

Completed acquisition by Lookers Group plc of Shields Land Rover

ME/6145/13

The OFT's decision on reference under section 22(1) given on 9 December 2013. Full text of decision published 27 January 2014.

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. **Lookers plc (Lookers)** operates throughout Great Britain and Northern Ireland.¹ It has two divisions: the Motor Division which consists of (as at 30 June 2013) 126 franchised dealerships representing 32 marques² operating from 69 sites; and the Parts Division which is an aftermarket parts business operating through three companies, FPS, Apec Braking and BTN Turbo, each of which supplies automotive parts to independent after sales suppliers. Lookers UK turnover for the financial year ending 31 December 2012 was £2.06 billion.
2. In central Scotland, the Lookers Motor Division operates under the Taggarts and Lomond Group brands.³ Taggarts operates franchise dealerships for Land Rover, Jaguar, Volvo, Peugeot, Nissan and Hyundai; Lomond Group operates four Audi franchise dealerships. The main business of each of the Taggarts and Lomond Group is the sale of new and used franchised vehicles, the provision of finance products for new and used vehicles, servicing and repair of franchised vehicles and the supply of franchised vehicle parts.
3. **Shields Automotive Limited (Shields)** operates a single Land Rover franchise dealership in south Glasgow. The business includes the sale of new and used Land Rover vehicles, the provision of finance products for new and

¹ It also has a dealership in Dublin.

² That is, the make or brand of car.

³ Lomond Group was acquired on 5 July 2012.

used vehicles, servicing and repair of Land Rover vehicles and the supply of Land Rover parts. Shields UK turnover for the financial year ended 30 June 2012 was £[] million.

TRANSACTION

4. Lookers acquired the entire share capital of Shields, which beside the Land Rover dealership included two sites rented to Vertu plc which operates two Ford dealerships on the sites; and some vacant premises, namely two vacant Toyota dealerships and a vacant head office building (the Transaction).
5. The Transaction was not notified by the parties and the OFT examined this merger following the receipt of a complaint.
6. The Transaction completed on 16 May 2013. The statutory deadline, as extended by Sections 25(1) and 25(2) is 16 December 2013. The administrative deadline for a decision is 9 December 2013.

JURISDICTION

7. As a result of the Transaction Lookers and Shields have ceased to be distinct. The parties overlap in the supply of new Land Rover vehicles in Greater Glasgow and are the only authorised Land Rover dealers in a substantial part of the UK.⁴ The share of supply test in section 23 of the Enterprise Act 2002 (the Act) is therefore met. The OFT therefore believes that it is or may be the case that a relevant merger situation has been created.

FRAME OF REFERENCE

Product scope

8. Taggarts and Shields overlap in the supply of a range of products and services, including:

⁴ Greater Glasgow has an estimated population of 1,195,200, over 20 per cent of Scotland's total population [Mid-2010 Population Estimates for Settlements and Localities in Scotland](#), A National Statistics publication for Scotland published 24 May 2012.

- sale of new and used Land Rovers
- repair and maintenance of Land Rovers
- sale of vehicle parts
- contract hire and leasing, and
- associated finance products.

New and used Land Rovers

9. The CC⁵ 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, although there may, however, be a blurring of the market where pre-registered cars are concerned in as much as some customers, both fleet and retail, may see pre-registered cars as a substitute for new cars.
10. As no competition concerns arise in the supply of new or used cars it has not been necessary for the OFT to conclude on the product scope in this regard.

Supply of new cars

11. The OFT has previously⁶ treated the sale of luxury, compact, people carrier, off-road vehicles as a single differentiated market on the basis that there is considerable overlap between these categories.
12. In addition the OFT, in JCT600/Gilder,⁷ did not conclude on the precise delineation of the market but considered that the appropriate frame of reference was, on the basis of the evidence it found, wider than the marques sold by the parties. In this case the parties stated that Land Rover is a luxury brand and as such competes against other luxury brands, such as Audi, BMW, Lexus and Porsche.
13. The OFT also considered whether it would be appropriate to delineate the supply of new cars to private customers separately to fleet customers. The

⁵ *New Cars: A Report on the Supply of New Motor Cars within the UK*, Competition Commission (2000).

⁶ See: *Completed acquisition by Pendragon plc of CD Brammell plc*, OFT 24 June 2004.

⁷ See: [Completed acquisition by JCT600 Limited of Gilder Group Limited](#), OFT, 6 September 2013.

OFT has previously⁸ defined fleet customers as those operating fleets of over 25 vehicles.

14. However, as no competition concerns arise in the supply of new cars on any basis it has not been necessary to conclude on the precise delineation of the market. In any event, the OFT considers on the basis of the evidence it found that the frame of reference is wider than Land Rover cars.

Supply of used cars

15. The OFT has previously considered the supply of used cars without further segmentation by either: type, marque, or sales channel. In JCT600/Gilder, it was not necessary for the OFT to reach a firm conclusion on whether such segmentation was appropriate as no competition concerns arose on any plausible frame of reference. Similarly, in this case, no competition concerns arise, and again it has not been necessary to conclude.

Contract hire and leasing

16. The OFT considered contract hire and leasing as a separate frame of reference in Pendragon/CD Bramall (2004).⁹ No competition concerns arise in this case in respect of the contract hire and leasing of Land Rover cars, meaning that it has not been necessary for the OFT to conclude on the product scope and this segment is therefore not considered further in this decision.

Supply of parts

17. In the current merger, one independent garage stated that they purchased parts from both Taggarts and Shields and that alternative suppliers were located considerably further away. This distance was said to be an issue due to the weight of 4x4 parts. However, another third party submitted that parts can be sourced from further away if prices rose.
18. The OFT, in Pendragon/CD Bramall (2004),¹⁰ previously considered the supply of parts to be a national market. The OFT contacted a large number of independent garages during its enquiries and received few concerns

⁸ See, for example, [Completed acquisition by JCT600 Limited of Gilder Group Limited](#), OFT, 6 September 2013, footnote 2 (JCT600/Gilder).

⁹ See, [Completed acquisition by Pendragon plc of CD Bramall plc](#), OFT, 24 June 2004.

¹⁰ See footnote 7.

about the impact of the merger on access to parts. As no concerns arise with respect to any method of supply of Land Rover parts it has not been necessary for the OFT to conclude on the product scope and this segment is therefore not considered further in this decision.

Supply of repair and maintenance services

19. The OFT has previously considered¹¹ the supply of repair and maintenance services as separate 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.

20. In this case the parties submitted that it is the final package sold to customers that is important when selling a car. The OFT also noted that some customers purchase service packages¹² at the time of purchasing a vehicle. It would appear reasonable to assume that if the vehicle and service packages were purchased in the same transaction that these customers would have had considered the price of both when making their purchase decision. However, the parties provided information for the Taggarts dealerships in Glasgow and Motherwell showing that [between 80 and 95] per cent of the services provided by Taggarts are ad hoc in nature (that is, rather than provided as part of a service plan) and only a very small proportion of service packages were sold in conjunction with a new vehicle sale ([] per cent and [] per cent for Taggarts Glasgow and Motherwell respectively). A greater proportion of service packages are sold relatively soon after the vehicle purchase.

22. However, on a cautious basis, the OFT has considered the supply of repair and maintenance services separately from the supply of cars.

Type of servicing

23. The OFT understands that the parties' repair and maintenance activities generally fall into one of three categories:
 - a. **Retail servicing:** a vehicle service may include a series of maintenance checks and procedures intended to keep the vehicle in good condition

¹¹ See, *JCT600/Gilder*, paragraph 28.

¹² Service plans typically cover a customer's servicing requirements for between two and five years and are paid by monthly instalments.

and to identify faults that may require repair. Servicing may be further delineated into that which is scheduled at regular intervals following the manufacturers' recommended service schedule and that which is 'ad hoc'.

- i. **Scheduled servicing:** Cars under warranty are required to be serviced at intervals specified by Land Rover (generally every 12 months or sooner if the car has a high mileage). Failure to carry out regular servicing may invalidate the manufacturer's warranty in the event of a fault.¹³ Both parties sell servicing on a one-off basis and as packages covering several years of servicing. Packages may be exclusive to a specific dealership or, as of 1 Jan 2013, service packages for the Range Rover Evoque and Sport have been introduced by Land Rover, which means that a customer may use any Land Rover authorised repairer.
 - ii. **Ad hoc servicing:** customers can purchase servicing outside of regular servicing such as seasonal checkups, wheel checks, etc.
- b. **MOT:** the parties provide statutory MOT tests for vehicles older than three years.¹⁴
 - c. **Repair work:** the parties carry out repair work for Land Rover vehicles. This includes repair work covered by the manufacturer's warranty (typically new and nearly new cars under warranty) and non-warranty repair work (vehicles of any age).

24. The OFT considers that competitive conditions in the supply of retail servicing and repair work are similar and has therefore considered these as part of the same frame of reference. The OFT considers that the conditions of competition for the supply of MOT tests differ to that of retail servicing

¹³ Cars not under warranty may also have servicing carried out at the discretion of the owner to ensure the longevity of the vehicle. This may be regular or ad-hoc.

¹⁴ While MOT tests may be carried out at the same time as an annual service, the MOT test checks that a vehicle meets road safety and environmental standards; it is not the same as having a service and does not check the general mechanical condition of a vehicle. The parties clarified that Shields outsources its MOT work to an independent testing station.

and repair work¹⁵ and therefore they have not been assessed as part of this decision.

25. With respect to warranty work, the customer's contract is with the manufacturer who then pays dealerships to carry out repairs. Land Rover did not express any concerns with respect to the impact of the merger on the supply of warranty repairs. Land Rover submitted that customers do not need to shop around as they do not pay for warranty work and therefore go to the dealer that is most convenient to them. As competitive conditions for the supply of warranty work are distinct from the supply of other servicing and no competition concerns arise on any basis, warranty work has not been considered further.

Distinction based on the age of vehicle/warranty status

26. The supply of repair and maintenance services for new or nearly new cars (that is vehicles less than three years old and/or still under warranty) has previously¹⁶ been considered separately by the OFT to services for older cars (that is vehicles older than three years and/or not under warranty). This was on the basis that despite the provisions of the 2010 Motor Vehicles Block Exemption Regulation¹⁷ owners of nearly new cars tended not to use independent garages for repair and maintenance work due to a perceived risk that their warranty will be invalidated and the car devalued. In this case, third parties submitted that there were different conditions of competition for the supply of repair and maintenance services for new and nearly new cars and for cars older than three plus years. This view was supported by data supplied by independent garages the OFT contacted, which was consistent with the proposition that independent garages provide only limited competition for servicing cars under warranty, since only a minority of the Land Rover cars serviced by these independents were under warranty.

¹⁵ MOTs are a statutory requirement for all vehicles over three years old. MOT testing stations have to be registered and approved by VOSA (the Vehicle and Operator Services Agency). What is checked is regulated as is the price for each MOT test.

¹⁶ For instance, JCT600/Gilder paragraph 29.

¹⁷ [COMMISSION REGULATION \(EU\) No 330/2010 of 20 April 2010](#) on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices. See paragraph 78 below.

Type of car or marque

27. The OFT has previously considered the servicing of new cars by marque.¹⁸ In this regard there can be no demand-side substitution, since the cars marque is pre-selected by the owner. Evidence received suggests that the majority of services that the franchised dealerships undertake are for their own marque and very few (if any) for rival marques¹⁹ suggesting limited supply-side substitution.
28. With regard to older cars, the OFT's market testing identified a greater number of Land Rover services carried out by independent garages. However, we have, on a cautious basis, not widened the market to include other marques with respect to servicing for older Land Rovers.

Conclusion on product scope

29. The Transaction has been assessed against the following product scope:
- the supply of new Land Rover cars
 - the supply of used Land Rover cars
 - the supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty, and
 - the supply of retail servicing, and non-warranty repairs for Land Rovers older than three years and/or not under warranty.

Geographic scope

The supply of new and used Land Rover cars to private customers

30. In previous decisions,²⁰ the OFT has found evidence of both national and local parameters of competition, including scope for local discounting.
31. The OFT has undertaken a similar approach in this case but, since the OFT considers that the appropriate frame of reference is wider than the marques

¹⁸ See *Completed acquisition by Pendragon Plc of Reg Vardy Plc*, OFT, 18 August 2006, paragraph 17.

¹⁹ Information provided by the parties indicated that Taggarts Glasgow and Taggarts Motherwell derived less than [] per cent of servicing revenues from non-Land Rover vehicles in 2010-2012. Shields did not appear to perform any servicing on non-Land Rover vehicles.

²⁰ For instance, JCT600/Gilder paragraph 34 – 40.

sold by the parties, no concerns arise in the supply of new or used cars on any definition, the geographic scope has been left open.

The supply of new and used Land Rover cars to fleet customers

32. The supply of new cars to fleet customers has previously been considered at the national level.²¹ In *JCT600/Gilder*, for example, the OFT's assessment was based on third parties submitting that the location of the dealer was not important and they purchased from across the UK.
33. A similar approach has been taken in this case, but, as no concerns arose in the supply of new or used cars to fleet customers on any definition, the geographic scope has been left open.

The supply of retail repair and maintenance services

34. The OFT has previously²² found that customers are unwilling to travel long distances to have their cars serviced. As a result, competition for the supply of repair and maintenance services is principally local. The OFT has previously used catchment areas based on customer location around dealerships, centered on the acquiring and target dealerships, as a starting point for considering the impact of consolidation on servicing at a local level.²³
35. In this case the parties submitted catchment areas defined by the distance around each dealership²⁴ within which the parties captured 80 per cent of customers. For the parties' dealerships this was approximately within [] miles from each dealership²⁵ in the last three years.

²¹ For instance, *JCT600/Glider* paragraph 41.

²² For instance, *JCT600/Gilder* paragraph 50.

²³ See the OFT's *Commentary on retail mergers*, March 2011, for the OFT's approach to local area analysis, including catchment areas.

²⁴ The parties also submitted catchment areas defined by postcode regions around each dealership. These gave slightly different catchment areas around each dealership than those defined by radii. The OFT took these into consideration but, for the reasons detailed in paragraph 43-44, considers that its assessment of the merger would not have been any different using postcode defined catchment areas given that such catchments provide only a starting point for its analysis.

²⁵ [] miles for Taggarts Glasgow, [] miles for Taggarts Motherwell, and [] miles for Shields Glasgow.

36. While the OFT has a number of reservations about the use of such catchment areas in this case,²⁶ it notes that catchment areas represent only a starting point for the analysis, serving to highlight the main suppliers that may place greatest competitive constraint on the parties. Catchment areas can typically be useful when the OFT is considering a large number of potential overlap areas, however, this case involves a single overlap.
37. Taking the above into account, the OFT has used the parties' 80 per cent catchment areas as a starting point for its analysis but has assessed the extent of competition between the parties and the constraints exerted by rival suppliers as part of the competitive assessment.

HORIZONTAL ISSUES

38. The parties overlap in the supply of the following goods and services:
- sale of new and used Land Rovers
 - sale of vehicle parts
 - contract hire and leasing
 - associated finance products, and
 - repair and maintenance of Land Rovers.

As explained above, the OFT has considered in more detail the parties' activities for the sale of new and used Land Rovers, and the supply of repair and maintenance services for Land Rovers.

The supply of new Land Rover cars to private customers

39. The parties are the only Land Rover dealerships in the Greater Glasgow region. The parties provided analysis showing that they capture 80 per cent of their customers within approximately [20 to 35] miles from each of their dealerships. Rival Land Rover dealerships are located between 25-49 miles away in Ayr, Stirling and Edinburgh. [] indicated that they supply Land Rovers to customers within the parties' catchment areas. The parties also submitted that: 'Within the catchment areas, there are a large number of rival dealerships selling new cars. Rival dealerships include all marques, particularly those with SUV models and those in the premium and luxury segments.'

²⁶ For example, straight line radii do not take account of local topographic conditions.

40. The OFT considers, that post-merger the parties will continue to face competition for the sale of new Land Rover cars from a number of sources. These include [] Land Rover Franchises who supply within the parties' catchment areas; Land Rover dealerships located elsewhere in the country; the franchised dealerships of rival marques; as well as the ability of customers to use the internet to search for suitable cars.
41. On this basis the OFT considers that the loss of competition between the parties for the supply of new Land Rover cars to private customers is not significant, and as a result the Transaction does not give rise to a realistic prospect of a substantial lessening of competition. Therefore, this market is not considered further.

The supply of used Land Rover cars to private customers

42. The parties also supply used Land Rover cars. However, the constraints on the parties for the supply of used Land Rover cars are greater than for the supply of new Land Rovers. For example, the parties' catchment areas are considerably wider than for the sale of new cars, being between 36 and 59 miles. In addition, the parties will compete against a greater number of fascias than in the sale of new cars, including specialist used car outlets and general used car outlets retailing used Land Rover vehicles. The parties identified over 50 non-franchised retailers of used cars within the parties catchment areas.
43. On this basis the OFT considers on the basis of the evidence it found that the loss of competition for the supply of used Land Rover cars to private customers is not significant, and as a result there is no realistic prospect of a substantial lessening of competition. Therefore, this market is not considered further.

The supply of new (and used) Land Rover cars to fleet customers

44. It is unclear whether, pre merger, Taggarts and Shields overlapped in the supply of Land Rover cars to fleet customers, as defined in paragraph 13 above. Even if the OFT applied a broader definition of fleet customers, to include any commercial business customer, any increment arising from the merger at the national level would be negligible. The OFT did not receive complaints from fleet customers. On this basis, the OFT considers that

there is no realistic prospect of a substantial lessening of competition. Therefore, this market is not considered further.

The supply of servicing and repairs for Land Rovers less than three years old and/or under warranty

Theory of harm

45. The OFT considers that, pre-merger, some customers of the parties may have reacted to an attempted price increase (or other deterioration of the competitive offering) by Shields or Taggarts by switching (or threatening to switch) to the other party's Land Rover dealership(s). As a result of the Transaction, this option is removed and:

- for services/repair work where price/service is bilaterally negotiated between the customer and dealership, some customers are in a significantly weaker negotiating position and may incur higher prices or lower levels of service quality, and
- for services/repair work that are not subject to bilateral negotiation (for example, winter check promotions advertised online) the parties post-merger may internalise the previous pre-merger levels of customer switching to the other party and, as a result, these 're-captured' lost sales may incentivise the parties to price discriminate (or deteriorate their competitive offering in some other way).

Shares of supply

46. The parties estimated that their share of servicing for all nearly new SUV cars in Strathclyde²⁷ is [] per cent. The OFT considers that this estimate understates the parties' share of supply. As discussed in paragraph 26, the OFT considers that the relevant frame of reference is the supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty within the parties' catchment areas.

²⁷ The parties stated that Strathclyde was the nearest approximation to its catchment area for which any data is available

47. The OFT considers on the basis of the evidence available that the parties combined share of supply is some [60 to 70] per cent.²⁸ The OFT acknowledges that this estimate is subject to some uncertainty. While the OFT has contacted all of the rival suppliers highlighted by the parties as their main competitors there are likely to be some additional independent garages which also service new or nearly new Land Rovers. Nevertheless, given the evidence available on service volumes of new and nearly new cars undertaken by independent garages that the OFT has been able to speak to (and scepticism from third parties over the extent of the constraint exerted by independent garages) the OFT considers any additional service volumes provided by independents that have not been identified would be limited. In any event, the OFT considers that the parties' share of supply is likely to be high even applying conservative assumptions.
48. Specifically, the parties submitted that between their three dealerships [] nearly new cars²⁹ were serviced in 2012. This ranged from [] services provided by Taggarts Motherwell to [] services provided by Taggarts Glasgow.
49. The parties submitted that there are five rival Land Rover franchised dealerships located within 70 miles of the parties' dealerships. The OFT considered that only the dealerships in Ayr, Stirling and Edinburgh³⁰ were likely to have any meaningful share of supply within the parties' catchment areas. The OFT notes that the parties' catchment areas overlap with each other to a significant extent, while other Land Rover franchises [] are on the periphery of each of the parties' respective catchment areas.³¹
50. The parties also submitted that they are also in competition with numerous independent garages, branches of national chains and dealerships of different marques located in the vicinity of the parties.
51. The OFT made contact with a number of the suppliers named by the parties during its investigation to inquire what volume of servicing of nearly new Land Rovers each performed.

²⁸ There is no publicly available data on the size of the market. The OFT therefore relied on the parties' data and data from third parties' to estimate shares of supply.

²⁹ Nearly new cars are those less than three years old.

³⁰ [].

³¹ While the rival franchises at Ayr and Stirling may be within the catchment areas of the parties if their radii were flexed slightly; it is unclear how the franchise at Edinburgh could be within Shields' catchment area.

52. In summary, on the basis of the information provided by the parties and our third party inquiries, the OFT considers that the supply of servicing for nearly new Land Rover vehicles in the parties catchment areas appears highly concentrated based on identified volumes, and that the parties have a high share of supply.

Extent of competition between Shields and Taggarts

53. The OFT assessed a range of evidence to examine the extent to which the parties' offerings are substitutable including data on customer overlaps, geographic distance, and competitor monitoring. The OFT has also taken account of third party views.

Customer overlap

54. The OFT assessed the extent of overlap between the parties' respective customers in order to examine the extent to which customers may consider the parties and competing suppliers to be substitutes and how closely they compete. For example, if two parties draw customers from the same area this may indicate that they compete within these areas and customers may consider them to be substitutes.
55. Data provided by the parties showed that their service customers are located across Central Scotland. However, the parties' dealerships draw a significant proportion of their customers from the immediate vicinity of each others' dealership. While the evidence suggests that each dealership has a strong presence in certain areas, it also shows that they each attract customers from the same areas (including customers who are located closer to the other merged party's Land Rover dealership). The OFT considers that the data provided by the parties on customer location is indicative of the fact that the parties compete closely for customers in the same areas.

Geographic proximity of suppliers

56. Relative distance between suppliers can be indicative of the extent to which customers may view them as being good substitutes. In this case Shields is located seven to eight miles driving distance from Taggarts Glasgow and 20 miles from Taggarts Motherwell.

57. There are independent garages located a similar distance to each of the parties' dealerships as the parties are to each other. However, third parties indicated that competition for servicing nearly new Land Rovers is principally between the franchised dealers. Consistent with this, and as outlined above, individual independent garages that the OFT contacted carried out a significantly lower volume of servicing than did the parties' dealerships. This may be because customers are concerned that using an independent garage may invalidate their warranty. Therefore, while many customers of the parties may have an independent garage located closer than the other party, it is not clear that many customers would consider an independent garage to be an alternative to an authorised Land Rover dealership.
58. With respect to alternate authorised Land Rover dealerships, those in Ayr, Stirling and Edinburgh are located significantly further away than the parties are to each other, which suggests there may be limited substitution to these other dealerships relative to that between the parties.
59. On this basis, the OFT considers that, for a significant proportion of the party's servicing customers of nearly new Land Rovers, the Transaction removes the next closest alternative.

Competitor monitoring

60. The parties submitted that, in general, they monitor all Land Rover dealerships in the UK. However, with respect to servicing specifically, they monitor, on a 'like for like basis',³² the hourly rate charged by competing brands and similar sized dealers locally and regionally.
61. Internal documents provided by the parties indicate continual monitoring by the manufacturer of a dealer's relative performance on various ratings, with at least some appearing to relate to a dealer's customer satisfaction results. Internal documents for Taggarts Glasgow compared its own 'scorecard' result against Taggarts Motherwell and Shields although in other documents they appear to compare rankings/score across a much wider set.

³² Like for like means that they restrict their monitoring to other dealerships or similar.

Third party views

62. Third party views may point to the potential for loss of competition between Taggarts and Shields as a result of the Transaction.³³
- a. Third parties considered that Land Rover dealerships were competitors for the servicing of nearly new Land Rover cars. Third parties also submitted that competition between dealers could take place in terms of price, service or convenience, and that customers would compare prices between dealers, ask for quotes and negotiate. Price matching a competitor quote was also noted as a possibility.
 - b. Third parties submitted that customers will switch servicing between dealers, typically if they have had a bad experience or they move location. Some third parties indicated that customer switching may be limited by strategies employed by dealers to encourage customer loyalty, for example Taggart's 'allegiance' labour rates charged for serving older, four plus, vehicles.
 - c. Land Rover submitted that, in planning their dealer network, they have regard to the 'natural markets' that exist due to drive-times and physical boundaries. []. While some third parties did not believe that the merger would impact on the service segment, others considered that the merger would limit choice for customers in Glasgow.
63. The OFT understands that the scope for dealerships to deteriorate some aspects of their offering may be limited by the agreements that authorised repairers enter into with the manufacturer, Land Rover. This agreement specifies many parameters of the service that is offered to customers. This includes that services are 'competitively priced'.ⁱ However, authorised repairers can set their prices freely and the OFT considers that service parameters under the agreements with Land Rover are not so prescriptive that dealerships would not have sufficient scope to deteriorate a wide range of service parameters if competition were to be reduced (for instance, availability of free courtesy cars or delivery/pick up services).

³³ These comments are for all servicing, not just for nearly new cars.

Extent of competition from rival suppliers

Land Rover dealerships

Parties' views

64. The parties submitted that dealers are free to sell throughout the UK and are not restricted to a particular area, but accepted that the principal constraint to a franchise dealership comes from other franchise dealers.³⁴
65. The parties identified Land Rover dealerships which had a similar catchment area (of between 15 and 25 miles) to themselves, identifying six in Scotland and two in England. They then carried out an information gathering exercise to find out from these garages, plus four independents and two national chains around Glasgow their quoted service price for a two year old Land Rover Discovery. The parties submitted that their results showed that there was a high level of competition, and not just from franchise dealers in the service segment.
66. The OFT noted from this information gathering exercise that the prices quoted by the Land Rover franchises were comparable with that of the parties, while those of the independents and national chains were considerably less. This suggested that the independents and national chains were unable to impose a constraint on the prices charged by the franchised dealerships. However, of particular note was one Land Rover franchise that quoted a price comparable to those of the independents contacted and in fact lower than the quote from an independent in its local vicinity. This suggested that for this franchise dealership the local independent was able to act as a constraint.
67. The parties further submitted that the dealerships they identified with no competition within a catchment area of some 15 to 25 miles were unable to provide a diminished level of service to their repair and maintenance customers because of the service level requirements imposed by the manufacturer and the prevailing market conditions as highlighted in a recent [] survey.³⁵ The market survey demonstrated that around 50 per

³⁴ A view supported by third parties that responded to the OFT's market testing who overwhelmingly indicated that competition to win servicing work for cars whilst under warranty was principally between Land Rover dealerships.

³⁵ [].

wish to spend some £20-30 on fuel to save a similar amount on a service.

- The dealer in Stirling named a number of competitors within 30 miles of their dealership. This included all three of the parties' dealerships. They said that they get a lot of servicing business from within 10-20 miles of their own dealership and the majority within [] miles, picking up a lot of servicing work from [] and []. He commented that customers do switch dealerships, but that he does not lose many customers in this way as he has a good offering and loyal customers. Customers may switch from other dealers – perhaps those who had a bad first service elsewhere, but such switching will be limited.³⁷

72. A third party submitted that the market was not solely Glasgow, since customers would consider using all dealerships in an area, with those in Ayr and Stirling being a 20-40 minute drive away, some of which offer a collect and deliver service.

73. The OFT also asked [] about their collect and deliver services in which a dealership may offer to transport a customer's car to/from their home or place of work to their dealership for services and repairs. This type of service may increase the constraint from rival dealerships that would otherwise be located too far away for a customer to consider travelling to.

74. The [] Land Rover dealerships told us:

- [] [].
- Edinburgh offer a collect/deliver service available by appointment on an ad hoc basis []. []. They offer the service to customers in the Glasgow/Motherwell region.
- Stirling stated that some of their customers are located [] miles away but the franchise may still collect a car for servicing. It estimated that some [] per cent of its service business for new and nearly new Land Rovers came from North Dunbartonshire and surrounding areas and []

³⁷ The dealer at Stirling commented that he might win some [] customers through switching from other dealers in a year.

per cent from Glasgow.³⁸ They explained that if they sell a Land Rover car they are more likely to get the subsequent servicing business (and they have to offer a collect/deliver service). The OFT notes that their website outlines a loyalty program open to purchasers of Land Rover vehicles that includes free collection/delivery (although it states that a fuel supplement charge may apply over 30 miles). They also offer overnight accommodation for customers over [] miles away.

75. The former owner of Shields stated that pre-merger it did whatever they could to win servicing business, including offering a collect/deliver service within an area of around [] miles (maybe further). They had two full time drivers offering the service, with others able to provide cover for this service too. Pre-merger an estimated two to four cars were being collected/delivered each day for servicing or repairs (and more during a manufacturers recall). He believed that every dealer would be trying to win service custom and would offer collect/deliver services.
76. In summary, the OFT considers that the parties face some constraint from rival dealerships but the extent of this constraint is limited due to geographic proximity. This is evidenced by the approximate numbers of services for [] customers in the parties' catchment areas.

Independent garages

Parties' views

77. The parties state that servicing can be carried out at any independent garage and that there were over 400 in Glasgow and the surrounding area. They provided details of over 100 garages in and around Greater Glasgow, which included a number of specialist repairers servicing Land Rover vehicles.
78. The 2010 Motor Vehicles Block Exemption Regulation³⁹ contains provisions allowing exemption from the application of Article 101(1) of the Treaty on

³⁸ An approximate [] from East Dunbartonshire and below and an approximate [] from the Glasgow area.

³⁹ COMMISSION REGULATION (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices.

the Functioning of the European Union. These provisions seek to ensure that independent garages:

- are able to perform repair and maintenance work for nearly new cars without invalidating the manufacturer's warranty
- may join the manufacturers authorised repairer network if the required standard is met, and
- can access the necessary technical information and spare parts to allow them to perform this work.

79. The parties pointed to the new entry into the maintenance and repair sector highlighted in the Impetus survey, namely that from 'soft' franchises such as 'Tesco autocentres' and 'Servicing Stop' and companies offering on-line booking such as Halfords and Kwik-fit that offer a manufacturers' service.⁴⁰ With regard to a perceived requirement to have a car under warranty serviced at the dealer, the survey showed that the majority (some 58 per cent) of customers were aware of their ability to obtain services outside the franchise network whilst still under warranty. However, the OFT's market investigation with independent garages suggests that, while customers may be aware of this fact, the actual take up is not as great.

80. The parties also provided an example of an internet search for 'service for Land Rover in Glasgow' from Google. The parties stated that [] per cent of consumers search on line, with around [] per cent using Google, such that the resulting page from the search would be typical of what a consumer would see. The page shows that of the 11 'pay per click' adverts none are for the parties dealerships. However, the OFT notes that the parties are the first three after the 'pay per click' adverts.

Views of third parties

81. Land Rover stated that there has been an increase in the number of independent garages and national chains carrying out routine service work, however, the OFT's market investigation received mixed views on whether

⁴⁰www.halfordsautocentres.com/webapp/wcs/stores/servlet/CarServicingDisplayView?storeId=11602&langId=-1&catalogId=19253&categoryId=276254.
www.kwik-fit.com/manufacturer-servicing.asp.

independent garages could provide services of a similar quality to Land Rover dealerships. Some third parties indicated that basic services could be supplied by independents but services which required specialist software/equipment may not be available. In contrast, others suggested independent garages could provide services of an equivalent standard to that of dealerships.

82. [] [].

83. Stirling commented that they considered that they only competed with other Land Rover dealerships for servicing cars under warranty as, while people can take their car anywhere, they preferred to take it back to a franchised dealer. When under warranty it is necessary to use original manufacture equipment and the franchise is the best place to get this done.

84. Land Rover told us that there are independent garages who may service many different types of marque. These independents are able to perform 90 per cent of services without any reference to Land Rover. The other 10 per cent of services (related to recalls/diagnostics) could require reference to Land Rover but there are also lots of suppliers of general diagnostic equipment available.

85. The former owner of the Shields franchise told us they had noted a small but significant number of customers who chose to use local independents. He thought that independents provided a lower quality service but do so for a lower cost. Nevertheless he considered that independent garages would likely refer complex work to a dealer that they couldn't do. Although independents are able to have the necessary technical training it is not economic for them to do so, such that they can only really do the simple things. He also commented that there has been a rise of quick-fit providers (for example; providing exhausts, brakes, tyres etc, although these national chains can also provide annual services).

86. Regardless of whether independent garages are able to perform repair and maintenance work, as previously discussed, the OFT has previously found that owners of nearly new cars may perceive a risk to their warranty if an independent garage is used. Two garages claimed that the fear of invalidating their warranties encouraged owners of nearly new cars to use the dealer for servicing. Indeed Land Rover's own website states:

'The Land Rover stamp: Regular servicing with an Approved Service Centre will give your vehicle the benefit of an approved Land Rover service history. This not only helps prolong the wellbeing of your Land Rover, but can also help maintain a competitive resale value'

87. The OFT notes that the volume of servicing undertaken by individual independent garages is much lower than that of each of the parties' dealerships. The OFT estimated that each independent garage that it spoke to had less than five per cent share of services of nearly new Land Rover cars compared to the parties' dealerships which had a [20 to 35] per cent share.
88. The OFT therefore considers that individual independent garages pose a significantly weaker constraint on the parties relative to the constraint that the parties exerted on each other.
89. The OFT recognises that even if each individual independent garage has a small share of supply, collectively these garages may constrain the parties' behaviour. However, the total number of nearly new Land Rover services that the OFT has been able to attribute to independent garages in and around each of the parties' catchment areas is only a fraction of the business carried out by the parties themselves.
90. Dealerships that the OFT contacted stated that if they sold a vehicle within their territory, they would hope to get the servicing work as well within the first three years. However, the OFT notes that data provided by the parties demonstrates that in 2012 Taggarts Glasgow and Taggarts Motherwell serviced [] nearly new cars that were not purchased from either of the Taggarts dealerships. This appears to show that, even where customers do not go back to the selling dealership, a significant proportion will still take their car to a franchised dealership.
91. In summary, the OFT recognises that some independent garages provide servicing and repair work for nearly new Land Rovers. However, the evidence available to the OFT suggests that substitution from dealerships to independent garages is limited and that the constraint represented by independent garages, individually or collectively, is considerably less than that exerted on each other by the parties.

Constraint from the franchises of other marques

92. The OFT contacted a number of franchised dealers for different marques. Responses indicated that either these other franchises have not provided these services for Land Rover cars (despite saying they could) or indicated that the scope of their activities was limited (for example only servicing vehicles they received in part-exchange or simple services such as checking oil, wiper blades, anti freeze, brakes etc). Indeed, one stated that they would refer the customer to a Land Rover dealership if a warning light was on.

Retention data

93. The parties submitted retention data provided by Land Rover, which showed that, across the entire Land Rover network, [] per cent of customers had their first service from the dealer who sold the vehicle, [] per cent had their second service at the selling dealer and [] per cent had their third service at the selling dealer. They argued that this level of retention was commensurate with the parties facing immediate and continuous competition from other service providers.

94. The OFT also received from Land Rover service retention data specific to Shields, Taggarts Motherwell and Taggarts Glasgow.

95. However, the OFT believes that there are limitations to using retention data to assess the competitive constraint that existed pre-merger between the parties or will remain post-merger from rival Land Rover dealerships and independent garages because:

- Firstly, since the annual service is not a statutory requirement, some customers may not return to the selling dealer because they choose not to have their car serviced at all. Owners who choose not to have their car serviced will not be affected by the Transaction (and reveal little about drivers who require non-discretionary repairs). However, third parties generally considered that most owners of new cars will have servicing, at least while under warranty.

- The data does not reveal where customers are switching to: for example the other merger party, another Land Rover dealership or an independent garage.
 - Since customers appear willing to travel further to purchase a vehicle than they would to get it serviced/repaired, any customer who obtains their first service from another dealership may not have considered the selling dealer to be a substitute supplier for servicing in the first place.
96. Given the limitations of the retention data it is unclear what weight, if any, can be placed on the retention data provided by both the parties and Land Rover.
97. The parties also provided refusal data from the Land Rover Customer Relationship Centre (CRC) which proactively reminds car owners when it is time for the next service. The parties submitted that out of [] customers on the CRC system for the two Taggarts dealerships in North Glasgow and Motherwell the conversion rate for these follow up enquiries was only [] per cent, which, the parties submit, shows that dealers cannot simply rely on customers coming back for a service.

Entry and expansion

98. The parties submitted that any garage was able to service a Land Rover vehicle, although it is unclear if this also applies to MOTs⁴¹ or non-warranty repair work.
99. Further, the parties submitted that independent garages were able to join the authorised network of Land Rover repairers, estimating that this would cost around £50,000 excluding initial stock, which would cost around £15,000, and £100 per day per technician. In *Pendragon/Reg Vardy*⁴² the OFT found that work as an independent repairer had relatively low margins, and that consequently it was not very attractive, financially, for an independent garage to invest in order to reach the required high standards.
100. On the other hand, two of the independent garages the OFT contacted expressed a potential interest in doing warranty work, and another stated

⁴¹ Given that MOTs have to be carried out by approved and authorised testing stations.

⁴² See, *Completed acquisition by Pendragon Plc of Reg Vardy Plc*, OFT, 18 August 2006.

that they currently performed authorised work on a case-by-case basis. In addition, the OFT is aware of national chains providing servicing for new and nearly new cars. For example: Halfords Autocentres, of which there are two in the Greater Glasgow area, offer interim (six months/6,000miles), full (12 months/12,000miles) and major (24 months/24,000 miles) services. While Kwik Fit, of which we understand that there are some 10 in Greater Glasgow offer the choice of either an interim and full service from the Kwik Fit fixed price servicing menu or the appropriate manufacturer service.⁴³

101. However, the OFT's market investigation identified relatively low volumes of new and nearly new Land Rovers being serviced by Independents, such that the impact of any such entry or expansion by independents is unclear. In addition, the OFT has not seen any evidence to suggest that entry to authorised service and repair network for Land Rover cars is sufficiently timely, or likely to be taken into consideration.

102. Based on the evidence above, the OFT considers that while these factors amount to a certain degree of constraint, it is insufficient to outweigh the loss of close competition between the parties in the supply of servicing and repair for new and nearly new cars.

Conclusion on unilateral effects in the supply of servicing and repairs for Land Rovers less than three years old and/or under warranty

103. The parties have a high share of supply of servicing and non-warranty repair work within their catchment areas, particularly for new and nearly new cars. For many customers the Transaction will remove their closest alternative supplier. Therefore, the OFT is concerned that there is potential for unilateral effects to arise in respect to servicing and non-warranty repair work for new and nearly new vehicles. The evidence available does not show that the parties will face strong post-merger constraints. On the basis of the above the OFT considers that there is a realistic prospect of a substantial lessening of competition in the supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty in the Greater Glasgow region.

⁴³ It is probable that the presence of national chains such as Halfords and Kwik Fit will grow in significance as people become more aware of the effect of the Motor Vehicles Block Exemption, thus decreasing the durability of any loss of competition.

The supply of retail servicing and non-warranty repairs for older Land Rover vehicles (those more than three years old and/or not under warranty)

Shares of supply

104. The parties serviced [] older Land Rovers in 2012. The OFT has contacted Land Rover franchise dealerships and independent garages to ascertain the number of services of older Land Rover vehicles they performed in 2012.

105. The OFT has estimated that each rival Land Rover dealership performed a [] services for older Land Rover cars. While a proportion of these would have been for customers located within the parties' catchment areas; the OFT considers on the basis of the evidence it found that these rivals accounted for only a limited number from the parties' catchment areas compared to the parties' dealerships as they are located a significant distance away.

106. Ten independent garages (including franchises of alternative marques) were identified who serviced older Land Rovers. Nine of these are within the Greater Glasgow region and another⁴⁴ was located just outside the parties' catchment areas but appears to service [] vehicles to the Land Rover dealerships.

107. The OFT considers, on the basis of the above evidence, that the parties are the largest suppliers of servicing for older Land Rovers in the parties' catchment areas.⁴⁵ However, the degree of constraint from rival Land Rover franchises, independent garages, national chains and dealerships of other marques, suggests that the concentration of supply is not so great as to result in unilateral effects arising from the Transaction.

Extent of competition between Shields and Taggarts

108. The OFT considers that Shields and Taggarts are less close substitutes for the supply of services for older Land Rovers than for nearly new Land Rovers.

⁴⁴ [].

⁴⁵ The OFT assumes that the parties will have a similar position in the supply of non-warranty repairs.

109. The OFT considers that the data on customer location is indicative that the parties are competing for customers in the same areas. The close proximity of the parties (especially Taggarts Glasgow and Shields) indicates that many customers are likely to view them as being substitutes
110. However, Shields undertook significantly fewer services for older Land Rover cars than for nearly new cars than the two Taggart dealerships. Shields' former owner explained that customers tended to trade their vehicles back in just before the warranty period expired to avoid the cost of the third year service and MOT. If vehicles did not meet Shield's quality criteria (or if they had duplicates in stock) they would sell the vehicle to an independent motor trader. Therefore the most important reason for the lower volume of vehicles over three years old serviced by Shields is that they did not know the identity of the next owner of the vehicle when it was sold to an independent. The OFT considers that this evidence is indicative of weaker competition between the parties in respect of the older cars than it is for the new and nearly new vehicles.
111. Third parties submitted that Land Rover dealerships would still be in competition with each other to win servicing work for older vehicles. However, as noted before, the Land Rover dealerships in Ayr, Stirling and Edinburgh are located significantly further away than the parties are to each other.
112. Based on the evidence available to it, the OFT considers that the merger may have removed a competing alternative provider of servicing for older Land Rover vehicles, and that, pre-merger, some customers of the parties may have reacted to an attempted price increase (or other deterioration of the competitive offering) by Shields or Taggarts by switching (or threatening to switch) to the other parties' Land Rover dealership(s), and that as a result of the Transaction this option is removed.

Extent of competition from rival suppliers

Third party views

113. While some third parties said that there was still an element of competition between Land Rover franchises to service older vehicles; third parties consistently pointed to independent garages as being in competition with franchised dealerships for servicing of older vehicles. There are independent

garages located within a similar distance to each of the parties' dealerships as the parties are to each other.

114. Specifically :

- [].
- Stirling commented that they generally see fewer cars out of warranty, adding that there are lots of non-franchised independent garages who have lower overheads, use non genuine parts, and are consequently cheaper on an hourly rate.
- Edinburgh stated that after three years people may go to another franchised dealership (for example, Land Rover, Jaguar, or Ford) or an independent garage. There are a number of non-Land Rover dealerships and independent garages that offer a lot of competition for cars older than three years, since they have low overheads; access to Land Rover parts; and can halve the labour costs.
- The former owner of Shields commented that independents are a more viable option with respect to servicing/repair of older Land Rover cars but in his view things are changing. Cars are getting more technical, for instance he considered that brakes were not entirely within the realm of independents as they are connected to the cars onboard computer.

The OFT understands that independent garages, national chains or rival marques franchises in the parties' catchment areas are likely to pose a more credible alternative for owners of older Land Rover vehicles than for new and nearly new cars. This may be based on the customers' perceived need to use an authorised repairer to maintain the validity of the warranty not applying unless the vehicle is covered by an extended warranty or is a used vehicle with a one-year warranty.

115. The OFT notes that the volume of services for older Land Rovers undertaken by independents and non-Land Rover dealerships within the parties' catchment areas is lower than that of each of the parties' dealerships: those that the OFT contacted estimated that they carried out between five and 96 services of older Land Rover vehicles in 2012 compared to the [] services carried out on older Land Rover vehicles in

2012 by each of the parties' dealerships. As a result, the OFT considers that individual garages may pose a weaker constraint on the parties relative to the constraint that they exert on each other.

116. However, the OFT recognises that even if each non-Land Rover franchise in the parties' catchment areas has a small share of supply, collectively they will constrain the parties' behaviour. The parties identified some 400 independent garages in Glasgow and during their information gathering exercise, collected quotes from some that the OFT had been unable to contact.

Conclusion on unilateral effects

117. The parties have a high market share of servicing, and non-warranty repair work for older Land Rover vehicles within their catchment areas, and the Transaction has removed many customers' geographically closest alternative supplier. However, the evidence available suggests that for servicing and repairs for the older Land Rover cars the degree of competition between the parties was weaker than that in respect of new and nearly new cars.⁴⁶

118. Third parties consistently pointed to the competitive constraint in this segment from independent garages, national chains and other providers, and consider that the increasingly important national chains such as Halfords and Kwik Fit,⁴⁷ as well as the numerous independent garages, collectively constrain the parties to a considerable degree. Therefore, on the basis of the above evidence the OFT has concluded that that, in respect to servicing, and non-warranty repair work for older Land Rover cars there is no realistic prospect of a substantial lessening of competition.

THIRD PARTY VIEWS

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

⁴⁶ See paragraph 110 above.

⁴⁷ See paragraph 100 above.

ASSESSMENT

120. Taggarts and Shields operate the only Land Rover dealerships in Greater Glasgow and Motherwell.

121. The parties overlap in:

- the sale of new and used Land Rovers
- repair and maintenance of Land Rovers
- sale of vehicle parts
- contract hire and leasing, and
- associated finance products.

122. The OFT's investigation has found concerns in relation to the supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty.

123. The OFT has previously found that customers are not willing to travel long distances to have their car serviced and that competition is principally local, and in this case the Transaction has removed many customers' closest alternative franchised dealer. The OFT considers that it is appropriate to identify the area within which the majority of the parties' servicing customers are located as a starting point to considering the impact of the Transaction. The parties' submitted 80 per cent catchment areas defined by (i) radii around a dealership and (ii) postcode blocks. The OFT considers that on any reasonable definition the parties' catchment areas overlap with each other to some extent. The OFT also took into account the more detailed information provided by the parties on the distribution of their customers.

124. With respect to the supply of retail servicing and non-warranty repairs to new or nearly new cars in the parties' catchment areas, the OFT considers on the basis of the evidence available that the parties combined share of supply is some [60 to 70] per cent.

125. The OFT was told by third parties that competition was primarily between Land Rover franchise dealerships. The investigation found that rival Land Rover franchise dealerships [] offer a degree of constraint on the parties, any such constraint may be limited, as illustrated by [] and the distance

from the parties' dealerships. However, third parties have submitted that rival dealerships do have customers in the Glasgow region, and that they also provide the option of collecting and delivering customers cars on their behalf.⁴⁸

126. For the reasons set out above in paragraphs 77 to 89 the evidence available to the OFT suggests that substitution from dealerships to independent garages is limited and that the constraint represented by independent garages, individually or collectively, is considerably less than that exerted by the parties on each other.

The OFT also found that the likelihood of dealers for other marques of car providing services for new or nearly new Land Rover cars is extremely low.

127. The OFT has found that the merger gives rise to potential for unilateral effects (through the parties either raising prices or reducing quality, range or service). The OFT has found that for many customers the Transaction removes their closest alternative supplier and remaining constraints from rival Land Rover dealerships may be limited. Further, the constraint represented by independent garages, individually or collectively, is considerably less than that which the parties exert on each other. In addition the likelihood of other franchises providing these services is extremely low. On the basis of the above the OFT considers that there is a realistic prospect of a substantial lessening of competition in the supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty in the Greater Glasgow region.

128. 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.

EXCEPTIONS TO THE DUTY TO REFER

129. The OFT's duty to refer under section 22(1) of the Act is subject to certain discretionary exceptions, including the exception under section 22(2)(a) relating to markets of insufficient importance ('de minimis'), and the exception under section 22(3)(b) read with section 73(2) relating to undertakings in lieu of reference.

⁴⁸ See paragraph 74.

130. The OFT has found that its duty to refer this case is met with regard to supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty in Greater Glasgow and Motherwell region. The OFT believes that the annual cumulative size of the market concerned is less than £10 million. The OFT has therefore considered whether it should apply the 'de minimis' exception to the duty to refer.

Whether undertakings are available

131. As set out in the OFT's Exceptions Guidance,⁴⁹ the OFT's general policy is not to apply the 'de minimis' exception where it is 'in principle' open to the parties to offer a clear-cut undertaking in lieu of reference. This is because the recurring benefits of avoiding consumer harm by means of undertakings in lieu in a given case, and all future like cases, outweigh the one-off costs of a reference.

132. Cases that the OFT considers are in principle suitable for resolution by undertakings in lieu are typically those where the part of the Transaction that raises concerns can be divested to an independent third party purchaser.⁵⁰ The OFT's Exceptions Guidance also stresses that '[t]he OFT will take a conservative approach to assessing whether undertakings in lieu are in principle available. To the extent that there is any doubt as to whether undertakings in lieu would meet the 'clear-cut' standard, it will not be included in the 'in principle' assessment. In other words, it must be clear that the competition concerns in the case in question are obviously such as to make the case a candidate for resolution by undertakings in lieu.'⁵¹

133. In this case, the OFT does not consider, based on its objective evaluation of the Transaction, that undertakings in lieu are 'in principle' available since the OFT's competition concerns relate to such an integral part of the

⁴⁹ OFT1122, Mergers- Exceptions to the duty to refer and undertakings in lieu of reference guidance, December 2010 (the OFT's Exceptions Guidance), see paragraph 2.21. See also OFT decision on the *Completed acquisition by Dunfermline Press Limited of the Berkshire regional newspapers business from Trinity Mirror plc* of 4 February 2008 (the OFT Dunfermline decision) and the OFT decision on the *Completed acquisition by Govia Limited of South Central Passenger Rail Franchise* of 6 August 2009 (the OFT Govia/SCP decision).

⁵⁰ See the OFT's Exceptions Guidance, paragraph 2.24.

⁵¹ See the OFT's Exceptions Guidance, paragraph 2.27.

Transaction that to remedy them through structural divestment would be tantamount to prohibiting the merger altogether.⁵²

The de minimis exception

The size of the market

134. The OFT estimates the affected markets in this case are worth approximately £1 to £1.5 million if the combined revenues of the parties and the estimated revenue from services carried out by rival dealerships and independents for customers in the parties' catchment areas are taken into account. This market size is well below the £10 million threshold above which the de minimis exception is generally not applicable. It is also below £3 million for which a reference to the CC would generally not be justified.

135. The OFT would expect to refer a merger where the value of the market(s) concerned was less than £3 million only exceptionally, and where the direct impact of the merger in terms of customer harm was particularly significant and/or where that merger was highly replicable in the relevant sector.⁵³ In its assessment of whether it is appropriate to apply the de minimis exception in this case, the OFT has considered in the round, the interaction of the following key factors: (i) the market size, (ii) the strength of the OFT's concerns that harm will occur as a result of the merger, (iii) the magnitude of competition lost by the merger, (iv) the durability of the merger's impact, and (v) the wider implications of any decision for the OFT's treatment of future cases. These considerations are stated for the purposes of its consideration of de minimis only, they in no way undermine the OFT's consideration, on the basis of the available evidence, that there is a realistic prospect of an SLC in this case and the duty to refer is met.

136. The OFT has decided to exercise its de minimis discretion in this case for the following reasons.

⁵² *Ibid.*, paragraph 2.25.

⁵³ *Ibid.*, paragraph 2.15.

Size of the market

137. The OFT considers the size of the market is small and this will reduce the overall consumer harm to be expected from this merger.

Strength of the OFT's concerns

138. The OFT's concerns relate to the supply of retail servicing and non-warranty repairs for Land Rovers less than three years old and/or still under warranty. The parties are the largest providers and each other's closest competitors. The OFT therefore believes there is a realistic prospect that an SLC will arise. However, the OFT considers that, the strength of the OFT's concerns that customer harm will occur as a result of the merger is lessened by the constraints discussed in the assessment section above as well as other the factors numbered in paragraph 137 above and discussed further below.

The magnitude of competition lost

139. The OFT considers that the lessening of competition in this case is substantial (the test for reference is met). However, the extent of any price effect is likely to be reduced by the actual and/or perceived threat of supply-side responses. For example, there is some, albeit limited, constraint expected post-merger from a number of sources: rival Land Rover franchise dealerships, independent garages and Land Rover specialists. It is also the case that national chains, such as Halfords, and Kwik Fit will provide a service to a manufacturers' specification.

140. It is also relevant, in this context, that some third parties suggested that customer switching between dealerships was limited.

141. The factors above are not sufficient to prevent the merger giving rise to a realistic prospect of an SLC. However, the OFT does consider that they reduce the magnitude of competition lost by the merger.

Durability of harm

142. The OFT considers that there are features of the market that demonstrate that the durability of the harm may be limited. These include the presence of alternative providers including national chains, such as Kwik-Fit, and

Halfords. In addition, a related factor is the increasing customer perception that there is no need to have a service of a new or nearly new car carried out by an authorised franchised dealer. The OFT considers that these two factors may serve to lessen the duration of any SLC.

Replicability

143. The OFT has considered the risk that using the exception in this case may create an expectation that mergers involving comparable competitive conditions would also be cleared. The OFT recognises that there is a small risk of this given the localised nature of franchised dealerships. The OFT will continue to monitor mergers and acquisitions in this sector and will intervene where appropriate.

Conclusion on de minimis

144. On balance, given the small size of the market and taking the above factors in the round, the OFT has found that the merger's impact on consumers is not expected to materially outweigh the public costs of a reference. The OFT therefore considers that it is, appropriate to exercise its de minimis discretion in this case.

DECISION

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

ⁱ Land Rover clarified that information regarding standard repair times is held in the electronic technical operating manual.