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## Completed acquisition by Pendragon Plc of Reg Vardy Plc

The OFT's decision on reference under section 22 given on 4 August 2006. Full text of decision published 18 August 2006.

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### PARTIES

1. **Pendragon Plc (Pendragon)** is active in the UK in the retail sale and contract hire and leasing of new and used vehicles and associated servicing, repair and spare part supply.

**Reg Vardy Plc (Reg Vardy)** was also active in these sectors prior to the merger. Reg Vardy's UK turnover for the financial year ended 30 April 2005 was £1,717 million.

### TRANSACTION

2. As a result of the transaction, Pendragon now controls ninety-seven Reg Vardy dealerships throughout the UK<sup>1</sup>, having acquired the share capital of Reg Vardy by way of offer which became unconditional on 14 February 2006. The extended statutory deadline expires on 18 August 2006. The administrative deadline has expired.

### JURISDICTION

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

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<sup>1</sup> This should state franchises rather than dealerships. While this figure was stated in the offer document, Pendragon now calculates that it purchased 101 franchises. A small number were subsequently sold on completion and Pendragon now controls 96 ex-Reg Vardy franchises.

## **MARKET DEFINITION**

4. In the UK, manufacturers sell most of their cars through a network of franchised dealerships that typically also provide servicing, repairs, supply of spare parts and contract hire and leasing. The parties run such franchised dealerships and overlap in the retail sale of new and used cars and light commercial vehicles (lcvs); and in the servicing and repair of such vehicles. Concerns relating to these areas are considered below.
5. The parties also overlap in the sale of parts for cars and lcvs to retail and trade customers; and in the contract hire and leasing of cars and lcvs. These are not considered further as no competition concerns were raised by third parties in these areas and the parties' combined shares in each of these sectors, which the OFT considers to be national, are below 5 per cent.

### **The retail sale of new and used cars and lcvs**

6. The Competition Commission (CC) concluded in its 2000 report on the supply of new motor cars<sup>2</sup> that the sale of new cars should be considered separately from the sale of used cars and that there was competition across the UK for the supply of new cars. In its decision on the acquisition by Pendragon of CD Bramall Plc<sup>3</sup>, the OFT accepted the CC's findings. In talking to third parties during its consideration of this merger, the OFT has found no evidence to suggest that it is necessary to deviate from the CC's conclusions in this instance.

### **Supply of servicing and repair of new and used cars and lcvs**

#### **Product scope**

7. In 2003, the OFT carried out a market study on new car warranties<sup>4</sup> which identified restrictions in some warranties and found that franchised dealers accounted for about 90 per cent of servicing for new cars (defined as those up to three years old). In May 2004, the OFT announced it had taken action to ensure that restrictions on servicing attached to warranties had been dropped.<sup>5</sup>

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<sup>2</sup> Competition Commission, *New cars: A report on the supply of new motor cars within the UK* (Cm 4660/2000).

<sup>3</sup> OFT's decision on the completed acquisition by Pendragon Plc of CD Bramall Plc, 24 June 2004.

<sup>4</sup> OFT, *New Car Warranties: Report of the market study*, December 2003.

<sup>5</sup> OFT press release 85/04 'Servicing ties removed from new car warranties' 14 May 2004.

8. In the OFT's 2004 decision in respect of CD Bramall, a local area in which the number of competing fascia was reduced from four to three raised initial competition concerns that were dismissed when considered in the context of the anticipation of entry or expansion of independent garages for servicing new cars at that time following the removal of restrictions on warranties.
9. The OFT has now released an independent evaluation<sup>6</sup> of the 2003 market study which shows that although consumer awareness regarding warranties has increased, a survey in 2006 found 86 per cent of consumers with new cars still went to franchised dealerships for servicing.
10. Customers have a choice for car servicing and repair between franchised dealerships, authorised garages (i.e. non-franchised dealerships that have been authorised by the car manufacturer to do repair work under warranty) and independent garages (i.e. not authorised or franchised). Both franchised dealerships and authorised garages are able to fully service cars under warranty and provide an authorised repairer stamp in the service log book. We have therefore considered them to be substitutes for consumers.
11. For private owners independent garages do not appear to be close substitutes. Third party evidence obtained by the OFT suggests that most individual customers perceive their warranty to be invalid if their car is not serviced at a franchised dealership and that the value of their car will be lower if they use an independent garage in the first three years of owning their new car. In addition, repairs paid for by the manufacturer, which are required on parts under warranty must be carried out by a franchised dealership or authorised garage as the manufacturer contracts directly with an authorised repairer for this warranty repair work.
12. Evidence before the OFT suggests that franchised dealerships carry out the vast majority of servicing and repair of individually owned new cars (i.e. cars less than three years old) during the first three years of ownership and that independent garages have a greater share in the provision of servicing and repair of older cars.<sup>7</sup> This was backed up by third parties and competitors, who said that for servicing new cars they

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<sup>6</sup> OFT852, *Evaluating the impact of the car warranties market study*, June 2006.

<sup>7</sup> See Steve Brooker, *NCC: At a crossroads: getting the UK car servicing and repair sector back on track*, June 2005.

faced competition from other franchised dealerships, while for older cars they also faced competition from independent garages.

13. Although the OFT found evidence that fleet car purchasers (who account for about 50 per cent of new car sales) sign contracts with independent garages for servicing the fleet, the OFT found no evidence that such contracts constrain the price paid by individual private owners for servicing. There is clearly scope for price discrimination between individuals and fleet owners.
14. On the supply side, while it is easy for franchised dealerships to switch between providing servicing for new cars and older cars, the evidence the OFT has found shows that independent garages are not able to switch as easily, since customers of new cars are not, on the whole, prepared to use independent garages. A sample of switching data provided by the parties, consisting of individual customers who responded to a survey stating that they had switched to an independent garage, was too small to enable the OFT to verify its significance and therefore insufficient to draw any firm conclusions to the contrary.
15. For these reasons, the servicing and repair of new cars up to three years old (owned by individual customers) by franchised dealerships and authorised garages will be considered separately from the servicing and repair of older cars.

### **Geographic scope**

16. The evidence the OFT found indicates that customers are generally unwilling to travel long distances to get their car serviced. The maximum travel distance was estimated by third parties to be between five and 20 miles. The parties provided evidence to show that dealerships compete at a local level for servicing. It is therefore relevant to look at local markets when analysing the effects of the merger on competition in the servicing and repair of cars.
17. The parties supplied customer postcode information, from which we were able to analyse what distance most of their customers had travelled. This followed the approach taken in CD Bramall, where the OFT concluded that examining the effect of the merger on a local basis by marque (i.e. the make or brand of car) was appropriate for the servicing of new cars. In order to represent the local market around each dealership we used circles of increasingly larger radius at intervals of five miles until an area

from which at least 80 per cent of its customers had travelled was defined, rounded up to the nearest multiple of five miles.

18. In general for Vauxhall and Nissan, 80 per cent of customers travelled up to 10 miles, whilst in the case of Land Rover 80 per cent of customers travelled up to 15 miles. For a small number of dealerships within the above marques, different radii were also considered, to reflect the fact that 80 per cent of customers in those locations travelled either further or not as far.
19. Due to the small number of overlaps, we were able to consider each local area on an individual basis in this case.

## **HORIZONTAL ISSUES**

### **The retail sale of new and used cars and lcvs**

20. A number of third parties were concerned that the merger would lead to a lessening in competition to supply new cars of certain marques. However, the parties' shares of supply of new cars by marque are generally low, with only one (about a third of Aston Martin's are sold by the parties) being greater than 20 per cent and in no case was the increment greater than 5 per cent. Given that there are a number of other suppliers of Aston Martin cars in the UK and that the Aston Martin brand is likely to compete with other luxury brands, the OFT does not believe that this merger will substantially lessen competition in relation to the supply of Aston Martin cars. Furthermore, as the parties have a small combined share of supply of new cars in the UK (less than 10 per cent), the OFT has no competition concerns in relation to the supply of all new cars.
21. One third party was concerned that the merger would give the parties increased purchasing power, which would be to the disadvantage of smaller franchised dealership chains. However, given the parties relatively low combined shares of supply for each marque of car (as noted above, below 20 per cent in all cases other than Aston Martin) the OFT considers that it is not credible that any increased buyer power would be sufficient to drive competitors out of the business.
22. Since the supply of used cars is more competitive than the supply of new cars with many more competitors operating in the market, the OFT also has no competition concerns in relation to the supply of used cars.

### **Supply of servicing and repair of older cars and lcvs**

23. The parties provided extensive evidence to show that independent garages provide a strong competitive constraint in the supply of servicing and repair for older cars. Customer data also shows that owners of cars more than three years old consider independent garages to be a substitute to franchised dealerships, with over 50 per cent using independent garages to have their cars serviced. This proportion increases with the age of the car. The OFT therefore believes that there are no competition concerns in relation to the servicing and repair of older cars.

### **Supply of servicing and repair of new cars and lcvs**

#### **Market shares**

24. The national shares of supply in car servicing are very small (less than 5 per cent). However, because dealerships compete locally on price it is appropriate to consider servicing at a local level.
25. The parties supplied some local market share estimates during the investigation for the identified overlap areas but later re-calculated their market shares (which range from around 20 to 40 per cent). They estimated their competitors' market shares as a percentage of the number of services performed in particular catchment areas against the overall vehicle parc (which counts the number of new cars registered within the postcodes covered by each of the catchment areas) for those areas. This left between 30 and 70 per cent of new cars unaccounted for, which the parties attributed to independent garages carrying out the servicing. However, the estimates raised a number of questions about the method used, such as the extent to which the overall vehicle parc is affected by fleet vehicles. As the calculations used were not provided, the OFT was unable to verify the estimates, even if such an exercise could be undertaken at first phase. In addition, the conclusions the parties drew as to the extent to which independent garages accounted for the servicing of new cars were contradicted by the bulk of evidence the OFT obtained.

#### **Local overlap analysis**

26. The majority of the parties' dealerships do not overlap at local level: application of the above principles on geographic market definition gave

rise to only seven overlap areas out of total of ninety-seven dealerships<sup>8</sup> being acquired.

27. For purposes of aiding its local overlap analysis in this case, the OFT treated the following considerations as relevant across the seven areas:
- There was evidence that rivals compete for customers based on both price and non-price parameters of competition at the local level.
  - There was no evidence to suggest that the parties were particularly close competitors (e.g. through branding and reputation) based on the nature of their product/service offering, relative to other rivals in the relevant local areas.
  - In the relevant local areas, there were no authorised repairers for the marque in question that were not attached to a franchise dealership, so there is no need to consider whether constraints from such operators should be weighted differently from those attached to dealerships.
  - As a general proposition, independent garages are unlikely to compete for new car service and repair because of consumer habits and perceptions (discussed further above under product market), and
  - De novo entry or conversion of independent garages to authorised repairer status is unlikely to resolve concerns (discussed below on entry and expansion).
28. In circumstances where there are no particular (e.g. branding, reputational) factors distinguishing the two merging parties from other competing dealerships, the OFT considered a fascia analysis as an appropriate starting point to capture the dynamics of competition between authorised dealerships in each overlap area.<sup>9</sup>
29. Given the limited scale of the inquiry, the OFT was also able to assess on a case by case basis whether a particular independent garage merited treatment as an effective competitor for the purposes of fascia analysis (see Land Rover West Midlands, below). Due to the likely significance of geographic proximity for the degree to which the parties are each other's next best alternative for consumers, the OFT gave consideration not only to the number of competing fascia in an area but to how geographically

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<sup>8</sup> See footnote 1.

<sup>9</sup> This approach was also taken in the CD Bramhall decision, cited above.

close the parties' garages for each marque were to each other and how close other franchised dealerships for the same marque were to reach a judgment on this point.

30. The overlap areas in question present varying degrees of fascia reduction and are treated individually. By way of summary, in each case where there was a fascia reduction from two to one the OFT reached the belief that the merger raises a realistic prospect of a substantial lessening of competition: in light of the factors cited at paragraph 27 and the fact that, in such areas, the merger would eliminate all pre-merger competition, the OFT is concerned the merger would be likely to result, or has resulted, in higher prices and/or reduced service levels to individual customers. In respect of overlap areas where the pre-merger fascia count was greater than two, the conclusions differed depending on the closeness of competition between the parties in the local circumstances, as set out below.

#### Vauxhall West Yorkshire

31. For the parties' Vauxhall franchised dealerships in this area, over 80 per cent of customers from Pendragon Wakefield, Reg Vardy Leeds and Reg Vardy Castleford come from within 10 miles. This narrows to 5 miles for over 80 per cent of customers from Pendragon Dewsbury. Using radii of 10 miles, the merger results in a reduction in the number of fascias from two to one around Reg Vardy Castleford, three to two around Pendragon Wakefield and four to three around Reg Vardy Leeds. The OFT therefore believes that there is a realistic prospect of a substantial lessening of competition in this area.

#### Vauxhall Central Scotland

32. For the parties' Vauxhall franchised dealerships in this area, over 80 per cent of customers from Evans Halshaw Airdrie (owned by Pendragon), Reg Vardy East Kilbride, Reg Vardy Falkirk and Reg Vardy Motherwell come from within 10 miles. When a circle of radius 10 miles is used to represent the local market, the reduction in the number of fascia is three to two around Reg Vardy in Motherwell and Evans Halshaw in Airdrie. Geographically, Evans Halshaw in Airdrie is closer to Reg Vardy in Motherwell than the alternative dealership, Arnold Clark, and this other franchised dealership is located towards the centre of Glasgow, whereas the parties are both on the outskirts of Glasgow to the east. The parties stated that there had been entry by independent garages in this area, resulting in them tightening their pricing policy for servicing/repairs, but



were unable to provide any direct evidence in support. Accordingly, the OFT believes there is a realistic prospect of a substantial lessening of competition in this local area.

#### Vauxhall Hartlepool

33. For the parties' Vauxhall franchised dealerships in this area, over 80 per cent of customers from Evans Halshaw Middlesbrough (owned by Pendragon), Reg Vardy Hartlepool and Reg Vardy Peterlee come from within 10 miles. When a circle of radius 10 miles is used to represent the local market, the reduction in the number of fascia as a result of the merger is four to three around Reg Vardy Hartlepool. The OFT considers that one of the two remaining rivals post merger may not be an effective constraint due to its location in Redcar on the coast and across the Tees river. Evans Halshaw Middlesbrough also lies across the Tees river from Reg Vardy Hartlepool but there is a bridge on the direct route and it is Reg Vardy Hartlepool's closest competitor geographically. In contrast, there is no direct crossing from Hartlepool to Redcar and any customer would have to drive past Evans Halshaw Middlesbrough. The OFT therefore believes there is a realistic prospect of a substantial lessening of competition in this area.

#### Land Rover Northamptonshire

34. For the parties' Land Rover franchised dealerships in this area, over 80 per cent of Pendragon Aylesbury, Pendragon High Wycombe and Pendragon Luton's customers come from within 15 miles, where there is no overlap. Over 80 per cent of Reg Vardy Milton Keynes customers come from within 20 miles, which would result in a reduction in fascia from four to three in the area around Milton Keynes. The competing franchised dealerships in the local area are to the north of Reg Vardy Milton Keynes, whereas both the closest dealerships to the south are Pendragon dealerships (one of which is at Luton which is connected to Milton Keynes by the M1 motorway). This leaves a sizeable area (in and around a triangle formed by Milton Keynes, Luton and Aylesbury) where the parties are close competitors with limited alternatives available for customers in that area. The OFT therefore believes there is a realistic prospect of a substantial lessening of competition in this local area.

#### Land Rover West Midlands

35. For the parties Land Rover franchised dealerships in this area, Pendragon Stourbridge, Pendragon Solihull and Reg Vardy Wolverhampton all draw

more than 80 per cent of their customers from within 15 miles. In this particular area, the evidence was sufficient to treat an independent garage as part of the effective competitor set for the purposes of fascia analysis: Ultimate Land Rover is successful independent garage located midway between these overlapping dealerships – Reg Vardy Wolverhampton and Stratstone Stourbridge – that specialises in the servicing of Land Rovers. Evidence from the parties demonstrated that they lowered their prices in response to the entry of this competitor, and that their performance in relation to targets was affected over a similar period. Significantly, third party inquiries corroborated the parties' account that Ultimate Land Rover is an effective competitor for the servicing of new Land Rovers in this local area.

36. Using circles with radii of 15 miles to represent the local market, and by treating Ultimate Land Rover as the competitive equivalent of a fascia, the merger leads to a reduction in the number of fascia from **four** to **three** around Reg Vardy Wolverhampton and five to four around Pendragon Stourbridge. Of the remaining competitors post-merger, Ultimate Land Rover is the closest geographic competitor to either party, situated midway between them. In these circumstances, the OFT does not believe that the merger eliminates close competition between the parties such that higher prices or lower service to consumers would result: of the remaining rivals to the merged firm, Ultimate Land Rover, as the closest alternative to each of the merged firm's dealerships is a particularly important constraint, as demonstrated by the parties' evidence on its impact on their business. The OFT does not believe there is a realistic prospect of a substantial lessening of competition in this particular case.

#### Nissan Leeds

37. For the parties' Nissan franchised dealerships in this area, over 80 per cent of customers from the Evans Halshaw dealership (owned by Pendragon) in Bradford and the Reg Vardy dealership in Leeds come from within 10 miles of the dealerships. When a circle with a radius of 10 miles is used, the reduction in fascia is four to three around Pendragon in Bradford and marginally a three to two around Reg Vardy in Leeds, with an extra fascia just on the south edge of the radius and connected to the relevant customer base by the motorway. Importantly, neither party is each other's closest competitor: another franchised dealership Perrys is situated near the motorway and in between the two parties' dealerships; as such, it is each party's closest competitor. In the OFT's judgment, in the light of these circumstances, the merger does not eliminate close competition between the parties such that higher prices or lower service

to consumers would result: the closest alternative to each of the overlap dealerships remains as an independent competitor and a particularly important constraint. Accordingly, the OFT does not believe that there is a realistic prospect of a substantial lessening of competition in this area.

#### Citroen Banbury

38. Over 80 per cent of Pendragon Kettering, Pendragon Northampton and Pendragon Milton Keynes' customers come from within 15 miles and there is no overlap on a 15 mile radius. As over 80 per cent of Reg Vardy Banbury's customers come from a radius greater than 25 miles, the OFT also considered a 25 mile radius as a sensitivity check, but on this basis there are four fascia post-merger (a further two just outside 25 miles) and three competitors at a similar distance to Reg Vardy in Banbury as both Pendragon's Stony Stratford and Northampton dealerships. Given the lack of close competition between the parties and the surrounding competition from rivals, the merger does not eliminate close competition between the parties such that higher prices or reduced service to consumers will result; on the contrary, several remaining rivals will continue to act as important constraints on the merged firm's dealerships. Accordingly, the OFT does not believe that there is a realistic prospect of a substantial lessening of competition in this area.

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

39. According to the Motor Vehicles Block Exemption<sup>10</sup> manufacturers must authorise other garages (outside of franchised dealerships of that model of car) to service and repair such cars so long as they meet certain criteria. To become an authorised repairer, the costs involve provision of facilities and equipment to the manufacturer's standards for the marque. Manufacturers cannot dictate the location of the facility and it does not have to be linked to a dealership selling cars.
40. Third parties stated that due to a number of factors, including increased use of computer controlled systems in new cars with associated expensive equipment requirements for those garages that wish to carry out such services, the option for independent repairers to become an authorised repairer is not very attractive. The evidence the OFT has found shows that only a limited amount of applications for authorised status

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<sup>10</sup> Commission Regulation (EC) No 1400/2002 of 31 July 2002 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices in the motor vehicle sector.

from independent garages have been made to those manufacturers with dealerships in the overlap areas.

41. While opening a new franchised dealership is possible and the OFT has evidence of some entry in the last three years in the relevant marques, an appropriate location must be found and high manufacturer standards must be met. Therefore the OFT does not believe that there will be sufficient and timely entry into the provision of servicing and repair to new cars to mitigate the anticompetitive effects of the merger.

#### **Buyer power**

42. Customers for servicing and repair of new cars (excluding fleet customers) are individual consumers who hold no buyer power.

#### **THIRD PARTY VIEWS**

43. While overall the majority of third parties contacted did not raise competition concerns about the merger, a number of concerns were received about the effect of the merger on the sales and servicing of new cars post merger. Such concerns are considered in the above assessment.

#### **ASSESSMENT**

44. The parties overlap in the sale, servicing and repair of new and used vehicles, the sale of spare parts, contract hire and leasing in the UK. However, the OFT believes that competition concerns only arise in respect of the supply of servicing for new cars (owned by individual customers) at a local level.
45. The OFT accepts the conclusions of the independent evaluation<sup>11</sup> of the car warranties market study, together with evidence from third parties, that suggests customers still predominantly have their new cars serviced and repaired at franchised dealerships. The OFT therefore believes that independent garages do not generally provide an effective constraint on competition in the local areas outlined above where overlaps were identified but was open to consider area-specific evidence to the contrary, and in the case of Ultimate Land Rover in the West Midlands, was satisfied that an independent was an effective competitor and indeed the most important constraint on each party's dealership.

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<sup>11</sup> OFT852, *Evaluating the impact of the car warranties market study*, June 2006.

46. Out of the total of ninety-seven acquired dealerships, the OFT was able to examine the relatively modest number of local overlap areas individually. Seven local areas were identified by a circle around each dealership with a radius representing the area from which approximately 80 per cent of customers from that dealership travelled for servicing. These were subject to the specific local analysis is set out in more detail above. Of the seven, the OFT has established a duty to refer in respect of four of the seven areas, including the one area giving rise to a two to one fascia reduction (Vauxhall West Yorkshire). The conclusion in respect of areas with either three to two or four to three fascia reductions depended ultimately on the closeness of competition between the parties relative to remaining rivals: on this basis, the OFT believes it has a duty to refer also in respect of Vauxhall Central Scotland and Hartlepool, respectively, and in respect of Land Rover Northamptonshire.
47. Consequently, the OFT believes that it is or may be the case that the merger has resulted or may be expected to result in a substantial lessening of competition within a market or markets in the United Kingdom.

#### **UNDERTAKINGS IN LIEU**

48. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, accept from such of the parties concerned undertakings as it considers appropriate for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which has or may be expected to result from it.
49. The OFT has therefore considered whether there might be undertakings in lieu of reference which would address the competition concerns outlined above. The OFT's guidance on undertakings in lieu of reference states that, 'undertakings in lieu of reference are appropriate only where the competition concerns raised by the merger and the remedies proposed to address them are clear cut, and those remedies are capable of ready implementation' (see paragraph 8.3 of OFT Mergers Substantive Assessment Guidance).
50. Pendragon indicated to the OFT that in order to remedy any substantial lessening of competition identified by the OFT and to avoid a reference to the Competition Commission, it would be prepared to offer undertakings

in lieu. In the following order of preference, it would, in respect of dealerships in overlap areas,

- 1) Relinquish the authorised repairer status – i.e. operate as an independent repairer.
- 2) Close the service outlet and not re-open as a service outlet.
- 3) Relinquish the authorised repairer status (as per 1.) and rebrand the outlet with a new brand.
- 4) Sell the authorised repairer agreement and sell or lease the authorised repairer premises to a new operator.
- 5) Pendragon is willing to accept such other undertakings as the OFT feels necessary to prevent a reference to the Competition Commission.

51. The OFT considered each of undertakings 1, 2 and 3 in turn but does not believe that any of them can resolve the competition concerns described in each local area in that each would still result in the removal of an existing competitor. The OFT then considered undertaking 4, but it raises a number of questions (such as the extent to which the car sales dealership and the servicing business are interdependent and the impact on the servicing business of the parties retaining the lease) such that the OFT does not believe on the evidence available that it is sufficiently clear cut or capable of ready implementation.
52. The OFT then considered undertaking 5 and believes that it is capable of clearly addressing the competition concerns arising in each local area identified above as it includes an option for the parties to divest those dealerships which the OFT considers necessary to fully address the adverse effects arising from the merger.
53. Accordingly, on the information currently available, the OFT has decided to exercise its discretion under section 73(2) of the Act to negotiate undertakings in lieu of reference.

## **DECISION**

54. The OFT has therefore decided to refer the completed acquisition by Pendragon of Reg Vardy to the Competition Commission pursuant to section 22 of the Act. However the OFT's duty to refer is suspended, because on the information currently available, the OFT is considering whether to accept undertakings in lieu of reference from Pendragon pursuant to section 73 of the Act.