

# Anticipated acquisition by Steven Eagell Limited of seven Toyota dealerships and two Lexus dealerships from Lancaster Motor Company

## Decision on relevant merger situation and substantial lessening of competition

**ME/6685-17**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 24 July 2017. Full text of the decision published on 16 August 2017.

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

### SUMMARY

1. Steven Eagell Limited (**SEL**) has agreed to acquire seven Toyota dealerships<sup>1</sup> and two Lexus dealerships<sup>2</sup> (**the LMC dealerships**) from Lancaster Motor Company (the **Merger**). SEL and the LMC dealerships are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that the Parties' enterprises will cease to be distinct as a result of the Merger and that the turnover test is met. The CMA therefore believes that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties overlap in the supply of new and used Toyota and Lexus cars and new Toyota light commercial vehicles (**LCVs**). The Parties also overlap in the supply of repair and maintenance services (**servicing**) of Toyota/Lexus cars and LCVs, and the supply of Toyota parts to trade customers. The Parties'

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<sup>1</sup> The sale agreement between the Parties included seven Toyota dealerships. The sale of six dealerships completed on 23 February 2017, and the sale of the remaining dealership [X] is due to complete in [X].

<sup>2</sup> The LMC dealerships also operate a Lexus workshop from one of their Toyota dealerships (Rayleigh). No Lexus vehicles are sold from the Rayleigh site.

dealerships supply these vehicles and services to customers predominantly within their local areas. The CMA has therefore assessed the impact of the Merger in the supply of:

- (a) new cars to private (non-fleet) customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (b) used cars to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (c) new LCVs to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (d) servicing of Toyota/Lexus cars and LCVs under warranty to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (e) servicing of Toyota/Lexus cars and LCVs out of warranty to private customers in an 80% customer catchment area around each of the Parties' dealerships; and
  - (f) parts for use in Toyota vehicles to trade customers in an 80% customer catchment area around each of the Parties' dealerships.
4. The CMA did not find competition concerns in any of these frames of reference because of:
  - (a) the limited overlaps in the Parties' catchment areas;
  - (b) the Parties' low shares of supply;
  - (c) evidence that the Parties are often not each other's closest competitors;
  - (d) the presence of other competitors, such as other marque dealerships, other Toyota/Lexus dealerships, independent workshops and generic parts suppliers in the Parties' catchment areas; and
  - (e) the absence of any customer complaints in relation to the Merger.
5. The CMA believes that these factors, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

7. SEL is a private company that operates a number of Toyota and Lexus dealerships in South East England under a franchise agreement with Toyota (GB) plc (**Toyota GB**). The turnover of SEL in 2015 was approximately £144m, solely generated in the UK.
8. The LMC dealerships are seven Toyota and two Lexus dealerships located in South East England, which also operate under a franchise arrangement with Toyota GB. The turnover of the LMC dealerships in 2016 was approximately £101m, solely generated in the UK.

### Transaction

9. On 2 February 2017, SEL agreed to acquire the LMC dealerships from Lancaster Motor Company. SEL is acquiring the LMC dealerships in two phases. The acquisition of six Toyota and two Lexus LMC dealerships completed on 23 February 2017. The acquisition of the remaining Toyota LMC dealership is due to complete in [X].

### Procedure

10. The CMA's mergers intelligence function identified this transaction as warranting an investigation.<sup>3</sup>

### Jurisdiction

11. As a result of the Merger, the enterprises of SEL and the LMC dealerships will cease to be distinct.
12. The UK turnover of the LMC dealerships exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.
13. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

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<sup>3</sup> See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9-6.19 and 6.59-60.

14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 June 2017 and the statutory 40 working day deadline for a decision is therefore 7 August 2017.

## Counterfactual

15. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.<sup>4</sup>
16. In this case, SEL submitted that the LMC dealerships were significantly underperforming and that, in the absence of the Merger, the dealerships would not have continued under the Toyota/Lexus brands under their previous ownership. SEL submitted that it would have been chosen by Toyota GB to continue the businesses. However, the Parties could not provide evidence to show that the LMC dealerships would have exited the market, or that there were no alternative purchasers for the dealerships or their assets. Toyota GB informed the CMA that [REDACTED].
17. On the basis of this evidence the CMA does not believe that an alternative counterfactual is appropriate, and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## Frame of reference

18. Market definition provides a framework for assessing the competitive effects of a merger and involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger, as it is recognised that there can be constraints on merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important

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<sup>4</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

than others. The CMA will take these factors into account in its competitive assessment.<sup>5</sup>

19. The Parties overlap in the supply of new and used Toyota/Lexus cars and new LCVs<sup>6</sup> (collectively **Toyota/Lexus vehicles**) in South East England. The Parties also overlap in the servicing of Toyota/Lexus vehicles in South East England, and the supply of Toyota-branded parts to other businesses such as independent workshops.
20. Toyota and Lexus are different car marques (brands) that are sold and marketed by Toyota GB in the UK. Toyota GB enters into franchise agreements with dealerships that meet its criteria (eg financial checks, a viable business plan, etc). Once established, Toyota GB will measure the dealerships' performance within their areas of primary influence (**API**). The Parties and third parties told the CMA that, generally, dealerships' APIs do not overlap as two dealerships close to each other would struggle to both provide compelling business plans to Toyota GB.

## **Product scope**

### *Sales of Toyota/Lexus vehicles*

#### *New and used cars*

21. The CMA and its predecessor bodies, the Office of Fair Trading (**OFT**) and Competition Commission (**CC**), have previously considered the supply of new and used cars in separate frames of reference, on the basis that new and used cars have different characteristics, prices and suppliers.<sup>7</sup> However, they did not consider it appropriate to segment the supply of new or used cars by type (eg saloon) or marque (eg Vauxhall) on the basis of the considerable overlap in types of vehicle<sup>8</sup> and the evidence of competition between marques.<sup>9</sup>
22. SEL submitted evidence showing that its business activities are split into the sale of new cars and the sale of used cars. SEL did not submit that these activities should be broken down further by type of vehicle or marque.

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<sup>5</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>6</sup> SEL submitted that it sells [0-5] or [0-5] used LCVs per year from each dealership, with the LMC dealerships likely to have similar volumes of sales. The CMA has therefore not assessed these negligible sales further.

<sup>7</sup> Eg ME/6474-14, [Completed acquisition of two Vauxhall dealerships from Riders' Garages Limited by Eden \(GM\) Limited](#) (24 October 2014), paragraph 23; ME/6310-13, [Completed acquisition by Ridgeway Garages \(Newbury\) Limited of Parkview Skoda](#) (21 March 2014), paragraph 12.

<sup>8</sup> Eg [Ridgeway Garages/Parkview Skoda](#), paragraph 15.

<sup>9</sup> Eg [Ridgeway Garages/Parkview Skoda](#), paragraph 12.

23. The CMA did not receive any evidence to support a deviation from previous decisional practice in relation to new or used cars. Rather, the evidence received supported this approach. For example:
- (a) third party dealerships stated that they compete across marques in relation to the sale of new cars, used cars and LCVs; and
  - (b) Toyota GB and SEL's internal documents demonstrated that they monitor the activities of other marques.
24. The CMA therefore assessed new and used cars in distinct frames of reference and did not identify narrower frames of reference by either type of car or marque. However, the CMA did not need to conclude on the most appropriate frame of reference as no competition concerns arise on any basis.

#### *LCVs*

25. SEL submitted that the sale of new cars and LCVs should be considered in the same frame of reference. However, SEL also submitted that new LCV customers differ from car customers in that they tend to be local independent traders looking to buy a vehicle for work purposes. This indicates a lack of demand-side substitutability between cars and LCVs. This is consistent with the previous decisional practice of the OFT, which considered cars and LCVs in separate frames of reference on the basis that most customers would not consider cars and LCVs as substitutes.<sup>10</sup>
26. On the basis of this evidence, the CMA has considered the supply of new cars and LCVs in separate frames of reference. However, the CMA did not need to conclude on the most appropriate frame of reference as no competition concerns arise on either basis.

#### *Private and fleet customers*

27. The OFT has previously considered whether to identify separate frames of reference for sales to fleet customers, who buy multiple vehicles, and sales to private customers. In the present case, SEL provided evidence that Toyota GB centrally handles the sale of five or more vehicles to any customer, and submitted that this often includes a service package for which Toyota GB negotiates the price.<sup>11</sup> The CMA therefore believes that the Parties do not compete in the sale (or servicing to any significant extent) of Toyota/Lexus

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<sup>10</sup> Eg [Completed acquisition by Inchcape plc of European Motor Holdings plc](#) (26 March 2007), paragraph 8.

<sup>11</sup> The Parties also submitted that fleet customers often have in-house servicing capabilities.

vehicles to fleet customers. For this reason, the CMA has conducted its assessment of the Merger in relation to private (non-fleet) customers only.

### *Servicing of Toyota/Lexus vehicles*

28. The OFT and CMA have previously considered all forms of repair and maintenance services (including retail servicing, MOT tests and repair work) to form part of the same frame of reference because the competitive conditions for these services are similar and there is some degree of bundling of these services together.<sup>12</sup> In the present case, the CMA has not seen any evidence to suggest that a narrower definition of servicing would be appropriate. The CMA therefore uses the term 'servicing' throughout this decision to mean all repair and maintenance services.<sup>13</sup>

### *Service plans*

29. The CMA and OFT have previously considered the supply and servicing of vehicles as separate frames of reference, on the basis that customers do not consider the cost of servicing as a significant factor when buying a vehicle.<sup>14</sup> However, SEL submitted that [50-60]-[60-70]% of its new vehicles are now sold with a Toyota or SEL service plan and, for this reason, competition for the servicing of new vehicles occurs at the point of the vehicle sale, rather than separately afterwards. This would suggest that customers consider the cost of servicing upfront as part of the new vehicle package, with competition occurring across marques, as opposed to occurring separately afterwards.
30. The CMA considered whether competition for servicing continues to occur after the sale of a new vehicle, or whether it now occurs at the point of sale. The evidence reviewed by the CMA was mixed. Third party Toyota dealerships provided evidence which showed that between [20-30] and [70-80]% of their new car or LCV customers bought a service plan when buying a new vehicle. Other marque dealerships provided evidence that between 10 and 80% of their customers purchased a service plan with a new vehicle.
31. This evidence indicates that a significant proportion of customers do consider the after-sales cost of a vehicle upfront, but also that a significant proportion of customers do not. For the purposes of its assessment of the Merger, the CMA has not segmented the supply of servicing to include only customers without a service plan; however, it has taken into account any differentiation

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<sup>12</sup> [Rider's Garages/Eden](#), paragraph 32; ME/6145-13, [Completed acquisition by Lookers Group plc of Shields Land Rover](#) (9 December 2013), paragraphs 23-24.

<sup>13</sup> More precisely, the CMA considers servicing to include all repair and maintenance services except works carried out under a vehicles warranty, as set out in paragraph 36.

<sup>14</sup> [Rider's Garages/Eden](#), paragraph 31.

between customers' preferences in its competitive assessment. The CMA has not needed to conclude on the most appropriate frame of reference as competition concerns do not arise on either basis.

### *Servicing under and out of warranty*

32. The OFT and CMA previously considered the servicing of new or nearly new vehicles (as a proxy for vehicles under warranty) separately from the servicing of older vehicles (as a proxy for vehicles out of warranty). This was because, despite the provisions of the 2010 Motor Vehicles Block Exemption Regulation,<sup>15</sup> owners of vehicles under warranty did not tend to use independent workshops<sup>16</sup> for servicing because of concerns that doing so might invalidate their warranties. The competitive conditions for the servicing of vehicles under warranty therefore differed from the competitive conditions for the servicing of vehicles out of warranty.
33. The CMA assessed whether this is still the case. SEL submitted that some owners of vehicles out of warranty may perceive a wider range of choices as to where to service their vehicles (ie including independent workshops). SEL submitted evidence demonstrating that its customer retention rates<sup>17</sup> for servicing dropped from [50-60]-[60-70]% for vehicles inside the warranty period, to [10-20]-[30-40]% for vehicles outside of the warranty period. Toyota GB also provided national retention data that illustrated a decline in servicing retention rates for older cars, though the 'drop-off' in retention rates was less pronounced as between cars in their last warranty year and those recently out of warranty.
34. Third party evidence also supported a continuing distinction between the servicing of vehicles under and out of warranty, with other marque dealerships reporting significant differences in retention rates. Independent workshops also confirmed that the majority of their servicing is conducted on cars out of warranty. However, the CMA notes that SEL's retention rates for vehicles under warranty are lower than in previous dealership cases assessed by the CMA or OFT, which might suggest that customers are now more willing to use independent workshops during a vehicle's warranty period (in line with the 2010 Motor Vehicles Block Exemption Regulation), though not to an extent

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<sup>15</sup> Commission Regulation 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](#).

<sup>16</sup> The CMA uses the term 'workshop' broadly to mean a place of business where retail servicing works are carried out, eg independent garages, dealerships.

<sup>17</sup> Customer retention rates reflect (as a percentage) the number of Toyota vehicle owners present in a Toyota dealership's API that have used that dealership for servicing during a year, out of all the customers driving a Toyota vehicle registered in that API.



that the CMA should consider the servicing of vehicles both under and out of warranty within the same frame of reference.

35. Therefore, and on a cautious basis, the CMA has considered separately the supply of: (i) servicing of Toyota/Lexus cars and LCVs under warranty to private customers; and (ii) servicing of Toyota/Lexus cars and LCVs out of warranty to private customers. However, the CMA did not need to conclude on the most appropriate frame of reference as no competition concerns arise on either basis.

#### *Works carried out under warranty*

36. The OFT has previously excluded works carried out under a manufacturer's warranty from its frame of references as the customer's contract for such works is with the manufacturer and not the dealer.<sup>18</sup> The manufacturer pays the dealership to carry out the repairs. The dealerships' ability to compete for these customers is therefore limited. The CMA has not seen any evidence to depart from this approach in this case.

#### *Cars and LCVs*

37. The CMA has not seen any evidence in the present case to suggest that it should depart from previous decisional practice which has identified a single frame of reference for the servicing of cars and LCVs. The Parties supported this approach.

#### *Sales of parts to trade customers*

38. In addition to parts sold to retail customers as part of the servicing process, the Parties also sell Toyota-branded parts to trade customers (eg independent workshops).
39. When replacing a part, a mechanic normally has a choice between using marque-branded parts or generic parts (which may be branded but not by marque, eg Bosch). However, for some new or specialist parts there may not be a generic option, and a 'captive' marque-branded part will need to be used.
40. The CMA considered whether marque-branded and generic parts should be considered within the same frame of reference and, either way, whether captive parts should be considered as a separate sub-segment.

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<sup>18</sup> [Lookers/Shields Land Rover](#), paragraph 25.

41. In Euro Car Parts/Andrew Page,<sup>19</sup> the CMA considered generic parts only within its frame of reference on the basis that marque-branded parts<sup>20</sup> suppliers often did not deliver parts (or did so less frequently) and often had limited product ranges. Marque-branded parts suppliers therefore did not constrain generic parts suppliers. However, the CMA believes based on third party responses in this case that this relationship is asymmetric and that generic parts suppliers constrain marque-branded parts suppliers.
42. In the present case, the evidence from the Parties' customers confirmed this view. Therefore, given the CMA's focus in the present case on marque-branded parts, the CMA has considered marque-branded and generic parts within the same frame of reference.
43. The CMA then considered whether it should identify a separate sub-segment for captive parts. In their initial responses, no trade customers made any distinction to identify captive parts. Moreover, when the CMA asked the Parties' customers about their purchases of captive marque-branded parts, one stated that it only purchased generic parts, whilst two others stated that they would only purchase marque-branded parts very rarely, eg if the product was new to the market. Given that customers did not readily differentiate captive parts from other parts, and in light of the limited circumstances in which customers appear to need a captive part, the CMA has considered competitive and captive parts within the same frame of reference. However, the CMA took account of the different supply options for captive parts in its competitive assessment. Ultimately, the CMA did not need to conclude on the most appropriate frame of reference as no competition concerns arise on any basis.

#### *Conclusion on product scope*

44. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of:
  - (a) new cars to private (non-fleet) customers;
  - (b) used cars to private customers;
  - (c) new LCVs to private customers;

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<sup>19</sup> ME/6647-16, [Completed acquisition by Euro Car Parts Limited of the assets of the Andrew Page business](#) (10 May 2017), paragraphs 43-46.

<sup>20</sup> Marque-branded parts were referred to as OEM branded car parts in [Euro Car Parts/Andrew Page](#).

- (d) servicing of Toyota/Lexus cars and LCVs under warranty to private customers;
- (e) servicing of Toyota/Lexus cars and LCVs out of warranty to private customers; and
- (f) parts for use in Toyota vehicles to trade customers.

45. However, it was not necessary for the CMA to reach a conclusion on the appropriate product frames of reference, since, as set out below, no competition concerns arise on any plausible basis.

### ***Geographic scope***

#### *Sales of Toyota/Lexus vehicles*

46. The CMA has previously assessed the supply of vehicles to private customers on both a local and a national basis.<sup>21</sup> However, in the present case, the Parties are only active in South East England, so a local assessment would be the most cautious approach. In light of the CMA's findings on a local basis, the CMA did not need to conduct a national assessment.
47. SEL identified catchment areas for each of the Parties' dealerships, using the area in which 80% of the customers who had purchased a new vehicle from the respective dealership were located. These customer sales catchment areas identified drive times ranging from [20-30] to [90-100] minutes.<sup>22</sup> In line with previous decisional practice, the CMA believes these individual catchment areas to be an appropriate proxy for the local frames of reference served by each site.<sup>23</sup>

#### *Servicing of Toyota/Lexus vehicles*

48. The CMA and OFT have previously found that customers are unwilling to travel long distances for servicing and has therefore assessed competition for the supply of servicing on a local basis.<sup>24</sup>
49. SEL submitted evidence on each of the Parties' dealerships' catchment areas for 80% of their servicing customers. The catchment areas provided were

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<sup>21</sup> [Rider's Garages/Eden](#), paragraph 42.

<sup>22</sup> The majority of dealerships' drive times for sales of vehicles were between [30-40] to [40-50] minutes. Lexus dealerships tended to have longer drive times, as did dealerships where the road network was weaker eg King's Lynn.

<sup>23</sup> See [Rider's Garages/Eden](#), paragraph 44.

<sup>24</sup> See [Rider's Garages/Eden](#), paragraph 45.

significant smaller than those provided for sales customers, ranging from [10-20] to [30-40] minutes for Toyota and [20-30] to [50-60] minutes for Lexus.

50. The CMA has not received any evidence to suggest it should deviate from its previous decisional practice and has therefore assessed the supply of servicing to private customers on the basis of the Parties' 80% customer catchment areas.
51. The CMA has previously used the same catchment area for servicing under warranty as for servicing out of warranty.<sup>25</sup> In the present case, the Parties conducted an analysis across two dealerships to test this, and the results showed negligible differences in drive times between the two sets of customers. The CMA has therefore assessed both servicing frames of reference using the same geographic frame of reference for each dealership.

#### *Sales of parts to trade customers*

52. The CMA has previously found that the appropriate geographic frame of reference for the sale of parts can vary depending on the nature of the customer.<sup>26</sup> For sales to larger customers, with sites across the UK, competition tends to take place nationally, whereas for smaller, independent customers, competition occurs at the local level.
53. SEL supplies parts to local trade customers such as bodyshops and independent workshops. SEL submitted that its trade customers' demand is not necessarily locally-driven, because speed of delivery is not important when cars are booked in for a service and customers can anticipate a proportion of their forward requirements. However, SEL also submitted that its 80% customer catchment areas for the supply of parts are between [20-30] to [40-50] minutes' drive of each dealership.
54. In light of the CMA's previous findings, and the local nature of the Parties' supply, the CMA has assessed the impact of the Merger on the supply of parts to trade customers on a local basis, using the Parties' 80% customer catchment areas. Nevertheless, the CMA has taken account of the wider constraints from national suppliers in its competitive assessment.

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<sup>25</sup> [Rider's Garages/Eden](#), paragraph 47.

<sup>26</sup> [Euro Car Parts/Andrew Page](#), paragraphs 47-61.

## ***Conclusion on frame of reference***

55. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of:
- (a) new cars to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (b) used cars to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (c) new LCVs to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (d) servicing of Toyota/Lexus cars and LCVs under warranty to private customers in an 80% customer catchment area around each of the Parties' dealerships;
  - (e) servicing of Toyota/Lexus cars and LCVs out of warranty to private customers in an 80% customer catchment area around each of the Parties' dealerships; and
  - (f) parts for use in Toyota vehicles to trade customers in an 80% customer catchment area around each of the Parties' dealerships.

## **Competitive assessment**

### ***Horizontal unilateral effects***

56. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.<sup>27</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the six frames of reference listed at paragraph 55.

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<sup>27</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

### *Sales of Toyota/Lexus vehicles*

57. The supplies of new and used cars and new LCVs have each been assessed on the basis of the same 80% sales catchment areas for each dealership. The CMA has therefore grouped its analyses together for presentational purposes.
58. The CMA identified 40 overlaps between the 80% catchment area of an SEL dealership and that of an LMC dealership. In 31 cases, the SEL dealership is not in the catchment area of the relevant LMC dealership, or vice versa, but the catchment areas of the two relevant dealerships overlap such that they may compete for some common customers in a small area. In most instances, the Parties were also not each other's geographically closest competitor.
59. The Parties provided estimated shares of supply for new vehicles (including cars and LCVs), based on their sales volumes compared with the volume of new vehicles registered within each dealership's API. The dealerships' APIs are normally smaller than their 80% catchment areas so the CMA believes these shares are likely to be an overestimate of the Parties' shares of supply in the relevant frame of reference. The data showed that the Parties' shares of supply for each dealership within its own API range from [0-5] to [5-10]%. Combining these shares where the Parties overlap did not give rise to any prima facie competition concerns.
60. With respect to used cars, SEL was unable to provide detailed shares of supply, but submitted that it had no reason to believe that the Parties' shares of supply would be materially higher than for new vehicles.
61. SEL identified ten competing dealerships (of various marques) for each of the Parties' dealerships. Each of the dealerships that responded to the CMA confirmed that they compete with the Parties for the sale of new and used Toyota and Lexus cars and LCVs. The Parties added that, for used cars, they also face competition from local used car dealers and national used car traders (eg Autotrader).
62. With respect to LCVs, the CMA notes that the Parties both offer a limited range of only two models, which are similar to the offering of other competitors.
63. In light of the limited overlap between the Parties' dealerships, the Parties' low shares of supply for new vehicles, the presence of closer competitors in many overlapping areas and the number of alternative suppliers, the CMA does not believe the Merger raises competition concerns in relation to the supply of new or used cars or new LCVs to private customers in any catchment area.

### *Servicing of Toyota/Lexus vehicles*

64. Due to the smaller customer catchment areas for the supply of servicing of Toyota/Lexus cars (both under warranty and out of warranty) the Merger gives rise to fewer overlaps than for the sale of new and used vehicles. The CMA identified seven instances where the catchment areas of the Parties' dealerships overlap, such that they may compete for some common customers in a small area (**Overlapping Dealerships**),<sup>28</sup> but found no instances where the Parties' dealerships are present in each other's catchment area.
65. Where the proportion of an individual dealership's catchment area which overlaps with a catchment area of a dealership of the other party is more than 10%, the Parties conducted an analysis of the proportion of the dealership's customers within that area compared with the rest of its catchment area. This analysis showed that between [0-5] and [10-20]% of customers in each of the Overlapping Dealerships' catchment areas are within the catchment area of a dealership of the other party.

### *Servicing of Toyota/Lexus vehicles under warranty*

66. The CMA assessed the impact of the Merger on the supply of each of Toyota and Lexus servicing under warranty within the 80% catchment area for each of the Parties' Overlapping Dealerships. The CMA did not put weight on the competitive constraints from independent workshops for servicing under warranty because of the evidence outlined above indicating that some customers are not sufficiently willing to use non-dealer workshops for servicing vehicles under warranty due to a perceived risk that it may invalidate their warranty (although, the CMA notes that the proportion of private customers willing to use independent workshops for services under warranty appears to be increasing).
67. Insufficient data was available to calculate the Parties' shares of supply of servicing of vehicles under warranty in each Overlapping Dealership's catchment area. However, SEL provided servicing retention rates for vehicles under warranty for each of its Overlapping Dealerships based on their APIs. These retention rates indicate the proportion of Toyota/Lexus customers with vehicles under warranty using their local dealership for servicing out of the total number of such customers in the area for 2016-2017. SEL also provided the rates for the number of customers located in the same API using the other Party's dealerships for servicing. The data showed that, for each of the

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<sup>28</sup> The Overlapping Dealerships are Bishop's Stortford, Peterborough, Hatfield, Cambridge, Chelmsford, Romford, Colchester and St Ives (in various combinations).

Overlapping Dealerships, the proportion of retained customers (by either Party) ranges from [30-40] to [50-60]%. This is lower than Toyota's national average for vehicles under warranty ([30-40]), which could indicate stronger third party competitive constraints on each of the Overlapping Dealerships for servicing than is present typically for Toyota dealerships across the UK. The CMA also notes that SEL's retention rates are lower than the rate at which it sells service plans to customers with new vehicles, which suggests that it fails to retain even all service plan customers for the full lifetime of their vehicle's warranty.

68. SEL submitted that [60-70]% of its servicing of vehicles under warranty is carried out for customers with service plans, for which work there is no competition from other workshops. However, the CMA notes evidence provided by Toyota GB that suggests not all service plans are purchased at the point of sale, with some being purchased when a vehicle's first service is due. This would suggest that some competition is likely to exist between the Parties for service plan customers after the point of sale of the vehicle.
69. The CMA assessed the competitive constraints from other Toyota and Lexus dealerships, accordingly, on each of the Overlapping Dealerships. The CMA found:
  - (a) Where SEL's Peterborough Toyota dealership overlaps with the LMC Cambridge and St Ives dealerships, these LMC dealerships are SEL's closest competitors geographically but the number of overlapping customers is limited and there is a significant distance between the overlapping sites.
  - (b) Where SEL's Bishop's Stortford Toyota dealership overlaps with the LMC Cambridge, Colchester, Romford and Chelmsford dealerships, there are two other rival Toyota dealerships within similar driving distances from Bishop's Stortford.<sup>29</sup>
  - (c) Where SEL's Lexus Hatfield dealership overlaps with the LMC Cambridge dealership, there is another rival Lexus dealership that is closer to Hatfield.
70. Notwithstanding that, in a couple of areas, the Parties' dealerships are each other's closest geographic competitor, the CMA notes:

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<sup>29</sup> The LMC dealerships listed are [30-40], [50-60], [30-40] and [30-40] minutes' drive from Bishop's Stortford respectively, whereas the other Toyota dealerships are [30-40] and [30-40] minutes' drive time from Bishop's Stortford.



- (a) the limited overlap between the Parties' catchment areas;
- (b) the limited number of the Parties' customers present in those overlapping areas;
- (c) the significant distances between the Parties' relevant overlapping dealerships;
- (d) the evidence provided by the Parties on the small increment of customers they retain from each other's APIs; and
- (e) the limited competition between the Parties for those customers with service plans, which constitute the majority of customers.

In light of this evidence, the CMA does not believe the Merger raises competition concerns in relation to the supply of servicing of Toyota/Lexus vehicles under warranty to private customers in any catchment area.

#### *Servicing of Toyota/Lexus vehicles out of warranty*

- 71. As explained above, the CMA believes that the competition faced by the Parties for the servicing of vehicles out of warranty is likely to be greater than for the servicing of vehicles under warranty because, in addition to the constraints from other Toyota/Lexus dealerships, customers are more likely to use independent workshops. Third parties confirmed this is the case.
- 72. On the basis that the CMA has found no competition concerns for the servicing of Toyota/Lexus vehicles under warranty, the CMA does not believe that competition concerns will arise in relation to the servicing of Toyota/Lexus vehicles out of warranty to private customers in any catchment area.

#### *Sales of parts to trade customers*

- 73. The Parties operate trade centres from eight of their Toyota dealerships, from which they supply parts to trade customers. Using the data provided by SEL on the trade centres' 80% catchment areas, the CMA identified one instance where an LMC dealership trade centre (in St Ives) is within an SEL trade centre's catchment area (Peterborough). The CMA also found four instances where the Parties' catchment areas overlapped without the other party being present in the catchment area.
- 74. SEL provided estimates of their shares of supply of parts to trade customers within the catchment area of each of the Parties' eight trade centres. These shares ranged from [0-5] to [10-20]%.

75. SEL submitted that it faces strong competition from national providers, such as Euro Car Parts (**ECP**), which can offer quick deliveries of parts for a variety of marques. The parts supplied by ECP and others are generic parts but are sourced from the same manufacturers that produce marque-branded parts. Most of the Parties' parts customers who responded to the CMA said that the majority of their parts are generic parts supplied by national parts suppliers, such as ECP and Motor Parts Direct. The CMA therefore believes that national parts suppliers are a strong competitive constraint on the Parties' trade centres.
76. Other Toyota dealerships operating in the Parties' catchment areas confirmed that they also supply Toyota-branded parts to trade customers. The CMA noted that, in three of the five overlap areas, the relevant LMC dealership trade centre is not the closest Toyota trade centre to the relevant SEL dealership.
77. With respect to 'captive' parts, Toyota GB provided evidence that, of the total sales value of Toyota-branded parts supplied to trade customers through its dealerships in 2016, [X]% was attributable to competitive parts (ie those for which a generic alternative was available) and [X]% to captive parts. The CMA has no reason to believe that the split between competitive and captive parts sales is materially different in respect of the Parties' sales of parts. Third parties told the CMA that captive parts tended to be either parts for which there were very few sales (and therefore the supply of a generic version was not economically viable) or new parts for which there is a short time period until an unbranded version becomes available. Toyota GB also noted that captive parts could be purchased from other Toyota dealerships or from parallel importers (eg Euro-Asian Parts).
78. Notwithstanding the presence of some overlapping areas, the CMA notes:
- (a) the limited overlap between the Parties' catchment areas;
  - (b) the significant distances between the Parties' relevant overlapping dealerships;
  - (c) the strong competitive constraint imposed by generic parts suppliers;
  - (d) customer comments that the Parties are not their primary parts suppliers;
  - (e) the presence of other dealerships offering the supply of Toyota-branded parts; and
  - (f) the limited sales of Toyota captive parts, which can be obtained from other Toyota dealerships and possibly from parallel importers.

In light of this evidence, the CMA does not believe the Merger raises competition concerns in relation to the supply of Toyota-branded parts to trade customers in any catchment area.

#### *Conclusion on horizontal unilateral effects*

79. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in any frame of reference.

#### **Third party views**

80. The CMA contacted trade customers and competitors of the Parties. No customers raised concerns about the Merger.
81. Third party comments have been taken into account where appropriate in the competitive assessment above.

#### **Decision**

82. Consequently, the CMA does not believe that it is or may be the case that the Merger may be expected to result in an SLC within a market or markets in the UK.
83. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Andrew Wright**  
**Director, Mergers**  
**Competition and Markets Authority**  
**24 July 2017**