

Anticipated joint venture between Cox and AutoTrader

Decision on relevant merger situation and substantial lessening of competition

ME/6765/18

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 21 November 2018. Full text of the decision published on 10 December 2018.

Please note that [X] indicates 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.

SUMMARY

1. Cox Automotive UK Limited (**Cox**) and Auto Trader Group plc (**AutoTrader**) have agreed to enter into a joint venture (the **JV**). Cox will contribute its **Manheim Online** and **Dealer Auction** businesses, and AutoTrader will contribute its **Smart Buying** business. Cox and AutoTrader are together referred to as the **Parties**.
2. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Manheim Online, Dealer Auction and Smart Buying is an enterprise; that these enterprises will cease to be distinct as a result of the **JV**; and that the share of supply test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation under the Enterprise Act 2002 (the **Act**).
3. The Parties' contributed businesses overlap in the supply of business-to-business (**B2B**) online used vehicle remarketing services in the United Kingdom (**UK**). Remarketing services are provided by intermediaries, such as the Parties, facilitate a sale between buyers and sellers of used vehicles. Outside the **JV**, the Parties supply business-to-consumer (**B2C**) online vehicle

listings, in particular via AutoTrader's autotrader.co.uk website. Because competition differs between different customer groups, the CMA has assessed the impact of the JV in the following frames of reference:

- (a) The supply of B2B online vehicle remarketing to franchised dealers as sellers in the UK;
 - (b) The supply of B2B online vehicle remarketing to franchised and independent dealers as buyers in the UK;
 - (c) The supply of B2B online vehicle remarketing to original vehicle manufacturers (**OEMs**) and large corporate sellers in the UK; and
 - (d) The supply of B2C online vehicle listings in the UK.
4. The CMA considered whether the JV may give rise to horizontal unilateral effects in the first three frames of reference above.
 5. AutoTrader, through Smart Buying, does not currently compete closely with Cox in B2B online vehicle remarketing. AutoTrader, however, had plans to develop and improve Smart Buying. The CMA believes these plans are likely to have led to Smart Buying becoming a more direct competitor to Cox.
 6. However, the CMA does not believe that the JV gives rise to competition concerns as a result of horizontal unilateral effects. This is because, even allowing for AutoTrader's development of Smart Buying, the competitive constraint lost as a result of the JV is limited. Set against that, the JV will be constrained by several credible competitors, including BCA (the market leader in physical auctions, which has its own online offering); other remarketing providers, such as Autorola and ADESA; and other parties who operate proprietary platforms, such as Motability.
 7. The CMA also considered whether the JV may give rise to conglomerate effects as a result of bundling AutoTrader's B2C online vehicle listings with the JV's B2B online remarketing services. The CMA believes the Parties lack the incentive to foreclose rivals in B2B online remarketing because the cost to AutoTrader of losing B2C customers would exceed the potential benefits in the B2B sector.
 8. Accordingly, the CMA believes that the JV does not give rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral or conglomerate effects.
 9. The JV will therefore **not be referred** under section 33(1) of the Act.

ASSESSMENT

Parties

10. Cox, part of Cox Enterprises Inc, is a privately-owned US group that provides solutions and services to the automotive sector. Cox owns (i) **Manheim Auctions**, which provides physical used vehicle remarketing services, and (ii) **Manheim Online**, which runs online auctions for OEMs and large corporates to sell vehicles to franchised and independent dealers.
11. Cox also operates (i) **Dealer Auction**, an online B2B vehicle auction platform for franchised dealers to sell vehicles to independent and franchised dealers, and (ii) **Motors.co.uk**, an online B2C listings platform.¹
12. The turnover of Cox Enterprises Inc in 2017 was £ [✂] billion worldwide, with £325 million generated in the UK.²
13. AutoTrader, a publicly-listed UK group, operates the UK's largest B2C online marketplace for vehicle listings (**autotrader.co.uk**). AutoTrader also operates **Smart Buying** (previously called AutoTrade Mail or ATM), a subscription based B2B online listings marketplace for independent and franchised dealers.³ AutoTrader's turnover in the financial year ending 31 March 2018 was £330 million worldwide, with £325 million generated in the UK.

Transaction

14. The businesses the Parties are contributing to the JV are: (i) for Cox, Manheim Online and Dealer Auction; and (ii) for AutoTrader, Smart Buying. The JV will be held 51% by Cox and 49% by AutoTrader.
15. The Parties state that the JV's rationale is to disrupt the current B2B vehicle remarketing sector. Currently, approximately 75% of vehicle remarketing is conducted at physical auctions, where BCA Marketplace (**BCA**) is the market leader, accounting for 50% of sales by value. The Parties want to build a new business devoted to online remarketing and to encourage the shift from physical to online. The JV is intended to bring together the complementary

¹ Cox also operates other related businesses including: Movex, a B2B logistics platform; incadea, a dealer software solution; Wewantanycar.com and Money4yourmotors.com, services that buy cars from consumers and sell through Cox's remarketing channels; and Kingfisher Systems, a provider of software (including live online feeds of physical auctions) to other vehicle remarketing businesses.

² Turnover figures have been converted from USD to GBP at a rate of 0.7767.

³ AutoTrader also operates Motor Trade Delivery, an online B2B logistics platform; C2C car listings; and display advertising and other motoring services (such as finance and insurance) through third-party partnerships.

expertise of the Parties: AutoTrader in digital and data, and Cox in vehicle handling and B2B transactions.

Procedure

16. The JV was considered at a Case Review Meeting.⁴

Jurisdiction

17. Each of Manheim Online, Dealer Auction, and Smart Buying is an enterprise. As a result of the JV, these enterprises will cease to be distinct.
18. The total UK turnover of the contributed businesses in the last financial year is £12.2 million. The turnover test in section 23(1)(b) of the Act is not met.
19. The Parties overlap in the supply of B2B online vehicle remarketing to franchised dealers as sellers. They have a combined share of supply based on sales volumes of [60-70]% (increment [5-10]%).⁵ The CMA therefore believes that the share of supply test in section 23 of the Act is met.
20. The CMA accordingly believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation under the Act.
21. The initial period for consideration of the JV under section 34ZA(3) of the Act started on 27 September 2018. The statutory 40 working day deadline for a decision is therefore 21 November 2018.

Counterfactual

22. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual). For anticipated mergers the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will use an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.⁶

⁴ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, from paragraph 7.34.

⁵ See details on shares of supply at paragraph 91 onwards.

⁶ [Merger Assessment Guidelines](#) (OFT1254/CC2), September 2010, from paragraph 4.3.5. The [Merger Assessment Guidelines](#) have been adopted by the CMA (see [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2), January 2014, Annex D).

23. The Parties noted that Smart Buying [had not been growing in recent years, and] AutoTrader had plans to develop and improve Smart Buying. They submitted, however, that the counterfactual should be the pre-existing competitive situation because [✂].
24. Based on the evidence described at paragraphs 79 to 87 below, the CMA believes that it is likely that AutoTrader would have relaunched Smart Buying, including by building transaction functionality, and that this development is likely to have made Smart Buying a more direct competitor to Cox. The CMA also believes that there are other players who may enter or expand their activities in B2B online vehicle remarketing.
25. The CMA believes that there is a realistic prospect that (i) AutoTrader would have relaunched Smart Buying, and (ii) AutoTrader's plans would have improved Smart Buying's services and led to it becoming a more direct competitor. The CMA's competitive assessment below considers in more detail the extent to which Smart Buying would have become a stronger competitor to the Cox's businesses as part of its analysis of whether the JV gives rise to a realistic prospect of an SLC.

Background

26. B2B used vehicle remarketing⁷ is currently carried out through a range of channels. This includes:
 - (a) **Physical auctions:** Physical auctions take place at purpose-built premises. They are conducted by professional auctioneers at sites owned and operated by remarketing providers. The vehicles and buyers are (typically) physically present.
 - (b) **Live feeds of physical auctions:** Physical auction operators often provide a live online feed of their physical auctions, allowing participants to take part remotely.
 - (c) **Buy Now online functionality:** Some remarketing providers allow customers to buy vehicles listed on their site online (not as part of an auction). This may involve vehicles that will be listed for auction in the future – allowing customers a chance to buy these online before the vehicle goes to auction. One example of this is *Bid Now/ Buy Now* operated by BCA.⁸

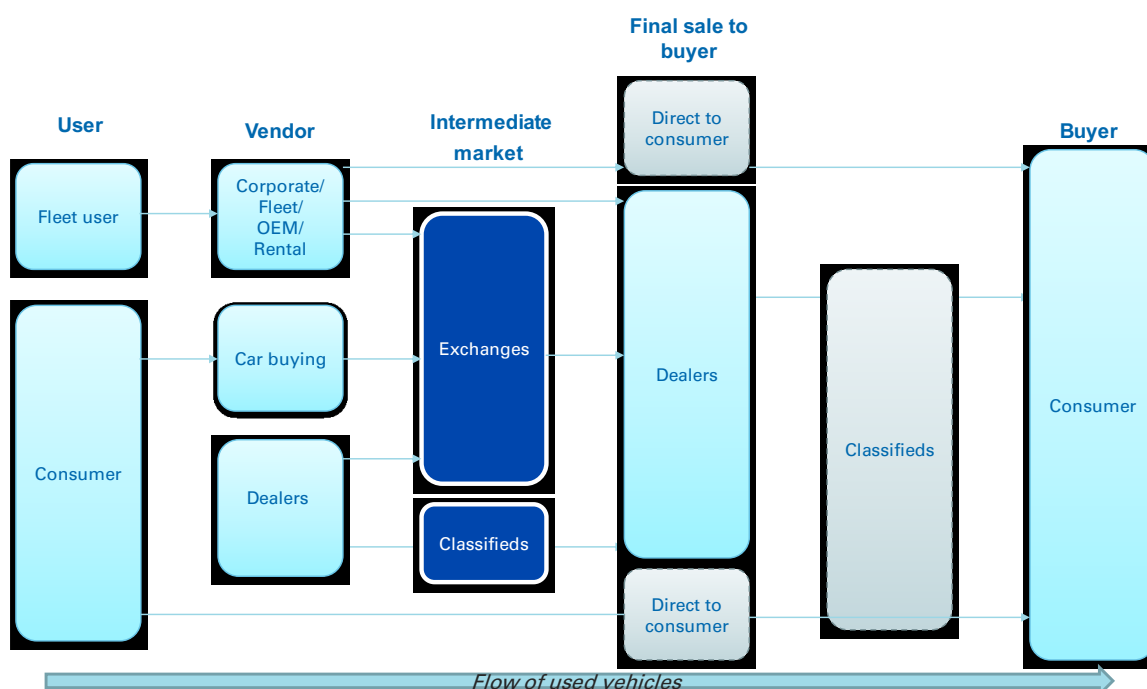
⁷ For convenience, this Decision refers to B2B used vehicle remarketing as B2B vehicle remarketing.

⁸ This allows BCA's customers to place bids on vehicles featured on BCA's list of auction stock where sellers have opted for them to be available under Bid Now/ Buy Now.

- (d) **Online third-party remarketing:** Some sellers use third-party online platforms to list and sell their vehicles. Third-party online platforms include both (i) online auction platforms, such as Dealer Auction and what is envisaged for the JV, and (ii) online listings platforms (also referred to as classifieds), such as the current version of Smart Buying.
- (e) **Proprietary platforms:** Some OEMs, large corporates, and large dealer groups operate their own platforms, which they use to sell their vehicles directly to buyers (**proprietary platforms**). They may do so instead of, or in combination with, engaging third-party remarketing providers to sell their used vehicles.

27. An illustration of the overall flow of used vehicles is shown below in Figure 1.

Figure 1: Flow of used vehicles



Source: CMA, adapted from OC&C⁹

28. As indicated in Figure 1, there are a variety of different professional sellers who use third-party remarketing services. These can be broadly classified as:

- (a) OEMs (eg BMW, Volkswagen);¹⁰

⁹ OC&C (2014), 'The Market for Vehicle Exchanges in the UK, France and Germany, August 2014'.

¹⁰ References to OEMs include their intra-group finance companies.

- (b) Large corporates, including fleet owners and car rental/leasing companies (eg Lex Autolease, Enterprise);
 - (c) Car buying groups, who buy cars from consumers and then may remarket these vehicles (eg webuyanycar.com);¹¹ and
 - (d) Dealers (both independent and franchised).
29. The buyers who use B2B remarketing services are franchised and independent dealers.
30. The Parties operate two-sided platforms – bringing together buyers and sellers of used vehicles. They source stock from sellers and need to assure these sellers that sufficient buyers will use the remarketing platform. Buyers, in turn, are attracted to a remarketing platform with a sufficient choice and quality of available vehicles. Remarketing providers compete for, and serve, both sellers and buyers.

Frame of reference

31. Market definition provides a framework for assessing the competitive effects of a merger. It involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger. There can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others. The CMA will take these factors into account in its competitive assessment.¹²
32. With transactional platforms, the CMA may define a single frame of reference incorporating both sides of the platform, although this will depend on the specific circumstances of the case.¹³
33. The businesses contributed by the Parties to the JV overlap in the supply of B2B online vehicle remarketing services in the UK.¹⁴ In the present case, the CMA believes that B2B online used vehicle remarketing providers face

¹¹ Where a car buying service does remarket a vehicle, they tend to do so 'in-house' (ie most of the major car buying services are owned by remarketing businesses). These sellers do not use the Parties' JV businesses to either buy or sell vehicles B2B and so this seller group has not been considered further.

¹² [Merger Assessment Guidelines](#), paragraph 5.2.2.

¹³ See [Just Eat and Hungryhouse](#), 16 November 2017, paragraph 4.11. See also [OECD Policy Roundtable on Two-Sided Markets](#) (2009).

¹⁴ The Parties will continue independently to operate related businesses outside of the JV, including primarily physical auction remarketing services and B2C online vehicle listings. Where relevant, these activities have been considered as part of this Decision. In particular, the CMA has considered the potential harm from conglomerate effects arising in providing both B2B and B2C online services to dealers from paragraph 162 onwards.

different constraints on the buyer and seller side of the platform. The CMA has therefore considered the different sides of the platform separately, while recognising the potential interactions between both sides of the market.¹⁵

Product scope

34. The Parties submitted that the narrowest product frame of reference is non-proprietary online channels for disposing of used vehicles. They submitted that the Parties do not overlap because auctions (Manheim Online and Dealer Auction) and listings (Smart Buying) are not in the same frame of reference.
35. The evidence that the CMA received indicates that the Parties do currently compete, albeit not closely, with each other.¹⁶ They both allow a range of different professional sellers to list and sell used vehicles online to a range of different professional buyers. Certain internal documents indicate that the Parties see each other as competitors (although the documents also refer to competition with BCA, the market leader in physical auctions).
36. Several dealer customers that responded to the CMA noted that Dealer Auction and Smart Buying compete. Competitors likewise described competition between the Parties as either moderate or high. Accordingly, the CMA believes there is a relevant overlap between (at least) Dealer Auction and Smart Buying.
37. The Parties also submitted an alternative frame of reference for used vehicle remarketing services. This would include physical auctions, live feeds of physical auctions, Buy Now online functionality, proprietary online platforms, and informal dealer networks. In this frame of reference, the Parties argued that the JV's share (by volume or value) was 21%.
38. As its starting point, the CMA has taken the supply of B2B online vehicle remarketing (excluding proprietary platforms). It has considered whether this frame of reference can be widened to include the other types of vehicle remarketing platforms mentioned by the Parties.

Physical auctions

39. The Parties submitted that physical auctions are a particularly close substitute for online auction platforms, and that the volume of used vehicles sold through physical auctions is large compared to online auctions.

¹⁵ In *BCA/SMA (Completed acquisition by BCA Marketplace plc of SMA Vehicle Remarketing Limited)* (2015)), the CMA noted that it would consider the impact of the merger on buyers and sellers separately.

¹⁶ See detailed discussion in the competitive assessment at paragraphs 94-98 below.

40. In *BCA/SMA*, the CMA considered the substitutability of online channels for physical auction services. It did not widen the product frame of reference to include other remarketing channels because sellers would not switch to other channels in the event of a 5% price increase.¹⁷ A previous European Commission case involving BCA also considered physical and online used vehicle auction services separately, without concluding on the precise market definition.¹⁸
41. Those cases considered the constraint from online on physical, whereas the present case concerns the constraint from physical on online.¹⁹ The CMA therefore considered evidence on demand-side substitution between online and physical:²⁰
- (a) **Different product characteristics:** While physical and online auctions both allow dealers to buy and sell cars, physical auctions offer certain additional services compared to online exchanges. For sellers, these include inspection, storage, reconditioning, and imagery services. For buyers, there are different levels of assurance and logistics services. In addition, the ability to view the actual vehicle in person prior to purchase at physical auctions is a distinguishing feature.
 - (b) **Different fees for buyers:** For buyers, physical and online exchanges have materially different fee levels: the buyer fee online is typically £[0-100], compared to the physical fee of £130-530 per vehicle. For sellers, however, the CMA found that fees for physical and online were broadly commensurate.
 - (c) **Different customer preferences:** Some customers have different preferences for physical and online exchanges. Large corporate sellers increasingly use online channels to dispose of their stock. Similarly, customers of the Parties as buyers told the CMA that they want to save travelling time and view a wide range of stock in one place via an online channel as opposed to at physical auctions. Dealers told the CMA that depending on the make, age, and condition of a vehicle, they may decide to use physical instead of online (eg they may dispose of or source older stock from physical auctions).

¹⁷ *Completed acquisition by BCA Marketplace plc of SMA Vehicle Remarketing Limited* (2015) paragraph 60.

¹⁸ *CD&R/ We Buy Any Car* (2013)

¹⁹ In most retail cases, physical has been found not to be a constraint on online (for example see *Amazon/The Book Depository* (2011), *Yoox/Net-a-porter* (2015) or *Mapil Bidco/Chain Reaction Cycles* (2016) as mentioned in the *CMA's Retail Mergers Commentary* in section 4). The Parties did not point the CMA to any cases where physical was found to constrain online.

²⁰ *Merger Assessment Guidelines*, paragraph 5.2.15.

42. As to supply-side substitutability, the CMA found that physical auctions and online auctions have a different competitor set, and that competitive conditions differ. The CMA therefore has not widened the frame of reference based on supply-side substitutability.²¹ The CMA did, however, receive evidence that certain providers of physical auctions are looking to enter the online space. It has considered the implication of these developments at paragraph 107 onwards below.
43. Accordingly, the CMA does not believe that physical auctions should be included in the same frame of reference as online exchanges. The CMA, however, has considered the out-of-market constraint from physical auctions in its competitive assessment below (paragraph 124 onwards).

Live feeds of physical auctions

44. The Parties submitted that online live feeds of physical auctions consist of essentially the same product as a physical auction in terms of the service provided to buyers and sellers. Participating buyers receive an additional benefit because they can take part in the auction (or multiple auctions simultaneously) without being physically present.²² As well as a similar service, the fees to buy or sell a vehicle at a physical auction and through a live feed are broadly similar.²³
45. Third-party responses supported the Parties' submissions. Third parties noted the comparable service and level of fees charged at physical auctions and live feeds. Third parties also said that for buyers, live feeds have the significant benefit of being accessible from their mobile phone or computer.
46. Accordingly, the CMA believes that the live feeds of physical auctions closely resemble physical auctions, and so should not be included in the product frame of reference for B2B online vehicle remarketing. The CMA, however, has considered the out-of-market constraint from live feeds in the competitive assessment below (at paragraph 124 onwards).

Buy Now online functionality

47. The Parties submitted that Buy Now online functionality offers buyers and sellers the advantages of online remarketing, including the ability to buy

²¹ [Merger Assessment Guidelines](#), paragraph 5.2.17.

²² Participating sellers also benefit from the fact that additional buyers may be present (throughout the UK) because buyers do not have to attend the physical auction itself.

²³ The fee to buy through the live feed is typically slightly higher than at the physical auction.

without travelling to a physical auction. Currently, BCA offers Buy Now online functionality, through its *Bid Now / Buy Now* tool, on its website.

48. The Parties provided details of the functionality, pricing, and appearance of Buy Now services, arguing that the services closely resemble Cox's and the post-merger JV's services. Third parties indicated that they considered Buy Now to be similar to B2B online remarketing platforms, although they noted some differences to other forms of online third-party remarketing services, such as additional services (like storage and imaging) resulting in a different fee.
49. The CMA believes that evidence indicates that Buy Now functionality should be included in the product frame of reference for dealers as buyers and sellers.

Proprietary platforms

50. The Parties submitted that OEMs and several large corporate sellers – such as fleet owners and vehicle rental companies – have developed proprietary platforms to sell used vehicles to their respective networks of franchised or approved dealers. These proprietary platforms offer similar functionality to the Parties' platforms, such as the ability for dealers to participate in online auctions or Buy Now. The leading proprietary platform, which sells significantly more vehicles each year than Dealer Auction, is Motability.²⁴
51. In *BCA/SMA*,²⁵ the CMA considered the substitutability of proprietary platforms for physical auction services, but did not include them in the product frame of reference.²⁶ The CMA did note, however, that customers use a variety of channels and that proprietary platforms may be an important source of vehicles for some dealers.

The constraint from proprietary platforms for dealer sellers

52. In the present case, proprietary platforms allow only the owner of the proprietary platform to sell its own stock. Therefore, proprietary platforms do not directly compete with the Parties to win dealer sellers to their platforms, because dealer sellers are unable to list on proprietary platforms. Proprietary platforms are therefore not demand-side substitutes for dealer sellers and so

²⁴ Motability helps people with a disability exchange their mobility allowance for a new car and it disposes of its fleet of used vehicles through its B2B proprietary platform. The Parties submit that 80% of Motability's vehicles are not adapted for disabilities and so the stock is similar to that featured on other online remarketing platforms.

²⁵ *Completed acquisition by BCA Marketplace plc of SMA Vehicle Remarketing Limited* (2015)

²⁶ This finding (physical vs. proprietary platforms) is not determinative for the present case, which considers the substitutability of online exchanges with proprietary platforms.

should not be included the same frame of reference based on demand-side substitution.

53. As to the supply-side, there is a limited supply-side constraint because certain large franchised dealers have developed their own proprietary platforms as a form of self-supply (eg, Sytner and Motorpoint). The CMA does not, however, consider this supply-side constraint sufficient to include proprietary platforms in the frame of reference for sellers. This is because the CMA did not receive evidence that large franchised dealers without proprietary platforms could build their own platform within a sufficiently short period of time for this to be a constraint.²⁷

The constraint from proprietary platforms for dealer buyers

54. As to buyers, the CMA notes the following evidence on the substitutability between proprietary platforms and the Parties' services:
- (a) **Access:** OEMs tend to operate closed proprietary platforms that they make available only to their franchised dealer base; these platforms are not an option for some dealer buyers. Other proprietary platforms are generally open to both franchised and independent dealer buyers, but some corporate sellers indicated that they only sell their vehicles to a closed group of dealer buyers. The Parties noted that Motability's access criteria are broadly similar to Dealer Auction's, and that Motability reported having 3,600 active dealer buyers in 2017.
 - (b) **Fees:** The fees charged to buyers on proprietary platforms varied. Some proprietary platforms do not charge any subscription or transactions fees (or very low fees), and others charge similar or higher fees than the Parties.
 - (c) **Stock:** Some proprietary platforms may offer a restricted type, range or profile of stock as they only feature one seller. The CMA received evidence, however, that some of the larger proprietary platforms (eg Motability) offer a wide variety and high volume of stock. Most dealers that use proprietary platforms noted that they have reliable levels of stock in good condition.
 - (d) **Dealer responses:** Dealers told the CMA that most dealers use at least one or two proprietary platforms – predominantly Motability, Sytner

²⁷ [Merger Assessment Guidelines](#), paragraph 5.2.17.

Auction, Auction4cars (owned by Motorpoint) and Enterprise – for buying used vehicles.

55. Overall, the available evidence indicates that proprietary platforms, particularly the larger ones, are substitutes for the Parties' services for dealer buyers and should be included in the product frame of reference.²⁸

Informal networks

56. The Parties submitted that informal private channels involving local dealers and traders are important for independent dealers.
57. Third-party responses to the CMA's merger investigation indicate that these channels may sometimes be alternatives for some dealers, particularly for disposing of certain vehicles (eg depending on age, make, condition). However, while informal dealer networks may offer an alternative way in which to buy or sell a vehicle, they are not a direct substitute for B2B online vehicle remarketing in terms of how buyers and sellers are matched, what services are offered, or their reliability and quality of their stock.
58. The CMA has not seen evidence to suggest that informal networks provide a constraint on the Parties' online channels in terms of pricing or other competitive behaviour. The CMA has therefore not included informal networks within the product frame of reference.

Customer segmentation

59. The CMA considered whether to segment the product frame of reference by customer type. The Parties identify the main categories of sellers as: OEMs, large corporates, car buying services, franchised dealers, and independent dealers. The main categories of buyers are: franchised and independent dealers.
60. In *BCA/SMA*, the CMA looked at buyer and seller customers separately. It also identified possible customer differentiation based on the types of sellers and buyers, but considered customer segmentation as part of its competitive assessment.²⁹
61. In the present case, the CMA considers that segmenting by customer type is appropriate because of the different options available to different customers.³⁰

²⁸ This excludes OEMs' proprietary platforms (eg Ford, Peugeot etc) on a cautious basis, given that these have strict access requirements and would not be an option for independent dealers.

²⁹ *Completed acquisition by BCA Marketplace plc of SMA Vehicle Remarketing Limited* (2015) paragraph 64.

³⁰ *Merger Assessment Guidelines*, paragraph 5.2.28-5.2.31

This is particularly the case between large corporates and dealers, but is also relevant to different types of dealers:

- (a) OEMs and large corporate sellers appear to tender for their remarketing services and achieve volume discounts that would be unavailable to dealers.
 - (b) OEMs and large corporate sellers tend to use different providers for their remarketing services compared to dealers, meaning there is a different competitor set.
 - (c) OEMs and large corporate sellers are only active on the sell side of online remarketing, as opposed to dealers who are active on both the buy and sell sides.
 - (d) Within dealers, franchised dealers may have additional options for buying and selling cars (such as proprietary exchanges and listing cars for sale on Dealer Auction) compared to independent dealers.
62. The CMA considered it appropriate to segment the product frame of reference to account for two broad customer types: (i) OEMs and large corporates; and (ii) franchised and independent dealers.
63. The CMA considered whether to segment dealers by whether they are franchised or independent. Only franchised dealers can sell vehicles on Dealer Auction.³¹ When acting as buyers, the main difference is that franchised dealers tend to source most of their stock from OEMs, which independent dealers cannot do. Accordingly, the CMA has excluded all OEM platforms on a cautious basis (see footnote 28), but considers they are an option for franchised (but not independent) dealer buyers. After excluding OEM platforms, the options available to franchised and independent dealer buyers appear broadly similar, and so the CMA has not segmented the product of frame of reference for these customer types.
64. The CMA some received evidence that the options available may differ depending on the size of a dealer. Large dealers, either independent or franchised, may operate their own proprietary network, or may be able to negotiate bespoke terms or fees with remarketing providers. The CMA did not receive sufficient evidence to suggest the JV would have a different effect on dealers of different size to define these customer segments.

³¹ This is why the CMA only considers online remarketing services to franchised dealers as sellers, as the options for independent dealers as sellers will be unaffected by the JV given they are not able to sell on Dealer Auction pre-JV.

The supply of B2C online vehicle listings

65. Outside the JV, the Parties overlap in the supply of B2C online vehicle listings. AutoTrader operates autotrader.co.uk and Cox operates motors.co.uk.
66. In a previous case, the European Commission considered a market for online classified vehicle advertising to consumers.³²
67. Although the Parties list several different options for B2C vehicle marketing – including general search services, social networks, TV and radio, and newspaper and print media – these options are differentiated to the Parties' B2C services in terms of their characteristics, pricing, and intended use.
68. The CMA has not received evidence that suggests departing from the European Commission precedent. The CMA has therefore considered a product frame of reference for the supply of B2C online vehicle listings, although has not concluded on the precise scope because no competition concerns arise.

Geographic scope

69. The Parties submitted that the geographic frame of reference for online auctions is national because: (i) online auctions, such as Dealer Auction, market their services on a national basis; and (ii) buyer and seller fees and terms do not vary across the UK.
70. The CMA has not received any evidence that suggests departing from the geographic frame of reference suggested by the Parties. The CMA has considered the impact of the JV on a UK-wide basis.

Conclusion on frame of reference

71. For the reasons set out above, the CMA has considered the impact of the JV in the following frames of reference:
 - (a) The supply of B2B online vehicle remarketing to franchised dealers as sellers in the UK;
 - (b) The supply of B2B online vehicle remarketing to franchised and independent dealers as buyers in the UK;

³² [APW/GMG/EMAP \(2008\)](#)

(c) The supply of B2B online vehicle remarketing to OEMs and large corporate sellers in the UK; and

(d) The supply of B2C online vehicle listings in the UK.

72. Because the JV does not give rise to competition concerns on any plausible basis, the CMA has not needed to conclude on the precise scope of the frame of reference.

Competitive assessment

Horizontal unilateral effects

73. Horizontal unilateral effects may arise when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged firm profitably to raise prices or to degrade quality on its own and without needing to coordinate with its rivals.³³ Horizontal unilateral effects are more likely when the merging parties are close competitors. The CMA assessed whether it is or may be the case that the JV has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the first three frames of reference identified in paragraph 71 above.

74. To assess the likelihood of the JV resulting in unilateral effects, the CMA considered the loss of both actual existing competition between the Parties, as well as the loss of future competition (referred to '*actual potential competition*' in the CMA's guidance) based on AutoTrader's relaunch and development of Smart Buying.³⁴

75. Before considering the specific theories of harm, the CMA has assessed the development plans for Smart Buying – including the likelihood of AutoTrader developing Smart Buying and its likely impact on competition – given the relevance of these plans to the three horizontal unilateral effects theories considered.

AutoTrader's development plans for Smart Buying

Framework for assessment

76. The CMA assessed whether absent the JV, AutoTrader would have relaunched and developed an improved offering for Smart Buying (including

³³ [Merger Assessment Guidelines](#), from paragraph 5.4.1.

³⁴ [Merger Assessment Guidelines](#), paragraph 5.4.14.

online transaction functionality), leading to increased competition between Cox and AutoTrader, and, in turn, lower prices or better quality.

77. Consistent with its Guidelines,³⁵ the CMA considered whether the JV will lead to horizontal unilateral effects from a loss of future competition by reference to the following questions:
- (a) Would AutoTrader have developed an improved offering for Smart Buying absent the JV?
 - (b) Would AutoTrader's development of Smart Buying have led to greater competition?
78. Also consistent with its Guidelines, before reaching a conclusion on an SLC, the CMA has considered whether there are other potential entrants to B2B online vehicle remarketing, or expansion by existing players, such as BCA through its *Bid Now / Buy Now* tool.³⁶ This is discussed at paragraph 108 onwards below.

Likelihood of AutoTrader developing Smart Buying

79. The Parties' submissions and internal documents show that [Smart Buying had not been growing in recent years]. With that in mind, AutoTrader was actively looking to relaunch and improve Smart Buying, and it had taken the following steps:
- (a) [✂]
 - (b) [✂]
 - (c) [✂]
 - (d) [✂]
80. The CMA believes that, absent the JV, it is likely that AutoTrader would have developed Smart Buying, based on the evidence that it was already working on these developments pre-JV.

³⁵ *Ibid.*, paragraph 5.4.15.

³⁶ *Ibid.*

Likely impact of developing Smart Buying

81. The Parties submitted that Smart Buying's future success [REDACTED]. They argued that (i) Smart Buying [REDACTED] converting it from a classified site to a transactional platform was difficult; (ii) [REDACTED]; (iii) [REDACTED].
82. The available evidence on the likely impact of AutoTrader's development of Smart Buying indicates the following.
83. First, AutoTrader's internal documents show mixed views within the business about [REDACTED] an improved Smart Buying product. In one document, AutoTrader commented that it planned to '[REDACTED]'.³⁷ However, another document noted that '[REDACTED]'; and AutoTrader has '[REDACTED]'.³⁸
84. The Parties also pointed to several [REDACTED] difficulties in converting Smart Buying to a successful transactional platform, such as [REDACTED]. The evidence does not support a finding that these difficulties were insurmountable – indeed, AutoTrader considered it could overcome them when it embarked on the Smart Buying relaunch – but they do indicate the significant work AutoTrader needed to accomplish to make Smart Buying a competitive transactional platform.
85. Second, the Parties submitted data showing that the pilot trials, running since early in 2018, [REDACTED]. The CMA does not believe this constitutes convincing evidence that AutoTrader would not have succeeded with developing Smart Buying. This is because the pilots [REDACTED].
86. Third, AutoTrader's internal financial projections indicate that AutoTrader believed Smart Buying would grow [REDACTED]. Other internal documents mentioned AutoTrader's ability to use its brand, dealer network, and data insights [REDACTED].
87. Overall, the CMA believes, based on the available evidence, that it is likely that AutoTrader's development plans for Smart Buying would have improved its services and led to Smart Buying becoming a more direct competitor to Cox. However, Smart Buying's future success required a significant change in the business model of a platform that [Smart Buying had not been growing in recent years] and therefore the extent and impact of the expected increased competition from Smart Buying on Dealer Auction may be limited.

³⁷ Annex AC01, slide 12.

³⁸ Annex ID-AC01A.0195

88. The CMA specifically assessed the expected impact of the improved Smart Buying and the extent of the constraint lost under the three theories of harm below.

Theory of Harm 1: Horizontal unilateral effects in the supply of B2B online vehicle remarketing to franchised dealers as sellers in the UK

89. The CMA’s first theory of harm concerns horizontal unilateral effects in the supply of B2B online vehicle remarketing to franchised dealers as sellers in the UK. This theory of harm focuses on franchised dealers as sellers because those are the customers for whom the Parties’ activities overlap (Dealer Auction does not serve independent dealers as sellers).³⁹

90. As part of its assessment, the CMA has considered shares of supply; the closeness of competition between Dealer Auction and Smart Buying today and in the future as a result of AutoTrader’s development plans for Smart Buying; and the competitive constraints faced by the Parties, including alternative providers and out-of-market constraints, such as physical auctions.

Shares of supply

91. The CMA estimates that the Parties have a combined share of supply of [60-70]% in the supply of B2B online vehicle remarketing to franchised dealers as sellers in the UK, with an increment of [5-10]% as a result of the JV.

Table 1: Estimated shares of supply in B2B online vehicle remarketing to franchised dealers as sellers, based on 2017 volumes

Provider	Share of supply
<i>Dealer Auction</i>	<i>[60-70]%</i>
<i>Smart Buying</i>	<i>[5-10]%</i>
Combined share	[60-70]%
Autorola	[10-20]%
BCA (Bid Now/ Buy Now)	[5-10]%
Full Auction	[5-10]%
TOTAL	100%

Source: Parties’ estimates and third-party responses

92. The CMA has not been able to obtain independent estimates of the market size to verify their accuracy, and therefore these numbers should be treated with some caution.

³⁹ Manheim Online is not considered in this theory of harm as it only offers online auctions for OEMs and large corporate sellers.

93. The CMA believes the shares of supply in Table 1 overstate the degree of market power which the JV would possess because:
- (a) There is evidence to suggest that the share of supply of Smart Buying may be materially overstated given the methodology used to convert listings into sales volumes.⁴⁰
 - (b) There are high levels of differentiation between the different players (paragraph 95 below). In particular, Smart Buying currently offers only a listings platform, while Dealer Auction allows dealers to complete transactions.
 - (c) Given the planned repositioning of Smart Buying absent the JV, the shares of supply may over- or under- estimate Smart Buying's expected size in the near future. The uncertainty as to its future performance absent the JV reduces the weight that the CMA attaches to the figures in Table 1.
 - (d) The market is evolving, and the shares set out above likely understate the competitive set in the future (as discussed at paragraph 107 onwards below).
 - (e) The CMA considers that the Parties are, and will continue to be, constrained to some extent by out-of-the-market constraints (paragraph 124 onwards below).

Closeness of competition

Current competition between Dealer Auction and Smart Buying

94. The Parties submitted that Smart Buying and Dealer Auction offer highly differentiated offerings. They argued that franchised dealer sellers are unlikely to use Smart Buying because of the assurance and benefits provided by Dealer Auction.
95. The CMA believes that Dealer Auction and Smart Buying currently offer differentiated services:

⁴⁰ This is because sales are not actually made on the Smart Buying platform, so the CMA does not know how many listings were converted into sales on Smart Buying. The Parties applied Dealer Auction's conversion rate to the volume of available stock listed on Smart Buying; however, a large proportion of Dealer Auction's sales occur via telesales operators completing a sale offline. Smart Buying does not have this functionality, which suggests that the true conversion rate would be lower than the conversion rate applied.

- (a) **Different functionality:** Smart Buying is a listings site, while Dealer Auction is transactional.
 - (b) **Different services:** Smart Buying does not offer sales agitation,⁴¹ unlike Dealer Auction.
 - (c) **Different customers:** Smart Buying allows independent dealers (and other sellers) to list vehicles, but Dealer Auction's sellers are exclusively franchised dealers (while only [%] of stock on Smart Buying is from franchised dealers).
 - (d) **Different stock profile:** The Parties' stock profile is different. Smart Buying tends to have newer, more expensive stock (average age [%] years, value £[%]), with lower average mileage ([%] miles). Dealer Auction focuses on older, less expensive vehicles (average age [%] years, value £[%]), with more miles on the clock ([%] miles).
 - (e) **Different fee structure:** Dealer Auction does not charge sellers a subscription fee, and charges a per transaction fee of around £[%]. Smart Buying does not charge transaction fees, but has a monthly subscription fee of £79-£99 per month.
96. Internal documents provided mixed evidence on whether the Parties compete closely today. One Cox document comments that in B2B remarketing '[%]'.⁴² Cox documents do, however, reference and monitor AutoTrader alongside a small set of other competitors, although not always specifically in relation to B2B remarketing. The Parties documents also frequently refer to BCA as the largest player, albeit in the physical sphere.
97. Third parties who responded to the CMA provided mixed evidence on the closeness of competition between the Parties.
- (a) On one hand, some third parties described competition between Dealer Auction and Smart Buying as moderate or high. Certain dealers also expressed concerns about the JV's impact, including that it could lead to an increase in fees (although most of the concerns were quite vague and not merger-specific).
 - (b) On the other hand, half of franchised dealers who responded told the CMA that they did not use Smart Buying or see it as a substitute for Dealer Auction. Dealers commented that Smart Buying had limitations

⁴¹ Sales agitation involves sales employees liaising with buyers and sellers to facilitate a sale between them in the event one is not reached via the online auction process.

⁴² Annex ID-CC02.0006

and was generally seen as inferior when compared to Dealer Auction. Dealers noted that Smart Buying [§], which meant that historically it had not been a strong competitor.

98. Overall, the CMA believes that although there is some competition between the Parties, the Parties do not compete closely: they have differentiated services; Smart Buying has a small share of supply; and dealers consider that Smart Buying is an inferior option. Because of the weak constraint currently exercised by Smart Buying on Cox's businesses, the CMA believes that Smart Buying would need to substantially change and improve its business to be a significant constraint on Dealer Auction in the future. The CMA therefore assesses future competition between the Parties below.

Loss of future competition between Dealer Auction and Smart Buying

99. As discussed above, AutoTrader had plans to develop Smart Buying, including by building transaction functionality, so that it would become a more direct competitor in B2B online vehicle remarketing.
100. The Parties submitted that AutoTrader's focus when developing Smart Buying was on large corporate sellers. They argued that any success from this development would have led to greater differentiation between Dealer Auction and Smart Buying related to the current position, where they do not compete closely.
101. The CMA considers below the future closeness of competition between Dealer Auction and the improved Smart Buying based on customer types, functionality, fee structures, and the Parties' internal documents.
102. First, AutoTrader considered that including more stock was key to improving Smart Buying. Including more stock (from large corporate sellers) would have attracted more buyers, in turn, making the platform more attractive for franchised sellers. The CMA does not believe that AutoTrader's focus on gaining stock from corporate sellers precludes AutoTrader competing more closely with Dealer Auction for dealers as sellers in the future. The CMA recognises, however, that AutoTrader's initial focus with Smart Buying was not on the same dealer sellers as targeted by Dealer Auction, which may limit the constraint it offered to Dealer Auction in the short- to medium-term.
103. Second, AutoTrader's planned developments of Smart Buying, especially building transaction functionality, would have made the offerings of the Parties more similar. Other aspects of the development, such as metrics to help dealers to buy and sell, would also have improved Smart Buying as a product for dealers. However, the CMA recognises that converting Smart Buying from

a classified site to a transactional platform is a significant challenge. Several AutoTrader documents express that [REDACTED], and that AutoTrader should '[REDACTED]'.⁴³

104. Third, the improved Smart Buying would have operated a different fee [REDACTED] additional features [REDACTED].
105. Fourth, certain AutoTrader documents on the development of Smart Buying refer to Dealer Auction as a benchmark. On several occasions, AutoTrader considered that it was developing functionality broadly similar to that offered by Dealer Auction (and it also discussed Dealer Auction's transaction fee).
106. Overall, the CMA believes that absent the JV, Smart Buying would have been likely to compete more closely with Dealer Auction for franchised dealer sellers. However, the CMA believes that, although Smart Buying would have been a stronger competitor compared to the current situation, absent the JV, its competitive constraint on Dealer Auction would have been limited:
 - (a) It would have been difficult to transform Smart Buying from a listing site into a transactional platform.
 - (b) Turning Smart Buying into a competitive transactional platform would have required developing other new services, such as [REDACTED].
 - (c) Even under AutoTrader's [REDACTED], the impact of the improved Smart Buying in terms of transactions for franchised dealer sellers over the next few years is minimal.⁴⁴

Competitive constraints

107. The Parties submitted that the JV will face significant competitive constraints from alternative online providers and from physical auction services. The CMA considers the constraints from alternative online providers and out-of-market constraints below.

Alternative online providers

- *BCA*

108. BCA is the largest operator of physical (and live feed) auctions in the UK. It has a significant online presence in continental Europe and it has considerable scale, expertise, and relationships in the industry – selling

⁴³ Annex ID-AC01A.0195

⁴⁴ As noted at paragraph 86 above, AutoTrader predicted that by the end of 2020, the improved Smart Buying would have made [REDACTED].

around 1 million used cars each year, more than double Cox and around ten times more than Dealer Auction.

109. BCA allows dealers to sell online via its *Bid Now/ Buy Now* service, as shown in Table 1. The CMA considers that BCA's *Bid Now/ Buy Now* is a close alternative to the Parties' services, and currently makes more sales than AutoTrader's Smart Buying. In particular, evidence provided by the Parties showed that the stock listed on *Bid Now/ Buy Now* was similar in profile to that listed on Dealer Auction.
110. BCA also operates a tool called Dealer Pro, which in its public materials BCA describes as '*the simplest way to put your vehicles directly in front of the UK's largest audience of trade buyers, with just the click of a button.*' BCA told the CMA that Dealer Pro is primarily a valuation tool; however, it does allow dealer sellers that value cars to then sell via *Bid Now Buy Now*.⁴⁵ i
111. [REDACTED]. The Parties have no knowledge of BCA's current plans, and several of their internal documents refer to [REDACTED].
112. Overall, the CMA believes that BCA will provide a strong constraint on the JV, given that BCA is the largest vehicle remarketing provider in the UK and already has its own online offering. Indeed, it was the JV's intention to win as many customers from physical auctions as possible.
- *Autorola*
113. Autorola is a large international player, operating in over 20 countries, and its website notes that it is '*the largest online platform in Europe.*'⁴⁶ Autorola offers remarketing services to franchised dealers in the UK through a buy it now listings service. In these transactions, Autorola charges a transaction fee and acts as an intermediary, thus offering a similar service to that currently provided by Dealer Auction.
114. The shares of supply indicate that Autorola has material volumes of transactions and share of volumes. Its 2017 sales were at least three times higher than Smart Buying's. It also made more sales in 2017 than AutoTrader predicted its improved Smart Buying product would make in financial year 2020.

⁴⁵ [REDACTED].

⁴⁶ Footnote 96 of the Parties Issues Paper response (5 November 2018)

115. AutoTrader's internal documents show it considers Autorola as a competitor. Likewise, Cox's documents note Autorola as a competitor and notes it has a large number of dealer customers and a number of key corporate customers across Europe.⁴⁷

116. Almost half the franchised dealers that responded to the CMA indicated that they use Autorola to sell used vehicles B2B.

- *Full Auction*

117. Full Auction offers an online trade remarketing solution with a focus on franchised dealers. Full Auction's website indicates that it serves over 1,000 dealers in the UK, and offers an interactive vehicle collection facility, and an appraisal system to complement its core service. In response to the CMA's questionnaire, some dealers mentioned Full Auction as an alternative.

118. Full Auction currently has a smaller share of supply than Autorola and BCA (although bigger than Smart Buying). The CMA believes that currently Full Auction offers a weaker constraint on the Parties than BCA and Autorola.

- *Aston Barclay*

119. Aston Barclay is the third largest operator of physical (and live feed) auctions in the UK (after BCA and Cox).

120. Although Aston Barclay does not currently operate an online B2B transactional platform, it has announced that it has expanded its online capabilities. Aston Barclay told the CMA that it plans to offer online remarketing to franchised dealer sellers by Q1 / Q2 2019. Aston Barclay also said that it had been investing hundreds of thousands of pounds in its new platform; that it had a number of customers that wanted to use its digital channels; and that it has '*a high chance of success.*'

121. The Parties' internal documents refer to Aston Barclay as [REDACTED].⁴⁸

122. Overall, the CMA believes that Aston Barclay will be an additional competitor to JV.

⁴⁷ Annex ID-CC09.01 2016 10 [REDACTED]

⁴⁸ For example, Cox document Annex CC004, slide 12

- *Conclusion on alternative online providers*

123. The CMA believes that the JV will be constrained by several competitors that already exert a constraint today, and that this constraint could grow in the future.

Out-of-market constraints

124. In addition to the primary constraint from alternative providers within the frame of reference, the CMA has considered the constraint from outside the market from physical auctions and proprietary platforms.

- *Physical auctions (including live feeds)*

125. The Parties submitted that physical auctions are an attractive option for dealers as sellers because these physical auction providers will take the vehicle away, freeing up space on their forecourt, and the seller fees charged are in line with those charged online.

126. The available evidence indicates that physical auctions do offer some constraint on the Parties' online activities (albeit less than the constraint from inside the frame of reference). Most franchised dealers that responded to the CMA's merger investigation use physical auctions to dispose of some of their vehicles, and an analysis of seller fees across physical auctions and online exchanges indicates that the fees are broadly similar. Additionally, the boundaries between physical and online – in this case specifically – are blurring somewhat:

- (a) Live feeds of physical auctions (such as those offered by BCA, which makes around one third of its physical auction sales through online sales via feeds) mean that sellers can have their vehicles shown remotely to a wide range of buyers.
- (b) Several of the Parties' internal documents refer to competition from providers of physical auctions, notably BCA, [REDACTED]. For example, in one document [REDACTED].
- (c) The Parties' rationale for the JV, as expressed in their submissions and internal documents, is to encourage the migration from the well-established option of physical remarketing (which accounts for around 75% of sales currently) to online remarketing through disruptive pricing.
- (d) The Parties have an incentive to convert the substantial number of potential online users from physical auctions. If the Parties were to increase the prices they charge sellers for their online services, the rate of

conversion from physical to online may decrease. Because there are large numbers of potential online users currently using physical, the potential volume gains from attracting a proportion of physical sales to online is substantial.

127. Overall, the CMA believes that physical auctions will provide an additional constraint on the JV over and above that from alternative providers, albeit to a lesser degree given the demand-side differences as described in paragraph 41.

- *Proprietary platforms*

128. Proprietary platforms are not a demand substitute to B2B online vehicle remarketing platforms for dealer sellers because they do not allow third-party dealers to dispose of stock. However, several of the proprietary platforms are owned by larger franchised dealers, and the Parties submitted that (at least for some franchised dealers) they are a supply-side alternative.

129. The CMA did not receive sufficient evidence, however, to conclude that proprietary platforms generally constrain the Parties' activities with respect to all relevant sellers on the supply-side. In particular, the CMA did not receive evidence that franchised dealers without proprietary platforms could build a platform within a sufficiently short period of time.⁴⁹

- *Informal networks*

130. Franchised dealers may also operate informal networks. These include networks with the other dealers in the franchise, or informal networks with local independent dealers. Some of the franchised dealers who responded to the CMA indicated that they use these informal networks to dispose of stock. The CMA did not receive sufficient evidence to conclude that informal networks constrain the Parties' activities.

Conclusion on Theory of Harm 1

131. For the reasons set out above, the CMA believes that the Parties do not currently compete closely, given the differentiation of their services and Smart Buying's limited activities. Although AutoTrader had plans to develop Smart Buying so that it became a closer competitor to Dealer Auction, the CMA believes that its constraint would have been limited. Moreover, there is a

⁴⁹ [Merger Assessment Guidelines](#), paragraph 5.2.17.

range of alternative options available to franchised dealers looking to sell used vehicles that will constrain the JV.

132. Accordingly, the CMA finds that the JV does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of B2B online remarketing services to franchised dealers as sellers in the UK.

Theory of Harm 2: Horizontal unilateral effects in the supply of B2B online vehicle remarketing to franchised and independent dealers as buyers in the UK

133. The CMA's second theory of harm concerns horizontal unilateral effects in the supply of B2B online vehicle remarketing to franchised and independent dealers as buyers in the UK. Unlike Theory of Harm 1, this theory of harm considers both franchised and independent dealers because Dealer Auction and Smart Buying allow both types of dealers to buy on their platforms.⁵⁰

Shares of supply

134. The CMA estimates that the Parties have combined shares of supply of [20-30]% in the supply of B2B online vehicle remarketing to franchised and independent dealers as buyers in the UK, with an increment of [5-10]% as a result of the JV. However, the CMA does not believe the shares of supply are particularly probative of market power in this case, for the same reasons as explained in paragraph 92.
135. As indicated in Table 2 below, the market is relatively fragmented, and there are several alternatives to the Parties. Franchised and independent dealer buyers have additional options than franchised dealer sellers (see Table 1), notably ADESA and the proprietary platforms.

⁵⁰ Manheim Online is not considered in this theory of harm as it offers online auctions (live feeds of physical auctions), which are not included in the frame of reference.

Table 2: Estimated shares of supply in B2B online vehicle remarketing to franchised and independent dealers as buyers, based on 2017 volumes

Provider	Share of supply
<i>Dealer Auction</i>	<i>[10-20]%</i>
<i>Smart Buying</i>	<i>[5-10]%</i>
Combined share	<i>[20-30]%</i>
ADESA	[5-10]%
Autorola	[0-5]%
BCA (Bid Now/ Buy Now)	[5-10]%
Proprietary platform Motability	[20-30]%
<i>Other (including other remarketing providers and proprietary platforms but excluding all OEM platforms)</i>	<i>[40-50]%</i>
TOTAL	100%

Source: Parties' estimates and third-party responses.

Note: Other includes eg. epyx 1link [5-10]%, ALD [5-10]%, Auction4Cars [5-10]%, Arval [0-5]%, Full Auction [0-5]%, 3G [0-5]% and others [10-20]%.

Closeness of competition

136. The Parties submitted that Smart Buying is unlikely to be considered an important or credible source of stock for franchised dealers when compared to other options, such as OEMs and large corporate sellers' proprietary platforms. The Parties submitted that independent dealers source stock from a wide variety of sources, substituting frequently between them.
137. As on the sell side (see paragraph 94 onwards), the evidence indicates that the Parties are not currently close competitors for franchised and independent dealers as buyers: (1) Dealers looking to buy used vehicles commented on the inferior [§<] offered by Smart Buying. (2) Smart Buying has a relatively low share [and has not been growing in recent years]. (3) Smart Buying does not offer transactional functionality. (4) Smart Buying has a different fee structure to Dealer Auction. (5) The stock available on Smart Buying and Dealer Auction is different.
138. As to AutoTrader's planned development of Smart Buying, the CMA believes that the points made in the *Loss of future competition between Dealer Auction and Smart Buying* section above apply to dealers as buyers. In particular, while AutoTrader initially focused on attracting large corporate sellers, it did so to increase the quality of its stock and so build a more attractive proposition for dealer buyers. Accordingly, the CMA believes that AutoTrader's development of Smart Buying would have led to it becoming a more direct competitor in B2B online remarking services to franchised and independent

dealers as buyers, although its competitive constraint on Dealer Auction would have been limited.

Competitive constraints

139. The Parties submitted that dealers buy vehicles from proprietary platforms as well as physical auctions and live feeds.⁵¹ They argued that these options, in addition to the other competitors, are likely to be closer alternatives than the Parties are to each other.

Third-party remarketing providers

140. In addition to BCA, Autorola and Full Auction as described at paragraph 107 onwards, dealers can source stock from ADESA and epyx 1link. Moreover, Aston Barclay may be a viable option once it enters online.
141. Both ADESA and epyx 1link remarket stock from OEMs and/or large corporate sellers, which is often seen as attractive stock for dealers, and have established operations: ADESA in remarketing in other countries; and epyx 1link in providing related services to OEMs and large corporate sellers.
142. Both these competitors are referenced in the Parties' internal documents, with ADESA [REDACTED]. Both were also mentioned by dealers responding to the CMA as providers that they use to source stock. Accordingly, the CMA believes that ADESA and epyx 1link are credible competitors to the Parties.

Proprietary platforms

143. The Parties provided data showing that the stock on Motability and Auction4cars (another proprietary platform) was [REDACTED]. The Parties also provided evidence showing that the functionality of and access to these proprietary platforms is similar to that of third-party remarketing providers. Most proprietary platforms also charge similar buyer fees to Dealer Auction.
144. Almost all dealers who responded to the CMA mentioned at least one proprietary platform as a source of stock, including Motability, Enterprise, Sytner Auction and Auction4cars. A prominent competitor likewise noted that Motability had broad range of high-quality stock and a comparable offering to Dealer Auction. Motability has a larger share of supply than the combined

⁵¹ Given the significant constraint on the Parties from other remarketing providers and proprietary platforms, the CMA has not needed to consider out-of-market constraints for dealers as buyers.

entity, and in 2017 there were around [150-175]% more purchases (by independent and franchised) [✂].

Conclusion on Theory of Harm 2

145. For the reasons set out above, the CMA believes that the Parties do not currently compete closely given the differentiation of their services and Smart Buying's limited presence. Although AutoTrader had plans to develop Smart Buying, which absent the JV, would have been likely to compete more closely with Dealer Auction, Smart Buying's competitive constraint would have been limited. Moreover, there is a large range of alternative online options available to all dealers looking to buy used vehicles.
146. Accordingly, the CMA found that the JV does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of B2B online remarketing services to franchised and independent dealers as buyers in the UK.

Theory of Harm 3: Horizontal unilateral effects in the supply of B2B online vehicle remarketing to OEMs and large corporate sellers in the UK

147. The CMA's third theory of harm concerns horizontal unilateral effects in the supply of B2B online vehicle remarketing to OEMs and large corporate sellers in the UK.
148. The Parties do not currently compete to provide remarketing services to OEMs and large corporate sellers. Dealer Auction does not allow OEMs or large corporate sellers to dispose of cars on their platforms, and they are not currently sellers on Smart Buying.
149. However, as part of its development plans for Smart Buying, AutoTrader wanted to encourage OEMs and large corporates to sell on Smart Buying. AutoTrader had been [✂].
150. OEMs and large corporate sellers are the target customers of Manheim Online. The CMA has, therefore, considered the impact of the JV on the actual potential competition between Smart Buying and Manheim Online.

Closeness of future competition

151. The Parties submitted that they would not be close competitors because OEMs and large corporates sellers require comprehensive vehicle services that remarketing providers must credibly demonstrate they can provide, which Smart Buying would not be able to do. Manheim Online, on the other hand, is

an experienced player that has built a comprehensive solution for OEMs and large corporate seller customers.

152. Internal documents provided by AutoTrader show that as part of developing Smart Buying, AutoTrader was considering ways to deliver additional services, such as by partnering, indicating it might be able to offer some of the services required by OEMs and large corporate sellers in the future. Tender documents and evidence provided by the Parties indicated that OEMs and large corporate sellers have bespoke needs.⁵²
153. The CMA believes that, although it is likely that AutoTrader would have developed Smart Buying into an option for OEMs and large corporate sellers, its competitive constraint on Manheim Online would have been limited. Indeed, the CMA recognises that Smart Buying currently has no activities in this segment and therefore AutoTrader was building from a zero base.

Competitive constraints

154. The Parties submitted that Manheim Online competes against BCA and other physical operators to win OEMs and large corporate sellers. They noted that BCA provides a significant constraint, and that competition for these sellers is fierce.
155. The CMA believes that, for OEMs and large corporate sellers, the JV will face strong competitive constraints:
156. First, internal documents provided by the Parties support the Parties submission, with Cox closely monitoring BCA with regards to these customers. AutoTrader documents also mention ADESA [REDACTED].⁵³
157. Second, OEMs and large corporates are charged low prices to dispose of stock on both online and physical exchanges – [REDACTED] – and this is consistent with strong competition to provide services to them.
158. Third, OEMs and large corporate sellers that responded to the CMA's questionnaire mentioned that they operate their own proprietary platform (eg, Hitachi, Renault, Enterprise Rent-A-Car, Leaseplan, Peugeot, Ford), and these platforms act as a constraint on the JV for these sellers. Evidence

⁵² For example, the Parties mention that in a recent tender for BMW, a range of services were required including defleet, refurbishment, inspection and collection, inventory management and remarking (both physical and digital).

⁵³ Annex ID-AC01A.0004

provided to the CMA from large corporate sellers showed that just under half of the total sales volume of these sellers occur through their own platforms.

159. Fourth, most of OEMs and large corporate sellers who responded to the CMA did not raise concerns about the impact of the JV.

Conclusion on Theory of Harm 3

160. The CMA believes that there is strong existing competition to provide remarketing services to OEMs and large corporate sellers. Although AutoTrader had plans to offer services to OEMs and large corporate sellers via Smart Buying in the future, a large range of alternatives will constrain the JV post-Merger.
161. Accordingly, the CMA found that the JV does not give rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in relation to the supply of B2B online remarketing services to OEMs and large corporate sellers in the UK.

Theory of Harm 4: Conglomerate effects in supply of B2B online vehicle remarketing services

162. Conglomerate effects may arise in mergers of firms that are active in the supply of goods or services that do not form part of the same markets but which are nevertheless related in some way, either because their products are complements (so that a fall in the price of one good increases the customer's demand for another) or because there are economies of scale in purchasing them (so that customers buy them together).⁵⁴
163. Most non-horizontal mergers are considered to be benign or even efficiency-enhancing (when they involve complementary products) and do not raise competition concerns. However, in certain circumstances, a conglomerate merger can result in the merged entity foreclosing rivals, including through a tying or bundling strategy.
164. In the present case, the CMA has considered whether the Parties could bundle the services offered by AutoTrader in B2C online vehicle listings with the B2B online remarketing services of the JV. As a result of this bundling, dealers that use rivals' B2B remarketing services might switch to the JV causing rivals in B2B remarketing to lose business and scale and become weaker competitors. Under this theory, this weakening of competition could allow the JV to increase prices (or otherwise degrade the quality of its

⁵⁴ [Merger Assessment Guidelines](#), paragraph 5.6.2.

offering) to customers. The CMA received third-party concerns relating to potential conglomerate effects.

165. The CMA's approach to assessing conglomerate theories of harm is to analyse (a) the ability of the merged entity to foreclose competitors, (b) the incentive of it to do so, and (c) the overall effect of the strategy on competition.⁵⁵ These are discussed below.

Ability

166. The Parties submitted that they would lack the ability to foreclose competitors because:
- (a) AutoTrader faces significant and growing competition in the provision of B2C online listing services from well-resourced competitors.
 - (b) They lack a common pool of B2B and B2C customers.
 - (c) There is no realistic mechanism that the Parties could adopt to foreclose rivals, including because of provisions agreed in the Subscription and Shareholders Agreement (**SSA**).
167. The CMA addresses these points in turn.

AutoTrader's position in B2C online vehicle listings

168. To implement a foreclosure strategy, the merged entity must have a significant degree of market power (which does not necessarily amount to dominance) in one of the markets concerned.⁵⁶
169. The Parties provided the CMA with share of supply estimates for B2C online vehicle listings, showing that AutoTrader has a share of visits of approximately 54%. AutoTrader is the largest provider, with a range of smaller competitors, including motors.co.uk, eBay (which owns Gumtree) and PistonHeads.⁵⁷ Dealers frequently commented to the CMA that autotrader.co.uk was important to their business, and that even though it was [✂] and implemented frequent price rises, they had few [✂] but to continue using it. The CMA considers, from the evidence available, that AutoTrader may have a degree of market power in B2C online vehicle listings.

⁵⁵ [Merger Assessment Guidelines](#), paragraph 5.6.6.

⁵⁶ [EC Non-Horizontal Merger Guidelines](#), paragraphs 99.

⁵⁷ On 19 October 2018 eBay announced its intention to buy motors.co.uk from Cox, subject to approval by the CMA.

Existence of a common pool of B2B and B2C customers

170. For foreclosure to be a concern, there must be a common pool of customers for the individual products concerned. The more that customers tend to buy both products together, the more demand for the individual products may be affected by bundling.⁵⁸
171. The Parties provided evidence that an estimated [X]% of Dealer Auction and [X]% of Manheim Online dealer customers currently subscribe to one of AutoTrader's B2C packages.
172. The CMA believes that this indicates the Parties could have the ability to foreclose B2B rivals since most customers in the B2B segment use AutoTrader product in B2C.

Mechanism for foreclosing rivals

173. As well as market power and a common pool of customers, for conglomerate effects to arise there must be a mechanism through which the merged entity could implement a foreclosure strategy (eg, bundling).
174. Both B2B remarketing and B2C listing services are frequently provided to dealers through a subscription. In theory, the Parties may be able to offer a mixed bundle of the separate subscriptions that customers currently make for B2B and B2C services, thus making it more likely that dealers would use the JV's B2B service compared to a rivals'. This, among other mechanisms, was suggested by third-parties as a strategy that could foreclose competitors in B2B remarketing services.
175. The Parties also argue that under the provisions of the SSA, [X]. The CMA considers that the provisions of the SSA would not be sufficient to preclude the ability of the Parties to engage in bundling. First, the provision requires [X]. Second, the Parties noted that it would still be possible (albeit more difficult) [X].

Conclusion on ability

176. The CMA believes that autotrader.co.uk has a strong position in B2C online vehicle listings, and that there is a customer overlap between autotrader.co.uk's and the JV's customers. The CMA has also identified some theoretical mechanisms of foreclosure.

⁵⁸ EC Non-Horizontal Merger Guidelines, paragraph 100. See also [Merger Assessment Guidelines](#), paragraph 5.6.13.

177. The CMA cannot exclude that the Parties may have the ability to foreclose B2B online vehicle remarketing, and therefore examine the Parties' incentives to do so below.

Incentive

178. The Parties submitted that they lack the incentive to foreclose rivals through a bundling strategy. In particular, B2C online vehicle listings is critical to AutoTrader and it would lack the incentive to jeopardise its revenues from B2C based on receiving only 49% of the profits from the JV, which is also significantly smaller in size than its B2C operations.
179. Revenue data shows that autotrader.co.uk forms [redacted]% of AutoTrader's business, indicating its importance and [redacted] for AutoTrader. The SSA contains a provision allowing Cox to buy AutoTrader's shares in the JV in the event of deadlock between the Parties.⁵⁹ The CMA considers this provision could lower AutoTrader's incentive to risk its B2C online vehicle listings revenue in exchange for a gain in B2B online remarketing as it could be forced to sell its share in the JV in the future.
180. The Parties provided the CMA with data on the annual revenue per customer for autotrader.co.uk compared with Dealer Auction. This showed that autotrader.co.uk generates [redacted]. This is before accounting for the fact that AutoTrader would only receive half of any profits made by the JV in B2B remarketing (but would absorb all of the potential costs). Even if the JV were to be more successful than Dealer Auction, the available evidence suggests that the costs to AutoTrader of losing B2C customers would exceed the benefit it would receive of additional B2B customers.
181. Moreover, the Parties provided evidence showing that only a small proportion of autotrader.co.uk's dealer customers are customers of the JV. In particular, of autotrader.co.uk's dealer customers, [redacted]. This indicates that, since a clear majority of dealer customers in B2C do not use the JV, the scope for customer losses is much bigger than that of customer gains in B2B.
182. Overall, the CMA believes that the Parties would lack the incentive to foreclose rivals in B2B remarketing through its B2C services because the cost of losing B2C customers would exceed the benefits.

⁵⁹ [redacted].

Effect

183. The CMA has not needed to consider the effect of any bundling strategy by the Parties on the basis that the CMA does not believe that the Parties would have the incentive to engage in such foreclosure.

Conclusion on Theory of Harm 4

184. For the reasons set out above, the CMA believes that the Parties may have the ability, but not the incentive, to foreclose rivals in B2B online remarketing through leveraging their position in B2C online vehicle listings.
185. Accordingly, the CMA found that the JV does not give rise to a realistic prospect of an SLC as a result of conglomerate effects in relation to the supply of B2B online remarketing services to franchised and independent dealers in the UK.

Barriers to entry and expansion

186. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.⁶⁰
187. As part of its assessment of the impact of the JV, the CMA has assessed both the development (or “expansion”) of Smart Buying by AutoTrader, as well as the current or planned entry and expansion of the Parties’ competitors. In particular, the CMA has considered the online remarketing activities of BCA and Aston Barclay, which is discussed in paragraphs 108 and 119.

Decision

188. Consequently, the CMA does not believe that it is or may be the case that the JV may be expected to result in an SLC within a market or markets in the United Kingdom.
189. The JV will therefore **not be referred** under section 33(1) of the Act.

Adam Land
Senior Director

⁶⁰ [Merger Assessment Guidelines](#), from paragraph 5.8.1.

Competition and Markets Authority

21 November 2018

ⁱ BCA told the CMA that Dealer Pro is primarily a part exchange evaluation tool; however, it does allow dealer sellers that value cars and who are also registered auction sellers with BCA to upload the photos and vehicle description generated by Dealer Pro to BCA's auction environment if they wish to advertise the vehicle on the BCA website prior to auction. As an additional option, vehicles listed on the auction web site can also be listed for sale on-line via BCA's auction platform's "Bid Now Buy Now" function. Dealer Pro is not itself a sales channel.