

Completed acquisition of two Vauxhall dealerships from Riders' Garages Limited by Eden (GM) Limited

ME/6474-14

The CMA's decision on reference under section 22(1) on 24 October 2014. Full text of the decision published on 17 November 2014.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties for reasons of commercial confidentiality.

Summary

1. Eden (GM) Limited (**Eden**) operates Vauxhall franchised car dealerships. Its two Devon dealerships, Exeter and Honiton, supply new and used Vauxhall cars to private customers as well as repair and maintenance services to Vauxhall cars.
2. Eden acquired two Vauxhall dealerships in Newton Abbot and Torbay (the **Riders dealerships**) from Riders Garages Limited (**Riders**) (the **Merger**). The Riders dealerships supply new and used Vauxhall cars to private customers and repair and maintenance services to Vauxhall cars. Eden and the Riders dealerships together are referred to in this decision as the **Parties**.
3. The Competition and Markets Authority (**CMA**) considers that the Parties are enterprises that as a result of the Merger have ceased to be distinct and that the share of supply test is met. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
4. Eden and the Riders dealerships overlap in the supply of new and used Vauxhall cars and the supply of repair and maintenance services for Vauxhall cars in the Exeter, Newton Abbot and Torbay areas.
5. In relation to the supply of new and used Vauxhall cars, the CMA does not consider there to be competition concerns based on the constraints faced by the Parties locally from dealerships of other car marques including other sellers of used cars (both Vauxhall and others).

6. The CMA considered separately the supply of repair and maintenance services for new and nearly new Vauxhall cars and for older Vauxhall cars, where the warranty has expired. It found no competition concerns in the latter segment, given the significant constraint imposed by independent garages supplying these services in the relevant areas.
7. The CMA's investigation found competition concerns in relation to the supply of repair and maintenance services for new and nearly new Vauxhall cars and cannot rule out that there is a realistic prospect that the Merger has resulted or will result in a substantial lessening of competition (**SLC**) in this market. Specifically, the CMA considers that the Parties are each other's closest competitors. In particular, the Exeter dealership and the Newton Abbot dealership are the only two Vauxhall dealerships in the 14-mile catchment area and are therefore likely to attract a high proportion of the same customers. Neither other Vauxhall dealerships outside the catchment area nor local independent garages provide a similar competitive constraint as the Parties impose on each other.
8. However, it was not necessary for the CMA to determine conclusively whether there is a realistic prospect that the Merger resulted or will result in an SLC. The CMA has decided that, should there be a realistic of the Merger having resulted or being expected to result in an SLC, it would in any event exercise its discretion to apply the markets of insufficient importance (de minimis) exception to the duty to refer under section 22(2)(a) of the Act.
9. As such this Merger will therefore **not be referred** under section 22(1) of the Act.

Assessment

Parties

10. Eden operates Vauxhall franchised car dealerships in Devon, as well as a number of other dealerships (including for other car marques) across the UK. Its two Devon dealerships, Exeter and Honiton, supply new and used Vauxhall cars to private customers and provide after sales services, such as repair and maintenance services to Vauxhall cars.
11. Eden acquired two Vauxhall franchised car dealerships from Riders Garages Limited (**Riders**) on 6 December 2013. The dealerships acquired are in Newton Abbot and Torbay. The Newton Abbot and Torbay dealerships supply new and used Vauxhall cars to private customers and provide repair and maintenance services to Vauxhall cars. The UK turnover of the Riders dealerships was approximately £9 million.

Transaction

12. Eden acquired the Riders dealerships by way of an asset purchase which completed on 6 December 2013.

Jurisdiction

13. As a result of the Merger, the enterprises of Eden and the Riders dealerships have ceased to be distinct. The CMA considers that the two Riders dealerships being acquired constitute an enterprise. The assets acquired for each dealership included the freehold property, stock (including parts and vehicles), records (eg customer and supplier lists), goodwill and IT systems. Further, as part of the Merger the employees needed to carry on the business of the Riders dealerships transferred to Eden.¹
14. The Parties overlap in the supply of new and used Vauxhall cars and repair and maintenance services for Vauxhall cars through franchised Vauxhall dealerships in the Newton Abbot, Torbay and Exeter areas. Eden estimates that its share of supply is [55–65]% for the provision of servicing and non-warranty repairs to Vauxhall cars² in the Exeter, Newton Abbot and Torbay areas. Third party evidence supports this estimate. Section 23(4) of the Act states that the share of supply test is measured on the basis of supply in the UK or a substantial part of the UK. A substantial part of the UK has been found to refer to an area of such size, character and importance as to make it worth consideration for the purposes of merger control.³ In previous decisions, the CMA's predecessors, the Competition Commission (**CC**) and Office of Fair Trading (**OFT**),⁴ have considered such factors as population size and the local nature of the markets in question.⁵ The CMA considers that these areas can be considered substantial parts of the UK, with Exeter alone having a population of 120,000. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
15. For these reasons the CMA believes that it is or may be the case that a relevant merger situation has been created.

¹ *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, paragraph 4.6.

² Eden submits that their customers are almost exclusively Vauxhall drivers.

³ *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.61.

⁴ The CMA was established on 1 October 2013. By virtue of the Enterprise and Regulatory Reform Act 2013 and the Enterprise and Regulatory Reform Act 2013 (Commencement No 6, Transitional Provisions and Savings) Order, No 416 of 2014, the merger control functions of the OFT and CC were transferred to the CMA on 1 April 2014.

⁵ See: CC, *A report on the completed acquisition by Stagecoach Group plc of Preston Bus Limited* dated 11 November 2009; Completed Acquisition by the Midcounties Co-operative Limited of Tuffin Investments Limited (2012), paragraph 19.

16. The OFT issued an enquiry letter to Eden on 23 January 2014 and stopped the four month statutory clock on 30 January under section 31 of the Act as then in force. The clock was re-started following the receipt of satisfactory information on 29 August 2014 and the four month period within which the CMA may make a reference therefore expires on 5 November 2014. On 29 August the CMA also informed Eden that it had sufficient information to enable it to begin an investigation for the purposes of deciding whether to make a reference. The statutory 40 working day deadline under section 34ZA of the Act for the CMA to make a decision on reference is therefore 24 October 2014.

Counterfactual

17. The CMA assesses the Merger's impact relative to the situation that would prevail absent the Merger (that is, the counterfactual). In practice, the CMA generally adopts the pre-Merger conditions of competition as the counterfactual against which to assess the impact of the Merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, there is a realistic prospect of a different counterfactual.⁶ In this case, there is no evidence supporting a different counterfactual, and the parties have not put forward arguments in this respect. Therefore, the CMA considers the pre-Merger conditions of competition to be the relevant counterfactual.

Product frame of reference

Overlaps

18. The CMA considers that market definition provides a framework for assessing the competitive effects of the merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.⁷
19. The CMA's approach to market definition is to begin with the overlapping products of the parties, taking this as the narrowest plausible candidate

⁶ See [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraph 4.3.5 *et seq.* The *Merger Assessment Guidelines* have been adopted by the CMA (see Annex D to *Mergers: Guidance on the CMA's Jurisdiction and Procedure*).

⁷ *Merger Assessment Guidelines*, paragraph 5.2.2.

product market and then to see if this can be widened on the basis of demand-side substitution.⁸

20. The Parties overlap in the supply of:
 - (a) new and used Vauxhall cars; and
 - (b) supply of repair and maintenance services to Vauxhall cars of all ages.⁹
21. The Newton Abbot site is 12.2 miles from Eden's Exeter dealership and 25.1 miles from Eden's Honiton site. The Torbay site is 18.1 miles from Exeter and 25.6 miles from Honiton.
22. Eden submits that the Parties do not overlap in the supply of cars to fleet or business customers as Eden does not participate in fleet or business sales.

Product scope

Distinction between new and used cars

23. The CC¹⁰ has previously considered the supply of new cars to be distinct from the supply of used cars on the basis that new and used cars have different characteristics, prices and suppliers. The OFT has also followed this approach in its competitive assessment.¹¹
24. Given the lack of competition concerns in the supply of cars in this case, the CMA has not found it necessary to conclude on the product scope in this regard but has on a cautious basis considered new and used cars separately in its assessment.

Supply of new cars

25. Eden submits that the main competitive constraint on the supply of new Vauxhall cars is the supply of other marques of car.

⁸ This approach is in line with the CMA's *Merger Assessment Guidelines*, paragraphs 5.26ff.

⁹ Since some third parties indicated that they purchase Vauxhall parts from Eden Exeter, the CMA considered whether the Parties may also have overlapped in the supply of car parts to retail and trade customers. Eden told the CMA that following a reorganisation by Vauxhall of the parts business, Eden Exeter was designated as the regional hub for the sale of parts, covering the entire region. Whilst the Riders dealerships could still offer the sale of parts, the CMA has previously considered the market to be national (see OFT decision *Lookers/Shields (2013)*) and received no concerns from third parties relating to the sale of parts in this case. Vauxhall told the CMA that they considered the market for parts to be national. The CMA received no evidence of competition concerns relating to this market and therefore the supply of Vauxhall parts is not considered further in this decision.

¹⁰ 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.

¹¹ *Completed acquisition by Ridgeway Garages Limited of Parkview Skoda (2014) (Ridgeway/Skoda)*, paragraph 14.

26. The CC concluded in its report on the supply of new motor cars within the UK that the product market was for the supply of all new cars.¹² The OFT has also previously considered that sales of a new car of a particular marque is constrained by other marques.¹³
27. In the present case this frame of reference was supported by third party comments. In particular, Vauxhall submitted that Vauxhall competes with other manufacturers and that it regularly compares prices against benchmarks from other marques. For example, it provided internal documents showing that it monitored the price of one of its models against six competitors, including Ford, Peugeot, VW, Toyota, Renault and Skoda. In addition, a competitor of the Parties submitted that Vauxhall cars compete against other marques of car and most strongly with Ford, Nissan and VW.
28. On the basis of this evidence and in line with previous decisions the CMA has assessed the Merger on the basis of a market for the supply of all new cars without segmenting by marque.

Supply of used cars

29. Eden submits that it competes against the supply of used Vauxhall cars and other marques of used cars.
30. In its previous cases, the OFT considered the supply of used cars without any further segmentation by marque.¹⁴ The CMA did not receive any evidence in this case to suggest a deviation from this approach. The CMA has therefore assessed the Merger on the basis of a product market for the supply of all used cars without segmenting by marque.

Supply of repair and maintenance services for Vauxhall cars

31. The OFT previously¹⁵ considered the supply of repair and maintenance services 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.¹⁶ The CMA has, in the present case, not received evidence to suggest it should depart from this approach.

¹² *Ibid.*

¹³ See, for example, the *Completed acquisition by JCT600 Limited Group of Gilder Group Limited (2013) (JCT/Gilder)* paragraph 10 and 12. *Ridgeway/Skoda*, the OFT left this open as no competition concerns arose in any case.

¹⁴ *Ridgeway /Skoda, Inchcape plc of European Motor Holdings plc (2007)* and *JCT600/Gilder (2013)*.

¹⁵ *JCT600/Gilder (2013)* paragraph 28.

¹⁶ The CMA's approach to secondary product markets is outlined in its *Merger Assessment Guidelines*, paragraph 5.2.20.

32. The CMA understands that there is some degree of bundling of repair and maintenance services as repairs often follow servicing. In addition, third party evidence demonstrates that, on the supply side, the vast majority of repairers and dealers offer a wide range of repair and maintenance services.¹⁷ The CMA therefore considers the supply of repair and maintenance services together as one product market.
- *Distinction based on the age of car/warranty basis*
33. The CMA considered whether the supply of repair and maintenance services should be delineated based on the age of the car or the existence of a warranty. The OFT has previously¹⁸ segmented repair and maintenance services for new cars and nearly new cars¹⁹ from services for older cars.²⁰ This was on the basis that despite the provisions of the 2010 Motor Vehicles Block Exemption Regulation (**European Block Exemption**)²¹ 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.²²
34. Eden submits that it competes with both other Vauxhall dealerships and independent garages and repairers for the supply of repair and maintenance services for all ages of car.
35. In *Ridgeway/Skoda*²³ and *Lookers/Shields*,²⁴ 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 evidence. Several non-authorized repairers (independent garages) told the CMA that older cars no longer under the manufacturer's warranty represented the vast majority of the revenue they derived from servicing Vauxhall cars. This is consistent with the proposition that independent garages provide only limited competition for servicing cars

¹⁷ CMA *Merger Assessment Guidelines*, paragraph 5.2.17.

¹⁸ For example, in *JCT600/Gilder (2013)* paragraph 29 and *Completed Acquisition by Lookers Group Plc of Shields Land Rover (Lookers/Sheilds) (2013)* paragraph 26.

¹⁹ In previous decisions, nearly new cars have been defined as cars that are less than three years old and/or still under the manufacturer's warranty.

²⁰ In previous decisions, older cars have been defined as cars that are over three years old and/or not under warranty.

²¹ 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.

²² 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 Vauxhall cars) to differ from its effect on other groups of customers (customers seeking to service older Vauxhall cars), thus requiring a separate analysis. See *Merger Assessment Guidelines*, paragraph 5.2.28 ff.

²³ See paragraph 24.

²⁴ See paragraph 26.

under warranty.²⁵ Similarly, other competitors told the CMA that customers would be more likely to take their car to an authorised repairer while the car is under warranty, and that a significant proportion of customers would not risk invalidating their warranty by taking the car to an independent whilst under warranty, but that this changed as soon as the warranty expired.

36. In addition, the CMA understands that, while a car owner whose Vauxhall car is under warranty can choose to go elsewhere to have a service, in order to maintain the warranty they must have a validity check (which is free) at an authorised dealer. The CMA considers that this is likely to create an additional cost to consumers in terms of time and convenience and reduce the constraint of independents regarding repair and maintenance services to new or nearly new cars. Eden estimates that only six to ten validation checks have been completed at Eden Exeter in the past two years. The CMA considers that this suggests low levels of competition from independents in the servicing of cars under warranty.
37. On the basis of this evidence and consistent with previous cases, the CMA has on a cautious basis assessed the Merger on the basis that repair and maintenance services for new and nearly new Vauxhall cars (ie those under warranty) are in a separate segment to repair and maintenance services for older Vauxhall cars no longer under warranty. In assessing this case, however, the CMA has considered all possible competitive constraints on the Parties as part of the competitive assessment below.
 - *New/nearly new cars*
38. In previous decisions, new or nearly new cars have been defined as cars that are up to three years old and/or under warranty.²⁶
39. Prior to 2010 all Vauxhall passenger cars were sold with a warranty of three years. Then from August 2010 this was extended to a 'lifetime' or 100,000 mile (whichever is reached sooner) guarantee for the first owner. Evidence received by the CMA from Vauxhall showed that, despite the existence of the 'lifetime' guarantee the majority of Vauxhall cars have not had their Vauxhall warranty revalidated after three years of age. In any event, the CMA

²⁵ That is, for the supply of repair and maintenance services for new and nearly new cars, the CMA 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.).

²⁶ Ridgeway garages (Newbury) Limited / Parkway Skoda paragraph 22.

understands that Vauxhall have very recently reverted to offering a three year warranty.²⁷

40. The CMA has therefore, on a cautious basis, used the first three years as a proxy for a car being under warranty in its competition assessment.

Conclusion on product frame of reference

41. For the reasons set out above, the CMA has assessed the Merger on the basis of the following frame of reference:

- The supply of new cars to private customers.
- The supply of used cars to private customers.
- The supply of repair and maintenance services for new or nearly new Vauxhall cars (as a proxy for cars under warranty).
- The supply of repair and maintenance services for older Vauxhall cars (as a proxy for cars out of warranty).

Geographic frame of reference

Supply of new and used cars to private customers

42. In previous cases²⁸ the OFT has assessed the supply of new cars to private customers on a local and national basis separately. In the present case Eden submits that the market for Vauxhall products is for the whole of the UK since there are no restrictions on sales by geographic territory. It also submits that a national frame of reference is appropriate with increased use of the internet which allows consumers to research products and prices on a national basis. Eden also provided evidence of internal commercial reviews which cover the best prices available for all ranges and models in the UK.
43. Competitors gave mixed views on the distance that customers would be willing to travel to purchase a new car, with some suggesting the average consumer would be willing to travel up to an hour, but other third parties suggesting much smaller ranges. Some competitors commented that dealers will compete against each other locally, suggesting that there is an element of local competition in the supply of new cars.

²⁷ See www.vauxhall.co.uk/owners_services/warranty_assistance/warranty/new_vehicle_warranty.html.

²⁸ *Inchcape/European Motor Holdings* and more recently *JCT600/Gilder (2013)* paragraphs 34–40, and *Lookers/Shields (2013)* paragraph 31. Whilst it did not need to conclude, the OFT found a similar conclusion in *Ridgeway/Parkview (2014)*, paragraph 28.

44. Since no competition concerns arise on any basis for the supply of new and used cars, the CMA does not consider it necessary to conclude on the geographic scope. Adopting a cautious approach, the CMA 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 and CMA in previous decisions,²⁹ the CMA has adopted a relevant distance based on 80% catchment areas. In this case, Eden provided estimates of the catchment areas of between 10 to 15 miles, defined as the distance around each of the Parties' dealerships.

Supply of repair and maintenance services

45. The OFT previously³⁰ 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 previously³¹ used 80% 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.
46. In the present case, the CMA considers that it has not received evidence to suggest that it should depart from the use of the 80% catchment area methodology. In this case, based on the location of Eden's repair and maintenance customers at Exeter, the 80% catchment area was 14 miles (Eden estimated a similar distance for the other dealerships).³²
47. In addition, the CMA has not received any evidence to suggest using a different approach to the geographic frame of reference as between the supply of repair and maintenance services to new/nearly new cars and older cars.³³
48. Therefore, in this case, the CMA has assessed competition for the supply of repair and maintenance services on the basis of a 14 mile catchment area centred on each dealership in Newton Abbot and Exeter respectively. The CMA considers the extent to which suppliers outside of these areas may constrain the Parties in the competitive assessment below.

²⁹ The 80% catchment area methodology was used by the OFT in *Ridgeway/Parkview (2014)*, *JCT600/Gilders (2013)* and *Lookers/Shields (2013)*, amongst others.

³⁰ *Ridgeway/Parkview (2014)*, paragraph 32, *JCT600/Gilder (2013)*, paragraph 50, *Inchcape/European Motor Holdings*, paragraph 18 and *Pendragon/Reg Vardy (2006)*, paragraph 16.

³¹ *Ibid.*

³² In this case, Eden calculated catchment areas based on invoice data from Eden Exeter only, providing estimates for the other sites based on discussions with representatives at the branches.

³³ This was also the approach taken in *Ridgeway/Parkview (2014)*.

Competitive assessment

Horizontal unilateral effects

Supply of new and used cars to private customers

49. Eden submits that there are a large number of dealerships offering the sale of competing marques of car within each town that the Parties operate in. The CMA understands that these include dealerships offering Toyota, Ford, Peugeot, Renault, VW, Citroen, Nissan and Skoda.

Supply of new cars

50. Third parties confirmed to the CMA that there were a large number of competing dealerships within the immediate local area of the Parties that will continue to constrain the Parties in the sale of new cars post-Merger.
51. One third party expressed concern that the Vauxhall dealerships were competing closely against each other to supply new Vauxhall cars and that some customers would have already decided to purchase a Vauxhall and therefore the other marques offered limited competitive constraint. However, other third parties told the CMA, in the eyes of most customers, the competition will be between Vauxhall and other marques rather than between competing Vauxhall suppliers. Therefore, the CMA considers that even if some customers have a pre-determined preference for a Vauxhall car, most customers will not, meaning that Vauxhall dealerships will still need to take account of competition from other marques in their pricing.
52. Although the CMA has not concluded on the correct geographic scope, at a national level the CMA considers that the Parties would face a greater degree of constraint from a much larger number of franchised Vauxhall dealerships. Specifically, Eden submits that there are 540 Vauxhall franchised dealerships in the UK.

Supply of used cars

53. For used cars specifically, several third parties told the CMA that, on top of competition from other marques, used car sales were not restricted to Vauxhall dealerships and there are a large number of independent suppliers offering used Vauxhall cars in the area.

Conclusion

54. On this basis, the CMA considers that there is no realistic prospect that the Merger has resulted in a substantial lessening of competition in the sale of new and used Vauxhall cars to private customers.

Supply of repair and maintenance services for new/nearly new Vauxhall cars

55. Eden submits that independent repairers can, and do, compete with the Parties to supply repair and maintenance services to Vauxhall cars regardless of the age of the car. Eden also submits that the prices of repair and maintenance services are transparent due to the high availability of price lists on the internet, allowing customers to easily shop around for a good price.

Shares of supply

56. Based on the catchment areas set out above, Eden and the Riders dealerships overlap in the area of Exeter and Newton Abbot, which includes the Eden Exeter site and the two sites previously owned by Riders in Newton Abbot and Torbay.
57. Accurate estimates of the Parties' and their competitors' shares of supply were not available to the CMA in this case. However, information submitted by Vauxhall and Eden is useful to provide an indication of the Parties' relative size in the market for the supply of repair and maintenance services for new and nearly new Vauxhall cars.
58. Eden estimates³⁴ that it has a combined share of [55–65]% in the relevant area for annual servicing (which the CMA considers is likely to constitute the majority of repair and maintenance services provided for cars of this age due to the fact that the majority of maintenance is covered by the manufacturer's warranty) for private customers with vehicles up to three years old.
59. Vauxhall car registration data (similar to the data used by Eden to estimate its market shares but over an aggregated 10 year period) supports Eden's estimate as it suggests that the Parties captured an estimated [45–65]% of total servicing for the relevant areas. However, the CMA considers that the registration data could also include sales by Vauxhall sites other than the Riders dealerships (for example Plymouth or Tiverton) since the data provided to the CMA specifies only the relevant Eden dealership with all other dealerships in the area (including the Riders dealerships) categorised as

³⁴ Using data on the registration of new Vauxhall cars in the area and the retention rate of dealers in supplying repair and maintenance services to those customers.

'other'. The CMA was unable to verify the extent of share of supply from each of those other dealers.

60. Therefore, while the CMA is only able to place limited weight on the share of supply data available, it considers that Eden will account for a significant proportion of the repair and maintenance services for new or nearly new Vauxhall cars.

Closeness of competition between the Parties

61. Eden submits that, prior to the Merger, it was not competing with the Riders Garages in Newton Abbot or Torbay. To support this, Eden submits that only [10–20]% of servicing and non-warranty repair work derived from areas outside of its 'Area of Responsibility' allocated in its franchise agreement with Vauxhall, ie from areas including the Newton Abbot or Torbay areas.
62. However, the CMA understands that the Eden Exeter dealership and the Newton Abbot dealership are the closest Vauxhall dealerships geographically, within approximately 12 to 13 miles of each other's location and therefore are within each other's 80% catchment areas for the supply of repair and maintenance services (ie 14 miles). They are the only Vauxhall dealerships within this catchment area. These catchment areas overlap around Exeter, Newton Abbot and Torbay. On this basis the CMA considers that a relatively large proportion of each of the Parties' customers may consider the other party to be a close geographic alternative.
63. Other franchised Vauxhall dealers told the CMA that they compete with other franchised Vauxhall dealers for repair and maintenance services. The CMA also notes that, as part of its price check policy,³⁵ Eden monitors the prices charged by other franchised Vauxhall dealerships in the area (although it also includes independents and other marques). This suggests that, as closely located Vauxhall dealerships, the Parties competed pre-Merger.
64. Several third parties supported this, telling the CMA that the Parties competed against each other to supply repair and maintenance services.
65. The CMA therefore considers, based on the Parties being the closest Vauxhall dealerships geographically, the location of the Parties' customers (as shown by the estimated shares of supply and 80% catchment areas) and the submissions from third parties, that the Parties are each other's closest

³⁵ See <http://www.edenvauxhall.co.uk/servicing-and-parts/price-check/>

competitor for the supply of repair and maintenance services for new and nearly new Vauxhall cars within the overlapping catchment areas.

Other constraints

66. The CMA has considered whether competition from other Vauxhall dealerships or independent garages or repairers will continue to provide a sufficient constraint on the Parties such that an increase in price or other worsening of their competitive offering would be unprofitable.
- *Other Vauxhall dealerships*
67. As set out in paragraphs 33 to 37, the CMA considers that other Vauxhall dealerships compete most closely against each other (as compared to competition from independent dealerships) since, despite the application of the European Block Exemption, owners of nearly new cars tend 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.
68. The CMA therefore considered the possible constraint on Eden from other franchised Vauxhall dealerships. Other dealerships in the area are outside of the Parties' catchment areas and include: Evans Halshaw in Plymouth (located around 42 miles from Exeter and around 33 miles from Newton Abbot), Westcars in Tiverton (located around 16 miles from Exeter and around 32 miles from Newton Abbot) and Rowcliffes in Taunton (located around 36 miles from Exeter and around 45 miles from Newton Abbot).
69. Evans Halshaw in Plymouth told the CMA that it considered itself to be a direct competitor of the Parties. It identified [X] and [X] of its customers that lived within 23 miles of Exeter and Newton Abbot respectively.
70. Westcars told the CMA that it considered itself to compete with the Vauxhall dealership in Exeter to provide servicing and non-warranty repair to Vauxhall car-owners. According to Westcars, it competed mainly on customer care and satisfaction as well on collection and delivery.
71. The CMA therefore considers that these Vauxhall dealerships may continue to provide a constraint on the Parties. However, this constraint is limited since they are located some distance outside of the Parties' catchment areas. The CMA therefore considers that the constraint imposed by the Riders dealerships pre-merger is significantly greater than that represented by the Vauxhall dealerships identified above.

- *Independent dealerships*

72. Eden submits that there are many non-authorised repairers (ie independent garages or dealerships) in the area that offer repair and maintenance services for Vauxhall cars under warranty. It also highlights that the European Block Exemption allows independents to compete as it guarantees that using a non-authorised repairer will not invalidate a warranty provided it has been completed to the appropriate standard. Eden also submits that it monitors the repair and maintenance prices of local independents (as well as other franchised dealerships and national servicing chains) as part of its price check policy (see paragraph 63 above).
73. However, for the reasons set out in paragraphs 31 to 37 above, the CMA considers that competition from independents for the repair and maintenance of new or nearly new Vauxhall cars is limited. It has however assessed the extent to which they may provide some competitive constraint on the Parties in this case.
74. Most independent garages told the CMA that they do not compete strongly with franchised Vauxhall dealerships for the supply of repair and maintenance services for new/nearly new cars. One independent repairer, however, told the CMA that it did compete with the Eden Vauxhall dealership in Exeter and offered servicing and repair work to all Vauxhall models, of all ages, to the manufacturers' specifications. The CMA also heard from one independent garage that specialised in offering repair and maintenance service to Vauxhall cars.
75. The CMA therefore considers that the Parties face some constraint from independents in the supply of repair and maintenance for new or nearly new Vauxhall cars. However, for the reasons set out above the CMA considers that such constraint is significantly less than the constraint that the Parties provided on each other pre-Merger.

Conclusion on the supply of repair and maintenance services for new/nearly new Vauxhall cars

76. For the reasons set out above, the CMA considers that the Parties are each other's closest competitors. In particular, the Exeter dealership and the Newton Abbot dealership are the only two Vauxhall dealerships in the 14 mile catchment area. Neither other Vauxhall dealerships nor independent garages provide a similar competitive constraint as the Parties impose on each other.
77. As a result, the CMA cannot rule out that there is a realistic prospect that the merger will result in an SLC in relation to repair and maintenance services for

new/nearly new Vauxhall cars in the Exeter and Newton Abbot area. However, in the light of paragraphs 87 to 96 below regarding the *de minimis* exception, it does not find it necessary to conclude on this point in this case.

Supply of repair and maintenance services for older Vauxhall cars

78. As for new and nearly new cars, the CMA has been unable to estimate accurate shares for the Parties in the supply of repair and maintenance of older Vauxhall cars. Share approximations, as derived from car service retention data from Vauxhall and Eden as above, suggest shares of supply for the Exeter and Newton Abbot dealerships combined of around [25–40]%, with estimates of the increment of around [0–15]%.³⁶
79. Eden submits that there are many independents in the area that will provide a strong constraint on them following the merger, particularly for the servicing of cars not under warranty. It was able to identify ten independent repairers offering repair and maintenance services for Vauxhall cars in each of Newton Abbot and Exeter.
80. The CMA received evidence from several third parties that independents are a much stronger competitive constraint for older cars, and that they compete strongly with franchised dealers to supply these services. This is in line with evidence from several non-authorised repairers (independent garages) that older cars no longer under the manufacturer's warranty represent the vast majority of the revenue they derive from servicing Vauxhall cars.
81. No significant concerns were raised by third parties with regard to the repair and maintenance services for older Vauxhall cars.
82. On the basis of this evidence the CMA considers that there is no realistic prospect of an SLC for the repair and maintenance services for older Vauxhall cars.

Conclusion on horizontal unilateral effects

83. The CMA finds that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of new and used cars or the supply of repair and maintenance services to older Vauxhall cars.

³⁶ As discussed above (paragraph 59), it has not been possible to verify whether this increment can be accredited fully to the Parties or whether it might include sales from other Vauxhall dealerships.

84. The CMA's investigation found competition concerns in relation to the supply of repair and maintenance services for new and nearly new Vauxhall cars in the Exeter and Newton Abbot area, and cannot rule out that there is a realistic prospect that the merger will result in an SLC. The CMA therefore cannot rule out that the test for reference may be met in this case. However, it was not necessary for the CMA to reach a definitive conclusion in this respect because the CMA will, for the reasons set out below, apply the markets of insufficient importance exception to the duty to refer.

Third party views

85. The CMA contacted third party competitors, both authorised Vauxhall dealerships and independent garages. It also received submissions from Vauxhall.
86. Third party comments have been taken into account where appropriate in the competitive assessment above. The majority of third parties did not raise concerns regarding the Merger. One third party raised a concern that the Parties will face less competition since Eden acquired the closest Vauxhall dealerships geographically and the CMA considers this above.

Exceptions to the duty to refer

87. The CMA'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.
88. As set out above, the CMA cannot rule out that its duty to refer in this case may be met with regard to the supply of repair and maintenance services for new/nearly new Vauxhall cars in the Exeter and Newton Abbot areas. The CMA believes that the annual aggregated size of the market concerned is less than £10 million (specifically it believes the annual value of the affected market to be approximately £1.5 million). The CMA has therefore considered whether it should apply the 'de minimis' exception to the duty to refer should there be a realistic prospect of the Merger having resulted or being expected to result in an SLC.
89. Eden 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 CMA 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 statement was provided without prejudice to

Eden's views on whether the duty to refer was met.³⁷ Given that, on the basis of the discussion below, the CMA decided to apply this discretion, it did not send an Issues Letter to Eden.³⁸

Availability of 'in-principle' undertakings in lieu

90. As set out in the *Exceptions Guidance*,³⁹ the CMA'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.
91. The CMA 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 competition concerns relate to some of the Parties' repair and maintenance service operations. The CMA considers these services 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.⁴⁰ The CMA notes in this respect that it strongly prefers structural undertakings over behavioural undertakings and has applied this cautious approach in previous decisional practice.⁴¹
92. On this basis the CMA therefore proceeded to consider whether to exercise its discretion to apply the de minimis exception.

Application of the de minimis exception

93. The CMA estimates the annual value of the affected market (repair and maintenance services for new/nearly new Vauxhall cars in the Parties' catchment areas) in this case to be just below £1.5 million.⁴² This is therefore significantly below the £3 million for which a reference for a Phase 2 investigation would generally not be justified.⁴³

³⁷ This procedural approach is in line with the [Exceptions to the duty to refer and undertakings in lieu of reference guidance \(Exceptions Guidance\)](#) (OFT1122), December 2010 – see paragraph 2.53. The *Exceptions Guidance* have been adopted by the CMA (see Annex D to *Mergers: Guidance on the CMA's Jurisdiction and Procedure*).

³⁸ The CMA recognises that Eden's offer to waive the receipt of an issues letter and an opportunity to submit its views to the CMA does not constitute acceptance on Eden's part of the CMA's findings with regard to the definition of markets and competitive assessment.

³⁹ *Exceptions Guidance*, see paragraph 2.21.

⁴⁰ See *Exceptions Guidance*, paragraph 2.25.

⁴¹ See the *Exceptions Guidance*, from paragraph 2.22, as well as the OFT's approach in *Ridgeway/Parkview*, paragraphs 70-72.

⁴² This is based on the Parties' estimates of the market size for 0-3 year old cars based on their retention rates. This assumes that no cars dropped out of the market, which the CMA considers may be conservative and therefore the estimate may overstate the market size.

⁴³ *Exceptions Guidance*, paragraph 2.15.

94. In its assessment of whether it is appropriate to apply the de minimis exception in this case, the CMA has also considered other factors. The CMA notes in this respect that, although the Merger gives rise to significant competition concerns, Eden will continue to face some, albeit limited, constraint from a number of independent repairers in their catchment area, one even focussing exclusively on Vauxhall cars. The CMA also notes that, despite being outside of the Parties' catchment areas, two other franchised Vauxhall dealerships considered themselves to compete against Eden to supply repair and maintenance services.
95. The CMA 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 for a Phase 2 investigation by the CMA on the basis of the CMA exercising its discretion to apply the de minimis exception. The CMA recognises that there is a risk of this given the localised nature of franchised dealerships. The CMA will therefore continue to monitor mergers and acquisitions in this sector and will intervene where appropriate.
96. On balance, having taken account of all relevant factors in the round, the CMA considers that the public cost of a reference would be greater than the impact of the merger on consumers. The CMA 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

97. This Merger will therefore **not be referred** under section 22(1) of the Act.

Nelson Jung
Director of Mergers
Competition and Markets Authority
24 October 2014