

Case ME/6851/19

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

Response to Notice of possible remedies under Rule 12 of the Competition and Markets Authority Rules of Procedure

1. **Introduction and Executive Summary**

- 1.1 On 21 October 2020, the Competition and Markets Authority (CMA) adopted its Provisional Findings (the PFs) in relation to its review of the completed acquisition by TVS Europe Distribution Limited (TVS) of 3G Truck & Trailer Parts Ltd (3G)(the Transaction). In the PFs, the CMA provisionally concluded that the Transaction 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. On the same day, the CMA issued its Notice of possible remedies (the Notice) setting out the possible actions the CMA considers it might take for the purpose of remedying, mitigating or preventing the alleged SLC and/or any alleged adverse effects identified in the PFs. In the present document (the Response), TVS (including its wholly-owned subsidiary Universal Components (UC)) and 3G (together, the Parties) submits its response to the Notice.
- 1.2 TVS strongly disagrees with the CMA’s provisional finding that the Transaction may be expected to result in an SLC, or indeed any adverse effects on customers.<sup>1</sup> TVS therefore believe that no remedial action is required in relation to the Transaction. Indeed, the CMA’s proposed full divestiture of 3G by TVS would only serve to deprive the Parties’ customers of the significant and direct expected benefits brought about by the Transaction in the form of variable cost synergies arising from the combination of the Parties’ purchasing requirements.
- 1.3 Without prejudice to the Parties’ views above (and their separate response to the PFs), TVS makes the following observations in relation to the Notice.

2. **Scope of any potential divestment**

- 2.1 As noted above, TVS strongly disagrees with the CMA’s provisional finding that the Transaction may be expected to result in an SLC. Rather, TVS has submitted detailed evidence – including evidence set out in contemporaneous internal documents – to show that the Transaction is expected to result in significant variable cost synergies by leveraging the Parties’ combined purchasing power across their respective suppliers.<sup>2</sup> In particular, and as set out in more detail in UC’s response to question 3 of the CMA’s Phase 2 Financial Questionnaire, [redacted]<sup>3</sup>. Further, these purchasing cost synergies were clearly and explicitly incorporated into UC’s financial modelling prior to completion of the Transaction – again as discussed in detail in UC’s response to question 3 of the CMA’s Financial Questionnaire.
- 2.2 These purchasing synergies are variable cost reductions and thus are of the kind that the CMA recognises will “*tend to stimulate competition and are more likely to be passed on to customers in*

---

<sup>1</sup> The Parties’ substantive response to the PFs will be submitted separately.  
<sup>2</sup> As discussed further in the Parties’ Merger Notice (e.g., at paragraphs 2.13 and 17.3).  
<sup>3</sup> Submitted to the CMA as Annex 2 of UC’s response to the CMA’s Financial Questionnaire.

*the form of lower prices*".<sup>4</sup> . As such they fall squarely within the definition of 'relevant customer benefits' (RCB) under section 30 of the Enterprise Act 2002 (the **Act**) and paragraphs 3.17 and 3.19 of the CMA's Merger Remedies guidance (the **Guidance**).<sup>5</sup> Under section 35(5) of the Act, in deciding whether any (and, if so, what) action should be taken for the purpose of remedying, mitigating or preventing an SLC, the CMA may, in particular, have regard to the effect of any such action on any RCB. Paragraph 3.15 of the Guidance notes that the CMA will normally take RCBs into account by considering the extent to which alternative remedies may preserve such benefits, while paragraph 3.4 of the Guidance states that the CMA will select the least costly and intrusive remedy that it considers to be effective.

- 2.3 TVS submits that a full divestment of 3G – effectively unwinding the Transaction – would clearly eliminate the possibility of the Parties securing purchasing cost synergies and would, therefore, remove this RCB. TVS therefore believes that a full divestment of 3G would be both unnecessarily intrusive and disproportionate. Conversely, and without prejudice to its view that no remedial action is required, a divestment of 3G's stock and/or warehouse facilities would represent a comprehensive solution to all aspects of the SLC provisionally identified by the CMA in the PFs. Such a remedy would also preserve the RCBs expected to arise from the Transaction.
- 2.4 In this context, TVS notes that 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>6</sup> However, a full divestment of 3G's stock and/or warehouse facilities to either an existing narrow/niche CVT wholesaler or to a new entrant wide range CVT wholesaler would ensure the acquiring third party could (at a minimum) replicate 3G's existing competitive constraint in a very short period of time while also preserving the RCBs discussed above.

### **3. Identity of divestment assets/business**

- 3.1 The CMA states in the Notice that "*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>7</sup>
- 3.2 Without prejudice to TVS's views above that no remedial action is required in relation to the Transaction, to the extent that the CMA ultimately concludes that some form of structural remedy is required, TVS confirms that a divestment of UC (rather than 3G) would be unnecessarily costly, intrusive and disproportionate within the meaning of the Guidance.<sup>8</sup>

### **4. No need for behavioural 'safeguarding' remedies**

- 4.1 TVS notes that, at paragraph 16 of the Notice, the CMA is considering "*whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies*".
- 4.2 To the extent that the CMA concludes a structural remedy is required for the purpose of remedying, mitigating or preventing any alleged SLC arising from the Transaction, TVS does not believe there would be any reason to also require behavioural remedies to safeguard the effectiveness of that structural remedy. In this respect, TVS notes that 3G and UC have been and continue to be operated

---

<sup>4</sup> *Merger Guidelines*, para 5.7.8.

<sup>5</sup> *Merger Remedies*, CMA87, 13 December 2018.

<sup>6</sup> I.e., 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 (paragraph 13 of the Notice).

<sup>7</sup> The Notice, at footnote 10.

<sup>8</sup> *Merger Remedies*, CMA87, 13 December 2018.

as entirely separate businesses since completion of the Transaction on 3 February 2020 (including pursuant to an initial enforcement order (IEO) imposed by the CMA on 10 February 2020).

## **5. Identification and availability of a suitable purchaser**

5.1 At paragraph 22 of the Notice, the CMA invites views on whether there are:

- (i) in addition to the factors already set out in the Guidance, any other specific factors or requirements to which it should pay particular regard in assessing purchaser suitability;
- (ii) any specific purchasers or types of purchasers which should be ruled out as potentially suitable purchasers (e.g. other UK and non-UK wholesalers or financial buyers); and
- (iii) risks that a suitable purchaser is not available or that the Parties will divest to a weak or otherwise inappropriate purchaser.

5.2 As the CMA itself recognises in the Notice, paragraphs 5.20 to 5.27 of the Guidance sets out in detail the criteria to which the CMA will have regard when considering whether a third party should be considered a suitable purchaser in the context of a structural remedy. TVS does not believe that any other specific factors or requirements should be considered relevant in assessing purchaser suitability for any potential divestment considered necessary to address the SLC provisionally identified by the CMA.

5.3 Likewise, TVS does not consider that any specific purchasers or types of purchasers should be ruled out at this stage; as any potential purchaser will be assessed by the CMA in accordance with the suitability criteria set out in the Guidance (including independence, capability, commitment, and absence of competitive or regulatory concerns), there is no reason to rule out in advance specific potential purchasers or types of purchasers. Indeed, any decision to do so by the CMA would be wholly unreasonable and disproportionate.<sup>9</sup>

5.4 The standard purchaser suitability criteria set out in the Guidance requires that any purchaser must have access to appropriate financial resources, expertise (including managerial, operational and technical capability) and assets to enable the divested business to be an effective competitor in the market.<sup>10</sup> TVS expects that, should it consider a remedy is necessary, the CMA will apply this criteria before approving any potential purchaser. As such, there is no reason to believe that either a suitable purchaser is unlikely to be available or that TVS would divest to a weak or otherwise inappropriate purchaser.

## **6. Effective Divestiture Process**

6.1 At paragraph 24 of the Notice, the CMA invites views on: the initial divestiture period; the risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture; and whether the functions of the Monitoring Trustee (MT) 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.

6.2 3G's commercial independence and viability continues to be protected under the terms of the IEO (as supervised by the Monitoring Trustee) which TVS expects to remain place until any final remedy undertaking or order is fully implemented. In these circumstances, there is no reason to believe that any of the factors identified in the Guidance as favouring a shorter divestiture period (e.g.,

---

<sup>9</sup> Without limitation to the above, UC notes that in previous cases where the CMA has considered both new entrants and private equity buyers as potential purchasers, it has assessed their suitability on a case-by-case basis in accordance with the criteria set out in the Guidance. UC believes this would be a proportionate and reasonable approach for the CMA to take in relation to any SLC it ultimately identifies in relation to the Transaction.

<sup>10</sup> At paragraph 5.21(c).

minimising asset risk and giving rapid effect to the remedy) would apply. Conversely, TVS believes that the factors mitigating in favour of a longer divestiture period – in particular the need to canvass a sufficient selection of potential suitable purchasers, as well as the need for those potential purchasers to conduct commercial due diligence – clearly do apply. For this reason TVS believes that any initial divestiture period should not be shorter than [X].

- 6.3 Pursuant to the directions issues by the CMA on 19 June 2020 (the **Directions**), the MT is under an obligation to support the CMA in taking any action which may be required to maintain the 3G business as a going concern.<sup>11</sup> In addition to ascertaining, monitoring and regularly reporting to the CMA as to TVS’s compliance with the IEO,<sup>12</sup> the MT is required to provide the CMA with a regular report setting out details of the performance of the 3G business, including any factors that might indicate asset deterioration<sup>13</sup> and whether appropriate steps are being taken to maintain the 3G business as a going concern.<sup>14</sup> Separately, should the CMA ultimately conclude that a divestment is required to address any SLC expected to arise from the Transaction, TVS has the necessary expertise to run an effective divestment process (with support from external advisers as necessary) and would be prepared to provide updates on that process directly to the CMA as required.
- 6.4 In these circumstances, TVS does not believe there would be any reason to expand the existing functions of the MT. Nor does TVS believe that the Transaction would in any way qualify as the kind of “*unusual case*”<sup>15</sup> in which a divestiture trustee should be appointed at the outset of a divestiture process.

---

<sup>11</sup> At paragraph 2.b. of the Directions.

<sup>12</sup> At paragraphs 10 and 17.a. of the Directions.

<sup>13</sup> At paragraph 17.b. of the Directions.

<sup>14</sup> At paragraph 17.c. of the Directions.

<sup>15</sup> Within the meaning of paragraph 5.44 of the Guidance.