

COMPLETED ACQUISITION BY INCHCAPE OF EMH

UNDERTAKINGS GIVEN BY INCHCAPE TO THE OFFICE OF FAIR TRADING PURSUANT TO SECTION 73 OF THE ENTERPRISE ACT 2002

WHEREAS:

- (a) On 29 January 2007 Inchcape acquired EMH (the Acquisition);
- (b) It appears to the OFT that as a consequence of the Acquisition a relevant merger situation has been created in the UK;
- (c) The OFT has a duty to refer a completed merger to the CC for further investigation where it believes that it is or may be the case that the merger situation in question has resulted, or may be expected to result in a substantial lessening of competition within any market or markets in the UK for goods or services;
- (d) Under section 73 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 has or may have resulted from it, or may be expected to result from it, accept undertakings to take such action as it considers appropriate, from such of the parties concerned as it considers appropriate;
- (e) The OFT considers that, in the absence of appropriate undertakings, it would be under a duty to refer the Acquisition to the CC;
- (f) The OFT further considers that the undertakings given below by Inchcape are appropriate to remedy, mitigate or prevent the substantial lessening of competition, or any adverse effect which has or may have resulted from it, or may be expected to result from it, as specified in the Decision;
- (g) Pursuant to section 71 of the Act, Inchcape gave initial undertakings on 8 March 2007 in respect of the Acquisition for the purpose of preventing pre-emptive action. These initial undertakings cease to be in force on acceptance by the OFT of the undertakings given below by Inchcape.

NOW THEREFORE Inchcape hereby gives to the OFT the following undertakings for the purpose of remedying, mitigating or preventing the substantial lessening of competition, or any adverse effect which has or may have resulted from it or may be expected to result from it.

Effective date of the undertakings

- 1 These undertakings shall take effect from the date that, having been signed by Inchcape, they are accepted by the OFT.

Divestment of the Divestment Dealership Business

- 2.1 Inchcape shall, using its best endeavours and acting in good faith, as soon as reasonably practicable, effect to the satisfaction of the OFT the divestment of the Divestment Dealership Business as a going concern by the end of the Divestment Period to a purchaser approved by the OFT in accordance with the provisions of these undertakings.
- 2.2 Inchcape shall be deemed to have complied with the obligation at paragraph 2.1 if, as soon as reasonably practicable and in any event by the end of the Divestment Period, it has entered into a legally binding agreement with a purchaser or purchasers approved in advance by the OFT in writing pursuant to these undertakings provided that, the final closing in respect of the divestment of the Divestment Dealership Business, if later than the end of the Divestment Period, takes place
- (a) within a period not exceeding two months (subject to obtaining all the necessary approvals and consents from third parties) after the approval of the relevant purchaser or purchasers by the OFT, or
 - (b) within a period not exceeding 10 Working Days after all the necessary approvals and consents from third parties have been obtained,
- whichever is later.
- 2.3 Without prejudice to the generality of paragraph 2.1 above, Inchcape shall take the following measures to the extent they may be necessary to effect the divestment of the Divestment Dealership Business in accordance with the provisions of these undertakings:
- (a) the transfer or vesting of property, assets, rights, personnel, liabilities or obligations (including without prejudice any contracts, licences, authorisations, permits or consents);
 - (b) the adjustment of contracts, whether by discharge or reduction or assignment of any liability or obligation or otherwise;
 - (c) the creation, allotment, transfer, surrender or cancellation of any shares, stock or securities; and/or
 - (d) the formation or winding up of a company.
- 2.4 In the event that Inchcape fails to complete the divestment of the Divestment Dealership Business within the Divestment Period, the OFT may, whether or not initiating the Trustee Functions set out below, require Inchcape to divest the Divestment Dealership Business as a going concern at no minimum price to a purchaser approved by the OFT.
- 2.5 Inchcape shall notify the OFT in writing of the identity of each proposed purchaser that makes an offer for either of the Divestment Dealership Businesses together with the value and terms of such offers as soon as reasonably practicable following the receipt of such offers and in any event within at least 10 Working Days of receipt of such offers.

Purchaser Approval

- 3.1 For the purposes of the OFT approving a proposed purchaser of the Divestment Dealership Business in accordance with these undertakings, Inchcape and/or any proposed purchaser shall satisfy the OFT that:
- (a) the proposed purchaser is independent of and unconnected to Inchcape and the Group of Interconnected Bodies Corporate to which Inchcape belongs and any Associated Person or Affiliate of Inchcape or such Group of Interconnected Bodies Corporate;
 - (b) the proposed purchaser has the financial resources, expertise and incentive to maintain and operate the Divestment Dealership Business that it is purchasing as a viable and active business in competition with Inchcape and other competitors; and
 - (c) the proposed purchaser is reasonably to be expected to obtain all necessary approvals, licences and consents from any regulatory or other authority.
- 3.2 The OFT may require Inchcape to provide it with such information and documentation as it may reasonably require to satisfy the OFT that a proposed purchaser will fulfil the requirements in paragraph 3.1 above.

Appointment of a Trustee

- 4.1 The provisions of paragraphs 4.2 to 4.7 below shall apply only as long as Inchcape has not satisfied, or where the OFT has reasonable grounds for believing that Inchcape will not satisfy, all or any part of the obligation to divest the Divestment Dealership Business in accordance with paragraphs 2.1 and 2.2 above.
- 4.2 Within 15 Working Days of the OFT notifying Inchcape that it must do so, Inchcape shall propose to the OFT for approval;
- (a) the names of at least two individuals to exercise the Trustee Functions; and
 - (b) the full terms of a mandate in accordance with which the Trustee shall carry out the Trustee Functions.
- 4.3 Inchcape and/or any individuals nominated pursuant to paragraph 4.2 shall satisfy the OFT that:
- (a) such nominated individuals are each EU nationals with the necessary qualifications to carry out their mandates, and employees or partners of an investment bank, bank, building society or law firm or accountancy firm with an established reputation either nationwide or in a substantial part of the UK or in another EU member state;

- (b) such nominated individuals are each independent of Inchcape and of the Group of Interconnected Bodies Corporate to which Inchcape belongs and of any Associated Person or Affiliate of Inchcape or of such Group of Interconnected Bodies Corporate and of any proposed purchasers of the Divestment Dealership Business to be sold pursuant to these undertakings, and, in the reasonable opinion of Inchcape, are appropriate to be appointed as Trustee; and
- (c) such nominated individuals neither are nor shall become exposed, either directly or indirectly, to a conflict of interest that impairs or may be likely to impair their objectivity or independence in discharging the Trustee Functions.

4.4 Within 20 Working Days of the OFT approving, at its discretion, one or more of the individuals and the mandate proposed by Inchcape pursuant to paragraph 4.2 above, and subject to any modifications the OFT deems necessary for the Trustee to carry out the Trustee Functions, Inchcape shall use its best endeavours to appoint from the persons so approved one person to carry out the Trustee Functions in accordance with the mandate approved by the OFT.

4.5 In the event that:

- (a) Inchcape fails to propose any person or persons in accordance with paragraph 4.2 above; or
- (b) none of the persons proposed by Inchcape pursuant to paragraph 4.2 is approved by the OFT; or
- (c) Inchcape is unable for any reason to appoint within the time limit stipulated in paragraph 4.4 any such person following approval by the OFT;

Inchcape shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions on the terms of a mandate approved by the OFT. Inchcape shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT.

4.6 The appointment of the Trustee pursuant to paragraph 4.4 or 4.5 shall be irrevocable unless (a) a conflict of interest that impairs or may be likely to impair the objectivity or independence of the Trustee in discharging the Trustee Functions arises; (b) the Trustee ceases to perform its functions; or (c) the OFT is otherwise satisfied that there is good cause for the appointment to be terminated in advance of the satisfactory fulfilment of the Trustee Functions.

4.7 In the event that the appointment of the Trustee is terminated in accordance with paragraph 4.6 above, Inchcape shall use its best endeavours to appoint from persons nominated by the OFT one person to carry out the Trustee Functions in accordance with such mandate as is

approved by the OFT. Inchcape shall use its best endeavours to make such appointment within seven Working Days of receiving the nominations from the OFT. Where required by the OFT, the outgoing Trustee shall continue as Trustee until a new Trustee is in place and a full handover of all relevant information has taken place.

The Mandate

5. The terms of the mandate proposed by Inchcape pursuant to paragraph 4.2 above shall, as a minimum, contain all provisions necessary to enable the Trustee to carry out the Trustee Functions including, without limitation to the generality of this paragraph:
 - (a) an exclusive, irrevocable mandate to sell either of the Divestment Dealership Businesses as required by paragraph 6.1 below to a purchaser or purchasers approved in writing in advance by the OFT at no minimum price and on such reasonable terms and conditions as the Trustee considers appropriate to effect an expedient sale;
 - (b) a mandate to take any other steps necessary for, or incidental to, the Trustee's mandate under sub-paragraph (a) above;
 - (c) a comprehensive power of attorney to the Trustee (including the authority to grant sub-powers of attorney to the Trustee's officers, employees and agents) to enable it to take all steps necessary or appropriate to effect the sale of either of the Divestment Dealership Businesses;
 - (d) a mandate to comply with any orders and/or directions given by the OFT; and
 - (e) a mandate to appoint at Inchcape's expense such advisers as the Trustee reasonably considers necessary or appropriate in connection with the performance of the Trustee Functions.

Functions of Trustee

- 6.1 The Trustee shall seek to procure, within such period as may be specified in writing by the OFT, the completion of the sale of the Divestment Dealership Businesses at no minimum price, to a purchaser or purchasers approved by the OFT in accordance with paragraph 6.3 below.
- 6.2 Without prejudice to the generality of paragraph 6.1, the Trustee shall take any of the measures set out in paragraph 2.3 above in relation to the Divestment Dealership Businesses to the extent to which such measures may be necessary to effect the divestment of either of the Divestment Dealership Businesses in accordance with paragraph 6.1.
- 6.3 The Trustee shall not sell or permit the divestment of either of the Divestment Dealership Businesses to a proposed purchaser unless it has obtained the OFT's prior written approval in respect of the identity of that

proposed purchaser. The Trustee shall notify the OFT of the identity of a proposed purchaser as soon as reasonably practicable and in any event at least 20 Working Days in advance of the proposed completion of the proposed sale and purchase agreement in question.

- 6.4 Pending the divestment of the Divestment Dealership Business pursuant to paragraph 6.1 above, the Trustee shall monitor Inchcape's compliance with its obligations under paragraphs 7.1 and 7.2 of these undertakings and shall take such measures as it considers necessary to ensure such compliance.
- 6.5 The Trustee may give written directions to Inchcape to take such steps within its competence as may be specified or described in the directions for the purpose of securing Inchcape's compliance with its obligations under these undertakings or enabling the Trustee to carry out the Trustee Functions. The Trustee may not require Inchcape to:-
- (a) offer any reverse premium or similar inducement to a purchaser; or
 - (b) accept any actual or contingent liability towards a purchaser or otherwise in connection with the divestment of the Divestment Dealership Business which would be unusual in scope, duration or financially having regard to the price and usual market practice in relation to similar disposals.
- 6.6 The Trustee shall, as soon as reasonably practicable, comply at all times with any reasonable instructions or written directions made by the OFT for the purposes of carrying out or securing compliance with the undertakings (or any matter incidental thereto) and shall provide to the OFT such information and reports in relation to the carrying out of the Trustee Functions as the OFT may require. The Trustee shall promptly report in writing to the OFT if the Trustee concludes on reasonable grounds that Inchcape is failing to comply with any of its obligations under these undertakings.
- 6.7 For the purpose of fulfilling the Trustee Functions, the Trustee shall not be bound by instructions of Inchcape nor shall the Trustee Functions be extended or varied in any way by Inchcape save with the prior express written consent of the OFT.

Obligations of Inchcape following appointment of Trustee

- 7.1 Inchcape shall not give any instruction or request to the Trustee which conflicts with the Trustee Functions.
- 7.2 Inchcape shall take all such steps as are reasonably necessary to enable the Trustee to carry out the Trustee Functions, including but not limited to (a) complying with such written directions as the Trustee may from time to time give pursuant to paragraph 6.5 above, and (b) providing the Trustee with all such assistance and information, as it may reasonably require in carrying out the Trustee Functions.

Remuneration of Trustee

8. Inchcape shall pay the Trustee a reasonable remuneration for the services it provides in carrying out the Trustee Functions, and shall pay the Trustee in a way that does not impede the independent and effective fulfilment of the Trustee Functions, which shall be set out in the Trustee's mandate referred to in paragraph 5 above.

Interim Action

9. Pending the divestment of the Dealership Business to the satisfaction of the OFT in accordance with the provisions of these undertakings, Inchcape shall ensure that:
 - (a) without accepting any duty to make any substantial capital investment additional to investment arrangements in place at the time of the Acquisition, the Dealership Businesses shall be maintained as a going concern and sufficient resources are made available for the development of the Dealership Businesses;
 - (b) except in the ordinary course of business, no substantive changes are made to the organisational structure of the Dealership Businesses or the management responsibilities within the Dealership Businesses;
 - (c) except with the prior written consent of the OFT the Dealership Businesses are maintained and preserved, including facilities and goodwill;
 - (d) the nature, description, range and standard of goods and services currently supplied by the Dealership Businesses are maintained and preserved;
 - (e) except in accordance with paragraph 2.1, paragraph 2.2 or paragraph 6.1 above, no assets of the Dealership Businesses are disposed of, and no Interest in such assets is created or disposed of, other than in the ordinary course of business;
 - (f) there is no integration of the information technology of the Dealership Businesses acquired by Inchcape by virtue of the Acquisition and any other businesses owned by Inchcape and the software and hardware platforms of the Dealership Businesses shall remain essentially unchanged, except for routine changes and maintenance;
 - (g) all reasonable steps are taken to encourage all Key Staff to remain with the Dealership Businesses;

- (h) to the extent it has not already occurred, no business secrets, know-how, commercially sensitive information, intellectual property or any other information of a confidential or proprietary nature relating to the businesses acquired by Inchcape by virtue of the Acquisition and any other businesses owned by Inchcape shall pass, directly or indirectly from either of the Dealership Businesses (or any of their employees, directors, agents or Affiliates) to EMH (or any of its employees, directors, agents or Affiliates) or vice versa, except where strictly necessary in the ordinary course of business and, where any records or copies (electronic or otherwise) of such information wherever they may be held have already passed between them, they shall be returned to the relevant business and any copies destroyed.

Continued Separation

10.1 Except with the prior written consent of the OFT, following the divestment of the Divestment Dealership Businesses pursuant to paragraph 2.1, paragraph 2.2 or paragraph 6.1 Inchcape or any member of the Group of Interconnected Bodies Corporate to which Inchcape belongs:

- (a) shall not, directly or indirectly, hold, acquire, re-acquire or use:
 - (i) any Interest in that Divestment Dealership Business other than the reversionary interest of any Divestment Dealership Business that is divested by way of a leasehold interest;
 - (ii) any Interest in any company carrying on or having Control of that Divestment Dealership Business (other than any investments made in the ordinary course of the operation of any of Inchcape's related employee benefit and pension fund of not more than three per cent in aggregate of the issued equity share capital in any such person having control of any Divestment Dealership Business, whose shares are listed or dealt with on any recognised investment exchange, which carries no more than three per cent of the voting rights exercisable at meetings of such person); or
 - (iii) other than in the ordinary course of business, any of the assets of that Divestment Dealership Business;
- (b) shall procure that no employee or director of Inchcape or of any members of the Group of Interconnected Bodies Corporate to which Inchcape belongs holds or is nominated to any directorship or managerial position in that Divestment Dealership Business or any directorship or managerial position in any company or other undertaking carrying on or having Control of that Divestment Dealership Business without the OFT's prior written consent;

- (c) shall not participate in the formulation of, or (other than in the ordinary course of business) influence or attempt to influence, the policy of that Divestment Dealership Business or of any company or other undertaking carrying on or having Control of that Divestment Dealership Business; and
- (d) shall not enter into or carry out any agreement or arrangement with any person, if the carrying out of the agreement or arrangement is intended to result or will result in any Associated Person or Affiliate of Inchcape or of any member of the Group of Interconnected Bodies Corporate to which Inchcape belongs directly or indirectly acquiring that Divestment Dealership Business or doing any of the things listed in sub-paragraphs (a) and (b) above.

Compliance

- 11.1 Inchcape shall comply with such written directions as the OFT may from time to time give:
 - (a) to take such steps as may be specified or described in the directions for the purpose of carrying out or securing compliance with these undertakings; or
 - (b) to do or refrain from doing anything so specified or described which Inchcape might be required by these undertakings to do or to refrain from doing.
- 11.2 Inchcape shall procure that any member of the same Group of Interconnected Bodies Corporate as Inchcape complies with these undertakings as if it had given them and actions of the members of the same Group of Interconnected Bodies Corporate as Inchcape shall be deemed to be performance by Inchcape for the purposes of these undertakings.
- 11.3 Where any Affiliate of Inchcape is not a member of the same Group of Interconnected Bodies Corporate as Inchcape, Inchcape shall use its best endeavours to procure that any such Affiliate shall comply with these undertakings as if it had given them.

Provision of Information

- 12. Inchcape shall furnish promptly to the OFT such information as the OFT considers necessary to monitor these undertakings.

Extension of time limits

- 13. The OFT may, where appropriate, in response to a written request from Inchcape showing good cause, or otherwise at its own discretion, grant an extension to any time period referred to in these undertakings;

Interpretation

- 14.1 The Interpretation Act 1978 shall apply to these undertakings as it does to Acts of Parliament.
- 14.2 References in these undertakings to any English law term for any legal status, interest, concept or things shall in respect of any jurisdiction other than England and Wales be deemed to include what most nearly approximates in that jurisdiction to the English law term.
- 14.3 In these undertakings the word "including" shall mean including without limitation or prejudice to the generality of any description, definition, term or phrase preceding that word and the word "include" and its derivatives shall be construed accordingly.
- 14.4 For the purposes of these undertakings:

"the Act" means the Enterprise Act 2002;

"Affiliate" of a person is another person who satisfies the following condition, namely that any enterprise (which, in this context, has the meaning given in section 129(1) of the Act) that the first person carries on and any enterprise that the second person carries on from time to time would be regarded as being under common control for the purposes of section 26 of the Act;

"Associated Person" means a person or persons associated with Inchcape within the meaning of section 127(4) of the Act and includes any Subsidiary of such a person or persons;

"business" has the meaning given by section 129(1) and (3) of the Act;

"CC" means the Competition Commission;

"Control" shall be construed in accordance with section 26 of the Act, and in the case of a body corporate, a person shall be deemed to Control it if he holds, or has an interest in, shares of that body corporate amounting to 10 per cent or more of its issued share capital or carrying an entitlement to vote at meetings of that body corporate of 10 per cent or more of the total number of votes which may be cast at such meetings;

"Dealership Business" means each of the dealerships listed in the Annex to these undertakings;

"the Decision" means the OFT's decision on reference under section 22 of the Act given on 26 March 2007;

"divestment" shall include, in addition to the sale of freehold property, the transfer of a leasehold interest or the grant of a long lease on normal commercial terms of not less than 25 years in duration and the word "divest" and its derivatives shall be construed accordingly; and

"purchase", "purchaser", "acquire" and "acquisition" and "attempted divestment" shall be construed to include both freehold and leasehold transactions;

"the Divestment Dealership Business" means each Dealership Business comprising, in respect of each Dealership Business, the whole or substantially the whole of the rights, assets, interests and obligations of or associated with that dealership as operated at the date of entry into a legally binding agreement, including without prejudice to the foregoing:

- (a) where specific solely to the individual Dealership Business, and capable of being transferred, all or substantially all tangible and intangible assets which contribute to the current operation or are necessary to ensure the viability or competitiveness of the Dealership Business;
- (b) where specific solely to the individual Dealership Business, and capable of being transferred, all or substantially all licences, permits, consents and authorisations issued by any governmental organisation for the benefit of the Dealership Business;
- (c) where specific solely to the individual Dealership Business, and capable of being transferred, all or substantially all contracts, leases, commitments and customer orders of or associated with the Dealership Business; all customer, credit and other records of the Dealership Business; and
- (d) the personnel of the Dealership Business;

"Divestment Period" means the period of time determined by the OFT and notified by it in writing to Inchcape;

"Group of Interconnected Bodies Corporate" has the meaning given in section 129(2) of the Act; references to a Group of Interconnected Bodies Corporate shall be to the Group of Interconnected Bodies Corporate as constituted from time to time;

"Interest" includes shares, an interest in shares and any other interest carrying an entitlement to vote at shareholders' meetings; and for this purpose "an interest in shares" includes an entitlement by a person other than the registered holder, to exercise any right conferred by the holding of these shares or an entitlement to Control the exercise of such right;

"Key Staff" means staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business;

"OFT" means the Office of Fair Trading;

"Inchcape" means Inchcape Plc

"EMH" means European Motor Holdings Plc

“Subsidiary” shall be construed in accordance with section 736 of the Companies Act 1985 (as amended), unless otherwise stated;

“Trustee” means the person appointed pursuant to paragraph 4.4, 4.5 or 4.7 to carry out the Trustee Functions;

“Trustee Functions” means the functions set out in paragraph 6;

“UK” means the United Kingdom of Great Britain and Northern Ireland;

“Working Days” mean any days of the week other than a Saturday, Sunday or any other day that is a public holiday in England; and unless the context requires otherwise, the singular shall include the plural and vice versa.

FOR AND ON BEHALF OF INCHCAPE

.....SignatureSignature
.....NameName
.....TitleTitle
.....DateDate

(Director)

(Director/Company Secretary)

Annex

Dealership Businesses

1. In the North Welsh Marches (Volkswagen) either Inchcape in Oswestry or EMH in Wrexham.