

Completed acquisition by Sheffield City Taxis Limited of certain assets and business of Mercury Taxis (Sheffield) Limited

ME/6548-15

The CMA's decision on reference under section 22(1) of the Enterprise Act 2002 given on 13 October 2015. Full text of the decision published on 29 October 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, Sheffield City Taxis Limited (**City Taxis**) acquired certain assets and business of Mercury Taxis (Sheffield) Limited (**Mercury Taxis**) (the **Merger**). City Taxis and Mercury Taxis are together referred to below as the **Parties**.
2. The Competition and Markets Authority (**CMA**) considers that the Parties are enterprises which 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 overlap in the supply of private hire transport services to cash and account customers and to tender customers in Sheffield. The CMA has considered separately the impact of the Merger on these two groups of customers as the nature of competition differs significantly between them. However, the CMA has included both private hire and hackney operators in the same frame of reference as, although differentiated, these two services have many similarities and there is some evidence to suggest that hackneys impose constraints on private hire operators. Therefore, the CMA has assessed the impact of the Merger in the supply of private hire and hackney transport services to cash and account customers and to tender customers in Sheffield.
4. The CMA found that the Parties competed closely for cash and account customers before the Merger, though Mercury Taxis had a narrower geographic

focus. However, the CMA believes that post-Merger the merged entity will remain subject to significant constraints from mid-sized private hire operators, hackneys and recent entrants such as Uber and Gett. The CMA has concluded that these constraints, taken together, are sufficient to ensure that the Merger does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) for cash and account customers as a result of horizontal unilateral effects.

5. The CMA concluded that the Parties face limited competition for tender customers from other private hire operators, due to the more limited scale and geographic coverage of these competitors, and from other transport providers, due to their typically more specialised and more expensive services. Accordingly, the CMA believes that the Merger gives rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to tender customers. However, the CMA concluded that the market for tender customers in Sheffield is not of sufficient importance to justify the making of a reference and it has therefore decided to exercise its discretion pursuant to section 22(2)(a) of the Enterprise Act 2002 (the **Act**).
6. The CMA also considered whether competition concerns would arise as a result of the Merger from co-ordinated effects. The CMA concluded that barriers to entry are not material and sufficient constraints remain from mid-sized private hire operators, hackneys and the planned expansion of Uber and Gett. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of an SLC as a result of co-ordinated effects in relation to the supply of private hire and hackney transport services to cash and account customers or tender customers in Sheffield.
7. The Merger will therefore **not be referred** under section 22(1) of the Act.

ASSESSMENT

Parties

8. City Taxis is a private hire operator based in Sheffield with [X] licensed drivers pre-Merger. The turnover of City Taxis in the year ending 31 March 2014 was around £7.2 million in the UK.
9. Mercury Taxis was also a private hire operator based in Sheffield. Pre-Merger, Mercury Taxis had agreements with around [X] drivers. The turnover of Mercury Taxis in the year ending 30 June 2014 was around £2.3 million in the UK.

Transaction

10. On 26 March 2015, City Taxis acquired, through a Business Purchase Agreement (**BPA**), the benefit (subject to the burden) of customer contracts, goodwill, information technology systems, intellectual property, business name, signs and licences of Mercury Taxis. Around 34 Mercury Taxis' employees transferred to City Taxis under the Transfer of Undertakings (Protection of Employment) Regulations 2006.¹

Jurisdiction

11. The Act defines an 'enterprise' as 'the activities or part of the activities of a business'.² In making a judgment as to whether or not the activities of a business or part of the activities of a business constitute an enterprise, the CMA considers the substance of the arrangement rather than its legal form. An enterprise may comprise of any number of components, most commonly including the assets and records needed to carry on the business, together with the benefit of existing contracts and/or goodwill.³
12. City Taxis submitted that, whilst the acquisition of Mercury Taxis was categorised in the BPA as the purchase of a going concern, in reality it acquired selected assets. However, having considered the assets which were transferred (see paragraph 10), the CMA believes that they constituted an enterprise. Therefore, as a result of the Merger, the enterprises of City Taxis and Mercury Taxis have ceased to be distinct.
13. The Parties overlap in the supply of private hire and hackney transport services in Sheffield and, as a result of the Merger, the Parties have a combined share of supply, based on the number of licensed drivers in Sheffield, of [50–60]% with an increment of [10–20]% (see paragraphs 62 to 64).
14. Section 23(4) of the Act states that the share of supply test is measured on the basis of supply in a substantial part of the UK. A substantial part of the UK has been found to refer to an area of such size, character and importance as to make it worth consideration for the purposes of merger control.⁴ An estimated 563,749 people live in the city of Sheffield and is the third largest English

¹ Drivers who worked for Mercury Taxis were not transferred under the City Taxis the Transfer of Undertakings (Protection of Employment) Regulations 2006 as they are self-employed.

² Section 129 of the Act.

³ See *Mergers: Guidance on the CMA's jurisdiction and procedure*, paragraph 4.7.

⁴ *R v MMC Ex p. South Yorkshire Transport Limited* [1993] 1 W.L.R. 23 at p32.

district by population and, for this reason, the CMA believes that it might reasonably be described as a substantial part of the UK.⁵

15. The CMA therefore considers that the share of supply test in section 23 of the Act is met.
16. The Merger completed on 1 June 2015 and was first made public on 5 May 2015. The four-month deadline for a decision under section 24 of the Act is 18 October 2015, following extensions under section 25(2) of the Act.
17. The CMA therefore believes that it is or may be the case that a relevant merger situation has been created.
18. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 18 August 2015 and the statutory 40 working day deadline for a decision is therefore 13 October 2015.
19. City Taxis did not notify the Merger to the CMA. The CMA opened an own-initiative investigation into the Merger by sending an enquiry letter to City Taxis on 18 June 2015.⁶

Counterfactual

20. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).
21. 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 than these conditions.⁷

Exiting firm

22. City Taxis submitted that the previous owners of Mercury Taxis were concerned that Mercury Taxis was not capable of competing with Uber, which had recently

⁵ See Office of National Statistics, [Population Estimates for UK, England and Wales, Scotland and Northern Ireland, Mid-2014 \(Reference Tables\)](#).

⁶ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, paragraphs 6.9–6.19 and 6.59–60.

⁷ [Merger Assessment Guidelines](#) (OFT1254/CC2) (2010), from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

entered Sheffield as an operator, or with other private hire operators which it expected to enter the Sheffield market following upcoming changes in regulation in relation to cross-border operations. City Taxis submitted that the most likely situation was that, absent the Merger, Mercury Taxis would have exited the market.

23. For the CMA to accept an exiting firm argument, it would need to believe, on the basis of compelling evidence, that it was inevitable that the firm would have exited the market.^{8,9} Based on Mercury Taxis' financial statements, the CMA notes that Mercury Taxis was profitable in 2013 and 2014.¹⁰ In addition, the BPA indicates that the Merger was conditional on a declaration and confirmation from the directors and accountants of Mercury Taxis, in a form satisfactory to City Taxis, that it was financially solvent at the date of completion and would continue to be financially solvent following completion.¹¹ On the basis of this evidence, the CMA believes that an exiting firm scenario is not an appropriate counterfactual.

Uber

24. Uber started operating in Sheffield on 5 June 2015, four days after completion of the Merger. Therefore, a counterfactual based strictly on the pre-Merger conditions of competition would not take account of Uber's presence in Sheffield.
25. Uber was granted a licence to operate in Sheffield by Sheffield City Council in [REDACTED], and an internal document provided by [REDACTED]. Uber told the CMA that, at the time [REDACTED].
26. Based on this evidence, the CMA believes that Uber's entry into Sheffield was independent of the Merger and it is unrealistic that, in the absence of the Merger, Uber would not have entered. Therefore, the CMA believes that Uber should be considered as a competitor in the counterfactual. The CMA has considered the likely strength of Uber in Sheffield as part of its competitive assessment.

⁸ See [Merger Assessment Guidelines](#), paragraph 4.3.10.

⁹ Moreover, if the CMA believes that the firm would have exited, then it would assess whether there would have been an alternative purchaser of the firm or its assets and what would have happened to the sales of the firm in the event of its exit.

¹⁰ Mercury Taxis' financial statements for the year ended 30 June 2014 indicate that it made a profit of £[REDACTED] and £[REDACTED] in the financial years 2013 and 2014, respectively.

¹¹ See clause 5.1.2 of the BPA.

Conclusion on the counterfactual

27. For the reasons set out above, the CMA has assessed the impact of the Merger using the pre-Merger conditions of competition with the adjustment to recognise the presence and likely growth of Uber.

Background

28. In the United Kingdom, vehicles licensed to provide point-to-point transport services to passengers in return for payment of a fare generally belong to one of two categories: private hire vehicles (**PHVs**, sometimes referred to as 'minicabs') and hackney carriages (typically referred to as 'taxis' or, in some areas, 'black cabs').
29. Under the relevant regulations, PHVs can only fulfil journeys booked in advance. Hackneys can ply for hire on the street or at ranks, but are also permitted to fulfil journeys booked in advance through a private hire operator.
30. Some authorities impose a limit on the number of hackney carriage vehicles they licence. Sheffield City Council has limited the number of its hackney licences to 857. PHVs also require vehicle licences issued by licensing authorities, but this number is not typically restricted.
31. In addition to the relevant vehicle licence, drivers of hackney carriages and PHVs must also obtain a hackney or private hire driver's licence. Some licensing authorities will issue specific licences for driving either a hackney or a PHV, each with specific requirements and fees. Other authorities, including Sheffield City Council, issue dual licences, which can be used to drive either type of vehicle. Bookings for private hire transport cannot be taken by a driver directly but must be made through an operator who also must hold a licence issued by a licensing authority.
32. Under the current relevant legislation,¹² for bookings for transport in a PHV to be lawfully fulfilled, the operator, driver and vehicle must all be licensed by the same licensing authority. However, once licensed by the same authority, an

¹² Local Government (Miscellaneous Provisions) Act 1976, s. 46, s.55. In *Dittah v Birmingham City Council and Choudry v Birmingham City Council* [1993] R.T.R. 356 the Court was asked to consider 'whether s 46(1)(e) of the Local Government (Miscellaneous Provisions) Act 1976 must be read subject to the provisions of s 80(2) of that Act so as to require private hire operators licensed under s. 55 of the Act to make use only of vehicles and drivers licensed by the council of the district by which the operators are licensed, or whether s. 75(2) of the Act, read in conjunction with s. 80, allows operators to use or to employ drivers and vehicles licensed by a district council other than that in which the operator is licensed.' It concluded that section 46(1)(e) of the Local Government (Miscellaneous Provisions) Act 1976 must be read: '...so as to require private hire operators licensed under s 55 of the Act to make use only of vehicles and drivers licensed by the council of the district by which the operators are licensed when operating in that controlled district.'

operator is free to accept and fulfil work in any borough, not just its licensing borough.¹³ This requirement is known as the ‘triple lock’. For example, an operator licensed in Rotherham can provide PHV transport to passengers starting and ending a journey in Sheffield so long as the booking is taken in Rotherham and the driver and vehicle are licensed in Rotherham.

33. The triple lock does not apply to hackney carriage vehicles, ie hackney vehicles and their drivers can be used to fulfil bookings for any private hire operator, even operators licensed in a different area to the vehicle and driver.¹⁴
34. Section 11 of the Deregulation Act 2015 (the **Deregulation Act**) took effect on 1 October 2015. This now allows private hire operators to subcontract bookings to private hire operators licensed by other licensing authorities. For example, from 1 October an operator licensed to operate in Sheffield can subcontract a PHV booking to a Rotherham operator to be fulfilled by a driver and vehicle licensed in Rotherham. The effect of the Deregulation Act on entry barriers is discussed in the competitive assessment.
35. Third parties told the CMA that price is an important determinant of customers’ choice between private hire operators. Private hire operators generally set the fare tariff applied to passengers’ journeys, consisting of a fare per mile for the first mile, a lower fare per mile thereafter and a fare per minute waiting time. City Taxis submitted that its drivers cannot deviate from the fare tariff set by the operator and that this is the standard structure for private hire transport pricing in the UK.¹⁵ Hackney fares are regulated by local authorities.

¹³ In *Shanks v North Tyneside Borough Council* [2001] EWHC Admin 533 it was put to the court that ‘provided that the operator uses vehicles and drivers which are licensed by any authority then that accords with the proper meaning of the phrases in s 46(1)(e).’ The court disagreed:

22 ... The provisions of s 80(2) as applied to s 46(1)(e) , in my judgment, brook of no other answer but that the operator granted the licence under s 55 can only operate vehicles and drivers licensed by the licensing authority which granted it its operator’s licence.” However, it continued: “26 The meaning of ‘operator’ in s 80 when taken in conjunction with s 75(2) provides for considerable flexibility. The operator can use the vehicles within his organisation for journeys both inside and outside the area of the local authority in which he is licensed and, indeed, can use such vehicles and drivers for journeys which have ultimately no connection with the area in which they are licensed.

27 There was before the magistrates a consequential question arising out of the primary question as to the extent to which the subcontracting of work was permissible. It seems to me, and I think it is agreed by both counsel, that the answer to the proper meaning of s. 46(1)(e) effectively answers that question. It is clear that whenever any operator acts by making provision for the invitation or acceptance of bookings for a private hire vehicle, he must use vehicles and drivers licensed by his licensing authority. He is perfectly entitled to do that by way of subcontract; but he cannot obtain the use of vehicles or drivers licensed by another authority in order to carry out the booking which he has as an operator made provision for by way of invitation or acceptance.

¹⁴ In the case of *Stockton-on-Tees Borough Council v Fidler* [2010] EWHC 2430 (Admin); [2011] R.T.R. 23 the court decided that a hackney carriage, wherever it is licensed, may be used as if it were a PHV without the need of any further licence. The reasoning was based on the interpretation of the Local Government (Miscellaneous Provisions) Act 1976, s. 80(1).

¹⁵ Drivers are, however, permitted to accept tips at the passenger’s discretion.

36. Third parties also indicated that private hire operators and hackneys compete on non-price factors, such as response times and accessibility. Private hire operators may provide additional training and uniforms to drivers, carry out spot checks on the cleanliness of their drivers' vehicles, monitor complaints against drivers, and/or provide chip-and-pin facilities for vehicles.
37. For most private hire operators in Sheffield, drivers pay a flat fee to the operator for a given period, eg per week or half-week (so-called 'radio rent') in order to receive bookings. For the operator's cash customers (ie those who pay by cash or card at the end of their journey), drivers then retain the fares collected. For account customers (ie those who pay on an invoice basis, eg corporate customers), the driver is paid a percentage commission for all such bookings fulfilled. Under some new business models, drivers do not pay a flat fee but rather pay a percentage of all fares collected to the relevant operator.

Frame of reference

38. 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 important than others. The CMA will take these factors into account in its competitive assessment.¹⁶

Product scope

39. The CMA's approach to assessing the product frame of reference is to begin with the overlapping products of the merger parties in the narrowest plausible product frame of reference and then to see if this should be widened on the basis, primarily, of demand-side considerations. The CMA will assess whether sufficient switching on the demand or supply side would render a small but significant non-transitory increase in prices unprofitable for a hypothetical monopolist provider.¹⁷
40. The Parties overlap in the supply of private hire transport services in Sheffield. Before the Merger, each of the Parties provided private hire transport services to individual customers, account customers and tender customers (ie large public bodies such as NHS Trusts and Sheffield City Council).

¹⁶ [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹⁷ [Merger Assessment Guidelines](#), paragraph 5.2.8 and 5.2.11.

41. The UK competition authorities have not previously decided any merger cases in the supply of private hire transport services or related services. City Taxis submitted that its main competitors for cash and account customers were private hire operators. With regard to tender customers, City Taxis indicated that it faced competition from a wider range of businesses, including providers specialised in patient transport for supply to NHS trusts.

Hackneys

42. The Parties overlap in the supply of private hire transport services. This frame of reference would include hackneys when they fulfil bookings taken by a private hire operator.¹⁸ However, City Taxis submitted that hackneys plying for hire on the street or at ranks should also be included in the frame of reference as (i) both hackneys and private hire operators are governed by the same legislation and are licensed by the same licensing authority; (ii) both are subject to the same licensing fees imposed by Sheffield City Council; and (iii) the fact many hackneys take bookings from private hire operators on a regular basis shows that there is little differentiation.
43. The CMA considered whether the market should be expanded to include transport services provided by hackney carriages plying for hire on the street or at ranks.
44. Transport provided by hackneys plying for hire and by private hire operators are similar in that they serve the same intended use, ie they provide transport for individuals and groups of passengers to their specified destination. The main point of differentiation is in how the service is accessed, ie flagging down or walking to a rank versus booking in advance. There are also differences between hackneys and private hire transport in pricing, both in price levels and in price regulation.
45. In terms of pricing, hackneys plying for hire on the street or at ranks in Sheffield operate under maximum fares set by Sheffield City Council.¹⁹ An internal document provided by Uber shows that it [redacted].
46. GMB, a general trade union that represents private hire drivers, discussed with its members [redacted]. The CMA notes that there had been no price variation by

¹⁸ Private hire transport services are booked in advance by telephone, website, mobile application (**app**) or in person. It includes all journeys fulfilled through a private hire operator, whether the vehicle used is a PHV or a hackney.

¹⁹ When hackney drivers undertake advance booking work from private hire operators, they apply the fares set by the operator (these fares cannot exceed the maximum set by the relevant licensing authority for hackneys).

either of City Taxis or Mercury Taxis over the last five years so the basis for these views is not clear.

47. City Taxis submitted that, when setting its fares, it tracks regulated hackney charges, setting its fares at a slightly cheaper rate. Most competitors said that they also take regulated hackney charges into account when determining fares. [X].
48. Most account customers who responded to the CMA indicated that they would not switch from private hire operators to hackneys if the prices charged by all private hire operators increased by a small but significant amount, such as 5%. However, the CMA believes that the switching behaviour of account customers, such as corporate businesses and hotels, may not reflect the behaviour of cash customers, for whom the barriers to switching might be lower. In particular, for cash customers who are in an area with a high density of hackneys plying for hire (eg the city centre), hackneys are likely to be seen as highly convenient. Though for cash customers in other areas (eg in the suburbs) they might be much less convenient.
49. Overall the CMA notes that there is mixed evidence on whether demand-side substitution by cash and account customers to hackneys plying for hire would be sufficient to make a significant non-transitory increase in prices by a hypothetical monopolist private hire operator unprofitable. However, based on (i) the similarity of the basic intended use of hackney and private hire transport services; (ii) internal documents suggesting consideration of hackney prices by private hire operators; (iii) third party comments by operators suggesting hackney prices affect their own price-setting; (iv) a potentially higher level of convenience for the proportion of customers whose journeys originate in areas with good coverage by hackneys (such as the city centre); and (v) the use of hackney carriages by private hire operators to serve their customers suggesting similar vehicle characteristics for a proportion of private hire operators' fleets, the CMA believes that hackneys impose sufficient constraints on private hire transport services to warrant including them within the frame of reference. The CMA notes that the competitive constraint posed by hackneys plying for hire on private hire transport services is likely to vary based on the demand characteristics associated with a journey, eg the location and urgency of pick-up,²⁰ which is taken into account in the competitive assessment.

²⁰ For example, hackneys are likely to pose a weaker constraint for journeys that are booked a long time in advance than for journeys that are booked on an 'as soon as possible' basis. The constraint posed by hackneys may also vary depending on a journey's pick-up location (eg customers located outside the city centre may not be able to hail a hackney) or by customer segment (eg business customers and tender customers may not be able to use hackneys because they require in-advance booking or have other requirements).

Tender customers and cash and account customers

50. The CMA also considered whether the conditions of competition were likely to differ between tender customers and cash and account customers. Different segments may be relevant when suppliers are able to offer different terms to different customer groups, such that the conditions of competition vary between those groups.
51. City Taxis submitted that segmenting the product scope was appropriate as competition for tenders could be characterised as competing for the market rather than in a market. It also submitted that competitors for private transport tenders were different from competitors for cash and account work, and there is a wider range of competitors for tendered work.
52. City Taxis submitted its pricing structure and each of the Parties' bids and/or contracts relating to its tender customers. This evidence showed that fares for tender customers differ from the Parties' basic fares, suggesting that PHV operators price-discriminate between these groups of customers.
53. Information from third parties showed that tender customers have specific requirements, such as readily-available vehicles, which requires the provider to have a large fleet, and in some cases drivers with particular training and wheelchair accessible vehicles. Third parties said that not all private hire transport providers would supply tender customers. This evidence suggests that the level of competition may differ between competition for tender customers and competition for cash and account customers.
54. On the basis of this evidence, the CMA believes that the competitive dynamics affecting these two categories of customers vary significantly and therefore that the supply of private hire and hackney transport services to cash and account customers should be considered separately from the supply of private hire and hackney transport services to tender customers.

Geographic scope

55. City Taxis submitted customer data for each of the Parties, which indicated that they both supplied private hire transport services across the entire Sheffield postcode region, denoted S1 to S81, which is wider than the Sheffield licensing borough.²¹ In addition, City Taxis said that neither company

²¹ The Sheffield postcode area includes, among other areas, Sheffield, Barnsley, Chesterfield, Dronfield, Hope Valley, Mexborough, Rotherham and Worksop.

had a policy to control or influence the area in which drivers worked.²² City Taxis submitted that the appropriate geographic scope was at least South Yorkshire/North Derbyshire, and it was likely to move to a national market as a result of the Deregulation Act. However, City Taxis said that it is uneconomic to accept bookings outside Sheffield, particularly if the pick-up location is far away.

56. City Taxis provided individual booking data over the three months prior to the Merger, including data on pick-up locations. This data indicated that a large majority of the Parties' journeys started in the postcode areas S1-18 and S20.
57. With regard to tender customers, City Taxis submitted that the geographic scope is much wider and there is likely to be a national market. However, the CMA found only limited evidence of competition from private hire operators located outside Sheffield for tender customers in Sheffield.
58. On the basis of this evidence, the CMA concludes that the Parties' overlapping areas in Sheffield (**Sheffield**) constitute the appropriate geographic frame of reference. Third party evidence has not suggested otherwise. The CMA believes that it is more appropriate to take account of any further competitive constraints from outside these areas, eg as a result of the Deregulation Act, in the competitive assessment. In its competitive assessment the CMA also considers whether the competitiveness of private hire and hackney transport services varies within Sheffield.

Conclusion on frame of reference

59. For the reasons set out above, the CMA has assessed the impact of the Merger in the following frames of reference:
 - private hire and hackney transport services to cash and account customers in Sheffield; and
 - private hire and hackney transport services to tender customers in Sheffield.

²² Private hire operators need to have a registered office and licence in the same licensing area. A registered office can only offer bookings to private hire drivers who are also registered within the same licensing area and who have a vehicle licensed in the same licensing area. Drivers who are offered a booking have the discretion to refuse it if, for instance, it is not economical.

Competitive assessment

Horizontal unilateral effects

60. 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 co-ordinate with its rivals.²³ 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 substantial lessening of competition in relation to horizontal unilateral effects in the two frames of reference identified.
61. The CMA examined the following areas in order to assess the Merger:
- shares of supply;
 - closeness of competition; and
 - competitive constraints.

Cash and account customers

Shares of supply

62. The CMA has estimated shares of supply for the Parties and their competitors, based on information provided by City Taxis and third parties, as shown in Table 1. These shares of supply are based on the number of licensed drivers working for private hire operators or as independent hackneys compared to the total number of licensed drivers.

²³ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

Table 1: Estimated shares of supply of private hire and hackney transport services in Sheffield

	<i>Number of licensed drivers</i>	<i>%</i>
City Taxis	[X]	[30–40]
Mercury Taxis	[X]	[10–20]
Combined	[X]	[50–60]
Excel Cars	[X]	[5–10]
Uber	[X]	[0–5]
Network Taxis	[X]	[0–5]
Gett	[X]	[0–5]
Fast 4's	[X]	[0–5]
S1 Cars	[X]	[0–5]
Express Cars	[X]	[0–5]
Active Response Transport	[X]	[0–5]
Union Cars	[X]	[0–5]
Other operators and independent hackneys	[X]	[20–30]%
Total	2,804	100

Source: CMA estimates based on data from City Taxis and third parties.

63. Table 1 shows that City Taxis and Mercury Taxis were the two largest private hire operators in Sheffield, with a combined share of supply of [50–60]%, and an increment of [10–20]% arising from the Merger. City Taxis indicated that 50 Mercury drivers left following the Merger, which would imply a current market share of approximately [50–60]%.
64. These figures will overestimate the shares of supply of private hire operators (including the Parties), and will underestimate the share for independent hackneys, as the hackneys in the private hire fleets will often ply for trade independently as hackneys, instead of taking private hire bookings, in particular at peak times.
65. These shares of supply suggest that the Parties had a strong position in the Sheffield market pre-Merger.

Closeness of competition between the Parties

66. To assess closeness of competition between the Parties, the CMA first sought to identify the product features that matter to their customers. Most account customers told the CMA that the service features that they valued were: response times, service quality, and pricing. Some of these customers also said that they valued a broad geographic coverage, but this was less important for others. The internal documents of one competitor showed that it monitored its response times and compared them to those of its competitors, which confirmed that this is an important aspect of competition.
67. The CMA did not receive any direct representations from individual customers but City Taxis and some competitors indicated that individual cash customers tend to value the same features as account customers, possibly with less

emphasis on geographic coverage. The CMA therefore assessed closeness of competition between the Parties along these different dimensions.

- **Response times.** The CMA did not find any consistent data from the Parties or third parties on response times, but noted that response times were likely to be closely linked to the density of drivers in the areas served. For this reason, City Taxis was likely to have the shortest response times of any firm offering a pan-Sheffield service, but Mercury Taxis, as the second-largest operator, was likely to be its closest competitor.
- **Geographic coverage.** City Taxis submitted that both Parties were active in the whole Sheffield postcode area but mainly in Sheffield city. City Taxis indicated that Mercury Taxis' focus was more concentrated within specific postcode areas in Sheffield city (ie West Sheffield). One customer which switched from Mercury Taxis to City Taxis noted that the Parties are the two main companies which cover the whole of Sheffield.
- **Quality of service.** City Taxis submitted that it shared some characteristics with Mercury Taxis. Both firms provided: (i) a 24/7 booking service, (ii) an app, (iii) a website, and (iv) training for drivers. However, there were also some differences, eg only City Taxis provided mandatory first aid training, Passenger Assistance Training and uniforms to its drivers, and Mercury Taxis' app was unsuccessful. City Taxis told the CMA that first aid training was not important for cash or account customers and was relevant only for tender customers whose passengers had specific requirements.
- **Pricing.** City Taxis provided data which showed that, prior to the Merger, both of the Parties charged £3.80 for the first mile, and £1.30 (City Taxis) or £1.40 (Mercury Taxis) per mile thereafter. Both charged 20 pence per minute waiting time.²⁴ City Taxis increased its fare per mile from £1.30 to £1.40 on 20 April 2015.ⁱ

68. This comparison suggests that, prior to the Merger, the Parties offered similar service features and pricing levels to cash and account customers, although Mercury Taxis had a narrower geographic focus.

69. Account customers told the CMA that they considered the Parties to be close competitors. One customer noted that both companies offered a high level of

²⁴ City Taxis submitted that this fare increase took place after the BPA between the Parties was signed. However, City Taxis submitted that the decision to increase fares was introduced in response to pressure from drivers and was taken in November 2014. GMB confirmed that this was agreed in advance of the Merger but was delayed to allow for a period of consultation with the drivers.

service. Another customer listed several private hire operators but said that only City Taxis and Mercury Taxis were rated as excellent or very good (respectively), which were the highest two ratings given by that customer. One competitor stated that the Parties competed for large business customers, such as hotels. Another competitor indicated that it only considered City Taxis and Mercury Taxis to be its competitors.

70. On the basis of this evidence, the CMA believes that prior to the Merger the Parties were close competitors for many cash customers and for account customers looking for wide coverage and reasonable response times across the city.

Competitive constraints

71. City Taxis submitted that there are 29 licensed private hire operators in Sheffield and it named five of these operators as its main competitors for both cash and account customers: Excel Cars, Network Taxis, S1 Cars, Fast 4's and Uber. Other operators with more than five cars or drivers include Express Cars, Union Cars and A1 Cars. City Taxis submitted that it was also constrained by hackneys plying for hire on the street and at ranks.
72. City Taxis provided the details of those operators it identified as competitors in relation to their size and area of operation, as summarised in Table 2.

Table 2: Operators identified by City Taxis as competitors

<i>Operator</i>	<i>Area of operation</i>	<i>Number of licensed drivers</i>
Active Response Transport	No information provided	[REDACTED]
Express Cars	East Sheffield and Lower Don Valley	[REDACTED]
Excel Cars	North and North West Sheffield	[REDACTED]
Fast 4's	South and South East Sheffield	[REDACTED]
Network Taxis	West and South West Sheffield	[REDACTED]
S1 Cars	Central Sheffield	[REDACTED]
Uber	Nationwide	[REDACTED]
Union Cars	North Sheffield	[REDACTED]

Source: City Taxis.

73. The CMA assessed the competitive constraints from the following alternative providers:
- mid-sized private hire operators;
 - small-sized private hire operators;
 - hackneys;
 - app-based operators (Uber and Gett); and
 - private hire operators operating from neighbouring licensing areas.

Mid-sized private hire operators

74. The CMA considers operators with approximately 50 to 200 licensed drivers or cars in their fleets (see Table 2) as mid-sized private hire operators. In this segment, Excel Cars appears to be the Parties' largest competitor, followed by Network Taxis, S1 Taxis and Fast 4's. The CMA examined the competitiveness of these operators according to the same service features outlined above.
- **Geographic coverage and response times.** Third party evidence indicates that mid-sized operators have a narrower geographic focus than the Parties. City Taxis confirmed that Excel Cars primarily competes with the Parties for customers in North and North West Sheffield, Network Taxis for customers in West and South West Sheffield, and Fast 4's for South and South East Sheffield. The CMA did not find consistent data on response times. The CMA believes that, to the extent that these operators have a density of drivers in certain areas of Sheffield, they may be able to offer good response times to customers whose journeys start in those areas.
 - **Service quality.** City Taxis submitted that it believes Excel Cars, Express Cars, Union Cars, Uber, Fast 4's and Network Taxis all operate 24/7 booking services. City Taxis submitted that none of these companies offer a mobile application, except for Uber (see paragraph 85). The CMA understands that Network Taxis also offers an app, although with only a very small number of downloads.
 - **Pricing.** City Taxis submitted that smaller operators are generally cheaper than the Parties. The CMA's merger investigation confirmed this, finding that some are cheaper overall and others are cheaper per mile after the first mile.
75. This comparison indicates that mid-sized operators have a slightly different offering compared with the Parties, in that they compete more on price and a local service rather than quality and pan-Sheffield coverage. Consistent with this view, City Taxis submitted that it competes on quality more than on price, and that, because of its infrastructure and tax compliance, it is not the cheapest operator in Sheffield. City Taxis said that it therefore benchmarks its prices against high quality operators in other cities in the UK.
76. The CMA asked the account customers of the Parties whether they could use any alternatives. One account customer indicated that the only alternative private hire operator is Network Taxis. Another customer listed three alternatives to the Parties: Excel Cars, S1 and A1. Another mentioned Excel

Cars, A1, Network Taxis and Fast 4's, though also stating that their quality is worse and more variable than the Parties'. Uber, Blueline Taxis and S1 Taxis were also mentioned by one account customer. However, several account customers told the CMA that they are not aware of any competitors to the Parties for their account business. Another account customer said that it had looked at alternative operators but was unable to engage with any of them.

77. One competitor said that the only potentially significant competitor to the Parties is Excel Cars, but it added that City Taxis did not compete with Excel Cars due to the ownership links between the firms.²⁵ Another competitor said it benchmarked its fares against several other private hire operators, but not against the Parties.
78. On the basis of this evidence, the CMA believes that mid-sized operators might be a credible alternative for some customers, especially those who are particularly price-sensitive or who do not require fast response times across the whole of Sheffield, and as such they are likely to exert a degree of constraint on the Parties. In particular, when considered in aggregate, many customers are likely to have alternative mid-sized private hire providers. However these providers may not be a credible alternative for all customers.

Small-sized private hire operators

79. There is a large 'tail' of 24 operators with fewer than 50 drivers in Sheffield. 21 of these operators have five or fewer drivers. Given the limited scale and coverage of these providers, the CMA believes that they are unlikely to exert a significant constraint on the merged entity.

Hackneys

80. Based on the estimated number of licensed hackney drivers working for Sheffield private hire operators (528) and the total number of licensed hackney drivers in Sheffield (857), the CMA estimates that around 329 hackneys operate entirely independently of any private hire operator. The CMA notes that this number excludes hackney drivers who 'switch' from working for an operator to working independently at times of high demand.
81. Independent hackneys tend to work predominantly in the city centre and around the main transport hubs where ranks are positioned. For this reason, the CMA believes that some customers may consider hackneys to be a convenient option for some of their journeys, while other customers may prefer pre-booking. As explained above, hackneys tend to be slightly more

²⁵ [REDACTED]. The CMA considers that the incentive for Excel Cars to compete with City Taxis may therefore be reduced.

expensive than PHVs, especially for long journeys. City Taxis and some third parties submitted that hackneys impose particularly strong constraints on the Parties in Sheffield city centre and at events in Sheffield.

82. The CMA believes that, while some customers, such as account customers or customers whose journey starts in the suburbs, are less likely to consider hackneys as suitable alternatives to the Parties, other customers whose journeys originate in the city centre and do not require pre-booking are likely to consider hackneys as a good alternative. The CMA also notes that some private hire operators take hackney fares into consideration when determining their fares. Overall, the CMA believes that hackneys do exert a degree of constraint on the Parties.

App-based operators (Uber and Gett)

83. Uber submitted that it entered as a private hire operator in Sheffield on 5 June 2015 and by mid-August, when the CMA launched its present investigation, it had [redacted] drivers. Uber entered in Leeds and Manchester in 2014 and, in both these markets, it estimates that it currently has a share of around [redacted] (by number of drivers).
84. City Taxis submitted that Uber is aggressively competing for drivers in Sheffield, engaging in advertising and offering substantial promotions to customers.
85. The CMA assessed Uber's competitiveness according to the same service features outlined above.
- **Geographic coverage and response times.** Uber's internal documents show that it plans to expand to [redacted] in Sheffield by the end of 2015, equivalent to a share of all 2,804 licensed drivers of [5–10]%, and slightly higher when compared to private hire drivers only. The share of private hire drivers won by Uber would be consistent [redacted] share of private hire drivers achieved by Uber in other UK cities where it has entered recently (eg Manchester and Leeds). Currently, Uber's launch and expansion in Sheffield [redacted].²⁶ The CMA notes that, [redacted] offer a geographic coverage and level of response time approaching that offered by Mercury Taxis prior to the Merger.
 - **Service quality.** Uber's offering differs from those of the Parties and other PHV operators as a vehicle can only be booked immediately with Uber through its app. Partly as a result of this feature, Uber told the CMA that it

²⁶ In the most recent data available, [redacted].

targets [REDACTED]. Uber also offers 'Uber for Business' to serve corporate customers [REDACTED].

- **Pricing.** An internal document provided by Uber indicates that [REDACTED]. Uber's low prices suggest that it imposes a strong constraint on the Parties, particularly as the CMA found no evidence that Uber's quality of service was any lower.

86. The CMA also noted the following points about Uber.

- **Strong brand recognition:** Uber is a large, international supplier of private hire transport services, with a well-established brand in several countries, and is present in several other cities in the UK, including London, Birmingham, Leeds, Manchester, Bristol, Newcastle and Liverpool/Merseyside. A strong brand increases the competitive constraint of Uber on City Taxis as it allows Uber to overcome the barrier to switching which may arise from uncertainty about the quality and reliability of an unknown brand. Some third parties told the CMA that historical presence and/or reputation were important to their choice of private hire operator. Internal documents provided by Uber show that [REDACTED] customers and [REDACTED] drivers in Sheffield were using Uber's app or website tools before it had entered the Sheffield market, indicating a strong brand presence.
- **Historical success in entering UK cities:** As mentioned above, Uber has already successfully entered several UK cities, gaining a market share of around [REDACTED] from incumbent operators in at least two of those cities. The CMA believes that, while Sheffield may differ in certain respects, including high levels of concentration prior to Uber's entry, this track record suggests that Uber will represent an important constraint on the Parties.

87. City Taxis submitted that Gett is another new entrant in Sheffield, adding that Gett is currently the largest global supplier of private hire services. City Taxis said that Gett has registered a substantial number of hackneys for its app in Sheffield.

88. Gett submitted that it is an app-focused technology company active globally, including in the UK, where it generally only provides hackneys. It indicated that it entered Sheffield [REDACTED]. Gett said that it aims to have around [REDACTED] hackney drivers by the end of 2015. Hackney drivers could be independent hackney drivers or drivers which already operate for other private hire operators. Gett said that, once it has [REDACTED]. Gett indicated that it [REDACTED].

89. On the basis of this evidence, the CMA believes that Uber and Gett are likely to expand further and that these operators will compete closely with the Parties for customers for whom scale, fast response times and geographic coverage are important. Uber and Gett may not be a credible alternative to the merged entity for customers that are reluctant to use apps for their bookings but, overall, particularly as these firms look to expand, they are likely to impose a considerable constraint on the Parties.

Private hire operators operating from neighbouring licensing areas

90. The current regulatory framework allows a private hire operator that complies with a triple lock in a neighbouring licensing area (eg Rotherham or North Derbyshire) to dispatch vehicles for bookings in Sheffield. However, the CMA received mixed evidence on the extent to which this happened in practice. GMB said that operators did this but City Taxis submitted that sending drivers from one area to another for individual jobs was impractical because it would involve too much 'dead mileage' and would result in poor service for customers. The Parties' booking data indicates that the Parties do pick up customers in neighbouring boroughs but only occasionally. Therefore, the CMA believes that, currently, competition from operators licensed in neighbouring areas is limited.
91. However, City Taxis submitted that this will change dramatically as a result of the Deregulation Act. This will allow private hire operators to subcontract bookings to private hire operators licensed by other licensing authorities. For Sheffield, this means that:
- an operator licensed in Sheffield can subcontract bookings to an operator licensed in another area (including to itself) which must use PHVs and drivers licensed by the same authority (or hackneys licensed by any authority); and
 - an operator licensed in an adjacent area to Sheffield can subcontract bookings to an operator licensed in Sheffield that must use PHVs and drivers licensed in Sheffield (or hackneys licensed by any authority).
92. City Taxis said that it expects a significant increase in competition from a number of sources following this legislative change, in particular from operators in immediately adjacent geographic areas, eg Rotherham, Barnsley, Chesterfield and North Derbyshire, and from national private hire operators such as Addison Lee and Veezu. City Taxis submitted that it will make cross-border operations much more cost effective. City Taxis said that, in light of the Deregulation Act, it is registering offices in boroughs outside Sheffield.

93. Some third parties agreed that the Deregulation Act will make it easier to set up as a new operator or to expand into new areas. However, another competitor did not consider the Deregulation Act to be a relevant factor in its expansion plans.
94. On the basis of this evidence, the CMA believes that the expected regulatory changes will facilitate the expansion of private hire operators across licensing areas, including in Sheffield, but it is unclear whether this effect will be significant and the extent to which it will increase competition in Sheffield. For this reason, the CMA did not place much weight on new competition arising in Sheffield from operators based outside Sheffield as a result of the Deregulation Act.

Conclusion on cash and account customers

95. The CMA's assessment indicates that the Parties competed closely before the Merger, although Mercury Taxis had a narrower geographic focus. However, the CMA has found that the merged entity will be subject to a number of constraints following the Merger: mid-sized private hire operators are likely to be a suitable alternative for customers whose journey originates outside the city centre; hackneys are likely to be a suitable alternative for customers whose journey originates in the city centre and who do not require pre-booking; and recent entrants such as Uber and Gett, with track records of taking share from incumbents in other UK cities, are growing fast. While these competitors all position themselves differently, the CMA believes that, collectively, they offer multiple alternatives to most of the cash and account customers of the Parties. In addition, the Deregulation Act will facilitate the expansion of private hire operators across licensing areas. For these reasons, the CMA believes that the merged entity is unlikely to be able to raise its fares or degrade its quality without losing a significant share of its customers to other operators. Accordingly, the CMA does not believe that the merger would give rise to a realistic prospect of an SLC for cash and account customers.

Tender customers

96. City Taxis supplies private hire transport services on a contract basis to several customers in Sheffield and the surrounding areas, including NHS Renal Dialysis Transport Services, Yorkshire Ambulance Service, Sheffield Teaching Hospitals NHS Foundation Trust and Rotherham Clinical Commissioning Group.
97. City Taxis and Mercury Taxis competed against each other and both won tendered contract work to supply private hire services to Sheffield City Council for the transport of vulnerable people, children and young adults, and to

Sheffield Health and Social Care NHS Foundation Trust for the transport of mental health patients and vulnerable adults. Mercury Taxis did not submit bids for the other contracts (see paragraph 96) which were won by City Taxis for various reasons, eg missing a deadline, not receiving work on a previous contract, not passing the pre-approval stage or the work not being suitable for its business model.

98. Several tender customers told the CMA that the Parties were close competitors before the Merger. One of these tender customers indicated that the Parties were the only PHV operators with sufficient capacity for its requirements. Another said that the Parties were very similar companies, both with a large number of drivers.
99. The CMA considered whether other operators exerted constraints on the Parties for tender customers.
100. While the Deregulation Act may in future facilitate the expansion of private hire operators across licensing areas, including to provide tendered services, the CMA found no evidence that, currently, any of the potential competitors identified by City Taxis competed strongly with the Parties for tender customers. Some tender customers told the CMA that they received only one bid in their tenders, and another said that it received a second bid from a private hire operator but this operator received a significantly lower score in its rating. Another tender customer said that some transport providers are able to provide transport services to cover elements of the contract but these are more expensive than private hire operators due to capacity constraints. Another said that it was aware of other providers such as Red Cross, Voluntary Car Drivers, Yorkshire Ambulance Service and Arriva but they all use different business models and the average journey cost varies.
101. Only one tender customer suggested that there are alternative private hire operators which it could use, including S1, Active Transport Services and Active Response Transport. This customer indicated that it used these other operators for specific requirements, such as wheelchair access or the need for patient escort, and, as they were significantly more expensive, they were only used for these purposes. This customer said that it used the City Taxis and Mercury Taxis for very similar purposes, ie where the requirement was simply for a vehicle and a driver.
102. [REDACTED]. This evidence suggests that City Taxis may have had an incentive to raise its prices post-Merger.
103. The CMA also considered whether Uber or Gett would impose constraints on the merged entity for tender customers. [REDACTED]. On the basis of this evidence,

the CMA has not placed any weight on Uber and/or Gett imposing a constraint on the merged entity for tender customers.

Conclusion on tender customers

104. For the reasons set out above, the CMA believes that the Parties face limited competition for tender customers from either other private hire operators, due to their more limited scale, geographic coverage and/or different product offerings, or from other transport providers, due to their typically more specialised and more expensive services. Accordingly, the CMA believes that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of private hire and hackney transport services to tender customers in Sheffield.

Co-ordinated effects

105. Co-ordinated effects may arise when firms operating in the same market recognise that they are mutually interdependent and that they can reach a more profitable outcome if they co-ordinate to limit their rivalry.²⁷ A merger may raise competition concerns as a result of co-ordinated effects if it affects the market structure such that the conditions for sustaining co-ordinated effects are created or enhanced.
106. Based on the evidence set out under ‘horizontal unilateral effects’, the CMA believes that sufficient constraints remain on the Parties post-Merger for cash and account customers from mid-sized private hire operators, hackneys, and Uber and Gett. The CMA believes that, particularly in the context of dynamic new entry and expansion, there is little prospect of the conditions for sustaining co-ordinated effects arising. Accordingly, the CMA believes that the Merger does not give rise to a realistic prospect of a substantial lessening of competition as a result of co-ordinated effects in relation to the supply of private hire and hackney transport services to cash and account customers in Sheffield.
107. While co-ordinated effects in relation to the supply of private hire and hackney transport services to tender customers in Sheffield cannot be ruled out in this way, the CMA has not investigated this fully for the reasons set out below (see paragraphs 112 to 122).

²⁷ [Merger Assessment Guidelines](#), paragraph 5.5.1.

Third party views

108. The CMA contacted the Department for Transport, drivers' unions, account and tender customers, and competitors of the Parties. A few customers and most of the Parties' competitors raised concerns regarding the level of competition remaining after the Merger. No other third parties raised concerns.
109. Third party comments have been taken into account where appropriate in the competitive assessment above.

Conclusion on substantial lessening of competition

110. Based on the evidence set out above, 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 an SLC as a result of horizontal unilateral or co-ordinated effects in the supply of private hire and hackney transport services to cash and account customers in Sheffield.
111. However, based on the evidence set out above, the CMA believes 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 as a result of horizontal unilateral effects in relation to the supply of private hire and hackney transport services to tender customers in Sheffield, and that there could be a risk of co-ordinated effects in this segment too (though the CMA has not investigated this).

Exceptions to the duty to refer

112. Where the CMA's duty to refer is engaged, the CMA may, pursuant to section 22(2)(a) of the Act, decide not to refer the merger under investigation for a Phase 2 investigation on the basis that the market(s) concerned is/are not of sufficient importance to justify the making of a reference (the ***de minimis* exception**). The CMA has considered below whether it is appropriate to apply the *de minimis* exception to the present case.

Markets of insufficient importance

113. In considering whether to apply the *de minimis* exception, the CMA will consider, in broad terms, whether the costs involved in a reference would be disproportionate to the expected customer harm, taking into account the size of the market, the likelihood that harm will arise, the magnitude of competition

potentially lost, the duration of such effects and the replicability of the Merger.²⁸

'In principle' availability of undertakings in lieu

114. The CMA's general policy, regardless of the size of the affected market, is not to apply the *de minimis* exception where clear-cut undertakings in lieu of a reference could, in principle, be offered by the Parties to resolve the concerns identified.²⁹
115. In order for an undertaking in lieu to be available in principle it must be:
- sufficiently clear-cut; and
 - not wholly disproportionate in relation to the concerns identified.³⁰
116. If the competition concerns arising from a merger relate to such an integral part of the transaction that to remedy them via a structural divestment would be tantamount to prohibiting the merger altogether then clear-cut undertakings in lieu are not in principle available.³¹
117. In this case, the CMA believes that there is no sufficiently clear-cut and proportionate divestment possible to resolve the concerns identified for tender customers³² because an effective divestment remedy would be tantamount to prohibition.
118. On this basis the CMA therefore proceeded to consider whether to exercise its discretion to apply the *de minimis* exception.

Relevant factors

119. Where the annual value in the UK of the market(s) concerned is, in aggregate, less than £3 million and where the CMA considers that there are no clear-cut undertakings in lieu in principle available, a reference will generally not be justified.³³ In this case, the aggregate value of private hire transport services

²⁸ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122), December 2010, chapter 2. The *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* were adopted by the CMA (see *Mergers: Guidance on the CMA's jurisdiction and procedure*, Annex D).

²⁹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 2.2 and 2.18-27.

³⁰ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance* (OFT1122), December 2010 - see paragraphs 2.22-2.27.

³¹ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraph 2.25.

³² *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 2.22 and 2.25.

³³ *Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance*, paragraphs 2.2, 2.15

provided by the Parties to tender customers for which data was available to the CMA (based on third party responses) was approximately £[~~3~~] million. While there were two additional contracts for which a value could not be established, the CMA considers, based on the value of the available tender contracts, that these contracts would not exceed £[~~3~~] million in value and, therefore, believes that the annual value in the UK of the relevant market is less than £3 million. On this basis a reference for a phase two investigation would not generally be justified.³⁴

120. The CMA also notes that the extent of its concerns regarding the likelihood, magnitude and duration of the SLC in the supply of private hire and hackney transport services to tender customers in Sheffield are mitigated by some degree of remaining competition from other transport providers inside and outside the relevant market segments, and potential entry.
121. The CMA believes that the risk of replicability from applying the *de minimis* exception in this case is limited given the very specific conditions in the Sheffield market at the date of this decision as set out above.

Conclusion on the application of the de minimis exception

122. Taking the above factors into consideration, the CMA believes that the market concerned in this case is not of sufficient importance to justify the making of a reference. As such, the CMA believes that it is appropriate for it to exercise its discretion to apply the *de minimis* exception.

Decision

123. Consequently, the CMA believes 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. However, pursuant to section 22(2)(a) of the Act, the CMA believes that the market concerned is not of sufficient importance to justify the making of a reference.
124. The Merger will therefore **not be referred** under section 22 of the Act.

³⁴ [Mergers: Exceptions to the duty to refer and undertakings in lieu of reference guidance](#), paragraphs 2.2, 2.15

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13 October 2015

ⁱ Sheffield City Taxis submitted the price increases were not as a result of the merger.