

Euro Car Parts / Andrew Page

Response to Remedies Notice

1 Executive Summary

- 1.1 ECP welcomes the opportunity to comment on the CMA's Notice of Possible Remedies (the Remedies Notice) and will respond separately to the Provisional Findings Report (PFs). The Remedies Notice seeks views on the following¹:
- (a) Whether divestiture will be an effective remedy to remedy the SLCs provisionally found and any resulting adverse effects;
 - (b) Which overlap depots should be divested and whether the Parties should have the choice of which overlap depots they are required to divest in each relevant local area;
 - (c) What should be the appropriate scope of any divestiture package of an overlap depot and whether the divestiture package should include an option for the potential purchaser to acquire a regional or national distribution centre, and/or AP's head office building in Leeds;
 - (d) How the remedy should specify the transfer of the AP depot lease(s) to a suitable purchaser(s);
 - (e) Whether any practical issues may arise from the divestiture of certain overlap depots;
 - (f) Whether, and for how long, transitional arrangements, if any, should be put in place;
 - (g) What would be the profile of a suitable purchaser;
 - (h) Whether there should be a single purchaser or limited number of purchasers of all overlap depots;
 - (i) Whether there are competitors that should be prohibited from acquiring specific divested overlap depots due to competition concerns or any other reason;
 - (j) What would be the appropriate timescale for achieving a divestiture and whether procedural safeguards (such as a divestiture trustee) would be needed; and
 - (k) The proportionality of the proposed structural remedy, including on the likely cost of implementing and (if required), monitoring the proposed structural remedy.
- 1.2 Each of these points is addressed in Sections 2 to 4 below. In short, ECP submits that divestiture would be a comprehensive, effective and proportionate remedy should the CMA ultimately conclude that there are SLCs in local areas. The alternative remedy, prohibition, would be clearly disproportionate in light of the CMA's provisional findings.
- 1.3 ECP also submits that this case does not raise any particularly difficult or complicated issues with respect to divestiture, and that there is therefore no need for the CMA to impose limitations or obligations that go beyond the standard approach to divestiture, in particular with respect to the depots to be selected, the timeframe for divestiture or procedural safeguards.

¹ Remedies Notice, paragraphs 24 to 27.

2 Scope of the divestiture remedy

- 2.1 ECP agrees with the CMA's conclusion at paragraph 17 of the Remedies Notice that divestiture in each overlap area to a suitable purchaser would "remove at source the SLCs that the Inquiry Group has provisionally identified" and would "therefore represent a comprehensive solution to all aspects of the identified SLC in each local area and present very few risks in terms of effectiveness". Divestiture is a structural remedy that will restore, on a permanent basis, the rivalry that the CMA provisionally expects to be lost as a result of the merger. Divestiture can be effected quickly, will act immediately to address the SLCs, requires no on-going monitoring and can be enforced easily.
- 2.2 At paragraph 19, the Remedies Notice states that the "Inquiry Group would in this case specify which divestments would address the SLC in each local area and the Parties would be able to select from that list. There may be some areas in which only the divestment of one (or more) specific overlap depot would effectively remedy the SLC". ECP submits that this would be unnecessary and disproportionate in this case.
- 2.3 The CMA has provisionally identified ten areas in which an SLC occurs because the parties' focal depots are close to each other and serve substantially the same customers, and because post-merger, ECP will be constrained by only one or two competitors (with the exception of Wakefield, where ECP will face "limited competition"). The divestiture of either one of the focal depots in each overlap area to a competitor will restore the pre-merger constraint previously posed by that depot and will increase the number of competitors in the market to pre-merger levels. There is therefore no reason to depart from the standard practice of allowing the merger parties the flexibility to select the depots for divestiture. Provided that the pre-merger constraint is replicated, the SLC provisionally identified by the CMA will be remedied and the Inquiry Group should, on this basis, be agnostic as to the identity of the depot to be divested.
- 2.4 Further, and for the same reason, removal of the overlap through divestiture of a single depot within each catchment area would be sufficient to address the SLC. ECP sees no basis for requiring the divestiture of more than one depot in any area.
- 2.5 With respect to the scope of the divestiture package, a limited number of SLCs have been identified in discrete local areas. ECP therefore submits that remedying these discrete SLCs would not require the inclusion of AP's national distribution centre or head office in the remedy package.
- 2.6 At paragraph 21, the Remedies Notice states that "the Inquiry Group's current view is that an effective divestiture package would need to include (but may not be limited to) the following:
- (a) the rights to enter into, or assign, the lease of the overlap depot property;
 - (b) transfer of the relevant staff;
 - (c) transfer of any existing customer contracts and the rights to fulfil these;
 - (d) access to relevant customer data;
 - (e) transfer of existing supplier contracts;
 - (f) option to acquire (or to assign the lease of) the fleet of delivery vehicles at the overlap depot;
 - (g) plant, machinery, computers, fixtures and fittings of the overlap depot;

- (h) rights to receive services and utilities currently being provided at the divested sites, eg telecoms, gas, electricity, building access and services; and
- (i) an option to acquire the stock/inventory.

2.7 ECP submits that the above list is comprehensive and covers all areas necessary or indeed advantageous for the effective running of a depot. There are no other elements that would need to be included within the scope of the package. With respect to the list, ECP has a number of comments:

2.8 First, ECP notes that there are no supplier contracts that are transferrable, other than contracts for the supply of utilities and other minor, locally supplied products. To the extent that supplier contracts of motor parts are depot-specific, ECP is prepared to liaise with suppliers to ensure a smooth transfer to the purchaser. However, decisions with respect to the supply to a motor factor or a particular depot will ultimately rest with the relevant supplier. From a practical point of view, this should not be a concern in any event, as any suitable buyer will have its own supplier relationships.

2.9 Second, with respect to customer contracts, the SLCs provisionally identified are discrete, local SLCs in relation to IAM car parts. Any customer contracts transferred to the purchaser would therefore need to relate only to local IAM car parts supply.

2.10 Third, with respect to the option to acquire the stock/inventory of the depots, ECP notes that it has significantly increased the inventory of the AP depots in line with its business model and approach to depot stock management. To the extent that it is required to provide an option to acquire inventory, the obligation should therefore apply to the original stock level only. Any further option to acquire the additional inventory should be offered at ECP's discretion.

2.11 At paragraph 23, the Remedies Notice states that it "may be necessary for ECP to provide certain support services on a transitional basis, depending on the requirements of the purchaser, for example: (a) provision of central support services such as finance, IT and procurement; and (b) access to any database or software, for example related to customers served from the depots being divested". ECP submits that the running of an individual depot is not particularly complicated, nor does it require access to IT or central services that cannot easily be obtained by any suitable purchaser through third party providers at little cost (see, in this respect, the Parties submissions on barriers to entry in response to the Issues Statement). As a result, access to transitional services such as these would not be required for the effective divestiture of the overlap depots in these ten areas.

2.12 ECP submits that divestiture of this small number of discrete depots would not raise any practical difficulties, such that special arrangements would need to be put in place.

2.13 Finally, with respect to the transfer of leases, ECP submits that it is likely to be more attractive for the purchaser if the AP depots to be divested remain occupied under temporary license, as is presently the case. The purchaser will then be free to negotiate a lease on terms that it considers most favourable, rather than acquiring (and being bound by) terms that ECP has agreed with the landlord.

3 Identity and availability of suitable purchasers

3.1 At paragraph 25, the CMA asks for views on whether it should specify that the purchaser is a larger operator with national coverage or a local operator with local knowledge and whether

there should be a single purchaser or limited number of purchasers of all overlap depots to aid the divestiture process.

- 3.2 As the SLCs provisionally identified are discrete local SLCs there is no reason from the perspective of the efficacy of the remedy to require a single purchaser or to limit the number of purchasers; nor is there any reason why national coverage would be needed to restore the competitive constraints in discrete local areas. Further, if the CMA were to impose such a requirement, this could serve to narrow down the list of potential purchasers to those interested in purchasing all or a substantial portion of the divestiture sites and could thereby dampen interest in the divestiture package and/or allow “game playing” by potential purchasers. In particular, [X]. ECP therefore submits that the CMA should not impose a limitation on the number of potential purchasers, recognising that as the divestiture process gets underway, purchasers willing to acquire all or a substantial number of the divestiture sites are more likely to be considered as attractive to both ECP and the CMA (as it may be more efficient from a process perspective to have one purchaser or a limited number of purchasers with whom ECP would negotiate and for whom the CMA must satisfy itself as to suitability).
- 3.3 ECP does not consider that there are competitors that should be prohibited from acquiring specific divested overlap depots due to competition concerns or any other reason.

4 Process and proportionality

- 4.1 At paragraph 26, the Remedies Notice seeks views on “the appropriate timescale for achieving a divestiture and what procedural safeguards would be needed to minimise the risk associated with this remedy option, eg should ECP be required to appoint an external monitor (eg a divestiture trustee)”.
- 4.2 ECP submits that the appropriate timescale for achieving a divestiture in this case ought to be six months from the date of the CMA’s final report. Given the limited number of SLCs identified and the small scale of the divestiture, there is no need to depart from standard practice. Further, all of the AP depots in the overlap areas received an alternative bid from either Parts Alliance or MPD, indicating that there will be no problems with locating a buyer for each SLC area. The fact that ECP has, under the parameters agreed with the CMA, operated all of the depots it acquired from AP and improved their performance in the time since acquisition further increases the likelihood of interest from other competitors and of achieving a timely divestiture should the AP depots be selected for divestiture.
- 4.3 With respect to procedural safeguards, ECP notes that is currently operating the AP depots under the supervision of a monitoring trustee. Continuation of this supervision until the time of divestiture would be sufficient to ensure that the business is maintained in good order and that its competitive position is not undermined. As noted above, with the limited number of divestments and pre-existing interest in the AP depots, there is a very low risk that it will be difficult to find a purchaser or to progress the divestiture in the standard timeframe. There is therefore no need to require the appointment of a divestiture trustee to oversee the process.
- 4.4 ECP notes that should an ECP depot be selected for divestiture in any of the local areas, there are no reasons to consider that a sale would be difficult to achieve, nor is there any reason to consider that standard ordinary asset maintenance undertakings which impose a general duty to maintain the divestment package in good order and not to undermine its competitive position would not be sufficient.

4.5 Finally, at paragraph 27, the Remedies Notice requests “views in relation to the proportionality of the proposed structural remedy, including on the likely cost of implementing and (if required), monitoring the proposed structural remedy”. ECP submits that the divestiture remedy is, as the CMA has provisionally found a more proportionate remedy than the alternative of prohibition. ECP also notes that it is more likely to be an effective remedy than behavioural commitments. As ECP has submitted, there is no need for transitional arrangements in view of the small number of sites and technologically low costs of running a depot, with the result that there will be no ongoing monitoring costs. With respect to the cost of implementation, ECP submits that adopting a standard six-month timeframe for divestiture without the need for a trustee, would keep the implementation costs to a minimum and ensure that the remedy is proportionate.

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