

## COMPLETED ACQUISITION BY TVS EUROPE DISTRIBUTION LIMITED OF 3G TRUCK & TRAILER PARTS LTD

### Notice of possible remedies under Rule 12 of the Competition and Markets Authority Rules of Procedure<sup>1</sup>

#### Introduction

1. On 19 June 2020, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition by TVS Europe Distribution Limited (**TVS EDL**) of 3G Truck & Trailer Parts Ltd (**3G**) (the **Merger**), for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. In its provisional findings on the reference notified to TVS EDL and 3G (together the **Parties**) on 21 October 2020,<sup>2</sup> the CMA provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation may be expected to result in a substantial lessening of competition (**SLC**) in the wide range wholesale supply of commercial vehicle and trailer (**CVT**) parts to motor factors in the independent aftermarket (**IAM**) in the UK.
3. The CMA has provisionally concluded that the SLC may be expected to result in adverse effects, for example in the form of higher prices and/or lower quality of products or customer service than would otherwise have been the case absent the Merger.
4. This Notice sets out the possible actions the CMA considers it might take for the purpose of remedying, mitigating or preventing<sup>3</sup> the SLC and/or any resulting adverse effects identified in the provisional findings.
5. The CMA invites comments on possible remedies by **4 November 2020**.

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<sup>1</sup> [CMA Rules of Procedure for Merger, Market and Special Reference Groups \(CMA17\)](#), March 2014, corrected November 2015.

<sup>2</sup> The provisional findings can be found on the case page [here](#).

<sup>3</sup> Elsewhere in this Notice, references to remedying the SLC and/or the adverse effects are used as shorthand for the statutory reference to remedying, mitigating or preventing the SLC and/or the adverse effects.

## Interim measures

6. On 10 February 2020, the CMA imposed an Initial Enforcement Order (**IEO**) for the purpose of preventing pre-emptive action<sup>4</sup> in accordance with section 72(2) of the Act. On 19 June 2019, the CMA issued directions under the IEO for the appointment of a monitoring trustee (**Monitoring Trustee**) in order to monitor and ensure compliance with the IEO. The IEO and the Monitoring Trustee remain in place.

## Criteria

7. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.<sup>5</sup>
8. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.<sup>6</sup>
9. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>7</sup>

## Possible remedies on which views are sought

10. In merger inquiries, the CMA will generally prefer structural remedies, such as divestiture (if the merger is completed) or prohibition, rather than behavioural remedies designed to regulate the ongoing conduct of the Parties or control market outcomes (eg prices) following the merger,<sup>8</sup> because:
  - (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
  - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and

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<sup>4</sup> Pre-emptive action means action which might prejudice the reference or impede the taking of remedial action which may be justified by the CMA's decisions on the reference (section 72(8) of the Act). Interim measures are designed to ensure that the viability and competitive capability of each of the merging parties are not undermined pending the outcome of the CMA's investigation, as this would risk prejudicing the ability of the CMA to achieve an effective remedy if it were to find that the merger gives rise to an SLC (see [Interim measures in merger investigations](#) CMA108 (28 June 2019), paragraph 1.7).

<sup>5</sup> Section 35(4) of the Act.

<sup>6</sup> [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.4.

<sup>7</sup> [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.4.

<sup>8</sup> [Merger Remedies](#): CMA87 (13 December 2018), section 7 for further guidance on behavioural remedies.

- (c) structural remedies rarely require ongoing monitoring and enforcement once implemented.<sup>9</sup>
11. At this stage, the CMA's initial view is that the full divestiture of 3G by TVS EDL is likely to be the only effective remedy to the SLC and/or any adverse effects which may be expected to result from it that the CMA has provisionally found.<sup>10</sup> The CMA's initial view is that a full divestiture of 3G would represent a comprehensive solution to all aspects of the SLC it has provisionally found (and any resulting adverse effects) and that the risks in terms of its effectiveness are low. The CMA's initial view is also that the full divestiture of 3G would be a proportionate remedy.
  12. The CMA has not, at this stage, been able to identify another structural remedy, including a differently configured or smaller divestiture package, that could form the basis of an effective remedy, given the need for the divested business to be a wide range wholesaler in order to be an effective competitive constraint on the Merged Entity.
  13. The CMA's initial view is that a structural remedy other than full divestiture of 3G would be unlikely to comprehensively address the SLC and/or any resulting adverse effects it has provisionally found and would be likely to have an unacceptable level of risk in terms of its effectiveness, in particular in relation to composition risks.<sup>11</sup>
  14. The CMA's initial view is that a behavioural remedy is very unlikely to be an effective remedy that could comprehensively address the SLC and/or any resulting adverse effects it has provisionally found.<sup>12</sup> This is in particular due to the broad scope of the adverse effects the CMA has provisionally found, the significant risks in designing effective behavioural remedies and the likely need for extensive and ongoing monitoring.
  15. Having said this, the CMA will consider any practicable remedies – whether structural or behavioural in nature – that the Parties, or any interested third parties, may propose that could be effective in addressing the SLC and/or any resulting adverse effects.
  16. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural

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<sup>9</sup> *Merger Remedies: CMA87* (13 December 2018), paragraphs 3.46 and 3.42.

<sup>10</sup> The divestiture of Universal Components Limited (**UC**) instead of 3G would be another potentially effective remedy, but the CMA assumes that the Parties would prefer to divest 3G rather than UC. The divestment of UC is not considered further here.

<sup>11</sup> Composition risks are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market (see also *Merger Remedies: CMA87* (13 December 2018), paragraph 5.3(a)).

<sup>12</sup> The circumstances in which behavioural remedies are more likely to be used as the primary source of remedial action are set out in *Merger Remedies: CMA87* (December 2018), paragraph 7.2.

remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the SLC and/or any resulting adverse effects.

### ***Divestiture***

17. As mentioned in paragraph 11 above, the CMA's initial view is that a full divestiture of 3G would represent an effective and proportionate remedy to the SLC and/or any resulting adverse effects it has provisionally found.
18. In evaluating possible divestitures as a remedy, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching a view, the CMA will have regard to the following critical elements of the design of divestiture remedies.

### ***The scope of the divestiture package***

19. To be effective in remedying the provisional SLC and/or any resulting adverse effects, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to compete effectively<sup>13</sup> as a wide range wholesaler and restore the competitive constraint imposed by 3G that would be lost as a result of the Merger.
20. The CMA invites views on whether:
  - (a) a full divestiture of 3G by TVS EDL would represent an effective remedy to the SLC and/or any resulting adverse effects that have been provisionally found;
  - (b) a differently configured and/or smaller divestiture package other than a full divestiture (eg a partial divestiture of some, but not all, of the business and operations of 3G) to a suitable purchaser could also be an effective remedy, and if so:
    - (i) what would be the appropriate scope of the package of assets to be divested;
    - (ii) whether there are any risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market;

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<sup>13</sup> [Merger Remedies](#): CMA87 (13 December 2018), paragraph 5.3(a).

- (c) divestiture of the 3G brand would be required to ensure that the package of divested assets can compete effectively – the CMA’s initial view is that this would be the case, bearing in mind the need to achieve an effective remedy to the provisional SLC and/or any resulting adverse effects;
- (d) any other elements may be required.

*Identification and availability of a suitable purchaser*

- 21. The CMA will need to be satisfied that a prospective purchaser:<sup>14</sup>
  - (a) is independent of the Parties;
  - (b) has the necessary capability to compete;
  - (c) is committed to competing in the relevant markets; and
  - (d) will not create further competition concerns as a result of the divestiture to it.
- 22. The CMA invites views on whether there are:
  - (a) any other specific factors or requirements to which it should pay particular regard in assessing purchaser suitability, eg to operate 3G as an effective wide range wholesaler;
  - (b) any specific purchasers or types of purchasers which should be ruled out as potentially suitable purchasers (eg other UK and non-UK wholesalers or financial buyers); and
  - (c) risks that a suitable purchaser is not available or that the Parties will divest to a weak or otherwise inappropriate purchaser.

*Effective divestiture process*

- 23. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with divestiture.
- 24. The CMA invites views on:
  - (a) the appropriate timescale for achieving a divestiture (the initial divestiture period);<sup>15</sup> and

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<sup>14</sup> [Merger Remedies: CMA87](#) (13 December 2018), paragraph 5.21.

<sup>15</sup> The initial divestiture period will normally commence once the CMA has accepted final undertakings or made a final order (up to 12 weeks after the final report) in relation to the required remedy in the CMA’s final report. The

- (b) the risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture, and whether the functions of the Monitoring Trustee (see paragraph 6 above) should be expanded to oversee the divestiture process and to ensure that the operations and assets to be divested are maintained and properly supported during the course of the process.
25. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
- (a) the Parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
- (b) the CMA has reason to expect that the Parties will not procure divestiture to a suitable purchaser within the initial divestiture period.
26. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

### **Cost of remedies and proportionality**

27. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or that is the least restrictive.<sup>16</sup> In relation to completed mergers, the CMA will not normally take account of costs or losses that will be incurred by the Parties as a result of a divestiture remedy.<sup>17</sup>
28. When considering relevant costs, the CMA's considerations may include (but are not limited to):<sup>18</sup>
- (a) distortions in market outcomes;
- (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and

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length of this initial divestiture period will depend on the circumstances of the merger, but will normally be a maximum period of six months (see [Merger Remedies: CMA87](#) (13 December 2018), paragraph 5.41).

<sup>16</sup> [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.6.

<sup>17</sup> [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.9.

<sup>18</sup> [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.10.

(c) the loss of any relevant customer benefits that may arise from the Merger which are foregone as a result of the remedy (see paragraphs 30 to 32 below).

29. The CMA invites views on what relevant costs are likely to arise in implementing a remedy requiring the full divestiture of 3G.

### **Relevant customer benefits**

30. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.<sup>19</sup>

31. Relevant customer benefits are limited by the Act to benefits to relevant customers<sup>20</sup> in the form of:<sup>21</sup>

(a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or

(b) greater innovation in relation to such goods or services.'

32. For the purposes of a completed merger, the Act provides that a benefit is only a relevant customer benefit if:<sup>22</sup>

(a) it has accrued as a result of the creation of the relevant merger situation or may be expected to accrue within a reasonable period as a result of the creation of that situation; and

(b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

33. The CMA welcomes views on the nature of any relevant customer benefits, and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the full divestiture of 3G.

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<sup>19</sup> Section 35(5) of the Act, see also [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraphs 3.15 to 3.22.

<sup>20</sup> For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in the chain of production and distribution and are therefore not limited to final consumers (see [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.18; and see also section 30(4) of the Act).

<sup>21</sup> Section 30(1)(a) of the Act, see also [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.17.

<sup>22</sup> Section 30(2) of the Act, see also [Merger remedies guidelines](#), CMA87 (13 December 2018), paragraph 3.19.

## Next steps

34. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **4 November 2020** (see Note (i)).
35. A copy of this notice will be posted on the CMA website.<sup>23</sup>

Kirstin Baker  
Group Chairman  
21 October 2020

## Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC and/or any resulting adverse effects is made having regard to the provisional findings published on 21 October 2020. The Parties have until **11 November 2020** to respond to the provisional findings. The CMA's findings may alter in response to comments it receives on its provisional findings, in which case the CMA may consider other possible remedies, if appropriate.

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<sup>23</sup> A copy of this notice and the provisional findings can be found on the CMA's case page [here](#).