

Anticipated acquisition by Ratcliff Palfinger Limited of the commercial vehicle tail lifts spare parts business of Ross & Bonnyman Limited

ME/4811/10

The OFT's decision on reference under section 33(1) given on 18 February 2011. Full text of decision published 3 March 2011.

Please note that the square brackets indicate 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.

PARTIES

1. **Ratcliff Palfinger Limited** (Ratcliff) manufactures and supplies tail lifts for commercial vehicles as well as for passenger vehicles, and spare parts to repair and maintain the tail lifts. Ratcliff's ultimate parent company is Palfinger AG, an Austrian company which manufactures and supplies cranes, container handling systems, tail lifts and forklifts.
2. **Ross & Bonnyman Limited** (R&B) is a UK company which manufactures and supplies tail lifts for commercial vehicles as well as for ambulances, and spare parts to repair and maintain the tail lifts.

TRANSACTION

3. On 5 November 2010 Ratcliff and R&B entered into an Asset Purchase Agreement for the line of business comprising R&B's spare parts for commercial vehicle tail lifts ('the Transaction'). The Transaction does not include the business relating to the manufacture and supply of the tail lifts themselves, the spare parts for ambulances or for any other R&B line of business (for example, yard lifts or mezzanine lifts).

4. Ratcliff proposes to acquire R&B for [].¹
5. Other features of the Transaction are that during [] R&B will manufacture the spare parts for R&B tail lifts and supply them exclusively to Ratcliff and that Ratcliff will take on the warranty liability ([]).

JURISDICTION

6. Because the Transaction includes goodwill, intellectual property (under licence), customer lists and stock the Office of Fair Trading (OFT) considers that Ratcliff is intending to acquire an enterprise. Further, as a result of the Transaction Ratcliff and the commercial vehicle tail lifts spare parts business of R&B will cease to be distinct.
7. The parties submitted that the 2009 turnover for the business being transferred was £[]. Therefore, the turnover test in section 23 of the Enterprise Act 2002 (the Act) is not met. Nevertheless, the parties overlap in the supply of spare parts for use in commercial vehicles tail lifts. The parties estimate that together they account for more than 25 per cent of such spare parts in the UK and thus the share of supply test in section 23 of the Act is met. The OFT 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.
8. The parties notified the Transaction by statutory merger notice on 9 November 2010. The OFT extended the statutory deadline by 10 working days on 26 November 2010. Following concerns from the OFT case team on the counterfactual (discussed below) Ratcliff withdrew the statutory merger notice on 15 December 2010 and allowed the case to be examined on the OFT's administrative timetable. The OFT's 40 day deadline in this case is 14 February 2011.²

THE COUNTERFACTUAL

9. The application of the substantial lessening of competition (SLC) test involves a comparison of the prospects for competition with the merger

¹ [].

² If the days between 29 December 2010 and 4 January 2011 are not counted, the 40 day deadline becomes 17 February 2011 (see '*Mergers: jurisdictional and procedural guidance*', OFT527, June 2009, paragraph 4.67). Paragraph 4.61 of '*Mergers: jurisdictional and procedural*

against the competitive situation without the merger. The latter is called the counterfactual. The counterfactual is an analytical tool used in answering the question of whether a merger gives rise to a SLC.³

10. Often the counterfactual used in merger assessments is simply the pre-merger situation. In this case, however, the parties submit that the correct counterfactual is not the pre-Transaction situation but one in which R&B no longer manufactures and supplies tail lifts for commercial vehicles. In this scenario R&B's exit would be independent of the Transaction and therefore the OFT's investigation would be one based solely on the supply of spare parts.
11. The OFT has therefore examined in detail the extent to which R&B's exit from the primary tail lifts market was both inevitable, imminent and not influenced by the Transaction. Clearly, if R&B's decision to exit was in fact not inevitable and imminent, but rather influenced by the Transaction, then it is appropriate to consider the impact of the Transaction on the primary market for tail lifts, as well as on the aftermarket for spare parts.
12. In assessing the appropriate counterfactual, the OFT adopts a cautious approach. The evidence required for the OFT to depart from the pre-Transaction conditions of competition as the counterfactual must be compelling. When assessing an exiting firm counterfactual the OFT will specifically consider:
 - whether the firm would have exited (through failure or otherwise)
 - whether there would have been an alternative purchaser for the firm or its assets to the acquirer under consideration, and
 - what would have happened to the sales of the firm in the event of its exit.⁴
13. Of relevance to this case, OFT guidance says: *the exiting firm scenario is most commonly considered when one of the firms is said to be failing*

guidance' discusses how the clock may be reset following a withdrawal of a statutory merger notice.

³ A discussion of how the OFT investigates issues pertaining to the counterfactual is in the joint OFT / CC guidelines: '*Merger Assessment Guidelines*', OFT1254, September 2010, paragraphs 4.3.1–4.3.29. See also *Completed acquisition by Home Retail Group plc of 27 leasehold properties from Focus (DIY) Limited*, Case ME/3427/07, 15 April 2008.

⁴ '*Merger Assessment Guidelines*', paragraph 4.3.8.

*financially. However, exit may also be for other reasons, for example because the selling firm's corporate strategy has changed.*⁵

14. The OFT has considered the likelihood of exit of: (i) R&B from the supply of tail lifts for commercial vehicles in the UK on financial grounds; (ii) the whole of R&B on financial grounds, and (iii) R&B from the supply of tail lifts for commercial vehicles in the UK on corporate strategy grounds.

Background to the Transaction

15. In 2008, The Catalyst Group (TCG), a consultancy, was employed by R&B to sell some or all of the R&B business. TCG approached a considerable number of potential purchasers (over 100) but was unable to find a buyer.⁶ However, Ratcliff did express interest in the spare parts component of R&B's business.
16. In March 2009 R&B decided that it could not sell all of its business, or even the complete tail lifts segment of its business, and therefore it should concentrate on selling some subdivisions of its business (such as the spare parts line of business). The reason submitted for this was to reduce bank debt. The parties told the OFT that no instructions were given to TCG to sell the business at a specific price and therefore the lack of interest from other potential buyers was not a result of prohibitive pricing requirements.
17. By the end of 2009 it was apparent that TCG could not sell R&B. However, TCG told R&B at that time that Ratcliff was willing to negotiate on the spare parts line of business. In mid 2010 the R&B Board decided therefore, in light of bank borrowings, the company should proceed with negotiations to sell the tail lifts spare parts business to Ratcliff.⁷

Inevitable exit of R&B's commercial vehicle tail lifts business on financial grounds

18. The OFT has examined whether R&B can be expected to imminently exit the commercial vehicle tail lifts business on financial grounds.
19. Division level financial data, prepared for the OFT, was submitted (table 1).

⁵ 'Merger Assessment Guidelines', paragraph 4.3.9.

⁶ In December 2009 R&B sold the shutter door segment of its business although this was not achieved through the TCG process.

⁷ Board minute submitted to the OFT.

Table 1: Tail lift division profits and turnover and spare parts turnover by tail lift type, 2007–2010 (£)

	2007	2008	2009	2010
Tuckaway	[]	[]	[]	[]
Column	[]	[]	[]	[]
Retractable	[]	[]	[]	[]
Total tail lift profit	[]	[]	[]	[]
Total tail lift turnover (approx.)	[]	[]	[]	[]
Total spare parts turnover (approx.)	[]	[]	[]	[]

Note: 2010 figures are for the 11 months to end November.

Source: The parties.

20. These data show that the tail lifts business of R&B has been loss making since at least 2007 (the OFT does not have earlier data) and sales have declined by more than 50 per cent over the period.
21. When compared with R&B's business as a whole, the data available to the OFT show that tail lifts business losses have driven poor overall performance (apart from in 2010 when the company experienced declined sales across all of its lines of business). This indicates that the other lines of business within R&B are generally profitable.
22. While this evidence does indicate that R&B does have a financial incentive to exit from the activity of supplying tail lifts for commercial vehicles, the OFT has also considered the following additional evidence in analysing whether it would have exited the market.
23. [] Therefore, by taking the entire tail lifts business into account (that is, tail lifts and spare parts) it may be the case that the combined tail lifts and spare parts would be profitable.
24. Second, the OFT has not been persuaded on the evidence that R&B's exit from the supply of commercial vehicle tail lifts is imminent. The parties have submitted that the tail lifts division has been loss making since at least 2007. But despite this, R&B has continued to run the division. Indeed, R&B told the OFT that it is still producing and selling tail lifts for commercial vehicles. In assessing whether exit is imminent, the OFT adopts a cautious approach, the evidence presented indicates that there is no material difference between the financial position persisting in 2007 to

the current financial position – as such, the OFT has reasonable doubts that the exit of this line of business is imminent.⁸

25. Third, R&B told the OFT that one of the key advantages to selling off its commercial vehicles tail lifts business was a reduction in staff costs (while still earning some income from the spare parts by manufacturing them for Ratcliff and via the earn out agreement). However, in the Issues Meeting R&B said that it had very recently experienced an increase in orders for its mezzanine lifts thus reducing the need to make as many staff reductions as it had previously planned.⁹ This raises the some doubt as to the inevitability of R&B exiting from the supply of commercial vehicle tail lifts.
26. For these reasons the OFT has not been persuaded that R&B can be expected to imminently exit the commercial vehicle tail lifts business on financial grounds.

Inevitable exit of entire R&B business on financial grounds

27. The OFT has assessed the likelihood of the entire R&B business exiting imminently on financial grounds.
28. R&B made a loss (profit before tax) of around £[] in 2010. However, after tax profit figures submitted to the OFT show that R&B made an overall profit in 2006, 2007 and 2009. The 2009 figures were boosted by the sale of R&B's shutter doors business (the company made an operating loss in that year). In 2008 the company made an after tax loss of around £[] which was driven by the interest payable on its bank loan. However, following the sale of the shutter door business (which was used to pay off some of the loan) the interest payable fell by more than half.
29. Nevertheless, []. The parties submitted:
 - Minutes of a Board meeting at which it was noted that [].
 - Note of a meeting between [] and [] which said that []. The note also mentions [].

⁸ The OFT took a similar view in *Anticipated acquisition by Dorf Ketal Chemicals AG of the titanate and zirconate business of Johnson Matthey plc*, Case ME/4681/10, 19 November 2010.

⁹ R&B staff do not specialise in any one type of lift. By way of example, staff working on tail lifts for commercial vehicles can be redeployed on mezzanine lifts if need be.

- An email from [].
 - [].
30. [].
31. [].
32. The financial data submitted to the OFT show that R&B has a positive net value including retained earnings of over £[]. The OFT estimates that R&B could sustain another year at 2010 levels of performance without eliminating retained earnings.
33. R&B's balance sheet shows that [].¹⁰ [].¹¹ [].
34. However, the OFT has not taken the fact of [] into account when assessing whether its exit is imminent. In assessing the counterfactual, the OFT is interested in evidence that has not been prepared in contemplation of the merger, it is also highly unlikely to take into account financial considerations that are connected with or have been influenced by the merger. In this case, [].
35. However, the invoice discounting facility (discussed in paragraph 31 above) is not specific to the Transaction, allows R&B a steady cash flow.
36. On the evidence available the OFT does not consider that R&B will imminently exit irrespective of the Transaction.

Inevitable exit of R&B's commercial vehicle tail lifts business on commercial strategy grounds

37. The parties submitted to the OFT that R&B had decided to exit the supply of tail lifts for commercial vehicles and concentrate on their existing other products (yard lifts and mezzanine lifts) as well as the niche segment of tail lifts for ambulances. This decision was taken after TCG informed R&B (in late 2009) that it could not sell all of the R&B business or all of the tail lifts for commercial vehicles lines of business (that is, the tail lifts and the spare parts).

¹⁰ The OFT has used the current ratio (current assets to current liabilities) and the quick ratio (current assets net of inventory to current liabilities) in making its assessment.

¹¹ [].

38. Key to this strategy is to sell the related spare parts business for the commercial vehicle tail lifts. Proceeds from the sale would allow R&B to significantly pay down its bank debt and therefore the reduced business could operate in an environment of lower interest payments and of a better negotiating position if further bank funding is required. A R&B Board document (from mid 2010) agreeing this strategy was submitted to the OFT.
39. The OFT accepts that this is a reasonable business strategy given that its other (non commercial vehicle tail lift) products make higher profit margins than do tail lifts for commercial vehicles and a reduction in the bank debt will not only reduce interest payments but allow R&B greater options for future funding. When assessing imminent exit from a line of business the OFT will generally seek evidence from the firm of an attempted sale of that business at any price. However, in this case, if the commercial strategy of R&B is to pay down bank debt the OFT can see that such a strategy can only be implemented if a certain price is realised for the business. Ratcliff acknowledged this in one of its internal documents, saying 'significant short term debt is one motivation [for R&B] to sell'.
40. However, the question is not just whether the strategy makes sense, but whether there is compelling evidence that R&B's exit from the supply of tail lifts for commercial vehicles is both imminent and has not been influenced by the Transaction. For the following reasons the OFT does not consider that the submitted evidence meets the requisite compelling standard.
41. The parties have not submitted a date (however rough) by which R&B is to exit the commercial vehicles tail lifts business. This draws into question whether R&B's proposed exit is indeed imminent and pre-determined. Indeed, R&B is still supplying tail lifts for commercial vehicles. During 2010 R&B had sold over [] new tail lifts including [] during the month of November.
42. The R&B Board document agreeing the sale of the spare parts business and the corresponding exit of R&B from the commercial vehicle tail lifts line of business was from mid 2010. However, R&B was aware in late 2009 that Ratcliff was interested in purchasing the spare parts business. Therefore, on a cautious basis the OFT cannot be sure that, even if this was the point at which R&B decided to exit the commercial vehicle tail lifts business, that

its decision was not influenced by Ratcliff's interest in the spare parts business.

43. The parties submitted that since Ratcliff is only purchasing the spare parts business from R&B, there are no legal¹² or substantive¹³ reasons related to the Transaction why R&B cannot continue supplying tail lifts for commercial vehicles.
44. Focusing on substance rather than legal form the OFT does not find this argument compelling. Firstly, it seems clear from the provisions associated with the Transaction that Ratcliff would control the supply of spare parts for any further primary market sales of tail lifts made by R&B. Given this, it is far from clear why R&B would have any financial incentive to sell tail lifts, given that such sales have not typically been profitable in themselves, its profits from selling tail lifts having been generated from the follow-on aftermarket sales.
45. Secondly, the OFT has received some evidence from customers that they consider the 'whole life cost' when making their choice of which tail lift to buy (that is to say they consider both the cost of the tail lift itself and the expected cost of servicing and maintenance of the lift). Ratcliff itself submitted to the OFT that customers '... are interested in both the upfront price and long term reliability and repair and servicing costs'. Since Ratcliff can control the price of R&B's spare parts, this implies that it would also be able to reduce the competitiveness of the overall 'life cycle' cost of R&B's commercial vehicle tail lifts, by simply increasing the prices for the relevant spare parts.^{14,15} Thirdly, Ratcliff would also be in a position to determine the quality of service (such as speed of delivery to repairers) could potentially be used to degrade the R&B tail lift brand.
46. The parties told the OFT that the proposed exit of R&B from the supply of tail lifts for commercial vehicles was not caused by the Transaction but rather that 'the sale of the spare parts business was caused by R&B's pre-

¹² Such as any restrictive covenants.

¹³ Such as the transfer of machinery or essential intellectual property rights.

¹⁴ The sale agreement stipulates that Ratcliff will not discount spare parts by more than five per cent without the consent of R&B. However, there is no restriction on Ratcliff raising the price of the spares.

¹⁵ The OFT also received evidence from competitors which suggests different pricing models at work. For example, some suppliers will offer a relatively cheap tail lift but price spare parts at a high profit margin while other offer a relatively more expensive tail lift and spare parts at a lesser profit margin.

existing and independent decision to stop tail lift production'. Thus, the parties argued, stopping tail lift production was the cause of the spare parts sale, not the effect.

47. The OFT's position, however, is that based on the submitted evidence there is reasonable doubt on this point. It is credible that the knowledge that Ratcliff was interested in acquiring the spare parts business was sufficient to influence R&B's decision to exit the commercial vehicle tail lifts business. Indeed, the parties told the OFT at the Issues Meeting that R&B is still active in the supply of tail lifts for commercial vehicles while it is looking for a buyer for the spare parts business (albeit at a reduced level relative to R&B's historical sales of tail lifts). Furthermore, the evidence (especially R&B's continued activity in this area) indicates that any R&B decision to exit the supply of tail lifts for commercial vehicles is far from irreversible. The OFT also notes that R&B's exit and the Transaction were announced in the same press statement.
48. For these reasons the OFT, mindful of its cautious approach in assessing the counterfactual, is not persuaded that R&B's commercial tail lifts business would inevitably have exited imminently and that its strategic decision to exit this line of business was not influenced by the Transaction. Given the OFT has not accepted the first limb of the exiting firm / division test set out in paragraph 12, the OFT has not found it necessary to discuss the other two limbs of the test in this case. Therefore, the OFT has not accepted the parties' preferred counterfactual and has instead adopted the pre-Transaction position as the appropriate counterfactual in this case.

MARKET DEFINITION

49. The parties overlap in the supply of tail lifts and in the supply of spare parts for the repair and maintenance of tail lifts.

Product scope: tail lifts

50. A tail lift is a hydraulically operated platform permanently fitted to the back of a van, lorry or truck which allows goods (or people) to be brought up and down between the levels of the ground and the load bed (or seating area) of the vehicle. Tail lifts are often not fitted as a part of the vehicle manufacture but rather after the vehicle has been purchased by the user.

The parties and third parties told the OFT that the expected life of a tail lift is between five and 10 years.

51. Tail lifts can be segmented between types of vehicles and applications. Most broadly, they can be segmented between commercial vehicle lifts and passenger vehicle lifts.
52. Commercial vehicle tail lifts comprise column and cantilever lifts (which includes tuck-away and retractable lifts). These types of lifts differ in their design features, are best suited to different types of vehicles and vary in their lifting capacity.¹⁶
53. Passenger tail lifts, on the other hand, are fitted on to vehicles such as minibuses and ambulances. They are used to convey passengers (ambulant and wheelchair occupants with restricted mobility). Ambulance lifts, for example, often require large, bulky equipment such as hospital beds.
54. Given these differences in tail lifts of functionality the OFT has examined whether tail lifts should be segmented between commercial vehicle and passenger, or further segmented.

Commercial vehicle versus passenger tail lifts

55. The parties submitted that tail lifts should be differentiated between those for commercial vehicles and those for passenger vehicles (including ambulances). Commercial vehicle users are typically specialist distribution firms and those companies with road distribution functions as a part of their business (for example, supermarkets, other retailers and removal firms). Passenger vehicle customers include taxi operators, ambulance operators and mini-bus operators.
56. Given the differences in the demand between commercial vehicle operators and passenger vehicle operators, and that passenger tail lifts are not a part of the OFT's focus in this case, on a cautious basis the OFT has examined this case on the basis of commercial vehicle tail lifts to be separate from passenger vehicle tail lifts.

¹⁶ Most manufacturers supply tail lifts with the following maximum weight limits: 500 kilograms (kgs), 750 kgs, 1,000 kgs, 1,500 kgs, 2,000 kgs, 2,500 kgs, and 3,000 kgs.

Further segmentation of commercial vehicle tail lifts

57. The parties do not consider that tail lifts should be further segmented beyond separating commercial vehicle tail lifts from passenger vehicle tail lifts. However, in light of the third party comment the OFT has considered whether tail lifts for commercial vehicles be segmented between column lifts and cantilever lifts.
58. During its market testing the OFT was made aware of some factors which suggest that commercial vehicle tail lifts should be further segmented for the purpose of market definition. For example, some third parties told the OFT that column lifts are better suited to light commercial vehicles (of up to 3.5 tonnes). Another third party told the OFT that the different types of tail lifts are suited to different applications.
59. Column tail lifts run on tracks fitted to the rear of the vehicle. From the tracks, a folding platform extends, which can be taken up and down. Column lifts have the advantage of being able to lift to a higher level than the load bed (and are therefore suitable for loads over more than one level in the truck). The OFT understands that they are usually the easiest of the lift types to fit, as they require little structural work.
60. Cantilever tail lifts, on the other hand, are attached to the chassis of the vehicle with hinges which allow the lift to be tilted or raised and lowered. This means that they can often form a ramp arrangement which may make it easier to load or unload, especially on uneven ground. Some cantilever tail lifts can be tucked away ('tuck-away tail lifts'), meaning that the ramp can be folded away under the load bed of the vehicle.
61. The OFT notes that on the supply side different suppliers are stronger in different lift types, with DEL being the market leader in column lifts and D'hollandia being the market leader in cantilever lifts. Likewise, Ratcliff and R&B are stronger in column lifts than in cantilever lifts.
62. Responses from third parties (customers and end-users) also highlighted the distinction between column tail lifts and cantilever tail lifts. Customers using column tail lifts for example indicated that they would not substitute or use cantilever tail lifts even if prices of column lifts were increased by their supplier.

63. Given the technical differences between the lift types, the differences between suppliers in these segments and some of the third party comments, the OFT considers it appropriate to examine the Transaction on the basis of commercial vehicle column tail lifts being in a different product market from commercial vehicle cantilever tail lifts. It may also be the case that column lifts can be further segmented by weight category although the OFT has not found it necessary to make such a differentiation since it does not affect the outcome of its competition assessment.

Geographic scope: tail lifts

64. The parties to the transaction manufacture and supply tail lifts in the UK as does one of the largest suppliers in the UK, DEL Equipment.
65. However, some of the other suppliers manufacture tail lifts outside of the UK from where they are supplied into the country. For example, D'hollandia (which accounts for around a quarter of all tail lifts sold in the UK) manufactures its tail lifts in Belgium¹⁷ and Anteo manufactures its lifts in Italy.
66. When buying a tail lift customers take into account the network of 'agents' or repairers for that brand of tail lift so that they know the likelihood of getting their tail lift repaired in the area in which they operate. As such, being able to import a tail lift from continental Europe will not be sufficient for gaining a foothold in the UK market. Instead, suppliers must have in place a network of repairers who can repair their lifts and have the requisite stock on hand.
67. The OFT has considered the Transaction on the basis of the UK only.

Product scope: spare parts

68. Spare parts are primarily sold to independent agents who repair and maintain tail lifts. There is a network of such agents across the UK. Spare parts therefore have a different customer base to tail lifts. The OFT's market testing in this case found that agents typically hold stock and repair lifts of all of the major manufacturers.

¹⁷ D'hollandia also has production facilities in France, Slovak Republic and Ireland.

69. The parties indicate that there is no substitutability (from the demand side) in the spare parts market because a vast majority of spare parts are specific to the tail lifts of a particular manufacturer. For example, they told the OFT that around 85 per cent of R&B's spare parts cannot be substituted for parts available from other suppliers. This indicates that for spare parts only each supplier is its own monopolist.
70. The parties argued that intellectual property rights in the die and cast used to manufacture the parts, and the small volume of individual parts make it unlikely for spare parts to be substitutable either. Indeed, the sale document of TCG said '*It should be noted that the spare parts sales with very high margins are protected because of the unique design of the components and also the fact that many of these products are cast and extruded, and so cannot be copied without considerable cost of the moulds and dies which are in the company's ownership.*' They further indicate that they are not aware of any competitor seeking to sell spare parts for the tail lifts produced by another manufacturer.
71. Customers (that is, agents and repairers) agreed. Customers told the OFT that they almost always use OEM parts when repairing tail lifts and have little or no experience of substituting generic or other branded parts for OEM parts.
72. Further, both the parties and customers told the OFT that there is no second hand market in parts which may increase the likelihood of substitution.
73. However, other manufacturers – competitors of the parties – told the OFT that some, if not most, spare parts have generic substitutes and therefore can be substituted between suppliers.
74. There is therefore a large discrepancy between the views of suppliers of tail lifts and spare part customers. While suppliers identified a sizeable proportion of their portfolios of spare parts which could be substituted, agents indicated that they would hardly substitute spare parts (unless the part is inherently generic like a rubber hose).
75. This discrepancy complicates any possible conclusion as to whether the spare parts of each manufacturer belong to their own separate market or whether they would belong to a wider market including all spare parts supplied by all tail lifts manufacturers.

76. Moreover, it may be the case that spare parts do not form a separate product market because customers assess the whole life cost of tail lifts at the point of deciding which to purchase (that is, both the cost of the tail lift and the cost of repair and maintenance over the course of its lifespan). Instead spare parts may form a single product market together with their corresponding tail lifts.
77. Nevertheless, the OFT has not found it necessary to conclude on whether spare parts form a separate product market since the outcome in this case does not depend on it (because each suppliers' position in the supply of spare parts is highly correlated to their supply of tail lifts).

Geographic scope: spare parts

78. The parties indicated that since spare parts are manufactured and supplied in the same way as new vehicle tail lifts, the vehicle tail lifts spare parts market will have the same geographical limits.
79. On a cautious approach the OFT has assessed this case on the basis of the UK.

HORIZONTAL ISSUES

80. The OFT is not aware of any independent market research in commercial vehicle tail lifts or the corresponding spare parts. Further, because of the nature of the industry – they are intermediate goods sold on a company to company basis, sometimes following a tender, sometimes not – it is difficult to get a reliable estimate of the shares of supply.
81. The parties submitted the following shares of supply for commercial vehicle tail lifts (table 2). A third party submitted its own estimates of the shares of supply in the UK which broadly corroborates the parties' estimates. Other third parties confirmed to the OFT the broad rankings and relative sizes of the various suppliers submitted by the parties in table 2 are realistic. Therefore, the OFT is content that the shares reported in table 2 do show the relative strengths of the various suppliers (although not necessarily the closeness of competition between particular suppliers).

Table 2 Supply of tail lifts in the UK (2009, per cent)

Supplier	Column lifts	Cantilever lifts	All lifts*
Ratcliff	[30–40]	[0–10]	[15–25]
R&B	[10–20]	[0–10]	[0–10]
Combined	[45–55]	[10–20]	[25–35]
D'hollandia	[0–10]	[60–70]	[20–30]
DEL	[35–45]	[5–15]	[20–30]
Anteo	-	[0–10]	
Ricon	-	-	[0–10]
PLS	-	-	[0–10]
Others**	[0–10]	[0–10]	[10–20]

* Includes passenger lifts.

** The parties submit that the 'others' category includes Anteo and Penny Hydraulics for column tail lifts and for 'all lifts'.

Source: The parties.

Unilateral effects in the supply of spare parts for commercial vehicle tail lifts

82. In terms of the supply of spare parts, the parties and third parties told the OFT that shares of supply are very similar to those for tail lifts (with a time lag of two or three years) since regardless of how substitutable spares between manufacturers are, it is almost always the case that only spares from the manufacturer of the tail lift are used in that lift (paragraph 71 above). Since there is little, if any, direct competition between suppliers of spare parts the OFT is not concerned about the Transaction's effect on competition for spare parts and therefore the rest of the OFT's decision focuses on tail lifts for commercial vehicles.

Unilateral effects in the supply of commercial vehicle tail lifts

83. The parties submitted that the value of the supply of new tail lifts in the UK is around £20–50 million per year and the value of the supply of spare parts in the UK is around £5–30 million.

84. The Transaction appears to leave just two major players (DEL and Ratcliff) in the market for the supply of column lifts for commercial vehicles in the UK, accounting for the vast majority of supply. It is in the supply of these types of tail lifts where the OFT's concerns lie.

85. The OFT accepts that the shares of supply do not necessarily capture the full competitive dynamics of what would exist post-Transaction for two key reasons.
86. First, D'hollandia has gained around six per cent share of supply since entering five years ago. There is also some evidence that its share has been growing recently (for example, the parties told the OFT that D'hollandia won a customer from R&B in a contract for over [] column tail lifts, equating to a market share of around [] per cent). It is one of the largest tail lift manufacturers in Europe and has the expertise and capacity to expand significantly in the UK. The parties submitted that D'hollandia is the current market leader in double height column lifts. It is not clear, however, that D'hollandia is a sufficiently strong competitor in this market (despite its strong position in cantilever lifts) to mitigate the concerns arising from the merger, not least since the Transaction would still reduce the number of players in the market from four to three, even including D'hollandia.
87. Second, the OFT acknowledges that R&B's tail lift customers will not (and cannot) be directly novated to Ratcliff as a result of the Transaction.¹⁸ Instead, it will be incumbent on Ratcliff to win these customers the next time that they upgrade or replace their commercial vehicle column tail lifts. But this is not to say that Ratcliff will not increase its position in the market as a result of the Transaction. Previously, R&B commercial vehicle column tail lift customers had a choice of R&B, Ratcliff, DEL and perhaps D'hollandia but post-Transaction they would only have a choice of Ratcliff, DEL and D'hollandia. Therefore, the OFT considers it likely that Ratcliff would win a sizeable proportion of these existing R&B customers (as would DEL). Based on the parties' estimated existing shares of supply (table 2), the OFT estimates that Ratcliff could expect to achieve [] per cent of R&B's customers (with DEL gaining around [] per cent).
88. Moreover, there may be some reasons why Ratcliff would be better placed than DEL or D'hollandia in winning these customers. For example, all third party customers who the OFT received comments from said that Ratcliff and R&B were close competitors with some customers saying that they are each other's closest competitors. Ratcliff itself considers R&B to be its closest competitor. Internal documents discuss how almost all of R&B's product offer is very close to Ratcliff's. One document shows that R&B is

¹⁸ But the manufacturer's warranty will be novated, thus some link to end users will be transferred as a result of the Transaction.

Ratcliff's closest competitor measured on a range of factors including price, performance, brand awareness and spare part availability.

89. Another reason why Ratcliff would be better placed to win R&B customers is because Ratcliff would be taking on some of R&B's warranty obligation. This would provide Ratcliff some visibility over R&B's existing customers allowing it to gauge – probably with a good degree of accuracy – when the customers would be looking to replace their commercial vehicle column tail lifts. Although there is no transfer of lists of end customers involved in this Transaction (in any case, the customers of spare parts are not the same customers who purchase commercial tail lifts) the warranty is provided to the end customer and this may provide at least some customer information to Ratcliff. As such, access to such customer information, may also give Ratcliff some competitive advantage in the market place. In addition, it should also be noted that internal documents submitted to the OFT show that Ratcliff estimated that it could capture more than [] per cent of R&B's customers after the Transaction.
90. In any case, irrespective of the extent to which the Transaction gives Ratcliff an advantage in winning R&B's tail lift customers, R&B's exit from the supply of tail lifts for commercial vehicles significantly reduces the number of major suppliers of column tail lifts. Moreover, unilateral effects are most likely to arise when parties are particularly close competitors (indicating an ability to internalise the previously external customer switching between suppliers) and where profit margins are high (indicating a high benefit from internalising such customer switching).¹⁹ The OFT considers that there are good reasons to consider that both conditions are met in this case. As discussed above, [] third parties consider Ratcliff and R&B to be close competitors. Further, margin data submitted in this case indicate that [].
91. Third party comments to the OFT indicate that end users generally do not switch suppliers. One third party said "it takes a lot for a customer to switch... I doubt whether a five per cent increase would be an immediate turning point for the bigger customers to switch... the principal reason a customer would switch would be poor service".
92. Other comments in Ratcliff's due diligence documents show that [].

¹⁹ *'Merger Assessment Guidelines'*, paragraph 5.4.9.

93. When asked about this, the parties responded that 'Ratcliff hopes that R&B's departure from the new commercial vehicle tail lift market will allow Ratcliff to increase its sales of new vehicle lifts and/or reduce discounting and other benefits that have had to be provided in the present market'. But that R&B's exit is independent from the Transaction. The parties also submitted that Ratcliff will face substantial and effective competition from other suppliers post-Transaction.
94. The OFT is concerned that the loss of R&B from the supply of commercial vehicle column tail lifts as a result of the Transaction would lead to a rise in price for those tail lifts. The evidence indicates that R&B has been an important competitive constraint on Ratcliff in the supply of column tail lifts for commercial vehicles. A loss of such an important constraint may lead to an increased ability for Ratcliff to raise prices of these tail lifts.

Barriers to entry and expansion

95. Third parties told the OFT that the main challenges associated with entry and expansion were reputation and a servicing network. The OFT has been told that customers are unlikely to purchase a tail lift from a manufacturer who does not have a trusted brand. Further, customers want peace of mind that in the event of breakdown their tail lift will be promptly repaired regardless of where the vehicle is in the UK at the time. Therefore, a relationship with a trusted and extensive network of repairers is required. The TCG Information Memorandum sent to potential buyers concurs with this view of barriers to entry (it said, 'making many of the lift and door parts unique, and in many cases steel castings and aluminium extrusions, ensures that spurious products cannot compete, and repair work requires spares supplied by the company').
96. When assessing barriers to entry and expansion, the OFT will consider whether entry or expansion is (i) timely, (ii) likely, and (iii) sufficient.²⁰
97. In terms of timeliness, OFT guidance suggests that the OFT will look for entry to occur within two years.²¹ Servicing agents or repairers typically undertake work for all of the major brands and types of commercial vehicle tail lifts. Some third parties told the OFT that there exist many repairers in the UK and there are no great barriers present in those firms repairing tail

²⁰ *'Merger Assessment Guidelines'*, paragraph 5.8.3.

²¹ *'Merger Assessment Guidelines'*, paragraph 5.8.11.

lifts of another supplier or stocking their spare parts. It may well be the case that entry – especially entry from a supplier with an established production facility nearby – could be made within a timely manner. For example, the parties told the OFT that Maxon, a US company, had recently entered the UK via acquisition. However, the OFT understands that Maxon does not supply column tail lifts and the OFT does not have sufficient evidence to indicate that Maxon is likely to enter into the supply of column tail lifts if prices were to rise.

98. Nor is the OFT aware of any other imminent entry into the UK. That TCG encountered such difficulty in selling the R&B business may indicate the lack of willingness to enter the UK market. Therefore, in the event of a post-Transaction price rise in column tail lifts for commercial vehicles the OFT cannot be sure that entry would be likely.
99. However, D'hollandia did enter into the supply of column tail lifts for commercial vehicles and there is some evidence that it is growing. D'hollandia told the OFT that [].
100. But a question remains on how sufficient entry would be. R&B accounts for around [10–20] per cent of column lifts in the UK. DEL and Ratcliff apart, no other supplier has replicated that position in the UK. Even if D'hollandia could, it would only represent a choice of three suppliers for customers to choose from.
101. Therefore, the OFT does not consider that barriers to entry and expansion are sufficiently low to countervail any attempt at post-Transaction price rises by Ratcliff.

Countervailing buyer power

102. During the course of its investigation the OFT did not receive any evidence of buyer power being held to such a degree that such customers could withstand an attempted post-Transaction price rise in the supply of column tail lifts for commercial vehicles. Further, the nature of the dynamics of the market (in particular, individually negotiated supply contracts) mean that even if some customers did possess countervailing buyer power it would not protect other customers from a price rise. Finally, evidence submitted by the parties show that R&B's largest customer accounts for only around

[] per cent of its revenue. This is not normally consistent with buyer power.

THIRD PARTY VIEWS

103. The OFT contacted a number of third parties in this case – end users, agents / repairers (who purchase spare parts) and competitors. All third parties who responded to the OFT were unconcerned about the merger. The OFT cannot be sure why third parties were unconcerned, but one possibility is that they did not see the Transaction as being a part of R&B's proposed exit from the supply of tail lifts for commercial vehicles.

104. All customers considered the parties to be close competitors with some saying that Ratcliff and R&B are each others closest competitor.

ASSESSMENT

105. The parties, Ratcliff and R&B, overlap in the supply of tail lifts for commercial vehicles and in the supply of spare parts for such tail lifts.

106. The parties submitted that R&B has decided to exit the supply of commercial vehicle tail lifts irrespective of the Transaction and that it is selling the spare parts line of business in order to substantially reduce its bank debt. For the reasons detailed in paragraphs 9 to 48 the OFT does not consider that the evidence is compelling that R&B would inevitably and imminently exit this activity absent the Transaction. Therefore, the OFT has taken as its appropriate counterfactual the pre-Transaction conditions of competition.

107. The OFT has decided, on the basis of the evidence before it, to examine the Transaction on the basis of commercial vehicle column tail lifts being in a separate product scope from commercial vehicle cantilever tail lifts. The geographic scope has been taken to be the UK.

108. The OFT is concerned that the Transaction would lessen competition in the market for column tail lifts for commercial vehicles. Given the Transaction, and Ratcliff's control over the pricing and service quality associated with R&B's spare parts for commercial vehicle tail lifts, it seems unlikely that R&B would have an incentive to remain in, or re-enter, the primary market for tail lifts.

109. While the Transaction will not directly transfer R&B's tail lift customers to Ratcliff, there are a number of reasons why Ratcliff might be expected to particularly benefit from the exit of R&B. For example, the parties are considered to be especially close competitors within the market for commercial vehicle column tail lifts. In addition, Ratcliff is taking on some of R&B's warranty obligation (for commercial vehicle tail lifts) and therefore Ratcliff would get some visibility of R&B's existing end users and could gauge when those customers would be looking to replace their commercial vehicle column tail lifts, which may give Ratcliff some competitive advantage in winning business.
110. In any case, irrespective of the extent to which the Transaction gives Ratcliff an advantage in winning R&B's tail lift customers, R&B's exit from the supply of tail lifts for commercial vehicles significantly reduces the number of major suppliers of column tail lifts, from three to two, with Ratcliff and DEL accounting for the vast majority of supply. In addition, the evidence suggests that the parties are especially close competitors, and that profit margins are high.
111. A third player D'hollandia has gained a small share of the market for column tail lifts since its entry five years ago, but it is not clear that it is a sufficiently strong competitor in this market (despite its strong position in cantilever tail lifts) to mitigate the concerns arising from the merger, not least since the Transaction would still reduce the number of players in the market from four to three, even including D'hollandia.
112. Consequently, the OFT believes 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 United Kingdom. The parties did not offer undertakings in lieu of a reference.

DECISION

113. This merger will therefore **be referred** to the Competition Commission under section 33(1) of the Act.