Maxus* commercial vehicles and *Isuzu* commercial trucks, and a wide range of pre-owned cars and commercial vehicles involving various brands. Doran Motors has an agreement with Mazda Motor Corporation ("*Mazda*") to repair *Mazda* cars. Doran Motors is also involved in the supply of associated financial services, aftersales services, repair services, and the sale of parts and accessories.

<sup>10</sup> As provided in an email from FKH to the CCPC, dated 13 October 2022.

<sup>11</sup> Doran Motors' legal address is Clonseady, Magheracloone, Carrickmacross, County Monaghan, with company registration number 160508.



10. Drogheda Car Sales, based in Co. Louth,<sup>12</sup> sells new and demonstration passenger cars under the *Hyundai* and *Suzuki* brands and a wide range of pre-owned cars and commercial vehicles involving various brands. Drogheda Car Sales is also involved in the supply of associated financial services, aftersales services, repair services, and the sale of parts and accessories. Drogheda Car Sales does not sell any new commercial vehicles.
11. For the financial year ending 31 December 2021, the Target Business' worldwide turnover was approximately [...], all of which was generated in the State.<sup>13</sup>

### Rationale for the Proposed Transaction

12. The Parties state the following in the Notification:

[...]<sup>14</sup>

### Third Party Submissions

13. No third party submission was received.

### Competitive Analysis

#### Horizontal overlap

14. In the Notification, the Parties state FKH is active in the sale of *“new and demonstration passenger cars under the brands BMW, MINI, Volkswagen and MG... [and] light commercial vehicles under the Volkswagen brand”*.<sup>15</sup> FKH is also a wholesale distributor of *FUSO* trucks and *MG* cars and parts.
15. Doran Motors is active in the sale of *“new and demonstration passenger cars under the Hyundai and Skoda brands and has an agreement with Mazda to repair Mazda passenger cars”* and the sale of new *LDV / Maxus* commercial vehicles and *Isuzu* commercial trucks (both being classified as light commercial vehicles).<sup>16</sup> Drogheda Car Sales is active in the sale of *“new and demonstration passenger cars under the Hyundai and Suzuki brands”*.<sup>17</sup> FKH, Doran Motors, and Drogheda Car Sales are all involved in the supply of associated financial, aftersales, and repair services, and sell parts and accessories for their respective brands.

<sup>12</sup> Drogheda Car Sales' legal address is North Road, Drogheda, County Louth, with company registration number 509964.

<sup>13</sup> As provided in an email from FKH to the CCPC, dated 13 October 2022.

<sup>14</sup> See paragraph 2.7 of the Notification.

<sup>15</sup> See paragraph 1.1 of the Notification.

<sup>16</sup> See paragraph 1.1 of the Notification.

<sup>17</sup> See paragraph 1.1 of the Notification.



16. In the Notification, the Parties state that FKH, Doran Motors, and Drogheda Car Sales are active in the sale of a wide range of pre-owned cars and commercial vehicles of various brands.<sup>18</sup>

17. There is therefore a horizontal overlap between the Parties in respect of: (i) the sale of new and demonstration passenger cars and light commercial vehicles (including associated ‘aftersales’ services); (ii) the sale of pre-owned cars and pre-owned light commercial vehicles.

### Relevant Markets

18. 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 relevant product and geographic markets because the Commission’s assessment of the likely competitive effects of the Proposed Transaction would be the same however those markets were defined. Nonetheless, the Commission has assessed the likely impact of the Proposed Transaction in respect of the product and geographic areas outlined below.

#### *Product Market*

#### The Sale of New and Demonstration Passenger Cars and Light Commercial Vehicles, Including the Supply of Intermediary Financial Services, Aftersales Services, Repair Services and the Sale of Parts and Accessories

19. In its merger determination in *M/22/016 – Keary Motors/Renault Retail Group Ireland* (“Keary Motors/Renault”),<sup>19</sup> the Commission analysed the likely competitive effects of the Proposed Transaction by reference to the areas of horizontal overlap between the activities of the parties in that case, which included:

- a. *‘the sale of new and demonstration **Renault-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 Renault-branded vehicles;*
- b. *the sale of new and demonstration **Dacia-branded** passenger cars and light commercial vehicles, including the supply of intermediary financial services, aftersales*

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<sup>18</sup> See paragraph 1.1 of the Notification.

<sup>19</sup> The Commission’s determination is available at: [M-22-016-Keary-Motors-Renault-Public-Determination-1.pdf \(cccpc.ie\)](https://www.cccpc.ie/M-22-016-Keary-Motors-Renault-Public-Determination-1.pdf).



*services, repair services and the sale of parts and accessories for Dacia-branded vehicles.*<sup>20</sup> [emphasis added].

20. As stated in paragraph 18, it is not necessary for the Commission to define the precise relevant product markets in this instance. For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission sees no reason to depart from the approach to setting out the potential relevant product market utilised in *Keary Motors/Renault* whereby the Commission assessed the competitive effects of that proposed transaction (insofar as new and demonstration passenger cars were concerned) on a narrower basis with reference to specific brands.<sup>21</sup>
21. In light of the above, for the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission has analysed its likely impact by reference to a narrower potential product market, i.e., *'the sale of new and demonstration 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 individually branded vehicles'*.
22. In the Notification, the Parties state that there is no overlap in the activities of the Parties in relation to the supply of new and demonstration *BMW, MINI, Volkswagen, MG, Hyundai, LDV / Maxus, Isuzu, Skoda*, and *Suzuki*-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), on the basis that FKH and the Target Business sell different brands of passenger cars. The brands supplied by each Party are outlined in Table 2 below.

*Table 2: Overlap of the activities of the Parties in the market for the sale of new and demonstration passenger cars and light commercial vehicles, including the supply of intermediary financial services, aftersales services, repair services and the sale of parts and accessories*

Brand	Does FKH supply this brand	Does the Target supply this brand	Overlap
<i>BMW</i>	Yes	No	No
<i>MINI</i>	Yes	No	No
<i>Volkswagen</i>	Yes	No	No
<i>MG</i>	Yes	No	No
<i>Skoda</i>	No	Yes	No
<i>LDV/Maxus</i>	No	Yes	No
<i>Isuzu</i>	No	Yes	No

<sup>20</sup> See paragraph 13 of [M-22-016-Keary-Motors-Renault-Public-Determination-1.pdf \(ccpc.ie\)](#).

<sup>21</sup> The Commission notes that the views of the Parties are that the product market for the sale of new and demonstration passenger cars and light commercial vehicles does not need to be further segmented by brand (see paragraph 5.1 of the Notification).



<i>Suzuki</i>	No	Yes	No
<i>Hyundai</i>	No	Yes	No

23. In light of the above, the Commission considers that the Proposed Transaction does not raise any horizontal competition concerns in respect of the sale of new and demonstration 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 any of the brands supplied by the Parties. This market is therefore not considered further in this Determination.

#### The Sale of Pre-Owned Passenger Cars and Pre-Owned Light Commercial Vehicles

24. In *Keary Motors/Renault*, the Commission analysed the likely competitive effects of the Proposed Transaction by reference to the areas of horizontal overlap between the activities of the parties in that case, which included: “*the sale of pre-owned passenger cars and pre-owned light commercial vehicles*”, and did not consider a hypothetically narrower product market on the basis of a given brand.<sup>22</sup>

25. In this instance, it is not necessary for the Commission to define the precise relevant product markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the potential product markets are defined narrowly or more broadly. For the purpose of assessing the likely competitive effects of the Proposed Transaction, the Commission sees no reason to depart from the approach taken by the Commission in *Keary Motors/Renault*.

26. Therefore, the Commission has assessed the competitive effects of the Proposed Transaction with reference to the sale of pre-owned passenger cars and pre-owned light commercial vehicles not distinguished on the basis of a given brand.

#### *Geographic Market*

27. In the Notification, the Parties state:

*“The Parties believe that the sale of new passenger and demonstration cars and LCVs in the State and the sale of pre-owned passenger cars and LCVs in the State are national markets. This is especially the case in view of the possibility of online sales*

<sup>22</sup> See paragraph 13 of [M-22-016-Keary-Motors-Renault-Public-Determination-1.pdf \(ccpc.ie\)](#).



*which means that customers in the present case can buy new and demonstration passenger cars online from any of the websites for BMW, MINI, Volkswagen and MG passenger vehicles in the State as well as from any of the websites for Hyundai, Skoda and Suzuki passenger vehicles and from websites for Volkswagen, LDV/Maxus and Isuzu commercial vehicles in the State.*

*...However, and without prejudice to the Parties' view on the relevant geographic market, if a narrower geographic frame of reference were to be considered, i.e. within the Greater Dublin Area and its immediate hinterlands (i.e., within 90 km or an hour's drive of the Frank Keane Group's dealerships) or within 90 km or an hour's drive of the Target Business's outlets in Carrickmacross or Drogheda, no competition concerns would arise in view of the competitive constraints offered by other motor retailers who are active in these areas...".<sup>23</sup>*

28. In *M/16/014 Frank Keane (Holdings)/MSL Grange Motors, MSL Ballsbridge Motors and MSL Service Centre (South Dublin) – Volkswagen*,<sup>24</sup> the Commission adopted the methodology described in previous merger determinations including *M/14/041 JDM Automotive/Common Road Cars*,<sup>25</sup> namely a catchment area with a radius of approximately 90 km or an hour's drive from the FKH's business / Target Business to other motor retailers active in these areas.
29. In this instance, it is not necessary for the Commission to define the precise relevant geographic markets since its conclusion on the competitive impact of the Proposed Transaction will be unaffected whether the relevant market is defined more narrowly (i.e., with reference to a catchment area with a radius of approximately 90 km or an hour's drive from the FKH's business / Target Business to other motor retailers active in these areas) or more broadly (i.e., State-wide).
30. For the purpose of assessing whether the Proposed Transaction might result in a substantial lessening of competition, the Commission has analysed its impact by reference to (i) the State; and, (ii) a narrower potential geographic market, i.e., a catchment area with a radius of approximately 90 km or an hour's drive from FKH / Target Business to other motor retailers active in these areas.

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<sup>23</sup> See paragraph 5.1 of the Notification.

<sup>24</sup> See Determination here: [M-16-014-Determination-Frank-Keane-Group\\_MSL-Grange-Motors-Ballsbridge-Service-Centre-South-Dublin-Volkswagen.pdf](#)

<sup>25</sup> See Determination here: [M-14-041 JDM Automotive - Commons Road Cars Determination \(ccpc.ie\)](#)





### *Conclusion on potential relevant markets*

31. In its assessment of the Proposed Transaction, the Commission applied these broader and narrower potential geographic markets to the only product market in which there is horizontal overlap between the activities of the Parties, i.e. the sale of pre-owned passenger cars and pre-owned light commercial vehicles.

## **Competitive Assessment**

### The Sale of Pre-Owned Passenger Cars and Pre-Owned Light Commercial Vehicles

#### *The State*

32. There is 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. In *Keary Motors/Renault*, the Commission noted that: “most, if not all, dealerships in the State sell pre-owned passenger cars and light commercial vehicles.”<sup>26</sup> This remains relevant and applicable to the Proposed Transaction. There are currently approximately 322<sup>27</sup> registered dealers supplying pre-owned passenger cars and pre-owned light commercial vehicles in the State, as listed on ‘beepbeep.ie’.<sup>28,29</sup>
33. Additionally, the Parties estimate that, in relation to the sale of pre-owned passenger cars in the State in 2021, their respective market shares were under [0-5]% (FKH) and [0-5]% (Target Business), giving FKH a [0-5]% market share post-transaction.<sup>30</sup> In relation to the market for the sale of pre-owned light commercial vehicles in the State in 2021, the Parties could not provide estimated that their market shares, but did provide that for the sale of new light commercial vehicles their respective market shares were approximately [0-5]% (FKH) and [0-5]% (Doran Motors), giving FKH a [0-5]% market share post-transaction. The Commission’s market investigation provided no reason to consider that these estimates would be unreasonable.

<sup>26</sup> See Determination here: [M-22-016-Keary-Motors-Renault-Public-Determination-1.pdf \(ccpc.ie\)](https://www.beepbeep.ie/en/dealer-search), paragraph 24.

<sup>27</sup> Figures based on <https://www.beepbeep.ie/en/dealer-search>, as of 20 October 2022.

<sup>28</sup> See: <https://www.beepbeep.ie/en/dealer-search>. ‘beepbeep.ie’ is a used car website run by The Society of the Irish Motor Industry (“SIMI”).

<sup>29</sup> In the Notification the Parties state that “the actual number is likely to be in excess of this as some dealers are not listed on this site, particularly small dealers”.

<sup>30</sup> See paragraph 5.2 of the Notification.



34. The Commission is of the view that the presence of approximately 322 dealers within the State, along with other dealers and importers, will likely exert a strong competitive constraint on FKH in the State following the implementation of the Proposed Transaction.

*90 km/ 1-hour drive radius catchment area*

35. When considering the narrower geographic scope set out in paragraph 28 above, based on the figures listed on [beebpeep.ie](https://www.beebpeep.ie) there are 82 dealers located in Dublin, seven in Meath, ten in Louth, two in Monaghan, eleven in Kildare and five in Wicklow in the FKH catchment area.<sup>31</sup>

36. For the Target Business' (Monaghan and Louth) catchment area, it is estimated that there are two dealers in Monaghan, ten dealers in Louth, seven in Meath, four in Cavan and 82 dealers in Dublin supplying pre-owned cars.

37. In relation to their respective catchment areas, the Parties estimate that their market shares in 2021 in the market for the sale of pre-owned passenger cars were approximately [0-5]% (FKH), [0-5]% (Doran Motors) and [0-5]% (Drogheda Car Sales), giving FKH a [10-15]% market share post-transaction. In relation to the market for the sale of pre-owned light commercial vehicles in their respective catchment areas, the Parties estimate that their market shares in 2021 were approximately [0-5]% (FKH) and [0-5]% (Doran Motors), giving FKH a [0-5]% market share post-transaction. and The Commission's market investigation identified no reason to suggest that these figures would be inaccurate.

38. In light of the above, the Commission is of the view that the presence of these dealers, along with other dealers and importers, will exert a strong competitive constraint on FKH following the implementation of the Proposed Transaction. The Target Business' combined market shares in the sale of pre-owned passenger cars and pre-owned light commercial vehicles is relatively low and the Commission is of the view that the expected increase in FKH's shares of sales will be relatively small following the Proposed Transaction.

Conclusion on Competitive Assessment

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<sup>31</sup> Figures based on <https://www.beebpeep.ie/en/dealer-search>, as of 20 October 2022.



39. In light of the above, the Commission considers that the Proposed Transaction does not raise any competition concerns in any market for goods or services in the State.

#### **Vertical Overlap**

40. The Parties have stated in the Notification that there is no vertical relationship between the Frank Keane Group and the Target Business. The Commission has not identified any vertical relationship between the parties. Therefore, the Commission considers that the Proposed Transaction does not give rise to any vertical competition concerns in the State.

#### **Conclusion**

41. 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**

42. The SPA and the Drogheda BTA impose a number of non-compete and non-solicitation obligations on the Sellers. The duration of these non-compete and non-solicitation obligations does not exceed the maximum duration acceptable to the Commission. The Commission considers these restrictions to be directly related to and necessary for the implementation of the Proposed Transaction as far as they relate to the State.



### **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 Nonivak Ventures Unlimited Company would acquire the entire issued share capital of Doran Motors Holdings Limited and certain assets of Drogheda Car Sales 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**