Completed acquisition by Ryder Systems of Hill Hire plc

The OFT's decision on reference under section 22(1) given on 3 October 2011. Full text of decision published 21 October 2011.

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. **Ryder Limited** ('Ryder') is part of Ryder Systems Inc., a provider of global transportation solutions headquartered in the US. In the UK, Ryder provides fleet management solutions: commercial vehicle rental, contract hire (operating leasing), maintenance and driver solutions to companies across different industries. It supplies light commercial vehicles (LCVs, vans up to 3.5 tonnes)[1] up to heavy goods vehicles (HGVs, lorries above 3.5 tonnes). Ryder's fleet in 2009 included 5,665 HGVs (including 654 tractors) and 771 trailers. Ryder's UK turnover in the financial year ending 31 December 2009 was over £157 million.

2. **Hill Hire plc** ('HH') is a lorry and trailer rental specialist. It offers short term rental hire, contract hire, sale and lease back, operating lease and used vehicle sales. HH's fleet includes approximately 4,000 HGVs and 12,460 trailers. HH's UK turnover in the financial year ending 31 December 2009 was over £113 million.

TRANSACTION

3. Ryder completed the acquisition of HH on 8 June 2011.

4. The OFT contacted Ryder on 30 June 2011 and launched its own-initiative investigation on 5 August 2011. The OFT's administrative deadline to decide this case is 3 October and its statutory deadline expires on 7 October 2011.

[1] This segmentation of vehicles categories by tonnages follows the definition adopted by the Society of Motor Manufacturers and Traders (SMTT).

JURISDICTION

5. As a result of this transaction Ryder and HH have ceased to be distinct. HH's UK turnover exceeds £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

MARKET DEFINITION

6. Ryder and HH (the parties) overlap primarily in: (i) short term rental of HGVs (HGV rental); (ii) contract hire of HGVs (HGV contracts[2]); and (iii) the sale of used HGVs.

Product scope

7. Ryder submits that the appropriate candidate frame of reference is the market for the transportation of goods by vehicle. In its view, end-users require a solution to transport their goods. The acquisition, leasing, and rental (short and long term) of lorries, tractors and trailers have a common main purpose: to cover the customers' requirements to transport goods by vehicle. In Ryder's view, no further segmentation should apply. However, for completeness, Ryder has also stated that, in any case, the candidate narrowest market would at least include **the provision of HGV leases and HGV rental** as a single product scope.

8. Related to this, EC precedents[3] have defined a market for full fleet leasing and management services comprising the outsourcing of the vehicle fleet and its management on behalf of corporate customers. The portfolio of goods and services each client contracts out varies depending on its specific needs but these agreements often include the provision of a portfolio of vehicles (funded or unfunded) and related services (such as regular maintenance, insurances, drivers and fuel service).

9. When selecting a candidate market in horizontal mergers, the OFT includes the substitute products (narrowly defined) of the merger firms. In this case, there are several ways to narrowly segment the products and services in

[2] Also referred to as operating lease.
[3] See for example EU decision of 12 June 2006 on case No COMP/M.4199 De Lage Landen/Athlon, paragraph 8 and *ff.*

which the parties overlap, according to: the length of the arrangement (such as contract hire versus rental); the types of vehicle included in the agreement (LCVs, HGVs, trailers, etc); lorry end-use by sector; and lorry distribution channel.

Short term HGV rental and HGV contract hire

10. From the demand side, a distinction between short term HGV rental and HGV contract hire focuses on the length of time the arrangement is intended to last.

11. Short term rental (or spot hire) of HGVs and trailers is the hire of vehicles for a relatively limited period of time, usually between one week and one year. These are often used to cover gaps in the customer's fleet, or to cope with short term contracts or seasonal increases.

12. Contract hire (or operating leases) of HGVs and trailers is the long-term provision of a customised vehicle often including a bundle of services (such as related maintenance, servicing and equipment, support with regulatory compliance and end-of-life disposal), in exchange for a monthly fee.[4] It is sometimes used as an alternative to ownership and maintenance of the vehicle directly by the end-user.

13. Within contract hire, a distinction can be drawn between 'funded' and 'unfunded' services on the basis that some customers may wish to maintain ownership of the fleet—and therefore to only contract for 'unfunded' fleet management services (that is excluding the financial operating lease)—whereas others consider the funding essential. It is unclear whether this merits any further segmentation since the evidence available to the OFT suggests that from the supply side, providers of these services can quickly switch between modes of service provision at no or negligible cost and are led by the customers' preferences. Consistent with this, in previous decisions, the Commission has left open whether the market for full fleet leasing and management services can be split into 'funded' and 'unfunded' services.

14. Customers who responded to the OFT's information request stressed that the cost of short-term HGV rental (spot hire) is significantly higher than long-term HGV contract hire arrangements (whether funded or unfunded). On this basis,

[4] Usually three to seven years for trucks and tractors, up to 10 years for trailers.

short-term HGV rental does not appear to be a close substitute for long-term HGV contract (or lease) options.

15. Hence, whilst it is not necessary to conclude on the exact market definition in this case, the OFT takes the view that these two product scopes are separate for the purposes of its competitive assessment.

Type of vehicle

16. In the provision of HGV rental and HGV contracts, an essential element is the type of vehicle. Commercial vehicles may be classified according to their gross vehicle weight (GVT) into LCVs (vans up to 3.5 tonnes),[5] light HGVs (lorries from 3.5 tonnes to 7.5 tonnes), medium HGVs (lorries from 7.6 tonnes to 16 tonnes), heavy HGVs (lorries above 16 tonnes) and tractors (traction vehicles used to pull trailers). According to the nature of their transportation requirements (distance, frequency, etc.), customers may prefer certain types of vehicles: self-evidently, different types of vehicle are unlikely to be good substitutes for a given transportation requirement.

17. Customers and suppliers explained to the OFT that contracts often include a combination of different types of HGVs and most suppliers (most notably independents) can supply such portfolios of vehicles. Thus, on the supply-side, however, the same suppliers offer rental (and contract hire) of different HGVs. The exception relates to the supply of trailers. Competitors offering HGV rental and HGV contracts (or lease) are often different from those offering these services for trailers. For the purposes of this decision, therefore, the market definition is left open but the OFT adopts a cautious approach and considers trailers as a separate frame of reference from HGVs.[6]

Distribution channel

18. Ryder's submission, as well as customer comments, identified three main channels of supply for HGV rental and HGV contract (lease):

[5] This decision uses the SMMT's definitions for LCVs and HGVs; however, the OFT understands that nowadays vans GVT is often above 3.5t. For the purposes of this decision the OFT does not need to conclude on the issue. See also footnote 1 above.

[6] For the purposes of this decision it has not been necessary to consider whether specialist suppliers of vehicles for specific uses (for example 'waste collection' or municipal vehicles) are part of the same market as the parties which offer a full range of vehicles for many different uses.

- original equipment manufacturers (OEMs), whose financial services divisions offer contract hire and whose networks of workshops can provide the service and maintenance support

- financial institutions that purchase HGVs from OEMs and make them available to customers on contract hire terms. Third parties have explained to the OFT that financial institutions often use the OEM's service division to cover the operational aspects of contract hire, such as maintenance, and

- independent lease and rental companies such as the parties, who purchase HGVs from OEMs and make them available on contract hire terms to customers, usually offering operational support via their own infrastructure of depots and workshops.

19. Given the absence of competition concerns flowing from this merger however the frame of reference is narrowly segmented, it is not necessary to conclude on whether each of these distribution channels represents a separate product market. That said, the narrowest candidate product markets above in which the parties overlap are the supply of HGV rental by independents and the supply of HGV contract hire by independents. For the purposes of this decision the OFT has taken a cautious approach and considered these separately.

Sale of used HGVs

20. Prior to the merger the parties also overlapped in the sale of used HGVs (those that have been returned by end-users). This candidate market is very fragmented and the OFT received no evidence to suggest that the merger raises any competition concerns within it. Therefore it is not addressed any further in this decision.

Geographic scope

21. Ryder submits that the appropriate geographic scope of the affected candidate markets is the UK owing to customers' preferences for brands, for language and for networks organised at national level.

22. In previous EU cases, the Commission has found that the market for lorry operating leasing is national in scope, because of differentiated consumer practices and national preferences. The geographic scope of the market for lorry financial leasing was left open, with the Commission considering it at least national.[7]

23. In this decision, whilst it has not required to conclude on the specific geographic scope, the OFT has considered the geographic scope at the national level. This is consistent with OFT precedents in related sectors.[8] This decision also addresses whether, in addition to the national parameters of competition, the case raises any local issues (for example as a result of the existence of maintenance depots throughout the country).

Conclusion on market definition

24. On a cautious basis, the OFT has assessed the competitive impact of the merger separately for:

- the national supply of short term HGV rental by independents, and
- the national supply of long term HGV contracts by independents.

25. In doing so, the OFT has been mindful of the constraints upon independents in HGV rental and HGV contracts from OEMs and financial institutions.

COMPETITIVE ASSESSMENT

Horizontal unilateral effects

Market shares

26. The OFT has estimated that Ryder's estimated market share (post merger) is [20-30] per cent in the national supply of HGV contract hire (operating leases) and [15-25] per cent in the national supply of HGV rental hire. These estimates refer to share of supply by independent suppliers only (excluding OEMs and financial institutions).

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[7] See EU decision of 6 August 2008, Case COMP/M.5217 GEFA / PEMA, paragraphs 12-14.
[8] Completed acquisition by Lex Vehicle Leasing Limited of FCE Bank Plc's vehicle fleet contract hire business http://www.oft.gov.uk/shared_oft/mergers_ea02/lexvehicleleasinglimited.pdf

27. None of these combined market shares are at a level that would ordinarily give the OFT cause for concern over unilateral effects, given that the OFT has drawn the markets narrowly. The next highest (tractor rental) is [20-30] per cent with an increment of [0-10] per cent. Again, not at a level that would give the OFT cause for concern over unilateral affects.

28. Neither does considering rental and contract hire by independents together in a wider candidate market give rise to market shares that are likely to give the OFT cause for concern: Ryder would account for [15-25] per cent of supply overall (see Table 1), although the merger brings together the largest and fourth largest independents. Even so, Dawsons and Fraikin account each for [five-15] per cent of supply, and three other competitors have a share of supply of [0-10] per cent or more.

Table 1

HGV lease and rental market by channel (2009)

Type of Channel	Share
OEMs	35-45%
Independents	25-35%
Financial institutions	15-25%

Market share of independents (2009)

Company	Share
Ryder	5-15%
Fraikin	5-15%
Hill Hire	0-10%
BRS	0-10%
Dawsons	0-10%
Salfords	0-10%
Gullivers	5-15%
Petit Forestier	5-15%
Burnet Tree	5-15%
TLS	0-10%
Others	35-45%

29. This is consistent with Ryder's internal documents highlighting the prominent place to be taken by the merged company, suggesting that Ryder sees this transaction as strengthening its place in the independent distribution channel.

This is also consistent with [35-45] per cent of the market being accounted for by small firms with shares of supply of less than [0-10] per cent.

30. In the light of this, the OFT considered whether Ryder may be the only independent (or one of only a few) post-merger able to supply those large customers requiring national coverage of HGV rental and maintenance locations. Responses from large customers generally showed that they tender out for preferred suppliers annually on a national scale (with some discretion for local managers with respect to short term rental, if other providers ensure better value for money or asset availability for the specific deal). Further, the majority of third parties' responses did not consider that regional or local players competed effectively with large national suppliers. Some respondents argued that pooling regional players together would not be feasible, as customers value a single point of contact and expect a uniform level of service around the country.

31. Set against this, feedback from third parties, including large customers requiring national coverage, consistently indicated that OEMs and the other large independents named in Table 1 (Dawson, Fraikin, Burnt Tree, Salford Vans and BRS) are effective competitors on a national scale.

32. Moreover, considering the likely constraint upon independents from financial institutions as well as OEMs further dilutes the parties' low combined shares (to [0-10] per cent), as shown in Table 2 below on a combined basis for rental and contract hire for all types of HGVs (that is, aggregating across and within supply channels).

Table 2 - estimated HGV lease and rental shares of supply by independents, OEMs and financial institutions over all segments (2009)

Company	Share
Financial Institutions	15-25%
DAF	5-15%
Mercedes	5-15%
MAN	0-10%
Scania	0-10%
Iveco	0-10%
Volvo	0-10%
Renault	0-10%
Ryder	0-10%
Fraikin	0-10%
Hill Hire	0-10%
BRS	0-10%
Dawsons	0-10%
Salfords	0-10%
Gullivers	0-10%
Petit Forestier	0-10%
Burnet Tree	0-10%
Other Independents	5-15%
Other OEMs	0-10%

33. Competition across and within these distribution channels is further considered below.

Competition across and within distribution channels

34. Table 3 below shows that the relative importance of these channels differs across services. It also shows that independents carry out the bulk of short term HGV rentals. Customers identified several independent players active in these segments, including smaller players in 'others' in Table 2 (namely, MV Commercial, Sun Rent, Euroway, TOM Vehicle Rental, Newtown Vehicle Rental, Alltruck, Centurion Truck Rental and WVC).

Table 3 - proportion of business (by volumes) by supply channels for HGV rental and contract hire in the UK (2009), per cent

Channel	Rental	Lease (*)
Independents	Circa 90	20
Financial Institutions	Not available	25
OEMs	Small	55

(*) Including both finance leasing and contract hire (operating leases)

Source: OFT analysis of data from the parties and third parties.

35. In addition, the OFT's investigation found that at least two OEMs (Scania and MAN) offer HGV rental services. The active presence of OEMs in this segment was further confirmed by one customer contacted by the OFT. Since customer responses highlighted that the main drivers of choice in HGV rental are availability and price, OEMs appear to be reasonably positioned to compete with independent HGV rental companies. Furthermore, the parties brought to the OFT's attention that other large well resourced companies such as Hitachi Capital Vehicles Solutions are entering the HGV rental market.[9]

36. OEMs represent more than 50 per cent of HGV leasing (including both finance leasing and contract hire), while financial institutions and independents provide for about a quarter each. The OFT investigation confirmed that all OEMs offer a wide range of financial services, including contract hire (that is operating leasing). Furthermore, the majority of respondents identified at least one OEM as an effective competitor to Ryder.

37. Despite this, the OFT has gone on to consider below whether there is any evidence of the parties being closer competitors than their shares of supply discussed above (regardless of the segmentation considered) suggest.

Closeness of competition

38. Ryder submitted that the parties' businesses were complementary as (i) Ryder's fleet was more focused on rigid HGVs whereas HH's was more focused on tractors and trailers and (ii) there was a material difference in the mix of rental and lease agreements in the parties' customer base. These differences in the parties' customer bases were confirmed by some third

[9] Submission of 2 September, Section B, pages 4-5. See also: www.hitachicapitalvehiclesolutions.co.uk/commercial-vehicle-leasing/products-services/commercial-vehicle-hire

parties: they said that Ryder targeted, in particular, customers with in-house transport operations whereas HH had a customer base predominantly in the transportation and logistics sectors, where Ryder had little presence.[10]

39. The OFT's analysis of the fleet portfolios and sources of revenues of the two parties corroborates Ryder's submission that they were more complementary than substitutable. The analysis indicates that Ryder was more focused on contract hire and on light and medium lorries, whereas HH was more focused on rental and on heavy lorries and tractors.

40. Consistent with this, the majority of customers told the OFT that the parties were not particularly close competitors, mainly because their fleets have different compositions.

41. That said, three competitors and two customers thought that the parties were close competitors. However, one of these customers told the OFT that they approached three or four suppliers when tendering out and indicated Scania as runner up to Ryder; the other customer also recognised Fraikin as a national competitor and considered OEMs as competitors, albeit less effective ones.

Conclusion on horizontal unilateral effects

42. On the basis of the above, the OFT does not consider that the merger gives rise to a realistic prospect of a substantial lessening of competition on the basis of horizontal unilateral effects. None of the parties' combined market shares are at a level that would ordinarily give the OFT cause for concern over unilateral effects, given that the OFT has drawn the markets narrowly. In addition, customers have confirmed that there are several other independent companies which will constrain Ryder and there is also compelling evidence of competition from outside these narrowest candidate markets (and widening them produces substantially lower combined market shares). Also, on balance, the evidence indicates that the parties are not closer competitors than these combined market shares imply.

[10] The parties submit that only [ ] customers are shared between the parties. While the OFT does not accept that this is evidence per se that the parties are not close competitors, we note that in a sector where customers seem prone to multi-source their fleet requirements, lack of shared customers may be an indication that the parties' respective customer bases are not overlapping substantially.

BARRIERS TO ENTRY AND EXPANSION

43. The OFT received no comments on the ease of entry or expansion. The OFT notes recent entry in HGV rental by two OEMs and Hitachi Capital Vehicle Solutions. However, given its absence of concerns about horizontal unilateral effects, the OFT has not needed to conclude whether entry and expansion may be timely, likely and sufficient to countervail a potential SLC.

BUYER POWER

44. Buyers include some large customers with a fleet of 100 or more HGVs, alongside a large number of customers with a small or medium fleet (most with one to five HGVs). Large customers, however, account for a very large share of the parties' revenues and may hence enjoy buyer power: the parties submit, for example, that the top ten customers account for [ ] per cent of HH's revenue. Consistent with this, there appears to be little difficulty in customers switching providers at the end of the agreed contract period (based on third party responses).[11] Set against this, it is not clear how any buyer power on the part of large customers would protect smaller customers, given that prices, terms and conditions tend to be individually negotiated.

45. However, given the absence of concerns over horizontal unilateral effects, the OFT has not needed to conclude on the extent of any buyer power.

THIRD PARTY VIEWS

46. The OFT contacted over 50 third parties, receiving responses from around half of them. The majority were not concerned. Two competitors noted that Ryder would enjoy synergies and increased buyer power as a result of the merger relative to other players. The OFT did not receive any evidence to suggest that consumers could be harmed as a result of any increased buyer power that the merged firm may enjoy. Indeed, the OFT considers that in many cases, an increase in buyer power is not likely to give rise to unilateral effects' and some of the benefits to the firm from its greater buyer power

[11] Only one customer told us that while switching is easy in principle for individual vehicles, in practice procurement tend to happen in bulk and there are benefits in dealing with only a few suppliers.

may be passed on to the merged firm's customers.[12]

ASSESSMENT

47. Prior to this merger, Ryder and HH overlapped primarily in (i) short term rental of HGVs; (ii) contract hire of HGVs; and (iii) sale of used HGVs.

48. The OFT does not consider that the merger gives rise to a realistic prospect of a substantial lessening of competition on the basis of horizontal unilateral effects. None of the parties' combined market shares are at a level that would ordinarily give the OFT cause for concern over unilateral effects, given that the OFT has drawn the markets narrowly. In addition, customers have confirmed that there are several other independent companies which will constrain Ryder and there is also compelling evidence of competition from outside these narrowest candidate markets (and widening them produces substantially lower combined market shares). Also, on balance, the evidence indicates that the parties are not closer competitors than these combined market shares imply.

49. As a result, the OFT considers there to be no realistic prospect of a substantial lessening of competition as a result of the merger. In the light of this, the OFT did not need to conclude on the ease of entry or expansion, or the extent of buyer power.

50. Consequently, the OFT believes that it is not or may not be the case that the merger might have been expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

DECISION

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

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[12] See Merger Assessment Guidelines, paragraph 5.4.19.