Anticipated acquisition by Europcar UK Limited of Vanguard Car Rental EMEA Holdings Ltd

The OFT's decision on reference under section 33(1) given on 12 February 2007. Full text of decision published 22 February 2007.

Please note that square brackets indicate figures or text which have been deleted or replaced at the request of the parties for reasons of commercial confidentiality.

PARTIES

1. **Europcar UK Limited** (Europcar) is a subsidiary of Europcar Groupe SA (Europcar Groupe), which is principally involved in car and light commercial vehicle rental services in Europe, operated through a combination of wholly owned subsidiaries and franchisee partners. Europcar's UK turnover in 2005 was [ ].

2. **Vanguard Car Rental EMEA Holdings Ltd** (Vanguard) is a holding company for the activities of Vanguard Car Rental Group Inc (Vanguard Inc) in Europe, the Middle East and Africa. Vanguard Inc is a US-based car rental services company, which operates primarily under the 'National' and 'Alamo' brands. Vanguard's UK turnover in 2005 was [ ].

TRANSACTION

3. On 13 November 2006, Europcar Groupe announced that they had entered into an agreement under which Europcar Groupe will acquire, by way of a share purchase agreement, all of the shares in Vanguard. Europcar Groupe will obtain certain rights to use the National and Alamo brands within Europe, the Middle East and Africa, with Vanguard Inc retaining the business and the brand names elsewhere.

4. Europcar intends to continue to operate the two networks as separate businesses, and the Vanguard outlets in the UK (both at airport and

downtown locations) will continue to carry the Vanguard brands (principally National and Alamo).

5. The parties notified the transaction on 12 December 2006 and the administrative deadline is 12 February 2007.

JURISDICTION

6. As a result of this transaction Europcar and Vanguard will cease to be distinct. Vanguard has a UK turnover in excess of £70 million, so the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is satisfied. 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.

FRAME OF REFERENCE

7. The parties overlap in the supply of short term passenger car rentals both generally and on-airport.

8. The parties also overlap in van rental services (including light commercial vehicles and minibuses).The parties combined share of supply will be [between 0 to 10 per cent] (increment of [between 0 to 10 per cent]) and a number of other larger competitors will remain post-merger to constrain the parties behaviour. Therefore, no competition concerns are considered to arise in this sector and van rental services will not be considered further.

Product frame of reference

Short term car rental

9. Car rental can be distinguished from other forms of transport, such as rail, by virtue of the additional convenience and flexibility which it offers. It is also generally more expensive than other forms of transport.

10. The parties submitted that the main relevant product frame for the purposes of analysing the transaction was the short term rental of passenger cars. They considered that whilst it is possible to identify various different elements of activity within such a frame of reference (for

example, distinguishing between business and leisure customers, or between two-way[1] and one-way[2] rentals), there are no clear dividing lines such as to facilitate or justify narrower definitions.

11. On the demand side, the services required by different types of customer will vary. For example, business customers will typically require higher service standards than leisure customers with respect to delivery/collection, vehicle types, and collated invoicing. Some customers will specifically require the ability to return the rented car to a location other than that from which it was collected, and hence require a 'national' rather than 'local' operator.

12. The parties argued that, in the majority of instances, smaller competitors operating at local level are able to compete effectively with national and international competitors. For example, there are various licensee, franchisee and affiliation arrangements which can enable a predominantly local provider to offer customers access to national services.

13. On the supply side, the possibility of substitution between different customer categories appears strong. The fundamental assets required to serve different demands are similar. Providers will have the ability to vary the characteristics of their rental fleet, in terms of vehicle mix and geographic location, relatively quickly.

14. Overall, it is not appropriate to split the 'general' car rental market between customer categories or by a local/national operator distinction. Third parties generally supported the view that it was not necessary to segment the frame of reference, with the exception of airport rental services as discussed below. Therefore, subject to this segmentation discussed below, the appropriate product frame of reference for the purposes of this analysis is considered to be the supply of short term car rental services.

[1] Returning the rental car to the location from which it was hired.
[2] Returning the car to a different location from which it was hired, and therefore requiring a geographic network element.

On-Airport short term car rentals

15. In *Avis/Budget*,[3] the OFT noted that car rental customers could be distinguished by the location of vehicle collection. For airline passengers, collecting a hire car at the airport offers flexibility and convenience over collection from locations outside the airport. It was also found that car rental firms at airport locations appeared to attract a premium price. Therefore, a separate frame of reference was identified for the supply of car rental services at airports.

16. The parties contended that both 'off-airport' and 'downtown' services were substitutable for 'on-airport' services. They submitted that a number of providers of varying size offer services to airport customers under which the customer is met at the airport, and either provided with a car that has been driven to the airport ('meet and greet' service), or transported to the location of a nearby off-airport car rental site to collect their car ('courtesy bus' services). The parties suggested that off-airport service providers are particularly significant at smaller airports.

17. Third parties in this case indicated that car rental services provided at airports are priced at a premium to both downtown and off-airport services. Competitors' estimated that both price differentials were in the 10 to 20 per cent range. Reasons given for the differentials included the higher costs of operating in a terminal (including airport concession fees) and the inherent advantages of an on-airport location. Third parties responses also consistently indicated that they and their end user customers have a strong preference for on-airport facilities. This suggests that on-airport and off-airport services are not strong substitutes for one another.

18. On the supply side, substitution possibilities are constrained by the fixed number of airport concessions available at any point in time. Operators without a concession may be able to increase the attractiveness of their downtown or off-airport services through low pricing strategies, but would have to wait until the airport operator next puts the concessions out to tender to gain an on-airport concession. Third parties indicated that concessions are generally offered for renewal every three to five years.

[3] OFT, *Proposed acquisition by Avis Europe plc of certain assets of Budget Group Inc*; 5 March 2003.

19. On the basis of the evidence available to it, the OFT considers the appropriate frame of reference to be the supply of on-airport short term car rental services.

Geographic market

20. The parties submitted that the relevant geographic market in relation to general short term car rental should be considered to be at least national in scope. They suggested that the catchment area of an individual operator is likely to overlap with the catchment areas of a number of other providers in neighbouring areas, such that local operators (whether or not they themselves provide one-way services) will be influenced by the wider conditions of competition across the UK.

21. In *Avis/Budget*, having established that airport rental services were a relevant frame of reference, individual airports were considered likely to represent separate relevant geographic markets. The OFT found no evidence during its investigation to suggest a departure from this approach. Furthermore, third parties generally supported a separate geographic frame for each airport.

22. Therefore, for the purposes of this assessment we have examined the effects of the transaction using two different frames of reference:

    a. the supply of short term car rental services in the UK; and
    b. the supply of on-airport short term car rentals for each individual airport where the parties overlap.

HORIZONTAL ISSUES

Short term car rental

23. Post merger the parties will have a combined share of supply of [between 20 and 30] per cent (increment of between [0 to 10] per cent) in the provision of short term car rental services in the UK.

24. Although the merger would enhance Vanguard's position as the largest supplier of short term car rentals in the UK, a number of other significant national competitors will remain post-merger (Budget/Avis, Hertz, Dollar/Thrifty and Enterprise) and a very substantial share (over 40 per

cent) of the sector is accounted for by fragmented small-scale operators. These competitors will continue to act as a strong constraint on the parties behaviour following the merger. Furthermore, no third parties raised concerns about this aspect of the merger. Overall, no competition concerns are considered to arise in relation to the supply of short term car rental services in the UK.

On-airport car rental

Non-coordinated effects

25. The parties have submitted that post merger they will have a combined share of supply of [between 35 and 45 per cent] (increment of [between 15 to 25] per cent) in the provision of on-airport car rental services in the UK. The merger would bring together the current third and fourth largest providers. Supply would be heavily concentrated amongst Avis, Hertz and the merged entity post merger.

26. At the individual airport level, there are a number of airports where the parties will have a [30 to 50] per cent share of supply, although it is worth noting that airline referral arrangements with car rental companies (especially Easyjet/Europcar, Ryanair/Hertz) may significantly affect supply shares at each individual airport. The merger will result in a reduction of the number of competing desks at some of the smaller airports from four to three.

27. Concern was raised by some third parties in relation to the position of the parties post merger. One was concerned that the loss of one of the four largest established national operators could lead to an increase in prices, and/or worsening of contractual terms at the airports under discussion, where there were only four desks. This was echoed by another third party who saw the parties as particularly close competitors and a third that customers would suffer as there would be fewer credible bidders for airport desks. However, there are a number of factors supporting the case that the loss of Vanguard as an independent competitor does not cause competition concerns.

28. The substantial majority of third parties (including both customers and airport operators) were unconcerned. Several indicated that in their view a number of operators outside the four largest would provide suitable

alternatives to the merging parties as potential bidders for desks at airports.

29. Customers' views on which rental operators are the closest competitors were somewhat mixed, but there was no compelling pattern of evidence that the parties represent each other's most binding competitive constraint.

30. One airport operator commented that it was not the number of concessions at an airport which was the primary determinant of competition. Instead they considered that pricing and levels of competitive activity was influenced by fleet availability and other seasonal considerations. Furthermore, information submitted by the parties did not show a correlation between the number of concession desks and price.

31. Finally, the ability of corporate customers, brokers, and airlines to switch quickly and easily between preferred providers implies that market shares are potentially fairly fluid, and established existing competitors can provide a competitive constraint even where the merging parties have a high current combined market share. Similarly the increased use of the internet by individual customers may raise competition with increased price transparency and the ease of price comparisons, compared with obtaining quotes over the telephone, thereby helping customers to seek out the most competitive quotes.

32. Although the merger will result in a reduction in the number of independently run airport rental concessions from four to three at some smaller airports, the parties will continue to face competition from the remaining two competitors. Given the relative ease with which customers appear to be able to switch these remaining competitors would be expected to exert a credible constraint on the parties. This view is supported by the majority of third parties. Nevertheless, we have also considered the additional constraints that the parties might face from new entry and expansion below.

Barriers to entry and expansion

33. For on-airport rentals, the primary barrier to entry is gaining access to an airport concession desk.

34. Airport concessions are often awarded through an open bidding process for a fixed number of years (typically three). Appointed concession holders will

pay a concession fee to the airport operator – usually a percentage of total revenues – subject to a minimum guaranteed payment. This suggests that viable bidders will need to be confident of achieving a certain volume of sales in order to underpin funding for minimum concession payments.

35. One third party was concerned that if the merging parties retained separate concession desks at airports, this would preclude entry by alternative operators at an individual airport.

36. The parties argued that airport operators will tend to maximise concessions subject to space constraints, therefore adding an extra desk if required to counter the loss of a competing desk. In this regard it is notable that there appears to be a general trend to increase car rental concession numbers at UK airports.

37. Airport operators also told the OFT that they did not see the merger as a significant challenge to their ability to bring in new entrants where it was feasible and warranted. This indicates that to the extent that access to concessions represents a barrier to entry for potential airport rental providers, airport operators have it within their power to adjust concession numbers if the car rental market structure in place is not delivering sufficient choice and competition.

38. Several airports provided us with examples of their expanding the number of desks and of new entry. One example of recent new entry (and expansion) is that of Enterprise which has been able to obtain nine UK airport concessions since 2004. As might be expected, a number of these concessions are at airports with a relatively high overall number of concessions (five or six desks, such as Heathrow, Gatwick, Birmingham, Edinburgh, and Glasgow), but some are at airports with fewer concession desks (three or four, such as Nottingham, Southampton and Doncaster). Others examples of regular bidders include Dollar/Thrifty[4] and Sixt, both of whom have an international network and brand presence.

39. The OFT were told by some airport operators that they had plans to add concession desks further at a number of airports. This would facilitate other entrants gaining a foothold from which to expand.

[4] Operated under a franchise agreement in the UK by Flightform Limited, a subsidiary of the Scot Group.

40. To conclude, whilst noting that access to airport concessions is a central factor determining the number and composition of competitors at a given airport, such factors are subject to the incentives facing airport operators, which would include some incentive to maintain choice and competition. As a result, it is considered that the potential for new entry would, in combination with existing competitive restraints, provide a strong constraint on the parties' behaviour post-merger. Therefore, competition concerns are not considered to arise.

THIRD PARTY VIEWS

41. Overall, only a few third parties contacted expressed significant concern about competitive aspects of the merger. Some concerns were expressed about the impact of the merger on competition in the airport car rental sector. Other concerns related to whether Europcar and Vanguard would continue to bid for and operate separate concessions desks at airports, and thereby avoid freeing up existing concessions for other potential operators. These issues are addressed above.

42. The substantial majority of third parties, including customers, airports and airlines, were unconcerned.

ASSESSMENT

43. The parties overlap in relation to the supply of short term car rental service in the UK and more also specifically short term on-airport car rental. Post merger the parties will have a combined share of supply of [between 20 and 30 per cent] in general short term car rental with an increment of [between 0 to 10 per cent]. In relation to short term on-airport car rental, in the UK post merger the parties will have a combined share of supply of [35-45] per cent with an increment of [15-25] per cent.

44. No third parties raised concerns in relation to general short term car rental in the UK. Although, there were some third party concerns in relation to on-airport car rentals, the evidence obtained by the OFT did not show that there was a significant increase in the risk of non-coordinated effects, given that there are enough competitors remaining at the airports where

the parties overlap to act as a competitive restraint, and that there was the prospect of entry, supported by recent examples, to maintain competition.

45. Consequently, the OFT 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 United Kingdom.

DECISION

46. This merger will therefore not be referred to the Competition Commission under section 33(1) of the Act.