
Completed acquisition by Zipcar, Inc of Streetcar Limited

ME/4571/10

The OFT's decision on reference under section 22(1) given on 10 August 2010.
Full text of decision published 27 August 2010.

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

PARTIES

1. Zipcar, Inc. (Zipcar) is based in the US and operates car sharing services. The company was founded in 2000 and operates in various cities across the United States and Canada. In the UK, Zipcar operates through Zipcar UK Limited. Zipcar launched its service in London in 2007. Zipcar's worldwide revenue for the year ending 31 December 2009 was approximately US [] million. In 2009, Zipcar's UK revenue was £[] million on which it made a loss of £[] million. At the end of 2009, Zipcar's vehicle fleet in London comprised [300-400] cars and it had approximately [10,000 -15,000] members.
2. Streetcar Ltd (Streetcar) operates car and van sharing services in the UK. It was founded in 2004 and currently operates in 11 towns and cities across the UK, namely London, Brighton, Oxford, Cambridge, Bristol, Edinburgh, Glasgow, Southampton, Maidstone, Woking and Guildford. Streetcar's revenue in 2009 was £16.4 million on which it made a profit of £[]. At the end of 2009, Streetcar's UK vehicle fleet comprised approximately 1,300 cars and vans, utilised over [1,000-1,500] parking spaces and had approximately [60,000-70,000] members.

TRANSACTION

3. Zipcar completed its acquisition of the entire issued share capital of Streetcar on 21 April 2010, for a purchase price of approximately US\$[] million (£[] million). Following completion of the acquisition, Streetcar became a wholly owned subsidiary of Zipcar.

JURISDICTION

4. As a result of the transaction Zipcar and Streetcar have ceased to be distinct. Streetcar's turnover is below £70 million and therefore the turnover test in section 23(1)(b) of the Enterprise Act 2002 (the Act) is not met.
5. The OFT believes that the parties have an estimated combined share of supply of [80-90] per cent by revenue in the operation of car clubs in the UK (with an increment of [0-10] per cent). Therefore the share of supply test in section 23(4) of the Act is met. As a result, the OFT believes that it is or may be the case that a relevant merger situation has been created.

RATIONALE FOR THE MERGER

6. Zipcar's stated rationale for the acquisition is to gain a leading position in London which they see as a gateway for expansion into other European cities. Zipcar stated that, although it could seek to expand through organic growth, the acquisition will allow it to expand more rapidly and provide the merged entity with better access to UK financing to fund expansion of vehicle fleets.
7. The parties intend to combine Streetcar and Zipcar and offer consumers the 'best of both', enhancing the overall customer experience by combining Streetcar's customer service and call centre with Zipcar's technology and establishing a larger vehicle network in London and further afield.
8. On 1 June 2010, Zipcar filed a registration statement for an Initial Public Offering in the US. The net proceeds from the offering are expected to be used to pay down debts. Zipcar Inc. has been loss making since its inception, having accumulated deficits of US\$[] million as at 31 March 2010.

MARKET DEFINITION

Background to car sharing and car clubs

9. The parties overlap in the provision of car sharing services, specifically, they provide 'for profit' car sharing services, referred to as 'car clubs'.
10. In general, the term 'car sharing' can refer to two or more people travelling together by car for all or part of a trip. Car sharing may be formal, via an organised car share scheme, or informal, for example between friends or colleagues. Organised car sharing schemes generally provide members with the benefits of use of a private vehicle without the full costs and responsibilities of ownership. Various types of organised car sharing schemes operate in the UK and throughout Europe. However, there is a distinction between 'not for profit' car sharing schemes, such as community-based social enterprises, and 'for profit' or commercial enterprises, such as those operated by the parties. The latter commercial car sharing services are commonly known in the UK as 'car clubs', and this term is adopted throughout this decision to refer to these commercial operations.
11. As a commercial service, a car club provides individuals with the choice of a network of readily accessible vehicles parked in their local area and subject to availability gives them access to a car whenever they need it but without the high fixed costs of individual car ownership. From a public policy perspective, car clubs and car sharing schemes are viewed as a means of reducing car ownership with attendant environmental benefits. In this respect, it has been noted in a report by the UK Energy Research Centre¹ that for car clubs to be viable in the UK, they need political support from local authorities, the provision of on-road parking bays, and finance and organisation to assist with marketing. Likewise, in the UK, the national non profit charity Carplus² promotes and supports the development of car clubs and car sharing schemes as part of its approach to rethinking car usage.
12. The parties state that car clubs are generally operated on the basis of membership of an organisation (or 'club'). Members join the club and are then provided with a membership card (a 'smart card' used to open the car)

¹ Quick Hits: Car Clubs September 2007.

² Carplus works independently and in partnership to reduce over-dependency on private cars by promoting accessible, affordable and low-carbon alternatives.

and access to a reservation system (usually on the internet or by telephone). The cost of insurance is built into the hourly rate, as is an amount of fuel (often 30 miles' worth) and the congestion charge.

13. In order to use a car, a member makes a reservation using one of the means above. Once the reservation is accepted, the car club sends a message via a mobile communication network to the on-board computer in the vehicle to provide details of the reservation. The member then accesses the car by using his membership card and then is usually required to complete a security procedure (for example, the entry of a passcode). This gives the member access to the key for the vehicle.
14. The membership of car clubs has been growing rapidly in recent years. The parties estimate that the national car club fleet increased in size from 1,320 vehicles in January 2009 to 2,117 in December 2009. The parties estimate that by value the UK market has grown from £6.1 million in 2007 to £22.3 million in 2009 and in London the market has grown from £5.0 million in 2007 to £19.1 million in 2009. The parties estimate that by the end of 2009, there were approximately 100,000 car club members in the UK.
15. The parties expect membership of car clubs to continue growing rapidly.³ This is supported by internal documents that the parties provided; they expect revenue to grow by [20-30] per cent per annum over the next two years. Streetcar's budget for 2010 estimates significant growth rates with members increasing from approximately [60,000-70,000] at the end of 2009 to [120,000-140,000] by the end of 2011. The plan for the combined entity also shows significant growth in membership over the period with membership increasing by over [100,000-120,000] members over the next two years.

Product scope

16. The OFT considers that the process of market definition in a horizontal merger generally begins from the narrowest plausible candidate product market in which the parties overlap: this is car club services.

³ OFT notes that the Frost & Sullivan Report 'Sustainable and Innovative Personal Transport Solutions – Strategic Analysis of Carsharing Market in Europe' January 2010 predicts that UK car sharing as a whole could grow from 106,000 members in 2009 to 2.3 million by 2016 and the number of vehicles increasing from approximately 2,350 in 2009 to 21,854 by 2016.

17. The OFT uses the conceptual framework of the 'hypothetical monopolist test' as a tool when defining markets. A set of substitute products will satisfy the hypothetical monopolist test if a hypothetical firm that was the only present and future seller of the products would find it profitable to raise prices⁴ of at least one product by at least a small but significant and non-transitory amount⁵ (the small but significant and non-transitory increase in price is known by the acronym 'SSNIP'). Under this framework, a set of products will not comprise a market if customers would respond to the SSNIP by switching to products outside the set to such an extent that the price increase by the hypothetical monopolist would not be profitable.
18. The parties overlap in the provision of car⁶ club services in London.⁷ The parties submit that car club operators are constrained in their ability to increase prices by other transport options specifically (a) car rental, (b) car ownership and (c) public transportation including taxis. The OFT therefore considered whether these other transport options, alone or in combination, provide sufficient constraint on car clubs to consider a wider market definition. The following sections set out the parties' arguments and the OFT's views in respect of each of these alternative transport methods.

Car ownership

19. The parties submit that car ownership is a significant constraint on car clubs. They point out that both Zipcar and Streetcar promote their business as an alternative to car ownership on their websites and have calculation tools to compare the cost of car clubs with car ownership.
20. The parties also provided results from surveys to support their view that car ownership constrained car clubs. For instance, a survey undertaken by Carplus showed that 25 per cent of members sold at least one car after joining a car sharing club.⁸ In addition, the parties also presented an exit

⁴ Although the SSNIP test is phrased in terms of a rise in price, it also covers an equivalent decrease in quality, range or service.

⁵ The significant and non transitory amount is normally taken to be five per cent

⁶ The parties have stated that Zipcar does not offer vans in the UK.

⁷ In the UK, Zipcar is active only in London. During the course of its investigation, the OFT did not see any evidence to indicate that Zipcar was considering expanding outside London in the UK. As such, the OFT has not considered in its investigation any impact of the merger on Zipcar's role as a potential competitor to Streetcar outside London.

⁸ Carplus annual survey of car clubs 2009/10

survey⁹ that showed that 26 per cent of people who had left the car club had done so because they had bought or been given a car.

21. The OFT's investigation indicated that car clubs are widely branded as an alternative to car ownership and this was supported by views from third parties.
22. The OFT accepts that the survey evidence shows that for some customers car ownership is an alternative; but this, in itself, is not indicative of a direct constraint on the prices offered by the parties. The OFT considers that such survey evidence does not indicate that car ownership is a sufficient constraint to defeat a five per cent price rise by the parties, not least because there is no evidence as to what proportion of car club customers are on the margin between these two alternative transport solutions, and would consider switching to car ownership in response to car clubs reducing the price or quality of their offering.
23. The OFT notes that other information provided by the parties¹⁰ indicates that the average spending on car clubs and car ownership differs substantially. The average annual spending by consumers on car club services equates to £[1,000-1,500], compared with an average cost of running a car of £[4,000-5,000]. In addition, figures based on European car usage indicate that members who give up their cars after joining a car club reduce their driving by up to 70 per cent.¹¹
24. Due to the differences in cost and changes in consumer driving behaviour once they have joined a car club, the OFT does not have sufficient evidence to indicate the proportion of car club members who would divert to car ownership to defeat a five per cent price rise by Zipcar post merger.
25. Furthermore, the OFT believes that any constraint from car ownership is more likely to be asymmetric as switching costs from car ownership to car clubs may be low, but from car clubs to car ownership are high. Thus, the cost of purchasing a vehicle will limit the number of members who will leave car clubs in favour of car ownership.
26. The OFT understands that the parties are seeking to attract members who are currently car owners and, to this extent, car ownership can be seen as

⁹ Streetcar exit survey 6 February - 6 July 2010

¹⁰ The Lucas Group 'UK Car Sharing Market Size and Opportunity' March 18, 2010

¹¹ City Car Share 'Bringing car sharing to your community.'; Growing Business Interview with Brett Akker 18/12/09.

an alternative on some level to car clubs. However, the question for the OFT is whether car ownership is sufficient to constrain a small but significant rise in price by car clubs. On the basis of the information available to us, the OFT does not consider car ownership provides a sufficient constraint on car clubs to widen the market definition.

Car rental

Parties' Views

27. The parties submitted that the relevant market should be drawn sufficiently widely to include off-airport car rental.¹² From the demand side perspective, the parties consider that customers have a continuum of different options when determining which type of car hire service they wish to use.
28. In terms of the general constraint from car rental, Zipcar provided results from a recent member's survey that showed that [60-70]¹³ per cent of the [200-400] respondents 'always', 'often' or 'sometimes' price check car-hire services when planning a Zipcar drive.¹⁴
29. In terms of the constraint on daily rental prices from car rental, the parties provided several pricing documents¹⁵ to support their view that they have regard to car rental charges when setting their own prices. The documents provided were internal documents used for price reviews and price setting which expressly referred to rates charged by car rental providers.
30. The parties state that one reason for monitoring rental prices closely is that approximately [70-80] per cent of their revenue is accounted for by daily (or longer) rentals.

¹² The anticipated acquisition by Europcar UK Limited of Vanguard Car Rental EMEA Holdings Ltd, No. ME/2802/06: In the context of car rental, the OFT considered 'off-airport car rental' as the relevant market.

¹³ This figure falls to [30-40] per cent if 'sometimes' is excluded

¹⁴ The survey asked 'When planning a Zipcar drive, how often do you check rates with other car hire services?' However, there is no information of the type of journey (eg day of the week, length of drive) that members are comparing with car rental.

¹⁵ Appendix 17 Parties' Response to the Issues Letter. Streetcar: Document considering January 2008 price increases

Appendix 18 Parties' Response to the Issues Letter. Streetcar: Pricing review (July 2009)

Appendix 19 Parties' Response to the Issues Letter. Streetcar: Long bookings review (May 2009)

Appendix 20 Parties' response to the Issues Letter. Streetcar: Competitive rates analysis (October 2009)

Appendix 21 Parties' response to the Issues Letter. Zipcar: London pricing strategy (2008 & 2009)

Appendix 22 Parties' response to the Issues Letter. Zipcar: Pricing strategy (July 2009)

31. In turn, the parties claimed that the constraint exerted by car rental providers on car clubs' daily rental prices acts as an indirect constraint on hourly rental rates. Zipcar's daily prices are set by a multiple of [] times their hourly prices, whilst Streetcar operates on a multiple of [] times. The parties argued that hourly rates cannot generally exceed the multiple range listed above since their offering needs to be seen by customers as good value as against car rental providers' daily rates.¹⁶
32. The parties explained why they considered they were incentivised to keep hourly rates competitive as against daily rates. This was because hourly rates needed to be good value as against daily rates. If hourly rates were (in relative terms) too expensive, then car clubs might not be seen by members as good value, or alternatively members needing to book the car for multiple hours might instead decide to hire the car for a whole day. []. In addition, daily usage would mean that cars are not available for other users, which risks putting off other members from using the service.

Third parties' views

33. The third parties who responded to the OFT during the investigation suggest that the services provided by car clubs and car rental do represent distinct offerings. For example, a third party stated that the characteristics of car clubs differ from those of traditional car hire services as they (i) are membership based, (ii) offer rental primarily by the hour, (iii) are booked exclusively online, (iv) are self service in operation, (v) use on-street parking and not depot collection and (vi) do not offer one way rental.
34. The business customers contacted by the OFT in the course of its investigation indicated that the services offered by car rental and car clubs are very different with business customers having different usage patterns for the different services. One respondent indicated that it uses car clubs for short term rental within London and car hire for long term rental outside of London. Another respondent indicated that it uses car clubs for smaller vehicles and car rental for vans. Overall, third parties indicated to the OFT that different car rental options were suitable for different hiring requirements and were generally viewed as complements rather than substitutes.

¹⁶ For example Streetcar's hourly charge for a small car is £4.95 and the daily rate is £49.50

OFT views

35. The OFT accepts on the basis of the evidence provided that the parties do monitor car rental prices and may have regard to car rental charges when setting their own daily charges. However, it does not follow from this that car rental services provide a sufficient constraint on car club services for the following reasons.
36. First, it is important to understand that car rental and car clubs operate wholly different business models, both in terms of the service they offer (eg membership v non-membership, 24/7 access v opening times at depots) and also in terms of how they set prices. Car rental providers generally operate pricing based on yield management models. By contrast, car clubs seek to achieve transparency and predictability by operating a fixed tariff on an hourly and daily basis which changes infrequently over time.
37. Second, a significant proportion of the parties' business is not accounted for by daily rentals. Internal documents¹⁷ indicated that [70-80] per cent of customer bookings are for less than 8 hours. This, in part reflects the differences in usage with over [50-60] per cent of Streetcar's members booking a car for 2-4 hours.¹⁸ Research¹⁹ provided by the parties showed that [20-30] per cent of members use car clubs for shopping; this was by far the largest single category. The evidence indicates overall that for the majority of customer bookings, traditional car hire is not an alternative.
38. Third, although the parties provided a number of documents²⁰ to show that car rental constrained car club prices, on reviewing the documents the page titled 'competitor pricing' referred only to car club prices; car rental prices were listed separately. The overall impression given by the documents reviewed by the OFT indicates that the strongest constraint on price comes from other car clubs. In response to the OFT's Issues Letter,²¹ Zipcar stated that it uses its comparative information of car rental companies as a basis for marketing to customers.

¹⁷ Streetcar: 'Long bookings review' May 2009

¹⁸ Streetcar: 'Long bookings review' May 2009

¹⁹ Streetcar '2009 Questionnaire Initial Insights' February 2009

²⁰ Streetcar: 'Long bookings review' May 2009; Streetcar response to OFT Questions 23 July 2010: Annex 27 'Proposed price changes'

²¹ Parties response to the OFT Issues letter 23 July 2010 paragraph 6.4

39. Fourth, when the parties have introduced a price increase,²² there is no evidence to show that this led to a loss in their competitive position against car rental, for example, with customers switching to car rental as a result of the price increase as one would expect to observe if car rental was a direct constraint on car clubs. [].
40. Fifth, other than a reference to a [] times multiple, the OFT was not provided with any evidence on how the parties actually determined the precise daily/hourly relationship. The OFT observes that, even within the confines of a [] (Zipcar) or [] (Streetcar) multiple for the hourly to daily price, there is significant flexibility to increase prices before the daily price would impose a constraint. Thus it is not clear how the daily price would constrain a five per cent increase in the hourly price, provided that the hourly price remained within the parties' stated multiples. Therefore, the OFT is of the view that there is sufficient flexibility within these multiples to raise significant doubts over whether the daily rates provide a sufficient constraint on the hourly prices.
41. On balance, the OFT believes that it is plausible that car rental provides some constraint on the parties' prices for daily or longer rentals. Nevertheless, the OFT has not been provided with any evidence to support the proposition that any constraint that may exist in relation to car club daily rentals also exerts a strong constraint on the pricing of hourly rentals or indeed, the fee for car club membership.
42. Therefore, on the basis of the information available, the OFT is not satisfied that car rental provides a sufficient constraint on car clubs to widen the market definition.

Other transport (taxis, public transport)

43. The OFT also considered whether other forms of transport, most notably taxis and public transport, should be included within the relevant market.
44. The parties provided survey evidence²³ that showed that, for most members, Streetcar is a secondary form of transport, with public transport remaining their primary mode. As a result, these other forms of transport represent complements rather than direct substitutes to car clubs as members use a range of transport options that are best suited to their

²² For example, in July 2009, Streetcar increased the daily rate of the Volkswagen Golf increased from £49.50 to £59.50

²³ Drummondmadell 'Streetcar: A Quantitative Pricing Structure Report' 12 December 2007

needs. No information on the relative charges of these alternative transport options was provided by the parties, but the OFT notes that these other forms of transport are very different in terms of cost structure (no membership fee) and pricing (generally done per journey, rather than per hour) to car clubs.

45. Therefore, on the basis of the information available, the OFT does not consider that other transport options provide a sufficient constraint on car clubs to widen the market definition.

Collective constraint

46. The parties have argued that other transport options such as car ownership and car rental collectively provide sufficient constraint on car clubs to prevent a small but significant rise in price, even if each of these alternatives is not sufficient on an individual basis. Hence these various options should be considered part of the same market.
47. However, the parties presented no specific evidence to support this point. In any case, the OFT believes that, in assessing the merger between Zipcar and Streetcar, it is most appropriate for the OFT to examine it through the lens of a market for car club services.

Conclusion on product scope

48. The OFT has examined above the constraint on car clubs from each of car ownership, car rental firms and other forms of transport. Based on the evidence available, the OFT is not persuaded that these alternative constraints are sufficient, alone or in combination, to widen the market definition beyond the market for the supply of car club services. On a cautious basis, and befitting its role as a first phase review body, the OFT has therefore assessed the merger on the narrower basis of car club services.

Geographic Scope

49. The parties submitted that the relevant geographic market for the off-airport car rental market is national. As summarised above, the OFT believes that the relevant product market for its review is narrower than off-airport car hire, but the OFT considered whether car clubs should be viewed as part of a national market.

50. On the supply side, the major car clubs do not operate nationwide, but rather in selected metropolitan areas such as London that give a large enough potential membership to support a network of shared cars.
51. On the demand side, customers will have a preference for using a car near to their location. The OFT therefore considered whether a narrower area, such as individual London boroughs, could be a relevant geographic market. However, customers are likely to be able to respond to some extent to local price differentials by switching to alternative locations, including across borough boundaries, which are themselves arbitrary. The OFT has not considered it necessary to conclude on the precise extent of demand-side geographic substitution at a very local level.
52. The parties overlap only in London. Therefore, based on the evidence available, the OFT considers that the narrowest plausible geographic market to examine the transaction is London.

UNILATERAL EFFECTS

53. The parties argued that there was no realistic prospect of a substantial lessening of competition under the Act since, amongst other things, the parties were not each other's closest competitors, barriers to entry were low and, in a growing market for car club services, entry and/or expansion was likely from a range of existing players and/or potential new entrants.
54. However, for the reasons set out below, the OFT considers that the completed transaction does create a realistic prospect of a substantial lessening of competition on the basis of unilateral effects, that is, that the merged entity might unilaterally increase prices or worsen other aspects of its car club services offer by either a decrease in output or quality or restriction in choice/innovation.

55. Under this section, the OFT considers the following:

- i. market shares
- ii. the significance of developing a network for car clubs
- iii. evidence on closeness of competition between the parties
- iv. position of other car clubs in London
- v. barriers to entry and expansion (with specific reference to access to parking spaces and costs of marketing)
- vi. recent entry and exit and details of information and evidence received from existing players and potential entrants, and
- vii. buyer power.

Market Shares

56. The parties submitted that their combined market share of the off-airport car rental sector in the UK in 2009 was only just over [0-10] per cent. As explained above, the OFT considers the relevant market against which to examine the transaction to be car club services in London.

Table 1: Car club estimated market shares by revenue (London) 2007-2009

Name	2007		2008		2009	
	Estimated sales (by value £'000)	Share (per cent)	Estimated sales (by value £'000)	Share (per cent)	Estimated sales (by value £'000)	Share (per cent)
Streetcar	[4,000-5,000]	[80-90]	[9,000-10,000]	[80-90]	[14,000-16,000]	[80-90]
City Car Club	[0-500]	[0-10]	[0-500]	[0-10]	[500-1,000]	[0-10]
Whizzgo	[0-500]	[0-10]	[0-500]	[0-10]	Acquired by City Car Club	
Zipcar	[0-500]	[0-10]	[1,000-2,000]	[0-10]	[2,000-3,000]	[10-20]
Connect by Hertz		[0]	[0-500]	[0-10]	[500-1,000]	[0-10]
Total	[4,000-6,000]	100	[10,000-15,000]	100	[15,000-20,000]	100

Source: the parties

57. There are four car clubs currently active in London - Streetcar, Zipcar, City Car Club and Connect by Hertz. The parties are the two largest car clubs by fleet size (Streetcar has [1,000-1,500] cars and Zipcar has [300-400]).

Table 2: Car club market shares by fleet (London) December 2009

Name	2009	
	Fleet Size	Share (per cent)
Streetcar	[1,000-1,500]	[60-70]
City Car Club	[0-500]	[10-20]
Zipcar	[0-500]	[10-20]
Connect by Hertz	[0-500]	[0-10]
Total	[1,000-2,000]	100

Source: the parties

58. The parties estimate that they will have a share of supply between [80-90] per cent (Streetcar [60-70] per cent, Zipcar [10-20] per cent) by fleet size and [85-95] per cent (Streetcar [80-90]²⁴ per cent, Zipcar [10-20] per cent) by revenue, in London.
59. City Car Club is the third largest car club, with an estimated market share of [10-20] per cent by fleet size and [0-10] per cent by value in London.
60. Connect by Hertz entered the London car club market in 2008 and has an estimated [0-10] per cent market share by revenue and a [0-10] percent market share by fleet size.
61. The parties' market shares are high enough to raise prima facie competition concerns such as to warrant further examination of the extent of competition between the parties pre-merger and the constraints that will remain operating on the merged firm going forward. The OFT first discusses in the next section the significance of a network for car club operators.

²⁴ One of the main driving factors for a car club's revenue is the utilisation rate of its vehicles. This is increased either by having more members per car or more active members. Streetcar has approximately [0-50] members per car compared with only [0-50] for Zipcar. Streetcar's higher revenue share is driven by higher utilisation, demonstrating that a larger network of members is important in driving revenue.

The significance of a network for car clubs

62. With the exception of 2009/10, when Streetcar made a small profit (of £[]), both parties have been loss making since they were established. The OFT understands that the utilisation rate – the proportion of time that cars are reserved by members – is the critical indicator of whether a car-sharing operation generates revenue from its investment so as to become profitable.
63. In contrast to traditional car rental firms, who are able to adjust the number of cars in a depot in response to a change in demand, car clubs have little flexibility to reduce their number of vehicles. It is highly preferable for vehicles to be visible and located in residential areas in order to gain and then retain members. When a car is first placed in a location, it may not be profitable, but it is needed in order to encourage people to join.
64. A third party indicated that a supplier seeking to launch a car club needed to place a 'pod' of cars within no more than 10 minutes' walk of another 'pod' of cars, with a pod containing one to ten cars. To make one car profitable it was indicated that a supplier needed around 50 active members, who will rent at least one and a half times per month. Carplus lent some support to this assertion, indicating that a supplier needed a minimum 20 members per bay, up to 40/50. The precise number of users required per car will depend on the cost of the bay it occupies: if it is in a private car park, a greater number of active members are required to make the car profitable.
65. The parties provided the results of customer surveys which indicated that car availability was important to customers,²⁵ and this was confirmed by a third party. The visibility of a network provides customers with confidence that cars will be available to use when wanted. Furthermore, the parties accepted that membership growth is heavily dependent on word of mouth referrals,²⁶ hence a car club's scale is important in increasing membership.
66. The next section considers the closeness of competition between the parties and the strength of the remaining constraints post-merger.

²⁵ Streetcar 2009 Questionnaire Initial Insights. February 2009

²⁶ Streetcar 2009 Questionnaire Initial Insights. February 2009

Closeness of competition

67. The parties argued that, rather than competing against other car clubs to win market share, they compete with different transport alternatives to persuade customers to switch to car clubs. Furthermore, the parties submit that there is significant independent evidence to demonstrate the rapid growth potential in the sector. The combined entity's incentive will therefore be to attract new customers from other forms of transport to car sharing rather than seeking to take advantage or eliminate competition by raising margins on existing or new business.
68. As well as emphasising the competitive role played by alternative transport options, the parties also argued that Zipcar and Streetcar faced only limited competition from each other.
69. First, they provided evidence in terms of an exit survey which showed only very limited levels of switching between the parties. The results of an exit survey of Streetcar members²⁷ showed that only [0-10] per cent of customers left to go to a competitor. This compared to [20-30] per cent leaving because they had bought / been given a car, and [30-40] per cent leaving because they had not used the service.
70. Second, they presented graphical evidence to show that Zipcar's entry did not have an impact on the rate at which Streetcar acquired new members. However, the OFT notes that the underlying data is not seasonally adjusted and only shows the absolute number of members joining Streetcar each month. In a growing market the absolute number may not be informative, as an increase in this measure can be consistent with a decrease in the relative number (that is, Streetcar new members as a proportion of market new members) of members joining.
71. Third, the parties argued that they did not set prices by reference to each other and that – by way of evidence – Zipcar's decision to cut prices in 2008 coincided with a rise in Streetcar's hourly rates and mileage charge. However, the OFT does not consider that the evidence available in terms of price changes demonstrates an absence of competition in this respect between the parties. Significantly:

²⁷ Streetcar Exit Survey 6 Feb – 6 Jul 2010

- i. In terms of pricing evidence, Streetcar has introduced few price changes, but all have been since 2007 when Zipcar entered the market.
 - ii. Zipcar entered the London market in March 2007, and in July 2007 Streetcar abolished its £100 deposit and £25 joining fee; instead it introduced a £50 membership fee that matched Zipcar's.
 - iii. In October 2007, Streetcar introduced a new model, the VW Polo, priced at £3.95 per hour, cheaper than its (and Zipcar's) previous cheapest hourly car charge of £4.95 for a Golf.
72. The OFT examined internal documents of both parties to assess the extent to which there was competition between them (whether in terms of pricing, seeking bays in new locations, or quality of service) in order to win new business.
73. Zipcar, the world's largest car club, entered the London market in 2007 and focused on developing its presence in a limited number of local authorities where it sought to compete directly with Streetcar.[].
74. Board papers provided evidence of Streetcar's response to Zipcar's entry. [] Whilst this reflects the direct competition Zipcar represented to Streetcar in entering the market, other competitors have stated that they too have had difficulties in obtaining on-street parking which is likely to limit their ability to attract new members (see further paragraph 90 below).
75. Zipcar also adopted a strategy of offering free membership to existing Streetcar members. [].
76. Further evidence on the degree of competition between the two parties is provided in 2009. Both parties (amongst others) bid for the concession to run the Westminster Car Club. When Streetcar lost the tender for Westminster Car Club to Zipcar, it responded by doubling the number of cars in the borough by sourcing off-street parking, before Zipcar could implement its on-street car club.
77. The OFT notes that, in terms of evidence of Zipcar's competitive strength, it has increased its market share in London from an estimated [0-10] per cent in 2007 to [10-20] per cent in 2009, while Streetcar's market share has fallen from an estimated [80-90] per cent to [80-90] per cent. Zipcar's

growth has been attained in a growing market, which has seen total revenue increase from £[0-5] million in 2007 to nearly £[10-20] million in 2009. Table 3 below demonstrates that Zipcar has grown significantly faster than the market since 2007.

Table 3: Car club growth 2007 to 2009 in London (by revenue)

Name	Per cent growth 2007-9
Streetcar	[300-400]
Zipcar	[1,000-1,100]
City Car Club	[300-400]
Market	[300-400]

Source: Calculations based on data from the Merger Submission 22 June 2010

78. The OFT accepts that the dynamic and growing nature of the market means that (as shown by the exit survey referred to in paragraph 69 above) there is little evidence so far of the parties winning substantial numbers of existing members from each other. However, Zipcar's offer of free membership to Streetcar's members shows that active attempts have been made to do this.
79. In any case, the OFT believes that, on the evidence available to it, that the parties did compete with each other to win new business and that Zipcar provided a significant competitive constraint on Streetcar given the rate of its expansion, its targeted growth strategy and significant investment, notwithstanding its comparatively limited size.

Position of other car clubs in London

80. There are two other competitors currently operating in the London car club market, namely City Car Club and Connect by Hertz, each with [0-10] per cent of the London market (based on revenue). The market shares by fleet size are [10-20] per cent and [0-10] per cent respectively.

81. City Car Club was the first car club established in London in 2000 and operates in a number of UK cities. The company was initially financed primarily through government and EU grants and therefore, unlike Streetcar, which entered the market in 2004, City Car Club was not initially run on a commercial basis. City Car Club informed the OFT in the context of its investigation that its plans are for continued modest expansion and that its strategy is to focus on building a national network.
82. Connect by Hertz is the car club arm of the Hertz Group, a major car rental supplier in the UK and internationally. Connect by Hertz entered the London market in 2008 and has invested heavily gaining a [0-10] per cent market share by revenue and [0-10] per cent market share by fleet size. However, Connect by Hertz informed the OFT in the context of its investigation that it is finding it difficult to 'pitch' its business against Streetcar's extensive network.
83. The OFT considers that, notwithstanding that City Car Club and Connect by Hertz are cited by the internal documents of Streetcar as competitor car clubs in London, they should not be seen as exerting the same competitive strength as Zipcar pre-merger given that:
- i. Zipcar had grown much faster than either City Car Club or Connect by Hertz (see Table 3 above)
 - ii. at the date of the merger, Zipcar (based on revenue) was three times the size of City Car Club or Connect by Hertz, and
 - iii. Zipcar is a firm dedicated to the car club model and with international expertise.
84. The OFT is therefore not satisfied that City Car Club and Connect by Hertz currently provide a sufficient constraint on the merged parties to outweigh the loss of Zipcar as a competitor.

Barriers to entry and expansion

85. The OFT's investigation identified and focused on two potential barriers to entry and expansion into the London car club market: the availability of

parking spaces, especially on-street parking spaces, and cost of marketing. Each of these is discussed below.

The availability of parking spaces

86. Parking spaces for use by car club vehicles are available from a number of sources: local councils, private car parking companies, private companies and private individuals. The breakdown of sources of the parties' car parking spaces is shown in Table 4 below.

Table 4: Breakdown of the parties' London car park spaces by provider

	Zipcar UK		Streetcar	
	Number of spaces	Percentage	Number of spaces	Percentage
Private car park	[0-50]	[0-10]	[50-100]	[0-10]
Commercial provider			[150-200]	[10-20]
Private individual	[0-50]	[0-10]	[200-300]	[20-30]
Private business	[0-50]	[10-20]		
Other (university, housing association)	[0-50]	[0-10]		
Council	[200-300]	[70-80]	[600-700]	[50-60]
Total	[400-500]	100	[1,000-1,500]	100

Source: the parties.

Local authority parking v private parking

87. The OFT's investigation indicated that the major source of parking spaces is local authorities; this is supported by the evidence provided by the parties, which shows that the major supplier of parking spaces to each of them is local authorities: [70-80] per cent in the case of Zipcar and [50-60] per cent in the case of Streetcar. However, the parties submitted that the wide availability of private parking spaces meant that access to parking spaces should not be seen as a barrier to entry into the London market. In support of this argument, the parties submitted that private parking was

not prohibitively expensive. They stated that, for Streetcar, [], but argued that this was a relatively small difference in the overall cost of operating a car club.

88. The OFT's investigation indicated that on-street parking from local authorities was important to establishing a successful car club and, moreover, that on-street parking from local authorities was substantially cheaper than private parking bays.²⁸ In addition, third parties indicated that the local authority bays generally provide better access for members as they are located in residential areas. They also effectively provide marketing for the car club given that they are located in visible on-street locations. It is this visibility that is key to attracting members and expanding the network (see further under 'marketing' below).
89. As the investigation confirmed that access to local authority parking spaces was important for new entry and expansion, the OFT assessed the ability of new entrants and/or existing players to access local authority parking spaces in the future. This is discussed in the next section.

Local authority parking

90. The OFT considered carefully whether access to local authority parking spaces was a barrier to entry. A number of third parties contacted during the investigation stated that entry and expansion in car clubs in London was limited by:
- i. limited availability of local authority parking spaces
 - ii. a large proportion (almost 50 per cent) of parking spaces being located in single operator boroughs (that is boroughs that provide parking spaces to only one car club operator)
 - iii. the use of criteria for the allocation of spaces that favour incumbents
 - iv. reasonably long contracts for parking spaces, for example up to [] years in the case of the Westminster concession, and
 - v. the fragmented nature of securing parking across London, meaning that any entry/expansion has to be piecemeal, which in turn limits the ability to gain economies of scale/scope.

²⁸ A third party stated that 'Costs of on-street parking bays vary from zero to £750. Renting privately would cost a minimum of £1500 per annum and much more in central London.'

91. The OFT assessed these third party views by reference to discussions with local authorities and the evidence put forward by the parties.

Availability of local authority spaces

92. In terms of availability of local authority spaces, the majority of local authorities contacted by the OFT indicated that they were planning on increasing the number of available bays to car clubs. However, there is also significant diversity between authorities in the number of spaces that are available for car club use, for example, only 53 spaces are available in Brent compared with 128 in Islington. Furthermore, the expected rate of expansion will vary between authorities. The OFT also notes that the provision of some additional parking spaces does not necessarily eliminate any incumbency advantage that may exist (see below).

Multiple vs single operator tenders

93. The parties explained that different boroughs in London adopt different approaches to contracting on-street car parking spaces with some boroughs operating on a single operator basis with either no exclusivity or varying periods of exclusivity (generally one to four years) and other boroughs operating on a multiple operator basis. They noted that 54 per cent of on-street spaces are in multiple operator boroughs, a proportion expected to rise in the coming years.
94. Some single operator boroughs contacted by OFT confirmed that they may convert to become multiple operator boroughs, although it should also be noted that one multiple operator borough signified that it intended to switch to single operator basis. In addition, a number of local authorities confirmed that they would be increasing prices to car clubs for car parking spaces in the future. For example, [].
95. Despite an expected increase in more parking bays becoming available in the future, a significant proportion of local authority parking is still held by a single operator. The OFT's investigation did not support the proposition that, even for those authorities offering spaces on a multiple operator basis, the number of spaces awarded is not affected by the car club's existing membership in the area (see below).

Local authority criteria for awarding parking spaces and length of contracts

96. The parties argued that multiple operator boroughs do not favour incumbent suppliers and that even single operator boroughs do not do so (as evidenced by the fact that Zipcar won the Westminster concession despite the fact that Streetcar was the largest operator in the borough). The parties also noted that when Streetcar entered the market, it was successful in obtaining spaces despite the fact that there was an incumbent (City Car Club).
97. The OFT was mindful of the fact that Zipcar did obtain the Westminster concession and considered this example carefully. Westminster City Council²⁹ informed the OFT that the contract was for a concession to operate the Westminster Car Club in the borough. The Council received three detailed tenders – from Streetcar, Zipcar and Connect by Hertz.³⁰ Zipcar received the highest score on the service quality and, more significantly, on the financial criteria. Indeed, information provided by the parties indicated that Zipcar is paying £[] per parking bay in Westminster, compared with an average of just over £[] that Streetcar is paying for private parking. The OFT therefore believes that Zipcar's experience in winning the Westminster concession (which lasts for [] years) cannot be regarded as definitive evidence that there is – in general – no incumbency advantage in obtaining local authority car park spaces.
98. The OFT also considered the fact that Streetcar entered the market in 2004 and was successful in obtaining car park spaces. However, it is conscious that when Streetcar entered car clubs were still a new concept and hence it is not surprising that local authorities were supportive of new entrants at this time. However, in line with the parties' submissions, the market has grown significantly since Streetcar's entry and during this time Streetcar has successfully built up strong working relationships with local authorities in London.
99. The OFT's investigation confirmed that local authorities apply criteria to assess car club tenders, including some or all of the following:
- i. accreditation with Carplus
 - ii. the car club's rates and charges

²⁹ Third part response from Westminster City Council

³⁰ City Car Club decided to withdraw its application as it felt that there should be multiple operators for the scheme. It also felt it would have limited chance of being successful.

- iii. the car club's terms and conditions
- iv. the car club's marketing plans, and
- v. the car club's performance.

100. A number of authorities³¹ consider membership as part of their criteria for allocating spaces under performance levels or marketing plans. Furthermore, a number of authorities contacted by the OFT explicitly stated that they did have regard to membership when awarding contracts. This is expected to favour established players, that is, the merged entity may benefit from an incumbency advantage when additional parking bays are released by local authorities. By way of factual support for this view, the OFT were told by Kensington and Chelsea that when they expanded service provision in 2010, they based the allocation of new bays on the number of members each club had in the borough, they did not competitively tender the contract. The authority did not want more than three operators in the borough as they felt more than that would dilute the network and service provision. These contracts last for three years.

Fragmentation of securing parking across London

101. The OFT has not been able to dismiss concerns that the fragmented nature of local authority policies in London, which might be seen as assisting entry, in fact acts as a barrier to entry. In line with the stated views of one third party, this means it would take time to develop a network in London. In such a dynamic market this could put new entrants at a relative disadvantage forcing them to enter on a piecemeal basis, picking up spaces gradually. This, in turn makes it unlikely that a new entrant would be in a position to replicate Zipcar's current position on a timely basis.

Conclusion

102. It is clear that parking is a necessary component in the car club model. The OFT's investigation indicates that access to local authority parking is an important component of a successful car club business. Local authority rules for allocating parking spaces, while varying across local authorities, can act overall to limit entry and expansion and prevent competitors from establishing an efficient network. The OFT is also minded that whilst parking costs will be shared by all car clubs, the existing network of the

³¹ []

merged entity will allow them to incur costs over a wider membership base, thereby putting them in a more competitive position than a new entrant.

Marketing

103. The OFT considered also whether marketing should be seen as a barrier to entry, prompted by third party comments that one of the key advantages of local authority parking was that it enabled the vehicles to be visible and therefore assisted with promoting the car club's brand in an area.
104. The parties submitted that the costs associated with branding/marketing are the cost of doing business as a car club operator and do not reflect cost asymmetries between themselves and a potential new entrant. The parties also stated that Streetcar has made material sunk cost investments in marketing and advertising in the UK to develop the car club concept, whereas a new entrant would benefit from the fact that car clubs are now a more widely known concept.
105. They argued that for entrants such as the rental operators the scope for brand extension – rather than the creation of a new stand-alone brand – would in any event make marketing and branding costs much less burdensome.
106. The parties argued that personal recommendations were important for promotion of the business. The parties provided evidence to show that 'word of mouth' is significant in gaining members and that a larger network will provide greater visibility of a brand.
107. In response to the OFT's investigation, a number of local authorities indicated that marketing plans were part of the criteria (as listed in paragraph 99) for awarding new bays, in part to establish the car club concept and encourage residents to join a car club.
108. The OFT considers that information provided by the parties themselves supports the view that expenditure on marketing is significant and necessary in order to attract members. Zipcar spent approximately £[] per member on advertising in 2009 but was planning on increasing the budget in 2010 by nearly four fold to over £[] million.³² Streetcar, whose marketing costs per member are lower due to its larger membership base

³² Zipcar response to OFT questions 23 July 2010: Zip04.01

was planning an increase of over [] per cent in marketing spend in 2010.³³ The importance of brand recognition was noted internally by Zipcar in relation to the merger with Streetcar. [] '[Streetcar] has a well established brand in the UK Market – []'.³⁴ In support of this assessment that Streetcar already has a well established brand in the UK, a third party described Streetcar as 'synonymous with car club'.

109. In relation to the parties' submission that 'word of mouth' is significant in terms of gaining members, the OFT notes that the parties' larger network will provide greater visibility of a brand. Due to the extensive network in London of the merged entity, they may have a distinct cost advantage over new entrants seeking to establish their brand because 'word of mouth' can be more effective in attracting new members than expensive marketing.
110. Overall, therefore, the OFT believes that marketing may represent a barrier to entry for at least some potential entrants. The OFT believes that network strength is one of the key ways to build a brand in this market and that it will be difficult for a new entrant to establish a strong brand until it has a sufficient network.

Recent entry/exit to the market

111. The OFT notes that Hertz is the latest of a number of car rental firms that have entered the car club market but, with the exception of Connect by Hertz who are still operating in the market, the other firms have exited. Both Budget and Avis entered the car club market in cities outside of London. Avis (which now owns Budget) exited the car club market in the UK three years ago, having traded on a pilot basis under the brand 'Urbigo'. They found that take up was fairly limited []. Nevertheless Avis has entered the market in France under the brand 'Okigo' which is trading well.

Information from existing and potential entrants

112. The parties argued that entry or expansion is possible by a range of credible entrants, including car club operators with significant presence elsewhere in Europe, traditional car hire companies and vehicle manufacturers. The parties pointed to the fact that Zipcar and Connect by Hertz had both entered the market relatively recently as evidence of successful entry.

³³ Streetcar response to OFT questions 23 July 2010: SC04.01

³⁴ Zipcar board presentation 2/4/10

113. The parties identified a number of potential candidates for significant expansion or entry in the car club market in London. The parties identified Connect by Hertz as the most promising party to expand further into the UK car club market. They emphasised Hertz's access to vehicles, depots and potential members through its rental customer list. They pointed towards Hertz's acquisition in 2009 of a technology supplier, Eileo, as evidence of its technical ability to expand in this market. They also noted the fact that Connect by Hertz had entered New York in 2008 and by May 2009 had achieved an estimated [10-20] per cent share of supply; this demonstrated Hertz's ability to expand rapidly in this sector if it were so minded.
114. The OFT spoke directly to a range of potential entrants in relation to the prospects of entry or expansion. By way of summary, none of them considered that they could enter the market on a sufficient scale to compete effectively with the merged entity. As indicated in the discussion of barriers to entry, above, third parties emphasised to the OFT that scale is an important driver of profitability and growth of car sharing clubs. Therefore, even if prices rose to supra-competitive levels, there is no indication that potential entrants are more likely to enter the market as they would be faced with the same difficulties of developing a network and membership base of sufficient scale to become profitable. The specific evidence obtained from each of the third parties contacted by the OFT is detailed below.

Connect by Hertz

115. The OFT pressed Connect by Hertz on its prospects for further expansion in the London market. However, as noted above (see paragraph 82 above) it informed the OFT in the context of its investigation that it is finding it difficult to 'pitch' its business against Streetcar's extensive network. Connect by Hertz informed the OFT that []. Connect by Hertz would continue its expansion in Madrid and Berlin []. As a result of the information provided, the OFT is not satisfied that Connect by Hertz will continue to expand at its current rate to provide lasting and effective post merger competition sufficient to outweigh the loss of Zipcar within a timely manner.

Enterprise

116. The parties identified Enterprise as another potential rental provider that could expand into car club schemes. WeCar is a car sharing programme introduced by Enterprise Rent-A-Car in partnership with Woking Borough Council. WeCar is based in Woking and dedicates two vehicles for short-term use by council employees. [] unlikely to provide a sufficient competitive constraint in the market post-merger.

City Car Club

117. City Car Club is an existing car club operator in London that was identified by the parties as, according to its own statements, rapidly expanding. City Car Club confirmed to the OFT that it would expand, but suggested that in London this would be to a limited extent, perhaps by five per cent per year. It informed the OFT that it was not aiming to compete in new areas in London, but was introducing new UK cities. Whilst City Car Club is well established in London it does not represent a similar competitive constraint to Zipcar. Therefore, based on the information provided to the OFT and City Car Club's growth to date, the OFT is not satisfied that it will provide a sufficient constraint on the merged entity.

Greenwheels

118. Greenwheels, another potential entrant identified by the parties, that has a 70 per cent market share in the Netherlands, informed the OFT that it is considering entering other European markets including London, [] or []. From its experience in the Netherlands, Greenwheels finds that members are attracted to a club offering a larger network as this offers better car availability. Given this issue, Greenwheels remained unsure as to whether it would enter the London market and therefore the OFT is not satisfied that Greenwheels' entry in the London market will be timely to provide a competitive constraint to the merged entity.

Peugeot's Mu

119. Finally, the OFT spoke with the UK managers of Mu, the initiative introduced by Peugeot which has proved successful in Paris. However, Mu is a different business model from car clubs as its focus is on marketing Peugeot products and is currently operating on a very small scale in the

UK. The OFT concluded that Mu's expansion would be neither timely nor sufficient to provide a sufficient constraint on the merged entity.

Conclusion on potential entrants

120. The OFT's Guidance³⁵ set out the conditions that must be satisfied if new entry or expansion, or the threat of entry or expansion, is sufficient to constrain the behaviour of merged firms. In essence, it is important that such entry or expansion be likely (that is, to be expected to occur in the event that the merging parties seek to exercise market power), sufficient in scale and sufficiently timely.

121. Recognising the fact that this market has seen entry in recent years – including by Zipcar itself – the OFT has sought to test carefully whether other suppliers would expand or enter in the event that the merged firm sought to exercise market power. However, on the evidence available to it, none of the third parties considered by the OFT could properly be considered sufficiently likely to enter or expand so as to replicate the competitive constraint lost by the merger. The barriers to entry and expansion in the market – in particular given the scale of the merged firm – are sufficient that the prospects of further entry or expansion in London are at present uncertain. Nor did the OFT receive any indication that an exercise of market power by the merged firm would prompt third parties to enter or expand. Given this uncertainty, the OFT considers that entry or expansion on a sufficient scale to replicate the competition constraint lost as a result of the merger is unlikely.

Buyer power

122. Beyond their ability to switch to other providers, or to reduce the extent to which they purchase, individual customers do not have significant buyer power with which to constrain the merged firm. However, the parties argued that, as a form of buyer power, local authorities had the ability – through their control of on-street car parking spaces – in certain instances to prevent the exercise of market power by the merged entity.

³⁵ OFT Substantive assessment guidance (OFT516), paragraphs 4.20ff.

123. Specifically, the parties provided evidence that the large majority of spaces that are in local authorities where there are single (rather than multiple) operators are covered by contracts with the relevant local authority [].³⁶

124. The OFT accepts that [] could in theory serve to limit the parties' ability to raise prices, at least in local authority areas that are covered by such protection. However, the OFT does not believe that such controls are sufficient to alleviate any concerns it has for three reasons.

- i. First, not all local authority areas are covered by such protection.
- ii. Second, it is not clear that the existence of such controls does prevent price increases in practice. The OFT is aware that Streetcar has introduced material price increases over the past two years, but no evidence was provided by the parties that any local authority had raised concerns regarding these price increases or had sought to prevent them being applied. In particular, the OFT observes that it is not clear how any local authority would react in the face of a claim by a car club that its price rise was required to take account of increased costs.
- iii. Third, such clauses impact only in relation to price. They do not take account of other parameters of competition such as service or quality that may be adversely impacted by a loss of competition.

125. As a result, it is not clear to the OFT that local authorities would provide sufficient constraint on the merged entity to restrain a small but significant price increase or equivalent reduction in quality or service.

THIRD PARTY VIEWS

126. Third party views on this merger were mixed. To the extent relevant, the OFT has included specific reference to third party views in the above detailed assessment. For the sake of completeness, the OFT notes the following.

127. The parties provided responses from 25 customers that they had received following the announcement of the acquisition. The responses were

³⁶ []

positive; the majority were enquiring about the usage of vehicles in other cities both in the UK and US; others welcomed a greater choice in the vehicles resulting from the merger. A couple of Streetcar's founder members queried what this would mean for their fees, and there were also queries requesting that some of Streetcar's policies could continue such as the provision of free mileage for bookings of more than 48 hours.

128. As noted above, the OFT contacted a range of third parties, including customers (businesses and individuals), existing and potential competitors, suppliers and local authorities.
129. Of the 50 third parties who commented to the OFT, a sizeable number raised concerns that the merger would lead to competition concerns in the car club market in London. The majority of respondents considered that the parties compete strongly with each other, and some customers were concerned that the loss of competition from the merger could jeopardize good service and value. Some local authorities contacted by the OFT expressed concern at the loss of Zipcar as a competitor in the market but others considered that the increased network would be of benefit to their residents and would support the increased use of car clubs in their areas.
130. A third of customers who responded to the OFT during the investigation noted the potential benefits of the merger, particularly Zipcar's members as they would have access to Streetcar's larger network of cars. A third of customers also mentioned that service was important to them, some of whom had concerns over the service Zipcar currently provided and whether Streetcar's call centre would remain in the UK.
131. Responses from customers, particularly those from individuals (whether received by the parties or given to the OFT) provide a varied and mixed picture. However, whilst many members see the benefits of a wider network post-merger, others have strong concerns, based on their experience of using the two car clubs, that the loss of competition may result in higher prices and/or poorer service.

ASSESSMENT

132. The parties overlap in the provision of car club services in London.

133. The OFT assessed whether the aggregate constraint from car ownership, car rental and other forms of transport would be sufficient to deter a small but significant non-transitory price increase by a hypothetical monopolist of car clubs in London. The OFT is not confident that these alternative forms of transport are close substitutes and hence, on a cautious basis, considers that it is appropriate to analyse the impact on competition of this transaction in the market for car club services in London.
134. The parties will have a [85-95] per cent market share (increment [10-20] per cent) by revenue of car clubs in London post-merger. The two other suppliers – Connect by Hertz and City Car Club – each have a share of around [0-10] per cent. The OFT considers that such market shares raise prima facie competition concerns.
135. Notwithstanding Zipcar's relatively modest share, the OFT believes that Zipcar was a particularly strong and dynamic competitor to Streetcar pre-merger having expanded significantly in the last few years.
136. The OFT's investigation indicated that the development of a network was important in attracting members, who tend to choose the car club nearest to their home or work. Increased membership, through increased utilisation rates, drives profitability. The OFT did not find, in London, that existing car club competitors, Connect by Hertz and City Car Club had developed strong networks and could be considered in their present position, absent expansion, to sufficiently constrain the merged entity.
137. The OFT did not consider that entry and/or expansion, on the evidence available to it, to be timely, likely or sufficient to replicate the position of Zipcar so as to constrain the merged entity. In particular, the evidence indicated that on-street parking provided by local authorities is important in terms of both cost and location to new entrants in seeking to build a network to rival the merged entity. Whilst some parking spaces may become available, the OFT believes that the merged entity would benefit from an incumbency advantage in bidding for future on-street parking space awards by local authorities.
138. As a result of the above, the OFT was not convinced that existing competitors or potential new entrants would be able to provide a sufficient competitive constraint on the parties. Information received from third parties during its investigation indicated that potential entrants or existing

providers were not planning to enter or expand in London to such an extent as to replace the competitive constraint lost by Zipcar.

139. The OFT is not satisfied, on the evidence available, that local authority buyer power to be a strong factor which would act as a constraint on the merged entity and, in particular, the investigation has not indicated that local authorities exercise any particular constraint on the parties in relation to price or service.
140. For the reasons set out above, the OFT considers that the merger creates a realistic prospect of a substantial lessening of competition in the provision of car club services in London.

EXCEPTIONS TO THE DUTY TO REFER

141. Where, as in this case, the OFT finds itself under a duty to refer a merger to the Competition Commission, it may decide not to do so where it believes that the customer benefits of a merger would outweigh its adverse effects. The OFT's guidance clarifies that the customer benefits in question must be clear and, in the case of cost savings, quantifiable.³⁷ It also gives as an example of such customer benefits a situation in which the merger increases the size of a network, and thus its value to customers.³⁸
142. Both the parties and some third parties have identified benefits from the merger such as greater choice and availability of cars for the combined members of the merged group. The OFT has noted in its decision (see paragraph 62-66 above) the importance of a network of cars for users of the service.
143. However, the OFT did not have any substantiated evidence on the scale of the benefits so as to ascertain what proportion of users would in practice benefit, or to what extent. Further, it was not clear to the OFT that any benefits that would arise would offset the loss of competition brought about by the merger. This is particularly the case given the parties' high combined share and the fact that the OFT does not have evidence that this share is likely to be undermined by entry or expansion in the future.

³⁷ OFT Substantive assessment guidance (OFT516), paragraph 7.7.

³⁸ Ibid., paragraph 7.8.

144. For these reasons, the OFT does not consider it appropriate to exercise this exception to the duty to refer in this case.

UNDERTAKINGS IN LIEU

145. Where the duty to make a reference under section 22(1) of the Act applies, pursuant to section 73(2) of the Act the OFT may, instead of making such a reference, and for the purpose of remedying, mitigating or preventing the substantial lessening of competition concerned or any adverse effect which may be expected to result from it, accept from such of the parties concerned undertakings as it considers appropriate.

146. The parties offered a structural undertaking which was the release by Zipcar of [] on-street parking spaces currently held by Zipcar for assignment or reallocation to an alternative supplier. The remedy would therefore address the most significant barrier to entry and expansion identified by the OFT in its investigation, namely access to local authority parking spaces. In this sense, the parties argued that the remedy should be seen as akin to a slot remedy in an airline merger, a model that has previously been accepted by the OFT.³⁹

147. While the OFT welcomes the willingness of the parties to put forward remedies, it does not consider that the remedy proposed in this case is capable of operating in a clear cut way to remedy the competition concerns arising from the merger for a number of reasons.

148. The remedy would not replicate the existing constraint that Zipcar placed on Streetcar. This is because the divestment would represent less than half [] of Zipcar's current holding of parking spaces, not least because Zipcar's Westminster concession would not be included.⁴⁰

149. For practical reasons, the OFT considered that it would be difficult to ensure that all the spaces would be taken by a single operator. The mechanism for transfer or reallocation of spaces would be specific to each of the six local authorities involved.⁴¹ A dispersal of the spaces amongst multiple operators would potentially fail to provide any single competitor

³⁹ Completed acquisition by Air France Finance SAS / City Jet Ltd of VLM Airlines N.V. No. ME/3535/08. 9 May 2008.

⁴⁰ The parties stated that they were not able to offer to 'divest' the Westminster concession for contractual reasons.

⁴¹ Brent, Camden, Lambeth, Kensington & Chelsea, Richmond, Tower Hamlets.

with the necessary increase in scale to provide an enhanced competitive constraint. Therefore, the remedy would require the cooperation of multiple local authorities, which would add significant complexity to the implementation of the remedy.⁴²

150. The remedy offer related to the parking spaces, but not to the vehicles or members that went with those spaces. Whilst parking is a key component in establishing a network (as recognised in paragraph 63 of the decision), it is questionable whether the remedy would be successful without the vehicles and members associated with the spaces.

151. Having examined the undertakings offered in this case, the OFT believes that they would not act in a clear cut manner to remedy or prevent the adverse competition effects identified and therefore the duty to refer remains.

DECISION

152. This merger will therefore be referred to the Competition Commission under section 22(1) of the Act.

ENDNOTES

1. With reference to paragraph 64, the third party subsequently informed the OFT that to make one car profitable, a supplier needed around **45** active members, who will rent at least one and a half times per month. This clarification does not impact on the OFT's conclusions in this case.
2. With reference to paragraph 81, OFT notes that City Car Club started operating car clubs in 2000 and entered the London market in 2002.
3. With reference to paragraph 82, OFT notes that Connect by Hertz entered the London market in December 2008.
4. With reference to paragraph 82, Connect by Hertz clarified that its comments were made in relation to Streetcar's extensive network

⁴² In addition, it is not clear whether the parties would have been able, as a result of the operation of the public procurement rules that could apply to tenders of spaces, to engineer a solution where a single competitor acquired all the spaces, even with the cooperation of the multiple local authorities.

overwhelmingly because of Streetcar's occupation of most on-street bays awarded by local authorities.

5. With reference to footnote 30, City Car Club clarified that due to the intended scale of the operation, it was felt that the larger operators would have a distinct advantage in winning the Westminster concession.
6. With reference to paragraph 100, the Royal Borough of Kensington & Chelsea subsequently clarified that in 2007, all operators who had expressed an interest to operate in the borough were allocated an equal number of bays. In 2010, 50 per cent of the new bays were allocated on the basis of membership figures; the remainder were allocated equally across existing car club operators. This clarification does not impact on the OFT's conclusions in this case.
7. With reference to paragraph 115, Connect by Hertz clarified that its comments were made in relation to Streetcar's extensive network overwhelmingly because of Streetcar's occupation of most on-street bays awarded by local authorities.
8. With reference to paragraph 117, City Car Club clarified that the five per cent expansion per annum relates to fleet growth in London.