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***Case No COMP/M.6958 - CD&R/ WE BUY ANY CAR***

Only the English text is available and authentic.

**REGULATION (EC) No 139/2004  
MERCER PROCEDURE**

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Article 6(1)(b) NON-OPPOSITION  
Date: 08/08/2013

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Brussels, 08/08/2013  
C(2013) 5345 final

In the published version of this decision, some information has been omitted pursuant to Article 17(2) of Council Regulation (EC) No 139/2004 concerning non-disclosure of business secrets and other confidential information. The omissions are shown thus [...]. Where possible the information omitted has been replaced by ranges of figures or a general description.

PUBLIC VERSION

MERGER PROCEDURE

**To the notifying party:**

Dear Sir/Madam,

**Subject: Case No COMP/M.6958 – CD&R/ WE BUY ANY CAR  
Commission decision pursuant to Article 6(1)(b) of Council Regulation  
No 139/2004<sup>1</sup>**

(1) On 04.07.2013, the European Commission received notification of a proposed concentration pursuant to Article 4 of the Merger Regulation by which CDR Osprey (Cayman) Partners L.P. ("CDR ", USA) acquires within the meaning of Article 3(1)(b) of the Merger Regulation sole control over We Buy Any Car Limited ("WBAC", UK), ultimately controlled by Pennine Metals B Limited ("Pennine", UK), by way of a purchase of shares<sup>2</sup> (CDR and WBAC are designated hereinafter as the 'Notifying Parties' or 'the Parties').

**1. THE PARTIES**

(2) CDR is a private equity fund managed by Clayton, Dubilier & Rice LLC ("CD&R LLC"), an entity affiliated with Clayton, Dubilier & Rice ("CD&R"). CD&R's Portfolio Companies include BCA Remarketing Ltd ("BCA"), a UK limited company which offers wholesale used vehicle remarketing services.

(3) Pennine is a UK limited holding company. It holds all of the shares of WBAC, a UK limited company active in the used vehicle sector, purchasing passenger cars and

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<sup>1</sup> OJ L 24, 29.1.2004, p. 1 ('the Merger Regulation'). With effect from 1 December 2009, the Treaty on the Functioning of the European Union ('TFEU') has introduced certain changes, such as the replacement of 'Community' by 'Union' and 'common market' by 'internal market'. The terminology of the TFEU will be used throughout this decision.

<sup>2</sup> Publication in the Official Journal of the European Union No C 199, 11.07.2013, p. 13.

light commercial vehicles ("LCVs") from the general public through its online purchasing service. The vehicles thus purchased are subsequently offered for sale on the wholesale market for used vehicles.

## **2. THE OPERATION**

- (4) The proposed transaction consists of the acquisition by CDR of sole control over Pennine, thus acquiring indirect sole control over WBAC.
- (5) Pursuant to the Share Purchase Agreement entered into by and between the Parties, the direct controlling undertaking will be BCA Osprey IV Limited ("Bidco"), wholly controlled by CD&R Osprey Investment S.à.r.l. ("Luxco"), who is in turn owned 58.21% by CDR. Since CDR will appoint up to four directors and the other two shareholders in Luxco (Majority WBAC Managers and BCA Managers) will only appoint one director each, and since all strategic decisions, such as those in connection with budget, business plan and appointment of senior management, require the consent of CDR, it can be concluded that CDR will acquire sole control over Pennine.

## **3. THE CONCENTRATION**

- (6) The proposed transaction consists of the acquisition of (indirect) sole control by CDR of WBAC, by way of purchase of shares. The transaction therefore constitutes a concentration within the meaning of Article 3(1) of the Merger Regulation.

## **4. EU DIMENSION**

- (7) The undertakings concerned have a combined aggregate world-wide turnover of more than EUR 5 000 million (CD&R: EUR [...]; Pennine: EUR [...]). Each of at least two of them has an EU-wide turnover in excess of EUR 250 million (CD&R: EUR [...]; Pennine: EUR [...]), but they do not achieve more than two-thirds of their aggregate EU-wide turnover within one and the same Member State.

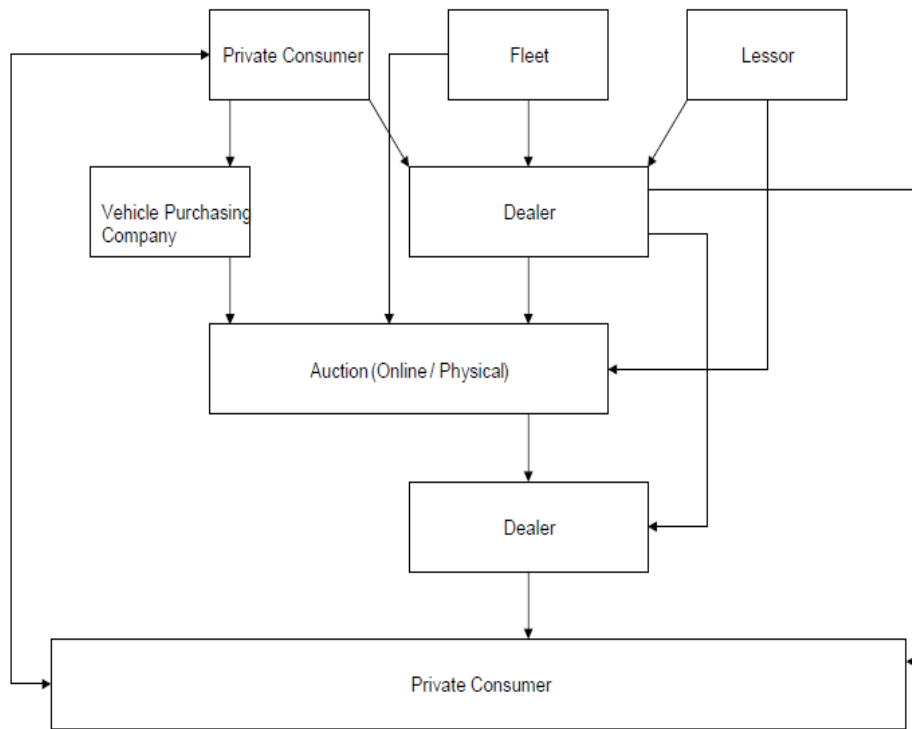
## **5. COMPETITIVE ASSESSMENT**

### **5.1. Introduction**

- (8) The proposed transaction concerns the used vehicles sector and, particularly, the segment for the wholesale supply of used vehicles (upstream) and the segment for the provision of used vehicle remarketing services (downstream).
- (9) More precisely, the used vehicle sector is made up of different players at different levels and used vehicles often change hands multiple times between the initial disposal and the final purchase, as illustrated in the following diagram<sup>3</sup>.

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<sup>3</sup> Sales of used vehicles made between private users are neither part of the wholesale nor of the retail segments of the used vehicle sector, however accounting for the majority of the total sales of used vehicles.



- (10) As it emerges from the above diagram, used vehicles are purchased by wholesalers (i.e. vehicle purchase companies and dealers) from different sources including private consumers, leasing companies and corporate fleets. Wholesalers subsequently dispose of their stock through either dealer-to-dealer sales or via auction, using the services offered by wholesale remarketing services providers (i.e. auction houses). Auction houses operate as an intermediary between sellers and purchasers of used vehicles, offering physical and online auction services to its customers. The used vehicles are primarily sold to dealers operating at retail level who, in turn, sell them to the final purchaser (private consumers).
- (11) WBAC operates as a used vehicle wholesaler, sourcing used vehicles from private consumers and subsequently reselling the large majority of these vehicles in the wholesale used vehicle segment ([90-100%] by volume and [90-100%] by value in 2012) through physical auction, whilst a minor part is sold for scrap.
- (12) BCA operates at the used vehicle remarketing level by offering auction services for used vehicles (physical, online and simultaneously physical and online). Auction houses facilitate the process of the wholesale sale of used vehicles by providing a platform for the transfer of vehicles from fleet or vehicle leasing companies, dealers or vehicle purchasing companies to dealers primarily who, in turn, resell the vehicles to consumers. Auction houses are never recorded by the competent authority (in the UK, the DVLA) as registered owner of the vehicles traded as they simultaneously buy and sell at the time of adjudication. For (UK GAAP) accounting purposes, the auction fee charged is treated as income.
- (13) BCA therefore operates downstream of WBAC as a channel for the disposal of vehicles previously purchased by the latter. Following the completion of the proposed

transaction, the merged entity will thus become vertically integrated, operating both at the wholesale and the remarketing services segments of the used vehicle sector.

## 5.2. Relevant product and geographic markets

### 5.2.1. Wholesale of used vehicles

- (14) The Commission has previously considered that the sale of used vehicles could constitute a sub-segment of the market for the wholesale supply of vehicles.<sup>4</sup> In relation to this market, the Commission further distinguished a separate retail segment which it considered to be regional in scope.<sup>5</sup>
- (15) The Parties, being merely active within the wholesale segment of the sale of used vehicles, consider it appropriate to distinguish between a retail and a wholesale segment also in respect of the sale of *used* vehicles. Based on the Parties' submissions, the wholesale of used vehicles through physical auction could furthermore represent a sub-segment of the potential market for the wholesale of used vehicles.
- (16) As regards the wholesale supply of vehicles, the Commission has also previously considered distinguishing between passenger cars and LCVs.<sup>6</sup> The Parties explain that this distinction however does not apply to the potential market for the wholesale supply of used vehicles.
- (17) The Commission's market investigation supported the Parties' view entailing that a separate relevant product market exists for the sale of used vehicles, being distinct from the sale of new vehicles. Also, the respondents to the Commission's market investigation unanimously considered that separate relevant product markets exist for the wholesale supply and the retail supply of used vehicles. Finally, the latter respondents unanimously considered a distinction between the wholesale of used passenger cars and the wholesale of used LCVs to be inappropriate.
- (18) When previously considering the distinction between the retail and wholesale segments of the automotive sector<sup>7</sup>, the Commission has left open whether the geographic market for these activities is Europe-wide or national in scope.
- (19) For the sake of the present case, the Parties submit that it would not be appropriate to define the geographic market as wider than national, mainly given the fact that WBAC is

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<sup>4</sup> COMP/M.3352 *VW / Hahn + Lang*, of 16 February 2004; COMP/M.3388 *Ford Motor Company Ltd / Polar Motor Group Ltd*, of 30 April 2004; COMP/M.5347 *Mapfre / Salvador Caetano / JV's*, of 20 April 2009; COMP/M.6718 *Toyota Tsusho Corporation / CFAO*, of 13 November 2012. A similar distinction was previously considered in respect of trucks and buses, given the differentiated product characteristics as well as market participants: COMP/M.6763 *VWFS / Pon Holdings B.V. / Pon Equipment Rental & Lease*, of 27 March 2013.

<sup>5</sup> COMP/M.5250 – *Porsche / Volkswagen*.

<sup>6</sup> COMP/M.2832 *General Motors / Daewoo Motors*, of 22 July 2002; COMP/M.3352 *VW / Hahn + Lang*, of 16 February 2004; COMP/M.3388 *Ford Motor Company Ltd / Polar Motor Group Ltd*, of 30 April 2004; COMP/M.4785 *Russian Machines / Magna*, of 30 August 2007; COMP/M.5219 *VWAG / OFH / VWGI*, of 25 September 2008. LCV are understood as referring to commercial vehicles weighing 3.5 tonnes or less.

<sup>7</sup> COMP/M.2832 *General Motors / Daewoo Motors*, of 22 July 2002; COMP/M.5219 *VWAG / OFH / VWGI*, of 25 September 2008; COMP/M.3388 *Ford Motor Company Ltd / Polar Motor Group Ltd*, of 30 April 2004.

only active in the UK while at the same time vehicles in the UK are right hand drive and therefore not readily substitutable with vehicles in most of the EEA.

- (20) The Commission's market investigation in the current matter largely confirmed that the relevant geographic scope of a potential market for the wholesale supply of used vehicles corresponds to the UK territory. To this end, several respondents put forward the argument that right hand drive used vehicles are not sold outside the UK.
- (21) However, the precise delineation of the relevant product and geographic markets for the supply of used vehicles can be left open, given that the proposed transaction is unlikely to raise serious doubts as to its compatibility with the internal market, regardless of the precise market definition retained. Accordingly, the competitive assessment below takes account of WBAC's activities on the narrowest possible relevant product and geographic market, being the potential relevant market for the wholesale supply of used vehicles through physical auction in the UK.

#### 5.2.2. *Provision of wholesale used vehicle remarketing services*

- (22) The Commission has not previously dealt with the type of services provided by BCA.
- (23) The Parties submit that wholesale suppliers of used vehicles often use vehicle remarketing channels such as online or physical auction sites as an efficient means of reselling vehicles, typically to dealers. The auction house simply acts as an intermediary in the transaction and operates on a commission-basis. The Parties do not believe that it is necessary to distinguish between physical and online auction services. The Parties however note that the majority of vehicles passing through used vehicle auction will go through physical rather than online auction, although this latter segment has seen growth in recent years. In any event, the Notifying Parties has presented data on the basis of the physical used vehicle auction segment, which it considers to be the narrowest possible relevant market.
- (24) The Commission's market investigation showed indications for the existence of a separate relevant product market for the provision of wholesale used vehicle remarketing services. At the same time, the majority of the respondents to the Commission's market investigation in the current matter considered that online and physical auction services for the sale of used vehicles can be considered substitutable. A number of respondents did however point out that the substitutability of physical and online used vehicle auction services can be limited due to e.g. logistical and legal constraints. Specifically, it was mentioned that physical auctions provide the opportunity for buyers to inspect the used vehicle and that sales are accordingly performed on "as seen" basis whereby the buyer fully takes on the risk of the condition of the vehicle as opposed to online auction where more stringent safeguards for the buyer may have to be introduced.
- (25) As to the geographic scope of a market for the provision of wholesale used vehicle remarketing services, the Parties submit that it would not be wider than national, mainly given the fact that vehicles sold in the UK are right hand drive and therefore not readily substitutable with vehicles in most of the EEA.

- (26) The Commission's market investigation showed some support for the Parties' claim entailing that the nature of the used vehicles sold in the UK (i.e. right hand drive), serves as a geographic constraint on the ability of used vehicle remarketing service providers to sell the same used vehicles to buyers in most countries outside of the UK.
- (27) However, the precise delineation of the relevant product and geographic markets for the provision of used vehicle remarketing services can be left open, given that the proposed transaction is unlikely to raise serious doubts as to its compatibility with the internal market, regardless of the precise market definition retained. Accordingly, the competitive assessment below takes account of BCA's activities on the narrowest possible relevant product and geographic market, being the potential relevant market for the provision of physical auction services for the wholesale of used vehicles in the UK.

### **5.3. Competitive assessment<sup>8</sup>**

- (28) The proposed transaction does not give rise to any horizontal overlaps between the Parties' activities. On the basis of the narrowest possible delineation of the relevant product and geographic markets set out above, it would however give rise to a vertically affected market given the Parties' activities in the upstream wholesale supply of used vehicles through physical auctions in the UK and the downstream provision of physical auction services for the wholesale of used vehicles in the UK.

*Vertical relationship – wholesale supply of used vehicles / wholesale used vehicle remarketing services*

- (29) According to the information submitted by the Notifying Parties, WBAC has a market share of [5-10%] on the market for the wholesale supply of used vehicles through physical auction in the UK<sup>9</sup>, while BCA holds a share of [50-60%] on the market for the provision of physical auction services for the wholesale of used vehicles in the UK. The Parties submit that they currently face – and will continue to face post-merger – competitive pressure from significant competitors at both levels of the used vehicle supply chain.
- (30) As will be explained in more detail below, it is important to note at the outset that this vertical relationship between the Parties' activities is largely pre-existent the proposed transaction and therefore unlikely to significantly alter the current degree of vertical integration in the markets concerned.

*Input foreclosure*

- (31) As mentioned above, WBAC resells its used vehicles mainly through the physical auction channel. In 2012, WBAC sold [90-100%] of its used vehicle purchases by volume (representing [90-100%] of total value) through this channel. Furthermore, [90-100%] (by volume) of WBAC's used vehicle sales made through physical auction (representing around [80-90%] of total value), is disposed of through physical auction

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<sup>8</sup> All market shares reported in this section are based on volumes and refer to the year 2012, unless indicated otherwise.

<sup>9</sup> It is to be noted that the Parties explain this market share to be based on a market total of 1 100 000 used vehicle sales, which excludes used vehicle sales made between car dealers as well as used vehicle sales made between private users.

services rendered by BCA.<sup>10</sup> Accordingly, the vertical relationship between WBAC's and BCA's activities in the used vehicle sector in the UK is largely pre-existing the proposed transaction. Indeed, the Parties indicate that post-merger this vertical relationship is intended to continue to exist, and potentially be extended to all of WBAC's used vehicles sold through auction.

- (32) Based on the information submitted by the Parties, the proposed transaction is unlikely to confer upon the Parties an ability or an incentive to engage in any form of input foreclosure given that: (i) WBAC already sells the large majority of its used vehicles using physical auction services provided by BCA, meaning that the proposed transaction is unlikely to materially alter the current degree of vertical integration in the markets concerned; (ii) the upstream input concerned constitutes a highly homogeneous product which none of the respondents to the Commission's market investigation considered essential to the functioning of downstream used vehicle remarketing channels; (iii) the volume of used vehicles that WBAC could reasonably foreclose access to represents only a minor part of the total volume of used vehicles sold through physical auction per annum (around [...] out of a total of around 1 100 000), and: (iv) several credible competitors on the market for the wholesale supply of used vehicles in the UK will, post-merger, continue to exert competitive pressure on WBAC, including Motability (6% market share), Arnold Clark Automobiles (6% market share), Pendragon Plc (5% market share), Sytner Group (3% market share), and Lookers Plc (3% market share).

#### *Customer foreclosure*

- (33) It is important to note at the outset that BCA's customer base is highly fragmented and that, apart from its two largest customers, no customer accounts for more than [5-10%] of the volume of used vehicles sold via BCA. BCA's two largest customers are [...] and [...] which respectively account for [10-20%] and [10-20%] of the total volume of used vehicles sold via BCA. Accordingly, [80-90%] of the total volume of used vehicles traded by BCA originate from suppliers other than WBAC.
- (34) The Notifying Parties furthermore submit that BCA's business model is built upon attracting ever increasing volumes of used vehicle trades given that on the one hand purchasers of used vehicles are attracted to auctions with the largest volumes of traded vehicles and associated range of choice, while on the other hand sellers of used vehicles are attracted to auctions having the highest (average) number of bidders which increases the likelihood of their reserve price being met.
- (35) In light of the above, the proposed transaction is unlikely to confer upon the Parties an ability or an incentive to engage in any form of customer foreclosure. This is particularly true given that: (i) a foreclosure of WBAC's competitors would result in a direct loss of around [80-90%] of BCA's turnover, which involves putting the merged entity's very existence at risk; (ii) a foreclosure of WBAC's competitors requires at least a simultaneous and high increase in the influx of used vehicles sources from WBAC,

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<sup>10</sup> Based on information submitted by the Notifying Parties, the percentage of WBAC's used vehicles sold through BCA has remained relatively stable since 2010 (the moment at which WBAC would have outsourced its auction services to third parties). The remaining [10-20%] of its used vehicle sales are disposed of by WBAC by using remarketing services offered by [...], [...] and [...].



necessarily involving an enormous increase in capital expenditure (e.g. due to an increase in input cost as well as insurance, storage and transportation costs) and related risk at the upstream level; (iii) during any transition period between a foreclosure of WBAC's competitors and the required increase in influx of used vehicles sourced from WBAC, a risk exists that WBAC's competitors switch to using BCA's competitors – given that the Commission's market investigation showed the large majority of respondents not to consider BCA as an indispensable provider of wholesale used vehicle remarketing services, and; (iv) several credible competitors on the market for the provision of physical auction services for the wholesale of used vehicles in the UK will, post-merger, continue to exert competitive pressure on BCA, including Manheim (20% market share), Scottish Motor Auctions (8% market share), Aston Barclay (3% market share), Central Motor Auctions (3% market share), and Fleet Auction Group (2% market share).

(36) One respondent to the Commission's market investigation in the current matter did raise a concern involving an alleged ability and incentive on the part of the merged entity to decide to increase upstream purchasing offers made by WBAC to motorists (i.e. private individuals). Such an increase would attract a greater number of motorists, thus allowing WBAC to capture a larger share of the motorist supply source for the wholesale channel. Accordingly, car retailers would be required to revert to (physical) used vehicle auctions for a larger number of used vehicles in order to stock their forecourts. This strategy would be beneficial to the merged entity as it would lead to an increase in used vehicle wholesale volumes and prices realised at (physical) auction and higher related auction fees. At the same time, the aforementioned strategy would have a detrimental (knock-on) effect on private consumers that are faced with a higher mark-up on used vehicles sold at the retail level of the supply chain. Also, the merged entity would have a further incentive post-merger in increasing the upstream purchasing offers made by WBAC given that the control over the influx of the stock of vehicles acquired by WBAC onto the wholesale market for used vehicles would potentially enable the merged entity to exert an influence over the price level at which vehicles are sold in the wholesale used vehicle market, through: (i) the ability to limit input on the auction market, thus increasing both the margin realised by WBAC and the fee paid to BCA, and; (ii) temporarily withholding stock so as to be able to modulate the insertion on the market of specific types of vehicles (for which there is high demand) in order to swiftly adapt to market trends and peak periods thus further impacting both on prices realised at auction and, consequently, auction fees for a specific type of vehicle.

(37) Firstly, it is important to note that the abovementioned respondent is concerned with an alleged potential knock-on effect of the proposed transaction on the retail used vehicle sector in the UK, a market on which neither WBAC nor BCA is active. In that regard, the respondent explained that the proposed transaction would not, in and of itself, have any detrimental effect on competition in either the market for the wholesale supply of used vehicles in the UK or the market for the provision of used vehicle remarketing services (provided that at least two viable competitors to BCA would remain post-merger, which is the case). Also, the respondent acknowledged that the initial effect of WBAC offering higher purchasing prices to motorists would in fact be beneficial to consumers.

(38) Furthermore, the Parties explain that WBAC exclusively sources its stock from private individuals while it only accounts for [0-5%] (by volume; [0-5%] by value) of

used vehicles thus purchased. The 11 000 used vehicle retailers active in the UK would thus have access to the majority of used vehicles sold by private users in the UK while sales made to WBAC account for a highly limited percentage of total sales.

- (39) Also, based on submissions made by the Parties, [70-80%] of annual used vehicle wholesales do not involve vehicles sourced from private individuals, but rather from fleet and leasing companies as well as original equipment manufacturers. Accordingly, a hypothetical increase in WBAC's used vehicle purchases would have no impact on the influx of cars for the largest part of the used vehicle wholesale sector (and thus neither on at least part of the influx of used vehicles into physical auction). In the event more used vehicle retailers would indeed need to revert to physical auction in order to stock their forecourts, the Parties would still not be able to influence the coming available to the market nor the price bands set for the vast majority of used vehicle wholesales. An attempt to influence pricing and coming available to the market of vehicles sold through BCA by third parties would rather involve a risk of customers switching to other large physical auction houses such as Manheim and Scottish Motor Auctions (together responsible for around 30% of used vehicles sold at auction). As already stated above, such a risk would run counter to BCA's very business model, which relies on attracting (ever larger) volumes and related vehicle choice. In that regard, it is important to recall that WBAC only accounts for [10-20%] of BCA's total traded vehicles (by volume).
- (40) Importantly, even if the merged entity had the ability to have WBAC offer higher prices to private users of vehicles long enough to significantly influence the availability of privately owned vehicles for used vehicle retailers, the merged entity will not be capable of exercising a significant amount of control over price formation in the wholesale used vehicle physical auction market, given that the price realised is determined by competitive dynamics between buyers at auction. By channelling more used vehicles through the wholesale segment, the merged entity could in fact drive wholesale prices down. It is important in that regard that the Parties cannot influence the supply volume originating from non-private users, which constitutes the largest part of the wholesale segment of the used vehicle market in the UK.
- (41) Furthermore, given WBAC's currently limited share of annual used vehicle purchases made from private vehicle users in the UK, the aforementioned concern raised during the market investigation require the merged entity to significantly increase annual used vehicle purchases and related working capital funding, cost (insurance, logistics) and risk. The merged entity is unlikely to have an incentive to engage in such behaviour given that the required significant increase in capital expenditure, would necessarily be coupled with increased costs for both WBAC and BCA (such as e.g. storage and security costs as well as the cost of depreciation), associated with the risk of being unable to sell used vehicles at the wholesale level. First, WBAC would have to forego (or highly limit) its wholesale margin in order to be able to significantly divert sales away from car retailers, given that cars sold directly to retailers are not subject to a wholesale mark-up which would allow retailers to make better offers. In that regard, the Parties indicate that WBAC's current business model is not based on offering the best purchase price for the vehicle, but rather on speed, certainty and convenience. Second, the used vehicle wholesale business would be reliant on cash-flow which requires that used vehicles are quickly converted back into cash, which in turn needs to be re-invested in the business.

- (42) In conclusion, the Parties are unlikely to have either an ability or an incentive to engage in the aforementioned strategy, given that the resulting likely decrease in the average level of auction fees realised combined with the increase in input cost, handling cost and associated commercial risk cannot reasonably be expected to be outweighed by a hypothetical increase in the total number of auction fees realised.
- (43) On the basis of all of the foregoing, the Commission considers that the proposed transaction does not give rise to serious doubts as to its compatibility with the internal market in relation to the vertically affected markets of wholesale supply of used vehicles in the UK and of the provision of physical auction services for the wholesale of used vehicles in the UK as a result of either input or customer foreclosure.

## **6. CONCLUSION**

- (44) For the above reasons, the European Commission has decided not to oppose the notified operation and to declare it compatible with the internal market and with the EEA Agreement. This decision is adopted in application of Article 6(1)(b) of the Merger Regulation.

*For the Commission*  
*(Signed)*  
*Joaquín ALMUNIA*  
*Vice-President*