

## **Anticipated acquisition by Horizon Global Corporation of Brink International B.V.**

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

**ME/6732/18**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 12 June 2018. Full text of the decision published on 12 September 2018.

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

## **CONTENTS**

SUMMARY .....	2
ASSESSMENT .....	5
Parties .....	5
Transaction .....	6
Jurisdiction .....	6
Counterfactual .....	6
Frame of reference .....	7
Competitive assessment .....	16
Horizontal unilateral effects .....	16
Vertical effects .....	74
Countervailing buyer power .....	42
Conclusion on substantial lessening of competition .....	45
DECISION .....	45

## SUMMARY

1. Horizon Global Corporation (**Horizon**) intends to acquire Brink International B.V. (**Brink**) (the **Merger**). Horizon and Brink are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Horizon and Brink is an enterprise, that these two enterprises will cease to be distinct as a result of the Merger, and that the share of supply test is met. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
3. A towbar is a bar or rigid linkage which is attached to a car, and is used to tow a vehicle such as a trailer or a caravan. The Parties are two of the largest suppliers (ie designers, manufacturers and distributors) of a range of towbars in Europe with the technical and logistical capabilities to design, manufacture and supply to the original equipment (**OE**) and independent aftermarket (**IAM**) channels.<sup>1</sup> Only one other supplier, Bosal, appears to operate at a similar scale and have similar capabilities (in terms of being active in design, manufacturing, and distribution across all types of towbars) and a similar extensive geographic presence to the Parties.
4. Brink also supplies towbar detaching systems (towbar necks) to some suppliers that compete with the Parties in the downstream supply of detachable towbars to to IAM customers in the UK (**UK IAM channel**).
5. The range of towbars includes detachable, retractable and fixed towbars. All types of towbar serve the same purpose but each of them has slightly different functionalities and, in many cases, materially different pricing. The CMA found that competitive dynamics differ between different types of towbar. The CMA therefore assessed the impact of the Merger on each type of towbar separately while taking into account certain common factors that cut across the wide range of activities of the Parties and their competitors.

---

<sup>1</sup> Horizon operates on a worldwide basis. Brink focuses predominantly on an EU-wide basis. The Parties trade using multiple brands and the ranges of products they supply in each geographic area vary as explained further in this decision.

6. Towbar detaching systems, which are a key component in the production of detachable towbars, have also been assessed as a separate frame of reference.
7. Suppliers active in the supply of towbars to OE customers (the **OE channel**) are based in different locations throughout Europe and are typically active on an EEA-wide basis. Customers in the OE channel (also located in different locations throughout Europe) procure their towbars on a European-wide (or wider) basis. By contrast, customers in the IAM channel are more frequently serviced by suppliers with a UK supply presence, including sales teams, warehouses and employees.
8. Consistent with the position described above, the CMA assessed the impact of the Merger within the following frames of reference:
  - (a) The supply of retractable towbars to OE customers in the EEA.
  - (b) The supply of detachable towbars to OE customers in the EEA.
  - (c) The supply of fixed towbars to OE customers in the EEA.
  - (d) The supply of retractable towbars to IAM customers in the UK.
  - (e) The supply of detachable towbars to IAM customers in the UK.
  - (f) The supply of fixed towbars to IAM customers in the UK.
  - (g) The supply of detaching systems (as an input within the supply of detachable towbars for IAM customers) in the UK.
9. For the frames of reference relating to the OE channel, the CMA consistently found that: (i) the Parties have a strong and well-established position (as evidenced, in particular, by their very high shares of supply); (ii) the Parties are particularly significantly competitive constraints on each other (as evidenced, for example, by bidding data and internal documents); and (iii) apart from Bosal, other suppliers active in the towbar sector are much weaker competitors.
10. Within the IAM channel, the CMA found that the position differed within different frames of reference. More specifically:
  - (a) In the supply of fixed towbars, the Parties have a relatively strong position across the sector (as evidenced by their high combined shares of supply) but there are several other alternative suppliers with the ability to meet customers' requirements;

- (b) In the supply of detachable towbars, the Parties have a relatively strong position across the sector (as evidenced by their high combined shares of supply), and there are several other alternative suppliers with the ability to meet customers' requirements, although the Parties would (through Brink's upstream supply of detaching systems) be in a position to significantly undermine the constraint posed by their most significant competitors; and
  - (c) In the supply of retractable towbars, which is a segment at a nascent stage with negligible sales, Brink does not make any sales in the UK at present and there was no evidence to suggest that it would be a particularly significant constraint on Horizon in future.
- 11. There is also a vertical relationship between Brink's upstream activities in the supply of towbar detaching systems in the UK and the Parties' downstream activities in the supply of detachable towbars to the UK IAM channel.
- 12. In its assessment of this vertical relationship, the CMA concluded that the Parties would have the ability and incentive to foreclose detachable towbar manufacturers supplying to the UK IAM channel post-Merger, resulting in a reduction of competition. The CMA found that the Parties would have the ability to foreclose downstream competitors (in particular because of their very high strong upstream market position and the lack of alternative existing or future supply options for customers). The CMA found that the Parties would also have the incentive to engage in a foreclosure strategy (in particular because of the merged entity's ability to recapture a very significant proportion of demand diverted from foreclosed downstream competitors). The CMA found that this would result in competition concerns in the downstream supply of detaching systems to IAM customers in the UK (in particular because of the lack of non-foreclosed competitors and lack of constraint from outside of the frame of reference).
- 13. The CMA found that the evidence in relation to entry and expansion was mixed (both in relation to the OE channel and the IAM channel). The CMA was therefore unable to conclude, to the requisite legal standard in a Phase 1 investigation, entry and/or expansion is likely and, would be timely and sufficient to prevent the anti-competitive effects resulting from the Merger.
- 14. The CMA noted that OE customers may have some countervailing buyer power but found that any such buyer power would not be sufficient to prevent the anti-competitive effects arising out of the Merger, in particular because of the removal of one of a very few number of sizeable competitors (Brink) and Horizon's strengthened market presence as a result of the Merger.

15. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral and vertical effects. Specifically, the CMA found a realistic prospect of an SLC in each the following frames of reference:
- (a) Horizontal effects related to the supply of each type of towbar to OE customers in the EEA.
  - (b) Vertical effects related to the supply of detaching systems (as an input within the supply of detachable towbars for IAM customers) in the UK.
16. If submitted by the Parties, the CMA will consider whether to accept undertakings under section 73 of the Enterprise Act (**the Act**). The Parties have until 19 June 2018 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to section 33(1) and 34ZA(2) of the Act.

## ASSESSMENT

### *Parties*

17. Horizon supplies a range of towbars in Europe, including in the UK. It also designs and manufactures those towbars and towbar detaching systems (an upstream key input to the supply of detachable towbars)<sup>2</sup> from multiple facilities, none of which are located in the UK.<sup>3</sup> It operates through its subsidiaries Witter Towbars (**Witter**) and Westfalia-Automotive Holding GmbH (**Westfalia**). Horizon's turnover in its most recent financial year was approximately £680m, of which [REDACTED] was derived from the UK.
18. Brink supplies a similar range of towbars in Europe, including in the UK. It also designs and manufactures those towbars and towbar detaching systems in from multiple facilities,<sup>4</sup> none of which are located in the UK. It also supplies towbar detaching systems in Europe, including in the UK, through its subsidiary ACS Systems BV (**ACS**). Brink's turnover in financial year 2016 was approximately [REDACTED], of which approximately [REDACTED] was derived from the UK.

---

<sup>2</sup> These towbar detaching systems are supplied by its subsidiary Terwa B.V. (**Terwa**).

<sup>3</sup> Horizon announced the closure of its UK manufacturing facility at Deeside in 2017 and began moving its production activities to Germany and Romania.

<sup>4</sup> Brink's manufacturing facilities are based in the Netherlands, France and South Africa, with a new facility being built in Thailand, due to start production in 2021.

## ***Transaction***

19. The Transaction involves the acquisition of Brink by Horizon.
20. The Parties informed the CMA that the Merger was also notified to the Bundeskartellamt (Federal Cartel Office) in Germany and provided appropriate waivers to facilitate timely and effective coordination between both authorities.

## ***Jurisdiction***

21. As a result of the Merger, the enterprises of Horizon and Brink will cease to be distinct.
22. The Parties overlap in the supply of different types of towbars to OE customers in the EEA and to IAM customers in the UK. Within several market segments, the Parties' combined shares of supply exceed [20-30]%, with the Merger bringing about a significant increment in share (eg the Parties have an estimated share of supply of over [50-60]% in the supply of towbars to IAM customers in the UK, with the Merger bringing about an increment of around [5-10]%). The CMA therefore believes that the share of supply test in section 23 of the Act is met.
23. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
24. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 13 April 2018 and the statutory 40 working day deadline for a decision is 12 June 2018.

## ***Counterfactual***

25. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). In practice, 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>5</sup>

---

<sup>5</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, paragraphs 4.3.5. *ff* 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).

26. In this case, the CMA has seen no evidence supporting a different counterfactual, and neither the Parties nor third parties have put forward arguments in this respect. Therefore, the CMA believes the pre-Merger conditions of competition to be the relevant counterfactual.

### ***Frame of reference***

27. 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 merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.<sup>6</sup>
28. Towbars of various types can be supplied to OEM customers (also referred to as 'line fit' customers), who purchase towbars to install during the manufacturing process for a car. They can also be sold to OES customers (also referred to as 'dealer fit' customers), which are often distribution networks run by large car manufacturers and purchase towbars to install when selling a car to an end-user. IAM customers purchase towbars for 'retrofitting' (ie after the manufacturing and sales process for a car). OEM and OES customers are typically vehicle manufacturers, such as VW, Renault and BMW, whereas IAM customers are wholesalers and specialist automotive parts fitters, such as PF Jones and Towbar Express.
29. The Parties supply various types of towbar to OEM, OES, and IAM customers in Europe, including customers in the UK. Both Parties also manufacture towbar detaching systems, which are a key input in detachable towbars, although only Brink is currently active in the supply of these systems to third party suppliers in the UK. These third party suppliers compete downstream with the Parties in the supply of detachable towbars to IAM customers.

### **Product scope**

30. The Parties submitted that the CMA should assess the Merger on the basis of a market for the supply of all types of towbars (which should also include sales of the wiring kits used in conjunction and sometimes supplied together with towbars).

---

<sup>6</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

31. The CMA's established practice is to consider the narrowest plausible frames of reference in which the Parties overlap, before considering whether demand- or supply-side factors justify widening the product scope. As explained below, the CMA has considered the narrowest plausible frames of reference by considering the supply of towbars by towbar type (ie fixed, retractable and detachable) and further by customer type (ie OEM, OES and IAM). The CMA has also considered the appropriate frame of reference within which to assess Brink's upstream supply of towbar detaching systems.

*Segmentation between retractable, detachable and fixed towbars*

32. The Parties submitted that all three types of towbar should be considered as part of the same frame of reference, in particular because:
- (a) on the demand-side, (i) all type of towbars perform the same purpose, (ii) the only significant difference between different types of towbar for motorists is aesthetics, (iii) vehicle manufacturers typically choose between towbar types (depending on the relative prices of each type of towbar), and (iv) prices are similar for some types of towbars (for example, mechanical retractable towbars are priced at a similar level to detachable towbars);
  - (b) on the supply-side, (i) both Parties (and some of their competitors) supply all types of towbars, (ii) there is little difference in the manufacturing process for different types of towbars, (iii) all towbars have to meet standard legal requirements and (iv) manufacturers can start supplying customers with a particular type of towbar with relative ease, even if they do not currently supply that type of towbar; and
  - (c) overall, segmenting towbars by type ignores the constraint each type of towbar places on each another.
33. The CMA considers, however, that the available evidence does not support the Parties' position.
34. First, it indicates that there are significant demand-side differences between different types of towbar. In particular:
- (a) towbar suppliers and customers told the CMA that aesthetic and functional differences between types of towbars are important. For example, retractable towbars have functional benefits compared to detachable towbars (which must be manually removed and stored). Similarly, fixed towbars are not an option for all types of vehicle as they can interfere with some functionalities of a vehicle, such as the parking sensors;



- (b) the CMA considers that the importance of these aesthetic and functional differences are consistent with the substantial price differences between different types of towbar. For example, by the Parties' own estimates (based on previous tenders that they bid for), the mean price of a fixed towbar was [under €100], as compared to [above €300] for an electronically deployable towbar;<sup>7</sup> and
  - (c) eight customers, from both the OE and the UK IAM channels, raised competition concerns relating to specific types of towbar which is consistent with them thinking they could not switch between types of towbar in response to a price rise or decrease in quality. Furthermore, two third parties told the CMA that customers would not switch between different types of towbar if a particular type was unavailable or increased in price.
35. The available evidence indicates that there are also significant supply-side differences between different types of towbar. In particular:
- (a) there appears to be some variation in the competitive set for each type of towbar. The available evidence indicates that only a small number of competitors (effectively the Parties and Bosal) supply all three types of towbar to a material extent;
  - (b) third parties told the CMA that a fixed towbar manufacturer aiming to supply detachable or retractable towbars would face major barriers to entry in terms of patents and the expense of developing its own system;<sup>8</sup>
  - (c) this position is consistent with evidence in the Parties' internal documents, which identify (among other things) technical and development capabilities as barriers to entry, particularly for the production of retractable towbars; and
  - (d) recent evidence of entry into new types of towbar indicates that product development can take some time (even where the cost and patent barriers to entry described above can be overcome). For example, Prof Svar has been developing its retractable system since 2007 and it still has not come to market.<sup>9</sup>

---

<sup>7</sup> Shot Report, 'Horizontal merger effects – evidence from a bidding analysis – Acquisition of Brink International by Horizon Global Corporation', E.CA Economics, 09 May 2018, table 14.

<sup>8</sup> On Barriers to entry and expansion, see further paragraphs 142ff.

<sup>9</sup> Merger Notice, paragraph 178.

36. More broadly, the CMA found that the Parties' internal documents consistently distinguish between the three different types of towbar. For example, [REDACTED] sets out market shares separately for each type of towbar.<sup>10</sup> The [REDACTED] also discusses market shares for each towbar type separately.<sup>11</sup> [REDACTED] also analyses its market position for each type of towbar separately.<sup>12</sup>
37. In light of the evidence described above, the CMA assessed the supply of fixed, detachable and retractable towbars within separate frames of reference. As noted above, the boundaries of a market do not determine the outcome of the analysis of the competitive effects of a merger and therefore the CMA has taken into account the constraints exercised by different types of towbar on each other, to the extent relevant, within its competitive assessment. As explained below, the CMA has also found certain similarities in market dynamics across the entire towbars sector, which have been taken into account in the competitive assessment within all frames of reference.

#### *Segmentation by customer type*

38. OEM customers are vehicle manufacturers that purchase towbars to install during the manufacturing process of the car. They generally purchase towbars by issuing a tender to selected potential suppliers before, in most cases, subsequently entering into bilateral negotiations. To supply an OEM customer, a potential supplier must have sufficient design capabilities to assist in developing and integrating the towbar with the vehicle (on a 'per platform' basis),<sup>13</sup> and with the logistics of the manufacturing process.
39. OES customers are typically also vehicle manufacturers (or distribution networks controlled by large car manufacturers) and generally purchase towbars in the same way as OEM customers (ie through tenders). In some cases, the extent of design collaboration with the customer vehicle may be less at the OES level than at the OEM level, and therefore the ability of a towbar supplier to develop a towbar in this way may be commercially less significant for this kind of customer.
40. Different vehicle manufacturers operate different procurement strategies, which can change over time and/or by brands/vehicle platforms/models.

---

<sup>10</sup> Brink's Vendor Commercial Due Diligence Final Report (Draft), produced by Roland Berger, 17 March 2018. Annex 11.3 to Merger Notice, slides 58 and 72.

<sup>11</sup> Brink's Group *Strategic Plan 2018-2022*, prepared by Brink's Management Team, 13 November 2017. Annex 12.5 to Merger Notice, slide 14.

<sup>12</sup> Horizon's *Europe & Africa 2018-2020 Strategic Plan*, November 2017. Annex 13.8 to Merger Notice, slides 5 and 10.

<sup>13</sup> A platform is a set of design features and components that are shared across a number of models.

These strategies include purchasing towbars at the OEM or OES levels only or 'hybrid' models in which towbars are purchased at both the OEM and OES levels of the customer's supply chain.

41. IAM customers are independent wholesalers and specialist automotive part fitters. Based on the Parties' and IAM customers' submissions, the CMA understands that they procure and fit towbars across multiple brands of vehicles. They generally purchase towbars as and when required (and therefore not through tenders) from manufacturers' catalogues, which include towbars for a wide variety of car models.

42. The Parties submitted that the CMA should consider OEM and OES customers as part of a single frame of reference for original equipment (**OE**) customers, and that OE and IAM customers should be assessed as separate frames of reference.

- *Potential segmentation between OEM and OES customers*

43. The Parties submitted that OES and OEM customers are effectively the same entities (ie large vehicle manufacturers) and use the same specifications, with the only significant difference between supply to these channels relating to supply chain logistics. The Parties also noted that the European Commission did not make a distinction between OEM and OES customers in previous automotive parts cases (albeit that these cases did not involve towbars).<sup>14</sup>

44. Some of the Parties' customers and competitors told the CMA that some OES customers can be less technically demanding than OEM customers. The CMA received examples of small OES suppliers that were unable to meet OEM customers' typical requirements. Most third parties who responded to the CMA's questionnaire said that the OEM and OES segments are very similar, with the only real differences arising from specific packaging and logistics requirements on the customer's part. While the available evidence indicates that OEM requirements for these aspects of supply are more complex than those in the OES channel, these were not considered to be material supply-side differences within the OE channel. While there can be some similarities in supply to the OES channel and the UK IAM channel,<sup>15</sup> the differences between the OE channel and the IAM channel were generally far more significant.

---

<sup>14</sup> Case COMP/M.3972 *TRW Automotive / Dalphi Metal España* and Case COMP/M.2939 *JCI / Bosch / VB Autobatterien JV*.

<sup>15</sup> For example, one third party gave an example of a vehicle manufacturer buying parts from a IAM supplier that did not necessarily meet OEM customers' usual enhanced requirements.

45. Accordingly, while recognising some variety in the technical demands of OES customers, the CMA considered that supply to OES and OEM customers should be analysed as part of the same frame of reference for OE customers.

- *Potential segmentation between OE and IAM customers*

46. The Parties submitted that OE and IAM customers should be assessed separately due to differences in the approach to design, standards of production and purchasing methods.

47. The Parties' customers and competitors told the CMA that OE customers have more complex requirements than IAM customers. For example, OE customers require suppliers to work with car designers to decide how the towbar will be integrated with the vehicle (ie how towbars will be mounted on the chassis) and expect rapid just-in-time delivery to assembly plants or at the official vehicle distribution network in the UK. This is consistent with the position set out in the Parties' internal documents.

48. Accordingly, the CMA considered that supply to OE and IAM customers within separate frames of reference.

*The inclusion of wiring kits within the frame of reference*

49. The Parties submitted that sales of wiring kits should be included within the frames of reference for the supply of towbars to OE customers and IAM customers because wiring kits are required for using a towbar and all towbar manufacturers can source wiring kits for sale alongside a towbar (frequently selling them as a part of a single 'kit').

50. The CMA notes that products which require each other in order to function do not necessarily form part of the same frame of reference. The Parties do not manufacture wiring kits themselves (but do, in some cases, source wiring kits from third parties to supply along with their towbars).<sup>16</sup> The Parties' market presence is therefore attributable to the resale of products manufactured by third parties and, in any event, it results in a low combined share. The CMA therefore has excluded the supply of wiring kits from all frames of reference in relation to the supply of towbars.<sup>17</sup>

---

<sup>16</sup> In other cases, other OE customers tender for wiring kits separately and IAM manufacturers procure wiring kits separately.

<sup>17</sup> The CMA has not further considered the impact of the Merger within a separate frame of reference in relation to the supply of wiring kits further because of the ability of third parties to source wiring kits separately, the Parties' low estimated shares of supply in this segment and the absence of third party concerns in relation to wiring kits.

### *The upstream supply of towbar detaching systems*

51. As noted above, a vertical relationship exists between Horizon's upstream supply of towbar detaching systems (or towbar 'necks') and the Parties' downstream activities in relation to the supply of detachable towbars in the IAM channel.<sup>18</sup>
52. Third Parties told the CMA that there is no scope to substitute a towbar detaching system for another product when producing a detachable towbar. The CMA therefore analysed this vertical relationship by reference to an upstream frame of reference for towbar detaching systems.

### *Conclusion on product scope*

53. Accordingly, for the reasons set out above, the CMA assessed the impact of the Merger within the following frames of reference:<sup>19</sup>
  - (a) The supply of retractable towbars to OE customers.
  - (b) The supply of detachable towbars to OE customers.
  - (c) The supply of fixed towbars to OE customers.
  - (d) The supply of retractable towbars to IAM customers.
  - (e) The supply of detachable towbars to IAM customers.
  - (f) The supply of fixed towbars to IAM customers.
  - (g) The supply of towbar detaching systems (as an input within the supply of detachable towbars for IAM customers).

### *Geographic scope*

#### *Supply of retractable, detachable and fixed towbars to OE customer in the EEA*

##### *OE (customers) channel*

54. The Parties submitted that the geographic scope of the OE channel is at least EEA-wide in particular because:

---

<sup>18</sup> The supply of detaching systems is not relevant for the OE channel as all large OE suppliers produce their own detaching systems.

<sup>19</sup> As noted above, within all frames of reference the term 'supply' includes multiple stages of production including the design, manufacture and distribution of towbars.

- (a) there are no technical standards or barriers to trade within the EEA;
  - (b) vehicle manufacturers award contracts based on bidding processes carried out at a European-wide level;
  - (c) transport costs are relatively limited in the EU (c.10% of the total cost of a towbar) and so EEA-based towbar manufacturers are able to supply vehicle manufacturers irrespective of their location in the EEA; and
  - (d) in practice, towbar manufacturers organise their production, sales and marketing activities on the basis of EU or EEA (or wider) markets. In particular, Brink conducts its business activities within the OE channel on an EU-wide basis, with Horizon conducting its activities in relation to an 'EMEA' (ie Europe, Middle East and Africa) area.
55. OE customers confirmed to the CMA that they procure all of their towbars on a European basis (or wider) and that location of the supplier was not particularly important to them.
56. Accordingly, the CMA considered that the supply of each type of towbar to OE customers should be considered on an EEA-wide basis.

*IAM (customers) channel*

57. The Parties submitted that the supply of towbars to IAM customers could be pan-European in particular because:
- (a) manufacturers supply the UK from elsewhere in Europe;
  - (b) some important purchasers in the UK, such as PF Jones and Amazon, are more likely to acquire products on a pan-European basis;
  - (c) there are no regulatory restrictions in supplying to different national markets; and
  - (d) brands would not be a material barrier between national markets.
58. The Parties also recognised, however, that there are some indications of a national market, such as differences in prices due to differing local distribution costs, different marketing positions in different national markets, and material transportation costs.
59. The CMA notes that while neither Party has UK manufacturing facilities (as set out in paragraphs 17-18), both have a UK presence including sales teams, warehouses and employees.

60. The UK IAM customers of the Parties who responded to the CMA's market investigation said that the location of a supplier was not particularly important, so long as towbars could be ordered for delivery the next working day. This is consistent with evidence from IAM customers that most of their suppliers have UK-wide coverage. This was also reflected in the Parties' internal documents, which consistently analyse the IAM sector (including competitive dynamics within the sector) by reference to national territories.<sup>20</sup>
61. Accordingly, for the reasons set out above, the CMA considered that the appropriate geographic scope for the supply of all types of towbar to IAM customers is UK-wide.
62. Nevertheless, consistent with its established practice (as described in paragraph 27 above), the CMA has considered supply from outside the UK (ie whether IAM customers would increase their purchases from non-UK based suppliers if UK-based suppliers increased their prices or reduce their service quality) to the extent relevant within the competitive assessment.<sup>21</sup>

#### *Towbar detaching systems*

63. The Parties did not make any submissions in relation to the geographic dimension of the supply of towbar detaching systems.
64. The available evidence indicates that at least some European-based suppliers of towbar detaching systems do not serve UK-based customers (eg Terwa, Horizon). Some towbar manufacturers told the CMA that obtaining towbar detaching systems with a short lead-time is commercially important, on which basis the CMA understands that having local logistical arrangements can be an important aspect of a supplier's competitive offering.
65. Given, in particular, that many suppliers without an established UK presence do not appear to service UK-based customers, the CMA considered that the appropriate geographic scope for the supply of towbar detaching systems is UK-wide.
66. Nevertheless, consistent with its established practice, the CMA has again considered supply from outside the UK (ie whether towbar manufacturers serving UK IAM customers could increase their purchases of detaching

---

<sup>20</sup> Brink's *Strategic Plan 2018,-2022*, prepared by Management Team, 13 November 2017. Annex 12.5 to Merger Notice, slide 15 states that there are a 'variety of local players' active in IAM. In contrast, it considers OEM and OES for the whole of Europe.

<sup>21</sup> [Merger Assessment Guidelines](#), paragraph 5.2.26.

systems from suppliers not currently serving UK customers) to the extent relevant within the competitive assessment.<sup>22</sup>

#### *Conclusion on frame of reference*

67. For the reasons set out above, the CMA assessed the impact of the Merger within the following frames of reference:
- (a) The supply of fixed towbars to OE customers in the EEA.
  - (b) The supply of detachable towbars to OE customers in the EEA.
  - (c) The supply of retractable towbars to OE customers in the EEA.
  - (d) The supply of fixed towbars to IAM customers in the UK.
  - (e) The supply of detachable towbars to IAM customers in the UK.
  - (f) The supply of retractable towbars to IAM customers in the UK.
  - (g) The supply of detaching systems (as an input within the supply of detachable towbars for IAM customers) in the UK.

#### **Competitive assessment**

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

68. 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>23</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 within the frames of reference set out in paragraph 67 above.
69. For the reasons described above, the CMA considered that the supply of fixed, detachable and retractable towbars should be considered within separate frames of reference (for both OE customers and IAM customers). Nevertheless, the available evidence indicates that there are some similarities

---

<sup>22</sup> [Merger Assessment Guidelines](#), paragraph 5.2.26.

<sup>23</sup> [Merger Assessment Guidelines](#), paragraphs 5.4.1. ff



in market dynamics across the entire towbars sector (which should be taken into account in the competitive assessment within all frames of reference).

70. Accordingly, before setting out its assessment of competition within each of the frames of reference identified above, the CMA first, by way of background and as a basis for the individual analyses that follow, provides an overview of market dynamics within the towbars sector in relation to OE customers (within the EEA) and IAM customers (within the UK).

*Market dynamics in relation to the supply of towbars to OE customers in the EEA*

71. The available evidence indicates that the supply of towbars to OE customers in the EEA (within all relevant frames of reference) is characterised by a number of common factors. In particular, the CMA found that:
- (a) the Parties have a particularly strong and well-established position across the towbars sector (as evidenced, in particular, by their very high combined shares of supply);
  - (b) the Parties exert significant competitive constraints on each other in relation to the supply of towbars, as seen in the Parties' bidding data, internal documents and the views of third parties;
  - (c) apart from Bosal, the other suppliers that are currently active in the towbars sector appear to be weaker competitors to (and exert a far less significant constraint on) the Parties;
  - (d) the towbars sector is characterised by significant barriers to entry and expansion (with previous market experience showing that entry can be difficult and take considerable time)<sup>24</sup>; and
  - (e) the Parties' customers are typically large and sophisticated players, but their ability to exercise buyer power would likely be limited post-Merger because of the loss of rivalry between the Parties.<sup>25</sup>
72. Each of these factors is explained in further detail below.

*The Parties have a strong and well-established position across the towbars sector*

73. The available evidence indicates that the Parties have a particularly strong and well-established position across the towbars sector. In particular, the CMA estimates that the Parties have a combined share of supply of over [60-70]%

---

<sup>24</sup> See paragraphs 142 ff on Barriers to entry and expansion.

<sup>25</sup> See paragraphs 185 ff on Countervailing buyer power.

in the supply of all towbars to OE customers in the EEA (with the Merger bringing about an increment of around [20-30]%) (See Table 1 below).

**Table 1: Share of supply estimates for OE customers (2017, EEA)**

<i>Towbar company</i>	<i>Value €m</i>	<i>Share</i>
Horizon	[X]	[40-50]%
Brink	[X]	[10-20]%
<b>Parties</b>	[X]	<b>[60-70]%</b>
Bosal	[X]	[30-40]%
Prof Svar	[X]	[0-5]%
Others	[X]	[0-5]%
Total	[X]	

Source: Towbar manufacturers.

74. The CMA estimates that Brink, Horizon and a third competitor (Bosal) made over [85-95]% of sales of all towbars to OE customers by value in the EEA in 2017. The other available evidence, including from the Parties' internal documents, also consistently indicates that the towbar sector is very concentrated and that the Parties hold strong positions.
75. The Parties submitted that shares of supply are not a reliable indicator of the market power in relation to the supply of towbars. The Parties suggested that such shares show only the current level of sales and therefore do not necessarily reflect the Parties' competitive significance in future. The Parties also suggested that the loss of one high-volume tender could severely impact the market shares of a towbar supplier and that the Parties would remain, in any case, susceptible to pressure from OE customers given their access to accurate cost data and ability to compare prices and OE customers' price negotiation strategies.<sup>26</sup>
76. Consistent with its guidance and established practice,<sup>27</sup> the CMA considers that market shares can give an indication of the potential extent of a firm's market power. While estimates of market shares are based on past competitive outcomes,<sup>28</sup> they can provide insight into likely future outcomes. In this regard, the CMA noted that the Parties' market shares are consistent with a broader body of evidence indicating that they hold a strong and well-established position across the towbars sector.<sup>29</sup>
77. The Parties submitted an analysis of bidding data based on matching their records of interactions with customers in response to tenders from 2015 to

<sup>26</sup> The potential for OE customers to exercise buyer power is considered below in paragraphs 187 ff.

<sup>27</sup> [Merger Assessment Guidelines](#), paragraphs 5.3.4. ff.

<sup>28</sup> This is particularly problematic in this sector because the current supply of towbars will in part be determined by long lasting contracts won many years ago.

<sup>29</sup> Frost and Sullivan (2017), *Global Tow bar Market Assessment and Competitive Intelligence*.

2017.<sup>30</sup> The CMA noted that there are certain aspects of this analysis that limit the weight that can be placed on it. In particular, the analysis: (i) includes only tenders the Parties bid on; (ii) is based on the Parties' perception of who else bid (apart from their own participation), which appears (based on the other evidence available to the CMA) to overstate significantly how often competitors' participate;<sup>31</sup> and (iii) is based on the Parties' perception of who won each tender (apart from where the Parties won tenders). In any case, the CMA noted that the results of this analysis were consistent with the Parties continuing to win a large proportion of contracts and, in particular, did not suggest any recent weakening of their competitive position.

78. The CMA notes that the Parties' suggestion that the loss of one high-volume tender could severely impact the market shares of a towbar supplier does not appear to be consistent with the available evidence. While individual contracts may be significant, the Parties' bidding data indicates that the largest tender within the last three years was for [X] towbars per annum, compared to the Parties' sales of [X] towbars to OE customers in 2017.

*The Parties are significant competitive constraints on each other*

79. The Parties submitted that Brink is a small player in the OE channel (and therefore should not be considered to be a particularly close competitor to Horizon at present). The Parties considered that the more limited position of Brink is evidenced by its lower output and the Parties' analysis that Brink participated in less than a third of all tenders in which the Parties were invited to participate between 2015 and 2017. The Parties' analysis suggested that, out of the [X] tenders in which Horizon participated, Brink bid in only [X] (ie [X] of the tenders in which Horizon bid).
80. The CMA noted, however, that Brink is the third largest supplier in the OE channel with an estimated [10-20]% share. The CMA further noted that while the Parties' bidding data shows Brink only bid on [X] of the tenders in which Horizon participated, these tenders were larger than average. When the size of the tenders is taken into account (ie the tenders are weighted by total anticipated lifetime volume of the contract),<sup>32</sup> Brink bid for [X] of the business for which Horizon bid.

---

<sup>30</sup> The records covered, amongst other things, the details of the customer; the type(s) and quantities of towbars to be delivered; and who the Parties' thought had bid and won each tender.

<sup>31</sup> Both Parties overestimated how often the other was competing with it. The Parties bid against each other in [X] tenders, but Horizon thought it had competed with Brink on [X] occasions and Brink thought it had competed with Horizon on [X] occasions.

<sup>32</sup> The total lifetime anticipated volume is an estimate of how many towbars would be supplied as part of that contract over the full duration of that contract.

81. Furthermore, the Parties' bidding data suggests that Brink is a relatively large constraint compared to other competitors as Horizon 'considered' Brink to be a competitor in [X] out of the [X] tenders in which Horizon participated, which was second only to Bosal, which Horizon thought it had competed against in [X] tenders.<sup>33</sup>
82. The significant competitive constraint that the Parties exercise on each other is also reflected by the other evidence available to the CMA. The Parties' competitors and customers who responded to the CMA's market investigation almost unanimously told the CMA that the Parties have a very similar product and service offering and are close competitors. The Parties' internal documents consistently emphasise each other (and Bosal and to an even lesser extent Prof Svar) as their closest competitors.<sup>34</sup>

*Apart from Bosal, other competitors are far less significant constraints on the Parties*

83. The Parties submitted that there are a large number of alternative suppliers for OE customers, including Bosal, Prof Svar, MVG and Aragon, all of which would continue to constrain the Parties post-Merger. The CMA considered, however, that this position is not fully supported by the available evidence.
- *Bosal appears to be a close competitor to the Parties*
84. The available evidence indicates that Bosal appears to compete closely with the Parties. In particular:
- (a) it accounts for a significant share of supply across the towbars sector (the CMA estimates that its share across all types of towbar is [30-40]%)
  - (b) in the bidding data submitted by the Parties, each Party considered Bosal to have competed against them more often than any other competitor;<sup>35</sup>
  - (c) the Parties submitted that Bosal is their closest rival in the supply of towbars to OE customers.<sup>36</sup> This is consistent with the Parties' internal

---

<sup>33</sup> It is not possible to compare how often Bosal actually bid against Horizon as the Parties bidding data only includes the Parties' perceptions about when Bosal (and others) bid. Brink thought it competed against Horizon in [X] of [X] tenders in which Brink participated. Again, this was second only to Bosal, which Brink thought it competed against in [X] tenders.

<sup>34</sup> For example, see Brink's Vendor Commercial Due Diligence Final Report (Draft), produced by Roland Berger, 17 March 2018. Annex 11.3 to Merger Notice, slides 58 and 72. Also, Horizon's *Europe & Africa 2018-2020 Strategic Plan*, November 2017. Annex 13.8 to Merger Notice, And, Brink's *Strategic Plan 2018,-2022*, prepared by Management Team, 13 November 2017. Annex 12.5 to Merger Notice.

<sup>34</sup> See paragraph 90

<sup>35</sup> Horizon considered Bosal to have bid against it in [X] out of [X] tenders. Brink considered Bosal to have bid against it in [X] out of [X] tenders.

<sup>36</sup> Merger Notice, paragraph 192.

documents, which consistently emphasise Bosal as a close competitor;  
and

(d) all six<sup>37</sup> OE customers that responded to the CMA's questionnaire were either supplied by Bosal or considered them a potential supplier.

- *Prof Svar appears to be a more remote competitive constraint on the Parties*

85. The Parties submitted that Prof Svar is a substantial competitor which already supplies several major OEs and which is rapidly growing, in particular as a result of the investment and sectoral expertise injected by its new owners, Brano Group (which acquired Prof Svar in 2014).<sup>38</sup> The Parties submitted that their analysis of the bidding data showed Prof Svar had been successful in recent tenders, supporting the Parties' belief that Prof Svar is bidding successfully more frequently than it had previously.
86. The CMA considered, however, that this position is not fully supported by the available evidence.
87. It is clear that Prof Svar's current market position is limited, with an estimated share of supply of below [0-5]% across all towbars.<sup>39</sup> While these shares of supply would not necessarily reflect recent success in winning tenders, they show that Prof Svar does not have an established track record of winning a significant amount of business within the towbars sector.
88. Prof Svar's limited success in securing tenders (including recent tenders) is also highlighted in the Parties' analysis of their bidding data, which shows that Prof Svar won only [X] of those tenders weighted by lifetime volume and that Prof Svar bid against the Parties on considerably fewer tenders than Bosal or each other.<sup>40</sup>
89. While the Parties suggested that their analysis shows that Prof Svar bid against Horizon on [X] of tenders (weighted by anticipated volume), the available evidence did not allow the CMA to confirm Prof Svar's participation in these tenders. The CMA noted that the Parties had, in practice, significantly overestimated how often they had bid against each other (before their

---

<sup>37</sup> A further OE customer did not answer this question.

<sup>38</sup> The Parties told the CMA that the Brano Group already supplies other car parts to large OE customers such as BMW, Volvo and JLR Group.

<sup>39</sup> At present, Prof Svar does not supply retractable towbars. However, the CMA understands it is developing a model although the CMA does not know when this model will be commercialised.

<sup>40</sup> Horizon considered it bid against Prof Svar for [X] out of [X] tenders compared to [X] against Brink and [X] against Brink. Brink considered it bid against Prof Svar in [X] out of [X] tenders compared to [X] times against Bosal and [X] times against Horizon.

respective bidding records could be reconciled for the purposes of the CMA's investigation) and therefore that their estimations of Prof Svar's participation are also likely to be overstated (in light of the other evidence suggesting that Prof Svar is a more limited competitive constraint within this segment).

90. The Parties' internal documents give a mixed picture of Prof Svar's importance. For example, [REDACTED].<sup>42</sup> While Prof Svar has more prominence in Horizon's recent internal documents, it is primarily noted as a competitor on price, whereas Brink and Bosal are identified as multi-faceted competitors with strong product development capabilities.<sup>43</sup>
91. This is consistent with the position set out in a third party market report, which included Prof Svar as a key competitor but noted that it has a focus on select OEM customer groups, produces low tech towbars and was weak in technology innovation.<sup>44</sup>
92. The CMA received mixed views from customers on the strength of Prof Svar as a supplier. Three out of six<sup>45</sup> OE customers that responded to the CMA's questionnaire said they would consider buying from Prof Svar. By contrast, all six used or would consider the Parties and Bosal (with one customer commenting negatively on Prof Svar's quality).
93. The available evidence in relation to the recent evolution and likely future growth of Prof Svar was also mixed. In particular:
  - (a) while Brano Group seems to have high ambitions for Prof Svar, stating in 2014 that '[w]e want to be a European peer in the field of towing equipment within four years,' no supporting evidence has been provided to show that Prof Svar has taken concrete steps towards achieve these ambitions;
  - (b) the Parties' bidding data from 2015 to 2017 does not suggest that Prof Svar is a growing competitive present presence, in particular because it shows that:

---

<sup>41</sup> Brink's *Strategic Plan 2018-2022*, prepared by Management Team, 13 November 2017. Annex 12.5 to Merger Notice.

<sup>42</sup> See footnote 10 above.

<sup>43</sup> Horizon's *Europe & Africa 2018-2020 Strategic Plan*, November 2017. Annex 13.8 to Merger Notice,

<sup>44</sup> Frost and Sullivan (2017), *Global Tow bar Market Assessment and Competitive Intelligence*, page 61.

<sup>45</sup> A further OE customer did not answer this question.

- (i) the number of tenders in which Prof Svar has bid each year has not grown over this period;<sup>46</sup>
  - (ii) the share of tenders where Prof Svar bid (weighted by anticipated lifetime volumes) has increased only very marginally;<sup>47</sup>
  - (iii) the proportion of tenders that Prof Svar is estimated to have won has not increased over this period (and, in fact, decreased slightly in 2016);<sup>48</sup> and
- (c) a third party market report from a third party raised doubts about Prof Svar's recent commercial record, noting that '*Prof Svar is steadily losing foothold in European OEM/OES Market.*'<sup>49</sup>
94. Accordingly, the CMA considered in the round that the evidence described above supports the position that Prof Svar does provide some competitive constraint on the Parties and that the extent of this constraint could increase in future. The available evidence also indicates, however, that this constraint is currently limited and, in particular, that Brink is a far closer competitor to Horizon at present.
- *Other competitors do not impose any material competitive constraint on the Parties*
95. While the Parties suggested that other suppliers, such as MVG, Aragon, and GDW, would continue to constrain the Parties post-Merger, the CMA considered that this position was not supported by the available evidence. In particular:
- a) estimates of market shares provided by both the Parties and a third party did not allocate any sales to these smaller suppliers;
  - b) the Parties' bidding data shows that the Parties estimated that a competitor other than Bosal and Prof Svar bid in only [X] out of [X] tenders in which the Parties bid (notwithstanding, as described above, that the Parties appear generally to overestimate the extent to which other suppliers have bid on previous tenders);

---

<sup>46</sup> The bidding analysis showed Prof Svar bid against the Parties [X] times in 2015, [X] times in 2016 and [X] times in 2017.

<sup>47</sup> The bidding analysis showed that weighted by anticipated lifetime volumes Prof Svar bid against the Parties in [X] of tenders in 2015, [X] of tenders in 2016 and [X] of tenders in 2017.

<sup>48</sup> Weighted by anticipated lifetime volumes, the CMA calculates that the data shows Prof Svar won [X] of tenders in 2015, [X] in 2016 and [X] in 2017.

<sup>49</sup> Frost and Sullivan (2017), *Global Tow bar Market Assessment and Competitive Intelligence*, page 23.

- c) only two out of six<sup>50</sup> OE customers that responded to the CMA's questionnaire had considered suppliers other than the Parties, Bosal or Prof Svar. By contrast, all six had used or had considered the Parties and Bosal. In particular, customers indicated that both Aragon and GDW were generally regarded as IAM suppliers rather than OE suppliers; and
- d) these suppliers appear to have limited capability to service the OE segment, in particular because their existing activities appear to be heavily focussed on that part of the OES channel that is, as discussed at paragraph 44 above, more similar to the IAM channel, which mean that they would struggle to compete for more demanding OE work. In particular, one of these competitors told the CMA that it supplies OES customers but not OEM customers, since it cannot offer just-in-time fulfilment capabilities. Another of these competitors told the CMA that it does not do any OEM work and only does a small quantity of OES work. That competitor said that OEM supply differed to OES supply, amongst other things, because of the higher logistics coordination requirements (and higher costs). An OE customer told the CMA that one of these competitors could not meet its needs because it was unable to develop a towbar using 'car data' only (ie collaborating in the development of the car and towbar) rather than using existing car designs with key inputs, such as mounting points, already established.

- *Conclusion on market dynamics in relation to the OE channel*

96. The CMA considered that the supply of fixed, detachable and retractable towbars to OE customers is characterised by the common factors in relation to competitive dynamics described above.<sup>51</sup> These factors have been taken into account, to the extent relevant, within each of the individual analyses of the separate frames of reference that follow below.

*Horizontal unilateral effects in the supply of fixed towbars to OE customers*

97. The Parties submitted that competition concerns did not arise within this segment noting, in particular, that Prof Svar has been aggressively pursuing both JLR and BMW in recent months. The Parties added that [X].<sup>52</sup> The CMA considered, however, that the Parties' position is not consistent with the available evidence.

---

<sup>50</sup> A further OE customer did not answer this question.

<sup>51</sup> See paragraphs 71 ff.

<sup>52</sup> Horizon's *Europe & Africa 2018-2020 Strategic Plan*, November 2017. Annex 13.8 to Merger Notice.



98. First, the CMA found that the Parties have a high combined share of supply of over [60-70]% in relation to the supply of fixed towbars to OE customers (with the Merger bringing about an increment of over [30-40]%).<sup>53</sup>
99. Second, customers and competitors told the CMA that the Parties only compete with Bosal and Prof Svar in this segment and that the constraint imposed by Prof Svar on the Parties is uncertain. The CMA noted that these third party views about Prof Svar's limited market position are consistent with its limited share of supply (estimated at around [0-5]%) and limited record of participation and success in the bidding data provided by the Parties.<sup>54</sup>
100. Third, some smaller competitors, such as Aragon and GDW, supply some OES customers with small volumes of fixed towbars. However, this supply does not appear to be a material constraint on the Parties' activities. In particular, reflecting the views submitted by customers, the CMA considered (as described in paragraph 46 above) that these activities reflect the less stringent requirements of some OES customers rather than any ability on the part of these suppliers to serve the technical requirements of OE customers.
101. Accordingly, on the basis of the evidence described above (including the competitive dynamics common to the supply of all types of towbar to the OE channel), the CMA considered that the Parties have a strong market position within this segment and would not face sufficient constraints post-Merger. The CMA therefore believes that the Merger gives rise to substantial competition concerns in the supply of fixed towbars to OE customers.

*Horizontal unilateral effects in the supply of detachable towbars to OE customers*

102. The Parties submitted that competition concerns did not arise within this segment, suggesting that there are four suppliers (other than the Parties) who currently supply at least one vehicle manufacturer and therefore can be considered credible suppliers to other manufacturers. In particular, the Parties stressed that Prof Svar has a strong detachable offering at a low price point.<sup>55</sup>

---

<sup>53</sup> By value. Based on information provided by towbar manufacturers.

<sup>54</sup> See paragraph 88 above. Very few of Prof Svar's wins were for fixed towbars, however, the CMA has put limited weight on this given the limited coverage of the Parties' bidding data and that many tenders are for multiple types of towbar.

<sup>55</sup> See paragraph 97 above.

The CMA considered, however, that the Parties' position is not consistent with the available evidence.

103. First, the CMA found that the Parties have a high combined share of supply of over [70-80]% in relation to the supply of fixed towbars to OE customers (with the Merger bringing about an increment of over [20-30]%).<sup>56</sup>
104. Second, customers and competitors told the CMA that the Parties only compete with Bosal and Prof Svar in this segment and the CMA considered that Prof Svar is a slightly weaker competitor because it:
- (a) bids in relatively few tenders; and
  - (b) has a low share of supply and (as described above, paragraph 87) rarely appears in the Parties internal documents.
105. Accordingly, on the basis of the evidence described above (including the competitive dynamics common to the supply of all types of towbar to the OE channel), the CMA considered that the Parties have a strong market position within this segment and would not face sufficient constraints post-Merger. The CMA therefore believes that the Merger gives rise to substantial competition concerns the supply of detachable towbars to OE customers.

*Horizontal unilateral effects in the supply of retractable towbars to OE customers*

106. The Parties submitted that competition concerns did not arise within this segment, suggesting that Brink (with a limited increment) is not a close competitor to Horizon and Bosal is the key supplier and Horizon's closest competitor. In particular, the Parties noted that Bosal developed the first fully retractable towbar and owns valuable patents (which are used even by Horizon). In addition, the Parties noted that Prof Svar is currently developing its own retractable system and therefore its competitive position in this segment should strengthen. The CMA considered, however, that the Parties' position is not consistent with the available evidence.
107. First, the CMA found that the Parties have a high combined share of supply of over [40-50]% in relation to the supply of fixed towbars to OE customers (with the Merger bringing about an increment of [0-5]%).<sup>57</sup>

---

<sup>56</sup> By value. Based on information provided by towbar manufacturers.

<sup>57</sup> By value. Based on information provided by towbar manufacturers.

108. Second, two OE customers raised concerns about the merger leading to a loss of competition specifically in this segment.
109. Third, the Parties' bidding data shows Horizon considered Brink to have bid against it in [X] of [X] tenders involving retractable towbars (representing [X] of tenders when weighted by anticipated lifetime volumes). This indicates that Brink represents a constraint on Horizon.
110. Fourth, the Parties' customers identified only one other credible competitor to the Parties – Bosal – within this frame of reference. The share data suggest that Bosal is the market leader within this segment, with an estimated [50-60]% share of supply, and it appears to be the closest competitor to each of the Parties. Notwithstanding its very significant market position, some third parties suggested that Bosal's retractable towbars were less technologically advanced than those supplied by the Parties.
111. Fifth, while Brink's share of supply is relatively limited at present, the CMA considers that the available evidence indicates that it is a material (and growing) constraint on Horizon. In particular, Horizon's internal documents identify [X].<sup>58</sup>
112. Sixth, as noted above, the available evidence indicates that the constraint of Prof Svar at present is limited (see paragraph 87) and the CMA does not have any conclusive evidence to determine its likely development in the market (see paragraph 93(a)).
113. Accordingly, on the basis of the evidence described above (including the competitive dynamics common to the supply of all types of towbar to the OE channel), the CMA considered that the Parties have a strong market position within this segment and would not face sufficient constraints post-Merger. The CMA therefore believes that the Merger gives rise to substantial competition concerns in the supply of retractable towbars to OE customers.

*Market dynamics in relation to the supply of towbars to IAM customers in the UK*

114. In broad terms, the supply of towbars to the IAM channel is less technically challenging than supply to the OEM channel, and therefore the channel is characterised by a greater degree of commoditisation. Motorists' choices primarily relate to questions of functionality (eg whether the towbar is suitable for the weight/load required, it is the correct height, and can fit the vehicle

---

<sup>58</sup> Horizon's *Europe & Africa 2018-2020 Strategic Plan*, November 2017. Annex 13.8 to Merger Notice, slide 11.

model). While some manufacturers can incorporate additional features intended to improve the end-product, the vast majority of development and design takes place during the development of a towbar as an OE product. Accordingly, suppliers in the IAM channel require less technical capability and their activities primarily consist of the the manufacturing and supply of 'simpler' towbars. Procurement processes also tend to be less demanding, with customers typically procuring substantially smaller volumes of towbars (either on an *ad hoc* basis or through far simpler contractual processes).

115. The available evidence indicates that the supply of fixed and detachable towbars (which together make up almost the entire UK market, as the supply of retractable towbars to IAM customers is at a nascent stage with few sales made at present) to IAM customers in the UK, is characterised by a number of common factors. In particular, the CMA found that:

- (a) the Parties have a relatively strong position across the sector (as evidenced by their high combined market share);
- (b) there is a larger range of alternative suppliers active in the UK IAM channel with the ability to meet customers' requirements than in the OE channel;
- (c) non-UK competitors appear to be a less significant alternative given their currently more limited market presence, reflecting their shares of supply and customer views; and
- (d) there appears to be a significant degree of competitive interaction between the Parties in the IAM channel, particularly from the point of view of customers.

116. Each of these factors is considered in further detail below.

- *The Parties have a relatively high combined market share*

117. The Parties provided estimates for shares of supply to UK IAM customers (see Table 2 below). The CMA notes that this data indicates that the Parties will have a significant position post-Merger (with a share of over [50-60]%) and that the Merger will bring about a significant increment (of almost [10-20]%).

**Table 2: Share of supply estimates for IAM customers (2017, UK)**

<i>Towbar company</i>	<i>Volume</i>	<i>Share</i>	<i>Value £m</i>	<i>Share</i>
Horizon	[REDACTED]	[40-50]%	[REDACTED]	[40-50]%
Brink	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
<b>Parties</b>	<b>[REDACTED]</b>	<b>[50-60]%</b>	<b>[REDACTED]</b>	<b>[50-60]%</b>
Tow Trust	[REDACTED]	[20-30]%	[REDACTED]	[20-30]%
PCT	[REDACTED]	[10-20]%	[REDACTED]	[10-20]%
A1	[REDACTED]	[5-10]%	[REDACTED]	[0-5]%
Bosal	[REDACTED]	[5-10]%	[REDACTED]	[5-10]%
Anker	[REDACTED]	[0-5]%	[REDACTED]	[0-5]%
Umbra Rimorchi	[REDACTED]	c.[0-5]%	[REDACTED]	c.[0-5]
Steinhof	[REDACTED]	c.[0-5]%	[REDACTED]	c.[0-5]
Autohak	[REDACTED]	c.[0-5]%	[REDACTED]	c.[0-5]
Aragon	[REDACTED]	c.[0-5]%	[REDACTED]	c.[0-5]
Total	[REDACTED]		[REDACTED]	

Source: The Parties

- *In contrast with the OE channel, there are alternative credible suppliers*

118. The Parties submitted that the supply of towbars to IAM customers is very competitive, with the Parties facing competition from a wide range of credible alternative suppliers, including (in particular) Tow Trust, PCT and Bosal.
119. The CMA noted that this position was not consistent with at least some of the Parties' internal documents, which suggested that the competitive constraint from other suppliers may be relatively weak in the UK IAM channel. For example:
- (a) [REDACTED].<sup>59</sup>
- (b) [REDACTED].<sup>60</sup>
120. IAM customers also highlighted concerns regarding the strength of some competitors. For example, four customers either questioned Bosal's reliability or even thought Bosal was pulling out of the UK.<sup>61</sup> Another IAM customer said that smaller UK competitors (such as PCT) have a poor range. A larger customer expressed concern about smaller suppliers' ability to supply the volumes required.

<sup>59</sup> [REDACTED].

<sup>60</sup> [REDACTED].

<sup>61</sup> The CMA confirmed with Bosal that this was not their intention.

121. Eleven out of thirteen customers that responded to the CMA's questionnaire expressed concerns over the impact of the merger, particularly in terms of choice and prices in the aftermarket.
122. On the other hand, IAM customers consistently identified a range of credible suppliers other than the Parties, including Bosal, PCT, Tow Trust and A1 Towbars. Each of these four suppliers have some market presence (with at least a [0-5]% market share across the sector) and offers a wide range of towbars. These suppliers are also widely used by customers in practice; eleven out of twelve<sup>62</sup> customers that responded to the CMA's questionnaire used at least one of these suppliers in addition to the Parties.
- *Non-UK competitors appear to be a less credible alternative*
123. The Parties submitted that competitors with no UK base, such as Umbra, Steinhof, Autohak and Aragon, are a significant competitive restraint. The Parties submitted that they already supply the UK and that there are no barriers to prevent them from expanding their shares further. The Parties gave examples of customers switching or considering switching to such suppliers.
124. The CMA noted, however, that these competitors have a very limited market presence. According to the Parties they have very low market shares at present (each below [0-5]% and collectively below [5-10]%). Furthermore, only one IAM customer that responded to the CMA's questionnaire listed one of these suppliers (an importer without a substantial UK sales) as a potential supplier. The available evidence also indicates that competitors without a UK base may only be a constraint for certain types of order. In any case, the CMA considers that these competitors' lack of past success is an indication that collectively they are likely to be a relatively weak constraint (both individually and collectively) on the Parties at present.
- *There is a significant degree of competitive interaction between the Parties*
125. The Parties submitted that both Tow Trust and PCT have a greater share of supply than Brink and that this demonstrates that they are closer competitors to Horizon than Brink is. The Parties submitted that other competitors have high quality and wide ranges and that doing OE work does not confer an advantage due to the legal obligation not to draw on this experience when designing towbars for the UK IAM channel.

---

<sup>62</sup> A further IAM customer did not answer this question.

126. However, nine out of twelve<sup>63</sup> IAM customers that responded to the CMA's questionnaire said that the Parties are very similar, noting their similar products, market leading brands and wide range of innovative products. Customers told the CMA that the Parties are differentiated from most other competitors, as they also do OEM work and are viewed as premium brands. A larger customer considered the Parties' ability to supply large orders distinguished them from other suppliers. However, most of these customers also considered at least one other supplier to be a close competitor to the Parties.

127. The CMA found that the evidence from the Parties' internal documents about the main constraints that each faces was mixed. For example:

(a) [REDACTED].<sup>64</sup>

(b) [REDACTED].<sup>65</sup>

- *Conclusion on market dynamics in relation to the IAM channel*

128. The CMA considered that the supply of fixed and detachable towbars to IAM customers is characterised by the common factors in relation to competitive dynamics described above.<sup>66</sup> These factors have been taken into account, to the extent relevant, within each of the individual analyses of the separate frames of reference that follow below.

*Horizontal unilateral effects in the supply of fixed towbars to UK IAM customers*

129. The supply of fixed towbars represents the majority of sales of all towbars in the UK IAM channel, representing (based on the Parties' estimates) 65-75% of all towbar sales in the aftermarket.

---

<sup>63</sup> A further IAM customer did not answer this question.

<sup>64</sup> [REDACTED].

<sup>65</sup> [REDACTED].

<sup>66</sup> See paragraphs 114 ff.

130. The Parties estimated that their combined share in the supply of fixed towbars in the UK IAM channel is very significant (at [50-70]% by volume) with the Merger bringing about a material increment (of [5-10]% by volume).
131. However, the available evidence indicates that there are a number of alternative suppliers active in this segment that will continue to constrain the Parties post-Merger. In particular, the CMA notes that there are at least four competitors (identified by customers and used by them in practice) that appear equally credible to Brink.
132. Accordingly, on the basis of the evidence described above (including the competitive dynamics common to the supply of other types of towbars to the IAM channel), the CMA considered that the Parties will continue to face sufficient constraints within this segment post-Merger. The CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC in relation to the supply of fixed towbars to IAM customers.

*Horizontal unilateral effects in the supply of detachable towbars to UK IAM customers*

133. The supply of detachable towbars is estimated to make up 25-35% of towbars in the UK IAM and has grown significantly in recent years.
134. Based on their own estimates, the Parties' combined share in the supply of detachable towbars in the UK IAM channel is very significant (at [40-70]% by volume), with the Merger bringing about a material increment (of [10-20]% by volume).
135. While the Parties face a number of competitors in the supply of detachable towbars to IAM customers, they would (through Brink's upstream supply of detaching system) be in a position to significantly undermine the constraint posed by their most significant competitors within this segment. In particular, the Parties' two largest competitors – Tow Trust (the second largest supplier) and PCT (the third largest supplier) – rely on Brink or the supply of detaching systems, which are a key input in the supply of detachable towbars. The vertical effect of the Merger is explained further below (paragraphs 155 ff).
136. Whether the Merger would raise competition concerns within this segment is likely to depend on whether the merged entity would have the ability and incentive to foreclose Tow Trust and PCT (and potentially other downstream competitors), which would form the most significant part of the fringe of firms that would constrain the Parties within this segment post-Merger.
137. The available evidence indicates that Tow Trust and PCT may not have a credible alternative source of supply for this input. This is consistent with



concerns expressed by the Parties' customers and competitors in relation to the Parties' strength in the supply of detachable towbars, which consistently emphasised that the Parties' subsidiaries are the only major suppliers of towbar detaching systems in Europe, and that this grants them greater strength in this segment.

138. Accordingly, the CMA considers that whether competition concerns arise in the supply of detachable towbars to the UK IAM channel is likely to be driven by the potential weakening of the ability of Tow Trust and PCT (both of which are currently supplied by Brink) to compete against Horizon. The CMA has therefore not concluded on whether the Merger gives rise to a realistic prospect of an SLC in the supply of detachable towbars as a result of horizontal unilateral effects but has instead considered competition concerns within this segment in its analysis of potential vertical effects (see paragraphs 155 ff below).

*Horizontal unilateral effects in the supply of retractable towbars to IAM customers in the UK*

139. The supply of retractable towbars is at a nascent stage with negligible sales. The CMA therefore noted that this product segment is not generally characterised by the common factors in relation to competitive dynamics described above. Compared to the other types of towbar, there are currently very limited sales of retractable towbars, which account for less than 1% of towbar sales to IAM customers in the UK. [X], with Horizon selling [X] in the UK in that year.
140. The CMA also gathered evidence relating to the potential for growth within this segment. Horizon's internal documents suggest that this segment represents a [X],<sup>67</sup> and some competitors also told the CMA that they expected rapid growth within this segment. On the other hand, the Parties submitted that the segment is unlikely to grow materially due to retractable towbars being considerably more expensive than other towbars (a position that was also put forward by a number of third parties).
141. The CMA found that while Horizon has an emerging presence within this segment, there was no evidence to suggest that Brink is a particularly significant constraint on Horizon (or is likely to be in future).

---

<sup>67</sup> Horizon's *Europe & Africa 2018-2020 Strategic Plan*, November 2017. Annex 13.8 to Merger Notice.

## Barriers to entry and expansion

142. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>68</sup>
143. This section first describes the barriers to entry identified by the CMA in its investigation before assessing how different types of competitors and/or suppliers could address those barriers and concluding on the likelihood, timeliness and effectiveness of any entry or expansion.
144. Based on views from the Parties, customers and competitors, the CMA considered that barriers to entry may vary depending on each frame of reference. These can be grouped in six categories:
- (a) technical ability and development and manufacturing know-how, in particular in relation to the design and production of retractable and detachable towbars (including access to appropriate patents and other protected know-how where required);<sup>69</sup>
  - (b) manufacturing capability and spare capacity and/or ability to expand swiftly, including access to key inputs (if not self-supplied), such as detaching systems for the production of detachable towbars;
  - (c) recognition and/or accreditation by customers (in particular, OE customers);
  - (d) economies of scale and additional financial costs;
  - (e) access to appropriate logistics, stock-management and other supporting services required to serve, in particular, the OE channel in the EEA (as noted above, OE customers often require 'just-in-time' and other enhanced logistical delivery capabilities); and
  - (f) local knowledge and expertise of the domestic market (particularly in relation to the IAM channel).
145. Different types of possible entrants may face different sets of these barriers. The CMA assessed the three relevant criteria (ie likelihood, timeliness and sufficiency) in relation to two types of possible entrants submitted by the

---

<sup>68</sup> [Merger Assessment Guidelines](#), paragraphs 5.8.1. ff

<sup>69</sup> See further paragraph 35 above on Barriers to entry related to patents of retractable towbars.

Parties:<sup>70</sup> (i) existing suppliers of towbars entering a new frame of reference (product and/or geographic), in particular from US-based companies (who the Parties suggested would be particularly well-placed to enter); and (ii) suppliers of other car parts already supplying OE customers and/or the UK IAM channel. The CMA also assessed existing suppliers which could, in principle expand their activities (such as Prof Svar, Aragon and GDW).

146. The likelihood, timeliness and sufficiency of entry or expansion, analysed by reference to the factors described above, has been assessed based on observing the recent development of the sector, third parties' views and the Parties' internal documents.
147. The CMA has not seen any evidence indicating that suppliers of other car parts (including the US-based suppliers suggested by the Parties) intend to enter any of these frame of references in a timely manner.
148. The CMA notes that there have been just two examples of successful entry since 1997. Prof Svar in 1997 and Brink in 2003. While other firms have recently won very limited amounts of OE work, as discussed in paragraph 44 above, this appears to be work that is more similar to that done for IAM customers.<sup>71</sup>
149. In practice, it is likely that any entry would need to be supported by OE customers as was the case for Prof Svar and Brink. Even with this support, in both examples the entrants were relatively slow to move beyond supplying the OE customer that assisted their entry; Prof Svar won its second customer in 2000, third in 2004 and fourth in 2007; Brink's expansion into the supply of complete line-fit tow bars has only happened since 2011. For vehicle manufacturers extending such support to new entrants would almost certainly not be costless to these customers and these costs form a barrier to entry.<sup>72</sup> Furthermore, this required investment appears to be ongoing [X].'
150. The CMA understands that some of these barriers (for example, logistics) can be overcome by outsourcing this service to a specialist third party. However, any candidate to enter into or expand in these markets requires access to

---

<sup>70</sup> The Parties suggested a range of potential entrants including towbar manufacturers serving European IAM customers, US towbar manufacturers and manufacturers of other automotive parts.

<sup>71</sup> See also paragraph 93 on the foreseeable future and growth of Prof Svar.

<sup>72</sup> These costs may take the form of direct costs or lower performance, for example allowing a new supplier more time for design tasks or accepting a higher risk that deadlines are not met.

expertise in design, manufacturing capabilities and access to clients which can ensure the necessary economies of scale.

151. In contrast, some of the Parties' internal documents indicate: 'high entry barriers for new competitors entering the first fit [(OEM)] market" and listed eight such barriers.<sup>73</sup>
152. The Parties submitted that car manufacturers could support the entry by IAM competitors into the OE channel if they chose, as the only significant barrier to entry channel is whether a vehicle manufacturer is willing to engage and support them in achieving the manufacturer's higher standards.
153. As noted in paragraph 95 above, the CMA received evidence that three of the most likely potential entrants currently focussed on the IAM channel would struggle to compete for OE work. While US towbar manufacturers and manufacturers of other automotive parts would likely face different barriers to entry, the CMA did not receive evidence that they would be any more likely to enter than IAM manufacturers.
154. In view of the mixed nature of the evidence described above, the CMA does not believe that it can conclude, to the requisite legal standard within a Phase 1 investigation, that entry and/or expansion is likely and would be timely and sufficient to prevent the anti-competitive effects resulting from the Merger.

### ***Vertical effects***

155. Vertical effects may arise when a merger involves firms at different levels of the supply chain. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors.<sup>74</sup>
156. Brink supplies towbar detaching systems (also known as 'towbar necks') to manufacturers of detachable towbars with whom both Parties compete for downstream UK IAM customers. Detaching systems make up around half the total cost of detachable towbars. Following the Merger, the first (Horizon) and fourth (Brink) largest suppliers to UK IAM customers would also supply a key input to their [X], Tow Trust, and [X], PCT, downstream competitors.

---

<sup>73</sup> Brink's Vendor Commercial Due Diligence Final Report (Draft), produced by Roland Berger, 17 March 2018. Annex 11.3 to Merger Notice.

<sup>74</sup> [Merger Assessment Guidelines](#), from paragraphs 5.6.5.

157. Third parties have expressed a concern that the Parties would, as a result of the Merger, be able to profitably foreclose the supply of detaching systems to rival detachable towbar manufacturers, either partially or totally. This might arise through the merged entity refusing to supply some or all of those downstream competitors, or through the merged entity increasing the costs of those downstream competitors by increasing the prices it charges (or a combination of both). In turn, this would affect the ability of those manufacturers to compete with the merged entity for downstream UK IAM customers for detachable towbars.
158. The CMA's approach to assessing vertical theories of harm is to analyse (a) the ability of the merged entity to total or partially foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.<sup>75</sup>

### *Ability*

159. The Parties submitted that post-Merger, they will not have the ability to foreclose their competitors, in particular because:
- (a) there are alternative suppliers of detaching systems, which include GDW, MVG Group, Prof Svar and Bosal; and
  - (b) towbar suppliers/manufacturers supplying UK IAM customers could procure from a new entrant or develop their own detaching systems in a timely, likely and sufficient way.
160. The CMA considered, however, that the Parties' position is not consistent with the available evidence.
161. First, based on the available evidence, the CMA believes that Brink (via its subsidiary ACS) is, in effect, the only substantial merchant market supplier of detaching systems to towbar manufacturers for the UK IAM segment. The CMA found that other suppliers are substantially smaller and often have very limited spare capacity (in particular given that their activities are often focussed on internal supply).
162. The CMA understands that Prof Svar and Bosal do not currently supply detaching systems to third parties.
163. While one downstream competitor suggested GDW as an alternative supplier of detaching systems, the CMA's investigation found that that this supplier has

---

<sup>75</sup> [Merger Assessment Guidelines](#), from paragraphs 5.6.6.

very limited available spare capacity (and therefore would not have sufficient capacity to meet any increase in demand). [REDACTED].

164. Similarly, the CMA's investigation found that MVG [REDACTED].
165. A number of customers and competitors suggested, in fact, that Horizon would be perceived as the next best alternative to ACS (Brink) in the supply of detaching systems (although the Parties confirmed that Horizon does not and has not historically made any sales of detaching systems in the UK).
166. The strength of Brink's upstream position as effectively the only material merchant market supplier of detaching systems is consistent with estimates from third parties that the Parties' detaching systems (whether in their own or third party detachable towbars) are used in over 95% of detachable towbars sold to UK IAM customers.
167. Second, the CMA found that the available evidence does not indicate that towbar suppliers/manufacturers supplying UK IAM customers could procure this input from a new entrant or develop their own detaching systems in a timely, likely and sufficient way.
168. As noted above, a number of suppliers operating around the fringes of the market (ie in captive supply only or with marginal UK supply) would not be able to expand production due to capacity constraints (and there is, in any case, no indication that any increase in output would be directed towards the UK market).
169. Towbar manufacturers serving the UK IAM channel also consistently told the CMA that developing their own detaching systems would not be a commercially plausible option, in particular because it would not be within their technical and financial capability. These suppliers told the CMA that the development process would also require substantial amount of time and they could face substantial challenges due to the large number of existing patents held by several competitors.
170. Accordingly, as a result of the lack of alternative existing or future options, the CMA considers that post-Merger the merged entity would have the ability to foreclose downstream manufacturers/suppliers competing in the supply of detachable towbars to UK IAM customers.

## *Incentive*

171. The Parties submitted that they would not have the incentive to engage in a foreclosure strategy, in particular because:

- (a) Brink makes the bulk of its margin on the supply of the [X].
- (b) To make such a strategy profitable, the Parties would have to offset the loss of margin on sales of the detaching systems by winning [X] the current sales of detachable towbars of foreclosed rivals; (which would not be a realistic outcome because, in addition to switching to alternative producers of detachable towbars, a significant group of customers would be likely to switch to fixed towbars).
- (c) [X]. Since Brink acquired ACS in 2013, it has grown its sales [X] (notwithstanding the presence of Brink in the downstream supply of detaching systems), and [X]; and
- (d) Both parties supply detaching systems to downstream competitors throughout the EEA and any action targeting the UK IAM market would potentially harm the Parties' business in other parts of the EEA with concerned downstream customers/competitors switching to other rivals.

172. The CMA considered how the Parties' combined position in the supply of detachable towbars (see paragraph 134) to UK IAM customers, as brought about by the Merger, could affect their incentive to foreclose downstream customers/competitors.<sup>76</sup>

173. The available evidence supports the Parties' position that Brink's margins are more substantial in the supply of [X] than in the [X]. This suggests that the Parties would not have the incentive to stop supplying third parties, and lose out a substantial source of their revenues, unless they were able to recapture a very large proportion of diverted demand in the downstream market.

174. In this regard, the competitive landscape described above (in paragraphs 133-138) shows that the Parties would control almost all the remaining sales of detachable towbars in the downstream UK IAM market. This would place the

---

<sup>76</sup> [Merger Assessment Guidelines](#), from paragraphs 5.6.5.

Parties in a position to capture a very significant proportion of diverted demand. It also gives the merged entity a large base of sales on which to enjoy increased margins.<sup>77</sup>

175. In relation to switching to other types of towbars, as discussed above, third parties told the CMA that customers would not switch between types of towbar in response to a price rise. Responses from third parties stressed that given the different functionalities and substantial price differences, switching between types of towbars is not expected. The CMA therefore considered that it is very unlikely that a material proportion of customer demand would move from detachable towbars to fixed towbars.
176. Only very limited weight can be placed on the separate operation (to date) of Brink's subsidiaries. In any case, the Merger significantly changes the nature of vertical integration within the relevant markets, with the supply of detachable systems becoming controlled by the largest supplier of detachable towbars (and therefore may, for the reasons explained, bring about a material change in Brink's incentives, as part of the merged entity, to pursue such a strategy).
177. As regards the Parties' submission that any attempt to foreclose the supply of detaching systems could trigger some retaliation from those affected and which operate in different EEA countries, the CMA notes that there are only a limited number of alternative suppliers to which any potentially foreclosed customers could switch their demand for detaching systems (as described above) and therefore that any bargaining power held by those IAM suppliers/customers would be limited.
178. Accordingly, in particular in light of its ability to recapture a very significant proportion of demand diverted from foreclosed competitors downstream, the CMA considers that post-Merger the merged entity would have the incentive to foreclose downstream manufacturers/suppliers competing in the supply of detachable towbars to UK IAM customers.

#### *Effect*

179. For the reasons explained above, the CMA considers that the Parties could have the ability and the incentive to foreclose the supply of detaching systems to rivals in the supply and manufacturing of detachable towbars.
180. The potentially foreclosed manufacturers are the Parties' two largest competitors in the supply of detachable towbars to UK IAM customers. The

---

<sup>77</sup> [European Commission guidelines on the assessment of non-horizontal mergers](#), paragraph 43.



foreclosure of these suppliers would significantly affect their ability to compete. As they are the second and third largest suppliers, their foreclosure would significantly affect competition in the market as a whole. The CMA has not found any reason why these rivals would not be affected (such as contractual arrangements that would shield those competitors from any anti-competitive foreclosure).

181. Of the main competitors supplying detachable towbars to UK IAM customers, only Bosal self-supplies its detaching systems and so could not be foreclosed. However, Bosal's competitive position in the downstream market is extremely limited compared to that of the Parties, with sales less than 10% of those made by the Parties.
182. Moreover, as stated above (paragraph 34(c)) OE and IAM customers told the CMA that they would not switch to other types of towbars as a result of a price increase. Consequently, the CMA considered that constraints from outside this frame of reference (in particular, other types of towbars, such as fixed towbars) would not be sufficient to prevent any anti-competitive effect from happening.
183. Given that the two largest rival suppliers of detachable towbars use Brink's detaching systems, the CMA considers that the foreclosure strategy described above would impair the ability of the two most significant competitors of the merged entity to compete effectively in relation to the supply of detachable towbars in the UK IAM channel. The CMA therefore considers that the Parties would not face sufficient constraints in the downstream segment post-Merger (given the lack of competitors who would not be dependent on the Parties for a key input).
184. Accordingly, on the basis of the evidence described above, the CMA considered that the Parties would have the ability and incentive to foreclose detachable towbar manufacturers, resulting in a realistic prospect of an SLC in relation to the supply of detachable towbars to IAM customers as a result of vertical effects.

## ***Countervailing buyer power***

185. In some circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The existence of countervailing buyer power is a factor in making an SLC finding less likely. The CMA will assess whether all or some customers have sufficient countervailing buyer power and/or the extent to which some customers can rely on the buyer power of others to protect all customers.<sup>78</sup>
186. Buyer power can be generated by different factors. An individual customer's negotiating position will be stronger if it can easily switch its demand away from the supplier, or where it can otherwise constrain the behaviour of the supplier.<sup>79</sup>

### *Some countervailing buyer power in the OE channel*

187. The Parties submitted that their OE customers have buyer power, in particular because OE manufacturers are sophisticated purchasers with extensive expertise in procurement and detailed knowledge of costs. The Parties further suggested that OE customers are able to generate competitive results despite not inviting tenders from all suppliers (as the Parties considered was demonstrated by their analysis of their bidding data).
188. The Parties noted that OE customers run rigorous tender processes, intended to ensure that the vehicle manufacturer has control over design, quality and price. The Parties considered that the commercial pressure exercised by OE customers continues during the lifetime of the contract, with favourable price adjustment and other contractual clauses.
189. The Parties submitted that there is no prospect of OE's buyer power reducing post-Merger, notwithstanding the reduction in suppliers brought about by the Merger, in particular because:
- (a) OE customers can leverage other car parts which they might be procuring from the same group of companies to constrain towbar procurement;
  - (b) OE customers currently operate on average with approximately two bidders and the Parties stressed that, in their view, 'at least these will remain [post-Merger] plus recent entrants [and] threat of sponsored entry [*sic*]; and

---

<sup>78</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

<sup>79</sup> [Merger Assessment Guidelines](#), paragraph 5.9.2.

- (c) OE customers control their supply base and therefore control the entry and expansion of new suppliers given the scale of and the investments required in procurement by OE customers. In this regard, the Parties submitted multiple suggested examples of 'OEM buying power', including agreements reach in relation to [X].
190. The CMA noted that OE customers appear to be strong and sophisticated players who may be well-placed to exercise some buyer power within existing market conditions.<sup>80</sup> The CMA found, however, that any such buyer power would not be sufficient to prevent the anti-competitive effects arising out of the Merger for the reasons explained below.
191. First, none of the evidence available to the CMA identified other components that OE customers purchase from Horizon and Brink that could be leveraged to constrain their activities in the supply of towbars.
192. Second, the CMA was unable to place material weight on the Parties' analysis suggesting that having more than two bidders did not have a large effect on the final price paid by OE customers. In particular, the available evidence suggests that OE customers purchase towbars in a variety of different ways (including through tenders, direct negotiations and a combination of both). Given the variety of purchasing models adopted by customers, it is clear that competition will be best served by several strong alternative suppliers (and that effective competition in the supply of towbars would be unlikely to be maintained by the presence of only two remaining suppliers).
193. In any case, this analysis is undermined by a number of methodological difficulties, which make it difficult to put any meaningful weight on it (particularly). In particular:
- (a) the Parties did not have complete information on the number of bidders or the final price;
  - (b) the analysis found a small increase in price as a result of having fewer than three bidders; while this increase was not statistically significant, the analysis was unable to exclude that the effect could be larger; and
  - (c) while the analysis was based on circumstances in which two bids were submitted, this ignores the fact that there were other options (outside of the suppliers that bid) that could have bid, particularly where encouraged by the OE customer (within the context of the regular interaction between

<sup>80</sup> This has been acknowledged in several EU merger decisions, none of them related to the products affected by affected by this Merger.

customers and suppliers that takes place within this sector), and that these outside options would be reduced as a result of the Merger.

194. Third, as concerns the suggested examples of ‘OEM buying power,’ the CMA was unable to conclude that the suggested examples could be considered as evidence of buyer power, in particular because the terms (while, on their face, stringent) were not provided with any comparison against the terms typically obtained by customers who do not possess countervailing buyer power.
195. Even where the market is characterised by customers who are larger than the suppliers, it does not necessarily follow that there will be countervailing buyer power (particularly following a Merger that reduces customers’ supply options within an already concentrated market). As set out in the CMA’s guidance, an individual customer’s negotiating position will be stronger if it can easily switch its demand away from the supplier, or where it can otherwise constrain the behaviour of the supplier (eg through withholding custom, self-supplying, or sponsoring entry or expansion).<sup>81</sup> For the reasons explained above, the CMA considers that effective mechanisms to constrain the behaviour of the merged entity would not be available to customers post-Merger.
196. This is also consistent with the views submitted by third parties, which strongly indicated that any buyer power that they hold would not be sufficient to preclude competition concerns. In particular, all seven OE customers that provided responses to the CMA indicated concerns about the Merger. One OE customer explicitly stated that having two suppliers made it difficult to get good results. Another customer said that they expected this to result in price rises post-Merger.
197. Consistent with this position, [REDACTED].

*No countervailing buyer power in the UK IAM channel*

198. The CMA has not seen any evidence and the Parties have made no specific representations suggesting that UK IAM customers of detachable towbars have any countervailing buyer power.

---

<sup>81</sup> [Merger Assessment Guidelines](#), paragraphs 5.9.3 ff.

199. In view of the above, the CMA has concluded that any existing countervailing buyer power (if any) would only weaken as a result of this Merger because of the limited number of alternative suppliers customers could switch to if prices increase or quality declines post-Merger.

### ***Conclusion on substantial lessening of competition***

200. As stated above the CMA found that the Merger raises serious competition concerns as a result of horizontal unilateral effects in relation to the supply of each type of towbar (i.e. fixed, detachable and retractable) to the OE channel in the EEA; and as a result of vertical concerns, in relation to the supply of detaching systems for the production of detachable towbars for the IAM channel in the UK.
201. Having assessed separately the possibility of entry or expansion (to the evidentiary standard required in its guidance and decisional practice) and any countervailing power, the CMA concluded that neither barriers to entry nor countervailing buyer power would prevent any anticompetitive effect for the reasons set out in paragraphs 142-154 and 185-199 respectively. The CMA has therefore concluded that it believes that it is or may be the case that the Merger gives rise to the realistic prospect of a substantial lessening of competition in the following frames of reference:
- (a) The supply of fixed towbars detachable and retractable) to the OE channel in the EEA.
  - (b) The supply of detachable towbars to the OE channel in the EEA.
  - (c) The supply of retractable towbars to the OE channel in the EEA.
  - (d) The supply of detaching systems for the production of detachable towbars for the IAM channel in the UK.

### **DECISION**

202. Consequently, the CMA therefore believes that it is or may be the case that (i) a relevant merger situation has been created; and (iii) the creation of that situation may be expected to result in, an SLC within a market or markets in the United Kingdom.

203. The CMA therefore believes that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised<sup>82</sup> whilst the CMA is considering whether to accept undertakings<sup>83</sup> instead of making such a reference.
204. If submitted by the Parties, the CMA will consider whether to accept undertakings under section 73 of the Enterprise Act (**the Act**). The Parties have until 19 June 2018 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to section 33(1) and 34ZA(2) of the Act. If the Parties do not offer an undertaking by this date, or they inform the CMA before this date that they do not wish to offer an undertaking; or if the CMA decides by midnight on 26 June that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it, the CMA will refer the Merger pursuant to section 33(1) and 34ZA(2) of the Act.

**Andrea Gomes da Silva**  
**Executive Director, Markets & Mergers**  
**Competition and Markets Authority**  
**12 June 2018**

---

<sup>82</sup> Section 33(3)(b) of the Act.

<sup>83</sup> Section 73 of the Act.