

Completed acquisition by Solera Holdings, Inc. of Autodata Publishing Group Limited

Decision on acceptance of undertakings in lieu of reference

ME/6626/16

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 21 September 2017. Full text of the decision published on 27 September 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.

Introduction

1. On 26 January 2017, Solera Holdings, Inc. (**Solera**), via its wholly owned subsidiary HPI Holding Limited (**HPI**), acquired Emperor 1 Ltd (**Emperor 1**), the ultimate holding company of Autodata Publishing Group Limited (**Autodata**) (the **Merger**). Solera, HPI and Autodata are together referred to as the **Parties**.
2. On 17 May 2017, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. As set out in the SLC Decision, the CMA found a realistic prospect of a substantial lessening of competition in relation to the supply of vehicle repair and maintenance information (**RMI**) platforms in the UK as a result of horizontal unilateral effects (the **SLC**). The CMA based its decision on evidence that there is a real risk that if the Merger went ahead there would be a reduction in the already limited number of suppliers of RMI.

4. As a result of the Merger, Autodata would no longer act as a competitive constraint on Solera. The SLC therefore relates to the loss of competition associated with the evidence that:
 - (a) the Parties are close competitors and the two main suppliers of RMI platforms in the UK, with a combined share of supply of [85-95]%;
 - (b) the other competing suppliers of RMI platforms in the UK would not sufficiently constrain the merged entity, mainly because: (i) they have a limited presence in the UK: each has a share of supply of less than 5%; (ii) the products offered by some competitors are different from the Parties' RMI platforms and used for other purposes, or are targeted mainly at a specific set of customers; and (iii) the RMI platforms supplied by most of the Parties' competitors in the UK do not have some features of the Parties' RMI platforms that are highly valued by most customers, including an accurate Vehicle Registration Mark (**VRM**) enablement functionality and customer helpdesk.¹
5. The CMA concluded that, in the absence of effective remedies, the Merger would result in the loss of the competitive constraint provided by Autodata on Solera's E3 Technical business, that is currently part of CarweB Limited's (**CarweB**) UK automotive data and services business.
6. On 24 May 2017, Solera offered undertakings in lieu of reference (the **UILs**) to the CMA for the purposes of section 73(2) of the Act. The CMA gave notice to Solera on 1 June 2017, pursuant to section 73A(2)(b) of the Act, that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering the Parties' offer (the **In Principle Acceptance decision**).
7. On 6 July 2017, the CMA issued a notice of consultation on the proposed undertakings (the **Notice of Consultation**), set out in Annex 1 below. The Notice of Consultation stated that the CMA would have regard to any representations received, and Solera may need to make modifications to the undertakings as a result of those representations.
8. On 25 July 2017, the CMA extended the time available to reach a decision on whether to accept the undertakings offered by Solera under section 73A(4) of the Act, resulting in a statutory deadline to reach this decision by 22 September 2017 (the **Notice of Extension**). An extension was necessary

¹ SLC Decision, paragraphs 7 and 8.

because the UILs included an upfront buyer condition, and more time was required to finalise the negotiation of the Asset Purchase Agreement (see paragraph 13 below).

9. The text of the SLC Decision, the In Principle Acceptance Decision, the Notice of Consultation, and the Notice of Extension are available on the CMA webpages.²

The undertakings offered

10. As set out above, on 24 May 2017 the Parties offered undertakings to remedy, mitigate or prevent the SLC or any adverse effect which has or may have resulted from the Transaction, or may be expected to result from it, as specified in the Decision.
11. Solera has offered to divest the E3 Technical business (the **Divestment Business**), by way of an Asset Purchase Agreement (**APA**) as set out in the text of the consultation on the CMA webpages. The UILs require Solera to divest specific assets to the upfront buyer in order to be active in the provision of RMI services, set out further in Annex 1, paragraph 8 below.
12. The UILs require that the Divestment Business be divested to an upfront buyer that has the ability and incentive to maintain and operate the RMI business as a viable and active business in competition with Solera and other competitors.
13. The Parties would also enter into an APA of the Divestment Business with the upfront buyer, before the CMA finally accepts the UILs.
14. The Parties proposed HaynesPro BV (**HaynesPro**) as the upfront buyer. See Annex 1, paragraphs 18 – 33, for the CMA's preliminary assessment of the suitability of the upfront buyer.

Consultation

15. On 6 July 2017, pursuant to paragraph 2(1) of Schedule 10 to the Act, the CMA published the Notice of Consultation, inviting interested parties to give their views on the UILs. The relevant text from the consultation is set out at Annex 1 of this decision.³

² See <https://www.gov.uk/cma-cases/solera-emperor-1-merger-inquiry>.

³ The full consultation text was published on <https://www.gov.uk/cma-cases/solera-emperor-1-merger-inquiry>.

16. For the reasons set out in the consultation, the CMA's preliminary view was that the UILs would resolve the SLC identified in the SLC decision in a clear-cut manner, ie without giving rise to material doubts about the overall effectiveness of the UILs or concerns about their implementation.⁴
17. The CMA received one submission from a third party during the consultation period. This third party questioned HaynesPro's intention to maintain and develop the divested business and noted that other potential purchasers might be better suited to operate and expand the divested business. The evidence available to the CMA indicated that HaynesPro has plans to work and invest to grow its position in the RMI market in the UK and that it will be incentivised to compete with Solera using the technical and staffing resources of the Divestment Business. The CMA assessment of potential purchasers is limited to the potential purchaser(s) proposed by the merger parties⁵ and each potential buyer proposed by the merger parties is assessed on its own merit against four main criteria: independence, capability, commitment to the relevant market and absence of competitive or regulatory concerns.⁶
18. In the Notice of Consultation⁷, the CMA set out its provisional reasons for considering that the characteristics of HaynesPro as an upfront buyer were such that they would continue to provide a similar range of services which could remedy the loss of the pre-Merger competitive constraint provided by Autodata. The concern raised by the third party does not give the CMA cause to depart from this initial view.
19. The CMA therefore considers that the UILs offered by Solera are clear-cut and appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision, and that HaynesPro is a suitable purchaser of the Divestment Business.

Decision

20. For the reasons set out above, the CMA considers that the UILs provided by Solera are as comprehensive a solution as is reasonable and practicable and remedy, mitigate or prevent the SLC identified in the SLC Decision and any adverse effects resulting from it. The CMA has therefore decided to accept the

⁴ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

⁵ See paragraph 8.35 of *Mergers: Guidance on the CMA's jurisdiction and procedure*:

<https://www.gov.uk/government/publications/mergers-guidance-on-the-cmas-jurisdiction-and-procedure>.

⁶ See paragraph 5.26 of *Mergers – Exceptions to the duty to refer and undertakings in lieu of reference guidance*: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/619736/oft1122.pdf

⁷ See Annex 1 below, paragraphs 18-33.

UILs offered by Solera pursuant to section 73 of the Act. The Merger will therefore not be referred for a phase 2 investigation.

21. The undertakings, which have been signed by Solera and will be published on the CMA webpages,⁸ will come into effect from the date of this decision.

Rachel Merelie
Acting Executive Director, Markets and Mergers
Competition and Markets Authority
18 September 2017

⁸ See <https://www.gov.uk/cma-cases/solera-emperor-1-merger-inquiry>.

Notice under paragraph 2(1) of Schedule 10 to the Enterprise Act 2002 (the Act) – consultation on proposed undertakings in lieu of reference pursuant to section 73 of the Act

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Introduction

1. Solera Holdings, Inc. (**Solera**), via its wholly owned subsidiary HPI Holding Limited (**HPI**), acquired Emperor 1 Ltd (**Emperor 1**), the ultimate holding company of Autodata Publishing Group Limited (**Autodata**) (the **Merger**). Solera, HPI and Autodata are together referred to as the **Parties**.
2. On 17 May 2017, the Competition and Markets Authority (**CMA**) decided under section 22(1) of the Enterprise Act 2002 (the **Act**) that it is or may be the case that the Merger constitutes a relevant merger situation that has resulted or may be expected to result in a substantial lessening of competition (**SLC**) within a market or markets in the United Kingdom (the **SLC Decision**).
3. On 24 May 2017, the Parties offered undertakings to the CMA for the purposes of section 73(2) of the Act.
4. On 1 June 2017, pursuant to section 73A(2)(b) of the Act, the CMA gave notice to the Parties that it considered that there were reasonable grounds for believing that the undertakings offered, or a modified version of them, might be accepted by the CMA under section 73(2) of the Act and that it was considering the offer (the **In principle acceptance decision**).
5. As set out in the SLC Decision, the CMA believes that, in the absence of appropriate undertakings, it would be under a duty to refer the Merger for a phase 2 investigation. The text of the SLC Decision is available on the CMA webpages.⁹

The undertakings offered

6. Under section 73 of the Act, the CMA may, instead of making a reference, and for the purpose of remedying, mitigating or preventing the SLC concerned

⁹ See the case page.

or any adverse effect which has or may have resulted from it or may be expected to result from it, except from such of the merger parties concerned as it considers appropriate undertakings to take such action as it considers appropriate.

7. The SLC Decision found that the Merger gives rise to a realistic prospect of an SLC in relation to the supply of vehicle repair and maintenance information (**RMI**) platforms in the UK.
8. To address this SLC, Solera has offered to divest the E3 Technical business (the **Divestment Business**), that is currently part of CarweB Limited's (**CarweB**) UK automotive data and services business, by way of an asset purchase agreement (the **Asset Purchase Agreement**) (the **Proposed Undertakings to Divest**). The assets that Solera has offered to divest as part of the Divestment Business include:
 - (a) CarweB's proprietary E3 Technical platform, including the software required to deliver the E3 Technical platform (eg source codes and all relevant user interfaces);¹⁰
 - (b) the licence from HaynesPro whereby CarweB has the right to distribute the HaynesPro technical database;¹¹
 - (c) a helpdesk to provide RMI technical support (via phone or email);
 - (d) the codes and know-how for cross-referencing and linking a Vehicle Registration Mark (**VRM**) lookup to the database;
 - (e) CarweB's employees associated with E3 Technical including business development and technical staff;
 - (f) CarweB's contracts with E3 Technical customers, including CarweB's corporate customers (who integrate RMI data into their solutions or sell products via a white label platform) and workshops; and
 - (g) other intangible assets, such as the brands associated with E3 Technical.
9. The Parties have also offered to enter into a purchase agreement with a buyer approved by the CMA before the CMA finally accepts these undertakings (the **Upfront Buyer Condition**).

¹⁰ The software to be transferred enables the delivery of the HaynesPro database via a web portal, or (for certain larger customers) via web services, to enable integration of the database into the proprietary systems of larger corporate customers.

¹¹ [REDACTED].

CMA assessment

Suitability of the proposed undertakings

10. The CMA currently considers that, subject to responses to the consultation required by Schedule 10 of the Act, the Proposed Undertakings to Divest, or a modified version of them, will resolve the SLC identified in the SLC Decision in a clear-cut manner, ie the CMA currently does not have material doubts about the overall effectiveness of the Proposed Undertakings to Divest or concerns about their implementation.¹² This is because the Proposed Undertakings to a suitable buyer will allow a supplier of RMI platforms that is independent of Solera and Autodata to operate as an effective competitor in the UK with an established customer base and a competitive RMI platform, replacing CarweB as a competitor in the supply of RMI platforms. As such, the Proposed Undertakings to Divest would result in replacing the competitive constraint provided by CarweB on Autodata that would otherwise be lost following the Merger.
11. The CMA also considers that the Undertakings would be capable of ready implementation because the Divestment Business is a limited and readily-identifiable set of assets that is capable of being transferred to an upfront purchaser.
12. The Upfront Buyer Condition means that the CMA would only accept the Proposed Undertakings to Divest after the Parties have entered into an agreement with a nominated buyer that the CMA considers to be suitable. The CMA considers that an Upfront Buyer Condition is necessary because the CMA considers that the identity of the purchaser will affect the undertakings' ability to remedy the CMA's competition concerns by competing effectively in the supply of RMI platforms in the UK.
13. The Asset Purchase Agreement (APA) is subject to the CMA's approval. The CMA will have regard to the fact that Solera has committed to comply with, or procure compliance with, certain non-compete provisions for the benefit of the Divestment Business as detailed in the legally binding agreement that they have entered into.
14. These restrictions on Solera are intended to ensure the effectiveness of the Proposed Undertakings to Divest by allowing the necessary minimum period

¹² *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance (OFT1122)*, December 2010, Chapter 5 (in particular paragraphs 5.7–5.8 and 5.11). This guidance was adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, Annex D).

of time for the transition and integration of the E3 Technical customers. These restrictions may also be necessary, for a minimum period of time, to protect the investment of the purchaser and to enable the purchaser to consolidate its position in the RMI market.

15. If required by the purchaser, CarweB will also provide the necessary transitional services during a period of up to [X], consisting of CarweB's support to the purchaser in the form of an arm's length short term royalty free licence (or licences) for VRM enablement services and updates to the relevant data inputs necessary for the purchaser to develop its own VRM enablement offer. These transitional services will enable the purchaser to offer CarweB's VRM look-up data through E3 Technical on a temporary basis. During the same period, CarweB will also give the purchaser access to its Thatcham data with respect to OE parts pricing, which is currently used in the E3 Technical platform to provide quotations.
16. These transitional services seek to allow the purchaser (particularly if the purchaser does not currently provide VRM enablement services) to: (i) obtain its own VRM licence with the Driver and Vehicle Licensing Agency (**DVLA**); (ii) set up appropriate systems; (iii) cleanse and maintain the data; (iv) create and test the linkage between the DVLA data and E3 Technical.
17. The CMA currently considers that the commitments described above will ensure that the Divestment Business continues to operate as an ongoing business.

Suitability of the proposed purchaser

18. The CMA's starting position is, without the need to undertake a detailed investigation, to seek an outcome that restores pre-merger level of competition. Therefore, in approving a purchaser, the CMA seeks to ensure that:
 - (a) the acquisition by the purchaser remedies, mitigates or prevents the SLC concerned and any adverse effect resulting from it;
 - (b) the proposed purchaser is independent of and unconnected to the merging parties;
 - (c) the proposed purchaser has the necessary financial resources, expertise, incentive and intention to maintain and operate the divested business as an effective competitor in the marketplace;

- (d) the proposed purchaser is reasonably expected to obtain all necessary approvals, licences and consents from any regulatory or other authority; and
- (e) the acquisition by the proposed purchaser does not itself create an SLC within any market or markets in the UK.¹³

19. Solera proposed HaynesPro BV (**HaynesPro**) as the prospective purchaser. An Asset Purchase Agreement (**APA**) is currently being negotiated between Solera and HaynesPro. Any potential APA between Solera and HaynesPro to transfer the Divestment Business will be conditional upon acceptance by the CMA of the UIL, including approval of the purchaser of the Divestment Business and the terms of the APA.

HaynesPro is part of the Haynes Publishing Group, renowned worldwide for their automotive manuals. Since its launch in 1995, HaynesPro has been supplying technical information to the automotive aftermarket across Europe. From inception, this information has been delivered entirely digitally on a subscription basis working in collaboration with its distribution partners. HaynesPro has been in the UK since 2008, selling its RMI data through CarweB as its distributor. In addition, since early 2014, HaynesPro has also sold its RMI data through other UK partners.

Would the SLC be remedied, mitigated or prevented?

20. As a current supplier of RMI data to CarweB, HaynesPro told the CMA that the acquisition of the Divestment Business would enable HaynesPro to continue serving E3 Technical customers whilst expanding in the relevant RMI markets in the UK. This will include, for example, running VRM lookup and Helpdesk operations and collaborating with parts distribution partners.
21. In the SLC Decision, the CMA identified significant barriers to entry and expansion in the supply of RMI platforms in the UK, in particular: (i) customer stickiness, arising from the strong brands of the Parties and familiarity of mechanics with their products; and (ii) the time and investment required to establish an accurate VRM matching system. The CMA considers that the acquisition of the Divestment Business by HaynesPro would facilitate the entry or expansion in the UK of an alternative supplier of RMI platforms and so would remedy or mitigate the SLC.

¹³ [OFT1122](#), paragraphs 5.25–5.30.

Independence

22. HaynesPro does not have any structural or financial links with Solera, HPI or Autodata, other than currently supplying its unedited RMI data to CarweB. This relationship will be terminated after the acquisition of the Divestment Business by HaynesPro.

Financial suitability

23. HaynesPro told the CMA that it will finance the acquisition through a combination of internal cash and a bank overdraft facility. The CMA believes that the company possesses the necessary financial resources and expertise to operate and maintain the Divestment Business.

Expertise, incentive and intention to operate as an effective competitor

24. The CMA believes that HaynesPro will be incentivised to compete with Solera because the acquisition of the Divestment Business will enable HaynesPro to grow and expand its presence in the relevant RMI market in the UK. HaynesPro considers that the Divestment Business includes the technical and staffing resources required to enable HaynesPro to compete effectively for the supply of RMI services in the UK.
25. HaynesPro has plans to work and invest to grow its position in the RMI market in the UK.
26. In addition to its expertise on RMI, HaynesPro will benefit from the experience of the CarweB's employees being transferred as part of the Divestment Business, in relation to Helpdesk, RMI, and VRM enablement services.
27. The CMA therefore considers that HaynesPro would maintain and operate the Divestment Business as an effective competitor.

Approvals and consents

28. The Divestment Business includes all of the same licences, permits and authorisations that are necessary to carry on business in the UK in its current form. No regulatory consents or approvals are required.
29. HaynesPro intends to provide VRM enablement and effective quotation services together with its RMI platform. To do this it will need to be granted licenses from the DVLA, from the Society of Motor Manufacturers and Traders (**SMMT**) and from Thatcham Research (the **Licenses**). HaynesPro has already applied for a licence from the DVLA and from the SMMT. The

Licenses are essential to enable HaynesPro to continue to create accurate VRM lookup and effective quotation services. The CMA has no reason to believe that HaynesPro will not be able to obtain the necessary licences. As mentioned above, Solera will provide to HaynesPro, for a transitional period, the inputs necessary for HaynesPro to develop its own VRM enablement offer.

Acquisition does not create an SLC

30. HaynesPro is active in the supply of RMI data in the UK. However, as noted in the SLC Decision, with regards to RMI platforms, HaynesPro has a limited presence in the UK with a share of supply of less than 5%.
31. The CMA considers that the acquisition of the Divestment Business by HaynesPro will not in itself create an SLC.

Conclusion

32. Therefore, subject to responses to this consultation, the CMA currently considers HaynesPro to be suitable purchaser of the Divestment Business.

Proposed decision and next steps

33. For the reasons set out above, the CMA currently considers that the Proposed Undertakings and the purchase of the Divestment Business by HaynesPro are, in the circumstances of this case, appropriate to remedy, mitigate or prevent the competition concerns identified in the SLC Decision and form as comprehensive a solution to these concerns as is reasonable and practicable.
34. The CMA therefore gives notice that it proposes to accept the Proposed Undertakings to Divest in lieu of a reference of the Merger for a phase 2 investigation. The text of the Proposed Undertakings is available on the CMA case page.¹⁴
35. Before reaching a decision as to whether to accept the Proposed Undertakings, the CMA invites interested parties to make their views known to it. The CMA will have regard to any representations made in response to this consultation and may make modifications to the Proposed Undertakings as a result. If the CMA considers that any representation necessitates any material

¹⁴ See the [case page](#).

change to the Proposed Undertakings, the CMA will give notice of the proposed modifications and publish a further consultation.¹⁵

36. Representations should be made in writing to the CMA and be addressed to:

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Competition and Markets Authority
Victoria House
37 Southampton Row
London
WC1B 4AD

Email: alison.trinkl@cma.gsi.gov.uk

Telephone: 020 3738 6394

Deadline for comments: 20 July 2017

¹⁵ Under paragraph 2(4) of Schedule 10 to the Act.