

## Completed acquisition by Harman International Industries Inc. of the Bang & Olufsen A/S automotive audio assets

**ME/6542-15**

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 4 September 2015.

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

### **SUMMARY**

1. On 1 June 2015, Harman International Industries Inc. (**Harman**) acquired Bang & Olufsen A/S's (**B&O**) assets associated with its automotive audio systems business (the **Merger**). Harman and B&O's automotive audio systems business are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties have ceased to be distinct and that the share of supply test is met. The four-month period for a decision, as extended, has not yet expired. The CMA therefore considers that a relevant merger situation has been created.
3. The Parties are both suppliers of premium automotive audio systems to Original Equipment Manufacturers (**OEM**)<sup>1</sup> and overlap in the supply of most components of these systems.<sup>2</sup>
4. The number of OEM customers that take their procurement decisions in the UK is very limited and very few of the Parties' OEM customers are UK customers, as evidenced by the small proportion of the Parties' revenue derived from sales to UK customers.

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<sup>1</sup> OEM customers refer to car manufacturers who use OEM components in the production of the cars they manufacture and sell.

<sup>2</sup> The Parties do not overlap in the supply of speaker grills for premium automotive audio systems. Furthermore, only Harman supplies the entire premium automotive audio system to some of its customers.

5. The CMA's market testing indicated that both demand- and supply-side substitution between premium and non-premium automotive audio systems is limited, and that OEMs generally go out to tender for each component of their premium automotive audio systems separately (with this being the case for all OEMs based in the United Kingdom (**UK**)). Therefore, the CMA assessed the competitive effects of the Merger by reference to each product component manufactured for premium automotive audio systems for which the Parties' activities overlap, specifically for:
  - amplifiers for premium automotive audio systems;
  - speakers for premium automotive audio systems; and
  - the brand associated with premium automotive audio systems.
6. Outside of the UK, as well as selling the above listed components separately, Harman also supplies some OEMs with their entire requirement for automotive audio systems (ie with all product components and the branding). However, since the Parties' activities do not overlap on this basis this was not considered further by the CMA. The CMA followed the same approach regarding other components where the Parties do not overlap, in particular speaker grills for automotive audio systems.
7. The CMA's market test indicated that OEMs source the components for their premium automotive sound systems on a worldwide or at least European Economic Area (**EEA**) wide basis. The CMA therefore believes that the geographic frame of reference is likely to be at least EEA-wide. For the purposes of its competitive assessment, the CMA considered whether the Merger would have a particular impact on OEMs based in the UK.
8. It was not necessary for the CMA to reach a conclusion on the product or geographic frame of reference, since no competition concerns arise on any plausible basis.

### **Speakers for premium automotive systems**

9. The CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in relation to the supply of speakers for premium automotive audio systems. On an EEA-wide basis there are a large number of existing and credible competitors remaining in the market that are capable of serving the UK market and, moreover, there is no significant overlap between the Parties for the sale of this component in the UK.

## **Amplifiers for premium automotive audio systems**

10. On an EEA-wide basis, the combined share of the Parties in this market is [20–30]%, with an increment of [0–5]%. Market testing confirmed that OEMs have a number of alternative suppliers of amplifiers for premium automotive audio systems.
11. The CMA found that the Parties supply amplifiers to three of the nine OEM customers who take their procurement decisions in the UK. One of these OEM customers – Jaguar Land Rover (**JLR**) – manufactures the bulk of vehicles fitted with premium automotive audio systems in the UK. The Parties currently have a very high combined share of supply in this segment, if measured by the number of amplifiers supplied for the current generation of automotive vehicles produced by UK based OEM customers. However, Harman recently lost its contract with JLR which decreases this share considerably. The CMA found that the Parties are not each other's closest competitors and that they will remain constrained by a number of other competitors operating throughout the EEA.

## **Brand associated with premium automotive sound systems**

12. The CMA has found that the brand is an important element of a premium automotive audio system. As a result of the Merger, Harman will add the B&O brands to its already broad portfolio of brands. The CMA has found that Harman's share of supply of brands to premium automotive audio systems after the Merger is relatively low and that it will be constrained by many other brands for premium automotive audio systems from which OEM customers can choose. OEM customers that responded to the CMA's market testing were therefore not concerned. On this basis, the CMA concluded that the Merger did not result in a realistic prospect of an SLC as a result of unilateral horizontal effects in relation to the supply of brands.
13. As the Merger does not give rise to competition concerns through horizontal unilateral level effects, the CMA also concluded that the Merger does not substantially change Harman's ability and/or incentive to 'foreclose' entry and/or expansion into the premium automotive audio systems sector by suppliers that do not own their own brand<sup>3</sup> or prevent the use of its brands in premium automotive audio systems with components produced by other suppliers.

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<sup>3</sup> The CMA also notes that with the market being segmented by component, access to branding is non-essential for the supply of these components.

14. As a result of these factors, the CMA does not believe that the Merger has resulted, or may be expected to result in a **SLC** within any market or markets in the UK for goods or services.
15. The Merger will therefore **not be referred** under section 22(1) of the Enterprise Act 2002 (the **Act**).

## ASSESSMENT

### Parties

16. Harman is a company registered in the State of Delaware, USA. It designs, manufactures and markets a broad range of automotive audio, lighting solutions and electronic systems, as well as digitally integrated audio and infotainment systems for the automotive industry. Harman has manufacturing facilities in the Americas, Asia and Europe. Harman does not have any facilities in the UK associated with its automotive audio systems business. Harman owns a number of brands for automotive audio systems, such as Harman Kardon, Infinity, JBL, Lexicon, Revel and Mark Levinson. It also uses brands licensed to it by third parties, such as Bowers & Wilkins. Harman's total revenue in the financial year ending on 30 June 2014 was around £3,248 million,<sup>4</sup> of which £[REDACTED] million was derived from the sale of amplifiers to UK OEM customers (see definition below in paragraph 23).
17. The target of the Merger consists of the B&O business that produces and supplies automotive audio systems (the **B&O business**). The B&O business comprises all the assets associated with the development, production, assembly, sale and supply of OEM factory-fitted automotive audio systems, including one or more of the following components: amplifiers, loudspeakers, sound tuning, speaker grills, the brand and other related components of an automotive audio systems. These products are currently produced at the facilities of the B&O Group in Denmark and in the Czech Republic. The brands associated with the B&O business are Bang & Olufsen and B&O Play. The B&O business has no assets located in the UK. The B&O business revenue in the last financial year ending July 2014 was around £61 million,<sup>5</sup> of which £[REDACTED] million derived from sales to UK OEM customers (as defined in paragraph 23).<sup>6</sup>

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<sup>4</sup> Based on the US/British pound average exchange rate for 2014.

<sup>5</sup> Based on the DKK/British pound average exchange rate for 2014.

<sup>6</sup> In financial year ending on July 2015, the B&O business's revenue derived from the sales to UK OEM customers was lower: £[REDACTED] million.

## Transaction

18. The Merger consists of the completed acquisition of the B&O business by Harman. The Parties entered into an Asset Purchase Agreement on 31 March 2015 and completed the transaction on 1 June 2015. The total consideration paid by Harman was €[X] million.
19. Harman's media release announcing the transaction indicates that its rationale for the Merger was, inter alia, to complement Harman's existing premium branded offering with B&O's distinctive brands, as it states that, 'while Bang & Olufsen branded solutions will continue at the top of the high-end luxury segment, we will rapidly grow B&O PLAY branded solutions in the larger mass luxury market'.<sup>7</sup>
20. The CMA issued an initial enforcement order on 1 June 2015 to prevent further integration of the Parties' businesses. The CMA granted derogations to the interim order that were necessary to allow the B&O business to continue operating as a going concern. The initial enforcement order was revoked on 5 August 2015.
21. The Merger was notified to and cleared by the Bundeskartellamt in Germany.

## Jurisdiction

22. As a result of the Merger, the enterprises of Harman and the B&O business have ceased to be distinct.
23. The Parties overlap in the supply of amplifiers and other components for premium automotive audio systems to car manufacturers. Based on the volume of sales of amplifiers for premium sound systems to car manufacturers that take their procurement decision in the UK (**UK OEM customers**)<sup>8</sup> in the last year, Harman estimated that the Parties' combined share of supply of premium amplifiers to UK OEM customers is around [90–100]%, with an increment of [0–5]%.
24. Harman recently lost its only UK OEM customer contract (with JLR). In light of this, Harman submitted that its share of supply for the next generation of JLR's vehicles would be around [20–30]% and this figure is more representative of the Parties' competitive position. However, Harman's sales to this UK OEM customer will be phased out over a period of [X] (see

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<sup>7</sup> See [Harman's media release announcing the Merger](#).

<sup>8</sup> This approach is in line with *Mergers: Guidance on the CMA's jurisdiction and procedure (CMA2)*, January 2014, paragraphs 4.58 and 4.59, which states that the CMA will have regard to the location where relevant procurement decisions are taken and where, in turn, competition between suppliers takes place.

paragraph 35 below) and hence its current share of supply still significantly exceeds 25%. As section 23(9) of the Act provides that the CMA must determine whether the share of supply test is met at the time of its decision on reference, the CMA considers that the Parties' combined share of supply currently exceeds 25%. The CMA also notes that Harman's future share of supply may be higher than Harman's estimate of around [20–30]% because Harman has recently won a contract to supply another UK OEM customer ([REDACTED]).

25. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
26. The Merger completed on 1 June 2015 and the four-month deadline for a decision under section 24 of the Act is 7 November 2015 (following an extension of 38 days under section 25(2) of the Act, because Harman failed to fully respond to a request for information issued by the CMA under section 109 of the Act within the deadline established by the CMA).
27. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
28. The CMA opened an own-initiative investigation into the Merger by sending an Enquiry Letter to Harman on 20 May 2015.<sup>9</sup> The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 15 July 2015 and the statutory 40-working-day deadline for a decision is therefore 9 September 2015.

## Counterfactual

29. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For completed mergers the CMA generally adopts the pre-merger 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 considers that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive as between the parties than these conditions.<sup>10</sup>

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<sup>9</sup> *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraphs 6.9–6.19 and 6.59–6.60.

<sup>10</sup> *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*, Annex D).

30. In this case, there is no evidence supporting a different counterfactual, and Harman and third parties have not put forward arguments in this respect. Therefore, the CMA considers the pre-Merger conditions of competition to be the relevant counterfactual.

## **Background**

31. Harman and B&O are both suppliers of premium automotive audio systems, which they sell to OEM customers (eg JLR, Aston Martin, Bentley etc).
32. An OEM may purchase the individual components that make up an automotive audio system separately or may purchase a complete automotive audio system. The B&O business does not supply a complete automotive audio system to any OEM customer.
33. The system may also be separately ‘badge engineered’ by a particular company that is not necessarily in the automotive audio market but is, for example, a supplier of premium home audio systems. This means that the audio company’s brand is licensed to the OEM and appears on the speaker grill even though the relevant components that make up the audio system may be sourced from different companies.
34. Evidence received in this case indicated that the contracts for the supply of premium automotive audio systems (or for their separate components) are typically awarded by OEMs through competitive tenders to supply these products for 5 to 20 years.

### ***Parties’ customers in the UK***

35. Harman’s only UK OEM customer is JLR. Harman supplies amplifiers to JLR which are then integrated into JLR’s automotive audio system with the brand Meridian. Harman recently lost its contract with JLR to a competitor, [REDACTED]. Harman’s JLR sales will therefore be phased out over the next [REDACTED]. Harman was recently awarded the contract to supply amplifiers, speakers and the use of the Bowers & Wilkins brand to the next generation of [REDACTED] cars.
36. The B&O business has two main OEM customers in the UK (as defined in paragraph 23): Aston Martin and Bentley. It supplies different components of the Aston Martin automotive audio system (amplifiers, speakers, speaker grills). B&O lost the contract to supply speakers for the new generation of Aston Martin cars to a competitor, [REDACTED], and as a result, its supply of speakers to Aston Martin will be fully phased out by [REDACTED]. B&O also supplies amplifiers

to Bentley, which are then incorporated into Naim-branded systems. B&O also supplies speaker grills to I.M. Kelly Automotive Limited.<sup>11</sup>

### ***Overlap between the Parties***

37. The Parties overlap in the supply of most components of premium automotive audio systems. More specifically, the horizontal overlaps between the Parties in the UK and EEA-wide are:
- amplifiers for premium automotive audio systems;
  - loudspeakers/speakers for premium automotive audio systems; and
  - the brand associated with premium automotive audio systems.
38. The Parties do not overlap in the supply of speaker grills for premium automotive audio systems, at a UK or an EEA level. While the B&O business produces speaker grills, bearing the B&O logo, Harman does not supply these. The OEM customers that procure other components from Harman contract for speaker grills directly, independently from Harman.
39. As B&O does not currently supply the whole premium automotive audio system to any of its customers, both at a UK and an EEA-wide level, there is also no overlap between the Parties on this basis.
40. The evidence gathered by the CMA did not suggest that B&O and Harman would be bidding against each other for the supply of speaker grills for premium automotive audio systems or for the supply of the whole automotive audio system. The CMA therefore has not assessed further the effect of the Merger regarding these products.

### **Frame of reference**

41. The CMA considers that 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 merger parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more

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<sup>11</sup> I.M. Kelly Automotive Limited is a developer and manufacturer of leather and textile interior trim components to the automotive and associated industries. It is a sub-supplier of certain door trims to Aston Martin. The revenue of the B&O business derived from the sales to this client was £[X] in the last financial year.

important than others. The CMA will take these factors into account in its competitive assessment.<sup>12</sup>

### ***Product scope***

42. The CMA's approach to product scope is generally to consider first if narrow candidate markets can be widened through demand-side substitution. If appropriate, the CMA then considers if supply-side substitution allows several products to be aggregated into a wider market.<sup>13</sup>
43. As set out above, the Parties overlap in the supply of the following components for premium automotive audio systems:
- amplifiers for premium audio systems;
  - loudspeakers/speakers for premium automotive audio systems; and
  - the brand associated with the premium automotive audio systems.
44. The CMA took these narrow component products as its starting point and then considered whether it was appropriate to broaden the frame of reference to include:
- non-premium automotive audio components; and/or
  - automotive audio systems as a whole, rather than individual automotive audio system components.

### ***Individual components or entire sound system***

45. Harman submitted that the relevant market was for the entire sound system.<sup>14</sup> Harman further stated that the Parties do not overlap for the supply of the whole premium automotive audio systems, both in the UK and at an EEA level.

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<sup>12</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

<sup>13</sup> [Merger Assessment Guidelines](#), section 5.2.

<sup>14</sup> See the European Commission decision in the case COMP/M.5221 – Kenwood/ JVC/ Holdco, of 19 August 2008 (**Kenwood/JVC/Holdco**), paragraph 15, in which the European Commission considered that the market for car electronics could be further segmented in three principal product categories: (a) car audio products, which primarily include radio receivers with various media players such as CD and DVD players (b) car speakers, including subwoofers and (c) car navigation products, including both portable navigation systems and aftermarket 'fix installed' systems.

46. The evidence available to the CMA indicates that OEMs do not necessarily procure the whole premium automotive audio system from the same supplier but rather each component may be and is often procured individually.
47. In the EEA, Harman supplies full systems to BMW, Maserati and Ferrari and will provide full systems to McLaren in the near future, while it only supplies amplifiers to JLR premium audio systems in the UK.
48. The B&O business previously supplied all the components of Aston Martin's audio system, but, as noted above, it has recently lost its contract with Aston Martin for the speaker supply business to [REDACTED].
49. Harman submitted that all other OEMs in the EEA (eg Audi, Volkswagen, Porsche, Bentley, Fiat, Peugeot, Citroen, Renault, Lancia, Skoda, Sear, Lotus, Lamborghini, Rolls Royce, Volvo) either do not use a full system supplier business model, or have a full system supplied by a competitor.
50. Furthermore, from a demand-side substitution perspective, the individual components of a premium audio automotive system are complementary, rather than substitutes. This is because each of the components are needed in order to assemble a full automotive audio system and cannot, therefore, replace each other.
51. With regard to supply-side substitution, OEMs have indicated that there are different suppliers for each component and that the conditions of competition for each component are different. The competitive strength of the suppliers also varies for each automotive audio system component. For example, some suppliers do not supply certain components and some are not in a position to expand their offer to include different components. As explained in more detail below in the *Competitive Assessment* section, the number of suppliers available for each component of a premium automotive audio system varies significantly.
52. The information submitted by third parties indicates, however, that OEMs tend to source the software and the brand for their automotive audio systems from the same supplier.
53. The CMA therefore assessed the competitive effects of the Merger by reference to each component of a premium automotive audio system for which the Parties' activities overlap, ie amplifiers, speakers and the brand associated with the audio system.

### *Non-premium automotive audio system components*

54. Harman submitted that the relevant market was premium automotive audio systems and did not make any submissions about broadening this to include non-premium automotive audio systems.<sup>15</sup> The Parties submitted that premium automotive sound systems could be defined as having at least two of the following characteristics: (i) 400 watts or more; (ii) eight speakers or more, which includes a sub-woofer; and (iii) Advanced Digital Signal Processing (DSP) for Stereo Playback, Discrete 5.1 Playback or 2 Channel Matrix surround Playback (premium automotive audio systems).<sup>16</sup>
55. Four competitors agreed with the definition of premium automotive audio systems proposed by the Parties and did not consider non-premium automotive audio systems to be an alternative to sound systems with the characteristics set out above. One other competitor noted that not all features included in this definition are exclusive to 'premium' automotive audio systems and that the brand should be listed as a key feature of these systems. Only one OEM competitor submitted that a non-premium branded system could act as a substitute.
56. All OEM customers that responded to the CMA's market testing agreed with the Parties' definition of 'premium', but one customer stated that a branded non-premium automotive audio system might be able to act as a substitute.
57. In terms of demand-side substitution, the CMA considers that the additional price that end consumers are willing to pay for premium audio automotive systems indicates that customers place value on having a 'premium' audio system and that they would be unwilling to replace these systems with non-premium ones in response to a small but significant and non-transitory increase in price.<sup>17</sup> Furthermore, the Parties' OEM customers that responded to the CMA's market testing did not identify any non-premium suppliers of automotive audio systems as alternatives to the Parties.
58. From a supply-side perspective, based on third party submissions, the evidence indicated that suppliers of non-premium systems were not able to start supplying premium automotive sound systems in a timely manner.<sup>18</sup> This is mainly because of the particular technical requirements of premium

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<sup>15</sup> The European Commission in its decision on COMP/M.7290 - Apple / Beats, of 25 July 2014 distinguished between high-end and low-end headphones. Although this precedent refers to a different product than automotive audio systems, it is informative on how regarding a related product, the European Commission distinguished between the high-end and low-end segments.

<sup>16</sup> This definition is adopted by the Information Handling Systems (IHS) Auto Tech Market Share Database and third parties confirmed that this definition reflected the distinctive features of high quality automotive audio systems.

<sup>17</sup> [Merger Assessment Guidelines](#), paragraphs 5.2.7–5.2.16.

<sup>18</sup> See [Merger Assessment Guidelines](#), paragraph 5.2.17.

automotive audio systems and the need for these premium sound systems to be associated with a well-known brand with a strong reputation. For example, a competitor indicated that brand name is a key feature of a premium sound system. Customers have also indicated only a limited number of companies as being able to supply premium automotive audio systems or components.

59. In light of the evidence available to it, the CMA therefore does not consider that the product frame of reference should be widened to include non-premium automotive systems or components for the purpose of assessing this Merger.

#### *Conclusion on product scope*

60. For the reasons set out above, the CMA has considered the impact of the Merger in the following product frames of reference:

- amplifiers for premium automotive audio systems;
- speakers for premium automotive audio systems; and
- the brand associated with premium automotive audio systems.

#### *Geographic scope*

61. Harman submitted that, based on previous decisions of the European Commission,<sup>19</sup> the automotive audio systems market is at least EEA-wide. Harman explained that this was because producers supply OEMs throughout Europe from a limited number of production sites.<sup>20</sup> In addition, Harman submitted that OEMs source the different premium automotive audio system components from a range of producers across Europe.
62. Harman also stated that transport costs only account for approximately 3% of the total costs of an automotive audio system and, therefore, are not an obstacle for UK OEMs sourcing the components for a premium automotive audio system from overseas. For instance, the amplifiers supplied by Harman

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<sup>19</sup> See: (a) decision of the European Commission in the case M.4696 KKR/Harman, of 18 September 2007, where the European Commission's market investigation suggested that the market for infotainment systems suppliers may be global as suppliers are active in all main markets and major customers source such systems on a global basis or at least at the EEA level; (b) the decision of the European Commission in Kenwood/JVC/Holdco, in which the European Commission, although not concluding on the dimension of the market for car electronics, considered whether the market was EEA-wide on the basis that (i) most manufacturers distribute their products on a global basis using direct and indirect sales channels in Europe, (ii) suppliers and distributors with operations in one Member State sell car electronics products to customers located in different countries given the low transport costs compared with the sales value of the products, and (iii) there are no technical specifications, and prices of car electronics within the EEA are largely harmonized.

<sup>20</sup> For example, the Parties supply the whole of Europe from sites in Germany and Hungary (Harman) and the Czech Republic and Denmark (B&O business).

to JLR are ordered in the UK but produced and delivered to JLR outside the UK from Hungary. All the automotive audio systems components supplied by the B&O business to its clients in the UK are produced outside the UK: some components are shipped to Aston Martin from the B&O business warehouse in Denmark, other components are collected by Aston Martin from the Target's warehouse in Germany.

63. All OEM customers that responded to the CMA market testing submitted that the market for automotive audio systems is wider than the UK, with several customers stating that they procure premium automotive audio systems or each of its components on a worldwide or EEA basis. Competitor responses also indicated that the market was wider than the UK. One competitor stated that it was normal business practice to supply customers outside of the UK and submitted that the national geographic boundaries are 'less relevant' for the competitive assessment of the Merger, as many OEMs have various production sites globally to which products are shipped directly.
64. Relevant geographic markets may be based on the location of suppliers or customers. In cases where delivered prices are negotiated individually with each OEM customers, the geographic scope of the relevant market may be one aspect of the definition of any relevant customer market. This may mean that suppliers can price discriminate on the basis of customer location.<sup>21</sup>
65. Such a customer based geographic market may be appropriate, particularly because, as set out below, the shares of supply of the Parties in the UK differ from their share of supply at an EEA level and the strength of different suppliers of premium automotive audio systems may vary to UK customers due to factors such as brand recognition and reputation.

#### *Conclusion on geographic scope*

66. In these circumstances, the CMA considers it appropriate to assess the effects of the Merger at an EEA level and, on a cautious basis, consider whether the Parties would have any particular strength in the UK post-Merger.

#### ***Conclusion on frame of reference***

67. The CMA took a cautious approach and assessed the competitive effects of the Merger by reference to the supply of each component of premium audio systems for which the Parties' activities overlapped, assessing these effects

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<sup>21</sup> [Merger Assessment Guidelines](#), paragraphs 5.2.27 and 5.2.29.

at an EEA level and whether the Parties would have any particular strength in the UK post-Merger.

68. However, it is not necessary for the CMA to reach a conclusion on the product or geographic frame of reference, since no competition concerns arise on any plausible basis.

## **Competitive assessment**

69. 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 degrade quality on its own and without needing to coordinate with its rivals.<sup>22</sup> Horizontal unilateral effects are more likely when the merger 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 SLC in relation to unilateral horizontal effects for each of the frames of reference set out above.

### ***Speakers for premium automotive audio systems***

70. On an EEA-wide basis, Harman submitted that, after the Merger, it will remain constrained by a significant number of competitors that supply speakers for premium automotive audio systems, including: Foster, PSS, Sonovaux, ASK, Panasonic, Mobis, Bose, Alpine, LPG and Dynaudio.
71. Submissions received from OEM customers confirmed that they consider Panasonic, Bose, Lear, ASK, Alpine, LPG, PSS, Pioneer and Fital as close competitors to the Parties for the supply of speakers for premium audio automotive systems. No customers expressed a concern about the Merger's impact on the supply of speakers for automotive sound systems.
72. The CMA considered whether the Parties had any particular strength in the supply of speakers for premium automotive audio systems to UK customers.<sup>23</sup> Based on Harman's estimates, the B&O business's share of supply of speakers for premium automotive audio systems to UK OEMs (current generation of cars) is around [0–5]%, which represents the speakers currently supplied to Aston Martin.<sup>24</sup> The B&O business recently lost this contract to [X]. Harman will supply [X] in the future and it estimates this accounts for

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<sup>22</sup> [Merger Assessment Guidelines](#), from paragraph 5.4.1.

<sup>23</sup> See paragraphs 64 and 65 and the [Merger Assessment Guidelines](#), paragraphs 5.2.27 and 5.2.29.

<sup>24</sup> This estimates are based on the assumption that each premium automotive sound system has the same number of speaker, when the number of speakers by premium automotive sound system may differ.

less than [0–5]% of the speakers supplied to UK customers for premium automotive audio systems.

73. The CMA spoke with [X] who told the CMA that it expects to receive bids from a number of suppliers for its upcoming tender for the supply of speakers for its premium automotive audio systems, including: [X]. B&O was not expected to participate in this tender.
74. On the basis of the above listed evidence, the CMA concluded that the Parties do not compete strongly against each other for the supply of speakers for premium automotive sound systems in the UK.

#### *CMA analysis and conclusion*

75. The CMA considers 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 supply of speakers for automotive audio systems on an EEA-wide basis, in particular on the basis that the Parties are not close competitors in this segment, the Merger results in only a small increment, and there is a large number of credible competitors remaining in the market.

#### ***Amplifiers for premium automotive audio systems***

76. On an EEA-wide basis, Harman estimates that the Parties have a combined share in the supply of amplifiers for premium automotive audio systems of [20–30]%.<sup>25</sup> The increment to Harman's share of supply resulting from the Merger on EEA-wide basis is less than [0–5]%.
77. As mentioned above in paragraph 23, based on Harman's estimates, the combined share of the Parties in the supply of amplifiers for premium automotive audio systems to the current generation of cars produced by UK OEM customers (as defined above in 23) in 2014 was around [90–100]%. Harman's sales of amplifiers for premium automotive audio systems to JLR accounts for around [70–80]% of the total sales to UK OEM customers. The B&O business' sales of amplifiers for premium automotive audio systems to Bentley and Aston Martin account for around [0–5]% of the total sales to UK OEM customers.

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<sup>25</sup> Harman's estimates are based on the following assumptions: (i) every premium automotive audio system incorporates one amplifier; (ii) LMC Automotive production volume figures were used to calculate the number of vehicles produced in the EEA by OEMs for which Harman considers it likely that procurement decisions are made in the EEA; (iii) the EEA LMC production figure was multiplied by the IHS premium attach rate (23%) to calculate the total premium market.

78. As noted above, Harman recently lost its contract with JLR to [REDACTED]. This contract accounted for all of Harman's current sales to UK OEM customers. Given that the vast majority of the sales of amplifiers to JLR was lost to [REDACTED] for the next generation of vehicles, Harman's share of amplifiers for premium automotive audio systems to the next generation of cars produced by UK OEM customers will be around [10–20]%, including phase-out sales to JLR<sup>26</sup> and its future sales to [REDACTED].
79. For the new generation of cars, the B&O business's share of supply of automotive amplifiers for premium automotive audio systems to UK OEM customers is around [0–5]%. [REDACTED].
80. Harman submitted that the following competitors significantly constrain the Parties in the market for premium amplifiers: Lear, ASK, Bose, Mobis, Panasonic, Alpine and Pioneer.

#### *Third party views*

81. OEM customers confirmed that there were several competitors active in the market for premium amplifiers other than the Parties, including Alpine, ASK, Bose, Panasonic, Dynaudio, Meridian and Lear. None of the OEM customers that responded to the CMA's market testing expressed concerns regarding the Merger in the market for the supply of amplifiers for automotive audio systems.
82. OEM customers' submissions also indicated that Harman and the B&O business are not each other's closest competitors. This is further supported by tender data supplied by some OEM customers. An OEM customer further stated that the B&O business mainly targets niche customers, while Harman targets larger customers. Third parties also suggested that the Parties' closest competitors for the supply to amplifiers to premium automotive audio systems appear to be Lear, Alpine, Bose and ASK.
83. Some competitors noted that the Merger reduced customer choice and increased the level of concentration in the market. However, some of the same competitors identify a number of suppliers competing with the Parties in the supply of amplifiers for premium automotive audio systems.

#### *CMA analysis and conclusion*

84. On an EEA-wide basis, the combined share of the Parties in this market is [20–30]%, with an increment of [0–5]%. Market testing confirmed that OEMs

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<sup>26</sup> The supply will be phased out over the next [REDACTED].

have a number of alternative suppliers of amplifiers for premium automotive audio systems, including Alpine, Alpine, Bose, ASK, PSS, Foster and Mitsubishi.

85. The Parties' share of supply of amplifiers for premium automotive audio systems currently sold to UK OEM customers is high. However, in the specific circumstances of this case, the current combined share of supply of the Parties does not appear to be representative of the Parties' market power. For instance, Harman's recent loss of the JLR contract to [REDACTED] demonstrates that its market position is contestable by other EEA suppliers and that its share of supply may vary significantly over time as shown by the effect on Harman of losing a contract with a single customer.
86. The evidence submitted by third parties indicates that the Parties are not each other's closest competitors for premium amplifiers: [REDACTED]. Moreover, one of the B&O [REDACTED].
87. Therefore, having considered the available evidence, the CMA concluded 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 supply of amplifiers for automotive audio systems.

### ***Brand associated with premium automotive audio systems***

88. The evidence submitted by Harman and by third parties indicates that the brand is an important component of a premium automotive audio system and, as mentioned above, the brand visible on a premium automotive audio system is not necessarily the same as the brand of the suppliers of the different components (see paragraph 33).<sup>27,28</sup>
89. Harman already owns, or uses under licensing agreements with third parties, a number of well-known automotive sound system brands (see paragraph 16). These brand licensing agreements tend to be of a long duration (20 to 30 years) or provide for the perpetual use of the brand. As part of the Merger, Harman and B&O entered into an exclusive automotive brand license agreement and, as mentioned above, one of the reasons for the Merger was to add the B&O brand to Harman's portfolio.

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<sup>27</sup> The Parties estimate that the brand accounts for around 15% of the total value of a premium automotive audio system.

<sup>28</sup> The brand supplier will also provide relevant software required for technical engineering.

### *Harman's submission*

90. Harman identified a number companies that supply well-known brands for automotive audio systems to OEMs, including: (i) Meridian; (ii) Burmester; (iii) Pioneer; (iv) Dynaudio; (v) Dimension; (vi) Sony; (vii) Beats; (viii) Fender; (ix) ELS; (x) Naim; and (xi) Canton.
91. Harman also noted that neither JLR nor Bentley use any of the brands supplied by the Parties. The amplifiers that the B&O business supplies to Bentley are incorporated into Naim-branded systems and the amplifiers that Harman supplies to JLR are incorporated into Meridian-branded systems.
92. This means that the majority of the Parties' UK OEM customers (as defined in paragraph 23) do not use the Parties' brands, with the exception of Aston Martin that uses the B&O brand.

### *Third party submissions*

93. The majority of competitors that responded to the CMA's market testing consider that brand names are a key feature of a premium automotive audio system and are concerned that the increase in leading brands under Harman's control is detrimental for suppliers without their own brand and/or that are coming from the home audio market. One competitor commented that if 'the highest brands in market' are controlled by 'one company' there would be less choice due to reduced competition. Some competitors are also concerned that Harman could insist that only Harman components are used with Harman brands.
94. None of the OEM customers that responded to the CMA's market testing expressed concerns with the impact of the Merger on the supply of brands for premium automotive audio systems. One of Harman's OEM customers stated that it would not use the B&O brands because these are strongly associated with other OEMs that compete closely with this customer. Other OEMs also submitted that there is some level of differentiation between the Harman and B&O brands.

### *CMA analysis and conclusion*

95. The evidence submitted by the Parties and third parties indicated that there are a significant number of other suppliers of brands for premium automotive audio systems (see above in paragraph 90). For instance, JLR uses the Meridian brand and Bentley the Naim brand. Recently, at EEA level, Harman lost its contract with Mercedes, which included the supply of the Harman brands, to [✂].

96. Although the evidence available to the CMA indicated that the brands owned and/or licensed to the Parties are valuable for OEM customers, the Parties' shares of supply suggests that there are other equally well-known and valuable brands available to OEM customers. Based on the IHS database<sup>29</sup> the Parties have a combined share by volume of sales of [30–40]% on an EEA-wide basis in the supply of brands for premium automotive audio systems. The increment to Harman's share of supply resulting from the Merger is [10–20]% on an EEA level. However, the Parties do not overlap in the supply of brands for automotive audio systems in the UK, as none of the Harman brands is currently being used by any UK OEM customers.
97. Harman's share of supply of brands for premium automotive audio systems after the Merger is below [40–50]% on an EEA-wide basis, and the Parties do not overlap in the UK in relation to brands. Market testing indicated that post-Merger the Parties will be constrained by several other brands for premium automotive audio systems from which OEMs can choose. Furthermore, the increase of Harman's portfolio of brands might have occurred even absent the Merger.
98. For the reasons set out above, the CMA found that the Merger does not give rise to competition concerns as a result of horizontal unilateral level effect in the supply of brands associated with premium automotive audio systems. On this basis, the CMA also considers that the Merger does not substantially change Harman's ability and/or incentive to 'foreclose' entry and/or expansion into the premium automotive audio systems sector by suppliers that do not own their own brand<sup>30</sup> or prevent the use of its brands in premium automotive audio systems with components produced by other suppliers (see the concerns expressed by Harman's competitors mentioned in paragraph 93).
99. The CMA therefore considers that there is no realistic prospect of an SLC in the supply of software and the brand associated with premium automotive audio systems.

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

100. 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 substantial lessening of competition. In assessing whether entry or expansion might

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<sup>29</sup> The IHS database estimates shares of supply for each supplier of premium automotive audio systems, based on the brand that appears on the grill of vehicles sold to end users.

<sup>30</sup> The CMA also notes that with the market being segmented by component, access to branding is non-essential for the supply of these components.

prevent a substantial lessening of competition, the CMA considers whether such entry or expansion would be timely, likely and sufficient.<sup>31</sup>

101. Harman gave examples of recent entry into the supply of premium automotive audio systems:
- Burmester entered this sector by partnering with [X];
  - Meridian entered this sector by partnering with [X]; and
  - Beats entered this sector by partnering with the [X].
102. A third party told the CMA that a premium household audio supplier that consumers were aware of could successfully enter the premium automotive audio systems market through the licensing of its brand.
103. In this case, it has not been necessary for the CMA to conclude on barriers to entry or expansion as the Merger does not give rise to competition concerns on any plausible basis.

### ***Countervailing buyer power***

104. In certain circumstances, an individual customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. The CMA refers to this as countervailing buyer power.<sup>32</sup>
105. Harman submitted that the size and presence of the Parties' OEM customers means that they have significant buyer power and leverage in negotiations. Furthermore, Harman stated OEMs are able to keep the Parties and their rivals under constant pressure, as there are a number of alternative suppliers of premium automotive audio system components available to OEMs.
106. Several OEM customers and competitors also noted the significance of buyer power in this market.
107. As the Merger does not give rise to a realistic prospect of a SLC on any plausible basis, the CMA does not find it necessary to conclude on the extent of buyer power.

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<sup>31</sup> [Merger Assessment Guidelines](#), from paragraph 5.8.1.

<sup>32</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

## **Third party views**

108. The CMA contacted OEM customers and competitors of the Parties. No OEM customers raised any concerns regarding the Merger. As set out above, a few competitors raised concerns regarding the limited number of alternatives suppliers of premium automotive audio systems after the Merger. Some competitors also expressed concerns regarding the increase of Harman's brands portfolio.
109. No other third parties raised concerns about the Merger.
110. Third party comments have been taken into account where appropriate in the competitive assessment above.

## **Decision**

111. Consequently, the CMA does not believe that it is or may be the case that the Merger has resulted, or may be expected to result, in a substantial lessening of competition within a market or markets in the United Kingdom.
112. The Merger will therefore not be referred under section 22(1) of the Act.

**Nelson Jung**  
**Director, Mergers**  
**Competition and Markets Authority**  
**4 September 2015**