

# Anticipated acquisition by Enterprise Rent-A-Car UK Limited of S.H.B. Hire Limited

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

**ME/6807/19**

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 31 May 2019. Full text of the decision published on 14 June 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. Enterprise Rent-A-Car UK Limited (**Enterprise**) has agreed to acquire S.H.B. Hire Limited (**SHB**) (the **Merger**). Enterprise and SHB 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 Enterprise and SHB is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover 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 overlap in the supply of vehicles for hire by way of flexible rental (**flexible rental services**) in Great Britain. The CMA assessed the impact of the Merger against separate product frames of reference for: (i) light commercial vehicles (**LCVs**) and cars (including pick-ups); (ii) heavy goods vehicles (**HGVs**); (iii) temperature-controlled LCVs; (iv) temperature-controlled HGVs; and (v) accessible vehicles. As to the geographic scope, the CMA has

assessed the Merger on: (i) the basis of a frame of reference covering Great Britain; and (ii) on the basis of regional frames of reference.

4. The CMA assessed whether the Merger gives rise to horizontal unilateral effects in each of the above candidate frames of reference.
  - a. In all Great Britain-wide frames of reference, the CMA found that the Parties' estimated shares of supply are relatively low, the increments arising from the Merger are small or moderate and that the merged entity remains subject to significant competitive constraints. In accessible vehicles (for which complete share of supply data was not available), the evidence shows that the increment in the Parties' market position brought about by the Merger is minimal and that the Parties will face strong competitive constraints post-Merger.
  - b. In all regional frames of reference, the CMA found that the Parties face a number of credible competitive constraints from suppliers operating throughout Great Britain or the UK.
5. The CMA believes that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects.
6. The Merger will therefore **not be referred** under section 33(1) of the Enterprise Act 2002 (the **Act**).

## **ASSESSMENT**

### **Parties**

7. Enterprise is a wholly owned subsidiary of Enterprise Rent-A-Car UK Holdings Limited and belongs to a group of related companies headquartered in the USA, providing car rental, car sharing, truck rental, fleet management, van pooling and other transportation solutions (the Enterprise Group). Enterprise supplies flexible rental services (solely to B2B customers) under the **Flex-E-Rent** brand. Flex-E-Rent operates from a national network across 23 sites in Great Britain. The turnover of Enterprise in financial year 2018 was approximately £17.9 billion worldwide and £876.5 million in the UK.
8. SHB is a privately-owned business headquartered in the UK. SHB is principally engaged in the supply of flexible rental services, specialising in the hire of vans, cars, 4x4 vehicles, lorries, mobility buses, golf buggies and other

types of specialist vehicles. SHB's flexible vehicle hire is supported by nationwide branch networks with an end-to-end vehicle and fleet service offering. The turnover of SHB in financial year 2018 was approximately £120.7 million, all of which was generated in the UK.

## Transaction

9. On 18 February 2019, Enterprise entered into a sale and purchase agreement (**SPA**) to acquire the entire issued share capital of SHB. Following completion, Enterprise will own 100% of the shares in SHB. The purchase price payable is [redacted].<sup>1</sup>
10. Enterprise submitted that the rationale for the Merger is to allow it to achieve a greater diversification of fleet and improved offering in specialist areas where it is not currently active or has a smaller presence, and thereby, to increase its penetration in the flexible rentals market.

## Jurisdiction

11. Each of Enterprise and SHB is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.
12. The UK turnover of SHB exceeds £70 million, therefore the turnover test in section 23(1)(b) of the Act is satisfied.
13. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.
14. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 9 April 2019 and the statutory 40 working day deadline for a decision is therefore 7 June 2019.

## Counterfactual

15. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie, the counterfactual). For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where,

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<sup>1</sup> As provided under Clause 3 of the SPA.

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>2</sup>

16. In this case, the CMA has found no evidence supporting a different counterfactual, and the Parties and third parties have not put forward arguments in this respect. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

## **Frame of reference**

17. 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>3</sup>

## **Product scope**

18. The Parties both supply vehicle hire services, which comprise a number of services including daily rentals (with a typical rental period of one to seven days), flexible rentals (with rental periods of anything from one day to one year and considered further below), long-term contract hiring also referred to as leasing (with a period of a year or more), replacement and courtesy vehicles (with short term rental periods) and regulated supply of long-term vehicles to consumers.<sup>4</sup>
19. The Parties overlap in the supply of flexible rental services. Flexible rental services refer to the hiring of commercial vehicles (which are often modified to customer specifications) without fixed or minimum term contracts and without penalty for early termination. Suppliers of flexible rental services can operate an 'outsourced' or 'insourced' model. In an outsourced model, a supplier will generally compete for contracts from a single location in the UK and outsource services such as vehicle repair and replacement to third parties.

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<sup>2</sup> [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

<sup>3</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>4</sup> Parties' final merger notice submitted 4 April 2019 (**Parties' Merger Notice**), Table 1.

For example, in addition to single-site national operators such as Reflex and West Wallasey, broker companies, such as Nexus Rental, who do not directly own vehicles use a supplier network to offer an entirely outsourced service. In an insourced model, a supplier will operate and provide services such as vehicle repair and replacement through its own network of regional depots throughout the country.<sup>5</sup> Both Parties operate a predominantly insourced model for their flexible rental services. Regardless of the supply model, vehicles are predominantly delivered to customers from suppliers' respective sites.<sup>6</sup>

20. Within flexible rental services, the Parties overlap in the supply of a number of vehicle types by way of flexible rental: namely, LCVs, cars, pick-ups, HGVs, temperature-controlled LCVs, temperature-controlled HGVs and accessible vehicles.<sup>7</sup>
21. The CMA has previously considered the supply of flexible rental services in *Enterprise/Vulcan*, in which the merger was assessed against the following product frames of reference:<sup>8</sup>
  - a. The supply of flexible rental services (including LCVs and cars) to customers requiring vehicles nationally (so-called 'national' customers); and
  - b. The supply of flexible rental services (including LCVs and cars) to customers requiring vehicles in a specific region or locality in Great Britain (so-called 'regional' customers).
22. The Parties submitted that they consider there to be one market for the supply of vehicle hire services.<sup>9</sup> However, the Parties further submitted that the narrowest product frame of reference is the supply of flexible rental services, segmented by the following vehicle types in which the Parties overlap:

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<sup>5</sup> The Parties submitted that all suppliers will outsource services to a certain extent, and that Enterprise was not aware of any customer that required its fleet to be serviced on an exclusively insourced basis (Parties' Merger Notice, paragraph 13.13).

<sup>6</sup> Parties' Merger Notice, paragraph 12.7(e).

<sup>7</sup> The Parties also overlap in the supply of fleet management services. The Parties submitted that SHB generated minimal revenues from such services (£[REDACTED]) in its last financial year) and that its share of supply in fleet management services would be less than [0-5]%. Given the limited extent of SHB's activities in fleet management services, the CMA has not considered these services any further in this decision as no competition concerns arise on any plausible basis.

<sup>8</sup> Completed acquisition by Enterprise Rent-A-Car UK Limited of Vulcan Holdco Limited and its subsidiary Burnt Tree Holdings Limited (ME/6463-14), decision of 29 October 2014 (*Enterprise/Vulcan*), paragraph 30.

<sup>9</sup> Parties' Merger Notice, paragraph 12.2.

- a. LCVs and cars;
  - b. HGVs; and
  - c. Certain specialist vehicles (including temperature-controlled vehicles, accessible vehicles and 4x4s).<sup>10</sup>
23. The CMA has considered the possibility of product segmentation by reference to: (i) different types of hire services; and (ii) different types of vehicle. As a starting point, the CMA has taken the supply of flexible rental services and considered whether this frame of reference can be widened to include other forms of vehicle hire and/or narrowed to particular vehicle types.

#### *Segmentation by hire type*

24. In *Enterprise/Vulcan*, the CMA decided on a cautious basis to consider the supply of flexible rental services separately from other forms of vehicle hire, having received mixed feedback on the substitutability between flexible rental services, longer-term fleet hire and daily rental hire. However, given the lack of competition concerns arising in that case on any basis, it did not definitively conclude on whether the frame of reference could be wider than flexible rental services.<sup>11</sup>
25. The Parties submitted that different methods of vehicle hire can be considered to be within the same product frame of reference on the basis that:<sup>12</sup>
- a. Most customers will choose a mix of daily rental, flexible and leasing solutions to meet their overall fleet requirements. Enterprise noted that it has responded to this demand by offering an [X].
  - b. The Parties have significant experience of customers considering other types of rental services as an alternative to flexible rental services when considering how best to resource their fleet requirements. For example, SHB has submitted a flexible rental solution in tenders where customers have expressly sought a leasing solution on the basis that a flexible contract will similarly meet customers' requirements.

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<sup>10</sup> Parties' Merger Notice, paragraph 13.1.

<sup>11</sup> *Enterprise/Vulcan*, paragraph 24.

<sup>12</sup> Parties' Merger Notice, paragraph 13.26.

- c. It is relatively easy for suppliers to re-dedicate vehicles from one type of rental to another, depending on what suppliers believe the most profitable use of the vehicles will be.
26. The Parties also acknowledged, however, that flexible rental services offer certain distinct features, such as the absence of minimum terms and the ability to cater to the customer's specification requirement. This view was supported by the third-party feedback the CMA received. Third parties confirmed that customisation, flexibility and the ability of flexible rental services to cater for unpredictable or seasonal demand were the main factors that set flexible rental services apart from leasing and shorter-term daily hire.
27. The CMA received mixed views as to the substitutability of other forms of vehicle hire with flexible rental services. Overall, evidence from third parties indicated that, whilst daily hire and leasing may be good alternatives to flexible rental services in some circumstances, they were not a good alternative in others.
  - a. The majority of customers considered both leasing and daily hire to be good alternatives to flexible rental services to some extent. Some noted that: (i) the former was particularly suitable for longer periods of work or for when demand was more certain; and (ii) the latter was a good alternative when hiring vehicles for short-term periods and for peaks in demand. A small proportion of customers (with respect to each of leasing and daily hire) considered these to be poor alternatives to flexible rental services, with some customers noting that these were more expensive than vehicle hire, that leasing was a more inflexible form of vehicle hire, and that daily hire was unsuitable for hiring vehicles that required modification.
  - b. Suppliers also differed in their views as to the substitutability of other forms of vehicle hire with flexible rental services. Less than half of suppliers considered leasing and daily hire to be good alternatives to flexible rental services. Some noted that the former was appropriate for longer periods of work, and the latter, more appropriate for hiring vehicles to accommodate peaks in demand. However, one supplier (with respect to each of leasing and daily hire) considered these to be poor alternatives to flexible rental services. Some suppliers noted that leasing was inflexible and that daily hire was unsuitable in circumstances where customers required modification of vehicles. One competitor also noted that changes in accounting requirements which became effective in January 2019 had also made leasing a potentially less attractive option relative to flexible rental services.

28. In the light of the distinct features of flexible rental services which set it aside from other hiring methods and the mixed third party evidence regarding the substitutability of other forms of vehicle hire with flexible rental services, on a cautious basis, the CMA has analysed the impact of the Merger on the supply of flexible rental services. The CMA has however considered the competitive constraint exerted by other methods of hire in its competitive assessment where relevant. Given the lack of competition concerns in this case under any frame of reference, it was not necessary for the CMA to conclude on whether the appropriate frame of reference may be wider than the narrower segments considered.

### *Segmentation by vehicle type*

29. In *Enterprise/Vulcan*, the CMA considered the supply of cars and LCVs by way of flexible rental (without segmenting between these vehicle types). The CMA did so following feedback from the Parties and third parties that the flexible rental market is predominately concerned with LCVs but that some customers also require cars on a flexible basis and accordingly, all suppliers supply LCVs and cars together.<sup>13</sup> The CMA has not previously considered whether any other types of vehicle, such as 4x4s or pick-up vehicles, could be included in that frame of reference or comprise a frame of reference on a standalone basis.

30. The Parties submitted that the frame of reference for the supply of flexible rental services could be widened to include all vehicle types (on the basis that customers will frequently require a mix of vehicles from their suppliers), but that the CMA did not need to assess the Merger in this wider frame of reference as no competition concerns arose regardless of how the frame of reference was defined.<sup>14</sup>

31. The Parties nevertheless stated that the narrowest product frames of reference in this case could be segmented along the following vehicle types in which the Parties overlap, namely: (i) LCVs and cars, (ii) HGVs; and (iii) a range of specialist vehicles (including temperature-controlled LCVs, temperature-controlled HGVs, accessible vehicles and 4x4s).<sup>15</sup> With respect to these vehicle types, the Parties submitted that:

- a. If separate vehicle segments were to be considered, the flexible rental market is, commensurate with the feedback received by the

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<sup>13</sup> *Enterprise/Vulcan*, paragraph 24.

<sup>14</sup> Parties' Merger Notice, paragraph 13.25.

<sup>15</sup> Potentially including vehicles such as Land Rovers, commercial 4x4s, pick-ups, LCVs and quads.



CMA in *Enterprise/Vulcan*,<sup>16</sup> predominantly concerned with LCVs, with the vast majority of LCV suppliers also supplying cars alongside LCVs in order to meet customers' fleet requirements (and that accordingly, it would not be appropriate to segment further as between LCVs and cars).<sup>17</sup>

- b. HGVs are distinct from a customer's perspective as they serve a different purpose to other commercial vehicles, and that the competitor set for HGVs differs from that of LCVs and cars given the presence of a number of players more focused on the hiring of HGVs.<sup>18</sup>
- c. The Parties' fleet composition in respect of different types of specialist vehicles was in most cases complementary, that their combined shares of supply in respect of certain types of specialist vehicles were low, and that accordingly, the question as to whether the market should be further segmented to reflect these different vehicle types could be left open.<sup>19</sup>

#### *CMA assessment*

- 32. The CMA believes that LCVs and cars should be considered together in a single frame of reference on the basis that the evidence received on this point was consistent with the CMA's previous findings in *Enterprise/Vulcan* and the Parties' submissions. Customers indicated to the CMA that they required LCVs and cars together. The Parties and other competitors also reported supplying these vehicles in combination.
- 33. The Parties also overlap in the supply of pick-up vehicles.<sup>20</sup> Pick-ups are light duty vehicles with an open cargo area which the Parties identified as being a type of 4x4 vehicle.<sup>21</sup> The Parties submitted that Enterprise only supplies pick-ups, whereas SHB supplies a wider range of 4x4 vehicles, has a highly diversified fleet and accordingly participates in a wider range of tenders compared to Enterprise.<sup>22</sup> In light of the Parties' overlap areas, the CMA

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<sup>16</sup> *Enterprise/Vulcan*, paragraph 26.

<sup>17</sup> Parties' Merger Notice, paragraphs 13.3–13.5. The Parties submitted that the predominance of LCVs in the flexible rental market was evidenced by the Parties' fleets, the majority of which consists of LCVs (Parties' Merger Notice, paragraph 13.3).

<sup>18</sup> Parties' Merger Notice, paragraph 13.6.

<sup>19</sup> Parties' Merger Notice, paragraph 13.7.

<sup>20</sup> Pick-ups account for a very small share of Enterprise's business, both in terms of volume of vehicles and revenue, as discussed further in paragraph 60.b.

<sup>21</sup> Parties' Merger Notice, paragraph 13.7.

<sup>22</sup> Parties' Merger Notice, Table 2: Flex-E-Rent's fleet mix and associated revenue (FY18), and paragraph 15.30.

considers that, for the purpose of the competitive assessment for this Merger, the overlap in pick-ups can be considered in the same frame of reference as the supply of LCVs and cars on the basis that:

- a. Pick-ups share some similar characteristics as LCVs. For example, in terms of functionality, owing to the open cargo area to the rear of the pick-up, both can be used to transport loads between destinations.
  - b. The Parties provided tender data which, although limited (as described further at paragraph 57 and following), provided evidence of bids by both Parties for customer tenders requiring a combination of LCVs and pick-ups and LCVs, cars and pick-ups.
  - c. The CMA has found no evidence that pick-ups display a comparable level of unique features as HGVs, temperature-controlled vehicles, or accessible vehicles, as discussed in paragraph 34 below.
  - d. A number of LCV and car suppliers comprising a significant share of supply (including the Parties, Northgate, West Wallasey and Dawson), also provide pick-ups.
  - e. SHB records certain types of LCVs within the 4x4 segment, indicating an element of crossover with the LCV and car (including pick-ups) frame of reference, while Enterprise's offer extends to pick-ups, but not other forms of 4x4s, as reflected in the different types of tender in which the Parties participate.<sup>23</sup>
34. The CMA believes that the remaining overlapping vehicle types identified by the Parties have distinct characteristics or functions with limited scope for demand-side substitutability between them. Specifically:
- a. LCVs are commercial carrier vehicles with a gross vehicle weight of no more than 3.5 metric tonnes. HGVs are vehicles with a gross vehicle weight above 3.5 metric tonnes. Both are used to transport different loads with the latter able to carry a heavier load. HGVs also require a specialist licence.<sup>24</sup>

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<sup>23</sup> Parties' Merger Notice, Table 3: SHB's fleet mix and associated revenue (FY17/18).

<sup>24</sup> [Vehicle and Operator Services Agency \(December 2011\), Goods Vehicle Operator Licensing Guide for Operators](#); page 4 states that a goods vehicle operator's licence is required for goods vehicle of over 3.5 tonnes gross plated weight (i.e. a HGV).

- b. Both temperature-controlled LCVs and temperature-controlled HGVs are used to transport products that must be kept at pre-defined temperatures, with the latter used for transporting a larger volume of products than the former.
  - c. Accessible vehicles are vehicles that have been specifically modified to create extra space in order that they can accommodate wheelchair users and are therefore not substitutable with other non-accessible vehicle types.
35. The CMA observes that although suppliers may offer a range of vehicle types, suppliers tend to focus primarily on the supply of a specific vehicle type. Many suppliers supply both LCVs and HGVs; by contrast, only a few suppliers specialise in primarily LCVs or HGVs. Data provided by these suppliers in the course of the CMA's merger investigation shows that on average a supplier's fleet in their secondary vehicle category is only [30-40]% of the size of their fleet in their primary vehicle category.<sup>25</sup> In addition, as illustrated by the share of supply data listed at Tables 1 to 4 of this decision, suppliers' shares of supply vary significantly across different vehicle types. This evidence is consistent with suppliers predominately focussing on supplying different groups of customers with different vehicle requirements and, therefore, with different competitive interactions across vehicle types.

#### *Conclusion on product scope*

36. For the reasons set out above the CMA has considered the impact of the Merger against the following product frames of reference:
- a) The supply of LCVs and cars (including pick-ups) on a flexible rental basis;
  - b) The supply of HGVs on a flexible rental basis;
  - c) The supply of temperature-controlled LCVs on a flexible rental basis;
  - d) The supply of temperature-controlled HGVs on a flexible rental basis; and
  - e) The supply of accessible vehicles on a flexible rental basis.
37. However, given the lack of competition concerns in this case under any frame of reference, it was not necessary for the CMA to conclude on whether the

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<sup>25</sup> The CMA has based this calculation based on suppliers' responses with regards to their fleet size for each vehicle segment.

appropriate frame of reference may be wider than the narrower segments considered.

### **Customer scope**

38. In *Enterprise/Vulcan*, the CMA considered separate frames of reference for national customers and regional customers.<sup>26</sup> The CMA has in this decision considered the difference between national and regional customers' respective requirements in the context of its consideration of the geographic frames of reference outlined below.
39. The CMA did not receive any evidence to suggest that a further segmentation of the market by customer types would be appropriate.

### **Geographic scope**

40. In *Enterprise/Vulcan*, the CMA assessed the merger at both the national level and at city/regional level (whilst also taking account in its regional assessment of the competitive constraint exerted by suppliers operating an outsourced model from outside of a particular region).<sup>27</sup> The CMA received mixed evidence in that case on whether a regional presence for national customers was required. Some third parties submitted that the market was national, and that companies operating an outsourced model could outsource servicing of customers in regions in which it did not itself operate.<sup>28</sup> Others, however, noted the importance of a regional presence for maintenance.<sup>29</sup>
41. The Parties submitted that the geographic scope of the supply of flexible rental services is at least as wide as Great Britain on the basis that the main competitors all compete across the country, regardless of whether they operate an insourced model and have regional depots in any particular region.<sup>30</sup> The Parties also submitted that they do not have [§].<sup>31</sup>
42. Whilst the Parties did not consider that there was a basis for adopting a frame of reference narrower than Great Britain, the Parties nevertheless provided

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<sup>26</sup> *Enterprise/Vulcan*, paragraphs 27-29.

<sup>27</sup> The CMA took this approach on a cautious basis, however, in the absence of competition concerns on any basis, it was not necessary for the CMA to conclude on whether the geographic market was regional or wider. (*Enterprise/Vulcan*, paragraph 34).

<sup>28</sup> *Enterprise/Vulcan*, paragraph 32.

<sup>29</sup> *Enterprise/Vulcan*, paragraph 32.

<sup>30</sup> The Parties confirmed that neither Enterprise nor SHB have depots in Northern Ireland or supply more than a minimal number of vehicles to Northern Ireland (Parties' Merger Notice, paragraph 14.5 (a)).

<sup>31</sup> Parties' Merger Notice, paragraph 13.33.

analyses on a regional basis of the competitors located within 50 miles of their overlapping depots (ie, in a region in which they were both present).<sup>32</sup> To support the use of 50 miles, the Parties provided evidence on the proportion of customers renting LCVs and cars (the primary area of overlap between the Parties) on a flexible basis that request delivery within various distance ranges for a sample of depots. For the Enterprise depots, almost [70-80]% of deliveries were within 50 miles of the depots, whilst for SHB depots over [80-90]% of deliveries were within 50 miles of the depots.<sup>33 34</sup>

43. Consistent with *Enterprise/Vulcan*, the CMA received mixed evidence on the extent to which competition in flexible rental services was national or regional. Some customers identified themselves as ‘national’ customers, typically operating across a number of geographic regions and which tended to require a larger number of vehicles (referred to in this decision as ‘**national customers**’). Other customers identified themselves as ‘regional’ customers, requiring a smaller number of vehicles in specific regions (referred to in this decision as ‘**regional customers**’). Similarly, competitors identified themselves as either ‘national’ (ie, able to supply a large number of vehicles across the country) or ‘regional’ (ie, only able to supply a smaller number of vehicles in their regional area) (referred to in this decision as ‘**national suppliers**’ and ‘**regional suppliers**’ respectively).
44. Half of all national customers told the CMA that they would consider both regional and national suppliers in order to meet their requirements. Regional suppliers told the CMA that they are mostly able to supply less than 100 vehicles. By contrast, national customers told the CMA that they required 200 vehicles on average. This indicates that regional suppliers do not have the fleet capacity required to fully service national customers with larger requirements, although they may compete with national suppliers to meet a portion of national customers’ total requirements. The CMA also found that national suppliers only identified other national suppliers as competitors.
45. The majority of regional customers told the CMA that they considered both national and regional suppliers to be viable alternatives to each other. Regional customers told the CMA that a regional presence was of relative importance, but that they were willing to use national suppliers who, whilst lacking a presence in their regional area, used an outsourced approach to

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<sup>32</sup> A further catchment was applied if the nearest overlapping depot between the Parties in a specific region was at a distance greater than 50 miles.

<sup>33</sup> Parties’ Merger Notice, Table 8 LCVs and cars and Table 9 Non-HGV vehicles. Data provided by SHB showed that the results were similar for both LCVs and for all non-HGVs. This is consistent with there being no material differences in delivery distances across vehicle types.

<sup>34</sup> The approach taken in this case is in accordance with the [CMA’s Retail Mergers Commentary, CMA 62 \(10 April 2017\)](#); paragraph 2.20.

supply regional customers. This indicates that regional customers would consider a national supplier even if the supplier is not present in the regional area. The evidence also indicated that regional suppliers mainly supply the regions in which they are located (ie, rather than operating more broadly outside of these geographic regions). This suggests that, while regional customers across the country may have access to the same set of national suppliers, they will have a different set of additional regional suppliers, depending on their area.

#### *Conclusion on geographic scope*

46. In view of the evidence described above regarding the different options available to national and regional customers, on a cautious basis, the CMA has considered the impact of the Merger on competition to supply on: (i) a Great Britain-wide level;<sup>35</sup> and (ii) on a regional level.
47. However, in the absence of competition concerns on any basis, it has not been necessary for the CMA to conclude definitively on the geographic frame of reference.

#### *Conclusion on frame of reference*

48. 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 LCVs and cars, including pick-ups (referred in the remainder of this decision as LCVs and cars (including pick-ups)), on a flexible rental basis at both: (i) Great Britain-wide level; and (ii) regional level;
  - b. The supply of HGVs on a flexible rental basis at both: (i) Great Britain-wide level; and (ii) regional level;
  - c. The supply of temperature-controlled LCVs on a flexible rental basis at both: (i) Great Britain-wide level; and (ii) regional level;
  - d. The supply of temperature-controlled HGVs on a flexible rental basis at both: (i) Great Britain-wide level; and (ii) regional level; and

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<sup>35</sup> The CMA has assessed the impact of the Merger at a Great Britain-wide (rather than UK-wide) level on the basis that, as noted in footnote 30 above, the Parties have no depots, and only minimal activities in Northern Ireland.

- e. The supply of accessible vehicles on a flexible rental basis at both: (i) Great Britain-wide level; and (ii) regional level.
49. Given the lack of competition concerns in this case under any frame of reference, it was not necessary for the CMA to conclude on whether the appropriate frame of reference may be wider than the narrower segments considered.

## **Competitive assessment**

### **Horizontal unilateral effects**

50. 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>36</sup> Horizontal unilateral effects are more likely when the merging parties are close competitors.
51. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in each of the frames of reference set out above.

#### ***Horizontal unilateral effects in the supply of LCVs and cars (including pick-ups), by way of flexible rental, at a Great Britain-wide level***

52. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of flexible rental services in respect of LCVs and cars (including pick-ups), at a Great Britain-wide level, the CMA considered evidence in relation to:
- a. the shares of supply of the Parties and their competitors;
  - b. the closeness of competition between the Parties;
  - c. the competitive constraints posed on the Parties, including out of market constraints; and
  - d. views from third parties on the Merger.

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<sup>36</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

## *Shares of supply*

53. The Parties submitted that post-Merger they would face competition from market leader Northgate as well as numerous other suppliers with sizeable shares in the supply of LCVs and cars by way of flexible rental on both a UK-wide and Great Britain-wide basis.<sup>37</sup> The Parties estimated their shares of supply on a volume basis. The CMA's share of supply estimates, based on the Parties' and third parties' data for the supply of flexible rental services in respect of LCVs and cars (including pick-ups)<sup>38</sup> in Great Britain, are shown in Table 1 below.<sup>39</sup>

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<sup>37</sup> Parties' Merger Notice, paragraph 14.11.

<sup>38</sup> As noted above, the product frame of reference includes LCVs, cars and pick-ups. Shares of supply for pick-ups specifically could not be verified for all suppliers listed at Table 1. Accordingly, vehicle numbers for 4x4s (which was available for all listed suppliers) have been included in Table 1 as a proxy for vehicle numbers for pick-ups. The CMA considers that 4x4s provide an appropriate proxy in the absence of specific information on pick-ups, on the basis that pick-ups are a type of 4x4 vehicle and that including 4x4s would in any event, only have the effect of overstating rather than understating the increment from SHB as a result of the Merger.

<sup>39</sup> The CMA has excluded broker companies from its share of supply tables in this decision on the basis that this would result in double-counting (given broker companies source vehicles from other suppliers).



**Table 1- Shares of supply for the provision of LCVs and cars (including pick-ups) by way of flexible rental in Great Britain**

	<b>Fleet number estimate</b>	<b>% of total</b>
Enterprise	[X]	[10-20]
SHB	[X]	[0-10]
<b>Combined</b>	[X]	<b>[20-30]</b>
Northgate	[X]	[20-30]
Thrifty <sup>40</sup>	[X]	[10-20]
Hertz	[X]	[10-20]
West Wallasey	[X]	[0-10]
Dawson	[X]	[0-10]
Reflex	[X]	[0-10]
Close brothers	[X]	[0-10]
GAP	[X]	[0-10]
Turner	[X]	[0-10]
Salford	[X]	[0-10]

Source: the Parties' and third parties' estimates

54. The CMA believes that shares of supply by volume provide a useful indication of the Parties' and competitors' relative strengths in flexible rental services. This is because the capacity of a given supplier (ie, their fleet numbers) is an important indication of their ability to meet customer requirements (particularly, that of national customers).
55. Table 1 demonstrates that the Parties will face a number of competitive constraints post-Merger. The Parties' combined share of supply by volume is moderate at [20-30]% with a low increment of [0-10]%. Northgate is (and will continue to be, post-Merger) the largest supplier. The merged entity will also face constraints from a number of other suppliers with moderate shares of supply such as Thrifty and Hertz, as well as a number of smaller players. The CMA therefore considers that overall, these shares suggest that the Parties will remain subject to meaningful competitive constraints post-Merger.

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<sup>40</sup> The Parties identified Thrifty and Hertz as daily (rather than flexible) rental service providers and did not estimate shares of supply for these parties on this basis. The CMA has nevertheless included Thrifty and Hertz's figures as both parties provided fleet numbers for LCVs and cars that they self-identified as providing on a flexible rental basis.

### *Closeness of competition*

56. The Parties submitted that their respective portfolios are, broadly speaking, complementary, with Enterprise's flexible rental services being focused primarily on LCVs and cars, and SHB having a more diversified portfolio (particularly, within specialist vehicles) and customer base.<sup>41</sup> The CMA has examined the closeness of competition between the Parties by reference to: (i) tender data provided by the Parties; (ii) the Parties' respective fleet compositions; (iii) the views of third parties; and (iv) and the Parties' internal documents.

#### *Tender data*

57. The Parties provided tender data which they submitted identified all of the flexible rental service tenders they participated in during 2018 and of which they have a record. This data indicated that the Parties encountered each other in less than half of ([X] out of [X]) tenders for LCVs and cars (including pick-ups).<sup>42</sup> Of these [X] tenders, on three occasions both Parties won a portion of the 'lots' within the same tender (ie for customers with large vehicle requirements wishing to divide their requirements into different sub-tenders or lots, which are separately tendered for). Separately, on three occasions SHB (alone) won the contract and Enterprise (alone) won the contract once.
58. The CMA believes that this tender data supports the Parties' submission that the Parties are not particularly close competitors. However, the CMA notes this data has the following limitations:
- a. Where LCVs and cars (including pick-ups) have been tendered alongside other vehicle types, it is unclear from the data which supplier has won the particular vehicle services within that 'mixed' tender.
  - b. The data represents only a limited subset of tenders (ie, only those of which the Parties had a record). In addition, the identified tenders comprise only a small proportion of each of the Parties' respective revenues for flexible rental services.
  - c. The data does not allow for comparison of the Parties' competitive interactions with each other as against their interaction with other competitors. The Parties submitted in this respect that they did not

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<sup>41</sup> Parties' Merger Notice, paragraphs 15.28–31.

<sup>42</sup> The CMA has used 4x4 data as a proxy for pick-ups, on the same basis outlined further at footnote 38.

have visibility regarding which other competitors competed in tenders and did not collect information during the ordinary course of business.<sup>43</sup>

59. The CMA therefore believes that, whilst the tender data supports the Parties' submission that there is only a limited degree of competitive interaction between the Parties in this frame of reference, in light of its limitations, the CMA will consider it in the context of the other available evidence.

*Fleet composition*

60. The Parties submitted that, broadly speaking, the Parties' fleet compositions were complementary.<sup>44</sup> With respect to the category of LCVs and cars (including pick-ups), the CMA notes that:
- a. LCVs comprise the majority of Enterprise's fleet size (and the majority of its total flexible rental services revenue), whilst cars comprise only less than 10% of both its fleet size and total flexible rental services revenue. By contrast, a smaller proportion of SHB's fleet size and total flexible rental services revenue is attributable to LCVs (around half). Cars, however, comprise a similarly small proportion of its fleet size and total flexible rental services revenue (less than 10%).<sup>45</sup>
  - b. Pick-ups comprise less than 10% of both Enterprise's fleet size and its total flexible rental services revenue.<sup>46</sup> By contrast, the Parties submitted that SHB has a highly diversified fleet, with a greater emphasis on 4x4s and specialist vehicles.<sup>47</sup> SHB's 4x4 fleet is described as comprising a range of vehicles (such as Land Rovers, commercial 4x4s, Toyota Hilux, LCVs, Quads, and other 4x4s such as Isuzu and Ford), representing less than one third of its total fleet size and of its total flexible rental services revenue.<sup>48</sup> SHB therefore has a stronger presence in 4x4s (both in volume and range).<sup>49</sup>

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<sup>43</sup> As noted in Annex 094 to the Parties' Merger Notice, where the Parties do know who competed, this may have been gained through, for example: being informed by a customer who they are bidding against so they are encouraged to put in a more competitive offer; in outcome communications from customers; and general market knowledge.

<sup>44</sup> Parties' Merger Notice, paragraph 15.30.

<sup>45</sup> Parties' Merger Notice, Table 2. In the context of the fleet breakdown cited in this paragraph, the term 'cars' does not include pick-ups but rather denotes, for Enterprise, passenger cars and, for SHB, small and medium hatchbacks, saloons, 5 door estates, commercial passengers, luxury and sport.

<sup>46</sup> Parties' Merger Notice, Table 2.

<sup>47</sup> Parties' Merger Notice, paragraph 15.29.

<sup>48</sup> SHB did not provide a fleet mix breakdown specifically in relation to pick-ups.

<sup>49</sup> Parties' Merger Notice, Table 3

61. Customers that responded in relation to the supply of 4x4 vehicles confirmed that this is a relative strength of SHB. These customers stated that Enterprise has a more limited (pick-up) offering than SHB and identified Thrifty as a more relevant supplier of 4x4 vehicles than Enterprise.
62. This evidence suggests that the Parties are not particularly close competitors, as reflected by Enterprise's larger fleet of LCVs and limited offering in pick-ups, as compared with SHB.

*Third party views on closeness*

63. The majority of national customers that responded to the CMA's merger investigation stated that they did not see the Parties as close alternatives to each other, with SHB having a more specialist vehicle-oriented offering. This is consistent with the Parties' submissions regarding the complementarity between the Parties' respective fleet compositions, and Enterprise's stated rationale for the Merger (namely, to diversify Enterprise's fleet). However, half of the Parties' national competitors did identify the Parties as competing within the same market or as being amongst the top competitors in the frame of reference.

*Internal documents*

64. The internal documents submitted by the Parties to the CMA (the majority of which were regularly-produced internal business updates/reports) were typically high-level in nature. Therefore, they did not, as a whole, give a useful indication of the Parties' views on the competitive conditions of flexible rental services in Great Britain or any narrower segments therein. Notwithstanding these limitations, the CMA notes that:
  - a. One Enterprise document on the 'LCV Market 2018' lists (in descending order, by size) [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as being its largest competitors on a fleet-size basis.<sup>50</sup> Similarly, a briefing document prepared by SHB for Enterprise in relation to the Merger lists, under a column labelled 'LCVs', [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED] as being players within the competitive landscape.<sup>51</sup>
  - b. Of the few references to competitors that were contained within SHB's management reports, Enterprise was included alongside references to other competitors (in particular, Northgate), but also a

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<sup>50</sup> Annex 12 to the Parties' Merger Notice, Flex E Rent Business Update September 2018, page 13.

<sup>51</sup> Annex 15 to the Parties' Merger Notice, Project Hermes Briefing Document, August 2018, page 16.

range of other competitors, each of whom were mentioned once, with no indication of Enterprise being ranked above the other market players.<sup>52</sup>

65. The references to competitors in these internal documents are therefore largely consistent with the competitive landscape suggested by the Parties' shares of supply (ie, that Northgate in particular is a strong competitor in LCVs and cars, and that a number of other competitors will remain post-Merger).

#### *Conclusion on closeness*

66. The CMA believes that the Parties do compete, but that their offerings are differentiated to some extent on the basis of:
- a. the Parties' shares of supply (ie, SHB has a significantly smaller share of supply);
  - b. the tender data which (notwithstanding its limitations) indicates that the Parties do not significantly constrain one another, with the Parties participating in only a small proportion of tenders that each party entered;
  - c. the differing emphasis as between the Parties in relation to vehicle fleet;
  - d. customers' and competitors' feedback, which indicated that the majority generally did not see the Parties as competing closely; and
  - e. the Parties' internal documents, which suggest that whilst the Parties do see each other as a rival in the market, other players such as Northgate are also seen as such.

#### ***Competitive constraints***

67. Unilateral effects are more likely where customers have little choice of alternative suppliers or where these alternative suppliers cannot compete.
68. The Parties identified their top national competitors in LCVs and cars as being primarily market leader Northgate (with whom the Parties share many of their top customers), followed by [X], [X] and [X], all of whom have a sizeable fleet and nationwide geographical coverage. The Parties also submitted that

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<sup>52</sup> These references tended to be made in the context of competition within flexible rental services in Great Britain as a whole, rather than being specific to competition within LCVs and cars.

they were constrained by out of market constraints imposed by leasing companies, daily rental companies, broker firms and regional suppliers. The CMA has therefore assessed the Parties' larger competitors listed in Table 1 as set out below.

69. **Northgate** is a specialist vehicle hire company, primarily involved with the supply of LCVs and cars and operates an insourced model, supplying vehicles from over 59 depots across Great Britain. It is the largest supplier in LCVs and cars, with [20-30]% share of supply and [X] LCVs than either of the Parties. Northgate also supplies pick-ups.
70. The CMA notes that Northgate was frequently mentioned by suppliers as a top five competitor and as a credible alternative by customers. Customer responses also supported the Parties' submission that they shared many of the same customers as Northgate (with many customers sourcing their vehicles from both the Parties and Northgate).<sup>53</sup>
71. The Parties' internal documents also frequently recognise Northgate as a strong competitor. As well as being mentioned more broadly in the documents identified in paragraph 64 above, there is also specific mention of Northgate on a standalone basis.<sup>54</sup> For example, a Business Update document prepared by Flex-E-Rent [X].<sup>55</sup> The CMA therefore believes Northgate is a strong competitor to the Parties and will continue to be so following the Merger.
72. **West Wallasey** and **Reflex** are specialist vehicle hire companies, primarily involved with the supply of LCVs and cars. West Wallasey also supplies pick-ups. Both use an outsourced model of supply.<sup>56</sup>
73. **Dawson** is a generalist vehicle hire company, active across LCVs and cars, HGVs and temperature-controlled LCVs. Dawson also supplies pick-ups. It operates an insourced model, supplying vehicles from over 28 depots across Great Britain.
74. West Wallasey, Reflex and Dawson each have [0-10]% share of supply. These suppliers were also mentioned as top five competitors by other

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<sup>53</sup> This feedback is consistent with the Parties' submission (Parties' Merger Notice, paragraph 15.34) that Northgate is highly active in bidding for contracts for LCVs and cars across the UK. However, as noted in this Decision at paragraph 58.c and the accompanying footnote the tender data was not collected by the Parties during normal course of business and they did not have visibility regarding the other suppliers competing in these tenders. Therefore, the CMA considers that the tender data cannot be used to assess the competitive constraint on the Parties from other suppliers.

<sup>54</sup> See paragraph 64 above.

<sup>55</sup> Annex 12 to the Parties' Merger Notice, Flex E Rent Business Update September 2018, page 10.

<sup>56</sup> West Wallasey has two depots and utilises an outsourced model of supply. Reflex has one depot. Servicing and maintenance of vehicles is carried out through a combination of workshops and mobile fitters.

suppliers and were cited as credible alternatives by customers. Consistent with this, a business update document prepared by Enterprise identified [REDACTED], [REDACTED] and [REDACTED] as competitors within the LCV and car segment<sup>57</sup> and a document prepared for the Merger by SHB identifies [REDACTED], [REDACTED] and [REDACTED] as competitors within the same segment.<sup>58</sup> Therefore, the available evidence indicates that these suppliers will also continue to exert a competitive constraint on the Parties post-Merger.<sup>59</sup> Notwithstanding the lower shares of supply of these players relative to Northgate, the CMA believes these to be credible competitors to the Parties across Great Britain.

75. **Thrifty** and **Hertz** are active in the daily rental and flexible rental market. They are specialist vehicle hire companies, primarily involved with the supply of LCVs and cars, with the latter also providing pick-ups.<sup>60</sup> Both have an insourced model, supplying from a national network of depots across Great Britain. They each have [10-20]% share of supply respectively. The constraint imposed by each of Thrifty and Hertz in the market for the flexible hire of LCVs and cars is more pronounced in relation to cars (with each of these players having a significant car fleet) than in relation to LCVs.
76. However, both were identified by other suppliers as amongst the top five competitors in this market. Customers also told the CMA that Thrifty and Hertz are credible alternatives to the Parties. Furthermore, [REDACTED] is also mentioned as a competitor in Enterprise's internal document identified above.<sup>61</sup> Therefore, the CMA believes that evidence indicates that Thrifty and Hertz will be two of a number of other suppliers who will continue to be a competitive constraint the Parties across Great Britain following the Merger.
77. Additionally, the CMA has found that there are a number of other smaller suppliers such as Close Brothers, Turner and Salford. [REDACTED] of these smaller competitors mentioned that they operated nationwide and could supply [REDACTED] plus vehicles. This is above the average of 200 vehicles required for national customers (as noted at paragraph 44 above). One competitor cited its national contract with a national customer in support of its ability to compete nationally. One competitor, however, noted that it may struggle to supply over [REDACTED]

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<sup>57</sup> Annex 12 to the Parties' Merger Notice, Flex E Rent Business Update September 2018, page 13.

<sup>58</sup> Annex 15 to the Parties' Merger Notice, Project Hermes Briefing Document, August 2018, page 16. The same document also identifies [REDACTED] as a competitor to SHB for 4x4s.

<sup>59</sup> One of these competitors told the CMA that it cannot [REDACTED]. However, as noted at paragraph 93, the CMA does not consider an absence of a network of depots limits the ability of suppliers operating an outsourced from competing against insourced suppliers, on the basis of favourable customer feedback with regard to the outsourced model of supply.

<sup>60</sup> Based on limitations of the information available, the CMA has not considered Thrifty to be a supplier specifically of pick-ups for the purposes of this assessment.

<sup>61</sup> See paragraph 64.a above. This document identifies [REDACTED] as a competitor in both LCVs and 4x4s.

vehicles and said that it found it easier to win regional contracts rather than national contracts. The CMA therefore believes that these players provide some constraint for national customers across Great Britain, but to a more limited extent.

78. [X] broker companies told the CMA that they were able to compete on a national basis, despite some preference from customers for insourced supply. One competitor from the broker sector told the CMA that it competes on a national level and is able to provide [X] LCVs and cars on a flexible rental basis through a large number of suppliers.<sup>62</sup> The CMA believes this suggests brokers will also act as a competitive constraint across Great Britain on the Parties post-Merger.

#### *Out of market constraint – alternative hire services*

79. The available evidence indicates that, consistent with the Parties' submissions, suppliers from the leasing and daily hire sector will also provide some competitive constraint on the Parties post-merger. As set out above at paragraph 27, the CMA received some evidence from customers and competitors on the positive substitutability of these methods of hire to flexible rental in at least some circumstances.
80. One leasing company told the CMA that it entered the flexible rental market [X] and anticipates national coverage. The CMA believes that this entry of a leasing company into the flexible rental market demonstrates a degree of supply-side switching from leasing into the flexible rental market. Although the fleet numbers are estimated to be small ([X] LCVs), the CMA believes that, when considered alongside third parties' views on the substitutability of leasing, such competitors are likely to act as a competitive constraint on the Parties to a limited extent post-Merger.

#### *Third party views*

81. The majority of third parties did not express concerns regarding the Merger in relation to this frame of reference. A number of the Parties' national competitors also stated that the Merger would generally enable Enterprise to compete more effectively through its more diversified fleet offering post-Merger.
82. The small number of customers and competitors that raised concerns did so on the basis that the Merger would remove a competitor in LCVs and cars

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<sup>62</sup> With a small number of LCVs (50) provided by SHB.



from the market. However, some also noted that the Merger will allow the Parties to offer more competitive prices.

83. Overall, the CMA believes that several national suppliers will constrain the merged entity, including both large flexible rental service suppliers operating across Great Britain on an insourced (Northgate, Dawson) and an outsourced (Reflex, West Wallasey) basis. The Parties will also face competition from smaller suppliers, brokers, leasing companies and daily hire companies to a more limited extent.

***Conclusion on horizontal unilateral effects in the supply of LCVs and cars (including pick-ups) on a flexible rental basis at the Great Britain-wide level***

84. For the reasons set out above, the CMA believes that the Parties compete in the supply of LCVs and cars in Great Britain. The available evidence shows, however, that the increment in the Parties' market position brought about by the Merger is limited, that the Parties are not particularly close competitors and that they will continue to face competitive pressure not only from Northgate, the market leader, but also a number of other strong players such as Thrifty, Hertz, Dawson, Reflex and West Wallasey. The available evidence also indicates that suppliers from the leasing and daily hire sector will also provide some competitive constraint on the Parties post-merger.
85. Taking the range of evidence into account in the round, including the strong constraint from rivals, the limited increment arising as a result from the Merger, differences in the Parties' overall fleet composition, as well as out of market constraints, the CMA therefore believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of LCVs and cars (including pick-ups) by way of flexible rental at the Great Britain-wide level.

***The supply of LCVs and cars (including pick-ups) on a flexible rental basis at a regional level***

86. The Parties did not provide shares of supply at a regional level for LCVs and cars but instead submitted analysis outlining the number of alternative suppliers to the Parties that have a physical presence in each of the regions/regional areas where the Parties overlap.
87. As discussed in the geographic frame of reference above, the Parties identified competitors within 50 miles, or further if there is a greater distance between the potentially overlapping Enterprise and SHB depots.<sup>63</sup> Based on

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<sup>63</sup> Parties' Merger Notice, paragraph 14.19.

these areas, the Parties identified 23 areas where the Parties' activities overlap.

88. The CMA has found that Northgate and Dawson, two of the largest national competitors, were present in every overlapping catchment area save for Ellesmere Port, in which Dawson did not have a depot. In addition, Thrifty and Hertz both have a wide national network of depots with Hertz confirming it has a network of 130 depots.
89. The Parties submitted that in only two regions would the number of national suppliers remaining after the Merger fall below five.<sup>64</sup> These were South Wales and Norwich, where there would be four national suppliers remaining. The Parties noted that this fascia count would not reflect the competitive constraint exerted by national suppliers that operate an outsourced model, such as West Wallasey and Reflex (nor out of market constraints, for example, as exerted by daily rental companies).
90. To identify those overlapping areas where there may be limited competitive constraints on the Parties after the Merger, the CMA took as its starting point a 50-mile radius catchment area as described in the geographic frame of reference above. The CMA then took into account the relative proximity of the Parties within the specified area, prioritising those where the Parties were of closer proximity to one another. The CMA also took into account the presence of national suppliers, both in terms of overall fascia count and their relative distance from the Parties' depots. These factors were considered cumulatively and, on this basis, the South Wales, Telford, Norwich and Southampton areas were identified, on a cautious basis, as warranting further scrutiny.
91. The CMA found that for each of South Wales, Telford, Norwich and Southampton, post-Merger there would remain eight or more competing remaining fascia.<sup>65</sup> For South Wales and Telford, the CMA found that four of the larger national suppliers are active in the region in addition to the Parties. For Norwich and Southampton, the CMA found that three of the larger national suppliers are active in the region in addition to the Parties.
92. The CMA also found that many regional suppliers provide a competitive constraint on the Parties for regional customers, for the following reasons.

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<sup>64</sup> Parties' Merger Notice, paragraph 14.29.

<sup>65</sup> Including both national and regional fascia.

- a. The number of regional competitor fascia remaining post-Merger was five or higher in each of South Wales, Telford, Norwich and Southampton;
- b. The majority of regional customers stated that they would consider using regional suppliers (as well as national suppliers) if the Parties increased their prices; and
- c. Half of regional suppliers identified at least one other regional supplier as a competitor.

93. The CMA found that whilst some customers said that a regional presence was of relative importance, the majority were open to this regional presence being established through outsourcing (through either the use of mobile repair vans or third-party service agreements with garages) as opposed to a network of depots. This means that suppliers who do not have a network of depots (such as West Wallasey and Reflex) or who are not present in specific regions are also able to act as a competitive constraint on the Parties post-merger, albeit to a lesser degree than those operating an insourced model.

94. The CMA also notes that no regional customers expressed concerns in relation to any of the four areas identified above. A minority of regional competitors expressed concerns on the basis that the merged entity could price aggressively and enhance its offering.

***Conclusion on the supply of LCVs and cars (including pick-ups) on a flexible rental basis at a regional level***

95. For the reasons set out above in relation to: (i) the lack of concerns at a Great Britain level; and additionally (ii) the ability of national suppliers with local depots in the specific areas to supply regional customers; (iii) the ability of national suppliers operating an outsourced model to supply regional customers; and (iv) the presence of regional suppliers who can also compete to supply regional customers following the Merger, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of LCVs and cars (including pick-ups) on a flexible rental basis at a regional level.

## Horizontal unilateral effects in the supply of HGVs by way of flexible rental

### Assessment at the geographic level of Great Britain

96. The Parties submitted that their share of supply in HGVs is low with a small increment and there are a number of other HGV suppliers with higher shares of supply, particularly Ryder, Dawson and Salford.<sup>66</sup>

**Table 2 – Estimates of share of supply for the supply of HGVs by way of flexible rental in Great Britain as a whole**

	Supply	% of fleet total
Enterprise	[REDACTED]	[0-10]
SHB	[REDACTED]	[0-10]
<b>Combined</b>	[REDACTED]	<b>[10-20]</b>
Ryder	[REDACTED]	[30-40]
Dawson	[REDACTED]	[20-30]
Fraikin <sup>67</sup>	[REDACTED]	[0-10]
Salford	[REDACTED]	[0-10]
Close Brothers	[REDACTED]	[0-10]

Source: Parties and third parties' estimates

97. Table 2 sets out the Parties' estimated shares of supply (based on fleet size) for the provision of HGVs by way of flexible vehicle hire in Great Britain as a whole, which the Parties supplemented with third party data. The Parties' combined share of supply is relatively low [10-20]% with a low increment of [0-10]% arising as a result of the Merger. A number of significantly larger players will remain post-Merger, in particular: (i) Ryder, the continued market leader which has a significantly larger share of supply of [30-40]%; and (ii) Dawson, which also has a significantly larger share of supply of [20-30]%. A number of other suppliers such as Fraikin and Salford have comparable shares of supply to the Parties.

<sup>66</sup> Parties' Merger Notice, paragraph 14.12.

<sup>67</sup> [REDACTED] Fraikin [REDACTED], the CMA considers its definition of 'flexible long term rental' falls within the scope of flexible rental services. Fraikin's [website](#) reads: 'If your commercial vehicle needs are more predictable, but you still prefer to avoid longer-term commitments, then you might like to take advantage of our flexible long-term rental for periods of 12 months or more. Fraikin Xtend offers discounted rental rates from day one whilst retaining the flexibility of short-term rental. If your business needs do change and you decide to end the rental part way through, then your only commitment is to give us one month's notice and we'll simply revert the rate back to a pre-agreed short-term hire charge.' In accordance with the CMA's definition of flexible rental services, no penalties are applied for early termination. Modifications are also possible, and like Enterprise, if vehicles are returned before the hire period ends, customers cover the cost of any vehicle modifications.

98. The indication from these shares of supply - that the Parties are not strong competitors in HGVs and will continue to face strong competitive constraints - is consistent with other evidence received by the CMA. For example:
- a) One of the Parties' key competitors in HGVs did not identify either of the Parties as a competitor to supply HGVs;
  - b) By contrast, competitors frequently mentioned Ryder and Dawson amongst their top five competitors for customers requiring HGVs. One competitor also told the CMA that second-hand HGV sellers are moving into the rental market and would pose an additional competitive constraint, as they are not able to move stock due to oversupply of second-hand HGVs; and
  - c) A business update document prepared by Enterprise identifies [redacted], [redacted], [redacted] and [redacted] as competitors.<sup>68</sup> In addition, a document prepared for the Merger by SHB identifies [redacted] as a competitor in HGVs.<sup>69</sup>

#### *Third party views*

99. The majority of third parties did not express any concerns regarding the supply of HGVs by way of flexible rental in Great Britain. One competitor however raised concerns that post-Merger the merged entity could restrict the HGVs that SHB supplies to brokers, thereby affecting the competitor's ability to supply customers requiring both HGVs alongside other vehicles. The CMA has taken this into account as part of its competitive assessment, while noting the limited presence of the Parties and the number of competitors who will continue to compete with the Parties post-Merger.

#### *Conclusion at the geographic level of Great Britain*

100. For the reasons set out above, the CMA therefore believes that, given in particular: (i) the Parties' low share of supply and low increment as a result of the Merger; (ii) the presence of a number of larger competitors post-Merger, in particular Ryder and Dawson, (iii) the feedback from third parties as to the limited presence of the Parties; and (iv) the reported potential for some constraints imposed by HGV sellers, the CMA believes the Merger does not give rise to a realistic prospect of an SLC in the supply of HGVs on a flexible rental basis at a Great Britain-wide level.

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<sup>68</sup> Annex 12 to the Parties' Merger Notice, page 14.

<sup>69</sup> Annex 15 to the Parties' Merger Notice, page 16.

### *Assessment at the regional level*

101. For the same reasons described above in relation to: (i) the lack of concerns at Great Britain-wide level; and additionally (ii) the low shares of supply and low increment as a result of the Merger; and (iii) the ability of national suppliers to supply customers across Great Britain<sup>70</sup>; the CMA believes the Merger does not give rise to a realistic prospect of an SLC in the supply of HGVs on a flexible rental basis at a regional level.

### ***Horizontal unilateral effects in the supply of temperature-controlled LCVs by way of flexible rental***

#### *Assessment at the geographic level of Great Britain*

102. The Parties submitted that their combined shares of supply are estimated to be low and that there are a number of alternative suppliers with significant fleets.<sup>71</sup>

**Table 3 - Estimates of share of supply for the provision of temperature-controlled LCVs by way of flexible rental in Great Britain as a whole**

	<b>Fleet number estimate</b>	<b>% of fleet total</b>
Enterprise	[✂]	[0-10]
SHB	[✂]	[0-10]
<b>Combined</b>	[✂]	<b>[10-20]</b>
VMS	[✂]	[40-50]
Petit Forestier	[✂]	[30-40]
Ryder	[✂]	[0-10]
Close brothers	[✂]	[0-10]
Salford	[✂]	[0-10]

Source: The Parties and third parties' estimates

103. Table 3 sets out the fleet sizes of temperature-controlled LCVs by way of flexible rental in Great Britain as a whole for suppliers who responded to the CMA's merger investigation.
104. This data illustrates that the Merger will result in a small increase of [0-10]% in Enterprise's similarly small fleet size of [0-10]%. Both VMS and Petit Forestier have substantially larger fleets (at [40-50]% and [30-40]% share respectively)

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<sup>70</sup> In particular, Ryder and Dawson who have a national network of depots.

<sup>71</sup> Parties' Merger Notice, paragraph 14.13.

than either of the Parties and will continue to be strong competitors to the Parties post-Merger.

105. Ryder is the next largest supplier with a share of [0-10]%. Customers requiring temperature-controlled LCVs indicated that Ryder is a credible alternative to the Parties. There are also a number of other smaller competitors in the market, including Close Brothers and Salford.
106. The majority of third parties did not express any concerns regarding the supply of temperature-controlled LCVs by way of flexible rental in Great Britain. However, one competitor raised concerns that post-Merger the market will become particularly concentrated in the temperature-controlled vehicle market place. The CMA has taken this into account as part of its competitive assessment, while noting the relative presence of the Parties and of competitors who will continue to compete with the Parties post-Merger.

#### *Conclusion at the geographic level of Great Britain*

107. For the reasons set out above, the CMA therefore believes that, given the Parties' relatively modest share of supply of [10-20]%, the small increment, and the continued presence of a number of significantly larger competitors post-Merger (VMS and Petit Forestier) as well as smaller competitors, the Merger does not give rise to a realistic prospect of an SLC in the supply of temperature controlled LCVs on a flexible rental basis at a Great Britain-wide level.

#### *Assessment at the regional level*

108. For the same reasons as described above in relation to: (i) the lack of concerns at Great Britain-wide level; and, additionally (ii) the small increment as a result of the Merger; and (iii) the ability of the national suppliers to supply customers across Great Britain<sup>72</sup>, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of temperature-controlled LCVs on a flexible rental basis at a regional level.

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<sup>72</sup> VMS, the market leader has confirmed that it is active across Great Britain and has a network of depots. Petit Forestier is also active across Great Britain and has 10 depots nationwide according to its [website](#).

## **Horizontal unilateral effects in the supply of temperature-controlled HGVs by way of flexible rental**

### **Assessment at the geographic level of Great Britain**

109. The Parties submitted that their combined shares are estimated to be low in this category<sup>73</sup> and that there are a number of alternative suppliers with significant fleets.<sup>74</sup>

**Table 4- Estimates of share of supply for the provision of temperature-controlled HGVs by way of flexible rental in Great Britain as a whole**

	<b>Fleet number estimate</b>	<b>% of fleet total</b>
Enterprise	[✂]	[0-10]
SHB	[✂]	[0-10]
<b>Combined</b>	[✂]	<b>[10-20]</b>
Dawson	[✂]	[30-40]
Petit Forestier	[✂]	[30-40]
VMS	[✂]	[0-10]
Salford	[✂]	[0-10]
Ryder	[✂]	[0-10]

Source: The Parties and third parties' estimates

110. Table 4 above sets out fleet sizes of temperature-controlled HGVs by way of flexible rental in Great Britain as a whole for suppliers who responded to the CMA's merger investigation.
111. The table shows that the increment as a result of the Merger is minimal ([0-10]%) due to SHB's relatively limited fleet of temperature-controlled HGVs. Both Dawson and Petit Forestier have considerably larger fleet sizes (each with [30-40]% share) than either of the Parties and will be strong competitors to the merged entity post-Merger. In addition, VMS, Ryder and Salford will, with [0-10]% share, each have a comparable fleet size to the Parties. The majority of third parties in respect of this frame of reference did not raise concerns.<sup>75</sup>

<sup>73</sup> Parties' Merger Notice, paragraph 13.7

<sup>74</sup> Parties' Merger Notice, paragraph 14.15.

<sup>75</sup> One competitor raised concerns on the same basis as for temperature-controlled LCVs, as cited at paragraph 106.



### *Conclusion at the geographic level of Great Britain*

112. For the reasons set out above, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of temperature-controlled HGVs on a flexible rental basis in Great Britain.

### *Assessment at the regional level*

113. For the same reasons as described above in relation to: (i) the lack of concerns at Great Britain-wide level; and additionally (ii) the minimal increment as a result of the Merger; and (iii) the ability of the national suppliers to supply customers around Great Britain<sup>76</sup>, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of temperature-controlled HGVs on a flexible rental basis at a regional level.

### ***Horizontal unilateral effects in the supply of accessible vehicles by way of flexible rental***

#### *Assessment at the geographic level of Great Britain*

114. The Parties submitted that there are a significant number of suppliers in the market capable of operating nationwide and that their combined shares are estimated to be very low in this segment.<sup>77</sup>

**Table 5- Estimates of fleet numbers for accessible vehicles supplied by way of flexible rental in Great Britain as a whole.**

	<b>Fleet numbers</b>
Enterprise	[X]
SHB	[X]
<b>Combined</b>	[X]
London Hire	[X]
Gowrings mobility group	[X]

Source: The Parties and third parties' estimates

115. Table 5 above sets out the Parties' estimated fleet numbers for the provision of accessible vehicles by way of flexible rental in Great Britain, which the CMA supplemented with data from third parties. As several third parties (which the CMA believes are active in this market) did not respond to the CMA's request

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<sup>76</sup> For example, Dawson and VMS confirmed that they are active across Great Britain and have a network of depots.

<sup>77</sup> Parties' Merger Notice, Table 7 and paragraph 13.7.

for data on their fleet numbers, the CMA did not produce shares of supply in this segment as this would not be fully reflective of all suppliers in this market.

116. Notwithstanding these limitations (and on the understanding that this data is not reflective of all potential competitive constraints on the Parties), the table above shows that the increment as a result of the Merger is minimal (less than 50 vehicles), with Table 5 indicating the continued existence of London Hire [redacted] post-Merger. The CMA believes that suppliers from the leasing and daily hire sector will also provide some competitive constraint on the merging Parties post-Merger, given the evidence from customers and competitors (discussed further at paragraph 27 and following) on the substitutability of these methods of hire to flexible rental more broadly. Specifically, the CMA believes Red Kite, which supplies [redacted] accessible mini buses on a leasing basis, will also provide competitive constraint on the Parties post-merger.
117. In view of the above, while the Parties have significant fleet numbers post-Merger, there is a very small increment in absolute terms on a Great Britain-wide basis, meaning the merged entity will not gain significantly in competitive strength as a result of the Merger. The Parties will continue to face competitive pressure from London Hire, [redacted], which is likely to be a strong competitive constraint on both a Great Britain-wide basis and regional basis. The CMA believes the Parties will also face out-of-market constraints from other national vehicle hire suppliers supplying accessible vehicles on a leasing or daily rental basis (for example, from Red Kite).
118. The CMA notes that no customers expressed concerns about the Merger with regard to accessible vehicles (whether on a Great Britain-wide or regional basis). One competitor told the CMA that there are a limited number of conversion suppliers<sup>78</sup> in the specialist bus and commercial vehicle segment, and that the merged entity could block the supply chain for new or replacement vehicles post-Merger. However, the Parties submitted that only SHB provides an insourced conversion service.<sup>79</sup> In addition to the fact that the increment within this frame of reference is minimal, the CMA believes that the Parties have not incrementally enhanced their strength in this particular conversion service as a result of the Merger.

### *Conclusion at the geographic level of Great Britain*

119. For the reasons set out above, in particular: (i) the minimal increment as a result of the Merger; and (ii) the presence of London Hire as a competitor able

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<sup>78</sup> Suppliers that can convert vehicles to suit different purposes.

<sup>79</sup> Parties' Merger Notice, paragraph 13.16(a).

to constrain the Parties post-Merger, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of accessible vehicles on a flexible rental basis in Great Britain.

#### *Assessment at the regional level*

120. For the same reasons as described above in relation to: (i) the lack of concerns at Great Britain-wide level; and additionally (ii) the minimal increment as a result of the Merger; and (iii) the ability of the national suppliers to supply customers around Great Britain<sup>80</sup>, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC in the supply of accessible vehicles on a flexible rental basis at a regional level.

#### **Barriers to entry and expansion**

121. 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>81</sup>
122. The Parties submitted that there are no material barriers to entry and expansion for the supply of LCVs and cars for flexible rental. The Parties commented that competitors have a range of options to increase supply (such as utilising existing fleet capacity, cross hiring from other rental or leasing companies and outsourcing operational services and acquiring new vehicles). The Parties also noted that customers with large vehicle requirements tend to divide their requirements into different sub-tenders / lots and that multi-sourcing also takes place.<sup>82</sup>
123. Evidence from third parties was mixed on barriers to entry and expansion. There is evidence of at least one competitor recently entering the market who is expecting to expand further. Two competitors noted, however, that a network of depots requires substantial capital, creating potential barriers to entry.
124. As noted above at paragraph 93, the CMA believes that the evidence does not suggest that a network of depots is essential in order to compete given that outsourcing may provide a viable, less capital-intensive option.

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<sup>80</sup> For example, [redacted] a competitor told the CMA that [redacted]

<sup>81</sup> [Merger Assessment Guidelines](#), paragraph 5.8.1.

<sup>82</sup> The prevalence of multi-sourcing has been confirmed by competitors and customers. Three customers with large and varied vehicle requirements have also confirmed the approach of dividing requirements into lots.

125. However, 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**

126. The CMA contacted customers and competitors of the Parties. The large majority of customers and competitors raised no concerns regarding the Merger.

127. Third-party comments have been taken into account where appropriate in the competitive assessment above.

### **Decision**

128. 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.

129. The Merger will therefore **not be referred** under section 33(1) of the Act.

**Alex Olive**  
**Director, Mergers**  
**Competition and Markets Authority**  
**31 May 2019**