

Euro Car Parts / Andrew Page

Response to Provisional Findings

1 Introduction

- 1.1 In its report issued on 14 September 2017, the CMA has provisionally found that ECP's acquisition of AP "may be expected to result in a SLC in the supply of IAM car parts by general motor factors to local IMT customers in the ten local areas".
- 1.2 ECP provides below its response and additional evidence with respect to the CMA's local area assessment. ECP also provides a response on a number of other elements of the Provisional Findings.

2 The appropriate counterfactual

- 2.1 ECP agrees with the CMA's provisional conclusion at paragraph 6.35 that "*AP would have been likely to have exited the market as a result of financial failure absent the Merger*" and with its provisional conclusion at paragraph 6.38 "*in relation to the ... 49 depots for which no bid was received, AP's head office and national distribution centre in respect of which there was no alternative bids, the appropriate counterfactual for [the] competitive assessment is exit of the relevant AP assets*".
- 2.2 With respect to the 52 depots for which a bid was received by either of Parts Alliance or MPD, ECP believes that their acquisition and continued operation by either of Parts Alliance or MPD is a less realistic scenario than their closure. In particular, given the significant issues that ECP identified following signing of the deal (which required large investment to remedy), ECP considers it likely that, for at least some of those branches, Parts Alliance and/or MPD would have exercised the lease "option" on the site and closed the business within the standard 6-month option period. Nonetheless, given the inherent difficulty for ECP of obtaining further evidence to support its view, ECP's remaining submissions are provided on the hypothetical basis that the Parts Alliance or MPD bids are a realistic alternative with respect to the 52 sites.

3 Market Definition

- 3.1 At section 5 of the Provisional Findings, the CMA considers whether the market should be broader than that for the supply of IAM car parts for cars and light vehicles to the IMT and, in particular, whether it should include the sale of OEM car parts for cars and light vehicles and whether it should include specialist suppliers. The CMA provisionally concludes at paragraph 5.31 that "*OEM and specialist parts suppliers appear to be alternative suppliers to general motor factors in a limited range of circumstances and therefore exert only a limited competitive constraint on general motor factors such as the Parties. As a result, we do not propose to consider OEM and specialist parts suppliers as part of the relevant product market.*"
- 3.2 ECP submits that, while there are differences in the ways that OEM and specialist parts suppliers supply the market, they are nonetheless an effective constraint,¹ as set out below.

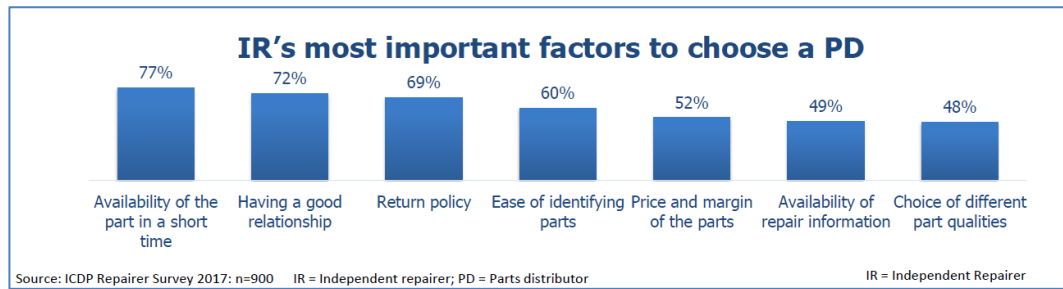
¹ In this respect, ECP strongly disagrees with paragraph 5.8 of the Report, which states "*The Parties acknowledged that most specialist suppliers do not have extensive distribution networks and are unable to deliver to the majority of IMT customers within most customers' required delivery times. They also stated that independent garages would not generally deal with a supplier which only sold a single car part type. The Parties therefore accepted that the competitive constraints from specialist suppliers are not as strong as from general motor factors such as the Parties.*" As noted during the put-back process, ECP makes no such acknowledgments. Indeed, ECP was shown during the put-back process the second sentence and responded

- 3.3 The CMA places considerable weight on the fact that OEM and specialist parts suppliers supply a more limited range of car parts and that they generally deliver less frequently than general motor factors. As a result, the CMA has provisionally found that they are “*only alternatives for a limited number of customers in a limited range of circumstances*” (see paragraph 5.30(a)). As ECP has previously submitted, this fundamentally misinterprets the way the market operates.
- 3.4 As the CMA’s own survey found, “*most garages order parts as and when required during the day on an ad hoc basis*”. Indeed, the response rate to the statement “I order parts as and when I need them during the day” was 91% for ECP customers and 92% for AP customers. This is because, most often, the mechanic will not know exactly what part is needed until the vehicle is up on the ramp and has been examined. At that point, the workshop makes its choice between those suppliers able to supply the part for the car type that is on the ramp. This means that the fact that a particular supplier has only a limited range is irrelevant if it can supply the part required by the workshop. As a result, at that point of choosing, as long as the OEM or specialist parts supplier can provide the needed part, it will be an effective alternative to a general motor factor. Put simply, if the car on the ramp is a Volkswagen, the fact that TPS does not supply parts for a Nissan is irrelevant to the workshop’s consideration of whether it should purchase the required Volkswagen part from TPS or from a general motor factor.
- 3.5 Even taking account of the fact that their delivery frequency may be less than that of a general motor factor, there are a number of reasons why an OEM or specialist parts supplier enjoys a number of competitive advantages over general motor factors, which the Provisional Findings appear to have ignored:
- (a) First, as mentioned in ECP’s 14 July 2017 response, OEM or specialist parts suppliers also have an inherent perceived “quality” advantage, as they offer “genuine” OEM parts. This is borne out by the ICDP survey, which notes that even where workshops consider that they can use IAM parts instead of OEM parts, quality perception or customer request for genuine parts accounts for 39% of the instances in which the workshop chooses OEM parts. Significantly, on the CMA’s own survey, quality of parts was the number one factor in respondents’ choice of supplier, ahead of both speed of delivery and price.²
 - (b) Second, the OEM or specialist parts supplier is more likely to correctly identify and thus deliver the needed part (which comes from their ownership of the intellectual property and allows them to identify the exact part needed based on the manufacturers specifications and the “as built” characteristics of the car). This ability to deliver the correct part first time acts as a counterweight to any potential disadvantage from having timed or less frequent deliveries; it is no better to receive an incorrect part within one hour and then have to wait for the correct part to be delivered in another hour, than to have the correct part delivered within a couple of hours in the first place.³ This is borne out by the ICDP survey, which shows that the correct identification of parts is a key factor in a workshop’s choice of supplier:

that ECP’s original submission from which this is taken does not address the IAM/dealer franchise distinction, as it relates only to IAM suppliers and the need for IAM suppliers to carry as many car marques as possible. This paragraph therefore entirely misstates ECP’s position with respect to competition from OEM and specialist suppliers.

² Even taking both first and second most important characteristics together, quality of parts beats speed of delivery for customers – the percentages of combined first and second most important characteristics show that quality accounts for 49% of ECP customer responses and 41% of AP; compared to 39% for both ECP and AP for speed of delivery.

³ As noted in the Parties’ response to the market questionnaire, motor factors have a 20-25% returns rate for parts. Dealers, on the other hand, have a much lower return rate. As ECP submitted in its response of 14 July 2017 to an information request relating to competitors, ECP understands that that returns on Vauxhall trade club parts amount to only 8% by value.



(c) Further, OEM and specialist suppliers provide services such as a “guaranteed first-time fit” that ECP and other motor factors do not provide.

3.6 The CMA’s near-exclusive focus on range and speed of delivery means that the above factors are ignored in the Provisional Findings, with the result that no weight is given to the very real competitive constraints generated by OEM and specialist suppliers.

3.7 Indeed, as discussed at the Main Party Hearing and described in detail in Annex A, the survey data (both a third party market survey by ICDP and the CMA’s own survey) shows that workshops already obtain about a quarter of their supplies from OEM and specialist suppliers, and that between 40% and 50% of workshops that do not currently use an OEM supplier could move at least half of all their needs to a dealer. The survey also found that “approximately 20% of respondents believed that they could switch all of their business to specialist and/or OEM parts suppliers”.⁴ If this is correct and 20% (or one-fifth) of customers were to switch all of their needs to OEM or specialist suppliers, this would, as a matter of economic logic, imply a significant constraint on the parties. The CMA has not provided evidence to show why this presumption should not hold. The CMA therefore has no reason to consider that the figures from the survey account for too small a proportion for the OEM and specialists to be effective constraints.

3.8 Finally, ECP notes that evidence from suppliers, competitors and customers cited in the Provisional Findings Report is supportive of the cumulative constraint posed by OEM and specialist suppliers. In particular:

- (a) All of the OEM suppliers that responded to the CMA’s questionnaire confirmed that they compete with general motor factors across their subset of products. Bluegrasscoms, which manages the trade clubs for Nissan, Vauxhall, and Peugeot Citroen, “*told [the CMA] that it competed strongly with the Parties across all the products general motor factors supply*” (Report, at paragraph 5.11).
- (b) Of the three buying/trade groups that responded to the CMA, only Parts Alliance said that it competed against OEM and specialist suppliers to a limited extent. AAG “*said that certain OEM parts suppliers such as Vauxhall Trade Club and TPS have strong trade programmes and AAG competes against those activities*” (Report, at paragraphs 5.15 and 5.16). Given the obvious interest Parts Alliance has in the outcome of the process, ECP submits that the evidence of AAG should be given stronger weight. Similarly, of the smaller motor factors questioned, 10 of 16 respondents stated that they compete with OEM suppliers and 8 of 16 stated that they compete with specialist suppliers, with only one of these respondents specifically commenting that it competed more heavily with other general motor factors (Report, at Table 5).

⁴ Report, at paragraph 5.22(e)

- (c) Of the 14 responses from key account customers questioned, only four said that they would not use an OEM supplier, with 10 customers either already using such a supplier or willing to do so.

3.9 In light of the above evidence that (i) OEM and specialist suppliers can provide an effective alternative source of supply and (ii) they are viewed as actual competitors to general motor factors by the suppliers, competitors and customers, ECP submits that the CMA was incorrect to discount them entirely in its analysis, as it appears to have done in the Provisional Findings.

4 Key Accounts

4.1 At paragraph 8.65, the CMA provisionally finds that the merger “*may not be expected to lead to competition concerns in the supply of IAM car parts to Key Accounts in the UK*”. ECP agrees with this conclusion, and provides the following comment on the CMA’s reasoning:

4.2 First, at paragraph 8.4, footnote 94) the CMA states “*We do not believe that the acquisition of the AP depots will materially affect ECP’s ability to compete to supply Key Accounts relative to the pre-Merger situation. This is because, as we discuss later, the geographic coverage of a supplier is a significant factor in a supplier’s ability to compete to supply Key Accounts. ECP is already able to supply Key Accounts from its existing network of depots and the acquisition of the AP depots will not materially affect ECP’s geographic coverage and therefore its ability to supply Key Accounts. In only three areas did we identify no overlap between ECP’s existing depots and the acquired AP depots.*” In the absence of a material impact on ECP’s ability to compete for key accounts, ECP submits that the transaction clearly cannot result in a significant lessening of competition.

4.3 ECP also draws the CMA’s attention to the following recent developments which it submits further supports the provisional findings:

- (a) On 25 September 2017, Genuine Parts Company (a U.S. based parts distributor) entered into a definitive agreement to acquire AAG. ECP believes that this acquisition, which is expected to close later this year, will strengthen AAG’s position and accelerate its moves into key account supply in the UK. Indeed, the Chairman of AAG stated that AAG is “very pleased to combine our two great businesses and leverage our collective resources and expertise to accelerate growth”.

- (b) [REDACTED].

4.4 These developments show that the market for supply to key accounts continues to develop and that other market players are likely to exercise an increasing constraint going forward. Irrespective of the counterfactual, therefore, the merger cannot result in an SLC with respect to key accounts.

4.5 Second, and in any event, as the CMA summarises at paragraph 8.64, competition for key accounts would not be stronger in the counterfactual whereby (i) 49 depots close, (ii) up to 39 are acquired by Parts Alliance, and (iii) up to 21 are acquired by MPD. This is because:

- (a) the closure of the 49 depots and redistribution of sales would not have been likely to have enabled other suppliers to compete more strongly;

- (b) Parts Alliance already represented a competitive constraint on ECP and there is no evidence that the acquisition of the additional depots would allow it to exert a significantly stronger constraint than it already does;⁵ and
- (c) MPD's geographical coverage would not have been sufficiently increased to allow it to pose more than a marginal constraint.

4.6 Even taking account of the possibility for increased competition in the alternative counterfactual, therefore, the CMA has provisionally found that the merger raises no SLC in relation to key accounts.

4.7 Given the above, it is clear that regardless of how competition with respect to key accounts is assessed, the transaction raises no concerns.

5 Local areas

5.1 At paragraph 7.64, the CMA provisionally finds that an SCL arises in ten local areas where "*the AP and ECP depots will no longer compete with one another and there are insufficient competitive constraints on ECP from both within and outside the relevant market post-Merger*".

5.2 ECP submits that the competitive constraint in nine of the ten areas is significantly greater than that set out in the CMA's local assessments and that, as a result, no SLCs arise in those local areas. There are four main reasons for this:

- (a) First, as set out above in section 3, the CMA's provisional findings significantly understate the competitive constraint posed by VM and specialist suppliers. ECP submits (as will be seen below in respect of TPS in a number of local areas) that the VM and specialist suppliers should form part of the effective competitor set where they appear at local level. However, even if this is not the case for individual suppliers, the additional constraint posed by these suppliers cumulatively should be viewed as replicating the constraint posed by a motor factor and thus operate as a de facto additional competitor at local level.
- (b) Second, as set out above and in previous submissions, this is a dynamic market with minimal barriers to entry and expansion. Recent developments provide compelling evidence of this dynamism: for example, UniSelect has acquired Parts Alliance (and there has been further PA consolidation), and Genuine Parts Company has acquired AAG (preceded by AAG acquisition of GAU and FPS). These well-capitalised public companies clearly intend to expand, and will present an increasing constraint. As a result, where there is an immediate reduction in the number of motor factors supplying a particular area, it is highly likely that this will be countered by entry or expansion in the short to medium term.
- (c) Third, the CMA's provisional findings underestimate the number of effective competitors at the local level. ECP has therefore sought further evidence regarding the competitive constraints actually present in the areas identified by the CMA. To this end, ECP has (i) reviewed the websites of competitors in each area, in particular with respect to their delivery schedules; (ii) contacted customers to obtain confirmation that they are in fact supplied by particular competitors⁶; and (iii) engaged an independent third party (ICDP) to survey

⁵ As set out in ECP's response to the working papers, any benefit to Parts Alliance from the acquisition of the AP depots that it bid for would have been no more than marginal. ECP agrees with the analysis at paragraphs 8.43 to 8.46, showing that the improvement in Parts Alliance's geographic coverage would be marginal at best.

⁶ The customers contacted by ECP were selected by the regional sales or branch managers for the local area based on whether they had a good relationship with ECP and would be likely to respond to the request.

specified competitors to see whether they supply to the areas identified by the CMA⁷. This evidence confirms that the competitor set provisional found is too narrow and excludes effective operators.

- (d) Finally, the analysis of discounts and margins data presented to the CMA in response to the Phase 1 decision and the CMA's Phase 2 working papers shows that there is no "step-change" effect on discounts or margins depending on whether there are 4 or 3 competitors in a local area.⁸ This suggests that either a 4 to 3 does not raise competitive concerns or the markets are being mischaracterised as 4 to 3's when they are, in fact, wider due to some constraint that is not being captured (which ECP believes to be e.g. the collective constraint from OEMs and specialist suppliers, and other competitors).

- 5.3 ECP submits that the evidence clearly indicates that the competitive constraint in nine of the ten areas identified by the CMA is significantly greater than that set out in the CMA's local assessments and that, as a result, no SLCs arise in those local areas.

Blackpool:

- 5.4 The CMA provisionally found that the merger may be expected to give rise to a SLC in Blackpool because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) PA does not currently compete with the Parties, such that the acquisition of the AP depot by PA would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

- 5.5 The two competitors identified by the CMA as effective competitors to the Parties in Blackpool are EK Motor Factors and Andrew Currans. ECP submits that the following additional competitors should also be considered as effective competitors:

- (a) Motocare Manchester: It appears that the CMA did not consider this to be an effective competitor because it did not score highly on the CMA's survey for ECP's customers (it did not feature in AP's top ten list and was not therefore specifically included in the survey of AP's customers). As ECP has already submitted,⁹ the limited number of customer surveyed and the way in which the survey was carried out has unreasonably served to limit the number of competitors that can be considered as effective. In the case of Motocare Manchester, the evidence ECP has gathered shows that it is an actual and effective competitor in the Blackpool area. ECP has obtained customer invoices indicating that this competitor supplies to the area. Motocare Manchester itself has confirmed that it supplies all makes and all parts to the Blackpool area, within a one hour lead time, for a total of 12 to 15 delivery rounds per day (each round would have multiple deliveries).

⁷ The survey was conducted by ICDP (a market research company specialising in research of automotive distribution), commissioned by ECP. ICDP contacted 36 competitors via phone interviews, asking them about their range of supply and delivery lead times and frequency into the core areas where the parties' customers are concentrated. ICDP was supplied with a list of 36 target competitors. Competitors were selected for this list on the basis that they had been considered, but rejected by the CMA in its assessment (as detailed in Appendix 7.3 to the Provisional Findings), filtering out those suppliers that were known to be VM Dealers or specialists (with the exception of Quickco and TPS in some instances), and those suppliers which were known not to provide deliveries or not to deliver to the focal areas, as informed by ECP's internal market intelligence. The phone interviews took place from September 28th to October 2nd. The results of the survey, summary of the methodology and questionnaire script are provided at Annex A, together with the other evidence gathered for each local area.

⁸ As discussed, a separate submission relating to margins in the ten local areas will be provided as soon as possible, following the questions raised during the Remedies Hearing.

⁹ See, in particular, the Parties' comments on the survey methodology and questionnaire submitted on 6 June 2017 and the Parties' Response to the Working Papers.

- (b) Talbot Trade Supplies: As with Motocare Manchester, it appears that the CMA did not consider Talbot Trade Supplies to be an effective competitor because of low survey scores in the survey of AP customers (it was not featured in the survey of ECP customers). However, given the extremely low response rate (only 6 respondents), ECP submits that the CMA should not rely on these results and should draw upon other sources of evidence. In this respect, Talbot Trade Supplies responded to ICPD's questions, confirming that it does supply all makes and all parts to the Blackpool area, within a one hour lead time and as many deliveries per day as required.

5.6 If these competitors are taken into account, ECP would be constrained by four, not two, competitors after the merger.

Brighton:

5.7 The CMA provisionally found that the merger may be expected to give rise to a SLC in Brighton because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) MPD does not currently compete with the Parties, such that the acquisition of the AP depot by MPD would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

5.8 The two competitors that the CMA identified as effective competitors to the Parties in Brighton are CPA and Jayar. ECP submits that the following additional competitors should also be considered as effective competitors:

- (a) Autolec Motor Factors: The CMA provisionally finds that Autolec is not an effective competitor because it is located 11 miles away from the Parties depots. ECP submits that distance alone cannot, in and of itself, be sufficient to eliminate Autolec as an effective competitor. In any event, ECP notes that Autolec is located to the east of Brighton, which is the direction in which the majority of the parties' customers are located,¹⁰ such that the distance from Autolec to the parties' customers is considerably less than 11 miles.

More generally, Autolec is a member of Group Auto and thus AAG. Based on ECP's branch manager's market intelligence, it delivers to the area within one hour or less. ECP has also obtained two invoices confirming supply to a customer located in the area. In the CMA's survey, a number of ECP Brighton survey respondents said they could use Autolec Motor factors (it scored 10 points in the ECP survey, with two respondents indicating that it was their main supplier).

Autolec declined to respond to ICPD's questions. In light of this, ECP respectfully requests that the CMA contact Autolec Motor Factors to confirm its customer base and delivery arrangements for Brighton.

- (b) EBC Motor Factors: It appears that the CMA may consider EBC not to be an effective competitor because it was not in the parties' top ten lists. As such, it did not form part of the survey. However, EBC is a member of the UAN network. It offers "express trade delivery" into the Brighton area. ECP has obtained photographic evidence of its delivery capabilities and two invoices confirming supply to a customer located in the area. In the CMA's survey, one respondent to the ECP Brighton survey listed "EBC Brighton" as their second biggest supplier, and referred to them in the unprompted question (these responses were recorded under "other"). EBC Motor Factors responded to ICPD's questions,

¹⁰ This is illustrated by the CMA's heat maps in Appendix 7.2 to the Provisional Findings Report, which show that both ECP and AP customers are concentrated to the east of the parties' respective depots (rather than around the depots).

confirming that it does supply all makes and all parts to the Brighton area, within a one hour lead time and delivers a large number of orders per day.

- (c) TPS: The CMA provisionally found that TPS is not an effective constraint because it is a VM supplier and it competes on a limited range of parts. As ECP sets out above, this focus on range significantly understates the competitive constraint from TPS (and other VM suppliers). In particular, within Brighton TPS is located very closely to ECP and AP. It also scored highly on the CMA's own survey of customers for ECP Brighton, with a third of the ten respondents indicating that they used TPS in the last three months. Almost three-quarters of respondents (seven respondents) indicated that TPS could fulfil their requirements (either prompted or unprompted).

- 5.9 If these competitors are taken into account, ECP would be constrained by five, not two, competitors after the merger.

Gloucester:

- 5.10 The CMA provisionally found that the merger may be expected to give rise to a SLC in Gloucester because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) MPD does not currently compete with the Parties, such that the acquisition of the AP depot by MPD would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

- 5.11 The two competitors that the CMA identified as effective competitors to the Parties in Gloucester are Parts Alliance (trading as GMF and GSF) and Autoparts & Diagnostic.

- 5.12 ECP submits that GMF and GSF should be treated as separate competitors in the Gloucester area. While both are members of Parts Alliance, they trade in competition for local customers within the Gloucester area. The CMA's survey support this, as 11 out of the 20 respondents (combined across the ECP and AP customers surveyed) used both GSF and GMF in the last 3 months.

- 5.13 ECP also submits that the MGM Motor Components should also be considered as an effective competitor. MGM Motor Components is an all makes, all parts supplier. It delivers to the Stroud area, in which a large portion of ECP and AP customers are located and has confirmed to ICDP that it does so within a one hour lead time, with up to eight delivery rounds per day (each round would have multiple deliveries). It therefore provides a strong constraint in the Stroud region of this catchment area.

- 5.14 If these competitors are taken into account, ECP would be constrained by four, not two, competitors after the merger.

Liphook:

- 5.15 The CMA provisionally found that the merger may be expected to give rise to a SLC in Liphook because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by one competitors; and (iii) MPD is a weak competitor to the Parties, such that the acquisition of the AP depot by MPD would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

- 5.16 The one competitor that the CMA identified as an effective competitor to the Parties in Liphook is CPA. ECP submits that the following additional competitors should also be considered as effective competitors:

- (a) Whoopee Motor Factors: Whoopee Motor Factors appears to have been excluded from the effective competitor set on the basis of the survey results. The limitations of the survey have been set out previously. In the case of Whoopee Motor Factors, the ICDP questionnaire has confirmed that it is an all makes supplier of IAM car parts, with deliveries into Liphook (and Bordon) within a one hour lead time. It has over eight delivery rounds per day (each with multiple deliveries).
- (b) Autocare Motor Factors: Autocare is an all makes, all parts motor factor that delivers to customers in a ten mile radius of its depot in Bordon, as it confirmed in response to ICDP's questionnaire. It delivers primarily to Bordon, with an average of 10 to 15 delivery rounds per day, and to Liphook with an average of two delivery rounds per day. It is clear from the CMA's heat maps that the parties' customers for the Liphook and Haslemere depots include a significant proportion around Bordon, such that a competitor delivering to Bordon will be an effective constraint. ECP has also obtained photographic evidence of Autocare Motor Factors' delivery capabilities and two invoices confirming supply to a customer located mid-way between Bordon and Liphook.
- (c) Dorset Auto Spares: Dorset Auto Spares deliver into Bordon, as the CMA has provisionally found (paragraph 7.38(b) of the Report). As confirmed by the CMA's heat maps, a large proportion of both AP's and ECP's customer base is located in and around Bordon. Therefore, Dorset Auto Spares does exert a significant constraint for a large proportion of the parties' customers. Dorset Auto Spares was the main supplier to two of 11 respondents in the survey of AP's customers and two of 12 respondents in the survey of ECP survey respondents. Three further respondents said they could use Dorset Auto Spares as a supplier. ECP has obtained photographic evidence of Dorset Auto Spares' delivery capabilities and an invoice confirming supply to a customer located mid-way between Bordon and Liphook.

5.17 If these competitors are taken into account, ECP would be constrained by five, not two, competitors after the merger. [REDACTED].

Scunthorpe:

5.18 The CMA provisionally found that the merger may be expected to give rise to a SLC in Scunthorpe because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) MPD does not currently compete with the Parties, such that the acquisition of the AP depot by MPD would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

5.19 The two competitors that the CMA identified as effective competitors to the Parties in Scunthorpe are Parkers and FMS Autoparts. ECP submits that the following additional competitors should also be considered as effective competitors:

- (a) AK Motor Spares: AK Motor Spares appears to have been excluded from the effective competitor set on the basis of the survey results. The limitations of the survey have been set out previously. In the AK Motor Spares, ECP has obtained photographic evidence of AK Motor Spares' ability to deliver parts in this area. It has also obtained two invoices to a customer in the area and three hand-written signed notes from customers confirming that they are supplied by A K Motor Spares. Further, AK Motor Spares responded to the ICDP questionnaire and confirmed that it supplies customers in Scunthorpe within a 30 minute lead time and has ten-plus delivery rounds per day (each with multiple deliveries).

(b) TPS: The CMA provisionally found that TPS is not an effective constraint because it is a VM supplier and it competes on a limited range of parts. As ECP sets out above, this focus on range significantly understates the competitive constraint from TPS (and other VM suppliers). In particular, within Scunthorpe, TPS is located very closely to ECP and AP. It also scored highly on the CMA's own survey, scoring eight points in the survey of AP customers (out of only eight respondents). It did not feature in the survey of ECP customers.

5.20 If these competitors are taken into account, ECP would be constrained by four, not two, competitors after the merger.

Sunderland:

5.21 The CMA provisionally found that the merger may be expected to give rise to a SLC in Sunderland because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) PA does not currently compete with the Parties, such that the acquisition of the AP depot by PA would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

5.22 The two competitors that the CMA identified as effective competitors to the Parties in Sunderland are Carparts Trade Supplies and NPA Motor Factors. ECP submits that the following additional competitors should also be considered as effective competitors:

(a) Quickco: Quickco is owned by Pendragon and stocks OE parts from eight franchises, including Ford, Jaguar, Land Rover, Vauxhall, Citroen, Nissan, Renault and MG Rover and also a large range of aftermarket parts. It does not, therefore, compete only on a limited range. With respect to deliveries, ECP has obtained four invoices confirming delivery to customers in Sunderland. In the CMA's provisional finding, Quickco is described as offering only next day delivery. This appears to be incorrect. Quickco responded to the ICDP questionnaire and confirmed that it delivers to Sunderland within a two-hour lead time and has three delivery rounds per day into the area (each round would have multiple deliveries).

(b) TPS: The CMA provisionally found that TPS is not an effective constraint because it is a VM supplier and it competes on a limited range of parts. As ECP sets out above, this focus on range significantly understates the competitive constraint from TPS (and other VM suppliers). In particular, TPS scored highly on the CMA's own survey, scoring 14 points with respect to ECP customers (it did not feature in the survey of AP customers). It also responded to the ICDP questionnaire, indicating that it has a maximum four hour lead time into Sunderland, with two delivery rounds per day.

5.23 If these competitors are taken into account, ECP would be constrained by four, not two, competitors after the merger.

Swindon:

5.24 The CMA provisionally found that the merger may be expected to give rise to a SLC in Swindon because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) MPD is a weak competitor to the Parties, such that the acquisition of the AP depot by MPD would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

5.25 The two competitors that the CMA identified as effective competitors to the Parties in Swindon are PA (trading as GSF) and APD.

5.26 However, contrary to the CMA's provisional findings, MPD has a branch located in Swindon itself, which has been open since 1 July 2017.¹¹ ECP has obtained photographic evidence of the existence of the branch¹² and two invoices confirming supply to a customer located in Swindon. Based on ECP's branch managers' market intelligence, the Swindon branch has a fleet of five vans. As MPD is already present in the local area and is already able to compete effectively to supply the customers served by the Parties in this area, the Merger and the counterfactual scenarios involve the same number of fascia competing to supply customers in this local area. For this reason, similar to other areas such as Boston, the CMA should conclude that the competitive outcome is likely to be similar in both the Merger and the counterfactual scenarios, with the result that the Merger may not be expected to give rise to a SLC.

5.27 In any event, ECP submits that there are two further effective competitors in Swindon:

- (a) Car Truck Services Swindon: In response to the ICDP questionnaire, Car Truck Swindon confirmed that it is an all parts, all makes supplier that delivers within a 90 minute lead time. It has 40 to 45 deliveries per day. ECP has obtained photographic evidence of its delivery capabilities and an invoice confirming supply to a customer in Swindon. Further, Car Truck Services Swindon scored 5 points in the survey of ECP's customers and 7 points in the survey of AP's customers.
- (b) Swindon Motaquip: Based on ECP's branch managers' market intelligence, Swindon Motaquip delivers to Swindon within 1 hour or less. ECP has obtained photographic evidence of its delivery capabilities and three invoices confirming supply to customers located in and around Swindon. Swindon Motaquip scored 8 points in the CMA's survey of AP customers and 8 points in the survey of ECP's customers. Swindon Motaquip declined to respond to ICDP.

5.28 If all of these competitors are taken into account, ECP would be constrained by five, not two, competitors after the merger.

Wakefield:

5.29 The CMA provisionally found that the merger may be expected to give rise to a SLC in Wakefield because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only face limited constraints from other competitors in the area; and (iii) PA is a weak competitor to the Parties, such that the acquisition of the AP depot by PA would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

5.30 The CMA provisionally concluded that the Parties would face limited competition from other suppliers post-merger, although it did not specify the number. ECP submits that the following additional competitors should be considered as effective competitors:

- (a) Parts Alliance (trading as GSF): GSF has a branch nine miles away, which is outside the catchment area but within 1.5x the catchment area. GSF's website (<https://www.gsfcarparts.com/leedseast>) confirms that GSF delivers into Wakefield from Leeds. ECP has obtained four invoices confirming delivery to a customer in Wakefield. GSF declined to answer the questions posed by ICDP on deliveries. In light of this, ECP

¹¹ Details of the location of this branch were previously submitted to the CMA. However, we understand that the CMA removed the branch from their analysis at an early stage because the postcode could not be precisely geocoded.

¹² Contact details for the branch are also listed on MPD's website, at <http://www.mpdonline.co.uk/stores/detail/car-parts-in-swindon>.

suggests that the CMA contact GSF to confirm its customer base and delivery arrangements for Wakefield.

- (b) M1 Motorparts: M1 Motorparts is an all parts, all makes motor factor that delivers to Wakefield from Leeds. In response to the ICDP questionnaire, it confirmed that it delivers within a one hour lead time and has ten delivery rounds per day (each with multiple deliveries). ECP has also obtained an invoice showing delivery to a customer within the area.
- (c) Wood Auto Factors: Wood Auto Factors appears to have been excluded from the effective competitor set on the basis that it did not score highly with respect to the unprompted questions. The limitations of the survey have been discussed previously. In the case of Wood Auto Factors, the ICDP questionnaire has confirmed that it is an all parts, all makes supplier that delivers within a one-hour lead time. It makes between 30 and 50 deliveries per day.

5.31 If these competitors are taken into account, ECP would be constrained by at least three competitors after the merger.

Worthing:

5.32 The CMA provisionally found that the merger may be expected to give rise to a SLC in Worthing because: (i) the Parties' depots compete closely to supply customers in the local area; (ii) after the merger, ECP will only be constrained by two competitors; and (iii) MPD does not currently compete with the Parties, such that the acquisition of the AP depot by MPD would maintain a significant source of competitive constraint on ECP which would otherwise be lost a result of the merger.

5.33 The two competitors that the CMA identified as effective competitors to the Parties in Worthing are CPA and Frenches Auto. ECP submits that the following additional competitors should also be considered as effective competitors:

- (a) BTR Brakes: BTR Brakes is located in Worthing. ECP has obtained photographic evidence of its delivery capabilities and an invoice confirming supply to a customers located in Worthing. BTR Brakes scored 6 points in the survey of AP Worthing customers (it was the second biggest supplier to one customer). Additionally, BTR Brakes responded to the ICDP questionnaire and confirmed that it has two rounds of deliveries into Worthing per day (each round would have multiple deliveries).
- (b) TPS: The CMA provisionally found that TPS is not an effective constraint because it is a VM supplier and it competes on a limited range of parts. As ECP sets out above, this focus on range significantly understates the competitive constraint from TPS (and other VM suppliers). In fact, the TPS branch in Brighton scored nine points in the survey of ECP Worthing customers, with four respondents having used TPS in the last three months (for two of these, TPS was their third biggest supplier).

5.34 If these competitors are taken into account, ECP would be constrained by four, not two, competitors after the merger.

Concluding remarks on effective competitor set at local level:

5.35 In light of the above, ECP submits that there would clearly be sufficient numbers of effective competitors in each of the above local areas to constrain ECP and thus to ensure that no SLC arises in any of these areas. Even if the CMA were not to agree with this submission on the basis

of the evidence set out above, there is enough doubt to suggest that further investigation is required before these are excluded from the effective competitor set at local level.