

Anticipated acquisition by AL-KO Kober Holdings Limited of Bankside Patterson Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6776/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 24 April 2019. Full text of the decision published on 20 May 2019.

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

SUMMARY

1. AL-KO Kober Holdings Limited (**AL-KO**) has agreed to acquire Bankside Patterson Limited (**BPL**) (the **Merger**). AL-KO and BPL 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 AL-KO and BPL is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
3. The Parties both produce chassis which they supply to UK caravan manufacturers. BPL manufactures steel chassis for caravan holiday homes, leisure lodges and residential park homes (together, **static accommodation**) and AL-KO manufactures chassis for touring caravans, ie those designed to be towed behind a motor vehicle.
4. The CMA has considered whether the competitive effects of the Merger should be assessed against a more competitive counterfactual than the prevailing conditions of competition. For the reasons explained below in

paragraph 36, the CMA has found that there is no realistic prospect that AL-KO, absent the Merger, would re-enter¹ the supply of chassis for static accommodation independently, or alternatively, through the acquisition of a competitor of BPL and, as such, the CMA has assessed the competitive effects of the Merger against the prevailing conditions of competition.

5. The CMA has found that a touring caravan chassis is a different product from a static accommodation chassis. These differences relate to the underlying purpose, specifications, technical features, size, weight and manufacturing equipment and expertise required to build each type of chassis. In light of the lack of demand-side and supply-side substitutability between the Parties' chassis products, the CMA has assessed the impact of the Merger considering both: (i) the supply of chassis for static accommodation in the UK; and (ii) the supply of chassis for touring caravans in the UK.
6. Within each of these frames of reference, the CMA has found that AL-KO and BPL are by far the largest UK suppliers of chassis for touring caravans and of chassis for static accommodation, respectively.
7. Whilst there is currently no overlap between the Parties' respective products, the CMA has considered whether there is a potential for competition in the future.
8. In relation to the supply of chassis for touring caravans, the CMA has found no evidence to suggest that BPL has ever considered producing and/or supplying chassis for touring caravans, nor would it do so absent the Merger.
9. In relation to the supply of chassis for static accommodation, the CMA has found that AL-KO would not have re-entered the supply of chassis for static accommodation absent the Merger. While the documentary evidence shows AL-KO did consider whether to independently resume production of this type of chassis prior to the Merger, the evidence also clearly demonstrates that AL-KO ruled out this possibility due to its inability to compete with incumbent suppliers, particularly in terms of price. Furthermore, the CMA saw no clear evidence of any formal discussion or consideration at company level within AL-KO of the idea of making an offer for, or otherwise acquiring a competitor of, BPL.²

¹ Between 2001 and 2008 AL-KO was engaged in the supply of chassis for static accommodation in the UK.

² Aside from BPL, the only UK suppliers of chassis for static accommodation of any considerable scale are Chassis Solutions Limited (**CSL**) and Gateway Chassis Limited (**Gateway**), which are both controlled by the same individual.

10. The CMA has therefore concluded that the Merger will not result in a loss of actual potential competition in relation to the supply of chassis for touring caravans and/or the supply of chassis for static accommodation in the UK.
11. The CMA also assessed whether the Merger gives rise to competition concerns due to a loss of perceived potential competition. In this respect, the CMA has identified that prior to the Merger, the threat of re-entry by AL-KO into the supply of chassis for static accommodation in the UK imposed little to no competitive constraint on BPL and as such did not have any discernible effect upon its pricing or its other commercial strategies or considerations. By comparison, the CMA noted that BPL has for some time paid close attention to the activities, strategy and pricing of its closest active competitors in the supply of chassis for static accommodation, CSL and Gateway, and not AL-KO.
12. Therefore, the CMA has concluded that the Merger does not give rise to a realistic prospect of an SLC in the supply of chassis for touring caravans or in the supply of chassis for static accommodation in the UK as a result of unilateral horizontal effects through the loss of actual or perceived potential competition.
13. Finally, the CMA has considered whether the Merger gives rise to conglomerate effects: ie whether as a result of the Merger the merged entity could bundle or tie the supply of its chassis for static accommodation and chassis for touring caravans in a manner that would result in total or partial foreclosure of its competitors in the supply of chassis for static accommodation. However, the CMA has found that the merged entity would lack the ability to foreclose the merged entity's competitors in the supply of chassis for static accommodation.
14. Therefore, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**).
15. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

ASSESSMENT

Parties

16. AL-KO, including its wholly owned subsidiary, AL-KO Kober Limited, is a UK-based manufacturer of vehicle technology and components, including axles and chassis for touring caravans, motorhomes, trailers and light commercial vehicles. AL-KO's operations are conducted from its site in Southam,

Warwickshire. AL-KO is a wholly owned subsidiary of Germany-based Alois Kober GmbH, which is part of the DexKo Global Inc. (**DexKo**) group of companies. DexKo is a global, US-headquartered group active across various areas within vehicle technology and component manufacturing. DexKo's turnover for the year ended 31 December 2017 was \$US [X], of which £ [X] million was generated in the UK.

17. BPL is a manufacturer of steel chassis for each of the three main types of static accommodation identified at paragraph 3, above, though its primary focus is on the supply of chassis for caravan holiday homes. The downstream static accommodation units into which BPL's chassis are incorporated are generally situated in holiday or residential parks. BPL also provides bespoke modular steel frame design and fabrication to the construction industry. BPL's turnover in the year ended 31 August 2017 was £24.92 million, all of which is attributable to the UK. BPL's static accommodation chassis business accounts for approximately [X] of its turnover.

Transaction

18. Under the Merger, AL-KO will acquire the entire issued share capital of BPL.
19. AL-KO's stated rationale for the Merger is that it 'fits with' the DexKo group's wider acquisition strategy of achieving profitable growth across its entire footprint by adding standalone businesses which contribute to achieving enhanced scale, capital efficiencies and diversity to deliver 'market leadership' in quality, innovation and service for its customers. AL-KO submitted that it anticipates the Merger could result in up to £ [X] of cost synergies, in particular through savings related to the integration and centralisation of certain business functions, which would allow AL-KO to operate the BPL business more efficiently.³

Jurisdiction

20. Each of AL-KO and BPL is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

³ DexKo Global Board of Directors Meeting – Project Paradigm, 25 July 2018.

21. The Parties' combined share of supply of chassis for caravans is approximately [70-80]%, with an increment of [30-40]%.⁴ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
22. On this basis, the CMA believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
23. The initial period for consideration of the Merger under section 34ZA(3) of the Act (the **Initial Period**) started on 14 February 2019. Owing to a failure by AL-KO (with or without reasonable excuse) to comply with requirements of notices served on it under s.109 of the Act, the Initial Period was subsequently extended pursuant to s.34ZB(1) of the Act. Taking account of that extension, the statutory 40 working day deadline for a decision is 26 April 2019.

Background

Types of caravan chassis

24. The National Caravan Council (NCC) explained that the UK caravan sector comprises four principal products: (i) the touring caravan; (ii) the motor caravan, often referred to as the 'motorhome'; (iii) the caravan holiday home; and (iv) the residential park home.⁵ Chassis are a key component in the manufacture of each of these products.
25. Touring caravans are designed to be highly mobile and are routinely towed behind cars and other conventional motor vehicles on the public highway, primarily for leisure and recreational use. Therefore, a touring caravan chassis provides a sturdy but lightweight underpinning for the body of the touring caravan that will be built upon it.
26. Unlike touring caravans, static accommodation units are typically situated semi-permanently, or at least long-term, on designated plots within holiday or residential parks. The chassis for these static accommodation units are

⁴ These figures exclude self-supply of chassis for static accommodation by downstream accommodation manufacturers, which BPL estimates to account for approximately 4.5% of the overall supply of chassis for caravans in the UK. AL-KO's share of supply was calculated using AL-KO UK caravan chassis production figures and NCC figures for UK touring caravan production. BPL's share of supply was calculated according to its annual production figures and those for competitors, as provided by BPL to the CMA.

⁵ 'Leisure lodges' are a subset of the caravan holiday home. Caravan holiday homes and leisure lodges are designed primarily for holiday or recreational use. Leisure lodges are typically larger in size and are often fitted-out to a higher specification than caravan holiday homes. Residential park homes are designed with permanent habitation in mind and are commonly used by end purchasers as a primary residence. As such, residential park homes are generally built to a higher specification than caravan holiday homes and leisure lodges.

necessarily much larger and heavier than those used in the manufacture of touring caravans and comprise a pressed or fabricated steel frame, with wheels and a coupling device.

Suppliers of chassis for caravans in the UK

27. The major UK suppliers of chassis for all types of caravans are AL-KO, BPL, CSL and Gateway.
28. AL-KO supplies lightweight chassis solely for use in the manufacture of touring caravans and motorhomes. It does not supply chassis for use in the manufacture of static accommodation. However, between 2001 and 2008 AL-KO was actively engaged in the supply of chassis to manufacturers of static accommodation in the UK. AL-KO's past experience and possible future presence in this activity are considered further in the competitive assessment below.
29. BPL's primary area of focus is chassis for caravan holiday homes, with chassis for residential park homes and leisure lodges comprising a smaller proportion of its total chassis output. BPL is also active in the design and fabrication of modular steel frames for the construction industry, though this represents less than [REDACTED] of its sales.⁶ BPL does not manufacture chassis for touring caravans or motorhomes, nor has it ever done so.
30. CSL and Gateway also supply chassis exclusively for use in the manufacture of static accommodation. Gateway specialises in chassis for caravan holiday homes and, to a lesser extent, leisure lodges, whilst CSL focuses primarily on chassis for residential park homes.⁷
31. The Parties submitted that there are also smaller UK operators, such as Bell Trailers Limited, which supply chassis to manufacturers of static accommodation in the UK. A third party also referred to Bell Trailers Limited as being a competitor to BPL, Gateway and CSL. Chassis for static accommodation can also be produced in-house by manufacturers of static accommodation.⁸

⁶ The design and fabrication of steel frames for the construction industry is not considered further in this decision as the CMA considers there to be no current or potential overlap in this activity between BPL and AL-KO.

⁷ The CMA understands that the key differences between chassis for caravan holiday homes, leisure lodges and residential park homes pertain to their size and load-bearing capabilities.

⁸ Of the static accommodation manufacturers contacted by the CMA, none currently produces its own chassis in-house. However, the Parties and a third party referred to certain manufacturers of static accommodation which currently do so. [REDACTED].

Demand for chassis for caravans

32. The demand for chassis for both touring caravans and static accommodation is dependent upon overall downstream demand for finished touring caravans and static accommodation units. The chassis manufactured by AL-KO and BPL are sold to manufacturers of touring caravans and static accommodation units respectively, who construct their end products upon the Parties' chassis and then sell them. With the exception of one company which manufactures both static accommodation units and touring caravans and is therefore a customer of both Parties, these are distinct groups of customers.⁹

Counterfactual

33. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual) and considers the effect of the merger compared with the most competitive counterfactual, provided that it is realistic. For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.¹⁰
34. The Parties submitted that the appropriate counterfactual against which the CMA should assess the Merger is the prevailing conditions of competition.
35. The CMA has assessed whether there is a realistic prospect of a counterfactual that is more competitive than the prevailing conditions. In particular, the CMA has considered whether, absent the Merger, AL-KO would have re-entered the supply of chassis for static accommodation in the UK by:
- (a) independent re-entry; or
 - (b) acquiring another company already operating in this market.

⁹ [X] currently manufactures both static accommodation units and touring caravans in the UK. The CMA notes that ABI, a well-known manufacturer of static accommodation, historically also produced touring caravans, though it has not done so since 2001.

¹⁰ [Merger Assessment Guidelines](#) from paragraph 4.3.5.

36. In light of the evidence reviewed by the CMA in the competitive assessment below (paragraphs 75 to 103),¹¹ the CMA believes that there is no realistic prospect that, absent the Merger, AL-KO would have re-commenced the supply of chassis for static accommodation in the UK or that it would have acquired a competitor to BPL.
37. Therefore, the CMA believes that the relevant counterfactual against which the competitive effects of the Merger should be assessed in this case is the prevailing conditions of competition.

Frame of reference

38. 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.¹²
39. As explained above, both Parties manufacture and supply chassis for caravans, with AL-KO manufacturing chassis for touring caravans and BPL manufacturing chassis for static accommodation.¹³

Product scope

40. The Parties submitted that it was appropriate to consider that chassis for static accommodation and chassis for touring caravans are two separate, albeit adjacent product frames of reference. The Parties submitted that the two types of chassis are not regarded by customers as substitutes, as they are not interchangeable. The Parties cited, in particular, the differences in size, specification, complexity and intended use between the two types of chassis.

¹¹ As indicated in the [Merger Assessment Guidelines](#) (paragraphs 4.3.19 and 5.4.15) the loss of a potential entrant may alternatively be considered as part of the assessment of the relevant counterfactual or as part of the competitive assessment.

¹² [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹³ AL-KO also manufactures components and accessories such as suspension, towing hitches and carrier systems for a range of vehicles including motorhomes, vans, light commercial vehicles and trailers. These are areas in which BPL has neither experience nor any current or planned activities.

41. The CMA generally determines the boundaries of the market by reference to demand-side factors (ie the behaviour of customers and its effects). However, it may also consider supply-side factors (ie the capabilities and reactions of suppliers in the short-term) and other market characteristics to determine whether several products, which are not demand-side substitutes, should be aggregated into one, wider market.¹⁴

Demand-side substitution

42. Evidence from third parties and the Parties' internal documents indicates that there is limited demand-side substitutability between chassis for touring caravans and chassis for static accommodation.
43. Third parties explained that chassis for static accommodation and chassis for touring caravans possess significantly different characteristics and are designed for use in the production of distinct, downstream products. Third parties told the CMA that:
- (a) The key attribute of a static accommodation chassis is its load-bearing capability. Static accommodation units routinely weigh upwards of six tonnes, with the larger models of residential park home and leisure lodge weighing considerably more.
 - (b) Conversely, the touring caravan chassis is designed to provide a sturdy but lightweight underpinning for the body of the road-going touring caravan that will be built upon it. They are therefore much smaller and lighter than static accommodation units, with most conventional touring caravans in the UK weighing less than two tonnes, reflecting the fact that they are designed to be highly portable.
44. Furthermore, the CMA's investigation has indicated that there are separate sets of customers for (i) chassis for static accommodation; and (ii) chassis for touring caravans, which provides a strong indication that the two products are not substitutable on the demand-side. [X] is the only company in the UK which currently purchases both types of chassis. All other chassis customers of BPL only produce static accommodation and all other chassis customers of AL-KO only produce touring caravans and/or motorhomes.

¹⁴ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, at paragraph 5.2.17. 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).

45. Finally, the Parties and third parties also explained that chassis for touring caravans must comply with certain EU-wide standards, which are not applicable to chassis for static accommodation.¹⁵

Supply-side substitution

46. On the supply-side, the two types of chassis are different in terms of the expertise and investment needed to manufacture them.
47. Touring caravan chassis must be engineered to a high standard in order to be road-legal and include the technologically complex components such as suspension and braking systems. [X]
48. Static accommodation chassis are fabricated from steel sections and, whilst they must be designed to support the weight of a static accommodation unit and are either galvanised or painted, they generally require relatively little advanced engineering work beyond this.¹⁶ Several third party manufacturers of static accommodation explained that they require a collaborative design approach from their chassis supplier, so that chassis can be tailored, for example, to the particular dimensional and weight-bearing requirements of their static accommodation designs.
49. The NCC was not aware of any companies that are currently looking to enter the market for the supply of static accommodation chassis, but considered that there may be metal fabricators which could, in principle, enter this space; though they would likely require assistance from customers to develop a sufficiently high-quality product. The NCC emphasised that static accommodation chassis are by and large simpler products than touring caravan chassis, since they do not need to be road-legal and so do not require various additional components that must be incorporated within a touring caravan chassis.
50. However, whilst chassis for static accommodation are generally considered to be less technologically advanced than chassis for touring caravans, one large manufacturer of static accommodation noted that there had not been any recent entrants into the UK static accommodation chassis market, which it considered is in part due to the technical and design expertise required to be

¹⁵ For example, EU Whole Vehicle Type Approvals are required for touring caravans, but not for static accommodation.

¹⁶ The CMA understands that there is a modest distinction in terms of size and load-bearing capacity between the chassis required for caravan holiday homes and for the larger, heavier leisure lodges and residential park homes. However, third parties explained to the CMA that there are no substantial differences in the expertise, technology or equipment needed to manufacture and supply these variants of a static accommodation chassis.

successful in this market, as well as the important role that reputation plays for manufacturers of static accommodation when selecting a chassis supplier.

51. The Parties also explained that there are considerable differences in the machinery and techniques used in the manufacture of the two types of chassis. For example, BPL recently invested circa £ [X] in laser technology, whereas AL-KO does not use this technology in the production of touring caravan chassis. In terms of the chassis design process, AL-KO produces 3D models, whereas BPL does not utilise this technology.
52. The Parties explained to the CMA that neither is aware of any company which currently supplies or has announced any plans to supply both chassis for touring caravans and for static accommodation in the UK. AL-KO stated that, aside from its own activities between 2001 and 2008, it was not aware of any other companies having done so in recent years.
53. The evidence set out above shows that entry into the supply of chassis for static accommodation may be difficult for suppliers of chassis for touring caravans and vice versa and that, in practice, suppliers are not able to quickly shift or alternate capacity between these two products.

Conclusion on product scope

54. For the reasons set out above, the CMA has considered the impact of the Merger in the following separate product frames of reference:
 - (a) Supply of chassis for touring caravans; and
 - (b) Supply of chassis for static accommodation (including chassis for caravan holiday homes, leisure lodges and residential park homes).

Geographic scope

Supply of chassis for static accommodation

55. The Parties submitted that the geographic scope of the supply of chassis for static accommodation is UK-wide.
56. Due to the size and weight of static accommodation chassis, they are cumbersome and costly to transport over long distances. As such, there are few, if any, imports to or exports from the UK of chassis for static accommodation. It is for reasons such as these that the largest chassis manufacturers are located geographically close to the leading manufacturers of static accommodation.

57. One manufacturer of static accommodation told the CMA that [REDACTED]
58. Several third parties noted that it would generally be uneconomical to import chassis for static accommodation from abroad due to their size and weight, though one manufacturer of static accommodation mentioned it had [REDACTED]
59. The CMA has therefore considered the impact of the Merger in the UK. However, the CMA did not have to reach a conclusion as to whether the geographic scope for the supply of chassis for static accommodation is narrower than UK-wide, because the Merger does not give rise to competition concerns on any basis.

Supply of chassis for touring caravans

60. The Parties submitted that the geographic scope of the supply of chassis for touring caravans is at least national, given that AL-KO imports components for its touring caravan chassis from its manufacturing facility in southern Germany, for assembly at its Southam site. However, the Parties submitted that the question of geographic scope could ultimately be left open.
61. Touring caravan chassis are smaller, lighter and much more easily-transportable than static accommodation chassis. The fact that AL-KO operates in the UK from a single site, serving downstream manufacturers located around the UK provides further evidence that the supply of chassis for touring caravans is at least national in scope.
62. The CMA understands that there are very few exports of chassis for touring caravans from the UK to other countries.

Conclusion on geographic scope

63. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of chassis for both touring caravans and static accommodation by reference to the UK.
64. However, it is not necessary for the CMA to reach a conclusion on the precise geographic frame of reference, since, as set out below, no competition concerns arise on any plausible basis.

Conclusion on frame of reference

65. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
- (a) The supply of chassis for static accommodation within the UK; and
 - (b) The supply of chassis for touring caravans within the UK.

Competitive assessment

Horizontal unilateral effects

66. 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.¹⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors.
67. In light of the limited supply-side and demand-side substitutability between the chassis for touring caravans produced by AL-KO, and the chassis for static accommodation produced by BPL, the CMA has not identified a horizontal theory of harm concerning a loss of existing competition between the Parties.
68. The CMA notes, however, that the supply of chassis for touring caravans and the supply of chassis for static accommodation are both very concentrated. AL-KO's share of supply in chassis for touring caravans is approximately [90-100]% by volume and BPL's share of supply in chassis for static accommodation is approximately [70-80]% by volume.¹⁸ These shares are not changed by the Merger.
69. Unilateral effects may also arise from the elimination of potential competition. The removal of both an actual or perceived potential entrant can lessen competition by weakening the competitive constraint on an incumbent supplier. 'Actual potential competition' refers to a potential entrant that could increase competition if and when entry occurs. 'Perceived potential competition' refers to a firm which imposes an existing constraint because of the threat that it would enter if existing firms in the market raised their prices,

¹⁷ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

¹⁸ The Parties provided approximated shares of supply based on a combination of (i) their own customer research; (ii) their understanding of customer requirements and, where available, customer production data; and (iii) figures compiled by the NCC, for the number of UK units produced annually in the downstream touring caravan and static accommodation markets. The stated figures exclude the small-scale self-supply of static accommodation chassis by downstream manufacturers, which the Parties understand accounts for circa 8% of overall UK supply of this chassis type.

even though it may be unlikely that entry would actually occur. The CMA has assessed whether the Merger would lead to a loss of actual potential competition or a loss of perceived potential competition.

Loss of actual potential competition

70. In considering whether the Merger would give rise to a loss of actual potential competition, the CMA assessed whether, absent the Merger:
- (a) BPL would have been a potential entrant in the supply of chassis for touring caravans in the UK that could have imposed a competitive constraint on AL-KO; and/or
 - (b) AL-KO would have been a potential entrant in the supply of chassis for static accommodation in the UK that could have imposed a competitive constraint on BPL.

Framework

71. Consistent with its established guidance,¹⁹ the CMA has assessed in the present case whether the Merger might be expected to lead to unilateral effects from a loss of actual potential competition by reference to:
- (a) Whether each of the Parties would be likely to enter the other's market in the absence of the Merger; and
 - (b) Whether such entry would lead to greater competition.

Potential entry by BPL into the supply of chassis for touring caravans

72. BPL has no prior experience in manufacturing the type of chassis required for touring caravans and currently lacks the technical expertise, equipment, machinery and site facilities necessary to do so.
73. In order to commence production of chassis for touring caravans to a credible standard, BPL would have to incur significant capital expenditure and alter its business model to adhere to the stringent standards and regulations to which touring caravan chassis are subject. Furthermore, BPL internal documents do not show that it has ever given any consideration to the prospect of moving into the production of chassis for touring caravans.

¹⁹ [Merger Assessment Guidelines](#), paragraph 5.4.13 – 5.4.15

74. For these reasons, the CMA considers that the possibility of BPL entering the supply of chassis for touring caravans in the UK absent the Merger is not realistic and that the question of whether any such entry would lead to greater competition can therefore be left open.

Potential entry by AL-KO into the supply of chassis for static accommodation

75. The CMA has considered whether, absent the Merger, AL-KO would have re-entered the supply of chassis for static accommodation in the UK; either through independent entry, or through the acquisition of a competitor of BPL.

Potential independent re-entry by AL-KO into the production of chassis for static accommodation

- *AL-KO's exit from producing static accommodation chassis*

76. AL-KO was engaged in the manufacture of chassis for static accommodation in the UK between 2001 and 2008, during which time its primary customers were downstream manufacturers [REDACTED]²⁰
77. During its period as a supplier of chassis for static accommodation in the UK, AL-KO operated that part of its business from a leased site in Kingston upon Hull, close to the main UK manufacturers of caravan holiday homes. AL-KO's static accommodation chassis business was built around a hub and spoke model, whereby it manufactured chassis components at its production facility in Kötzt, southern Germany, before transporting the components by lorry to the UK, where it assembled the finished chassis at its Kingston upon Hull site.
78. AL-KO submitted that its exit from the supply of static accommodation chassis in 2008 was a result of its cost per unit exceeding the prices its downstream manufacturer customers were willing to pay, such that AL-KO was making a loss on each chassis it sold. These problems were exacerbated by a marked downturn in downstream sales of static accommodation units.
79. Contemporaneous AL-KO internal documents corroborate this:
- (a) Invoices from 2007 show that AL-KO was selling chassis to [REDACTED] for between £ [REDACTED] per unit.²¹ Internal AL-KO cost estimations from the time show that this represented a per unit loss of between £ [REDACTED].²² Further AL-

²⁰ [REDACTED]

²¹ Annex 008, AL-KO response of 2 November 2018 to an RFI dated 23 October 2018.

²² Annex 009, AL-KO response of 2 November 2018 to an RFI dated 23 October 2018.

KO documents show that a chassis with a quoted price to [REDACTED] in fact cost AL-KO £ [REDACTED] to produce.²³

(b) AL-KO documents seen by the CMA dating from as early as 2005 refer to the challenges the company faced in the market for static accommodation chassis.²⁴ In particular, a report prepared by AL-KO's UK managing director for AL-KO senior management in 2005 describes the high costs being incurred by AL-KO, relative to the prices expected by customers, and the recent sharp drop in downstream sales of static accommodation units.²⁵ The report also attributes AL-KO's difficulties in part to a need to [REDACTED]. The report contains some suggestions on how this situation might be remedied, including [REDACTED], but ultimately recommends that ending the manufacture of its then current models of chassis is essential. "We [REDACTED]

(c) In September 2008, an email from AL-KO's UK managing director to AL-KO senior management suggested that AL-KO should close its Kingston upon Hull site in order to reduce costs and solve urgent financial problems.^{26, 27}

80. Taking this evidence into account, the CMA's investigation indicates that AL-KO operated according to an importation and remote assembly model which greatly increased its production costs. Unlike UK chassis producers, AL-KO had to cover the cost of transportation of the chassis from southern Germany to the UK, as well as incurring [REDACTED]. In addition, AL-KO offered only fully-galvanised chassis, which although built to a high specification and of a superior quality than some equivalent UK products, were also costlier to produce.
81. As a result, AL-KO was unable to compete with the lower prices of its UK-based competitors, who also offered customers the option of cheaper, painted chassis, which ultimately led AL-KO to exit the supply of chassis for static accommodation in the UK in 2008.
82. The CMA considers that the underlying factors which led to AL-KO exiting this market in 2008 still apply: [REDACTED], nor have market conditions changed

²³ Annexes 010 and 011, AL-KO response of 2 November 2018 to an RFI dated 23 October 2018.

²⁴ Annex 012, AL-KO response of 2 November 2018 to an RFI dated 23 October 2018.

²⁵ The report states that: "*The cost of the complete chassis is far higher than anticipated, and the real cost is more than the market can stand, and more than AL-KO can fund.*"

²⁶ Annex 014, AL-KO response of 2 November 2018 to an RFI dated 23 October 2018.

²⁷ This email stated the intention to discuss the possibility of closing AL-KO's Hull site with customer [REDACTED]. A subsequent internal AL-KO email of November 2008 reported that [REDACTED], which led to the closure of AL-KO's Kingston upon Hull site (see Annex 015, AL-KO response to RFI, 2 November 2018).

significantly; particularly in respect of the demand for and price of chassis for static accommodation in the UK.

- *AL-KO is approached by static accommodation manufacturer [REDACTED]*

83. In [REDACTED], approximately [REDACTED] years after AL-KO had exited the supply of chassis for static accommodation in the UK, [REDACTED] approached AL-KO to request price quotations for a range of this type of chassis. In response to this request, [REDACTED]. However, [REDACTED], internal documents indicate [REDACTED] and so did not re-enter the market at that time.²⁸
84. Several years later, in [REDACTED] approached AL-KO with a request for it to manufacture a range of static accommodation chassis. At that point, AL-KO was already seeking to acquire BPL, having made its first approach to BPL in April 2017.
85. [REDACTED] appears to have been prompted by dissatisfaction with [REDACTED].²⁹
86. In light of [REDACTED] accommodation chassis, AL-KO investigated the cost of manufacturing a chassis [REDACTED]
87. AL-KO's internal discussions at this time show that it considered the acquisition of BPL and [REDACTED]³⁰ Taking into account relevant internal documents produced at the time, the CMA considers that at this point in time, AL-KO considered re-entry to be preferable to acquiring BPL.
88. However, after an exercise to design and cost the supply of chassis that would meet [REDACTED] requirements, [REDACTED]. AL-KO estimated the cost of producing a suitable chassis as being [REDACTED]. This estimate was based on [REDACTED]³¹

²⁸ An internal AL-KO presentation to senior group management describes the approach [REDACTED], stating that: [REDACTED] (see Annex 007, AL-KO response to RFI, 2 November 2018).

²⁹ AL-KO internal documents (for example, document BRE-001-0000005379, DexKo Global M&A Growth Opportunities UK, 5 July 2017) refer to a visit to AL-KO [REDACTED] and a presentation given to AL-KO. A key AL-KO takeaway from this presentation was that: [REDACTED] In its presentation to AL-KO's UK management, [REDACTED] stated of [REDACTED] chassis: [REDACTED] and offered to switch its chassis purchases entirely to AL-KO if it could produce a chassis [REDACTED] (See excerpt from presentation included in document BRE-001-0000005379, DexKo Global M&A Growth Opportunities UK, 5 July 2017 and the [REDACTED] in Annex 081 to the Draft Merger Notice – Email from [REDACTED] to Peter Eustace and Martin Green of AL-KO, 27 June 2017).

³⁰ A contemporaneous slide deck on the Merger presented the two options as separate options, with the slide concluding: [REDACTED] BRE-001-0000005361, AL-KO s.109 response. A further AL-KO internal document of July 2017 also presents the: "NDA from Paradigm to sign and start the acquisition process" and [REDACTED] as direct alternatives. The document goes on to state: [REDACTED]

³¹ AL-KO submitted that: (i) [REDACTED]; and (ii) it has not given any consideration to the prospect of setting up another manufacturing facility in the UK, to handle the production of static accommodation chassis.

89. A subsequent update on AL-KO's ongoing acquisition projects confirms that, based on AL-KO's costs estimates, [REDACTED]. The update presentation stated: [REDACTED].³² An August 2018 email from Peter Eustace to senior AL-KO management³³ stated that: [REDACTED] With this fact established, AL-KO did not offer a formal proposal to [REDACTED] and instead proceeded with acquiring BPL.
90. In light of the above, the CMA considers that the evidence in relation to AL-KO's reasons for exiting the supply of static accommodation chassis in 2008 and its responses to the approaches of [REDACTED], respectively, indicate that AL-KO actively explored the possibility of supplying chassis for static accommodation using its tested 'hub and spoke' operational model, in which these chassis' components would have been manufactured in Germany, for assembly in the UK. However, the documentary evidence shows that AL-KO found this option to be cost-prohibitive.
- *Conclusion on independent entry in the supply of chassis for static accommodation*
91. Based on the available evidence, the CMA considers that absent the Merger, AL-KO would not have independently re-entered the market for the supply of static accommodation chassis in the UK.
92. Whilst there is clear evidence that the Merger was seen by AL-KO as being an alternative to entering with its own product, AL-KO evaluated the possibility of independent entry [REDACTED] and subsequently ruled it out as being commercially unviable, ultimately proceeding with the Merger.
93. In particular, the considerable discrepancy between AL-KO's calculated costs of supplying chassis for static accommodation to potential UK customers and the prices required by these customers indicates that there is very little possibility that AL-KO could have sustained a profitable entry into this market.

Potential re-entry into the supply of chassis for static accommodation through the acquisition of a different supplier of chassis for static accommodation

94. During its investigation, the CMA saw evidence that prior to the Merger, AL-KO's UK managing director, Peter Eustace, had been in contact with [REDACTED].³⁴

³² Document BRE-002-0000017058, DexKo Global M&A & Growth Opportunities UK, 29 June 2017.

³³ Document BRE-001-0000005795, Email from Peter Eustace to Harald Hiller and Micha Harzenetter, 31 August 2017.

³⁴ [REDACTED]

95. Mr Eustace told the CMA that AL-KO would “*probably have looked very closely*” [REDACTED], absent the Merger.³⁵ Mr Eustace also explained that, at the time of AL-KO’s initial approaches to BPL in the first half of 2017, [REDACTED] Evidence reviewed by the CMA indicates that [REDACTED] had suggested to Mr Eustace in 2017 that he had not been looking to sell [REDACTED] and that, rather, his interest at that point in time was: [REDACTED] but that he might nevertheless consider an offer for the business if it represented “*good value*”.³⁶
96. More specifically, an informal email exchange which took place between May and July 2017³⁷ indicates that [REDACTED] and Mr Eustace met to continue a conversation which had taken place on the sidelines of a trade show, regarding the possible interest of AL-KO in acquiring [REDACTED]
97. The documentary evidence and submissions from AL-KO indicate that, after these initial contacts, the notion of a possible offer for [REDACTED] was given no further consideration by Mr Eustace, who did not subsequently revert to [REDACTED] on this subject.
98. AL-KO explained that: “*The prospect of acquiring [REDACTED] was never evaluated... Peter Eustace did not produce or submit anything to the AL-KO group that investigated or indeed proposed this possibility*” and that “*Peter decided it was not worth investing further time in pursuing... He did not request permission to sign an NDA; no research was undertaken. DexKo management were unaware of the contact. No investment memo was prepared, which would have been the next step should Peter have wanted to explore the opportunity seriously.*”³⁸
99. Consistent with these submissions, while internal AL-KO documents demonstrate that multiple global acquisitions are being carefully considered or progressed at any given time by DexKo, there is no such evidence in relation to the possible acquisition of [REDACTED] beyond the informal emails mentioned above.³⁹ In addition, the evidence indicates that the possible acquisition of [REDACTED] was not disclosed or suggested to anyone else within AL-KO. Nor was

³⁵ Telephone call between Peter Eustace, Micha Harzenetter and the CMA, 15 February 2019.

³⁶ Emails provided to the CMA by AL-KO on 5 March 2019, in response to a s.109 notice served on AL-KO on 27 February 2019.

³⁷ *Ibid.*

³⁸ AL-KO’s response to a s.109 notice served on AL-KO on 27 February 2019.

³⁹ The CMA notes that the 2017 emails between Mr Eustace and [REDACTED] were exchanged at a time when AL-KO had already identified BPL as a possible acquisition target. However, the CMA also saw an earlier, informal email exchange between Mr Eustace and [REDACTED] of May 2015, which resumed in March 2016, in which Mr Eustace had expressed a possible interest in acquiring [REDACTED]. These emails dated significantly prior to the Merger and, between these emails and the Merger, AL-KO did not consider or take any steps towards exploring the possibility of making an offer for [REDACTED].

any confidentiality agreement entered into by AL-KO or any financial or other information shared by [X] to progress a potential acquisition.

100. Taking all of the above evidence into account, the CMA considers, on balance, that the available evidence does not demonstrate a realistic prospect that, absent the Merger, AL-KO would have re-commenced the supply of chassis for static accommodation in the UK, through the acquisition of [X].

Conclusion on loss of actual potential competition

101. For the reasons explained above, the CMA has found that there is no realistic prospect that, absent the Merger, either of BPL or AL-KO would have entered into the supply of chassis for touring caravans and static accommodation, respectively.
102. Given this finding, the CMA has not needed to conclude on whether any such entry would have led to greater competition in either relevant market.
103. Accordingly, the CMA has concluded that the Merger does not give rise to a realistic prospect of an SLC in the supply of chassis for touring caravans or in the supply of chassis for static accommodation, in the UK, as a result of unilateral horizontal effects through the loss of actual potential competition.

Perceived potential competition

104. In addition to considering whether the Merger might be expected to give rise to a loss of actual potential competition, the CMA has also considered whether the Merger might be expected to substantially lessen competition in the supply of chassis for static accommodation by removing the threat that AL-KO would enter if suppliers of static accommodation chassis raised their prices,⁴⁰ ie whether the Merger would result in a loss of perceived potential competition. In particular, the CMA has considered BPL's internal documents to assess whether there is evidence that BPL is being constrained by the threat of entry by AL-KO.
- *Minimal evidence of constraint from AL-KO on BPL*
105. The CMA identified only two BPL internal documents referring to AL-KO other than documents produced in connection with the Merger. These documents suggest that BPL was aware of AL-KO's presence in the adjacent market and

⁴⁰ [Merger Assessment Guidelines](#), paragraphs 5.4.16 – 5.4.18.

in 2017 considered the possibility of AL-KO re-entering the market for static accommodation chassis and how this might impact upon its business. [REDACTED]
41,42

106. [REDACTED]⁴³ [REDACTED]

107. The CMA notes, however, that both of these documents were produced after BPL had begun engagement with AL-KO regarding its possible acquisition of the BPL business and that, as explained below, Gateway was considered by BPL management to represent much more of a credible threat to BPL than any possibility of entry by AL-KO from outside the market.

108. With the exception of the one document from 2017, referred to in paragraph 105 above, none of the documents seen by the CMA considered or discussed BPL's price rises in the context of the hypothetical threat of entry by AL-KO. [REDACTED]⁴⁴ [REDACTED]⁴⁵

109. The CMA therefore considers that the threat of entry by AL-KO did not pose a significant constraint on the behaviour of BPL in relation to the supply of chassis for static accommodation, especially if compared with the significant competitive constraint posed by other competitors.

- *Much greater constraint from Gateway and CSL on BPL*

110. In contrast, the available evidence demonstrates that BPL monitors CSL and Gateway very closely and it is evident that these rival producers of chassis for static accommodation exert a clear competitive constraint on BPL.

111. BPL prepares short slide presentations for its monthly board meetings, which contain key performance statistics. [REDACTED]⁴⁶

112. The CMA has also reviewed documentation prepared for meetings between BPL senior management and shareholders which are held approximately every six-weeks. These meetings discuss BPL's high-level strategy. Gateway

⁴¹ BPL explained that the price of steel is a key driver in the cost of its chassis and that its customers closely monitor publicly available indices for commodities prices, such as steel and zinc (which is used in the galvanising process). [REDACTED]

⁴² Minutes of Executive Chairman update meeting, 10 May 2017.

⁴³ BPL's response to a s.109 notice, issued on 29 October 2018. Annex 5, slide 42.

⁴⁴ BPL Commercial Strategy Presentation, July 2018.

⁴⁵ AL-KO internal documents, such as Document BRE-001-0000003484, AL-KO Integration Plan. demonstrate its intention [REDACTED]

⁴⁶ For example, slides from BPL board meeting, January 2017.

and CSL are mentioned frequently and repeatedly in the documents prepared for these discussions, [✂]

Conclusion on loss of perceived potential competition

113. Based on the available evidence, the CMA considers that the threat of AL-KO's re-entry into the supply of chassis for static accommodation has been insufficient to represent a significant constraint on BPL's behaviour, in particular given how infrequently BPL appears to have considered AL-KO in its decision-making, compared to its regular and sustained monitoring of Gateway and CSL. Therefore, the CMA has concluded that the Merger does not give rise to a realistic prospect of an SLC in the supply of chassis for static accommodation in the UK as a result of unilateral effects through a loss of perceived potential competition.

Conglomerate effects

114. Conglomerate effects may arise in mergers between firms that are active in the supply of goods or services that do not form part of the same markets, but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).⁴⁷
115. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not give rise to competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through the imposition of a tying or bundling strategy.
116. In the present case, the CMA has considered whether, post-Merger, the merged entity would be in a position to supply chassis for both touring caravans and static accommodation to downstream (caravan) manufacturers such that the merged entity's upstream (chassis) competitors would be foreclosed.
117. The CMA's approach to assessing conglomerate theories of harm is to analyse (i) the ability of the merged entity to foreclose competitors; (ii) its incentive to do so; and (iii) the overall effect of the strategy on competition.⁴⁸

⁴⁷ [Merger Assessment Guidelines](#), paragraph 5.6.2.

⁴⁸ [Merger Assessment Guidelines](#), paragraph 5.6.6.

Ability

118. The CMA has assessed whether, as a result of the Merger, the merged entity could bundle or tie its chassis for static accommodation and chassis for touring caravans in a manner that would result in total or partial foreclosure of its competitors in the supply of chassis for static accommodation.⁴⁹
119. As referred to earlier in this decision, the merged entity will have a very high share of supply (by volume) in the UK, both in the supply of chassis for touring caravans (approximately [90-100]%) and in the supply of chassis for static accommodation (approximately [70-80]%), with its main competitors in the latter being CSL and Gateway.
120. The CMA is aware of only one customer [REDACTED] that currently purchases both chassis for touring caravans from AL-KO and chassis for static accommodation from BPL.
121. Focussing on this customer, the CMA has considered:
- (a) whether the merged entity would be able to induce it to purchase both types of chassis from the merged entity post-Merger; and
 - (b) whether it is a significant or necessary customer, such that its loss could lead to competitors being foreclosed from the supply of chassis for static accommodation in the UK.
122. [REDACTED]⁵⁰ [REDACTED]
123. Furthermore, this customer accounts for only around [10-20]% of BPL's revenue, and so represents a relatively small proportion [10-20]% of all UK sales of static accommodation chassis. The majority of the market [80-90]% would therefore remain available to competitors, even in the event that the merged entity sought to tie or bundle sales of touring caravan and static caravan chassis. The CMA also noted that [REDACTED]
124. Therefore, the CMA has concluded that the Merger will not provide the merged entity with the ability to foreclose its competitors in the supply of chassis for static accommodation. This being the case, the CMA has not had to assess the impact of the Merger on the merged entity's incentive to

⁴⁹ The CMA has considered this theory of harm in relation to static caravan chassis only as pre-Merger AL-KO already had a circa 100% market share in relation to the supply of touring caravan chassis.

⁵⁰ [REDACTED]

foreclose its competitors, or the effect of any such foreclosure strategy on competition.

Conclusion on conglomerate effects

125. For the reasons set out above, the CMA has found that the Merger does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the supply of chassis for static accommodation in the UK.

Barriers to entry and expansion

126. 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.⁵¹
127. The Parties did not make any submissions to the CMA specifically concerning barriers to entry.
128. The CMA has not had to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any basis.

Third party views

129. The CMA contacted a number of the Parties' customers, none of whom expressed concerns about the Merger. The CMA also contacted competitors of the Parties as well as impartial industry bodies.
130. Two competitors expressed concerns [REDACTED]
131. Third party comments more generally have been taken into account where appropriate in the competitive assessment above.

Decision

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

⁵¹ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

James Waugh
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Competition and Markets Authority
24 April 2019