

Anticipated acquisition by Uber International B.V., a wholly owned subsidiary of Uber Technologies, Inc., of GPC Computer Software Limited

Decision on relevant merger situation and substantial lessening of competition

ME/6903/20

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 29 March 2021. Full text of the decision published on 7 May 2021.

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. The Competition and Markets Authority (**CMA**) has found that the anticipated acquisition by Uber International B.V., a wholly owned subsidiary of Uber Technologies, Inc. (Uber International B.V., Uber Technologies, Inc., and/or their affiliates, **Uber**) of GPC Computer Software Limited and its subsidiaries (**Autocab**) (the **Merger**)¹ is not likely to result in a substantial lessening of competition in any market in the UK.
2. Uber's main business is the provision of ride-hailing services: it develops and operates technological applications that connect consumers with drivers.
3. Autocab primarily develops and supplies two types of software for taxi services.
 - (a) Booking and dispatch technology (**BDT**) enabling taxi companies to connect drivers to end customers. BDT includes the dispatch system,

¹ Uber and Autocab are together referred to as the **Parties** and, for statements relating to the future, the **Merged Entity**.

white label passenger apps, driver companion apps and automated phone systems.

- (b) The iGo network (**iGo**) which connects demand for taxi trips (generated by a party that cannot satisfy the demand, usually known as an ‘aggregator’) with supply for taxi trips. Taxi companies use iGo when demand arises for services outside their service area or when customer demand exceeds the number of drivers they have available. Other aggregators use iGo because they do not supply taxi or private hire vehicles (**PHVs**) themselves but have customers who require such services; these companies include travel companies and emergency transportation companies.
4. The CMA has jurisdiction to review a merger where either (a) the target company generates more than £70 million of turnover in the UK (the turnover test); or (b) the merger results in the Parties having a share of supply of goods or services of any description in the UK of 25% or more (the share of supply test). Autocab’s revenues do not meet the turnover test, however, the CMA has concluded that the Parties together have a share of more than 25% in the supply of BDT in the UK. Although there are differences in the BDT supplied by the Parties (with Uber only self-supplying its BDT), the CMA found that there is sufficient overlap in the core components of the Parties’ BDT services to consider these services to overlap for the purpose of the share of supply test. Therefore, the CMA has concluded that it has jurisdiction to review the Merger.
5. The CMA’s investigation considered whether the Merger would lead to:
- (a) a loss of competition between the Parties to supply BDT services and referral networks in the UK either today or in the future (ie horizontal unilateral effects); or
- (b) harm to the competitiveness of taxi companies through a decline in the quality of the BDT services and referral network (iGo) that Autocab currently supplies to them (ie vertical effects).
6. As part of its investigation, the CMA reviewed a substantial volume of internal documents from each of Uber and Autocab, and considered detailed submissions from other market participants such as taxi companies, competing BDT suppliers and competing ride-hailing suppliers including 99 responses to the CMA’s invitation to comment, 55 questionnaire responses, and seven calls with third parties to gather their input. This significant and detailed engagement from third parties played a substantial role in helping the CMA to understand how competition works in the relevant markets.

Horizontal unilateral effects in the current and future supply of BDT and networks in the UK

7. The CMA found that Uber and Autocab do not compete directly. The CMA however believes that Uber and Autocab compete ‘indirectly’. Autocab does not compete with Uber to attract passengers or drivers to use Autocab’s products (and Uber does not compete with Autocab to provide BDT services to taxi companies). Instead, Autocab sells its technology to taxi companies who then use that technology to attract passengers and drivers in competition with Uber, other ride-hailing companies, and other taxi companies. Evidence from internal documents and third parties indicated that BDT is an important input for taxis to compete with rivals including Uber. The CMA considered the competitive constraint provided by Uber with respect to product quality and innovation; the evidence did not suggest that Uber constrains the price that Autocab charges for its products.
8. Although the CMA found that there was some indirect competition between Autocab and Uber, the evidence both from the Parties’ internal documents and from third parties showed that Autocab faces a substantially stronger constraint from its BDT rivals than it does from Uber or other ride-hailing apps. The evidence also indicated that Uber is not constrained by Autocab, but is constrained by competing ride-hailing companies. To the extent Uber looks at competition from local taxi companies, the evidence indicates that it does not look at factors relating to their BDT services or referral networks, but instead considers how they market themselves to passengers in terms of things like safety. Competition from other BDT suppliers and ride-hailing companies will continue to constrain the Parties in the development and delivery of their BDT services following the Merger.
9. Consequently, the CMA considers that the current competition between the Parties is limited. Following the Merger, the Parties will continue to face sufficient competition from other BDT suppliers and ride-hailing rivals.
10. The CMA considered whether the future development of Autocab’s products could make the Parties closer competitors such that the Merger would eliminate an important future constraint.
 - (a) The CMA considered whether Autocab could be expected to develop its own consumer-facing app that would compete directly with the Uber app. There was no evidence to suggest this was likely to happen. Autocab has released a consumer-facing app in the past, but withdrew it following low take up and complaints from its taxi customers that Autocab was competing directly with them through the app. There is also no evidence

to suggest that an app, even if successful, would pose a significant additional constraint on Uber.

(b) The CMA also considered whether, using its iGo referral network, Autocab could potentially compete directly with Uber for work from corporate accounts or other large purchasers of taxi services. However, the available evidence does not indicate that iGo would grow to become a significant competitor to Uber. iGo's growth has been slow to date and evidence does not suggest that this would have materially changed absent the Merger. Autocab is also facing a growing competitive threat from referral networks being developed by competing BDT providers such as iCabbi and Cordic, as well as ride-hailing and taxi companies in this space.

(c) Finally, the CMA assessed whether iGo would develop into a network that taxi companies and aggregators would use to compete against Uber. Evidence from taxi companies and aggregators indicated that iGo has the potential to grow and compete more strongly against Uber. However, the CMA found that this was not supported by other sources of evidence. In particular Autocab's plan for growth relies on bringing in more aggregators onto the network. There is significant uncertainty regarding the scale of any growth for aggregator demand (as well as the geographic scope of such growth) and some third parties were sceptical about iGo's growth potential. The CMA also notes that there are a number of credible alternative referral networks being developed by competitors alongside iGo.

11. As a result of the above, the CMA found that there is no realistic prospect of a substantial lessening of horizontal competition between the Parties.

Vertical effects arising from foreclosure of taxi companies and aggregators using Autocab's offering

12. In assessing vertical effects, the CMA considers first whether the Merged Entity would have the ability to foreclose downstream competitors (in this case the taxi companies that use Autocab's services). If the CMA finds that the Merged Entity would have the ability to foreclose downstream competitors, it then goes on to assess whether the Merged Entity would have the incentive to foreclose downstream competitors and how that foreclosure would affect competition.

13. The CMA has considered two questions in assessing whether the Merged Entity would have the ability to foreclose taxi companies and aggregators using Autocab's offering:

- (a) as a technical matter, could the Merged Entity change the price, quality, or other aspects of Autocab's offering and/or use commercially sensitive data of Autocab's taxi customers in a way that would harm those customers by causing their drivers and/or passengers to switch to competitors (such as Uber); and
 - (b) if the Merged Entity could degrade the Autocab offering, would Autocab's customers be able to avoid this degradation (eg because they could switch to another supplier).
- 14. As BDT only accounts for a small proportion of taxi companies' costs, the CMA believes that the Merged Entity's ability to harm Autocab's taxi company customers by raising their cost would be limited. Taxi companies told the CMA, however, that the quality of BDT services is important to them and the CMA considered whether the Merged Entity could reduce the quality of those services. The CMA considered that it would be possible for the Merged Entity to degrade the quality of Autocab's products and that, at least in theory, it would be possible to offer a lower quality product in areas where Uber is currently strong, while maintaining a higher quality product in areas where Uber is currently weak or not present. The CMA also considers, however, that any degradation in the quality of Autocab's services would need to be significant in order to cause passengers and/or drivers to switch from Autocab's taxi company customers to competitors (such as Uber).
- 15. The CMA went on to consider whether taxi companies would have the ability to switch to other BDT suppliers if the Merged Entity tried to degrade Autocab's services. The CMA found that there are sufficient alternative BDT providers for taxi companies to switch to in the event of a material degradation. The CMA also found that, while taxi companies might face some barriers to switching (such as business disruption, complexity of the process and the time involved to complete the process), the costs of switching are relatively low and a significant number of taxi companies have switched BDT suppliers in the past, or told the CMA that they would be able to do so in the future if there was a change in Autocab's offering. The CMA therefore believes that, although the Merged Entity might be able to reduce the quality of Autocab's BDT services, it could not foreclose taxi companies because those companies could switch to other BDT suppliers such as iCabbi and Cordic.
- 16. The CMA also considered the concerns raised by a number of third parties that the Uber business would have access to commercially sensitive information of taxi companies who use Autocab's BDT and could use this information to put these taxi companies at a competitive disadvantage. The CMA notes that most of the concerns expressed related to Uber using such

information (including to prices charged, areas of peak demand and to under- or over-supplied areas), to compete more aggressively, for instance by offering lower prices or shorter waiting times. While Uber using data to compete more aggressively with taxi companies in ways that benefited passengers would not raise competition concerns, the CMA would be concerned about the possibility that such data could be used to foreclose taxi companies (or to compete less aggressively than Uber otherwise would). The CMA found that, while Uber may have the ability to access this information, if this were to occur taxi companies would have the ability to switch to other BDT providers, and that there are sufficient alternatives available.

17. The CMA further considered whether by raising the price or reducing the quality of iGo, the Merged Entity might foreclose aggregators such as travel companies and emergency transport companies that use referral networks to book taxis. Third party aggregators identified a number of alternatives to Autocab and all responding aggregators indicated that they already connect to multiple referral networks. The CMA therefore believes that the Merged Entity would not have the ability to foreclose aggregators because aggregators use alternatives and do not face major difficulties in integrating into new networks.
18. Since the CMA concluded that the Merged Entity would not have the ability to foreclose taxi companies or aggregators, it did not go on to assess whether the Merged Entity would have the incentive to foreclose these downstream competitors, or the effect of such foreclosure. The CMA found that there is no realistic prospect of a substantial lessening of competition as a result of the foreclosure of taxi companies or aggregators following the Merger.
19. The CMA does not believe that it is or may be the case that the Merger may be expected to result in a substantial lessening of competition within a market or markets in the UK.² As a result, the CMA has decided to not refer the Merger for a phase 2 investigation.

² That is, the Merger does not meet the test for referral set out in section 33(1) of the Enterprise Act 2002.

ASSESSMENT

Parties

Uber

20. Uber is a global ride-hailing company. In order to deliver its ride-hailing services, Uber develops and operates proprietary technological applications that connect consumers with drivers. Uber holds private hire licences in certain areas in the UK and provides taxi services to UK consumers.³
21. Uber's UK turnover in 2019 was £[✂].

Autocab

22. Autocab is a supplier of software to taxi companies. Autocab primarily supplies two types of software.
- (a) Booking and dispatch technology (**BDT**) which enables taxi companies to connect drivers to end customers. Autocab provides BDT to taxi companies,⁴ primarily through its Software as a Service (**SaaS**) solutions. This includes the Ghost dispatch system (an automated dispatch system), white label passenger apps, driver companion apps and automated phone systems.
- (b) The iGo network (**iGo**) which connects demand for taxi trips (generated by a party that cannot satisfy the demand, usually known as an 'aggregator') with supply for taxi trips. Taxi companies use iGo when demand arises for services outside the service area of the taxi company or when the taxi companies' customer demand exceeds the number of drivers they have available. Other aggregators use iGo because they do not supply taxi or private hire vehicles (**PHVs**) themselves but have customers who require such services, for example, travel companies and emergency transportation companies.
23. Autocab's UK turnover in 2019 was £[✂].

³ Uber also connects customers with a wide range of mobility options, such as public transportation networks and personal mobility options (eg e-bikes and e-scooters), as well as connecting consumers with restaurants and food delivery providers (known as 'Uber Eats'). Furthermore, Uber connects shippers with carriers in the freight industry.

⁴ The CMA uses 'taxi companies' to cover: (i) operators of Private Hire Vehicles and/or Hackney Carriages, which may take bookings in-person, via telephone, internet and, usually, app; and (ii) international ride-hailing companies, which focus on bookings via app. Hackney Carriages are 'black cabs' allowed to ply for hire in the streets and at taxi ranks. Private Hire Vehicles have to be pre-booked. The distinction between the two is less significant than in the past as many riders have one or more apps on their phone with which they can obtain a pre-booked Private Hire Vehicle at short notice. All these taxi companies are licensed.

Transaction

24. The Merger concerns the acquisition by Uber International B.V. of 100% of the shares of GPC Computer Software Limited pursuant to a Share Purchase Agreement (**SPA**) entered into between the Parties on 4 August 2020.⁵

Rationale for the Merger

25. Uber submitted that the main strategic rationale for the Merger is to enter into markets in which it is not currently present and to join iGo as an aggregator.⁶ Uber submitted that the Merger will:
- (a) allow Uber to broaden the geographic scope of its activities in the UK so that passengers can use the Uber app to obtain trips in areas where Uber currently does not operate; and
 - (b) stimulate demand for taxi companies.
26. Further, Uber indicated that iGo has international potential and could facilitate the referral of taxi trips to and from taxi operators located outside the UK.⁷
27. The CMA considers that that the internal documents from Uber support the rationale submitted.

Procedure

28. The Merger was considered at a Case Review Meeting.⁸

Background

BDT and referral networks

29. BDT is software that enables taxi companies to provide trips to end customers (**passengers**). It enables taxi companies to accept bookings and dispatch the drivers to passengers. BDT comprises different components for collecting bookings (such as phone systems, chatbots for use on websites, and passenger and driver apps); dispatch software to allocate bookings to the

⁵ In addition, it is intended that [REDACTED]. It is intended that GPC Computer Limited [REDACTED]. [REDACTED]. FMN, paragraph 2.22 and 2.23.

⁶ FMN, paragraph 5. Uber has explained to the CMA that a commercial partnership allowing it to join iGo as an aggregator would not allow Uber to achieve its goals, [REDACTED] (Response to the Issues Letter, paragraph 2.13)

⁷ For instance: [REDACTED] from Uber Internal Document, [REDACTED], July 2020, page 5.

⁸ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

most suitable drivers; and software to support functionalities (such as analytical and accounting software).

30. A referral network connects demand for taxi trips (generated by a party that cannot satisfy the demand, usually known as an 'aggregator') with supply for taxi trips. Referral networks can be used by taxi companies to service their passenger's trips where customer demand exceeds the taxi companies' supply of drivers. Other companies that do not supply taxi services at all may use referral networks to procure taxi services where necessary for their business.
31. The supply of BDT and networks which facilitate the provision of taxi services are technological markets where innovation and product development are important. The CMA asked taxi companies to identify the key parameters of competition for the supply of these services. Taxi companies identified innovation and product development, quality of the offering (eg features and functionality of BDT and its performance) and reputation of the supplier as key. Some taxi companies also considered the size and geographic coverage of referral networks offered by BDT providers as a relevant factor. Taxi companies indicated that price was less important when choosing a BDT supplier.

Taxi services

32. Taxi services involve the provision of point-to-point transport services to passengers in return for payment of a fare. In the United Kingdom, taxi companies, drivers and vehicles need to hold a license from a licensing authority in order to be able to operate in the licensing authority's area. In England and Wales, taxi companies and drivers are allowed to operate outside the area in which they are licensed (but a taxi company, its drivers and vehicles must all be licensed by the same authority).⁹
33. Indirect network effects can be expected in this market meaning that taxi services become more valuable and useful to passengers as the number of drivers increase; and become more valuable to drivers as the number of passengers increase. The number of passengers using taxi companies affects demand for drivers and, at the same time, reduced driver availability makes a taxi company less attractive to passengers.
34. Passengers may multi-home between taxi or ride-hailing companies. Drivers can also multi-home between operators to some extent, although this varies depending on the type of company the driver is working for. Uber's data

⁹ Parties' response to RFI 3, as confirmed by DfT on a call dated 10 December 2020.

indicates that a material proportion of its drivers, at least in some cities, multi-home.¹⁰ Licensing authorities' rules, however, may make it inconvenient, or not possible, for a driver to work for multiple operators at once. For example, some UK licensing authorities require vehicles to display a single sticker or sign indicating the operator the driver is working for; if a driver multi-homes between operators the sticker or sign needs to be changed depending on the operator the driver receives the trip from.

The Parties' products

35. Autocab and other BDT providers supply BDT to taxi companies and aggregators¹¹ and there are also taxi companies that self-supply their own BDT.¹²
36. Uber provides taxi services, connecting passengers to drivers. When passengers request trips, taxi companies (including Uber) allocate jobs between their drivers and set the trips' prices. Uber has developed its own software which it deploys within its integrated platform and therefore does not purchase BDT software from third parties. Uber describes its software as aimed at allowing Uber to dispatch trips and provide its ride-hailing services as a downstream alternative to taxi companies.¹³
37. iGo is a referral network available to taxi companies using Autocab's BDT which enables taxi companies to refer trips to one another on standardised terms.¹⁴ Through iGo, taxi companies can refer their own passengers to other taxi companies that also use iGo. iGo therefore enables taxi companies using Autocab's services to offer a wider geographic coverage to their customers.
38. Autocab also offers iGo to aggregators and taxi companies self-supplying their own BDT as a way to refer demand to taxi companies that use Autocab's BDT.
39. While aggregators and taxi companies that self-supply their own BDT may use multiple referral networks (ie multi-home), taxi companies that outsource

¹⁰ Data on the extent of multi-homing does not appear to be collected by any market participants. However, according to estimates by Uber, approximately [10-20] – [20-30]% of its London drivers were multi-homing during February 2020.

¹¹ Aggregators are demand generators that pull together groups of passengers that need transport services for different reasons (ie emergency transport). Aggregators do not have their own source of supply of drivers and taxi companies self-supplying BDT might not have drivers operating in certain UK areas. Thus, they both seek taxi companies to supply trips throughout the UK.

¹² These are either ride-hailing companies or PHV operators partially owning their BDT provider, such as Addison Lee. Interconnection with Autocab's BDT allows taxi companies self-supplying BDT and aggregators to interact with Autocab's customer taxi companies.

¹³ Parties' response to Request for Information (RFI) 1, paragraph 3.7.

¹⁴ Autocab introduced iGo three years ago. iGo generated £[§] in actual revenue in 2018, £[§] in 2019 and £[§] in 2020 (Annex 084 to FMN, [§], paragraph 8.3). This represents approximately

BDT, such as Autocab's BDT customers, can currently only access the referral network offered by their own BDT provider. This is because Autocab and other third-party BDT providers do not make their respective referral networks available to the customers of BDT providers.

Jurisdiction

40. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 29 January 2021 and the statutory 40 working day deadline for a decision is therefore 29 March 2021.¹⁵
41. The Act requires the CMA to assess whether arrangements are in progress or in contemplation which, if carried into effect, will result in enterprises ceasing to be distinct and whether either the turnover of the target in the UK exceeds £70 million (the **turnover test**) or the merger results in a combined share of supply or acquisition of goods or services of any description of 25% or more (the **share of supply test**).¹⁶
42. As explained below, the CMA believes that it is or may be the case that the share of supply test set out in section 23 of the Act is met. The Parties overlap in the supply of BDT in the UK, including self-supply, with a combined share of supply on the basis of three different volume-based metrics¹⁷ of [40-50]% in 2019 (with an increment from Autocab under each metric of at least [10-20]%¹⁸).
43. 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.

Enterprises ceasing to be distinct

44. The CMA believes that the Merger (as described in paragraph 24) is sufficient to constitute arrangements in progress or contemplation for the purposes of the Act.¹⁹

¹⁵ The CMA suspended its statutory timetable from 1 February 2021 to 2 February 2021.

¹⁶ Section 33(1)(a) and Section 23 of the Enterprise Act 2002 (the **Act**).

¹⁷ Namely, the: (i) the number of connected drivers (ie drivers using BDT); (ii) total hours worked by connected drivers; and (iii) number of trips supplied using BDT. See further paragraphs 67 to 74.

¹⁸ Specifically, the increment from Autocab under each metric is: [10-20]%, for the number of connected drivers (ie drivers using BDT); [20-30]% for the total hours worked by connected drivers; and [20-30]% for the number of trips supplied using BDT.

¹⁹ Section 33(1)(a) of the Act.

45. Each of Uber and Autocab is an enterprise. As a result of the Merger, these enterprises will cease to be distinct.

The turnover test

46. Autocab's UK turnover in 2019 was £[~~100m~~]. Therefore, the turnover test is not met.

The share of supply test

Legal framework for the share of supply test

47. The share of supply test is satisfied if the merging enterprises both either supply or acquire goods or services of a particular description, and will, as a result of the merger, supply or acquire 25% or more of those goods or services in the UK as a whole or in a substantial part of it.²⁰
48. The share of supply test therefore contains the following three key elements:
- (a) a product element (ie the supply or acquisition of goods or services of a particular description);
 - (b) a geographical element (ie the UK or a substantial part of it); and
 - (c) a quantitative element (ie the 25% threshold).
49. **Product element:** With regard to the product element, the Act confers on the CMA a broad discretion to choose a specific category of goods or services supplied or acquired by the merging parties.²¹ The CMA's guidance on its jurisdiction and procedure (the **Guidance**) provides that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment and the description of goods or services need not amount to a relevant economic market. In addition, the Guidance explains that the group of goods or services to which the jurisdictional test is applied can aggregate, for example, intra-group and third-party sales even if these might be treated

²⁰ Section 23 of the Act and [Mergers: Guidance on the CMA's jurisdiction and procedure](#), paragraph 4.53. The word 'supply' is defined broadly for these purposes (section 129 of the Act).

²¹ Section 23 of the Act. In particular, sections 23(6) and (7) of the Act provide that, where goods or services of any description are the subject of different forms of supply (ie where in the CMA's opinion, transactions concerned differ materially as to their nature, their parties, their terms or their surrounding circumstances), the CMA may consider the supply of such goods or services to be of those forms taken separately, together or in groups. Moreover, section 23(8) of the Act states that '[t]he criteria for deciding when goods or services can be treated, for the purposes of this section, as goods or services of a separate description shall be such as in any particular case the decision making authority considers appropriate in the circumstances of that case'.

differently in the substantive assessment.²² In general, the CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met.²³

50. **Geographic element:** The share of supply test requires that the merger has a sufficient UK nexus, namely, that it would result in the creation or enhancement of at least a 25% share of supply or acquisition of goods or services either in the UK or in a substantial part of the UK. The area or areas considered must be of such size, character and importance as to make it worth consideration for the purposes of merger control.²⁴ The CMA will take such factors into account as: the size, population, social, political, economic, financial and geographic significance of the specified area or areas, and whether it is (or they are) special or significant in some way.²⁵
51. **Quantitative element:** With regard to the quantitative element, the Act gives a wide discretion to the CMA to apply whatever measure it considers appropriate to calculate the merging parties' share of supply or procurement and to determine whether the 25% threshold is satisfied.²⁶

The Parties' submissions

52. The Parties submitted that the CMA does not have jurisdiction over the Merger, as neither the turnover test nor the share of supply test is met.
53. In relation to the share of supply test, the Parties made the following submissions.
- (a) Uber and Autocab do not supply or acquire goods or services of the same description.²⁷ The Parties submitted that Uber and Autocab are active at different levels of the supply chain. Autocab supplies (at the upstream level) BDT to taxi companies, to enable them to compete with Uber's ride-hailing services downstream. The Parties note that the share of supply

²² *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.56, citing anticipated acquisition by Montauban S.A. of Simon Group plc (ME/2500/06), OFT decision of 21 August 2006 (*Montauban S.A./Simon Group plc*).

²³ *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.56.

²⁴ *Regina v Monopolies and Mergers Commission and another ex parte South Yorkshire Transport Limited* [1993] 1 WLR 23, at paragraphs 31A to 32B.

²⁵ CMA Decisions: *Completed acquisition by Novo Invest GmbH acting through Novomatic UK Ltd of Talarius Limited* (28 October 2016) (*Novomatic/Talarius*); *Completed acquisition by Co-operative Foodstores Limited of eight My Local grocery stores from ML Convenience Limited and MLCG Limited* (19 October 2016) (*Co-operative/ML Convenience and MLCG*); *Anticipated acquisition by Co-operative Foodstores Limited of 15 Budgens grocery stores from Booker Retail Partners (GB) Limited* (6 June 2016) (*Co-operative/Booker*); *Completed acquisition by LNGaiety Holdings Limited of MAMA & Company Limited* (19 February 2016) (*LN-Gaiety/MAMA & Company*); *Completed acquisition by Oasis Dental Care (Central) Limited of Total Orthodontics Limited* (2 September 2015) (*Oasis Dental Care/Total Orthodontics*).

²⁶ Section 23(5) of the Act.

²⁷ FMN paragraphs 5.19.1-2.

test cannot be satisfied where the Parties are solely active at different levels of the supply/procurement chain.²⁸

- (b) BDT is not an input that Uber either supplies or acquires.²⁹ The proprietary software which underpins Uber's ride-hailing business is not available to third parties because it cannot be disaggregated from the rest of Uber's technological stack and it cannot be viewed as a separate activity 'upstream' of Uber's ride-hailing operations. It is irrelevant that Uber's ride-hailing business has material common functionality with Autocab's software as Uber's software is not a severable or distinct element that can be sourced and supplied independent of the Uber business.³⁰ The Parties contrasted this position with *Montauban/Simon*³¹ and other cases in which the CMA took into account 'self-supply'.³²
- (c) The software used by Uber as part of its ride-hailing services cannot be said to be comparable with Autocab's BDT as the software allows Uber itself – not third parties – to dispatch trips and provide its ride-hailing services as a downstream alternative to taxi companies for passengers and drivers. This means that there are no customer groups for which Autocab's BDT and the software which underpins Uber's ride-hailing business are alternatives.³³
- (d) Third party views about Autocab and Uber competing relate to downstream competition and in any event the share of supply test requires the CMA to carry out a legal/economic assessment of the product/service in question and cannot be grounded on third party views as to competition.³⁴
- (e) None of the bases cited by the CMA in shares of supply in the Issues Letter involve an increment and, as such, are inappropriate. If section 23(2A) of the Act could be satisfied through the aggregation of supply metrics that arise at different levels of the supply chain, it would mean that all vertical mergers would be brought within the scope of that section.³⁵

54. Each of these points were considered by the CMA as part of its assessment of the share of supply test, which is set out below.

²⁸ Response to the Issues Letter, paragraphs 4.7, 4.9.

²⁹ Response to the Issues Letter, paragraph 4.7, paragraphs 4.14-4.16.

³⁰ Response to the Issues Letter, paragraph 4.10.

³¹ Proposed acquisition by Montauban of Simon Group plc, OFT decision published 21 August 2006 (ME/2500/06) (*Montauban S.A./Simon Group plc*).

³² Response to the Issues Letter, paragraph 4.17.

³³ Response to the Issues Letter, paragraphs 4.20-4.24.

³⁴ Response to the Issues Letter, paragraph 4.17.

³⁵ Response to the Issues Letter, paragraphs 4.25-4.29.

Assessment of the share of supply test

The product element

55. As discussed above in paragraph 29, BDT enables taxi companies (including ride-hailing companies) to connect passengers with drivers. As such, it is a key input for the provision of taxi services.³⁶ Taxi companies have the choice of buying off-the-shelf BDT solutions or developing their own.
56. Autocab develops and supplies off-the-shelf BDT solutions that it supplies to taxi companies. As discussed in paragraph 29 above, Autocab's BDT offering includes components for collecting bookings (such as intelligent phone systems, chatbots for use on websites, and white label passenger apps), dispatch software to allocate bookings to the most suitable drivers, software transferring information from/to drivers (eg white label driver apps) and software to support functionalities (such as analytical and accounting software). Uber has developed its own technology (others adopting the same approach include Bolt and Ola) which includes passenger and driver apps as well as software to optimise bookings and to provide support functionalities.
57. While BDT software may consist of different components that can be installed in different ways and tailored to suit different needs/preferences, all BDT software has material common elements of functionality. In particular, it offers a way to optimise the matching of passengers and drivers via the collection of bookings (eg via passenger apps), the transfer of information to/from drivers (eg driver apps) and the use of dispatch software for matching passengers and drivers. As such, the CMA considers that the supply of BDT, described as software that enables taxi companies (including ride-hailing companies) to connect drivers with customers, constitutes a reasonable description of goods or services for the purposes of the Act.³⁷
58. The CMA further considers that it is or may be the case that both Autocab and Uber supply BDT, with Autocab supplying this service to third parties and Uber self-supplying for use within its ride-hailing app. In particular, the CMA considers that, had Uber not developed its own BDT, its only alternative would have been to procure it from suppliers such as Autocab.
59. Autocab's internal documents support this view, indicating that Autocab's BDT was designed to resemble that of Uber and other ride-hailing apps and to

³⁶ Uber described BDT as an upstream market separate from taxi services, see FMN, Figure 5.1.

³⁷ See CMA Decision: Anticipated acquisition by Visa International Service Association of Plaid Inc (24 August 2020) (*Visa/Plaid*), CMA Decision: Anticipated acquisition by Roche Holdings, Inc. of Spark Therapeutics, Inc. (10 February 2020) (*Roche/Spark*), CMA Final Report: Completed acquisition by Linergy of Ulster Farm By-Products (6 January 2016) (*Linerger/Ulster Farm By-Products*).

enable taxi companies to better compete against Uber.³⁸ Indeed, they demonstrate that Autocab monitors Uber, with one document stating that, in creating its passenger app, Autocab's product team based it on 'leading ride-hailing apps available around the world including Uber, Lyft, Ola and Bolt'.³⁹

60. Evidence received from third parties also supports the view that Uber's and Autocab's software share material common functionality. Most third parties (including taxi companies and BDT providers) consider the Parties to compete at least indirectly in the provision of BDT.⁴⁰ The CMA considers this evidence to be particularly persuasive in determining whether the Parties overlap in the supply of BDT.⁴¹

61. The CMA makes the following observations in response to the Parties' submissions.

(a) While Uber may categorise itself as a 'marketplace'⁴² or ride-hailing app that is distinct from other taxi companies, the CMA considers that, for assessing whether the share of supply test is met, Uber operates as any other taxi company insofar as it requires PHV operator licences in order to offer services and competes against other taxi companies for passengers and drivers. As discussed in paragraph 57 above, the CMA is satisfied that the BDT deployed on Uber's ride-hailing app has ample common elements of functionality with Autocab's BDT and is used in a similar manner to taxi companies using Autocab's BDT.

(b) The fact that Autocab's BDT may be differentiated from Uber's (for example because Autocab offers smart telephone technology or their coding/implementation is different) does not preclude the possibility that they both should be considered BDT software. There is no need under the Act or the CMA's Guidance for products or services to be homogeneous in order for there to be an overlap for the purposes of the share of supply test. Similarly there is no need for the service to be a discrete input. Rather, the CMA will consider whether there are common elements of functionality in determining whether there is an overlap.⁴³ As discussed

³⁸ See for example, Autocab Internal Document, [REDACTED], September 2020 and Autocab Internal Document [REDACTED], January 2019.

³⁹ Autocab Internal Document, [REDACTED], December 2019.

⁴⁰ Third party responses to the CMA Questionnaire.

⁴¹ The CMA is entitled to determine the relative weight it assigns to different types of evidence based on the relevant circumstances and context of a case (*Stagecoach v Competition Commission*, [2010] CAT 14, paragraph 42). The CMA considers it reasonable to place weight on the views of market participants owing to their knowledge of the market (and market dynamics) and notes that it also placed weight on this type of evidence in *ICE/Trayport*.

⁴² FMN, paragraph 4.9.

⁴³ Indeed, the CMA will consider whether there are sufficient common elements of functionality as per the cases referred to in footnote 25.

above, the CMA is satisfied that this is the case and this conclusion does not differ because Uber self-supplies BDT.⁴⁴

(c) The CMA recognises that Uber developed its BDT specifically for use within its ride-hailing app and that it is not made available to third parties (and thus there are no existing customer overlaps). However, this is not determinative of whether Autocab and Uber overlap in the supply of BDT for the purposes of the share of supply test. The CMA notes that the share of supply test is not an economic assessment of the type used in the CMA's substantive assessment.⁴⁵ In particular, it is not a necessary element that the relevant goods or services be supplied for commercial gain or reward.⁴⁶

62. Finally, the Parties' argument that the share of supply test cannot capture mergers where the parties are active at different levels of the supply/procurement chain applies only where the relationship between the parties is purely vertical and there is therefore no horizontal overlap.
63. In this case, and for the reasons explained in paragraphs 55 to 62 above, the CMA is of the view that the Parties are active at the same level of the supply chain (in addition to Uber being vertically related).
64. In light of the above, the CMA believes that it is or may be the case that the Parties are both engaged in the supply of BDT in the UK, a service of a reasonable description.⁴⁷
65. The CMA therefore believes that the share of supply test in section 23 of the Act is met.

⁴⁴ Uber refers to cases such as *Montauban/Simon Group* and *Tronox/TTI* as support for the view that the share of supply test can only be met in relation to self-supply where products or services are homogeneous. However, the CMA does not consider that the fact that one party self-supplies has any impact on whether merger parties both supply products or services of a reasonable description. The CMA further notes that it found an overlap in *ICE/Trayport* on the basis of ICE self-supplying despite the fact that ICE and Trayport's trading software differing in certain aspects.

⁴⁵ *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.56. The CMA is entitled to aggregate, for example, intra-group and third party sales even if these might be treated differently in the substantive assessment (see CMA decisions: *Anticipated acquisition by Tronox Holdings plc of TiZir Titanium & Iron A.S.* (4 January 2021) (*Tronox/TTI*), *Anticipated acquisition by Roche Holdings, Inc. of Spark Therapeutics, Inc* (10 February 2020) (*Roche/Spark*) and *OFT Decision: Anticipated acquisition by Montauban S.A. of Simon Group plc* (21 August 2006) (*Montauban/Simon Group*).

⁴⁶ See *Montauban/Simon Group* and *ICE/Trayport*, where the front-end access services to enable energy trading in the UK offered by ICE and Trayport were materially different and ICE's services were only available to access ICE trading venues and not available on a standalone basis.

⁴⁷ Therefore, it is inaccurate to describe the Merger as being purely vertical.

The geographic element

66. The BDT supplied by Autocab and Uber is used across the UK. As such, the CMA has considered the shares of supply of the Parties on a national basis.

The quantitative element

67. As set out further in the previous section, the key overarching function of BDT software is that it enables taxi companies (including ride-hailing companies) to connect their drivers with passengers in order to provide taxi services.
68. The CMA considers that it is appropriate to measure the supply of BDT by BDT providers and companies self-supplying BDT (including ride-hailing companies) by reference to metrics derived from the activity of 'active' connected drivers (ie drivers using BDT), which as noted in paragraph 67 is directly related to the supply of BDT.⁴⁸
69. The CMA notes that the Act gives a wide discretion to the CMA to apply whatever measure, or combination of measures, it considers appropriate to calculate the merging parties' share of supply or procurement and to determine whether the 25% threshold is satisfied. Section 23(5) of the Act provides that the CMA shall apply such criterion as it considers 'appropriate' and, in doing so, specifically cites 'quantity' and 'number of workers employed' as examples of an appropriate criterion.⁴⁹
70. Accordingly, for the purposes of this case, the CMA has calculated the shares of supply of BDT providers and companies self-supplying BDT in terms of: (i) the number of connected drivers; (ii) total hours worked by connected drivers; and (iii) number of trips supplied using BDT, as provided below at Table 1.
71. The CMA considers that the three measures are each representative of the Parties' share of supply of BDT for the reasons set out in paragraph 68 and thus believes that, taken individually or in combination, these measures constitute a reasonable proxy for estimating the shares of supply of BDT to taxi companies in the UK.⁵⁰

⁴⁸ The CMA has used proxies to calculate the share of supply in other cases, including in [ICE/Trayport](#) and CMA decisions: *Completed acquisition by Restore plc of certain businesses of TNT UK Limited* (9 August 2018) ([Restore/TNT](#)) and *Completed acquisition by Beijer Ref AB (publ) of HRP Holdings Limited* (7 June 2016) ([Beijer/HRP](#)).

⁴⁹ Section 23(5) of the Act.

⁵⁰ The CMA considers that the fact that the 25% threshold is met on several bases provides a strong indication that the share of supply test is met in this case.

72. In calculating these shares, the CMA has used the estimates provided by the Parties for 'other' companies to account for missing data.⁵¹ When calculating the shares based on number of hours worked by drivers and number of trips supplied, the CMA has used data from the Parties and from its own market testing on average hours worked per driver per week (prior to the Covid-19 pandemic)⁵² and on the total number of trips supplied during February 2020.⁵³

Table 1: Shares of supply of BDT (BDT providers and taxi companies self-supplying BDT), as at February 2020

Type	Company	Share of trips	Share of hours	Share of drivers
Self-supplying	Uber	[20-30]%	[20-30]%	[20-30]%
BDT provider	Autocab	[20-30]%	[20-30]%	[10-20]%
Parties combined		[40-50]%	[40-50]%	[40-50]%
BDT provider	iCabbi	[20-30]%	[10-20]%	[10-20]%
BDT provider	Cordic	[5-10]%	[5-10]%	[5-10]%
BDT provider	Cab Treasure	[0-5]%	[0-5]%	[0-5]%
BDT provider	Datamaster	[0-5]%	[0-5]%	[0-5]%
Self-supplying	Bolt	[0-5]%	[0-5]%	[5-10]%
BDT provider	Haulmont (Sherlock)	[0-5]%	[0-5]%	[0-5]%
Self-supplying	Ola	[0-5]%	[0-5]%	[0-5]%
Self-supplying	Free Now	[0-5]%	[0-5]%	[5-10]%
BDT provider	Magenta	[0-5]%	[0-5]%	[0-5]%
Self-supplying	Gett	[0-5]%	[0-5]%	[0-5]%
BDT provider	Cab Despatch	[0-5]%	[0-5]%	[0-5]%
Self-supplying	ViaVan	[0-5]%	[0-5]%	[0-5]%
BDT provider	Envoy (TM Information Systems)	[0-5]%	[0-5]%	[0-5]%
BDT provider	Other BDT providers	[5-10]%	[5-10]%	[5-10]%
Self-supplying	Other companies self-supplying BDT	[0-5]%	[0-5]%	[0-5]%
Total		100%	100%	100%

Sources: CMA third party questionnaires; Parties' estimates for 'others' provided in FMN (Other BDT providers – number of licences) and Frost & Sullivan due diligence report (fleet size)

Note: Shares may not sum to exactly 100% due to rounding. [⌘] 'Other BDT providers' include Catalina and A2B Australia (MTI Data) (based on Autocab's internal estimates), Taxi Caller, Taxi Mobility, and Taxi Cloud (based on analysis by Frost & Sullivan). 'Other taxi companies self-supplying BDT' include Cabapp, Taxiapp, Tapsi, and Wheely. There may be a small amount of double-counting of some of the 'other BDT providers'. However, as they are relatively small, this should not materially distort the results and any double-counting would result in over-estimating the total size of the market and hence underestimate the Parties' shares.

⁵¹ The CMA has not been able to verify the Parties' estimates of the shares of other BDT providers and taxi companies self-supplying BDT. These estimates were based on internal analysis and assumptions that are not fully clear from the evidence provided, and they refer to 2019 (rather than February 2020). However, the CMA does not consider that these issues would materially affect the results.

⁵² The CMA calculated total hours worked per month by multiplying the average number of hours worked per driver per week by four (yielding monthly figures) and then by the total number of drivers connected to the BDT of each provider as at February 2020.

⁵³ For taxi companies self-supplying BDT, the CMA obtained this data directly in its market testing. For BDT providers, the CMA obtained from its market testing an average of number of trips per driver per week among taxi companies using BDT and multiplied this four (yielding monthly figures) and then by the number of drivers connected to the BDT of each provider as at February 2020.

73. The Parties submitted that Uber's drivers multi-homed with other taxi companies and hence that its share of drivers may overstate its share of supply. The CMA considers that its estimated shares of supply based on driver hours and number of trips are not biased by such multi-homing (or part-time working), as these are not based on number of drivers, which might use more than one operator. Furthermore, the CMA additionally estimated alternative shares of supply based on number of drivers, removing only from Uber's number of drivers the upper bound estimate ([20-30]%) for the proportion that are multi-homing⁵⁴, which reduces both Uber's share and the market size denominator (though these drivers are still implicitly included in the total as part of the shares of other taxi companies with which they multi-home).⁵⁵ Even under these most conservative assumptions, the Parties' share would remain at [30-40]%, well above the 25% threshold.
74. As explained in paragraph 63 above, the CMA is of the view that the Parties are active at the same level of the supply chain. As such, the Merger involves an increment on the basis of the measures used to calculate shares of supply.

Conclusion on jurisdiction

75. In light of the above, the CMA believes that the share of supply test is met for the supply of BDT to taxi companies in the UK, aggregating external supply and self-supply. As such, 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.

Counterfactual

76. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is

⁵⁴ The Parties estimated the upper bound of the confidence interval to be [20-30]% during February 2020, based on estimates of multi-homing in London. The CMA has applied this estimate nationally in its calculations. To the extent that multi-homing is more prevalent in London than in other areas, which the evidence available to the CMA at this stage supports, this calculation underestimates Uber's share.

⁵⁵ The CMA considers that applying this adjustment exclusively to Uber, without removing any of these drivers from the share of the other companies, results in an underestimate of Uber's share.

a realistic prospect of a counterfactual that is more competitive than these conditions.⁵⁶

77. The Parties submitted that adopting a more competitive counterfactual in which Autocab was able to expand iGo into a major national network was not credible because of iGo's limited financial success to supply, the need for external investment and generation of aggregator demand.
78. In relation to the supply of BDT and networks, the CMA considers that the prevailing conditions of competition include strategies related to innovation and product development and are therefore not to be taken as a purely static view of the market as it is today.
79. The CMA therefore assessed the Merger against the prevailing conditions of competition. However, where relevant and appropriate, the CMA has considered as part of the competitive assessment the Parties' commercial strategies absent the Merger (including Autocab's prospect and options for growth in the UK) and their implications for future competitive conditions.

Frame of reference

80. 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.⁵⁷

Product scope

The supply of BDT

81. The Parties submitted that the product frame of reference should be defined, at its narrowest, as the supply of BDT to taxi companies.⁵⁸
82. The Parties also submitted the following points.

⁵⁶ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

⁵⁷ [Merger Assessment Guidelines](#), paragraph 5.2.2.

⁵⁸ FMN, paragraph 13.7.

- (a) From a demand-side perspective, there is a degree of substitutability between the core BDT components. For instance, taxi companies can choose to receive bookings via a mix of the options on offer such as through apps for riders; intelligent phone systems; or website chatbots.⁵⁹
 - (b) From a supply-side perspective, Autocab and its competitors are generally active across the full suite of BDT components. All BDT solutions to taxi companies serve the same basic function of enabling taxi companies to provide, or facilitate the provision of, transportation services.⁶⁰
 - (c) Software solutions from providers that are not active in the provision of BDT are sometimes substitutable with BDT. For instance, taxi companies can use general management and accounts software for many of the same features that are available in the management and accounts component of BDT.⁶¹
83. Evidence that the CMA received from some BDT providers supported the view that core BDT components serve the same function of allowing taxi companies to provide or facilitate the provision of taxi services. These BDT providers submitted that they viewed BDT as a single product, rather than as separate components or products.⁶² In addition, the CMA found that the main BDT providers are generally active across the full suite of BDT components.
84. Third parties also identified the same set of competitors as BDT providers.⁶³ The CMA notes that some responding taxi companies identified features and functionalities of BDT offered by some providers as elements of differentiation between the products rather than as distinct products.
85. The CMA did not receive any evidence to support the Parties' arguments that software solutions from providers that are not active in the provision of BDT are sometimes substitutable with BDT. In particular, the CMA did not receive any evidence of the way that such products, which do not have the capability of connecting drivers and passengers, constrain the provision of BDT.

Conclusion

86. In light of the above, the CMA has considered the impact of the Merger in the supply of BDT to taxi companies.

⁵⁹ FMN, paragraph 13.5.

⁶⁰ FMN, paragraph 13.6.

⁶¹ FMN, paragraph 13.5.

⁶² Note of the call with [REDACTED], paragraph 6. Note of the call with [REDACTED], paragraph 6.

⁶³ Third party responses to the CMA Questionnaire.

The supply of referral networks

87. Referral networks connect taxi companies and/or aggregators that need to refer trips on the demand side with taxi companies supplying trips on the supply side. Referring taxi companies include both companies that self-supply their own BDT and taxi companies that use the BDT of the network provider.
88. The Parties submitted that the product frame of reference should be defined as the supply of referral networks for the referral of rides between taxi companies. The Parties submitted that BDT is not a substitute for a referral network.⁶⁴
89. The CMA considers that the evidence indicates that the frame of reference differs for taxi companies that outsource their BDT on the one hand and for aggregators and taxi companies self-supplying BDT on the other.
90. For both aggregators and taxi companies that self-supply their own BDT the evidence received from third parties supports the view that referral networks and BDT are separate products. These types of companies do not purchase BDT from BDT providers. However, they are able and do join referral networks of several BDT providers to connect with taxi companies.
91. However, evidence from taxi companies that purchase BDT indicates that BDT and referral networks are a single product for those companies. Taxi companies that use Autocab's BDT can supply and refer trips exclusively on iGo and are not able to connect to referral networks of Autocab's BDT competitors. If these taxi companies were to switch BDT providers, they would also need to switch referral networks.⁶⁵ As such, the use of iGo for these companies is linked to Autocab's BDT and these two services are considered from a demand side perspective as one product by these taxi companies.
92. The CMA therefore considers that there is a separate product frame of reference for referral networks for aggregators and taxi companies that self-supply BDT. For taxi companies that outsource BDT, referral networks are an additional feature of the BDT product and therefore are not be considered separately from the supply of BDT.

Conclusion

93. In light of the above, the CMA has considered the impact of the Merger in the market for the supply of referral networks to aggregators and taxi companies

⁶⁴ Response to the Issues Letter, paragraph 2.7.

⁶⁵ Third party responses to the CMA Questionnaire.

that self-supply their own BDT. For taxi companies outsourcing BDT, the CMA believes that referral networks should be regarded as an additional functionality offered alongside BDT.

The supply of taxi services

94. The supply of taxi services comprises the provision of point-to-point transport services to passengers in return for payment of a fare.
95. The Parties referred to, and provided share of supply data based on, the approach taken by the CMA in *Sheffield Taxis*.^{66, 67}
96. In *Sheffield Taxis*, the CMA included hackney carriages⁶⁸ (ie black cabs) and PHV operators⁶⁹ (including app-based operators⁷⁰ such as Uber) within the same product frame of reference, despite some differences in the applicable regulatory framework.
97. The evidence that the CMA has received in this case from third parties is consistent with the Parties' submission and *Sheffield Taxis*. Third parties said that since the development of app booking, the distinction between hackneys and PHVs has narrowed considerably and they compete for the same business.⁷¹

Conclusion

98. In light of the above and consistent with the CMA's conclusions in *Sheffield Taxis*, the CMA has considered the impact of the Merger in the downstream market for the supply of taxi services (including hackney carriages and PHV operators (including app-based operators such as Uber)).

⁶⁶ FMN, paragraph 13.15-13.16.

⁶⁷ CMA decision, Completed acquisition by Sheffield City Taxis Limited of certain assets and business of Mercury Taxis (Sheffield) Limited (*Sheffield Taxis*), 13 October 2015.

⁶⁸ Hackneys are allowed to ply for hire on the streets.

⁶⁹ Private hire vehicles have to be pre-booked. These are operated by taxi companies which take bookings in-person, via telephone, internet and, more usually, app.

⁷⁰ App-based operators (eg ride-hailing companies) focus on bookings via app.

⁷¹ [X] submission to the CMA from 27 October 2020. [X] submission to the CMA from 21 October 2020.

Geographic scope

The supply of BDT and the supply of referral networks

99. The Parties submitted that the geographic frame of reference for the supply of BDT and the supply of referral networks should be defined as the UK as a whole.
100. The Parties submitted that contracts with customers for BDT and access to referral networks are entered into a UK-wide basis. In addition, there is no distinction between the cities or regions in which referral networks operate.
101. The evidence that the CMA has received from third parties is consistent with the Parties' submission. BDT providers indicated that there were no significant barriers to supplying BDT across the UK and it would be easy to trade anywhere in the UK.⁷² BDT providers also explained their presence may vary across the UK but expressed that this was not evidence of strong barriers to geographic expansion. They considered that their current geographic presence was more a reflection of the location of their customer base and their historic efforts in targeting taxi companies in certain areas.⁷³
102. The internal documents from Autocab generally suggest that Autocab examines the sale of, and competition between, different BDT and referral networks at a national (eg UK) or even broader geographic level.⁷⁴
103. In addition, since BDT providers are switching from hardware-based BDT to cloud-based BDT software, the CMA believes that the availability of cloud computing and low-cost wireless data may facilitate entry by BDT suppliers into different areas in the UK.

Conclusion

104. In light of the above, the CMA has considered the impact of the Merger in the supply of BDT and referral networks on a national basis.

The supply of taxi services

105. The Parties referred to the approach in *Sheffield Taxis* where the geographic frame of reference was defined as individual cities and metropolitan areas.

⁷² [REDACTED] and [REDACTED] response to the CMA Questionnaire. Note of the call with [REDACTED].

⁷³ [REDACTED], [REDACTED], [REDACTED] and [REDACTED] response to the CMA Questionnaire.

⁷⁴ See, for example, Annex 022 to the FMN, Autocab Internal Document, [REDACTED], October 2019, pages 5 and 20.

106. In addition, Uber submitted that it uses [redacted] as the geographic unit in its normal course of business. Uber explained that [redacted] cover a larger area than just a specific city, reflecting that there is not a clear delineation between cities. The boundaries of a [redacted].
107. Evidence from Uber's internal documents supported a geographic frame of reference defined as cities and metropolitan areas. The internal documents indicate that Uber considers competition in different towns and cities, and show differing competitors and strengths depending on the area concerned.⁷⁵
108. Views from third parties also support a local geographic frame of reference. Both taxi companies and BDT providers confirmed the local nature of demand and supply for taxi services with taxi companies.

Conclusion

109. In light of the evidence noted and consistent with the CMA's conclusions in Sheffield Taxis, the CMA has considered the impact of the Merger in the supply of taxi services on a local basis. For the purposes of the competitive assessment, the CMA focused on individual cities/metropolitan areas represented by Uber's [redacted], as these best reflect Uber's local market position.

Conclusion on frame of reference

110. For the reasons set out above, the CMA has considered the impact of the Merger in the following frames of reference:
 - (a) the upstream market for the supply of BDT and referral networks to taxi companies that outsource BDT in the UK;
 - (b) the upstream market for the supply of referral networks to aggregators and taxi companies that self-supply their own BDT in the UK; and
 - (c) the downstream market for the supply of taxi services at local level.

Competitive assessment

Horizontal unilateral effects

111. 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

⁷⁵ See, for example, Uber Internal Document, [redacted], November 2019, page 58.

without needing to coordinate with its rivals.⁷⁶ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in relation to horizontal unilateral effects in the current and future supply of BDT and networks that facilitate taxi services across the UK.

112. The Parties overlap in the supply of BDT with the material common functionality of enabling the booking and dispatch of taxi services (since, as noted above, Autocab supplies BDT to taxi companies while Uber self-supplies BDT).
113. In order to assess the likelihood of the Merger resulting in horizontal unilateral effects in the supply of BDT and/or referral networks, the CMA therefore considered:
 - (a) current closeness of competition between the Parties and the significance of alternative constraints; and
 - (b) anticipated future development of Parties' products.

Current closeness of competition and significance of alternative constraints

114. The Parties submitted that Uber and Autocab are not actual competitors in the current supply of BDT, referral networks or taxi services. In particular, the Parties made the following submissions.
 - (a) Uber does not compete with Autocab in the supply of BDT because Uber provides its services directly to drivers and passengers. In contrast, Autocab provides its BDT to taxi companies, who then customise and provide the BDT to their drivers and passengers. Similarly, the Uber app allows individual end users to book or supply trips in the locations in which Uber operates. Autocab's iGo referral network is accessed by taxi companies who send trips to other taxi companies.⁷⁷
 - (b) Autocab does not compete with Uber in the supply of taxi services because an individual passenger or driver cannot use Autocab's BDT or network to complete trips. Only taxi companies, PHV operators or aggregators can use Autocab's services.⁷⁸

⁷⁶ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

⁷⁷ Response to the Issues Letter, paragraph 5.2.

⁷⁸ Response to the Issues Letter, paragraph 5.3.

115. The Parties also submitted that any indirect competitive constraint Uber exerts on Autocab is far weaker than the direct constraint exerted by Autocab's direct BDT competitors. In particular, the Parties made the following submissions.
- (a) Autocab considers its closest competitors in the supply of, and innovation in relation to, BDT to be iCabbi, Cordic, Cab Treasure, as well as range of smaller players. The Parties also argue that national presence is not required for innovation and that BDT providers with a regional database can drive innovation.⁷⁹
 - (b) Autocab is not the market leader for innovation because Autocab's rivals have experienced more growth in the recent past. The Parties argue that iCabbi, Cordic and Cab Treasure have at times launched key innovations before Autocab. For example, the Parties stated that Cordic first launched apps, with iCabbi and then Autocab developing this product later. The Parties asserted that, as a result of iCabbi introducing this feature before Autocab, Autocab lost key customers to iCabbi.⁸⁰
116. The CMA has assessed the closeness of competition between the Parties and considered within its assessment evidence including:
- (a) the Parties' internal documents; and
 - (b) third party views.
117. The Parties submitted that the CMA should place limited weight on Autocab's internal documents because a number of the documents Autocab provided to the CMA were prepared for an external marketing purpose such as selling Autocab's products to taxi companies or selling Autocab itself to potential investors.⁸¹ The Parties also contended that [REDACTED].^{82, 83} The CMA understands that a document created for marketing purposes could in theory paint an overly favourable view of Autocab and its products. However, the CMA does not accept that this necessarily makes these documents unreliable. The CMA believes that Autocab's documents still provide insight into Autocab's internal view of its products and the market and thus that it is reasonable to place weight on this evidence. In placing weight on any document, the CMA takes into account the context in which that document was prepared.

⁷⁹ Response to the Issues Letter, paragraph 5.19 and 5.20. The Parties also explain that iCabbi (paragraphs 5.23-5.34) and Cordic (5.35-5.42) do not offer a weak constraint to Autocab.

⁸⁰ Response to the Issues Letter, paragraph 5.21.

⁸¹ Response to the Issues Letter, paragraph 5.12.

⁸² Response to the Issues Letter, paragraphs 5.12 and 5.13.3(A).

⁸³ See iCabbi's blog post on '[How to beat Uber](#)' and Cordic's post titled '[Cordic helps London cab firms in the fight against Uber](#)'.

118. The CMA notes that Autocab also submitted that its decision-making 'is conducted informally' with no preparation of notes or documents. The fact that a business does not keep explicit records of its decision making or strategy does not insulate those activities from review by the CMA, nor does it mean that the CMA is required to disregard all available evidence, such as marketing documents, in favour of relying on that business's assertions as to what its strategy may be. Rather, to carry out its investigation, the CMA will analyse the available evidence, which may include any documents that the business does prepare, the business's actual behaviour in the market, and evidence from third parties.
119. The CMA considers that it is clear that Autocab and Uber do not compete to supply BDT to the same customers: Autocab supplies BDT to taxi companies, and Uber supplies BDT only for its own use. Taxi companies could not switch from Autocab to use Uber's BDT services. There is, however, evidence that Uber exerts an indirect competitive constraint on Autocab.
120. Evidence both from Autocab's internal documents and from third parties indicates that BDT is an important input for taxis and assists taxi companies to compete with rivals including Uber.
- (a) Autocab documents, for example, describe Autocab's technology as helping taxi companies to compete⁸⁴ and as 'instrumental in giving local taxi companies a new lease of life' including in combating Uber and other ride-hailing apps.⁸⁵
- (b) Most taxi companies that responded to the CMA's questionnaires confirmed that they viewed BDT as a fundamental input for them to provide their services and compete against their rivals.⁸⁶ The majority of BDT providers and taxi companies that responded to the CMA's questionnaires indicated that Autocab competed against Uber in the design and development of applications, although none of these respondents pointed to evidence or examples of direct competition between Autocab and Uber.⁸⁷
- (c) The majority of responding taxi companies also believed that iGo was an important part of Autocab's offering to them. A number of taxi companies and another third party considered the iGo network presented an

⁸⁴ Autocab Internal Document, [REDACTED], [Undated].

⁸⁵ Autocab Internal Document, [REDACTED], August 2019, pages 1-4.

⁸⁶ Third party responses to the CMA Questionnaire.

⁸⁷ Third party responses to the CMA Questionnaire.

opportunity to compete with the scale and the geographic reach of Uber and submitted that iGo had features that mirrored Uber's network.⁸⁸

121. The CMA recognises that referral networks offer an opportunity for local taxi companies to compete against ride-hailing apps or larger taxi companies, but considers that the views of taxi companies as to the importance of iGo indicate the indirect nature of competition between Autocab and Uber. As competition takes place between the taxi companies and Uber, the CMA considers that Autocab developing a referral network could facilitate taxi companies' competition against Uber for passengers across the UK. The CMA notes also that iGo has only a very limited presence in the market.
122. There is evidence that Autocab takes account of Uber when developing certain aspects of its BDT offering, although this evidence shows that Autocab also takes account of other ride-hailing competitors. For example, one Autocab document refers to Autocab's white label apps as 'Uber-esque in style'. Autocab also states that its 'product team have been researching the leading ride-hailing apps available around the world including Uber' when designing Autocab's passenger app'. While these documents show that Autocab considers the constraint from Uber, they also show that Autocab is constrained in the same way by other ride-hailing apps and that Uber is not a uniquely close competitor.
123. While there is evidence that Uber provides some constraint to Autocab, evidence both from Autocab's internal documents and from third parties consistently indicates that Autocab's strongest competitors are other BDT suppliers such as iCabbi and Cordic.
 - (a) In documents where Autocab lists its key competitors, the focus is on BDT providers as opposed to Uber and other ride-hailing apps. For example, in a document setting out Autocab's operational plan, it mentions that iCabbi 'aggressively' competes against Autocab, and that iCabbi has invested heavily in its market presence and brand. Similarly, Cordic is described as having a good reputation for technical features.⁸⁹
 - (b) Evidence from third parties, including both Autocab's customers and competitors, also indicates that the most significant competitors to Autocab are the other BDT providers. The majority of taxi companies identified iCabbi as a second-best option to Autocab.⁹⁰ Third parties also confirmed that iCabbi was at an advanced stage of testing its referral

⁸⁸ Notes of the calls with [redacted] and [redacted]. [redacted] submission to the CMA from 27 October 2020. Third party responses to the CMA Questionnaire.

⁸⁹ Autocab Internal Document, [redacted], July 2017.

⁹⁰ Third party responses to the CMA Questionnaire.

network.⁹¹ A large number of taxi companies also mentioned Cordic as a competitor to Autocab. BDT providers specifically mentioned that they considered Cordic very strong in London and in the South East, although somewhat less strong than Autocab and iCabbi.⁹²

124. The CMA has found no evidence in Uber's internal documents that Autocab provides a material constraint to Uber. Although there is evidence that Uber considers some of Autocab's customer taxi companies to be competitors in local markets,⁹³ there is no evidence that this influences the development of Uber's BDT. Uber develops its own BDT to support its global operations and developments of this technology are not specific to its UK business. Uber's internal documents show that Uber focuses primarily on international competition and ride-hailing companies such as Bolt, Ola and Free Now.⁹⁴ Uber's internal documents in the UK also focus on ride-hailing apps when considering competition, with Ola and Bolt in particular being strong competitors.⁹⁵ To the extent that Uber's internal documents identify competition from local taxi companies, Uber does not focus on the BDT features of those companies, but instead [REDACTED].⁹⁶ The CMA considers that the lack of discussion of Autocab's BDT in Uber's internal documents is consistent with the Parties' statement that there is limited evidence that Uber considers Autocab to be a direct competitor and that competition takes place between Uber and Autocab's taxi company customers.⁹⁷
125. Third party evidence also indicated that the most significant competitive constraints on Uber come from other ride-hailing apps, namely Bolt, Ola, Gett and Free Now. Respondents identified that these companies were direct competitors to Uber, as opposed to indirect competitors who provided services to competing taxi companies.

⁹¹ Third party responses to the CMA Questionnaire.

⁹² Third party responses to the CMA Questionnaire.

⁹³ See for example Uber Internal Document in relation to taxi company [REDACTED], [REDACTED], November 2019, page 58; Uber Internal Document in relation to taxi company [REDACTED], [REDACTED], February 2020, page 23; Uber Internal Document in relation to taxi company [REDACTED], [REDACTED], October 2018, page 21; Uber Internal Document in relation to taxi company [REDACTED], [REDACTED], 20 July 2017, page 5; Uber internal Document in relation to taxi companies [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [Undated]; and Uber internal Document in relation to taxi companies [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [Undated].

⁹⁴ Uber Internal Document, [REDACTED], May 2020, page 25.

⁹⁵ For instance, an Uber internal document from 2020 noted the need for Uber to differentiate its offering from its competitors, which listed alternative ride-hailing companies Ola, Bolt and Free Now, as well as taxi and courier company Addison Lee. The document indicates that Ola and Bolt are strong competitors to Uber and outlines that Uber must compete against them to maintain its advantage. Uber Internal Document, [REDACTED], May 2020, pages 24 and 25.

⁹⁶ See, for example, Uber internal document that assesses competitors including Addison Lee, [REDACTED]; Uber Internal Document, [REDACTED], May 2020

⁹⁷ Response to the Issues Letter, paragraph 5.15.

126. Some respondents also noted that these ride-hailing companies, particularly Bolt and Ola, were as strong as Uber for the supply of taxi services.

Conclusion on current horizontal competition between Uber and Autocab

127. The evidence set out above shows that the Parties do not compete directly, although Uber does provide a degree of indirect competitive constraint to Autocab. In particular, Autocab takes Uber's offering into account when designing and developing software for its customer taxi companies as these companies use Autocab's products to compete against Uber, other ride-hailing apps and other taxi companies. While there is some indirect competition between the Parties, evidence from the Parties' internal documents and from third parties also shows that the Parties face stronger competitive constraints from other companies than from each other. Autocab is constrained principally by other BDT suppliers while, in respect of software development, Uber, is constrained principally by other ride-hailing apps, such as Bolt and Ola. These constraints will remain following the Merger. As a result, the CMA considers that the Merger will not significantly reduce the competitive constraints on either Uber or Autocab.

Anticipated future development of the Parties' products

128. The Parties submitted that Uber and Autocab will not become competitors in the supply of BDT and networks facilitating the supply of taxi services in the future because there is no evidence that Uber would develop a referral system and Autocab has no plans to offer taxi services to passengers or drivers. The Parties also said that Autocab's relationship with its taxi company customers would be undermined if it directly competed with these customers by launching a customer-facing app.⁹⁸
129. The Parties submitted that the future development of Autocab's iGo would not bring Autocab into direct, or closer, competition with Uber. iGo does not have a passenger or driver facing app. Even if iGo grew to be a national network, it would only enhance the competitive constraint imposed on Uber by multiple taxi companies, as opposed to providing one integrated competitor to Uber.⁹⁹
130. Further, the Parties said that no serious consideration was given, or resources allocated, to developing iGo into a consumer facing app.¹⁰⁰ The Parties argued that if Autocab launched its own app, Autocab would be competing with its own customers. The Parties cited the customer backlash it

⁹⁸ Response to the Issues Letter, paragraph 5.5.1 and 5.5.2.

⁹⁹ Response to the Issues Letter, paragraph 5.71 – 5.76.

¹⁰⁰ Response to the Issues Letter, paragraph 5.5.2.

experienced when launching its own app in 2014 and the level of resources needed to market a national consumer-facing app as preventing Autocab from developing such an app now.¹⁰¹ The Parties explained that references in internal documents to iGo being developed as a consumer facing app were including to show potential investors that this was [REDACTED], but that Autocab had not considered such a launch [REDACTED].¹⁰²

131. The Parties also submitted that current expectations of iGo's growth are modest. iGo generated revenue of £[REDACTED] in 2020 and the Parties submit that its revenues are not expected to grow significantly. The Parties also contend that estimates of iGo's growth presented in Autocab documents are predicated on the assumption that [REDACTED].
132. The CMA considered whether the anticipated development of both Parties' products could alter the view that the Parties are not close competitors, and considered within its assessment:
- (a) the Parties' direct competition for passengers in the future;
 - (b) the Parties' direct competition for corporate work in the future; and
 - (c) enhanced competition of aggregators and taxi companies against Uber.

Direct competition for passengers in the future

133. Some third parties believed that Autocab would be able to develop iGo to launch its own passenger-facing app, entering in direct competition with Uber.¹⁰³ The CMA has reviewed the available evidence and considers that it is unlikely that the future development of iGo will bring Autocab into direct competition with Uber for passengers.
134. First, the launch of a passenger-facing iGo app could undermine Autocab's relationship with its customers. Autocab attempted to launch a customer-facing app in 2014, but withdrew it following customer complaints about Autocab entering into competition with them.¹⁰⁴ The CMA has seen references in a document prepared by Rothschild in connection with the sale of the Autocab business to the possibility of developing iGo to become a passenger-facing app similar to Uber. However, the CMA considers that this document does not go further than explaining the possibility of such an app. Moreover, the CMA considers that the internal documents Autocab provided

¹⁰¹ Response to the Issues Letter, paragraph 5.5.2.

¹⁰² Response to the Issues Letter, paragraph 5.13.5.

¹⁰³ Third party responses to the CMA Questionnaire.

¹⁰⁴ Response to Issues letter, paragraph 5.52 and Autocab Internal Document, [REDACTED].

do not indicate that Autocab itself was likely to launch an app, particularly given the lack of success of this strategy in 2014.¹⁰⁵

135. Second, as discussed below at paragraph 138 and 139, the available evidence indicates that iGo's general growth is uncertain and, as discussed at paragraph 140, other competitors are currently at a similar position regarding the development of their networks. The CMA has not found any evidence to suggest that, even if Autocab did develop a successful consumer-facing app, such an app would pose a significant additional constraint on Uber.
136. For the reasons above, the CMA considers that the available evidence does not indicate that Autocab either intends or is likely to enter into direct competition against Uber for taxi services by launching a consolidated customer facing iGo app.

Direct competition for corporate work and new segments in the future

137. There is evidence in Autocab's internal documents of plans to develop the use cases for iGo, including to serve corporate customers, offer school transportation and delivery services. Such activity would bring Autocab into direct competition with Uber, which already operates, for example, corporate accounts through Uber for Business. The internal documents indicate that Autocab has detailed plans in this space and is in discussions with potential customers about their future use of iGo.¹⁰⁶
138. The CMA notes that iGo was launched in 2017 and has had limited growth to date. Moreover, Autocab's growth models primarily relied on the assumption that [REDACTED].¹⁰⁷ Given the limited growth of iGo since then, and that projections do not go beyond 2021, the CMA considers that it can only place limited weight on these models and that the evidence from Autocab's internal documents taken together do not indicate that iGo would be likely to become a significant competitor to Uber for corporate work.
139. Further, third-party views were mixed on Autocab's ability to grow iGo and become a strong competitive constraint on Uber. Less than half of the BDT providers submitted that Autocab began to compete more directly with the introduction of iGo, as Autocab started to win business from the same or similar sources as Uber.¹⁰⁸ Another taxi company submitted that Autocab did

¹⁰⁵ Annex 019 to the FMN, [REDACTED], August 2019, page 18: [REDACTED].

¹⁰⁶ Autocab Internal Document, '[REDACTED]', February 2020, page 5 and 19. See also Autocab Internal Document, [REDACTED], February 2019, page 39.

¹⁰⁷ Autocab, Internal Document, [REDACTED], November 2020, [REDACTED] sheet.

¹⁰⁸ Third party responses to the CMA Questionnaire.

not have the experience nor the ability to further develop the network at this time, due to the high financial commitment required.¹⁰⁹

140. In addition, the CMA considers that there are significant competitors to the Parties in this space. Competitors to Autocab are developing referral networks in competition with iGo. Cordic is a minority shareholder in Cab Guru, a referral network. Cordic's taxi companies are able to refer and access demand on the network. The CMA understands that iCabbi is launching its own referral network to compete with Autocab's iGo, and that this network is already available.¹¹⁰ The CMA recognises that Autocab may potentially have a first mover advantage and that Autocab's national scale plays a role in the strength of its network. However, the CMA considers that Autocab's network has not achieved a level of success that puts its competitors at a material disadvantage for the purposes of attracting demand to their networks. As mentioned above, iGo has seen limited success to date and could be considered to be in a similar nascent stage as iCabbi and Cordic's networks. Further, as above, the CMA considers that access to demand from corporate clients and aggregators is an important source for the growth of a referral network. As aggregators in particular tend to multi-home, there is scope for multiple referral networks to develop and grow.
141. Ride-hailing companies and taxi companies are also increasingly available as alternatives to iGo in this space. For instance, Free Now is currently active in nine UK cities¹¹¹; Gett provides corporate ground travel services in 25 cities in the UK including London, Edinburgh, Manchester, Glasgow and Newcastle.¹¹² Addison Lee, also serves corporate clients and has a delivery service.¹¹³
142. For the reasons above, the CMA does not consider that the available evidence indicates that iGo's growth would mean the Parties become significant competitors for corporate work. iGo's growth to date has been modest and there is no evidentiary basis to conclude iGo will grow substantially in the future. The CMA found that the evidence indicates that other networks are also in a similar position to iGo and have the potential to develop, and that there are other competitors for corporate work.

¹⁰⁹ [redacted] response to the CMA Questionnaire.

¹¹⁰ [redacted].

¹¹¹ For details of Free Now's areas of operation see: <https://free-now.com/uk/passenger/europe>. For details of Free Now's corporate accounts see: <https://free-now.com/uk/business/account/>

¹¹² See Gett's website entry 'Where can I use Gett?'

¹¹³ See Addison Lee's website <https://www.addisonlee.com/services/about/>

Enhanced competition of taxi companies and aggregators against Uber

143. The CMA notes that the majority of responding Autocab taxi company customers and a few aggregators considered that iGo was an important part of Autocab's offering, representing a source of growth for their business and a tool to better compete against Uber. However, some taxi companies and aggregators noted that iGo only represented a small amount of their revenue or demand respectively. The CMA recognises that iGo, if it were ultimately to succeed, could be a source of growth and a competition tool for taxi companies, however, iGo has remained very small since it was launched in 2018.
144. The CMA has not found evidence to support a conclusion that iGo is likely to grow to a sufficient scale to constrain Uber in the foreseeable future. As explained above, iGo's growth to date has been limited and some third parties have expressed scepticism about Autocab's ability to grow this business (see paragraph 139). Furthermore, to the extent that referral networks do play a role in supporting taxi companies and aggregators competing more closely with Uber a number of credible alternatives are being developed by competitors alongside iGo. As a result, the CMA does not believe that aggregators would be reliant on iGo to compete more closely with Uber or that iGo would be uniquely positioned to allow aggregators to compete against Uber.

Conclusion on anticipated future development of the Parties' products

145. The CMA believes that iGo would need to grow materially in order to enhance competition against Uber from taxi companies and aggregators. For the reasons set out above, the CMA considers that the evidence indicates that while there is scope for iGo to grow there is a considerable level of uncertainty about its future success and the CMA considers it unlikely that it would grow to a sufficient extent to exert a material constraint on Uber.

Conclusion on horizontal unilateral effects

146. For the reasons set out above, the CMA believes that Uber and Autocab are not currently close competitors and only compete indirectly. Following the Merger, Autocab would still face sufficient constraints from alternative BDT providers, and Uber would face sufficient constraints from ride-hailing companies. With regard to future competition, the CMA believes that the available evidence does not indicate that Autocab would have developed sufficiently to exert a material constraint on Uber, nor that the Parties would have developed their offerings to compete more directly. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an

SLC as a result of horizontal unilateral effects in relation to the horizontal unilateral effects in the current and future.

Vertical effects

147. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer, or a downstream competitor of the supplier's customers.
148. Vertical mergers may be competitively benign or even efficiency-enhancing, but in certain circumstances can weaken rivalry, for example when they result in foreclosure of the merged firm's competitors. The CMA only regards such foreclosure to be anticompetitive where it results in an SLC in the foreclosed market(s), not merely where it disadvantages one or more competitors.¹¹⁴
149. In the present case, the CMA has considered whether, following the Merger, the Merged Entity would have the ability and incentive to partially foreclose Autocab's customer taxi companies in areas where Uber already has a substantial market position.¹¹⁵ Such strategies may involve one or more of the following practices: (i) degrading the quality of Autocab's BDT offering; (ii) reducing the rate of development and innovation for Autocab's offering; (iii) accessing and using competitively sensitive information about Autocab's taxi company customers' booking data to put those customers at a competitive disadvantage as against Uber.¹¹⁶

Ability to foreclose Autocab's taxi company customers

150. In order to assess whether, post-Merger, the Merged Entity would have the ability to harm Autocab's taxi company customers' competitiveness through foreclosure, the CMA has considered the following factors:

(a) the Merged Entity's ability to target foreclosure strategies at a local level;

¹¹⁴ In relation to this theory of harm 'foreclosure' means either foreclosure of a rival or to substantially competitively weaken a rival.

¹¹⁵ [Merger Assessment Guidelines](#), paragraph 5.6.6. The CMA considered that Uber had a substantial market position in a [§<] when its shares of supply were over 30% in that local area. The CMA identified 12 [§<] where Uber had a substantial market position (eg Birmingham, Brighton and Sussex, Edinburgh, Glasgow, Leeds, Leicester, London, Manchester, Merseyside, Nottingham, South Coast, and South West). To identify areas where Uber had a substantial market position, the CMA focussed on individual cities/metropolitan areas represented by Uber's [§<], as these best reflected Uber's local market position. Uber explained that [§<] cover a larger area than just a specific city, reflecting that there is not a clear delineation between cities. The boundaries of a [§<].

¹¹⁶ BDT only accounts for a small proportion of taxi companies' costs. As such, the CMA considers that a foreclosure strategy based on a price increase of BDT would not be realistic. Further, the CMA considers it unlikely that the Merged Entity would stop supplying BDT altogether, as there are alternative BDT providers that could supply the product to taxi companies. As such, the CMA has not assessed a total foreclosure strategy.

- (b) the importance of BDT as an input for the supply of taxi services;
 - (c) taxi companies' (including Autocab's taxi company customers') ability to switch to alternative standalone BDT providers; and
 - (d) the availability of alternative standalone BDT providers.
151. In order to assess the specific issue of whether, post-Merger, the Merged Entity would have the ability to use competitively sensitive information to foreclose Autocab's taxi company customers, the CMA has considered the following additional factors:
- (a) the extent to which Autocab possesses competitively sensitive information about Uber's rival taxi companies;
 - (b) whether Uber would be able to access and use these data; and
 - (c) the extent to which this would enable the Merged Entity to put rival taxi companies at a competitive disadvantage as against Uber.

Ability to target foreclosure at local level

152. The Parties submitted that, post-Merger, the Merged Entity would not be able to selectively discriminate between the Autocab products offered to Autocab's taxi company customers in different locations. The Parties submitted that this would be impractical due to the national, SaaS based nature of such products and the fact that Autocab's systems have been designed to roll out upgrades to all products at the same time. This would also be impractical due to the additional costs involved in running different versions of the software simultaneously, which would require additional processes to ensure customers were assigned the correct version.¹¹⁷ Further, the Parties stated that differentiating quality to different customer groups in this way would carry reputational risks and potentially damage Autocab's relationship with its customers.
153. The CMA considers that the Parties have provided insufficient evidence to support the position that, post-Merger, it would be prohibitively costly for the Merged Entity to engage in selective local discrimination of Autocab's products. In particular, the CMA considers that the Parties' products and services are of a digital nature and therefore offer various ways in which discrimination mechanisms could be implemented and/or automated. Further, the CMA notes that small changes in processing, which might impact the

¹¹⁷ Response to the Issues Letter, paragraph 5.80.

timeliness of information facilitating drivers' and passengers' matching, appear to be within the scope of Uber's technical capability.

154. Further, the CMA considers that the Parties have not provided evidence to support the position that, post-Merger, the Merged Entity would not be able to target local strategies based on access to competitively sensitive information of Autocab's customer taxi companies aimed at putting these customers at a competitive disadvantage against Uber. The CMA considers whether Uber would be able to access and use competitively sensitive information of Autocab's customer taxi companies in paragraphs 184 to 190. However, the CMA considers that taxi companies' booking data (including data on areas that were under- or over-supplied,¹¹⁸ best locations for work and prices charged) have a local nature and, as such, might enable the Merged Entity to target foreclosure of Autocab's customer taxi companies at the local level.
155. In light of the above, and based on the evidence available, the CMA believes that, Post-Merger, the Merged Entity might be able to target foreclosure strategies involving quality degradation of BDT and the use of competitively sensitive information at the local level.

Importance of BDT

156. The Parties submitted that BDT accounts for a very small proportion (approximately [0-5]%) of the total costs incurred by taxi companies in the supply of taxi services. As such, any hypothetical post-Merger price increase in BDT would have a negligible effect on the ability of taxi companies to compete.¹¹⁹ The Parties also submitted that there is a relationship between the effect of a price increase and of a quality reduction. Taxi companies would switch in response to a certain increase in the price of BDT, because it would reduce their profits by a certain amount. Similarly, a quality degradation of BDT resulting in the same reduction of profits would also induce a switch. The Parties submitted that even a 100% increase in BDT price, or its equivalent reduction in profits due to quality degradation, could at most reduce taxi companies' profits by [0-5]%.¹²⁰

¹¹⁸ Under-supplied areas are locations that are not reached by enough drivers to serve demand, causing higher waiting times. Over-supplied areas are location with a higher presence of drivers with respect to the demand.

¹¹⁹ The Parties cite in particular to the OFT's decision in [Nakano/Premier Foods](#), in which the OFT concluded that the Merged Entity would not have the ability to foreclose its downstream competitors. This was on the basis that the relevant upstream input supplied to them by the Merged Entity represented only 0-5% of the variable costs of the downstream product and therefore had a "de minimis impact" on overall costs at the downstream level. Paragraph 212 of the SLC Decision.

¹²⁰ The Parties calculated the impact of a 100% price increase on profits using Autocab's yearly BDT fee per driver and Uber's gross profit per driver as a proxy for taxi company's profit per driver. The CMA considers this is a reasonable proxy.

157. The CMA recognises that BDT represents a small proportion of taxi companies' costs and for this reason the Merged Entity's ability to harm Autocab's customer taxi companies by directly raising their cost would be limited. However, the CMA considers that the importance of BDT in shaping downstream competition is unlikely to be fully captured by the proportion of taxi companies' costs that BDT currently accounts for. Indeed, evidence from most taxi companies that responded to the CMA market testing shows that the quality and degree of innovation were more relevant factors than price when selecting a BDT provider.¹²¹ Specifically, these taxi companies explained that access to high-quality BDT, alongside developments of BDT features were important for their ability to compete in an increasingly technology-driven and dynamic market. More generally, all taxi companies except for one indicated that BDT was an essential input to their supply of taxi services.¹²² All these companies explained that they would not be able to operate efficiently without BDT, with this particularly the case for medium to large businesses.¹²³ Other third-party views were consistent with those of taxi companies.
158. The CMA accepts the general proposition that a reduction in profits due to quality degradation, similarly to an equivalent increase in the price of BDT, would need to be significant in order to impact on the competitiveness of taxi companies. Further, the CMA notes that the Parties' submission is consistent with the response from more than half of Autocab's customer taxi companies, which stated that they would absorb a small but significant increase in price or an equivalent degradation in quality of Autocab's BDT.¹²⁴
159. Based on the evidence and analysis set out above, the CMA considers that Autocab's BDT is an important input to its taxi company customers' businesses even though it does not account for a significant share of such customers' costs and profits. Notwithstanding the importance of BDT in this context, the CMA recognises that, post-Merger, a degradation in the quality of Autocab's BDT would need to be significant enough to affect taxi companies' ability to compete in the downstream supply of taxi services, for example by inducing passengers or drivers to switch away from the taxi companies with degraded quality.

¹²¹ Third party responses to the CMA Questionnaire.

¹²² All third party responses to the CMA Questionnaire with the exception of .

¹²³ In this context, the CMA refers to the size of taxi companies in terms of the number of drivers operating with these companies.

¹²⁴ Third Party responses to the CMA Questionnaire.

Ability to switch BDT provider

160. The Parties submitted that the switching process was quick and easy, taking on average 36 working days.¹²⁵ Further, the Parties submitted that the monetary costs of switching (including costs related to contract termination) were immaterial compared to taxi companies' revenues – these costs would not exceed [0-5]% of a taxi company's annual gross profit per driver. The Parties pointed to the practice of BDT providers buying customers out of contracts to alleviate contractual and financial limitations and provided evidence that customers switch even when not close to the end of their contracts. The Parties submitted that Autocab's annual churn is [0-5] – [5-10]%.
161. The evidence that the CMA received from third parties is mixed on this point. Around half of Autocab's taxi company customers believed that the process of switching BDT provider was easy and smooth. Some of these taxi companies had already switched in the past or were in the process of switching.¹²⁶ Most BDT providers and the other half of Autocab's customers identified barriers to switching BDT provider, including time and cost, complexity of the switching process, business disruption and the cost of exiting contracts.¹²⁷ However, some of these taxi companies explained that they would switch supplier if Autocab were to adopt partial foreclosure strategies.¹²⁸
162. In light of the evidence available to it, the CMA considers that customers face some barriers to switching, including the complexity of the switching process, business disruption and time. Further, the CMA considers that the Parties' submission on switching times does not account for the time and effort that needs to be invested both before the contract is signed and after the go-live date (eg continued training and troubleshooting for drivers becoming used to the new app).
163. However, the CMA believes it is significant that switching does occur and that the monetary costs of switching are limited, such that a customer facing quality degradation that reduced its annual gross profit per driver by more than [0-5]% would be willing to incur these costs in order to switch BDT provider.¹²⁹ Furthermore, switching costs are one-off, while the impact of

¹²⁵ Response to the Issues Letter, paragraphs 6.8 and 6.9.

¹²⁶ Third party responses to the CMA Questionnaire.

¹²⁷ Third party responses to the CMA Questionnaire.

¹²⁸ Partial foreclosure strategies refer to a price increase or to a degradation in quality or development of Autocab's BDT offering.

¹²⁹ The Parties calculated these costs assuming that taxi companies' gross profits per driver would be similar to Uber's gross profits per driver. Based on this, the Parties estimated that a company paying on average £[§<] per driver per month for BDT and with 14 months left in the contract (average remaining contract term across Autocab's customers) needs to pay around [0-5]% of its annual gross profit per driver to terminate its contract.

quality degradation on profits would continue and there are financial incentives offered by BDT providers that have encouraged customers to switch before the end of their contract.

164. In light of the evidence set out above, the CMA believes that while taxi companies face some barriers to switching, switching costs are likely to be low relative to the potential impact of a quality degradation. On that basis, the CMA considers that a significant number of taxi companies do or would switch to alternative BDT providers in response to a degradation post-Merger in the quality of Autocab’s BDT offering.

Autocab’s market power in BDT

165. Autocab is the largest player in the UK with a market share of [30-40]%. iCabbi ([20-30]%) and Cordic ([10-20]%) are the second and third largest players, respectively. Other BDT providers are available, although their shares are significantly lower.

Table 2: Estimates of shares in the supply of standalone BDT in the UK, as at February 2020¹³⁰

<i>Company</i>	<i>Number of drivers</i>	<i>Share of drivers</i>
Autocab	[§]	[30-40]%
iCabbi	[§]	[20-30]%
Cordic	[§]	[10-20]%
Cab Treasure	[§]	[5-10]%
Datamaster	[§]	[0-5]%
Haulmont (Sherlock)	[§]	[0-5]%
Magenta	[§]	[0-5]%
Cab Despatch	[§]	[0-5]%
Envoy (TM Information Systems)	[§]	[0-5]%
Others	[§]	[10-20]%
Total	[§]	100%

Sources: CMA third party questionnaires;¹³¹ Parties’ estimates for ‘others’ provided in Final Merger Notice (Other BDT providers – number of licences); Frost & Sullivan due diligence report (fleet size)

This cost would be even lower when accounting for financial incentives offered to encourage switching (eg 9-12 months free). Similarly, the Parties estimated that even the highest switching cost suggested by responding taxi companies (eg the £50,000 cost for the purchase of a new hardware) equates to the annual gross profit generated from just 10 drivers.

¹³⁰ Autocab submitted data as a March 2020, however the CMA does not believe this would significantly affect shares.

¹³¹ [~~§~~]. ‘Other BDT providers’ include Catalina and A2B Australia (MTI Data) (based on Autocab’s internal estimates), Taxi Caller, Taxi Mobility, and Taxi Cloud (based on analysis by Frost & Sullivan). The CMA notes that there may be a few instances of double-counting of some of the ‘other BDT providers’ due to the way they have been aggregated in the source documents (in combination with companies for which the CMA has questionnaire responses). However, as they are relatively small, the CMA currently considers this should not materially distort the results and any double counting would result in over-estimating the total size of the market and hence under-estimating the Parties’ shares.

166. The Parties submitted that taxi companies have a wide range of options available for sourcing BDT, the largest of which are iCabbi and Cordic.
- *iCabbi*
167. iCabbi started to supply BDT in the UK in 2013 and grew rapidly, with Renault Group acquiring a 75% stake in 2018. The Parties submitted that this bolstered iCabbi's ability to innovate, making it the strongest alternative to Autocab. Further, the Parties submitted that the constraint imposed on Autocab by iCabbi is reflected in the fact that [50-60]% of Autocab's customers who switched between August 2017 and March 2021 moved to iCabbi.¹³²
168. iCabbi submitted that it was the strongest standalone BDT provider after Autocab and explained that its greatest period of growth in the UK came at the expense of Autocab.¹³³ iCabbi recognised that it did not have the same geographic spread as Autocab, but noted that it supplies BDT to some of the biggest taxi companies.
169. Evidence from third parties indicates that while Autocab is the largest BDT provider in the UK, iCabbi's offering is very close to Autocab's.¹³⁴ Most of the third parties compared Autocab's BDT directly to iCabbi's. Around a third of responding taxi companies and almost all BDT providers considered that iCabbi was as good as Autocab. Most of the other taxi companies believed that iCabbi was only slightly weaker than Autocab. The majority of taxi companies that would switch if Autocab were to degrade the quality of its offering indicated that they would move to iCabbi.¹³⁵
170. Autocab's internal documents indicate that Autocab views iCabbi as its closest competitor. For example, one Autocab internal document states that iCabbi has [REDACTED].¹³⁶
171. Based on the evidence above, the CMA considers that iCabbi is Autocab's closest competitor in the supply of BDT in the UK and that its BDT offering is a strong alternative to Autocab's BDT.

¹³² Response to Issues Letter, paragraph 5.27.

¹³³ [REDACTED].

¹³⁴ Third Parties were requested to compare the BDT offering of each provider, including quality factors and rate of innovation.

¹³⁵ Third party responses to the CMA Questionnaire.

¹³⁶ Annex 022 to the FMN, Autocab Internal Document, [REDACTED], October 2019, page 47.

- *Cordic*

172. The Parties submitted that Cordic was at the forefront of global innovation, as it was the first to launch white label passenger apps, and cloud-based BDT systems alongside iCabbi. The investment from Oakfield Capital in 2018 further fostered Cordic's innovations. The Parties submitted that in the period between August 2017 and March 2021 it lost a material ([5-10]%) number of customers to Cordic.¹³⁷
173. Cordic identified itself as the third largest BDT provider in the UK, with a particular focus on London and the South East.¹³⁸ Thus, the CMA considers that in these areas Cordic is a stronger constraint than indicated by its national shares of supply and in particular in London where Uber has a significant market position.
174. Evidence from third parties indicates that Cordic's BDT is a credible alternative to Autocab's BDT offering. Over 40% of taxi companies identified Cordic as a competitor to Autocab, albeit a weaker one than iCabbi. Most BDT providers listed Cordic as the third strongest standalone BDT provider, with some considering Cordic as good as Autocab. Some taxi companies indicated that they would switch to Cordic if Autocab were to degrade the quality of its BDT offering.¹³⁹
175. Autocab's internal documents indicate that Autocab recognises Cordic as a competitor, albeit one with some limitations. For example, one Autocab document noted Cordic's [REDACTED]. That same document also recognised that Cordic has [REDACTED].¹⁴⁰
176. Based on the evidence set out above, the CMA believes that Cordic's BDT offering is a credible alternative to Autocab's BDT. While Cordic is currently strongest in London and the South East, this reflects the quality of its BDT system which is available nationwide and is therefore an additional credible alternative to Autocab and iCabbi.

- *Other BDT providers*

177. The CMA recognises that a number of other smaller BDT providers are active in the UK, including Datamaster, Haulmont,¹⁴¹ Magenta, MTI, Catalina, TaxiMobility, Cab Treasure, Envoy and Txicaller.

¹³⁷ Response to the Issues Letter, paragraph 5,40.

¹³⁸ [REDACTED].

¹³⁹ Third party responses to the CMA Questionnaire.

¹⁴⁰ Annex 022 to the FMN, Autocab Internal Document, [REDACTED], October 2019, page 43.

¹⁴¹ The constraint exercised by Addison Lee is considered through Haulmont.

178. The Parties submitted that these providers collectively account for over 20% of the supply of BDT in the UK and that they are particularly strong in the provision to small taxi companies, which is also Autocab's target customer segment (constituting [80-90]% of its current customer base). Further, the Parties submitted that from August 2017 to March 2021, Autocab lost [30-40]% of its customers to BDT providers other than iCabbi or Cordic.
179. Third parties mentioned alternative BDT providers such as Cab Treasure, Haulmount, Datamaster, InfoCab, Cabmaster and Cab9. Except for Cab Treasure, none of these providers was mentioned by more than three taxi companies.¹⁴² All of them were considered significantly weaker than Autocab and iCabbi.¹⁴³ The CMA considers that switching patterns presented by the Parties are consistent with this evidence.
180. Autocab's internal documents contain references to some of these other BDT providers. For instance, one document identifies their strengths, such as the [redacted] of Taxi Caller's system and Cab Treasure's [redacted].¹⁴⁴
181. Based on the evidence available to the CMA as set out above, the CMA considers that these other BDT providers are significantly weaker alternatives to Autocab in the supply of BDT in the UK.
182. In light of the above, the CMA believes that while Autocab is the largest standalone BDT supplier in the UK, two credible alternatives (ie iCabbi and Cordic) are available to Autocab's taxi company customers. In particular, evidence indicates that iCabbi's BDT offering is very close to Autocab's offering. Cordic's BDT was rated as slightly weaker by Autocab's customers but still acceptable to most of them. Thus, if post-Merger Autocab were to degrade the quality of its BDT, it would offer an inferior product to its closest competitors.

Conclusion on ability to foreclose by degrading quality and development of BDT

183. For the reasons set out above, the CMA believes that the Merged Entity would not have the ability to foreclose Autocab's taxi company customers by degrading the quality and development of its BDT as taxi company customers would be able to switch to one of the existing credible alternative BDT suppliers to avoid a degradation in the quality and development of their BDT by the Merged Entity.

¹⁴² Third party responses to the CMA Questionnaire.

¹⁴³ Third party responses to the CMA Questionnaire.

¹⁴⁴ Annex 022 to the FMN, Autocab Internal Document, [redacted], October 2019, pages 51 and 55.

Uber's ability to access and use competitively sensitive information

184. A number of third parties raised concerns that, post-Merger, the Merged Entity could access Autocab's taxi company customers' booking data (including areas that were under- or over-supplied,¹⁴⁵ best locations for work and prices charged), which the Merged Entity could use to put those customers at a competitive disadvantage as against Uber.
185. The Parties submitted the following points regarding Uber's access to Autocab's taxi company customers' data post-Merger.
- (a) The Autocab systems that store its customers' personal data will be ringfenced from the rest of the Merged Entity in order to ensure that the Uber business is not able to obtain unwarranted access. Further, the Parties submitted that Autocab does not currently aggregate customer data and aggregating this data for Uber's use would be a time-consuming manual exercise.¹⁴⁶
 - (b) Autocab would be required to seek its customers' consent prior to sharing their data (to the extent this included personal data) with the Uber business post-Merger. They stated that the definition of personal data is broad and would cover, for example, names and contact details, location/GPS data and prices. Any aggregation, anonymisation or sharing (including with a shareholder) of Autocab's taxi company customers' personal data would be considered to be a processing activity under data protection legislation for which consent would be required.¹⁴⁷
186. With regard to the Parties' plans to ringfence data from the Uber business, the CMA has not received sufficient evidence to show that the Merged Entity would be unable to remove these safeguards post-Merger if its incentives changed. The CMA notes that there are intended exceptions to the ringfence arrangements whereby Uber personnel will be able to access Autocab systems, such as where required by law, to work on the Autocab tech stack, or for auditing and accounting purposes.¹⁴⁸ Additional exceptions or permissions could be added post-Merger. Furthermore, while aggregating data may be a time-consuming exercise, the CMA has not received evidence

¹⁴⁵ Under-supplied areas are locations that are not reached by enough drivers to serve demand, causing higher waiting times. Over-supplied areas are location with a higher presence of drivers with respect to the demand.

¹⁴⁶ Response to the Issues Letter, paragraph 6.30. See also Annex 084, 'Response to follow up questions to Uber and Autocab presentation of 15 January 2021', 26 January 2021 and Uber's plans for access to data discussed at section 2.

¹⁴⁷ Supplemental submission on Uber's approach to Autocab customer data post-Transaction, paragraph 2.3.

¹⁴⁸ Annex 084, 'Response to follow up questions to Uber and Autocab presentation of 15 January 2021', 26 January 2021, paragraph 2.8.

to indicate that the Merged Entity would lack the resources to undertake such an exercise.

187. With regard to the Parties' obligations under data protection law, the CMA accepts in principle that, if the Merged Entity wished to engage in any processing of Autocab's customers' data that was not covered by existing consents, Autocab (as a processor of its customers' personal data) may be required to request that its taxi company customers seek renewed consent from their own end users (to cover any new processing) and accede to any necessary contractual amendments to enable such processing.¹⁴⁹
188. To the extent renewed consent is required under the circumstances described above, the CMA considers that Autocab's customers will have to decide between: (i) arranging to grant the necessary consents in order to continue using Autocab's BDT; or (ii) refusing to do so and terminating their use of Autocab's BDT. The CMA notes that at least some of Autocab's taxi company customers may grant consent because the value of retaining access to Autocab's services would outweigh any potential adverse impact resulting from the use of their data or for other reasons. If there were no credible alternative BDT providers, concerned customers would have to either stay with Autocab and pass on their data (which means that the Merged Entity could use that data to the disadvantage of the local taxi companies in those areas), or use an inferior BDT to the detriment of their business. However, the CMA considers that there are credible alternative BDT suppliers that concerned customers can switch to if they no longer want to use Autocab's BDT. For the reasons set out in paragraphs 160 to 182, the CMA considers that switching is a viable option for Autocab's taxi company customers because Autocab's rival BDT providers, such as iCabbi and Cordic, offer BDT that is not significantly different from Autocab's.
189. If renewed consent is not required (because any further processing does not involve personal data or existing consents cover any intended processing), the CMA recognises that taxi companies might not receive prior notice of any access by Uber to their data. Those taxi companies would be deemed as having agreed to such sharing of data when they previously consented to Autocab's data terms (and the Merged Entity could use that data to the disadvantage of the local taxi companies in those areas). Nevertheless, to the extent they are now concerned, the existence of credible alternative BDT

¹⁴⁹ Consequently, the CMA has not considered in detail the extent to which Autocab would be required post-Merger to seek additional consents to be able to process its customers' data for any specific uses by the Uber business, which the CMA notes would require an in-depth assessment of the application of data protection legislation. The CMA has also not considered whether or to what extent Autocab would be able under its existing customer contracts to give access to Uber to use Autocab's taxi company customers' data for any specific purpose.

suppliers means they also have the option to switch to an alternative BDT provider.

190. The CMA recognises that the possibility of Uber having access to Autocab's taxi company customers' competitively sensitive information post-Merger is a concern for those customers. Most of the concerns expressed to the CMA, however, pointed to a concern that Uber could use these data (such as prices charged, areas of peak demand and to under- or over-supplied areas) to compete more aggressively with these taxi companies, for example, by offering lower prices or shorter waiting times. While Uber using data to compete more aggressively with taxi companies in ways that benefited passengers would not raise competition concerns, the CMA would be concerned about the possibility that such data could be used to foreclose taxi companies (or to compete less aggressively than Uber otherwise would). As set out above, however, the CMA did not find a competition concern given the available alternative BDT suppliers.

Conclusion on ability

191. For the reasons set out above, the CMA believes that a foreclosure strategy involving an increase in the price of BDT would not be credible. The CMA believes that the Merged Entity might have technical ability to degrade quality/innovation at a local level and use Autocab's taxi company customers' competitively sensitive information to its advantage, including by targeting local strategies based on access to these data. However, the CMA found that the Merged Entity would not have the ability to foreclose Autocab's taxi company customers by any of these foreclosure strategies as the quality of alternative BDT suppliers' offering is not significantly different from Autocab's, and taxi company customers would be able to switch to one of the existing credible alternative BDT suppliers to avoid any foreclosure strategy that the Merged Entity could implement.

Incentive and effect

192. The CMA has not considered the incentive and effect of any partial foreclosure strategy by the Merged Entity on the basis that the CMA does not believe that the Merged Entity would have the ability to engage in such foreclosure.

Other vertical theories considered

Partial foreclosure of Autocab's customer taxi companies in areas where Uber is currently weak or inactive

193. The CMA has assessed whether Uber would, through iGo, be able to grow its market position and network in areas where it is currently weak or inactive, such that the Merged Entity might become able to partially foreclose Autocab's customer taxi companies operating in these areas by one or more of the practices discussed in paragraph 149 above.
194. The CMA considers that the Merger would enable Uber to expand the areas it is able to fulfil trips within the UK through iGo. The CMA believes that, in the short run, this would result in increased choice for passengers as they would have an additional demand channel.
195. The CMA considers that competition in the downstream market for the supply of taxi services is primarily local. As a consequence of the Merger, Uber would use taxi companies operating on iGo to serve trips in areas where it is currently weak or inactive; it would not be using its own drivers and would not, as a result of the Merger, be able to build an independent market position in these areas. The CMA also notes that taxi companies are able to refuse to service Uber's demand which would become available through iGo and, if they decide to serve Uber's trips, they will remain independent and retain full control over the fares they charge for trips.
196. Further, and most importantly, as set out in paragraph 191 above the CMA found above that the Merged Entity lacks the ability to partially foreclose customer taxi companies in areas where Uber has a substantial market position. Based on this conclusion, the CMA does not consider that, even if taxi companies decided to service Uber's demand through iGo, this could lead to foreclosure concerns in areas where Uber is currently weak or inactive.

Partial foreclosure of aggregators using Autocab to refer trips in the UK

197. The CMA has assessed whether the Merged Entity might partially foreclose aggregators¹⁵⁰ by raising the commission they pay for using iGo, with the aim of diverting their passengers to Uber and/or protecting Uber's market position and network.

¹⁵⁰ The CMA has included taxi companies that self-supply their own BDT and use Autocab to refer trips as part of this assessment. The CMA has not engaged with taxi companies that outsource BDT on this matter as they can currently only access the referral network offered by their BDT providers.

- *Ability*

198. The Parties submitted that connection to Autocab and iGo are not essential for aggregators as they have multiple routes to market. The Parties submitted that aggregators and taxi companies can use many networks through which they can refer rides, including Karhoo, HERE Mobility, Riide, iCabbi and Cab Guru. The Parties also stated that there were no technological barriers, switching costs or penalties associated with switching referral networks. Further, the Parties submitted that aggregators regularly multi-home between referral networks.
199. Around half of the aggregators responding to the CMA's merger investigation indicated that connection to BDT providers and referral networks was an important tool to refer demand. The other half believed they had other options (eg contract directly with taxi companies) and the use of these alternatives would not significantly affect their business.¹⁵¹
200. Third party aggregators identified a number of alternatives to Autocab. Each of the respondents identified at least one alternative they considered to be as good as iGo (eg iCabbi's network), but all believed they had many options available.¹⁵² Other alternatives identified were CabGuru, MTI, CabTreasure, Datamaster, Freedom, Haulmont, Catalina and Magenta. However, except for CabGuru, which one aggregator considered as good as iGo and iCabbi and another slightly weaker than iCabbi, all these other alternative network providers were not believed to be as good as iGo (or iCabbi), due to their limited coverage.¹⁵³
201. All responding aggregators explained that they already connected to multiple referral networks (and BDT providers) to refer trips and, in any case, would not incur any cost for switching between referral networks.¹⁵⁴ Most respondents considered that it would be easy to integrate with a new provider or start using a new network. Two aggregators submitted that it would take a couple of days to develop the necessary connections.¹⁵⁵ Two respondents were concerned about the Merger removing their access to iGo or increasing commissions they currently pay to Autocab. Both third parties submitted that no longer having access to Autocab's referral network would negatively

¹⁵¹ Third party responses to the CMA Questionnaire.

¹⁵² Third party responses to the CMA Questionnaire. Note of the call with [REDACTED].

¹⁵³ A third party [REDACTED] submitted that Karhoo did not compete against BDT providers but rather it connected to them, working more similarly to an aggregator like Minicabit. [REDACTED] explained that Karhoo collaborates with all BDT providers except for Autocab, which refused integration with it. One BDT competitor [REDACTED] also considered Karhoo as an aggregator rather than a competing referral network.

¹⁵⁴ Note of the call with [REDACTED] and [REDACTED], [REDACTED], [REDACTED]. [REDACTED] and [REDACTED] responses to the CMA questionnaire.

¹⁵⁵ [REDACTED] and [REDACTED] response to the CMA questionnaire.

impact on their business. However, both companies were currently using multiple networks to refer trips.¹⁵⁶

202. Based on the evidence set out above, the CMA believes that the Merged Entity would not have the ability to partially foreclose aggregators using Autocab and iGo to refer trips. The CMA received mixed evidence on the importance of connection with BDT and referral networks to aggregators. Further, the CMA considers that there is at least one alternative (eg iCabbi) as good as Autocab/iGo. Other alternatives are also available. Evidence shows that aggregators multi-home and do not face difficulties when integrating with new networks.

- *Incentive and effect*

203. The CMA has not considered the incentive and effect of a partial foreclosure strategy by the Merged Entity on the basis that the CMA does not believe that the Merged Entity would have the ability to engage in such foreclosure.

Conclusion on vertical effects

204. For the reasons set out above, the CMA believes that the Merged Entity would lack the ability to foreclose downstream taxi companies and aggregators due to the presence of credible alternative BDT providers and networks. The CMA found that there is sufficient evidence that taxi companies and aggregators would be able to switch, or remain, with these alternatives to avoid the Merged Entity's foreclosure strategies. Accordingly, the CMA found that the Merger does not give rise to a realistic prospect of an SLC as a result of vertical effects in relation to partial input foreclosure to taxi companies in the UK. The CMA also found that the Merger does not give rise to a realistic prospect of an SLC in relation to partial input foreclosure to aggregators in the UK.

Barriers to entry and expansion

205. 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.¹⁵⁷

¹⁵⁶ [redacted] and [redacted] response to the CMA questionnaire.

¹⁵⁷ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

206. 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

207. The CMA contacted customers of Autocab, competitors of the Parties, including ride-hailing companies and BDT providers, and aggregators. Some customers raised concerns regarding loss of innovation / access to data / competitor having control of an important element of their business ie BDT.

208. These concerns have been taken into account in the above assessment.

209. The Parties submitted that third party evidence should be given limited weight. They argued that taxi companies are generally opposed to Uber, and therefore the Merger, due to Uber's historic role as a disruptor. They argued that evidence from Autocab's competitors should be viewed with caution as such competitors have a vested interest in the Merger not proceeding.¹⁵⁸ Further, the Parties submitted that much of the third party evidence referred to in the Issues Letter was not credible because the Issues Letter did not specify the sample size used or the number of respondents raising a concern.¹⁵⁹

210. Third party views provide an important source of evidence for the CMA in merger investigations. However, the CMA will maintain an open mind regarding the assessment of this evidence in each case and its interpretation of that evidence will be affected by the context in which it was generated. In this case, the CMA applied these principles and assessed all views received in their wider context, taking account, where relevant, of respondents' divergent interests.

211. However, while many of the taxi companies responding to the CMA's questionnaires and invitation to comment considered Uber as a competitor and were concerned about Uber's effect on their businesses, the CMA did not consider that to be a reason to discount the concerns expressed by those companies or to investigate them less thoroughly. Taxi companies and other third parties, such as BDT suppliers, provided very detailed information to the CMA, much of which was consistent with information from other sources including the parties' own internal documents, and that input was highly valuable in assisting the CMA in carrying out its analysis. The CMA did not find that taxi companies' concerns about Uber meant that their evidence was not credible. Moreover, taxi companies' knowledge and understanding of market dynamics may have made their evidence particularly persuasive on

¹⁵⁸ Response to the Issues Letter, section 3.

¹⁵⁹ Response to the Issues Letter, paragraph 3.7

some points (including for example on the potential competition between the Parties in BDT). The CMA also notes that the third party evidence from taxi companies that was cited in the Issues Letter was based on comments from Autocab's customers that the CMA contacted using the details provided by Autocab, rather than comments from customers of Autocab's competitors that the parties suggested [✂].

212. When citing third party evidence, in line with usual practice, the Issues Letter provided a general qualifier (eg 'most' or 'many') to signal the number of third parties that raised a point. The CMA believes that the approach taken in this case is consistent with the approach taken in phase 1 investigations and provides sufficient detail to parties to make representations on the case they have to answer, taking into account, in particular, the test for reference at phase 1.¹⁶⁰ Firstly, it enables parties to generally understand the level of agreement amongst respondents. Secondly, and importantly, it does not obscure the nature of the concern in any way. The CMA does not believe that it was necessary for Parties to know the exact number of third parties responding to a particular point, or raising a specific concern, in order to make informed representations, especially as third party evidence is one of a number of sources of evidence the CMA has relied on in reaching its decision in this case.

¹⁶⁰ While the CMA's revised guidance on jurisdiction and procedure does not apply to this case, the CMA considers that its approach is also consistent with the statement that merger parties will be informed of the 'nature of the concerns expressed by the third parties (but not of their identity) in sufficient detail to enable them to respond to those concerns' (*Mergers: Guidance on the CMA's jurisdiction and procedure, Revised CMA2*, footnote 147).

Decision

213. 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.

Joel Bamford
Senior Director Mergers
Competition and Markets Authority
29 March 2021