

## Case ME/6851/19

## Completed acquisition of 3G Truck &amp; Trailer Parts Ltd by TVS Europe Distribution Limited

Response to CMA Working Papers<sup>1</sup>**1. Introduction and Executive Summary**

- 1.1 This response to the Competition and Markets Authority's (CMA) Working Papers of 4 September 2020 (the **Working Papers**) in its review of the completed acquisition by TVS Europe Distribution Limited (TVS EDL) of 3G Truck & Trailer Parts Ltd (3G)(the **Transaction**) is submitted on behalf of TVS EDL, its wholly-owned subsidiary Universal Components (UC) and 3G (together, the **Parties**).<sup>2</sup>
- 1.2 As set out in more detail in the Parties' response to the CMA's Phase 1 Decision of 3 July 2020 (the **Phase 1 Decision Response**), the Parties agree with the CMA's finding at Phase 1 that "*From a demand-side perspective, different product groups (eg braking or suspension components) are clearly non-substitutable, as they serve entirely different end-uses*";<sup>3</sup> indeed, for each individual purchase, customers will consider the range of available suppliers that provide the relevant product – which equates to competition on a product category-by-category basis focused primarily on price, delivery time and availability. The breadth of range of product categories stocked by any given supplier is, at best, of secondary importance for the vast majority of customer purchases. This is entirely consistent with the evidence set out in the CMA's Economic Evidence Working Paper (the **Econ Working Paper**) which shows that "*Quality, delivery time, and price are the three attributes most frequently rated as 'very important' by customers.*" This is also consistent with the evidence set out in the CRA report of 15 July 2020 (the **CRA Report**) which showed that the vast majority of each Parties' sales were to customers who purchased products across only a small proportion of each of the Parties' product categories.
- 1.3 As discussed during the UC Phase 2 oral hearing of 11 September 2020 (the **UC Hearing**), the Parties acknowledge that for a very small proportion of their sales, customers may place a value on the ability to add an item onto a pre-existing open order so as to receive that item on a next day basis with no incremental delivery fees. The Parties refer to such orders in this response (as in the oral hearing) as '*ad hoc*' – as opposed to '*primary*' – sales. Given that wholesalers with parts in a greater number of product categories will generally be making more frequent deliveries than a wholesaler supplying only one or a smaller number of product categories, on average it is more likely that a customer will have a pre-existing open order with a wide range wholesaler when the requirement for an *ad hoc* part arises. The email negotiations and overstrikes data cited in Figures 10 and 11 of the Econ Working Paper pertain directly to such *ad hoc* sales; this explains why there is a relatively higher proportion of 3G mentions (even when correcting for the erroneous inclusion of orders related to the Republic of Ireland) in those two datasets than in other internal datasets/documents – such as UC's price benchmarking or regional sales meeting presentations.
- 1.4 As set out in more detail below however, not only are *ad hoc* sales a very small proportion of any given customer's overall purchases – ranging from 5-20% depending on how they are defined – but even on this small proportion the Parties will not have the ability or incentive to raise prices post-merger. Any attempt to do so would put at risk not only the specific *ad hoc* order subject to the relevant price negotiation (and in this respect, the evidence cited by the CMA shows that the Parties continue

<sup>1</sup> Information shaded pink in this document is TVS information that is confidential vis-à-vis 3G. Information shaded green in this document is 3G information that is confidential vis-à-vis TVS.

<sup>2</sup> Unless otherwise indicated, defined terms in this response have the same meaning as set out in the Parties' response to the CMA's Phase 1 Decision of 3 July 2020.

<sup>3</sup> The Decision, at paragraph 130.

to face significant constraints from ‘narrow’ or ‘niche’ suppliers) but also the relevant customer’s underlying primary purchases which are of far greater importance to the Parties. Put simply, it would be illogical for the parties to jeopardise the overwhelming majority of their sales for a small price increase on the tiny proportion of *ad-hoc* sales.

- 1.5 Instead, the available evidence— including much of the evidence set out in the Working Papers –shows that while the Parties compete, significant and growing competitive constraints will remain post-merger, such that the Transaction cannot be said plausibly to result in an SLC. In particular, not only will the merged entity continue to face important direct constraints in each product category from wholesalers that focus on that category, other wide range wholesalers and OES suppliers, but the constraint posed by new entrants such as Sampa and Inter Cars is also clearly growing rapidly; given both of these competitors operate a similar business model to the Parties, they can be expected to provide an equally strong constraint on the merged entity’s *ad hoc* sales.
- 1.6 The Parties also note that the CMA has not provided the underlying data or methodology for the analysis set out in the Econ Working Paper which has made it very difficult to respond to some of the analysis undertaken by the CMA. In the areas where the Parties *have* been able to consider the CMA’s analysis – such as in respect of UC’s overstrikes data – they have uncovered some material errors in the CMA’s results (for example the inclusion of overstrike reports related to sales in the Republic of Ireland).
- 1.7 The remainder of this response is structured as follows:
  - (i) Section 2 sets out the evidence contained in the Working Papers that proves competition is based primarily on price, delivery time and availability; conversely the evidence cited in the Econ Working Paper clearly shows that customers do not value breadth of product category range as particularly important.
  - (ii) Section 3 explains in more detail why the theory of harm set out in the Econ Working Paper (i.e., based on the potential removal of a supplier capable of providing a basket of goods) is not credible.
  - (iii) Section 4 shows that – in contrast to the statements apparently made by the Parties’ competitors to the CMA – the competitive constraint from recent entrants is already significant and continues to grow.
  - (iv) In Section 5, the Parties set out in more detail why the Working Papers mischaracterise their internal documents, in particular UC’s internal documents relating to its rationale for entering into the Transaction.
  - (v) Finally, Section 6 sets out the Parties’ serious concerns as to the methodology used by the CMA in its Phase 2 customer questionnaire, where many of the most important questions have been worded in a way that is inherently biased towards the conclusions reached by the CMA in its Phase 1 Decision.

**2. The Working Papers show that competition is based on price, delivery time and availability**

- 2.1 As set out in more detail in the Phase 1 Decision Response, the Parties agree with the CMA’s finding that “*From a demand-side perspective, different product groups (eg braking or suspension components) are clearly non-substitutable, as they serve entirely different end-uses*”;<sup>4</sup> for each individual purchase, customers will consider the range of available suppliers that supply the relevant product primarily on the basis of price, delivery time and availability. The breadth of the range of

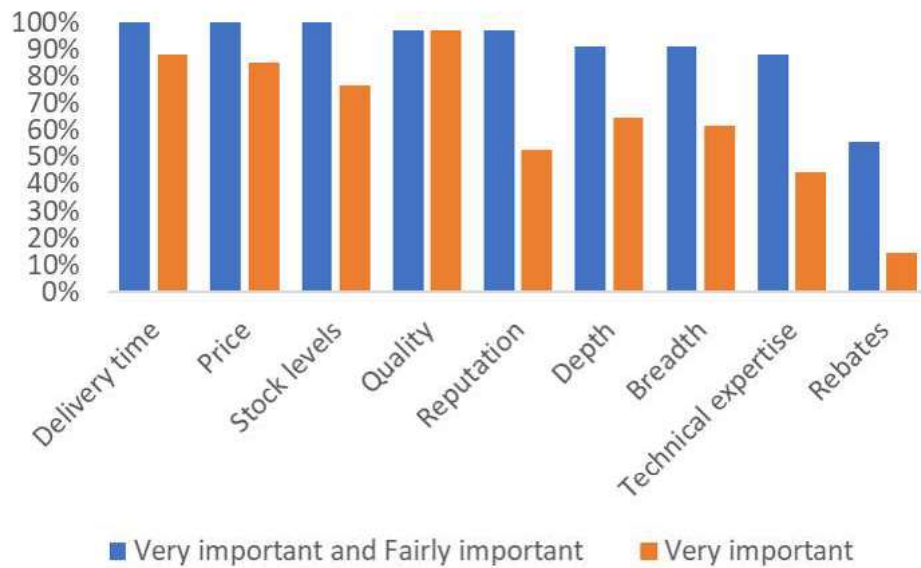
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<sup>4</sup> Decision, paragraph 130.

product categories stocked by any given supplier is, at best, of secondary importance for the vast majority of customer purchases. This, in addition to the fact that competitors are active within a particular product category (and not necessarily across categories), means that competition for customers takes place primarily within categories and not across categories.

2.2 The evidence set out in the Econ Working Paper proves this. Specifically, the CMA’s customer survey asked customers to rate the importance of different possible choice attributes for suppliers. While the Parties have not been provided with the underlying results of that customer survey, the Econ Working Paper states that “*Quality, delivery time, and price are the three attributes most frequently rated as ‘very important’ by customers. Breadth of range was rated as very important by 21 customers out of 34 who answered this question. These ratings do not appear to vary much by customer size.*”<sup>5</sup> In fact, Figure 1 of the Econ Working Paper (reproduced below for ease of reference) shows that out of the nine possible choice attributes put to customers, ‘Breadth’<sup>6</sup> was only the joint sixth most frequently ranked attribute identified as either very important or fairly important, and only the sixth ranked as very important. Only ‘Reputation’, ‘Technical expertise’ and ‘Rebates’ ranked lower when considering attributes identified as very important.

**Figure 1: Proportion of customers ranking various supplier criteria as ‘very important’ and ‘very important’ or ‘fairly important’ (reproduced from Figure 1 of the Econ Working Paper)**



2.3 That ‘price’ and ‘availability’ are the key parameters of competition in the relevant markets is also borne out by the evidence collected by the CMA as to customers’ stated reasons for using suppliers – including with respect to the Parties. Indeed, the evidence set out in the Working Paper shows that ‘price’ and ‘availability’ are by a significant margin the most commonly cited reasons that customers chose to purchase from the Parties (as well as from their competitors).

<sup>5</sup> Econ Working Paper, at paragraph 13.  
<sup>6</sup> Presumably corresponding to ‘breadth of range’.

Figure 2: Reasons given by customers for using different suppliers (reproduced from Table 3 of the Econ Working Paper)

	UC	3G	Auto mint	EBS	Knorr	Winn ards	CV Logix	TTC	Imex	tmd Frictio n
Price	47%	52%	20%	33%	0%	37%	75%	0%	40%	20%
Breadth	17%	16%	30%	22%	12%	25%	25%	0%	0%	0%
Availability	53%	48%	10%	22%	0%	12%	75%	17%	40%	0%
Quality	3%	4%	20%	0%	12%	25%	0%	17%	0%	60%
Technical Expertise	3%	4%	0%	11%	0%	0%	0%	0%	0%	20%
Delivery	10%	12%	0%	0%	0%	12%	0%	17%	0%	0%
Rebates	3%	8%	0%	0%	0%	0%	0%	0%	0%	0%
Convenience	3%	4%	0%	0%	0%	0%	0%	0%	0%	0%
Relationship	30%	8%	0%	0%	0%	0%	0%	0%	0%	0%
Safety	0%	0%	0%	0%	12%	0%	0%	0%	0%	0%
Affiliate	0%	0%	10%	11%	25%	12%	25%	0%	0%	40%
<b>Total number of reasons given</b>	<b>51</b>	<b>39</b>	<b>9</b>	<b>9</b>	<b>5</b>	<b>10</b>	<b>16</b>	<b>3</b>	<b>4</b>	<b>7</b>
<b>Total number of mentions</b>	<b>30</b>	<b>25</b>	<b>10</b>	<b>9</b>	<b>8</b>	<b>8</b>	<b>8</b>	<b>6</b>	<b>5</b>	<b>5</b>

Source: responses to CMA third party questionnaire

- 2.4 The table above shows that 47% of the customers that listed UC as one of their top 10 suppliers cited price as a reason for purchasing from UC, while 53% cited ‘availability’. Only 17% of UC’s customers cited ‘breadth’ as a reason for purchasing from UC. The figures for 3G are even more striking, with 52% of customers citing ‘price’ as a main reason for purchasing, 48% citing availability and only 16% citing ‘breadth’.
- 2.5 The Econ Working Paper attempts to explain away the clear evidence as to the importance of price – and relative lack of importance of breadth of range – by asserting that “*These results are difficult to interpret. First, some suppliers attracted relatively few mentions in total, so that it is difficult to draw firm conclusions for them. Second, the interpretation of some of the terms is unclear. For example it is not clear whether ‘availability’ refers to the range of products supplied (ie as synonymous with either ‘breadth’ or ‘depth’), or to the fact that products can be made available quickly to customers (eg because they are always held in stock). The wording of some responses is more consistent with the former interpretation (for example, one customer refers to a ‘broad base of product availability’), while other responses are more consistent with the latter (for example one customer refers to ‘huge range and good availability’).*”<sup>7</sup> The first attempted explanation – that ‘some suppliers attracted relatively few mentions in total, so that it is difficult to draw firm conclusions for them’ – is presumably not intended by the CMA to apply to UC or 3G given that this was specifically a survey of the Parties’ customers. The second explanation is completely implausible: paragraph 16 of the Econ Working Paper states that “*We did not prompt answers to these questions so that respondents could describe motives in their own terms*”, however that fails to mention that the word ‘breadth’ was specifically cited in question 6 of the questionnaire as a criterion for choosing suppliers in the following terms:

<sup>7</sup> Econ Working Paper, at paragraph 17.



Figure 3: Excerpt from Question 6 of CMA Customer Survey Questionnaire

6. How important are the following criteria when you choose which supplier to buy commercial vehicle and trailer parts from?

[...]

b. Breadth of range of products offered (ie the number of product categories)

Not important  Fairly important  Very important  Do not know

Are there any product categories where this factor is more relevant?

[...]

- 2.6 Having asked customers to think of “breadth” in terms of “range of products offered (ie the number of product categories)” for the purposes of question 6 of the CMA’s customer questionnaire, for the Econ Working Paper to speculate that *some* (but not all) customers citing “availability” in response to a different question may have been thinking about precisely that same concept, is simply not credible.
- 2.7 Likewise, in terms of the number of suppliers used by customers – and again with the important caveat that as of the date of this response the CMA has refused to share (even on an external advisor basis) the data underlying the customer survey results – the Econ Working Paper shows that “Of the 32 customers who answered this question, 21 listed the maximum number of 10 suppliers, with the suppliers listed accounting for 74% of their total purchases on average. This indicates that multi-sourcing is prevalent in this industry, which is consistent with the findings at phase 1”.<sup>8</sup> This prevalence of multi-sourcing reveals that customers do not have a preference to source their requirements from a single supplier and explains why they rank breadth of range relatively low.
- 2.8 In fact the evidence set out in the Econ Working Paper as to the paramount importance of price and product availability, the relative unimportance of breadth of range, and the prevalence of multi-sourcing is entirely consistent with the evidence on actual purchasing behaviour set out in the CRA Report. That report showed that the vast majority of the Parties’ sales were to customers who purchased products across only a small proportion of each of the Parties’ product groups, consistent with customers using *other* sources of supply to complete their range (as all motor factors need to be able to supply a complete range of products). Specifically, [%] of UC’s sales came from customers who bought fewer than [%] of UC’s [%] product groups, while [%] of UC’s sales came from customers who bought from fewer than [%] of UC’s product groups. Similarly, for 3G, no customer purchased more than [%] product groups, while [%]% of 3G’s sales came from customers who bought fewer than [%] of 3G’s [%] product groups and [%]% of sales came from customers who bought from fewer than [%] of 3G’s product groups. Likewise, when looking at a single month, the majority of each of the Parties’ sales were to customers who purchased from only a small number of product groups. For UC, no customer purchased more than [%] product groups while [%] of UC sales in April 2019 came from customers who bought from fewer than [%]

<sup>8</sup> Econ Working Paper, at paragraph 15.

product groups during that month. Similarly, for 3G, no customer purchased more than [X] product groups, while [X] of 3G's sales in April 2019 came from customers who bought from fewer than [X] product groups during that month.

- 2.9 As noted above, the CMA accepts the main findings in the CRA Report that customers multi-source but argues that “*The hypothesis that we have sought to test is more nuanced: it is that some customers might have a preference for sourcing some of their purchases from a limited number of suppliers that present particular characteristics, not just in terms of the range supplied but also the ease of ordering parts and the speed of deliveries*”<sup>9</sup> (CMA's emphasis). It is worth emphasising that the theory of harm set out in the Working Papers is not that, for the sake of convenience, *all* customers prefer to source *all* of their purchases from one supplier, or even that *most* customers prefer to source *most* of their purchases from one supplier. Instead, the CMA appears to consider that the Transaction may result in an SLC on the basis of a hypothesis that some undefined proportion of the Parties' customers have a preference for sourcing some undefined proportion of their purchases from an undefined but ‘limited’ number of suppliers with similar characteristics.
- 2.10 The CMA cites two pieces of evidence from customers as being consistent with this hypothesis, discussed in turn below.
- 2.11 **First** – despite acknowledging that the evidence proves “*the Parties' customers multi-source to a significant extent*”<sup>10</sup> – the CMA nonetheless apparently finds that “*there are a number of cost and convenience factors that would make this less efficient or impractical*”,<sup>11</sup> including higher administrative and logistical costs and higher product costs due to the operation of rebates. As noted above, in fact the results of the CMA's own market assessment show that of all the potential considerations put to customers in the customer survey, ‘rebates’ ranks least important by a significant margin (and the CMA notes that “*These ratings do not appear to vary much by customer size*”).<sup>12</sup> This can be seen very clearly in Figure 1 above. Further, as set out in paragraph 44 of the Econ Working Paper, the evidence cited by the CMA in support of this finding appears to be largely (if not exclusively) based on reported qualitative feedback during the CMA's follow up calls to customers. It is very difficult for the Parties to comment on this feedback without access to the transcripts of those conversations. However, from the summary of the feedback as set out in the Econ Working Paper it appears that the CMA has given particular weight to the views expressed by EMS and Digraph. In this context, the Parties note the following.
- (a) As previously explained to the CMA,<sup>13</sup> EMS (and FP&S) are both owned by BPW Bergische Achsen KG, a German-based vertically integrated CVT parts manufacturer and wholesaler.<sup>14</sup> BPW describes itself as providing “*The full product range for trucks and trailers, from the original part to the aftermarket part...Of course, the BPW Aftermarket Group distributors not only supply the original spare parts of the BPW Group brands, but also all the spare parts that are necessary and important for the repair and maintenance of commercial vehicles... the precisely suitable parts are delivered to you very quickly and with a high frequency, as needed. For example, directly from our warehouse – up to three times a day. No matter where in Europe you work with us: you can always rely on consistently high standards.*” In addition

<sup>9</sup> Econ Working Paper, at footnote 265.

<sup>10</sup> Econ Working Paper, at paragraph 216.

<sup>11</sup> Econ Working Paper, at paragraph 217.

<sup>12</sup> Econ Working Paper, at paragraph 13.

<sup>13</sup> E.g., please refer to paragraph 2.10 of the Merger Notice.

<sup>14</sup> More information on BPW is available at <https://www.bpw-aftermarket-group.com/en>. See also: <https://www.bpw.co.uk/news/ems-joins-bpw-international-aftermarket-network>, “BPW Limited has announced today, 14 December 2015, the purchase of 100% of the share capital in EMS Truck and Trailer Parts Limited, a Northampton based parts distribution network with 6 operating sites based around the Midlands. The company will join BPW's expanding network of parts distributors across the UK, bringing its extensive truck and trailer parts range expertise. As a newcomer to the BPW Aftermarket Group, EMS Truck and Trailer Parts Limited joins the current 20 aftermarket subsidiaries operating across Europe. With their technically experienced staff, they focus on supplying spare parts covering both truck and trailer applications and offering high quality service and support.”

to EMS and FP&S, BPW also owns PE Automotive (or ‘Peters’) in the UK. The Parties described PE Automotive in the following terms in the Merger Notice: “*Universal Components also considers PE Automotive and J4 UK to be strong/close competitors. PE Automotive are a member of the BPW Group, and distribute their parts through BPW Group’s network giving them a margin advantage when it comes to prices, and they offer an efficient delivery service through a network.*” In the Phase 1 Decision Response, the Parties identified PE Automotive / Peters as a competitor in the hub components, steering, hubs and cabin suspension product categories.

- (b) As the CMA itself notes in the Entry and Expansion Working Paper,<sup>15</sup> and as the Parties previously explained to the CMA,<sup>16</sup> in 2017 Digraph was acquired by LKQ,<sup>17</sup> one of the largest CVT parts wholesalers worldwide, owner of Euro Car Parts and a potential entrant on the UK market. In the Merger Notice, the Parties explained that “*Global activity in the commercial vehicle parts market over the last decade has seen major European businesses such as LKQ, Diesel Technik and Inter Cars commence market consolidation activities. By this we mean that not only do they operate as commercial vehicle parts wholesalers on the continent, but they now also operate at a factor/retailer level. This places them with a significant competitive advantage. The margin gains through using this vertically integrated model are significant*”.<sup>18</sup> By way of a real-world illustration of this constraint, [§]. This suggests Digraph/LKQ’s views (insofar as they have been disclosed to the Parties) on the convenience of purchasing from so-called ‘wide range’ wholesalers has at the very least been exaggerated for the purposes of the CMA’s investigation.
- (c) In addition to Digraph and EMS, Bison – which apparently told the CMA “*that it was not a wholesaler*”<sup>19</sup> – is in fact a direct competitor to the Parties. Indeed, the Phase 1 Decision Response shows that Bison competes with the Parties across at least 6 different product categories.<sup>20</sup> [§].
- (d) As discussed in more detail above, the CMA’s own customer survey shows that customers consistently identified price, availability and delivery times as more important than breadth of range. Notwithstanding the CMA’s view that “*there are a number of cost and convenience factors that would make [multi-sourcing] less efficient or impractical*”, the objective evidence clearly shows that customers simply do not place a particularly high value on breadth of range.

2.12 As such, for the vast majority of the Parties’ customers and sales, breadth of product range is not an important consideration. However, the Parties accept that a small proportion of any given customer’s purchases may be made on an *ad hoc* basis, in respect of which carriage cost may be a relatively more

<sup>15</sup> Entry and Expansion Working Paper, at paragraph 54.

<sup>16</sup> Merger Notice, at paragraph 2.10.

<sup>17</sup> More information on LKQ is available at <https://www.lkqcorp.com/lkq-global/about-us/>. See also <https://www.digraph.co.uk/about-us/> (“*It all began in 1976 when founder, Peter Rawson, set-up the business operating from a Portakabin in West Hallam, Derbyshire. With hard work and determination Peter built the foundation which has helped the company grow to what it is today. Digraph, then operating out of 14 branches, received investment from LKQ Corporation in late 2017. Now, with 23 branches and significant further expansion in the pipeline, our annualised turnover is fast approaching £30m.*”)

<sup>18</sup> Merger Notice, at paragraph 2.9.

<sup>19</sup> Entry and Expansion Working Paper, at paragraph 35.

<sup>20</sup> E.g., General, Front & Rear lighting, Cabin, Hub components, Steering and Hubs.

important consideration. However as set out in the next section in detail, even for this small proportion of any given customer's sales, the merger will not result in a loss of competition.

- 2.13 **Second**, the CMA argues that “*consistent with these preferences, when asked which suppliers they would use to replace purchases from the Parties, customers mostly pointed to other suppliers which are typically considered as wide-range, instead of splitting their purchases between multiple narrow-range suppliers.*”<sup>21</sup> However, as set out in more detail below, the Parties believe that the wording used in relevant parts of the CMA's customer questionnaire is fundamentally biased towards its conclusions in the Phase 1 Decision; customer responses to these questions therefore cannot legitimately be relied upon as evidence of their purchasing preferences.
- 2.14 In summary, the most plausible, simple and intuitive interpretation of all of this evidence is that customers simply do not value breadth of range as particularly important for the vast majority of their purchases.

### 3. **The theory of harm set out in the Working Papers is not credible**

- 3.1 Having accepted that customers multi-source to a significant extent,<sup>22</sup> the CMA nonetheless identifies a mechanism by which the merged entity may increase price post-merger. Specifically, paragraph 223 of the Econ Working Paper states that:

*“We do not consider that it is necessary for the Parties to have perfect information about the preferences of their customers for the Merger to lead to a price increase. Our analysis of the Parties' price negotiation correspondence (paragraphs 132 and following) reveals one mechanism by which prices are set in this industry: when negotiating the price of a particular product with the Parties, customers obtain quotes from alternative suppliers, and use these quotes as 'leverage' to obtain a better price from the Parties. If a customer has a preference for buying a particular item as part of a broader basket, it will naturally seek a quote from another supplier that can also provide a basket of goods. In that context, the removal of a supplier capable of providing a suitable basket of goods reduces the bargaining power of that customer. There is no need for the Parties to know the preferences of that customer for the Merger to lead to higher prices compared to the counterfactual: the customers concerned would simply be less able to obtain competitive quotes that they can use as credible threats, and therefore less able to negotiate prices down.”*

- 3.2 As discussed during the UC Hearing, the Parties acknowledge that for a very small proportion of their sales, customers may place a value on the ability to add an item onto a pre-existing open order so as to receive that item on a next day basis with no incremental delivery fees. The Parties refer to such orders in this response (as in the oral hearing) as ‘*ad hoc*’ – as opposed to ‘*primary*’ – sales. Given that wholesalers offering parts in a greater number of product categories will generally be making more frequent deliveries than a wholesaler supplying only one or a smaller number of product categories, on average it is more likely that a customer will have a pre-existing open order with a wide range wholesaler when the requirement for an *ad hoc* part arises. A large proportion of the email negotiations and overstrikes data cited in Figures 10 and 11 of the Econ Working Paper pertain directly to such *ad hoc* sales; this explains why there is a relatively higher proportion of 3G mentions in those two datasets than in other internal datasets/documents (such as UC's price benchmarking or regional sales meeting presentations) assessed by the CMA in the Econ Working Paper. Indeed, when *ad hoc* sales are removed from the UC overstrike dataset, the frequency of 3G mentions falls to the same level as observed in those other internal documents.

<sup>21</sup> Econ Working Paper, at paragraph 217.

<sup>22</sup> Econ Working Paper, at paragraph 19.



- 3.3 As set out in more detail below however, not only are *ad hoc* sales a very small proportion of any given customer's overall sales, but even on this small proportion the Parties will not have the ability or incentive to raise prices post-merger; any attempt to increase prices on these *ad hoc* sales would put at risk not only the specific order subject to the relevant price negotiation (and in this respect, the evidence cited by the CMA shows that the Parties continue to face significant constraints from 'narrow' or 'niche' suppliers) but also the relevant customer's underlying primary sales which are of far greater importance to the Parties.

*Ad hoc orders account for a small proportion of each Party's sales*

- 3.4 Sales of the kind identified by the CMA in this theory of harm ("when negotiating the price of a particular product with the Parties") are limited to *ad hoc* orders, i.e. instances in which a motor factor needs to make a one-off purchase of a particular CVT part. This may occur when the relevant part is not common and therefore not generally stocked by the motor factor, or because the stock on the particular part has been depleted and the factor has an urgent need for that part which cannot wait until their normal primary order. This may be the case if a factor's customer (i.e. a commercial vehicle repair provider or **CVRP**) is servicing a 'vehicle off-road' (**VOR**) which requires a particular part for it to be able to return to the road legally. Such safety critical parts are distinct from other parts – for example body panels - which depending on the severity of the damage to the relevant vehicle may simply be replaced at a later service and therefore are not time critical. However, it is important to note that there is no standard industry definition of a 'VOR part'. Further, while in the Parties' experience most (if not all) *ad hoc* orders relate to safety critical parts, not all safety critical parts will be purchased through *ad hoc* orders; instead customers will endeavour to purchase such parts within their primary supply orders. As such, the conditions of competition for VOR parts are not inherently different from non-VOR parts in the same relevant market.
- 3.5 Nonetheless, for 'time sensitive' *ad hoc* orders, motor factors and fleet operators will place a greater value on the ability to receive the parts as quickly as possible, and therefore will generally want to place an order for them outside of their primary order (which, depending on the time of day that the need for the *ad hoc* part arises, may not be scheduled until the following day). It is important to note that all suppliers, regardless of whether they provide several categories of parts or only a single category of parts, will generally offer a next day delivery service, and therefore it is not speed of delivery that will favour one supplier over another for the servicing of *ad hoc* orders. However, there is generally a minimum order value to qualify for free delivery (referred to for the purposes of this response as a '**free delivery threshold**').<sup>23</sup> Thus, to the extent that a factor has an open existing order with a supplier above the relevant free delivery threshold on the same day as its need for an *ad hoc* item arises, the factor could save on an additional next day delivery cost for the *ad hoc* part(s) by appending that *ad hoc* order to the pre-existing primary supply order. Given that wholesalers with parts in a greater number of product categories will generally be making more frequent deliveries to customers than a wholesaler supplying only one or a smaller number of product categories, on average it is more likely that the factor will have a pre-existing open order with a wide range wholesaler when the requirement for an *ad hoc* part arises.
- 3.6 However, it is important not to overstate this advantage. First, the advantage will only exist if the motor factor does not already have an open delivery with a so-called 'niche' or 'narrow range' wholesale supplier that can supply the relevant part occurring on the same day as the need for the *ad hoc* part arises. This means it is not the case that suppliers focused on one or a smaller number of product categories are not constraints for *ad hoc* orders, rather they may simply be less of a constraint on average for these particular types of orders given they make less frequent deliveries to customers. Second, the advantage will only exist to the extent that the specific parts in the *ad hoc* order do not by themselves meet the free delivery threshold. However, as shown below many *ad hoc* parts are relatively infrequent, high value, items whose price will be above the free delivery threshold. For

<sup>23</sup> As previously noted to the CMA, UC has a free delivery threshold of £125.



these items there is no advantage to go to a supplier where there is already an order coming, versus a supplier without an order on that day, because the free delivery threshold will be met on the basis of the *ad hoc* item in and of itself. Finally, the advantage will be no greater than the cost of delivery saved by appending the *ad hoc* order to an existing order that has already met the free delivery threshold, versus making a separate *ad hoc* order with an alternative supplier and incurring a separate delivery charge.

- 3.7 Importantly, however, *ad hoc* orders make up only a very small proportion of any given customer's overall demand, with the vast majority of that demand instead being purchased through primary sales orders (as evidenced below in relation to UC's sales data); it would be irrational for the Parties to damage relations with customers – and thereby risk jeopardising their primary sales – by attempting to raise prices of *ad hoc* sales.
- 3.8 During the UC Hearing, the Panel Members asked UC to provide an estimate of the size of *ad hoc* demand. As described above, there is no easy way to identify an *ad hoc* order, as they may well be the exact same products being bought as in a primary order, but simply purchased at a different time and/or under different constraints. As such, it is extremely difficult for UC to provide an exact estimate of the size of *ad hoc* demand. However, in an attempt to respond to the Panel Members' questions, UC has looked at a number of different ways to estimate the level of *ad hoc* orders. The estimates are based on UC sales data from March 2020, the last month not significantly affected by lockdown. Total UK sales in March 2020 were [REDACTED].
- 3.9 **First**, *ad hoc* orders are generally single quantity orders appended onto primary orders which have already exceeded the free delivery threshold. UC has looked at any single product (referred to as 'single line') and single quantity orders placed by customers after the free delivery threshold on a pre-existing order for that day was met. Orders placed on days when the customer did not meet the threshold are not treated as *ad hoc* for these purposes as there is no advantage in ordering these from a wide range wholesaler versus a wholesaler focused on one or a smaller number of product categories. On this basis, *ad hoc* orders are estimated at [REDACTED], or [REDACTED] of UC's total sales in March 2020. However, if orders which already meet the free delivery threshold in and of themselves (and therefore could also be ordered from a 'narrow' or 'niche' wholesaler without incurring a delivery charge) are excluded,<sup>24</sup> *ad hoc* orders are estimated at only [REDACTED] or [REDACTED]% of UC's total sales in March 2020.
- 3.10 As a sensitivity, UC has also looked at any single line order, regardless of the quantity in the order, placed after the free delivery threshold on a pre-existing order for that day was met. However, this sensitivity is likely to capture a significant amount of non-*ad hoc* orders, particularly those with large quantities of a single part which are more likely to be part of a primary order. Nonetheless, even including such orders, this would amount to only [REDACTED] or [REDACTED] of UC's total sales in March 2020, or just [REDACTED] ([REDACTED]%) of March 2020 sales excluding single line orders that already meet the free delivery threshold alone.
- 3.11 **Second**, in UC's experience *ad hoc* orders often come relatively late in the day, when the primary order has already been placed and the customer realises that they need the specific *ad hoc* part for next day delivery. As such, UC has looked at any single line orders which are made in the last hour of trading (and for which delivery would be for the day after as part of the main order). This accounts for [REDACTED] worth of sales or [REDACTED]% of total sales in March 2020. As sensitivities to this approach, UC has also considered looking at single line orders that occur in the last 90 minutes and the last 2 hours of trading. These account for [REDACTED] and [REDACTED]% of March 2020 total sales respectively.

<sup>24</sup> UC understands that most other providers, including those providers who supply only one or two product categories, have similar minimum thresholds for free delivery to UC, and therefore will be equally well placed to fulfil the customer's order.

- 3.12 **Third**, on a highly conservative basis, UC has also looked at any single line, single quantity orders that occur any time in the day, regardless of whether the free delivery threshold has been met or not. This is likely to include many instances of sales that should not be considered *ad hoc* for these purposes insofar as the free delivery threshold has not been met, and therefore there is no advantage for a wide range wholesaler in providing the part versus a wholesaler focused on one or a smaller number of product categories. However even on this conservative basis, this would amount to [X] or [X] of March 2020 sales.
- 3.13 All of the estimates above are consistent with the Parties' view that the level of relevant *ad hoc* sales, in which a wide range wholesaler could feasibly have some comparative advantage over a wholesaler focused on one or a smaller number of product categories is only a very small proportion of each Parties' overall sales.
- 3.14 As set out in the UC Hearing, the CMA's evidence with respect to email negotiations and price matched overstrikes predominantly relates to *ad hoc* sales rather than primary sales.<sup>25</sup> In particular, the [X] ([X]%) of competitor overstrikes (i.e. overstrikes related to explicit price matching of a supplier) are granted in respect of single line orders and therefore predominantly *ad hoc* sales.<sup>26</sup> As such, while the Parties acknowledge that the frequency of mention of 3G or other wide range wholesalers in the competitor overstrikes data (and hence email negotiations) is higher than the frequency of mentions in all the other CMA evidence base because that specific sub-set of the overstrike data is largely made up of *ad hoc* sales. However, as an initial point it is important to note that the CMA's estimate of 3G mentions ([X]) includes overstrikes for sales to the Republic of Ireland. Excluding the Republic of Ireland overstrikes, 3G was in fact mentioned [X]% of the time. Furthermore, as discussed above, these higher mentions seem to be predominantly driven by single line items that are below the free delivery threshold – consistent with them being *ad hoc* purchases. Focusing on 3G mentions of single line items in the competitor overstrike reports that are *above* the threshold (and hence where there is no advantage to ordering from a wide range supplier), the share of 3G mentions is only [X]% – consistent with the evidence on primary orders.
- 3.15 Importantly, the named competitor overstrikes cited by the CMA account for only a tiny proportion of the total value of parts for which an overstrike was granted ([X]%) and *de minimis* proportion (just [X]) of UC's total sales. Even if all overstrikes are considered, regardless of the reason, these account for only [X]% of UC's total sales over the period April 2019 to June 2020 (i.e., the period covered in both the overstrike and transaction data).
- 3.16 With respect to the fact that competitive overstrikes are only a tiny proportion of UC's total sales, the CMA suggests that "*this mechanism may apply in various situations where prices are negotiated bilaterally, rather than solely in the cases of direct price-matching covered by UC's overstrike reports.*"<sup>27</sup> However, there are no other situations where *ad hoc* purchases are negotiated bilaterally. All other bilateral negotiations (mainly negotiations with area sales managers) relate to negotiations over primary orders. As set out below, on these primary orders wholesalers focusing on one or a smaller number of product categories exert no less a constraint than wide range wholesalers and in many product categories are the clear market leader; this is consistent with the CMA's evidence of 3G appearing far less frequently in UC's documents that detail these primary negotiations.

*The Parties will not have the ability or incentive to refuse bilateral negotiations on ad hoc orders*

<sup>25</sup> It should be noted that email negotiations are a subset of the overstrikes data, rather than a separate data source. This is because whilst the negotiation may take place through email, any reduction in price which is decided on will be entered in as an overstrike, and therefore included in the overstrike data. This accounts for why estimates of 3G mentions in UC's competitor overstrike data and email negotiations data are almost identical.

<sup>26</sup> The results are the same for all overstrikes: 71% of all overstrikes relate to single line orders.

<sup>27</sup> Econ Working Paper, at paragraph 226.

- 3.17 Even though wide range wholesalers may have a relatively stronger position on *ad hoc* sales compared to wholesalers focusing on one or a smaller number of product categories, the Parties are still constrained by the fact that customers who make *ad hoc* purchases are the same customers who also make their primary purchases from the Parties. For primary purchases – as set out below – customers have a range of credible alternatives outside the Parties. Given the nature and relative value of *ad hoc* orders compared to primary orders, the Parties will not have an ability or incentive to increase prices on *ad hoc* orders post-merger.
- 3.18 Consistent with this, looking at the products on which an overstrike is granted, [X] % of these orders (by value) are to customers who are also using UC for their primary purchases.<sup>28</sup> More importantly, if the CMA’s theory is that post-merger the Parties may no longer provide a discount on an *ad hoc* sale when a customer requests it, such sales (i.e. orders on which competitor overstrikes were granted) account for less than [X] % of UC’s sales. It would be entirely irrational for UC to risk the [X] % of primary sales just for the sake of a slightly higher margin on less than [X] % of sales on which 3G may have been a more significant constraint. Primary purchases are the main consideration for both customers and the Parties and for these purchases, customers have credible alternatives outside the Parties. The credible threat to switch away primary purchases to alternative suppliers will prevent the Parties from refusing to negotiate down prices on the tiny proportion of *ad hoc* orders on which there is direct competition.

*The available evidence shows a modest diversion between the Parties for their primary sales*

- 3.19 With respect to competition for being the main ‘primary’ supplier of parts rather the small proportion of *ad hoc* sales, the CMA addresses this response at paragraph 226 of the Econ Working Paper:

*“...we consider that this mechanism may apply in various situations where prices are negotiated bilaterally, rather than solely in the cases of direct price-matching covered by UC’s overstrike reports; second, we note that the Parties use the intelligence gathered through price negotiations in broader benchmarking exercises (paragraph 147), such that the rivalry that crystallizes in bilateral negotiation is likely to have a broader impact on their pricing strategy; third, even if it was true that bilateral bargaining accounted for a small share of the Parties’ transactions, and by implications that most transactions were settled based on ‘list prices’, this would in fact open up alternative mechanisms by which preferences for buying baskets could translate into price increases post-merger. In that scenario, which is the most common scenario under which horizontal unilateral effects are considered, the Merger is likely to lead to a price increase simply if diversion between the Parties is high.”*

- 3.20 In summary the CMA appears to argue that any competition seen in *ad hoc* price-negotiations will also be reflected in competition for being the primary supplier. However, this position fails to recognise that actual levels of diversion between the Parties is in fact *not* high for their primary sales – and significantly lower than that of *ad hoc* sales.
- 3.21 This is shown not only in the CRA switching analysis but also in other evidence from internal documents that better reflect the competitive strength of different suppliers in respect of primary sales, as summarised in the table below.

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<sup>28</sup> This refers to the period covered in both overstrikes and the transaction data i.e. April 2019 to June 2020.

**Table 1: Summary of UC evidence on the competitive strength of 3G on primary sales**

Evidence from UC	Estimate of the competitive strength of 3G
[REDACTED]	[REDACTED]% of total mentions
[REDACTED]	[REDACTED]% of total mentions
[REDACTED]	[REDACTED]% of mentions in opportunities
[REDACTED]	[REDACTED] of total mentions
[REDACTED]	[REDACTED]% of mentions [REDACTED] of leakages
[REDACTED]	[REDACTED]%, [REDACTED]% in most conservative scenario

3.22 As seen in the table above, across all evidence from internal documents related to competition for the primary supply of customers, 3G consists of between [REDACTED]% and [REDACTED]% of total competitor mentions. This evidence includes the following.

- (a) [REDACTED] In this respect, UC notes that the CMA’s analysis finds “3G is benchmarked for 54% of products (79% weighted by sales)”<sup>29</sup>. However, as explained at the UC Oral Hearing this figure over-represents 3G and simply reflects that 3G is active in many categories and mentioned alongside other competitors. Looking at frequency of mentions (which is consistent with the CMA’s analysis of the Parties’ other internal documents), 3G accounts for 29% of total mentions (31% weighted by value).
- (b) [REDACTED]
- (c) [REDACTED]
- (d) [REDACTED]

<sup>29</sup> Econ Working Paper, at paragraph 154.  
<sup>30</sup> Econ Working Paper, at paragraph 236.

(e) [REDACTED]

- 3.23 The findings across UC's internal documents are also consistent with direct evidence on customer switching submitted by the Parties. The switching analysis estimates switching from UC to 3G at [REDACTED]% and up to [REDACTED]% in the most conservative scenario.
- 3.24 With respect to the switching analysis, we note that the CMA has raised reservations with the robustness of these estimates, however this appears to be based on a misunderstanding of the Parties data.
- 3.25 The main concern of the CMA is that the Parties' switching analysis does not control for all possible factors impacting demand, and hence wrongly classifies reductions in demand as potential switches – thus biasing estimates of switching between the parties downwards. In particular, the CMA states that *“UC's internal documents indicate that such situations are very common: in [REDACTED]% of the cases where a sales representative identified the cause for a drop in demand by a particular customer, this was not related to a switch to a competitor.”*<sup>31</sup> The CMA argues that these internal documents *“indicate a range of other reasons for ‘leakages’ that are picked up by UC's sales staff but are not clearly accounted for in this analysis, including changes in stock levels, general slowdowns in activity by some depots, switches to different parts, etc.”*<sup>32</sup> The reasons for ‘leakages’ cited by the CMA are based on the CRM database and are replicated in the table below.

[REDACTED]

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<sup>31</sup> Econ Working Paper, at paragraph 232.

<sup>32</sup> Econ Working Paper, at paragraph 233.

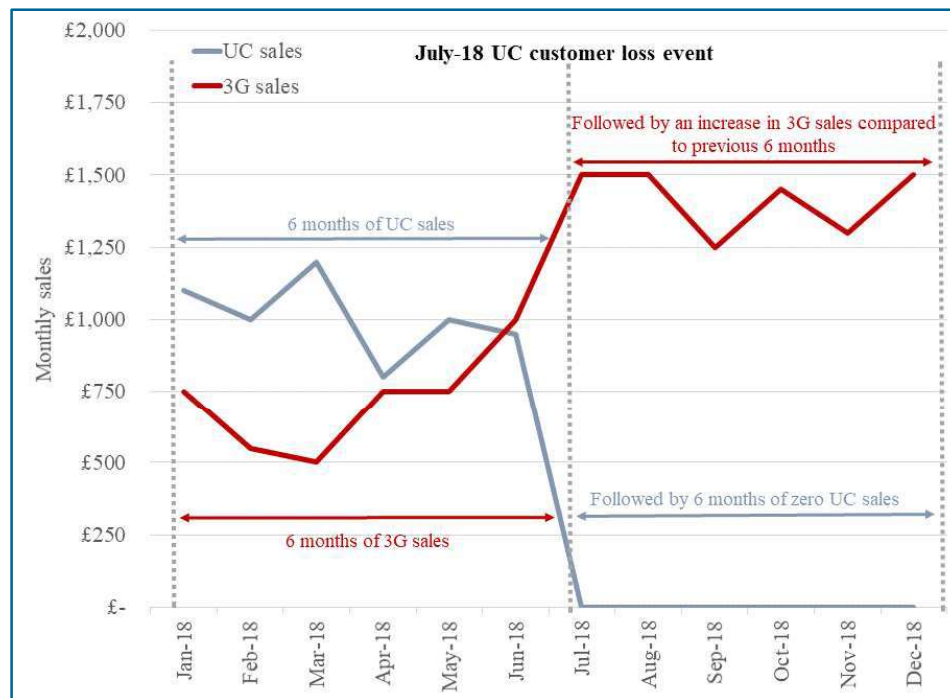


Source: Table 9 in the Econ Working Paper.

3.26 However as set out during the UC Hearing, this seems to be based on a misunderstanding of the UC leakage data and the way in which the Parties have defined switching within its analysis. The CRA analysis includes a number of alternative specifications and sensitivities which address the concerns raised by the CMA and ensure that situations where demand has dropped to zero for other reasons are not misclassified as switching.

- (a) With respect to the reason of “*Too much stock/order when needed*”, the Parties agree that there may be fluctuations in stock levels over time. However, these fluctuations are directly factored into the Parties’ analysis with two sensitivities contained in the paper explicitly accounting for them. First, in the six-month scenario (see illustrative example of the switching methodology under this scenario below), a customer loss event is defined as a situation where a customer is buying a CVT part from UC every month for six months and then stops purchasing that part entirely for the following six months. Any products in which there are fluctuations would not be included in the analysis – and the Parties confirm that whilst a delay of one or two months may be feasible due to stock levels, it is extremely unlikely that a customer would not need to purchase a particular part for a period of *six months* due to stock levels. Second, by looking at the 1000 fastest moving products the Parties again confirm that the likelihood of one of these products not needing to be ordered due to stock reasons over a period of six months is almost negligible. As such it cannot be stock issues that are driving the key results.

**Figure 5: Illustrative example of the switching methodology (6-months sensitivity)**



- (b) Drops in demand are also addressed in the CRA switching analysis for the exact same reasons as changes in stock levels. A slowdown in demand may translate to few sales in a month, or even zero sales in a single month, but it is simply not realistic that this would translate to zero sales of a particular product (particularly a fast-moving product) for a customer over a period of six months. As such it cannot be changes in demand which is driving the low switching results seen between the Parties in the CRA analysis.

- (c) Situations where a customer may have switched their ordering to headquarters (and hence sales at the branch level for a particular product may appear to have dropped to zero) are explicitly accounted for in the analysis. One of the sensitivities that CRA ran was to combine sales across each delivery point account and corresponding invoice point account to examine switching at the invoice point level. The results did not change significantly – and therefore it cannot be correct that this is a cause for concern.
- (d) With respect to one-off purchases – these have been explicitly omitted from the analysis as the definition of a customer loss event requires customers to be purchasing a particular product *on a monthly basis* for a period of three or six months prior to switching. This means the existence of one-off purchases cannot be driving the switching results.
- (e) Finally, a number of measures are taken to avoid the situation where discontinued parts are treated as losses. As explained in the paper, obsolete parts are excluded while superseded parts are grouped together with the newer versions.

3.27 In summary, the CMA is incorrect to state that the CRA switching analysis does not correct for potential changes in demand, and it is incorrect to cite the UC document as evidence of this. The switching analysis provides evidence of what the Parties’ customers actually do, and is clearly more informative to evidence on what the Parties’ customers say they would do, particularly given the issues with the CMA’s customer questionnaire set out below. Most importantly, unlike the CMA’s customer questionnaire, the CRA switching analysis is consistent with the CMA’s other evidence on the constraints that the Parties face in their primary supplies.

*Diversion between the Parties is consistent with strong third party competitive constraints*

3.28 The modest diversion between the Parties shown in the CRA switching analysis and the evidence on primary supply sales cited in CMA working paper is entirely consistent with evidence set out in the Phase 1 Decision Response showing very significant (and, as discussed in more detail below, growing) third party competitive constraints in each product category. The Parties do not repeat that evidence in full in this response but note in particular the following.

- (a) A particular CVT component produced by a given third party CM may be supplied to end customers in the UK through a number of alternative distribution channels. There may be little or no physical difference, therefore, between CVT components supplied by: (a) non-vertically integrated wholesalers such as the Parties as a PL product via independent motor factors; (b) OES suppliers to non-vertically integrated wholesalers such as the Parties; (c) OES suppliers directly to motor factors; (d) CVT manufacturers as an OEM product bearing the vehicle’s main brand (e.g. ‘Scania’) in the AA channel; and/or (e) CVT manufacturers as an OES product bearing the relevant ‘all makes’ brand (e.g. ‘VRS’) either in the AA channel or directly to independent CVRPs.
- (b) Conditions of competition vary significantly between categories of CVT parts. Within each category, in addition to other wide range wholesalers, the Parties face strong competition from suppliers with different business models, including suppliers focused on one or a smaller number of product categories – so-called ‘narrow’ or ‘niche’ wholesalers. Such wholesalers will typically have a much wider choice of specific parts within their core categories than is offered by wider range wholesalers and have a commensurately greater degree of technical knowledge of those parts. At the same time, these more focused wholesalers, like all wholesalers in the UK, offer next day delivery are able to benefit from more competitive input costs than the Parties (as they typically buy greater volumes from their – fewer – core suppliers than the Parties).

- (c) While it is correct that certain OES parts manufacturers will require a higher minimum order value to qualify for free delivery than the Parties (TVS has a free delivery threshold of £[~~500~~]), this is not the case for all OES suppliers. Indeed, several OES suppliers offer delivery free of charge, regardless of order value (i.e., have no minimum order value at all). Moreover, the Parties believe it is nonetheless often cheaper for motor factors to purchase directly from an OES supplier as doing so avoids having to pay the mark-up charged by CVT wholesalers such as the Parties.
- (d) Of UC's 23 top selling categories, the Parties are relatively minor players in every product category: (a) UC's market share is below 5% in 5 of the 23 product categories; below 10% in 17 of the 23 product categories; and there is only one product category where UC's market share marginally exceeds 15%; (b) 3G's presence is even more modest, with a market share below 5% in 15 of the 23 product categories; below 10% in 21 of 23 product categories; and there is only one product category where its market share marginally exceeds 15%. As a result, the combined presence of the Parties is modest across all product categories with a combined share below 15% in 15 of 23 product categories and a combined share below 25% in 22 of 23 product categories. There is only one market where the Parties' combined share exceeds 30% (hub components, and even then the share is only marginally in excess of 30%). However in this market, the Parties face strong competition.
- (e) 'All makes' supply is a significant competitive constraint on the Parties; each part supplied by a CVT manufacturer under an 'all makes' brand direct to a CVRP represents one less potential sale for the Parties through their own distribution channel. CVT manufacturers that operate all makes programmes such as Daf, Volvo, Scania and MAN supply CVT parts for a wide range of vehicle manufacturers, not just their own vehicles (hence, 'all makes'). CVT manufacturers supplying CVT parts under all makes brands are also able to leverage the strength and coverage of their local dealership network to supply the IAM.

3.29 The evidence collected by the CMA from the customer survey as set out in the Econ Working Paper is consistent with this. In relation to 'all makes' suppliers, for example, 14 of the 31 customers responding to the relevant question in the survey told the CMA that they did actively monitor prices of 'all makes' suppliers.<sup>33</sup> Similarly, 15 of the Parties' customers confirmed that their own customers purchase from 'all makes' suppliers and were aware of instances of their customers switching to 'all makes' suppliers.<sup>34</sup> Indeed EMS told the CMA that "*the likes of the main dealer programs (TRP/VRS/Roadcrew) make large margins on both their captive parts and the labour provided by vehicles serviced in their workshops. They use the aftermarket parts as the "cherry on top" so tend to offer ridiculous margins because they can afford to. We rely on the aftermarket, we don't compete with our customers who run workshops, our business is parts*".<sup>35</sup>

#### **4. The competitive constraint from recent entrants is already increasing**

4.1 The Parties note that in relation to the nine competitors identified by the Parties and considered by the CMA in the Entry and Expansion Working Paper, each and every one of those competitors has **already entered the relevant UK markets**. The relevant question for the CMA's assessment is therefore whether the *expansion* of those competitors would be timely, likely and sufficient to prevent any potential SLC that the CMA may identify.

<sup>33</sup> Econ Working Paper, at paragraph 30. That the remaining 17 suppliers did not monitor 'all makes' pricing is clearly not dispositive of the fact 'all makes' suppliers constrain the Parties' customers and are therefore an indirect constraint on the Parties. Indeed, some of those customers explicitly told the CMA that they did not monitor 'all makes' pricing simply because they did not have the capacity to do so (at paragraph 31 of the Econ Working Paper).

<sup>34</sup> Econ Working Paper, at paragraph 33.

<sup>35</sup> EMS, cited at paragraph 31 of the Econ Working Paper.

4.2 The Parties also note that while the CMA found reputation and to a lesser extent branding *may* be a barrier to entry, “*the barriers to entry and expansion in relation to opening a warehouse, access to stock of parts and customer contracts are low*”.<sup>36</sup> Further, any possible benefits from economies of scale, “*are not so material that they would discourage entry from third parties that are already active in an adjacent market, manufacturers or non-UK based wholesalers*”.<sup>37</sup>

4.3 In this context, the CMA’s Merger Assessment Guidelines<sup>38</sup> state that:

*“To be considered a competitive constraint, entry or expansion should be of sufficient scope to deter or defeat any attempt by the merged firm to exploit any lessening of competition resulting from the merger. **Small-scale entry, when the market share of the entrant is small compared with that of the merged firm, may nonetheless be sufficient to prevent an SLC for undifferentiated goods where there are no barriers to further expansion**”* (emphasis added).<sup>39</sup>

4.4 The Parties have explained to the CMA that CVT replacement parts are extremely undifferentiated goods. Indeed, there is often little – *if any* – physical difference between the CVT replacement parts supplied in PL, OES or OEM packaging and in many cases the different types of parts may all be made in the same factory or by the same manufacturer.<sup>40</sup> The CMA does not appear to dispute this in the Working Papers.<sup>41</sup>

4.5 Given the undifferentiated nature of the relevant goods, the low (if any) barriers to expansion, and the pre-existing market entry of well-funded, well-recognised and long-established overseas competitors, the CMA’s guidelines clearly envisage that ‘small-scale’ entry may be sufficient to prevent any possible SLC. However, the CMA does not appear to recognise this in the Econ Working Paper, instead concluding that “*in the absence of any evidence or concrete plans of material entry or expansion, it is our preliminary view that significant entry or expansion would not be likely over the next two years*”. The Parties set out below why this conclusion is not supported by the available evidence.

4.6 Before doing so, however, the Parties strongly dispute the CMA’s apparent assumption that “*concrete plans*” must first be furnished by competitors of the Parties to the CMA as part of its market investigation in order for expansion by those competitors to be factored into the CMA’s assessment. This assumption permeates the CMA’s assessment in the Entry and Expansion Working Paper:

*“Since Diesel Technic entered the relevant market in 2015, we note that it had expanded its product range over the last 3 years. However, Diesel Technic was **unable to provide us** with any evidence of **concrete plans** that it would expand (including its product range) over the next two years”*.<sup>42</sup>

*“in relation to Borg & Beck and BPW, we **have not seen any concrete plans** that these wholesalers would each [REDACTED] in order to offer a similar or comparable product offering as the Merged Entity”*.<sup>43</sup>

<sup>36</sup> Entry and Expansion Working Paper, at paragraph 85.

<sup>37</sup> Entry and Expansion Working Paper, at paragraph 86.

<sup>38</sup> Merger Assessment Guidelines, CC2.

<sup>39</sup> CMA Merger Assessment Guidelines, at paragraph 5.8.10.

<sup>40</sup> Phase 1 Decision Response, at paragraph 3.1 *et seq.*

<sup>41</sup> In fact, one third party (Boydell and Jacks) “*explained that, generally, PL parts and OEM mainly differ in the labelling. Many companies simply re-box the OEM product in their own label packaging. In many cases, the same manufacturer may produce the OEM, OES and PL version of a part and these would be physically identical*” (Econ Working Paper, at paragraph 129).

<sup>42</sup> Entry and Expansion Working Paper, at paragraph 42.

<sup>43</sup> Entry and Expansion Working Paper, at paragraph 46(d).

*“in relation to Diesel Technic, EBS and Granning, we have not seen any concrete plans that these wholesalers would each expand their product group”.*<sup>44</sup>

*“we have not seen any concrete plans by wholesalers to open new warehouses”.*<sup>45</sup>

*“In the absence of any concrete plans, our preliminary view is that it is not likely that actual (or the threat of) entry into, or expansion in, the relevant markets would materialise over the next two years”.*<sup>46</sup>

- 4.7 The Entry and Expansion Working Paper therefore appears to understand that the test of whether expansion is “likely” will only be met where that expansion is all-but *certain* as evidenced by the CMA having sight of the relevant “concrete plans” drawn up by the relevant competitor(s). That is simply not correct. In fact, the Merger Assessment Guidelines makes clear that “*In assessing the likelihood of post-merger entry or expansion, the Authorities will consider whether entry or expansion is likely to take place if the entrant expects post-entry prices to be at pre-merger levels*”.
- 4.8 The evidence clearly shows this to be the case. In particular, the Parties already face fierce competition from a range of new entrants – in particular CV Logix, Sampa and Inter Cars (as discussed further below) – who are able to offer their customers prices that are already lower than the Parties’ own prices.

Sampa

- 4.9 Sampa is a well-established European wholesaler with large product and product group offerings across the commercial vehicle landscape. Sampa has 2,500 employees, offices and warehouses in 15 countries and generates a turnover of USD110 million.<sup>47</sup> These capabilities allow Sampa to develop new products more quickly and cheaply than either of the Parties.
- 4.10 Indeed, Sampa already employs sales people in the UK and, following the opening of its warehouse in Manchester in early 2020, is now competing directly and aggressively for the Parties’ customers – including by way of offering short delivery times and low prices. The Parties therefore see Sampa as a major threat to their future market position. Consistent with this, 3G understands that Sampa has [REDACTED]
- 4.11 Further evidence of Sampa’s ability to compete successfully in the UK is provided in **Annexes 1 to 3**. For example:
- (a) [REDACTED](Annex 1)
  - (b) [REDACTED] (Annex 2)
  - (c) [REDACTED]

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<sup>44</sup> Entry and Expansion Working Paper, at paragraph 46(e).  
<sup>45</sup> Entry and Expansion Working Paper, at paragraph 48(b).  
<sup>46</sup> Entry and Expansion Working Paper, at paragraph 58.  
<sup>47</sup> See <https://www.sampa.com/en/we-are-sampa/sampa-at-a-glance>.  
<sup>48</sup> See <https://ucukltd.com/store/body-panels/daf/xfl05-2005-on/dfbody532-rear-wing-section-th>.



[REDACTED](Annex 2)

(d) [REDACTED](Annex 3)

4.12 Indeed, as recently as 17 September 2020, Sampa sent an email to its UK customers with the subject line “*Sampa’s Masterpiece with Your Special Offer*”, advertising extremely aggressive pricing on a range of air spring products (see **Annex 4**). As can be seen in the table below, the prices offered by Sampa [REDACTED] and the prices that UC is able to offer for these products.

**Table 2: Comparison of Sampa, 3G and UC prices**

OEM number	Sampa price	UC price	3G price	3G price for kit
21961374	30.50	[REDACTED]	[REDACTED]	[REDACTED]
21961456	27.50	[REDACTED]	[REDACTED]	[REDACTED]
20541504	20.00	[REDACTED]	[REDACTED]	[REDACTED]
1379392	40.00	[REDACTED]	[REDACTED]	[REDACTED]
1903608	42.00	[REDACTED]	[REDACTED]	[REDACTED]
5010557355	43.00	[REDACTED]	[REDACTED]	[REDACTED]
5010500328	43.00	[REDACTED]	[REDACTED]	[REDACTED]
1697678	30.00	[REDACTED]	[REDACTED]	[REDACTED]
0392022	32.00	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED] Other internal documents from UC confirm the threat represented by Sampa:

[REDACTED]

<sup>49</sup> Previously provided to the CMA as Annex 9.1.8 to the Merger Notice.

[✂]

[✂]

[✂]

- 4.14 To the very limited extent that it has been disclosed to the Parties, the evidence collected by the CMA in its market investigation appears to be broadly consistent with the Parties' view that not only has Sampa recently established itself in the UK market but that it is rapidly expanding its presence. For example, Boydell and Jacks told the CMA that "*Sampa would expand its product range in the next 3-5 years and would replace TTC 'easily' and 'quite quickly' to become a 'big player' in the market*".<sup>51</sup>

InterCars

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<sup>50</sup> Previously provided to the CMA as Annex 9.1.2 to the Merger Notice.  
<sup>51</sup> Entry and Expansion Working Paper, at paragraph 23.

- 4.15 InterCars is a large parts distributor, with a presence in 17 countries, again able to offer very competitive prices. It claims to have the largest range of CVT parts (both PL and OEM/OES) in Europe and has introduced a sophisticated webshop.
- 4.16 InterCars entered the UK market in 2017 and has registered a company at Companies House in the UK (InterCars United Kingdom – Automotive Technology Ltd). InterCars already ships parts to the UK two to three times a week, and most UK motor factor customers have an account with Intercars. Its market-leading extensive web shop and competitive pricing have also contributed to its success.
- 4.17 The Parties are aware of InterCars’ desire to expand further in the UK from comments that customers have made. Indeed, as previously noted to the CMA, one of UC’s own agents was approached by InterCars with a view to that individual moving to InterCars to strengthen its UK-based business.
- 4.18 Consistent with this, the Parties note that InterCars UK changed its registered address from an office in London to a warehouse in the West Midlands back in May 2020. A third party (Dinex) indicated to the CMA during the market investigation that InterCars had a facility in the UK where it did not currently stock parts, but that this facility was ready to start supplying in the UK.<sup>52</sup>
- 4.19 InterCars itself confirmed to the CMA that it was expecting to increase its revenues/volume in the UK over the next two years.<sup>53</sup>

[✂]

CV Logix

- 4.21 CV Logix entered the market at wholesale level in 2017, and established itself as one of the key players for CVT parts. They are owned by Alliance Automotive Group, which was itself acquired by Genuine Parts Company in 2017 to form what is claimed to be the largest automotive aftermarket company in the world (see <https://allianceautomotivegroup.eu/about-us/>).
- 4.22 CV Logix claimed during the market investigation that it has a wider range of components and better quality products than the Parties. It also considered that its prices, rebates and technical services are comparable to the Parties.<sup>54</sup>
- 4.23 The Entry and Expansion Working Paper recognises that CV Logix is “*an example of successful market entry and expansion*”.<sup>55</sup> The market investigation has indicated that CV Logix has expanded its range of products and number of product groups over the last years.<sup>56</sup> It has also revealed that customers place frequent orders (4 or more times a week) from CV Logix more than they do from any other supplier on the market.<sup>57</sup> In fact, one of the customers contacted by the CMA (Majorsell) welcomed the transaction as it believed that the merger would create a counterweight to CV Logix.<sup>58</sup>
- 4.24 This trend will continue in the coming years:

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<sup>52</sup> Entry and Expansion WP, at paragraph 25.  
<sup>53</sup> Entry and Expansion WP, at paragraph 24.  
<sup>54</sup> Econ WP, at paragraph 80.  
<sup>55</sup> Entry and Expansion WP, at paragraph 43.  
<sup>56</sup> Entry and Expansion WP, at paragraph 29.  
<sup>57</sup> Econ WP, at paragraph 20.  
<sup>58</sup> Econ WP, at paragraph 121.

- (a) CV Logix has seen “*significant revenue growth*” since 2016<sup>59</sup> and it indicated to the CMA that it has plans to increase its revenues “*quite significantly*” over the next 2 years.<sup>60</sup>
- (b) Customers confirmed that “it is likely that CV Logix will become a large scale wholesaler to the aftermarket in the next few years”<sup>61</sup>, and that CV Logix “could easily expand its range”.<sup>62</sup>

4.25 CV Logix exerts a strong competitive constraint on UC and 3G. This is illustrated, by way of example, in the following internal UC emails:

[✂]

4.26 Unsurprisingly, UC’s internal documents also identify CV Logix as a “challenge” (see the slide included in paragraph 4.13 above), a “competitor” and a “threat”, and CV logix also figures prominently in the win/loss analyses performed by UC (see, by way of example, [✂]):<sup>65</sup>

[✂]

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<sup>59</sup> Entry and Expansion WP, at paragraph 43.

<sup>60</sup> Entry and Expansion WP, at paragraph 46.

<sup>61</sup> Econ WP, at paragraph 51.

<sup>62</sup> Econ WP, at paragraph 51.

<sup>63</sup> The relevant part here is [✂]

<sup>64</sup> The relevant part here is [✂]

<sup>65</sup> Respectively from (i) UCUK Board Report June 2019 provided as Annex 9.1.5 to the Merger Notice; (ii) Regional Sales Meeting of August 2018, provided as Annex 13.42 to the Parties’ response to the 17 June 2020 Section 109 Notice (Annex 2); and (iii) Regional Sales Meeting Presentation April 2019, provided as Annex 13.41 to the Parties’ response to the 17 June 2020 Section 109 Notice (Annex 2).

[✂]

[✂]

Expansion of other competitors

4.27 The Parties will also face increased competition from other players already active in the UK market. For example, Dinex and BPW expect an increase in sales in the coming years.<sup>66</sup>

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<sup>66</sup> Econ Working Paper, at paragraph 111, for Dinex; Entry and Expansion WP, at paragraph 38 for BPW.



- 4.28 The market investigation has identified multiple competitors anticipating an expansion of their offering. For example, a number of “*wide range wholesalers*” indicated that they “*plan to continue expanding their range*”.<sup>67</sup> Likewise, several narrow range suppliers confirmed to the CMA that “*they will continue to expand their product offering through natural additions to their range*”.<sup>68</sup>
- 4.29 This is not surprising, as expanding the product range, including into new product categories, can typically be done with limited investment and within a short timeframe. By way of example, Borg & Beck told the CMA that it had expanded its product range in the last 18 months.<sup>69</sup>
- 4.30 As explained above, [REDACTED]

5. **The Working Papers mischaracterise the Parties’ internal documents**

[REDACTED]

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<sup>67</sup> Econ Working Paper, at paragraph 105.

<sup>68</sup> Econ Working Paper, at paragraph 110.

<sup>69</sup> Entry and Expansion WP, at paragraph 34.

<sup>70</sup> PTBR Working Paper, at paragraph 42.

<sup>71</sup> E.g., Econ Working Paper (at paragraphs 206 *et seq.*) and PTBR Working Paper (at paragraphs 26 *et seq.*).

[✂]

[✂]

[✂]

[✂]

Figure 12: Excerpt from 3G’s Statutory Accounts for the Period to 31 May 2019

<b>3G TRUCK &amp; TRAILER PARTS LIMITED</b>			
<b>PROFIT AND LOSS ACCOUNT</b>			
<b>FOR THE YEAR ENDED 31 MAY 2019</b>			
	<b>Notes</b>	<b>2019 £</b>	<b>2018 £</b>
<b>Turnover</b>	<b>3</b>	<b>14,382,555</b>	<b>12,443,144</b>

[✂]

[✂]

[✂]

[✂]

[✂]

<sup>72</sup> As submitted to the CMA with the Parties’ response to the Phase 1 Issues Letter (document entitled “tvs edl consolidated lrp fy19-fy24 including alpha (1).xlsx”).

<sup>73</sup> For ease of modelling (and in light of the fact that the 24 May 2019 Financial Model covered all TVS EDL business units in all geographies), UC chose not to model any expected changes to the UC UK revenue as a result of the Transaction. Instead, any changes were modelled through the 3G and combined 3G/UC turnover data.

[✂]

[✂]

[✂]

[✂]

[✂]

[✂]

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<sup>74</sup> Assuming that there is a [✂] loss in revenue, and there are constant marginal costs, it cannot be the case that UC is assuming a profit maximising increase in price on the remaining sales, as this would result in greater revenue, rather than holding revenue the same, or lowering it as is assumed in the financial model.

<sup>75</sup> At slide 7.

[✂]

6. **The CMA's Phase 2 questionnaires contain serious methodological flaws**

- 6.1 The CMA's Phase 2 market questionnaire is inherently biased towards the conclusions reached in its Phase 1 Decision. This represents a very serious – and entirely preventable – error in the CMA's Phase 2 investigation.
- 6.2 Specifically, the CMA's Phase 2 customer questionnaire contains numerous and significant flaws that were identified to the CMA shortly before the release of the Working Papers (after one of UC's customers sent a copy of the questionnaire to UC) in a submission of 3 September 2020 (the **UC Customer Questionnaire Submission**, attached for ease of reference as **Annex 7**). This response does not repeat the detail of the concerns raised in the UC Customer Questionnaire Submission, save for the most important issues discussed below.
- 6.3 As a first point, the Parties note that during conversations with the CMA at the start of the Phase 2 process, the Parties' advisors requested an opportunity to discuss with the CMA the content of its Phase 2 customer questionnaire in light of the complexity of the CVT spare parts value chain (including, for example, the lack of any industry-standard terminology) in order to minimise the risk of respondents misinterpreting or misunderstanding the relevant questions. The CMA refused that request.
- 6.4 The most important flaw in the CMA's customer questionnaire (and, the Parties presume, the CMA's competitor questionnaire) is that many of the questions are predicated on a single market for CVT parts – in direct contrast to the detailed evidence submitted by the Parties that shows conditions of competition vary significantly between different CVT part categories. Indeed, the questionnaire does not even seek to test this most critical point of divergence between the views of the Parties and the CMA's Phase 1 Decision by asking whether customers themselves believe there are differences in the conditions of competition across CVT product categories.
- 6.5 Instead each of the relevant questions in the CMA's questionnaire are predicted on a single CVT parts market. By way of example:

Figure 15: Excerpts from CMA Customer Questionnaire

3. Use the table below to name your 10 most important suppliers of commercial vehicle and trailer parts. For each supplier estimate the percentage of your total purchases of commercial vehicle and trailer parts that you have bought from that supplier in the last six months. Indicate how frequently you used each supplier on average in this period.

Supplier name	% of total purchases	Frequency used

4. For your 10 most important suppliers listed in the previous question, complete the following table indicating what product categories and types of brand you bought from each supplier and the main reasons why you used each supplier.

Supplier	What product categories did you purchase from this supplier?	What type of brand did you buy from this supplier?	What are the main reasons why you used this supplier?

7. When you purchase from Universal Components:

- a. Do you also contact alternative suppliers asking for quotes? If yes, indicate how many suppliers you usually contact and how you decide which ones to contact.
- b. Do you buy at list prices, at prices agreed by a buying group or at prices that your company has negotiated individually?
- c. If your company negotiates prices individually, how do you negotiate and what are the most important aspects that you seek to agree on?

6.6 As repeatedly shown by the Parties, within each CVT product category, in addition to other so-called ‘wide range’ wholesalers, the Parties face strong competition from suppliers focused on one or a smaller number of product fields (referred to by the CMA in its Phase 1 Decision as ‘niche’ and ‘narrow’ suppliers respectively). The risk of asking customers questions predicated on a single CVT product market therefore includes the following.

- (a) Suppliers focused on one or a smaller number of product categories may be significantly under-represented in respondents’ lists of their 10 most important suppliers in question 3, simply because customers do not purchase all their requirements from them.
- (b) Customer views on frequency-based on orders across all their purchases in response question 3 may appear to highlight differences between suppliers, but which simply reflect the fact customers purchase products from multiple product fields from the Parties, whereas they may purchase from a single (or a smaller number of) product field(s) from those suppliers focused on one or a smaller number of product categories.



- (c) The ranking of the importance of certain criteria when choosing which supplier customers purchase CVT parts from in question 6 will fail to capture differences in the drivers of choice across product fields. It may also highlight differences with those suppliers focused on one or a smaller number of product categories, which simply reflect the fact that comparisons are not done with reference to the same product fields.
  - (d) Similarly, price negotiations in question 7 (UC) and 9 (3G) will fail to capture differences across product fields and apparent differences across suppliers may in fact simply reflect that customers purchase different product fields from different suppliers.
  - (e) The diversion questions 8 (UC) and 10 (3G) will fail to capture (or will significantly understate) the constraint from suppliers who may be effective alternatives for the customers in certain but not all product categories.
  - (f) The constraint from ‘all makes’ suppliers in question 14 and 16 may be understated if these suppliers do not compete with motor factors across the full range of CVT parts.
- 6.7 Further, to the extent the CMA’s questionnaire makes any mention at all of product categories, it does so at a level of aggregation that will again bias customer responses towards wholesalers who supply all products within that category. Specifically, the questionnaire defines the meaning of the term “*Product category*” as “*product categories such as axle, body, braking, consumables, electrical, engine, general chassis, lightning [sic], steering and suspension, transmission, etc.*”. However, this extremely high level of aggregation does not reflect how customers make purchasing decisions in practice. As explained in the Phase 1 Decision Response, customers make decisions to buy individual CVT parts – not groups of products. This is particularly important because many of the Parties’ largest competitors do not supply all categories, or even all products within a single wide category; asking questions on much wider category levels, will therefore bias the respondent towards only those competitors who operate across the entire wider category, even though any given customer may actually buy from many different competitors – each strong in a different product category. By way of example, while the CMA’s customer questionnaire mentions the overall category of “*Braking*”, the Parties distinguish between the following braking product fields: Air Brakes, Axle, Braking, Fittings, Air Brakes Coils & Couplings and Slack Adjusters. Further, as can be seen from the market share data submitted by the Parties to the CMA as part of the Phase 1 Decision Response, individual competitors have very different positions across those different braking product categories. For example, Wabco and Knorr Bremse are relatively strong in Air Brakes; TMD Friction and Winnards are present in Axle Braking; Reflex & Allen in Air Brake Coils & Couplings; Tube Gear and Air Brake Connections in Fittings; and Mei in Slack Adjusters.

**Table 3: Competitor shares in product fields within the CMA’s “Braking” product category**

	Air Brake	Axle Braking	Air Brake Coils & Couplings	Fittings	Slack Adjusters	Total Braking
UC	3%	5%	11%	9%	4%	4%
3G	3%	3%	6%	2%	3%	3%
Wabco	30%		33%	n/a		18%
Knorr Bremse	28%			n/a	8%	16%
TMD Friction		44%				13%
Ebs	16%	n/a	4%		12%	10%
Haldex	14%			n/a	8%	8%
Winnards		22%			n/a	6%
Mei					62%	5%
New World	7%			n/a	4%	4%
Juratek		12%				4%
Borg & Beck		11%		n/a		3%
Tube Gear			11%	34%		2%
Reflex & Allen			28%			2%
Air Brake Connections	n/a		n/a	34%		1%
Granning / J4		3%				1%
Exb	n/a		7%	n/a	n/a	0%
Norgren				10%		0%
Cv Logix				8%		0%
Raufoss				3%		0%

Note: the market shares by product field have been provided to the CMA in the Phase I Decision Response. The table includes only competitors with known revenue in at least one field; “n/a” means that a competitor is active in the field but revenue information is not available.

6.8 The bias inherent in the CMA’s questionnaire may be illustrated using the market share data above and questions 3 and 5 as an example. Specifically, as a result of the flaws in the CMA’s questionnaire, it is very unlikely that TMD Friction would be mentioned by any customers as one of their “10 most important suppliers of commercial vehicle and trailer parts” in response to questions 3 and 5. However, TMD Friction is in fact the **largest** supplier of axle braking products in the UK, with a market share more than five times larger than the Parties’ combined share. The result is that responses to the CMA’s questionnaire will completely fail to capture the constraint of many important CVT part suppliers, not because they are not strong constraints, but simply because of the way the question has been asked.

6.9 Question 8 of the CMA’s questionnaire is an even clearer example of this bias.

**Figure 16: Question 8 of the CMA’s Customer Questionnaire**

8. Thinking about the parts that you bought from Universal Components in the last 6 months, suppose that **Universal Components** had not been operating - which alternative supplier(s) would you have used instead to buy these parts?

- a. Name of the alternative supplier that you would have used (or the one that you would have bought the most from if you would have used more than one alternative supplier)
- b. What product categories would you have bought from them?
- c. Why would you have used them?

If you would have used more than one alternative supplier, what proportion of the purchases you previously made from Universal Components would you have bought from this main supplier?

6.10 In the opening sentence of this question, the CMA asks customers to think “*about the parts that you bought from Universal Components in the last 6 months*”, again without making any distinction as to parts purchased across different product categories. The question goes on to ask “*suppose that Universal Components had not been operating - which alternative supplier(s) would you have used instead to buy these parts?*” Notwithstanding that the question is therefore already inherently biased toward suppliers that are able to offer all of the parts supplied by the UC, in referencing “*supplier(s)*” it does at least allow for the possibility of respondents identifying more than one alternative (*de facto* wide range) competitor. And yet the following sub-question 8(a) immediately eliminates the possibility of customers identifying more than one other wide range supplier by asking for details of just one single alternative supplier. Asking customers to focus on all purchases from one of the Parties and then asking them to name a single alternative across these products may naturally be interpreted by respondents as limiting their options to a single alternative who can replace all purchases. This means that those suppliers focused on one or a smaller number of product categories are highly unlikely to be named as effective alternatives by customers simply because they cannot replace all of the purchases these customers make from the Parties. This question therefore leaves no option to the customer but to name another so-called ‘wide range’ wholesaler.<sup>76</sup>

6.11 The CMA’s approach to both the content and process of its market questionnaires in this investigation is clearly against (at the very least) the spirit of its own guidelines for the design and presentation of customer survey evidence in merger cases,<sup>77</sup> which states that “*the questionnaire must not influence customers to give particular answers: it must not lead them to express an opinion or fact that is not a proper representation of their views or behaviours. It is important, therefore, to provide a sufficient range of response options at all questions so that customer views are represented properly.*” In this context, the Phase 1 Decision Response could not have been clearer that – in contrast to the CMA’s conclusion at Phase 1 – competition for the wholesale supply of CVT parts takes place on a category-by-category basis (for example, see paragraph 1.2). The CMA’s use of a questionnaire as the basis of

<sup>76</sup> Whilst the second (and last) part of the question allows the customer to split purchases by product category, the framing bias at the beginning of the question is likely to affect these responses as well. In addition, by defining categories in an aggregate way as explained above, responses exclude those suppliers focused on one or a smaller number of product categories who may be effective alternatives for certain product fields.

<sup>77</sup> “*Good practice in the design and presentation of customer survey evidence in merger cases*”, May 2018, paras 3.10 and 3.11.

its Phase 2 market testing that precludes responses on a category-by-category basis therefore constitutes a serious bias towards its own conclusions at Phase 1.

*Only a tiny fraction of customers raised concerns about the Transaction*

- 6.12 Notwithstanding the serious flaws in the design of the CMA’s questionnaire, the Parties also note that of the 777 customers identified to the CMA, and the 341 customers to whom the CMA sent a questionnaire, the CMA received just 34 written responses, two of which were on the basis of a “*shorter, simplified version of the questionnaire*” that the Parties have not seen.<sup>78</sup> Further, of those 341 customers, just 19 provided a written response expressing a clear concern that the Transaction may reduce competition;<sup>79</sup> conversely of the customers approached by the CMA during its Phase 2 investigation, over 94% did not express such concerns.<sup>80</sup>

**Allen & Overy LLP**  
**22 September 2020**

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<sup>78</sup> Econ Working Paper, at paragraphs 9 and 10.

<sup>79</sup> Econ Working Paper, at paragraph 37.

<sup>80</sup> Or at least did not express concerns outside what appear to be un-transcribed phone calls with the CMA case team.