

Completed acquisition by Ridgeway Garages (Newbury) Limited of Parkview Skoda

ME/6310-13

The OFT's decision on reference under section 22(1) given on 21 March 2014. Full text of decision published 17 April 2014.

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**Please note that the square brackets indicate figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.**

**PARTIES**

1. **Ridgeway Garages (Newbury) Limited (Ridgeway)** is a company incorporated and registered in England and Wales, headquartered in Newbury, Berkshire, and operating the Ridgeway Group. Ridgeway is a franchised car dealer for a variety of marques including Skoda. Ridgeway's other activities include repair and maintenance services, MOT services, and the supply of automotive parts. Ridgeway operates a number of franchised dealerships across Central and South England. Ridgeway's turnover for 2012 was approximately £444 million.
2. **Parkview SKODA (Parkview)**, the trading name of PJA Trading Limited, operated a franchised Skoda dealership in Reading. Parkview supplied new and used Skoda vehicles as well as repair and maintenance services for Skoda cars. Parkview's UK turnover for 2012 was approximately £7 million.

**TRANSACTION**

3. By way of an Asset Purchase Agreement, Ridgeway acquired the goodwill, assets<sup>1</sup> and staff of Parkview. The merger completed on 31 October 2013 and the Office of Fair Trading (**OFT**) opened its investigation into the completed merger on 20 November 2013. The statutory deadline, as extended under section 25(2) of the Enterprise Act 2002 (**the Act**), is 21 March 2014.

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<sup>1</sup> Including ramps and other diagnostic equipment as well as leasehold premises.

## JURISDICTION

4. As a result of this transaction, Ridgeway and Parkview have ceased to be distinct. The parties overlapped in the supply of new and used Skoda cars and repair and maintenance services for Skoda cars through franchised Skoda dealerships in the districts of Reading and West Berkshire.<sup>2</sup> The parties are the only two franchised Skoda dealerships in the districts of Reading and West Berkshire. Their combined share of supply for repair and maintenance services for new and nearly new Skoda cars in this area, exceeds 25 per cent.<sup>3</sup> The share of supply test in section 23 of the Act is therefore met.
5. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.<sup>4</sup>

## COUNTERFACTUAL

6. Ridgeway submitted that Parkview would have exited the market had it not been for the merger, because Parkview had been experiencing financial difficulties for some time prior to the merger. For the OFT to accept an exiting firm argument, it would need, on the basis of compelling evidence, to believe that it was inevitable that Parkview would have exited the market and be confident<sup>5</sup> that there was no substantially less anti-competitive purchaser for Parkview. The OFT would need to conclude, having regard also to what would have happened to Parkview's sales in the event of its exit, that there is no realistic prospect of a substantially less anti-competitive outcome than the merger.
7. In considering these factors, the OFT noted that The Volkswagen Group (The VW Group)<sup>6</sup> informed the OFT that it had formed an internal view, based on

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<sup>2</sup> The area comprising the districts of Reading and West Berkshire is considered by the OFT to be a substantial part of the United Kingdom for the purposes of the jurisdictional test in section 23 of the Act. Reading and West Berkshire have a combined population of approximately 300,000 (Reading representing 155,700 and West Berkshire 154,000, according to the Reading Borough Council and West Berkshire Council websites holding national census figures). See also the OFT's *Mergers Jurisdictional and procedural guidance*, June 2009, paragraphs 3.56 and 3.57.

<sup>3</sup> In the substantive analysis below the OFT considers shares of supply on a wider basis based on the catchment areas from which the parties derive 80 per cent of their customers. Even on this wider geographic basis, which included a third franchised Skoda dealer, the OFT concluded that the parties' combined share of supply for repair and maintenance services for new/nearly new Skoda cars was [50-60] per cent.

<sup>4</sup> See End Note 1 below

<sup>5</sup> See *Merger Assessment Guidelines*, joint publication of the Competition Commission and OFT, September 2010, from paragraph 4.3.10.

<sup>6</sup> The VW Group owns the Skoda brand having turned Skoda Auto into its wholly owned subsidiary in 2000.

Parkview's financial reports, that Parkview had a negative net worth of £[X] as of December 2011. This was consistent with Parkview's abbreviated balance sheet. The VW Group said that Parkview's management accounts recorded losses of £[X] in 2012 and that its 2013 losses were forecast at only £[X]. [X].

8. The OFT did not receive information<sup>7</sup> on what, if any, restructuring was or could have been planned by Parkview in order to avoid insolvency. In particular, in view of the significant reduction of Parkview's forecast losses for 2013, it is not clear that, at the time of the merger, and based on the evidence available to the OFT, Parkview would have been unable to meet its financial obligations in the near future and that a restructuring would not have been possible. Therefore, the OFT does not consider that Parkview's exit from the market was inevitable.
9. Nevertheless, for completeness the OFT has gone on to consider the extent to which there could have been an alternative purchaser for Parkview. In this regard, the OFT received information during its market enquiries that another dealership had a serious interest in purchasing the business and assets of Parkview but was unable to proceed because the deal had already been concluded with Ridgeway. The dealership concerned was located well outside the parties' catchment area for repair and maintenance services where competition concerns arise (see Horizontal Issues section below), and therefore Parkview's purchase by this dealership is likely to have represented a substantially less anti-competitive outcome than Ridgeway.
10. Therefore, on the basis of the evidence available, the OFT does not consider that a counterfactual other than the pre-merger conditions of competition would be appropriate to assess this merger.

## **FRAME OF REFERENCE**

11. When Ridgeway acquired Parkview's Skoda dealership in Reading, it operated a Skoda dealership in Newbury (around 15 miles from Parkview's dealership).<sup>8</sup> The overlap between the merged parties was therefore in the supply of new and used Skoda cars and in the repair/maintenance services of Skoda cars in the Reading/Newbury area.

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<sup>7</sup> The seller of Parkview did not respond to OFT's enquiries.

<sup>8</sup> Ridgeway opened its Newbury dealership in May 2013, following its acquisition of some assets of the Whitequay Skoda dealership in Newbury, which went in administration and ceased operating in January 2013.

## Product scope

### Distinction between new and used cars

12. The Competition Commission (**CC**)<sup>9</sup> has previously considered the supply of new cars to be distinct from used cars on the basis that new and used cars have different characteristics, prices and suppliers.
13. In previous cases, the OFT did not need to conclude on this point although it was noted that there was no evidence to deviate from the CC's conclusion.<sup>10</sup>
14. Similarly, in this case, the OFT did not receive evidence to suggest that the CC's conclusion was not appropriate but, given the lack of competition concerns in the supply of new or used Skoda cars, the OFT has not found it necessary to conclude on the product scope in this regard. On a cautious basis, for the purposes of the competition assessment, the OFT has considered new and used cars separately.

## Supply of new cars

### Distinction between types and marques

15. The OFT has previously considered whether new cars could be segmented by luxury, compact, people carrier, off-road and various other types but found that there is considerable overlap between these categories of vehicles.<sup>11</sup> The OFT has also considered previously that sales of a new car of a particular marque is constrained by other marques.<sup>12</sup>
16. Ridgeway supported this approach and submitted that any segmentation based on a particular type or marque was not appropriate. Third party comments also suggest that customers are likely to search a wide range of marques and types of cars when deciding to purchase a car with some of the parties' customers confirming that they would consider other marques. One competitor submitted to the OFT that Skoda cars compete with the likes of Vauxhall, SEAT, Renault and Honda amongst other marques.

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<sup>9</sup> Competition Commission, *New cars: A report on the supply of New Motor Vehicles within the UK – Competition Commission (Cm 4660/2000)* – (New Car Report) paragraph 2.81.

<sup>10</sup> See, for example, *Completed acquisition by JCT600 Limited of Gilder Group Limited (2013)* paragraph 8 and *Completed acquisition by Lookers Group plc of Shields Land Rover (2013)* paragraph 10.

<sup>11</sup> *Completed acquisition by Pendragon plc of CD Bramall (2004)*.

<sup>12</sup> See for example the *Completed acquisition by JCT600 Limited Group of Gilder Group Limited (2013)* paragraph 10 and 12.

17. However, on the basis that no competition concerns arise on even a narrow basis of the supply of new Skoda cars, the OFT has not found it necessary to conclude in this regard.

#### Distinction between different customer types

18. The parties both supplied new cars to fleet and private customers and the OFT therefore considered whether the supply of new cars to private customers should be segmented from the supply of new cars to fleet customers. The OFT has previously<sup>13</sup> defined fleet customers as those operating fleets of over 25 vehicles such as car rental and vehicle leasing firms and large companies.
19. However, in line with previous cases,<sup>14</sup> the OFT has not found it necessary to conclude in this regard given that, on the evidence available, no competition concerns arise on any plausible frame of reference. For the purpose of the competition assessment, the OFT has considered separately the supply of new cars to fleet customers and the supply of new cars to private customers.

#### Supply of used cars

20. The OFT has previously considered the supply of used cars without any further segmentation.<sup>15</sup> The OFT did not receive any evidence in this case to suggest a deviation from this approach. Given that no competition concerns arise for the supply of used cars in this merger, the OFT, in line with previous cases, has not found it necessary to conclude on further segmentation of product scope for used cars.

#### Supply of repair and maintenance services

21. The OFT has previously<sup>16</sup> considered the supply of repair and maintenance services<sup>17</sup> separately from the supply of new or used cars on the basis that customers did not consider the costs of servicing as a significant factor when buying a car.<sup>18</sup>

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<sup>13</sup> See, for example, *Completed Acquisition by JCT600 Limited of Gilder Group Limited* (2013) footnote 2.

<sup>14</sup> The same approach was taken by the OFT in *Completed acquisition by Lookers of Shields Land Rover* (2014) paragraph 14 and *Completed acquisition by JCT600 Limited of Gilder Group Limited* (2013) paragraph 14.

<sup>15</sup> *Completed acquisition by Inchcape plc of European Motor Holdings plc* (2007) and *JCT600/Gilder* (2013).

<sup>16</sup> *JCT600/Gilder* (2013) paragraph 28.

<sup>17</sup> In this case reference to repair and maintenance service refers to the periodic servicing required by motor vehicles that includes, but not limited to, oil, filter, brake pad change and general maintenance work.

<sup>18</sup> The OFT's approach to secondary products is outlined in its *Merger Assessment Guidelines*, paragraph 5.2.20.

## Distinction based on the age of car/warranty basis

22. The OFT has previously<sup>19</sup> segmented repair and maintenance services for new cars and nearly new cars<sup>20</sup> to services for older cars.<sup>21</sup> This was on the basis that despite the provisions of the 2010 Motor Vehicles Block Exemption Regulation (**European Block Exemption**)<sup>22</sup> owners of nearly new cars tended not to use independent garages for repair and maintenance services due to a perceived risk that their warranty will be invalidated and the car devalued.<sup>23</sup>
23. In *Lookers/Shields (2013)*,<sup>24</sup> the OFT found that there were different conditions of competition for the supply of repair and maintenance services for new/nearly new cars and older cars. This was supported in the present case by third party independent garages who submitted that older cars that were no longer under the manufacturer's warranty represented the vast majority of their revenue derived from servicing Skoda cars. This is consistent with the proposition that independent garages provide only limited competition for servicing cars under warranty.<sup>25</sup>
24. On a cautious basis, therefore, the OFT has assessed the merger on the basis that repair and maintenance services for new and nearly new Skoda cars are in a separate segment to repair and maintenance services for older Skoda cars.

## Conclusion on product scope

25. For the reasons set out above, the transaction has been assessed against the following product scopes:

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<sup>19</sup> For example, in *JCT600/Gilder (2013)* paragraph 29 and *Lookers/Shields (2013)* paragraph 26.

<sup>20</sup> In this decision, nearly new cars are defined as cars that are less than three years old and/or still under the manufacturer's warranty.

<sup>21</sup> In this decision, older cars are defined as cars that are over three years old and/or not under warranty.

<sup>22</sup> Commission Regulation (EU) No 330/2010 of 20 April 2010 on application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

<sup>23</sup> Such segmentation is based on the potential for the effect of the merger on competition to supply a targeted group of customers (in this case, customers seeking to service new and nearly new Skoda cars) to differ from its effect on other groups of customers (customers seeking to service older Skoda cars), thus requiring a separate analysis. See *Mergers Assessment Guidelines*, paragraph 5.2.28 ff.

<sup>24</sup> See paragraph 26.

<sup>25</sup> That is, for the supply of repair and maintenance services for new and nearly new cars, the OFT considers that, in the event of an increase in the price of servicing by all franchised dealerships, the level of switching to independent garages, in aggregate, would be insufficient to make such a price rise unprofitable (see *Merger Assessment Guidelines*, paragraph 5.2.11 ff.). In assessing this case, however, the OFT has considered all possible competitive constraints on the parties as part of the competitive assessment below.

- i. the supply of new Skoda cars to private customers;
- ii. the supply of new Skoda cars to fleet customers;
- iii. the supply of used Skoda cars to private customers;
- iv. the supply of repair and maintenance services for new and nearly new Skoda cars; and
- v. the supply of repair and maintenance services for older Skoda cars.

## **Geographic scope**

### Supply of new and used cars to private customers

26. In previous cases<sup>26</sup> the OFT has assessed the supply of new cars to private customers on a local and national basis separately. Ridgeway submitted that customers are willing to travel to find the right car and that distance is not a barrier for this approach. Some customer comments in this case suggested that, to the extent that competition was narrower than national, local markets were relatively wide with some customers prepared to travel longer distances.
27. Ridgeway further submitted that the supply of used cars should be considered on a national basis given that customers are prepared to travel, and are also now using the internet to search on average over 18.2 times<sup>27</sup> prior to purchasing a car.
28. Since no concerns arise in this case on any plausible basis for the supply of new and used Skoda cars, the OFT does not consider it necessary to conclude on the geographic scope. For the purpose of the competition assessment, and adopting a cautious approach, the OFT has considered the impact of this merger both at national and local level. At the local level, and in line with the methodology used by the OFT in previous decisional practice,<sup>28</sup> the OFT has adopted a relevant distance based on 80 per cent catchment areas. In this case, based on the evidence available,<sup>29</sup> the catchment areas, defined by the distance around each of the parties' dealerships, demonstrated significant overlap between the parties.

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<sup>26</sup> *Inchcape/European Motor Holdings* and more recently *JCT600/Gilder (2013)* paragraph 34-40, and *Lookers/Shields (2013)* paragraph 31.

<sup>27</sup> Ridgeway submitted that the source for this information was 'GForces'.

<sup>28</sup> The 80 per cent catchment area methodology was also used by the OFT in *JCT600/Gilders (2013)* and *Lookers/Shields (2013)*.

<sup>29</sup> The parties' 80 per cent catchment area was based on their customer post codes using 2013 sales data. The parties were unable to provide the OFT with sales data for previous years.

### Supply of new cars to fleet customers

29. The supply of new cars to fleet customers has previously<sup>30</sup> been considered at a national level, based on third parties submitting that location of the dealer was not important and they purchased from across the UK. In this case third party fleet customers also considered the geographic scope of the supply of new cars to be national.
30. Given that no concerns arise on any plausible frame of reference the OFT has not found it necessary to conclude on the geographic scope of the supply of new cars to fleet customers. However, for the purpose of the competition assessment the OFT has taken a similar approach to its previous decisional practice and considered the merger on a national basis.

### Supply of repair and maintenance services

31. The OFT has previously<sup>31</sup> found that customers are unwilling to travel long distances to have their cars serviced and that, as a result, competition for the supply of repair and maintenance services is principally local. The OFT has previously<sup>32</sup> used 80 per cent catchment areas centred on the acquiring and target dealerships, as a starting point for considering the impact of the merger on servicing at a local level.
32. In the present case, the OFT has not received evidence to suggest that it should depart from this approach, specifically the use of the 80 per cent catchment area methodology. In addition, the OFT has not received any evidence to suggest using a different approach as between the supply of repair and maintenance services to new/nearly new cars and older cars.
33. The OFT has therefore assessed the merger on the basis of the parties' 80 per cent catchment areas. For the parties this was approximately [redacted] miles<sup>33</sup> (or [redacted] minute drive time) centred on each dealership in Newbury and Reading respectively.

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<sup>30</sup> *JCT600/Gilder (2013)*, paragraph 41.

<sup>31</sup> *JCT600/Gilder (2013)*, paragraph 50, *Inchcape/European Motor Holdings*, paragraph 18 and *Pendragon/Reg Vardy (2006)*, paragraph 16.

<sup>32</sup> *Ibid.*

<sup>33</sup> Catchment area for Reading- [redacted] miles and for Newbury- [redacted] miles.



## HORIZONTAL ISSUES

34. The OFT has assessed whether the merger gives rise to horizontal unilateral effects in each of the frames of reference listed above, such that Ridgeway may profitably raise prices or reduce the quality of the service offered relative to the levels absent the merger.

### Supply of new and used Skoda cars to private customers

35. At a local level the OFT has established that within the parties' 80 per cent catchment areas from their dealerships, a number of alternative franchised Skoda dealerships operate namely, WMC (Winchester), Garlands (Aldershot), City SKODA (Basingstoke), Hughes (Farnham Common), and Grey Gable (Oxford). These dealerships all supply both new and used Skoda cars.
36. The OFT was unable to obtain volume and revenue data for all the Skoda dealerships in the catchment areas. That said, considering the number of alternative franchised Skoda dealerships within the catchment area – with the merger reducing the number of competing fascia from seven to six – the OFT considers that *prima facie* a significant constraint will remain on Ridgeway post-merger. Furthermore, the OFT's market testing has pointed to each of these alternative franchise dealerships imposing a competitive constraint on Ridgeway.
37. In addition, there were no significant concerns from third parties in respect of the supply of new and used Skoda cars to private customers. Moreover, if the geographic scope is widened to a national level, the OFT considers that the parties would face a greater degree of constraint from a much larger number of franchised Skoda dealerships. The VW Group submitted that there are currently approximately 135 franchised Skoda dealerships in the UK and it aims to have approximately [X] representation points in the UK.
38. On the basis of the available evidence, the OFT therefore considers that there is no realistic prospect that the merger has resulted in a substantial lessening of competition (**SLC**) in the sale of new and used Skoda cars to private customers.

## **Supply of new Skoda cars to fleet customers**

39. The OFT received a concern from a competitor<sup>34</sup> in relation to the supply of new cars to fleet customers. The nature of the competitor's concern was that Ridgeway could be 'dominant' in the supply of new Skoda cars to fleet customers post-merger.
40. However, given the national geographic scope of the frame of reference, significant constraints to Ridgeway will remain post-merger. Further, the parties have an insignificant number of fleet customers and no customers raised concerns in this regard.
41. The OFT therefore considers that, on the basis of available evidence, there is no realistic prospect of an SLC in the sale of new Skoda cars to fleet customers.

## **Supply of repair and maintenance services for new/nearly new Skoda cars**

### Share of supply

42. Through its market investigation, the OFT has obtained a best estimate of market shares, compiling revenue figures for 2012 for the three franchised Skoda dealers and a number of independent garages in the catchment area.<sup>35</sup>

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<sup>34</sup> Where third parties express competition concerns about the merger, generally, all else being equal, the OFT will give substantially more weight to concerns of customers than competitors, depending on the credibility of the opinions expressed and whether they are substantiated by evidence. See *OFT Jurisdictional and Procedural Guidance OFT 527 (June 2009)* – paragraph 6.12.

<sup>35</sup> Ridgeway and Parkview's catchment area was defined as [x] and [x] miles respectively based on customer post code data. The OFT used the data to map the catchment area for each party which showed overlap in the Theale, Thatcham and Reading areas.

**Table 1: Estimated shares of supply of repair and maintenance services for new and nearly new Skoda cars in the parties' catchment area.**

	<b>Revenues</b>	<b>Share of supply (%)</b>
Ridgeway (Newbury)	£123,460 <sup>36</sup>	[20-30]
Parkview (Reading)	£120,670 <sup>37</sup>	[20-30]
<b>Combined</b>	<b>£244,130</b>	<b>[50-60]</b>
City SKODA (Basingstoke)	£[redacted] <sup>38</sup>	[40-50]
Independents (21)	£[redacted] <sup>39</sup>	[0-10]
<b>Total</b>	<b>£[redacted]</b>	<b>100<sup>40</sup></b>

43. The OFT considers, on the basis of the evidence available, that post-merger Ridgeway will have an estimated combined share of supply of [50-60] per cent with an increment from Reading of [20-30] per cent. City SKODA (Basingstoke) has an estimated share of supply of [40-50] per cent and was, prior to the merger, the largest supplier of repair and maintenance services for new and nearly new Skoda cars in the catchment area. The aggregated share of supply of independent garages is minimal.
44. Given the above, the OFT considers that the merger represents a reduction in the number of franchised Skoda dealerships offering repair and maintenance services for new/nearly new Skoda cars from three to two firms within the catchment area of the dealerships subject to the merger. Further, given the low aggregate share of supply of independent garages, the OFT considers that this fringe of rivals is unlikely to provide a strong constraint to Ridgeway. The shares of supply therefore raise *prima facie* competition concerns.

<sup>36</sup> The OFT obtained revenue data from the parties' management accounts for 2012. The OFT was unable to obtain a breakdown of the total revenue for servicing between new/nearly new and older Skoda cars and has therefore assumed a 75:25 split in favour of service revenues for new/nearly new Skoda cars. This assumption has been based on information from third party views on the estimate of the revenue split.

<sup>37</sup> See footnote 36 above.

<sup>38</sup> The total revenue and revenue split between servicing new/nearly new cars and older cars was provided by City SKODA from its internal records.

<sup>39</sup> The revenue figure and hence share of supply estimate for independent garages is subject to some uncertainty. While the OFT was able to contact most of the independent garages provided by Ridgeway as their main competitors, the OFT considers there are likely to be some additional independent garages which also service new or nearly new Skoda cars. Nevertheless, given the level of service revenues at independent garages who were able to provide this information, the OFT considers that any additional revenue from those independent garages the OFT has not identified or been able to contact would be limited. In any event, the OFT considers that the parties' share of supply is likely to be high and largely unaffected by such uncertainty.

<sup>40</sup> The sum of share of supply figures is slightly less than 100 per cent due to rounding of figures.

## Geographic customer overlap

45. The parties' dealerships are within approximately 15 miles of each other's location and hence are within each other's catchment areas for repair and maintenance services (15 miles). These catchment areas overlap around Theale, Thatcham and Reading. On this basis the OFT considers that a relatively large proportion of each of the parties' customers may consider the other party to be a close geographic alternative.

## Other constraints on the parties

46. City SKODA (Basingstoke) is the only other franchised Skoda dealership within the parties' catchment area. This dealership is located approximately 16 miles from the parties' Newbury dealership and 19 miles from the Reading dealership. City SKODA (Basingstoke) told the OFT that it competes with the parties and in particular with the Skoda dealership in Newbury. City SKODA further confirmed that when the previous Skoda dealership in Newbury (Whitequay) went into administration, it experienced an increase in demand for repair and maintenance services for Skoda cars that had previously been serviced by the now defunct Whitequay.<sup>41</sup> This suggests that, for some customers, City SKODA may have been their second choice and, in the event of a worsening of competitive conditions at the parties' Newbury dealership post-merger, some customers may switch to City SKODA, although the extent of this competitive constraint is unclear. In addition, City SKODA said that they also received some demand from customers for repair and maintenance services that have previously serviced their cars at Parkview (Reading).
47. Almost all independent garages told the OFT that they do not compete strongly with the franchised Skoda dealerships for the supply of repair and maintenance services for new/nearly new cars. This view is consistent with the share of supply estimate for independent garages at Table 1 above and the high service retention data provided by Ridgeway. It is also consistent with information provided by City SKODA (Basingstoke), which also confirmed high service retention rates by franchised Skoda dealers for new or nearly new cars.
48. The OFT considered the possible constraint from franchised Skoda dealerships that are outside the parties' catchment area and a further distance away from the parties' location. These dealerships include WMC in Winchester (located 29

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<sup>41</sup> City SKODA said that these cars were identified predominantly from registration plates and service history details.

miles from Newbury and 38 miles from Reading), Garlands Skoda in Aldershot (located 43 miles from Newbury and 25 miles from Reading), Hughes Skoda in Farnham Common (located 39 miles from Newbury and 24 miles from Reading) and Grey Gable in Oxford (located 40 miles from Newbury and 45 miles from Reading). However, these franchised Skoda dealerships are some distance outside the parties' catchment areas and the OFT has not received any evidence that they would impose a significant constraint on Ridgeway post-merger.

## Conclusion

49. For the reasons set out above, on the basis of evidence provided by Ridgeway and third party enquiries, the OFT considers that, as regards repair and maintenance services for new and nearly new Skoda cars, the merger represents a reduction in the number of competing franchised Skoda dealerships in the parties' catchment areas offering such services from three to two firms. This is reflected in the fact that the parties' estimated share of supply is high. While the evidence suggests that Ridgeway may face competition from one other franchised dealership in this area, there is only a very weak constraint from independent garages and a lack of evidence for a significant constraint from franchised dealerships outside the parties' catchment areas.
50. As a result, the OFT cannot rule out that there is a realistic prospect that the merger will result in an SLC in relation to the repair and maintenance services for new/nearly new Skoda cars. However, in the light of the paragraphs 73-76 below it does not find it necessary to conclude on this point.

## Supply of repair and maintenance services for older Skoda cars

51. Within the 80 per cent catchment areas identified, the OFT estimated Ridgeway's combined share of supply in the repair and maintenance services for older Skoda cars at [40-50] per cent with an increment of [20-30] per cent from Parkview. City SKODA (Basingstoke) has an estimated share of supply of [30-40] per cent and the aggregated share of supply of independent garages is [30-40] per cent.<sup>42</sup>
52. Although the merger represents a reduction of franchised Skoda dealerships supplying repair and maintenance services for older Skoda cars, there appears to be some constraint not only from City SKODA (Basingstoke) but also from independent garages, and supply is therefore less concentrated than for

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<sup>42</sup> The share of supply estimates for repair and maintenance services for older Skoda cars was considered with the same assumptions as those for new/nearly new Skoda cars given the constraints on the available data.

services for new/nearly new Skoda cars. Independent garages told the OFT that they compete strongly with franchised dealers in the servicing aspect for older cars because they believe customers are more willing to take older cars to independent garages.<sup>43</sup> In addition, no significant concerns were raised by third parties with regard to the repair and maintenance services for older Skoda cars.

53. On the basis of the evidence available, the OFT, therefore, considers that there is no realistic prospect of an SLC for the repair and maintenance services for older Skoda cars.

### **Barriers to entry and expansion**

54. In assessing the prospect of an SLC resulting from a merger, the OFT considers the potential for competition in the market to be affected in the longer term as new firms enter, or the merged firm's rivals take actions to enhance their ability to compete against the merged firm. The OFT has therefore considered whether entry and expansion in the supply of repair and maintenance services for new/nearly new Skoda cars could take place in a timely and likely manner, and be sufficient to prevent a potential SLC finding.<sup>44</sup>
55. Ridgeway submitted that any garage is able to service a Skoda car and the barriers to entry for setting up a franchised Skoda dealership are relatively low.
56. The OFT acknowledges that independent garages are able to service Skoda cars of all ages under the European Block Exemption without invalidating the manufacturer's warranty. However, the OFT considers that, based on the evidence available to it, currently only a limited number of customers appear to be willing to service new/nearly new cars at independent garages, and that it is uncertain if and when this will change significantly (in particular given that the change in the European Block Exemption allowing such servicing by independent garages was introduced already in 2010).
57. The OFT considers, therefore, that the constraint from independent garages, even when considered collectively, for the repair and maintenance services for new/nearly new Skoda cars is unlikely to increase sufficiently within the timescales necessary (within two years) to prevent any potential SLC finding.

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<sup>43</sup> This may be due to the mistaken perception that servicing cars under warranty from independent garages may invalidate the warranty. This is in line with the OFT's findings in its recent *Lookers/Shield* decision - paragraph 86.

<sup>44</sup> *Merger Assessment Guidelines*, paragraph 5.8.1 ff.

58. Independent garages can seek to obtain authorised repairer status from Skoda, which allows garages to perform warranty repairs. The VW Group confirmed that the rules in the European Block Exemption that apply to its 'Authorised Repairer' contract do not allow a limit on the number of authorised garages, provided these garages meet Skoda's standards and equipment specifications. The OFT therefore asked several independent garages in the parties' catchment areas whether they were authorised repairers for Skoda cars and, if not, whether they planned to apply to become one. None of the independent garages contacted said they were authorised repairers or that they planned to apply for such status. [§<].
59. In terms of obtaining franchised Skoda dealership status, the decision to allow a new franchise to operate is made by Skoda (The VW Group). Under the European Block Exemption, a car manufacturer can select a specific number of representation points and the VW Group said it bases this on demographics, population size of the area, viability of the operation and convenience to customers. [§<].
60. Therefore, on the basis of the available evidence, the OFT considers that it is not clear that entry or expansion will be timely (that is, less than 2 years), likely and sufficient to mitigate its concerns in repair and maintenance services for new/nearly new Skoda cars.

### **THIRD PARTY VIEWS**

61. Third party views have been reflected above where appropriate.

### **ASSESSMENT**

62. The merged parties overlapped in the supply of new and used Skoda cars to fleet and private customers, and in the repair and maintenance services for Skoda cars. In relation to the supply of new and used Skoda cars, the OFT did not consider there to be competition concerns based on the constraints faced by the parties both nationally and at a more local level. The OFT considered separately the supply of repair and maintenance services for new and nearly new Skoda cars and for older Skoda cars. It found no competition concerns in the latter segment, given the significant constraint by independent garages and another franchised Skoda dealership in the parties' catchment area for these services.
63. The OFT's investigation found significant competition concerns in relation to the supply of repair and maintenance services for new and nearly new Skoda cars

and cannot rule out that there is a realistic prospect that the merger will result in an SLC. However, in the light of the paragraphs 73-76 below the OFT does not find it necessary to conclude on this point.

64. Through its market investigation the OFT obtained a best estimate of the shares of supply, outlined in Table 1 above. This shows the parties' combined share of supply to be significant with a high increment. The merger also represents a reduction in the number of franchised dealers from three to two firms within the parties' catchment areas, and although the evidence suggests that Ridgeway may face competition from City SKODA in Basingstoke going forward, the extent of such constraint is not clear.
65. Moreover, independent garages demonstrated a very weak constraint on Ridgeway with an insignificant estimated aggregate share of supply and the OFT also found a lack of evidence for a significant constraint from franchised Skoda dealers outside the parties' catchment area.
66. The OFT therefore cannot rule out that the test for reference may be met in this case. However, it was not necessary for the OFT to reach a definitive conclusion in this respect because OFT would, in any event, apply the markets of insufficient importance ('de minimis') exception to the duty to refer. The reasoning is set out below.

## **EXCEPTIONS TO THE DUTY TO REFER**

67. The OFT's duty to refer under section 22(1) of the Act is subject to certain discretionary exceptions, including the exception under section 22(2)(a) relating to markets of insufficient importance, and the exception under section 22(3)(b) read with section 73(2) relating to undertakings in lieu of reference.
68. As set out above, the OFT cannot rule out that its duty to refer in this case may be met with regard to supply of repair and maintenance services for new/nearly new Skoda cars in the parties' catchment area. The OFT believes that the annual aggregated size of the market concerned is less than £10 million. The OFT has therefore considered whether it should apply the 'de minimis' exception to the duty to refer.
69. During the course of the OFT's investigation, Ridgeway stated that it would be willing to waive its procedural rights to a full investigation, including the receipt of an Issues Letter and an Issues Meeting, in the event that the OFT found that its duty to refer might be met but that it would exercise its discretion not to refer given the markets concerned were of insufficient importance. This was provided



without prejudice to Ridgeway's views on whether the duty to refer was met.<sup>45</sup> Given that, on the basis of the discussion below, the OFT decided to apply this discretion, it did not send an Issues Letter to Ridgeway.<sup>46</sup>

### **Availability of 'in-principle' undertakings in lieu**

70. As set out in the OFT's Exceptions Guidance,<sup>47</sup> the OFT's general policy is not to apply the 'de minimis' exception where it is 'in principle' open to the parties to offer a clear-cut undertaking in lieu of reference, which does not depend on any actual offer of undertakings in lieu.
71. The OFT does not consider, based on its objective evaluation of the merger, that clear-cut undertakings in lieu are 'in principle' available to resolve the competition concerns that this case has raised. The OFT notes in this respect that it strongly prefers structural undertakings over behavioural undertakings and has applied this cautious approach in previous decisional practice.<sup>48</sup>
72. In the present case the competition concerns relate to the parties' repair and maintenance service operations which the OFT considers to be such an integral part of the merger that to remedy any SLC in relation to repair and maintenance services through a structural divestment would be tantamount to prohibiting the merger altogether.<sup>49</sup> On this basis the OFT therefore proceeded to consider whether to exercise its discretion to apply the de minimis exception.

### **Application of the de minimis exception**

73. The OFT estimates the annual value of the affected market (repair and maintenance services for new/nearly new Skoda cars in the parties' catchment areas) in this case to be significantly below £1 million. This is therefore below the £3 million for which a reference to the CC would generally not be justified.<sup>50</sup>
74. In its assessment of whether it is appropriate to apply the de minimis exception in this case, the OFT has also considered other factors. The OFT notes in this respect that, although the merger gives rise to significant competition concerns,

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<sup>45</sup> This procedural approach is in line with the OFT's *Exceptions to the duty to refer and undertakings in lieu of reference guidance* (Exceptions Guidance) (OFT1122) December 2010 – see paragraph 2.53.

<sup>46</sup> The OFT recognises that Ridgeway's offer to waive the receipt of an issues letter and an opportunity to submit its views to the OFT does not constitute acceptance on Ridgeway's part of the OFT's findings with regard to the definition of markets and competitive assessment.

<sup>47</sup> OFT1122, Mergers- Exceptions to the duty to refer and undertakings in lieu of reference guidance, December 2010 (the OFT's Exceptions Guidance), see paragraph 2.21.

<sup>48</sup> See the *Exceptions Guidance*, from paragraph 2.22, as well as the OFT's approach in *Lookers/Shields*, paragraphs 133-135.

<sup>49</sup> See *Exceptions Guidance*, paragraph 2.25.

<sup>50</sup> *Exceptions Guidance*, paragraph 2.15.

Ridgeway will continue to face a constraint from a competing franchised Skoda dealership in their catchment area.

75. The OFT has also considered the risk that using the de minimis exception in this case may create an expectation that mergers involving comparable competitive conditions and similar competition concerns would also not be referred to the CC on the basis of OFT exercising its discretion to apply the de minimis exception. The OFT recognises that there is a small risk of this given the localised nature of franchised dealerships. The OFT will continue to monitor mergers and acquisitions in this sector and will intervene where appropriate.
76. On balance, having taken account of all relevant factors in the round, the OFT considers that the public cost of a reference would be greater than the impact of the merger on consumers. The OFT therefore considers that, to the extent that its duty to refer may be met, it is appropriate to exercise its discretion to apply the de minimis exception in this case.

## **DECISION**

77. This merger will therefore **not be referred** to the Competition Commission under section 22(1) of the Act.

## **END NOTES**

1. This merger was not notified to the OFT by the parties. The OFT's Merger Intelligence Committee (MIC) identified the merger as one where there is a realistic prospect that its duty to refer under section 22 of the Act may be met. The OFT subsequently commenced the investigation on 20 November 2013.