

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

Final report

12 January 2021

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Glossary.

# Summary

## Background

1. On 12 June 2020, the Competition and Markets Authority (**CMA**) referred the completed acquisition by TVS European Distribution Ltd (**TVS EDL**) of 3G Truck & Trailer Parts Ltd (**3G**) (**the Merger**) for an in-depth phase 2 inquiry. The CMA is required to answer the following statutory questions:
  - (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the UK for goods or services.
2. TVS EDL, including its subsidiary Universal Components UK Limited (**UC**), and 3G (together, **the Parties** and, for statements referring to the Parties post-Merger, the **Merged Entity**) overlap in the wholesale supply of commercial vehicle and trailer (**CVT**) parts in the Independent Aftermarket (**IAM**) in the United Kingdom (**UK**). The Parties wholesale a wide range of CVT parts to motor factors, who in turn sell the parts to garages and repair workshops.
3. UC and 3G are both private limited companies based in the UK, selling throughout the UK, the rest of Europe and other international markets. The ultimate parent company of UC is TVS Automobile Solutions Private Limited (**TVS ASPL**), a private limited company based in India. Worldwide turnovers of TVS EDL and 3G in the financial year 2018/19 were £45.8 million (of which UC turnover was £28.1 million) and £14.4 million respectively. Of this, 3G generated approximately £10.8 million in the UK.
4. As part of our phase 2 inquiry, we invited a wide range of interested third parties to comment on the Merger. These included customers of the Parties, competitors, manufacturers and buying groups in the CVT parts industry. We received over 80 responses to our third party questionnaires and obtained additional evidence from calls with 21 third parties. We received several submissions and responses to information requests from the Parties, held two hearings with each of them, and carried out an extensive review of internal documents provided by the Parties. We also considered evidence from the Parties and third parties received during the CMA's phase 1 investigation into the Merger.

## Relevant merger situation

5. We have decided that the Merger has created a relevant merger situation within the meaning of the Enterprise Act 2002 (**the Act**) because: (a) the enterprises of TVS EDL and 3G have ceased to be distinct within the statutory period for reference; and (b) as a result of the Merger, the Parties have a combined share of supply over 25% in the wide range wholesale supply of CVT parts in the IAM in the UK.

## Counterfactual

6. To assess the effects of a merger on competition, we compare the prospects for competition with the merger against the competitive situation that would have existed without the merger. This is called the 'counterfactual'.
7. We have adopted the relevant counterfactual as the pre-Merger conditions of competition, except that Truck and Trailer Components (**TTC**), which has now exited the UK market, is no longer a competitive constraint on the Parties. We have taken into account other relevant market developments in the competitive assessment.

## Market definition

8. Market definition provides a framework for assessing the competitive effects of a merger.
9. Given that the Parties overlap in the wholesale supply of CVT parts in the IAM in the UK, we have taken this as the appropriate starting point in our analysis to determine the relevant market. We have considered whether the market should be segmented on the basis of the product range offered by wholesalers. We have also considered whether the relevant market should be broadened to include supply by Original Equipment Supplier (**OES**) parts manufacturers to motor factors; and by 'all makes' suppliers (wholesalers set up by truck manufacturers to supply parts for all makes of truck) to workshops.
10. We first considered demand side factors. We found that customers typically purchase from multiple suppliers and that they use different suppliers for different reasons. In particular, we found that for some purchases some customers value the option of a supplier that can offer a broad range of products in a single transaction, which implies that, for such purchases, narrow range suppliers are not close substitutes. This in turn implies that, from a demand side perspective, there is a separate market for the wide range wholesale supply of CVT parts to motor factors.

11. On the supply side, most market participants indicated that different types of wholesalers had different strengths. In particular, customers saw wide range wholesalers as being able to provide a convenient 'one stop shop' for buying a range of parts in a single transaction, whereas narrow range wholesalers were better placed to provide specialist knowledge and a deeper range of parts within the categories they supply and OES parts manufacturers tend to be used for specialist products and in cases where the product is safety critical or where quality is particularly important. We recognise there is a degree of competitive interaction between wide range wholesalers and narrow range wholesalers, and between wide range wholesalers and OES parts manufacturers, and have taken those constraints into account in our competitive assessment.
12. We have also found that 'all makes' suppliers are not within the relevant market as most wholesalers and 'all makes' suppliers did not see themselves as competing with each other, but we have taken any indirect constraint they provide into account in our competitive assessment. We also have not included the Authorised Aftermarket (**AAM**) (ie the truck manufacturers' networks of franchised or authorised service and repair centres) in the relevant market as prices tend to be higher in the AAM than in the IAM, but we have taken any indirect constraint they provide into account in our competitive assessment.
13. We also considered whether the market for the supply of CVT parts in the IAM is regional, national or international, and have concluded that the relevant geographic market is the UK.
14. Taking the evidence in the round, we have therefore concluded that the relevant market in which to assess the effects of the Merger is the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.

## **Competitive assessment**

15. We considered whether the Merger would enable the Merged Entity profitably to increase prices or reduce service levels in the wide range wholesale supply of CVT parts to motor factors in the UK IAM, relative to the counterfactual.
16. The market for the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK is concentrated, with the three largest providers accounting for around two thirds of supply. The Merger combines two of the three largest suppliers in the market, giving the Merged Entity a significantly larger share than any of its competitors.



17. In a number of documents that it prepared to inform the decision on proceeding with the Merger, UC states that the object of the Merger is 'to acquire our closest competitor' and refers to the 'current lack of strong competition' to UC and 3G. In these documents, UC also notes that the Merger will remove 3G as a price constraint, allowing UC to increase its margins through higher prices and lower rebates. The majority of customers that expressed views on the Merger to us raised concerns about such matters, with many considering that the Parties were the only credible alternatives to one another since TTC's exit from the market.
18. In addition to UC's internal documents on the rationale for the Merger and the views of customers, we have considered evidence on how much the Parties influence each other's pricing and evidence of customer switching and diversion. Based on our assessment, we have found that the Parties are each other's closest competitors. 3G's pricing appears to be very strongly influenced by UC and, while UC does have regard to a range of competitors, 3G is far more prominent in UC's internal documents on pricing than any other competitor. Similarly, the analysis of UC's internal documents concerning wins, opportunities, and the losses and competitive threats it faces, shows that 3G is the most important competitor to UC. In addition, we asked each Party's customers whom they would have bought from if that Party had not been operating in the past six months. Respondents to these questions reported that on average half to two-thirds of their purchases from each Party would have been diverted to the other.
19. We considered the competitive constraints imposed on the Parties by other wide range wholesalers, narrow range wholesalers, OES parts manufacturers, 'all makes' suppliers and the AAM.
20. We have found that other wide range wholesalers exert only a limited competitive constraint on the Parties. Each of the wide range wholesalers competes with the Parties to some degree, but there are a variety of factors which limit the constraint that each of them exerts and this is reflected in their low market shares relative to the market share of the Parties. CV Logix, the next largest wide range wholesaler, focuses on sales to other members of its group. Many of the other wide range wholesalers have a more limited range than the Parties and some either do not have a UK warehouse (which in our view is necessary to be able to compete effectively in the relevant market given the importance of next-day delivery), or have only recently opened one.
21. To some extent, narrow range wholesalers compete against the Parties within particular product categories. However, customers particularly value the Parties' ability to offer a 'one stop shop' which narrow range wholesalers

do not offer. We have found, therefore, that narrow range wholesalers exert only a limited constraint on the Parties.

22. Many OES parts manufacturers serve motor factors directly. However, they are generally focused on a limited range of products, and customers tend to use them for specialist parts, where quality is critical and for stock orders while using wholesalers for daily purchases. We have found, therefore, that OES parts manufacturers exert, at most, a limited competitive constraint on the Parties.
23. We also considered the indirect constraint from 'all makes' suppliers, which do not compete directly against the Parties, but instead compete with the Parties' customers, the motor factors. Motor factors told us they would be able to pass on a wholesale price rise to their customers, which would not be the case if they were competing closely with 'all makes' suppliers. In view of this, competition from 'all makes' suppliers would not constrain the Parties' ability profitably to sustain price increases. We have found, therefore, that 'all makes' suppliers exert, at most, a limited constraint on the Parties.
24. Lastly, we considered the extent to which the supply of CVT parts in the AAM imposes an indirect competitive constraint on the Parties (ie that customers of the garages that are supplied by motor factors would switch from using the IAM to the AAM if the Parties increased their prices). We have seen no evidence in its internal documents that UC takes account of such switching, and the AAM is typically a more expensive option than the IAM, so price-sensitive end users may be unwilling to make such a switch. We have found, therefore, that the AAM exerts, at most, a limited constraint on the Parties.
25. In our view, other providers do not collectively exert an effective competitive constraint on the Parties. This is supported by UC's Merger rationale documents and the concerns raised by customers as discussed in paragraph 17.
26. For the reasons given above we have concluded that, subject to any countervailing factors, the Merger may be expected to result in an SLC in the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.

## **Countervailing factors**

27. We considered whether there are countervailing factors which might prevent an SLC from arising.

### ***Entry and expansion***

28. We looked at whether entry or expansion would be timely, likely and sufficient to constrain the Merged Entity such as to prevent an SLC from arising.
29. We first assessed the extent to which there are any barriers to entry or expansion. We have found that although opening a warehouse and establishing a sufficient stock of parts requires investment and takes some time, these constitute a low barrier to entry and/or expansion. However, we have found that the need for a new or expanding wholesaler to develop a strong reputation, and to a lesser extent branding, is likely to be a material barrier to entry and/or expansion.
30. We are of the view that a new entrant would be likely to take at least two years, and possibly longer, to establish a warehouse with access to sufficient stock and also develop a sufficiently credible reputation in the market to enable it to act as an effective competitive constraint on the Merged Entity.
31. We also note that the Parties' internal documents show that it would take around four to five years for a supplier to establish a UK business which would act as an effective competitive constraint on the Merged Entity.
32. We then considered potential sources of entry into, and/or expansion in, the relevant market by looking at the recent history of entry and/or expansion, specific evidence of planned entry or expansion by third parties, and the scope for entry from adjacent or related markets.
33. We have assessed the entry and/or expansion plans of new or existing suppliers in the market, but the evidence provided to us was not sufficient to enable us to conclude that the requisite growth, whether taken individually or in combination, would be likely to be achieved in a timely manner such as to act as an effective competitive constraint on the Merged Entity.
34. In light of the above, we have concluded that entry and/or expansion would not be timely, likely and sufficient in scope to constrain the Merged Entity such as to prevent an SLC from arising.

### ***Buyer power***

35. We also considered whether countervailing buyer power might prevent an SLC from arising in this case.
36. Evidence from customers shows that the ability to order from a 'one stop shop' provider is important to them, and many customers did not see any

other provider as being able to provide such a 'one stop shop'. Even if some individual customers have strong negotiating positions, we have not seen evidence that any ability they may have to keep prices down would protect other customers.

37. As with individual firms, the ability of a buying group to exercise buyer power will depend on the availability of alternative providers. Buying groups told us that they do not have easy alternatives for all products currently bought from the Parties. In addition, even if buying groups were able to protect their members, not all motor factors are members of buying groups. There are conditions that buying groups require to be met when considering applications from motor factors to join a buying group such that not all motor factors would be able to join if they wished to.
38. We also note that the UC strategy documents do not show that UC believed buyer power would constrain their pricing strategy after the Merger.
39. We have therefore concluded that buyer power would not prevent an SLC from arising in this case.

### ***Efficiencies***

40. We have concluded that the Parties have not demonstrated that the Merger would result in rivalry-enhancing efficiencies such as to prevent an SLC arising in this case.

### **Findings on SLC**

41. As a result of our assessment, we have decided that the completed acquisition by TVS EDL of 3G has resulted in the creation of a relevant merger situation.
42. We have also decided that the creation of that situation may be expected to result in an SLC in the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.

### **Remedies**

43. Having decided that the Merger may be expected to result in an SLC, we are required under the Act to decide whether action should be taken to remedy, mitigate or prevent that SLC or any adverse effect that may be expected to result from the SLC and, if so, what action should be taken.

44. In deciding on the appropriate remedy, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects. The CMA will then select the least costly and intrusive remedy that it considers to be effective. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.
45. We considered full divestiture of 3G, a partial divestiture proposed by TVS EDL and behavioural remedies. For each remedy option we first assessed its effectiveness.
46. We have found that full divestiture of 3G would address our competition concerns at source and therefore comprehensively prevent any SLC and consequently any resulting adverse effects. We have found that this remedy would be capable of effective implementation, it has low purchase, asset and composition risks and would require minimal ongoing monitoring after its full implementation. We have therefore found that the risks in terms of the effectiveness of a full divestiture of 3G are low.
47. We considered a partial divestiture suggested by the Parties, in which the existing stock and/or warehouse of 3G would be divested. In our view, such a partial divestiture of 3G would not create a viable, standalone business that could compete successfully on an ongoing basis so as to restore pre-Merger levels of competition, nor would it enable new entry to do so. For such a divestiture to address the SLC we have found it would be highly dependent on a purchaser being able, with only the stock and/or warehouse, to restore the competition lost as a result of the Merger. In our view, there is a high risk that this partial divestiture would not effectively remedy the SLC we have found.
48. We have also considered whether there is an alternative partial divestiture package that would include all the elements that we consider to be essential to the business, but it has not been possible to identify one that would not carry substantial risk. Any split of the 3G business would risk losing the staff and management and their existing knowledge of the supply chain, or damaging 3G's reputation in the market and its customer relationships, which would reduce the ability of the divested elements to compete successfully on an ongoing basis.
49. TVS EDL told us that it would be open to behavioural remedies but did not provide a full description of these or explain how they would be effective in comprehensively addressing the SLC and its resulting adverse effects.
50. The CMA has a strong preference for structural remedies over behavioural remedies and will generally use behavioural remedies as the primary source

of remedial action if one or more of the following conditions apply: structural remedies are not feasible, the SLC is expected to have a relatively short duration or behavioural measures will largely preserve relevant customer benefits (**RCBs**) that would be removed by structural measures. This case met none of these criteria. We therefore concluded that there is no behavioural remedy which would effectively remedy the SLC we have found.

51. We have therefore concluded that only full divestiture of 3G would be an effective remedy. We would expect the full divestiture of 3G to restore the market structure and dynamic rivalry expected in the absence of the Merger, and therefore to have an immediate and comprehensive effect in addressing the SLC and its resulting adverse effects.
52. We have set out in our final report the criteria for a suitable purchaser and the procedural safeguards which should be put in place to ensure an effective divestiture process, and in our view the risk of not finding a suitable purchaser is low.
53. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. The Parties told us that the full divestiture of 3G would remove the RCBs that would otherwise arise from the Merger.
54. We have concluded that the cost synergies referred to by the Parties do not meet the statutory test to be considered as RCBs. We have found that the full divestiture of 3G is no more onerous than is required to achieve the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects and is not disproportionate to that aim.
55. We have therefore concluded that only full divestiture of 3G would be an effective and proportionate remedy that constitutes as comprehensive a solution as is reasonable and practicable to the SLC and its resulting adverse effects that we have found.
56. TVS EDL and TVS ASPL will be required to sell the whole of the 3G business subject to the CMA's approval of the purchaser and the terms of the transaction.
57. We propose to implement the full divestiture remedy by seeking suitable undertakings from the Parties and TVS ASPL. We will issue an order to require full divestiture if suitable undertakings are not offered within the statutory timeframe.

# Findings

## 1. The reference

- 1.1 On 12 June 2020, the Competition and Markets Authority (**CMA**) referred the completed acquisition by TVS Europe Distribution Limited (**TVS EDL**) of 3G Truck & Trailer Parts Ltd (**3G**) (**the Merger**) for an in-depth phase 2 inquiry. In exercise of its duty under [section 22\(1\)](#) of the Enterprise Act 2002 (**the Act**), the CMA made a reference to its chair for the constitution of a group<sup>1</sup> of CMA panel members in order to investigate and report on the following questions in accordance with [section 35\(1\)](#) of the Act:
- (a) whether a relevant merger situation has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the UK for goods or services.
- 1.2 In answering the statutory questions we applied a 'balance of probabilities' threshold to our analysis. That is, we considered whether it is more likely than not that an SLC has resulted, or may be expected to result, from the Merger.
- 1.3 Our terms of reference, along with information on the conduct of the inquiry, are in Appendix A.
- 1.4 This document, together with its appendices, constitutes our final findings, published and notified to TVS EDL and 3G in line with the CMA's rules of procedure.<sup>2</sup> Further information, including non-confidential versions of submissions received from TVS EDL and 3G<sup>3</sup> and our provisional findings report,<sup>4</sup> can be found on the [inquiry case page](#).<sup>5</sup>
- 1.5 Throughout this document, where relevant, TVS EDL, including its subsidiary Universal Components UK Limited (**UC**), and 3G are collectively referred to

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<sup>1</sup> [Section 22\(1\)](#) of the Act provides that the group is to be constituted under Schedule 4 to the Enterprise and Regulatory Reform Act 2013.

<sup>2</sup> [CMA rules of procedure for merger, market and special reference groups \(CMA 17\)](#), Rule 13.

<sup>3</sup> [Parties' response to Phase 1 Decision](#), dated 3 July 2020, (**Parties' response to the Phase 1 Decision**), [Parties' response to the remedies notice](#), dated 3 November 2020, (**Parties' response to the remedies notice**), and [Parties' response to the Provisional Findings](#), dated 12 November 2020 (**Parties' response to the Provisional Findings**)

<sup>4</sup> Completed acquisition by TVS Europe Distribution Limited of 3G Truck & Trailer Parts Limited: Provisional findings report. Notified 21 October 2020 ([Provisional findings report](#))

<sup>5</sup> The CMA's case page can be found at: <https://www.gov.uk/cma-cases/universal-components-3g-truck-trailer-parts-merger-inquiry>.

as ‘**the Parties**’ and, for statements referring to the Parties post-Merger, ‘**the Merged Entity**’.

## **2. Background to the industry and the Parties**

### **Introduction**

2.1 This chapter provides a background to the United Kingdom (**UK**) commercial vehicle and trailer parts industry, including its structure and the various types of participants. It then provides an overview of the Parties, including their operations in the UK and financial information.

### **The industry in which the Parties operate**

2.2 In the UK, the Parties overlap in the wholesale supply of commercial vehicle and trailer (**CVT**) parts to the aftermarket.<sup>6</sup> This section describes the different types of replacement parts supplied to the aftermarket, provides an overview of this sector and describes the levels in the supply chain.

#### ***Types of replacement parts***

2.3 Replacement parts can broadly be categorised as follows:

- (a) Original equipment manufacturer (**OEM**) parts;
- (b) Original equipment supplier (**OES**) parts; and
- (c) Private label (**PL**) parts.

2.4 OEM parts are those used by the commercial vehicle manufacturer when the vehicle is first manufactured, and are made available to OEM distribution networks who supply the manufacturer’s franchised/authorised service and repair centres. They are not typically made available to the independent aftermarket.<sup>7</sup> OEM parts are made directly by the vehicle manufacturer or sourced from a parts manufacturer on request of the vehicle manufacturer and typically carry the vehicle manufacturer’s name, such as DAF.

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<sup>6</sup> By aftermarket, we mean the market for replacement parts and accessories for a truck after its sale.

<sup>7</sup> The independent aftermarket is explained below at paragraph 2.9.



- 2.5 OES parts carry the parts manufacturer's name (such as Bosch) and are typically functionally identical to OEM parts. OES parts are usually cheaper and may be packaged differently to OEM parts.
- 2.6 PL parts<sup>8</sup> are manufactured on behalf of an independent parts wholesaler (eg a wholesale supplier to a motor factor) and usually carry the wholesaler's brand name, although sometimes they are unbranded. The Parties told us that PL parts are usually 10 to 15% cheaper than OES parts and that this provides a financial incentive to the customer to choose a PL part over an OES part, given the perceived higher quality of OES parts. We received mixed evidence from third parties about the actual quality of OES parts compared with PL parts.<sup>9</sup>

### ***Authorised and independent aftermarkets***

- 2.7 When a commercial vehicle is under warranty, the operator of that vehicle is likely to have it serviced and repaired by the vehicle manufacturer itself or by a member of the manufacturer's network of franchised or authorised service and repair centres, known as the authorised aftermarket (**AAM**), using OEM parts. Once the warranty<sup>10</sup> expires, the vehicle operator has the choice of continuing to have the vehicle serviced through the AAM channel (ie the franchised dealers) or having it serviced in the independent aftermarket (**IAM**) (this is explained below).
- 2.8 In the experience of the Parties, once a vehicle is over four years old, it is much more likely to be serviced and repaired by an independent service centre (forming part of the IAM in the UK) using PL parts.
- 2.9 The IAM refers to the aftermarket that is outside the truck manufacturers' networks of owned, franchised or authorised service and repair centres.<sup>11</sup> The IAM is concerned with the manufacturing, distribution, retailing and installation of CVT parts by independent businesses (ie businesses which are independent from commercial vehicle manufacturers, and are not franchise dealers).

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<sup>8</sup> The Parties also supply PL parts purchased from either a recognised brand or other PL (ie non-UC/3G) suppliers that do not supply their parts to OEMs (referred to as '**PL Other**').

<sup>9</sup> Calls with third parties.

<sup>10</sup> In addition to the warranty, we were told that truck dealerships sometimes sell new vehicles to customers under a repair and maintenance programme for three, five or seven years that ties in the customer from an aftermarket perspective.

<sup>11</sup> [Parties' response to Phase 1 Decision](#), paragraph 3.9.

- 2.10 In the aftermarket, OES and PL parts are used when garages or workshops (whether independent, or franchisees of a vehicle manufacturer), dealers or fast-fit centres repair and service vehicles.
- 2.11 UC estimated that the value of this aftermarket (ie the IAM and the AAM) in the UK is around £1.2 billion. The Parties told us that they estimated that the volume of sales in the UK aftermarket is split roughly equally between the IAM and the AAM. They also estimated that, within the IAM in the UK, approximately £300 million sales is from PL and £300 million is from OES parts.<sup>12</sup>

### ***Overview of the aftermarket for CVT parts***

- 2.12 The Parties provided a diagrammatic representation of the CVT parts value chain in the UK, showing the levels of the supply chain between the parts manufacturers and the end users of the parts (the fleet operators and truck owners) (see Figure 2.1).
- 2.13 The Parties also noted the following:<sup>13</sup>
- (a) Some manufacturers manufacture PL, OES and OEM parts but simply rebadge or manufacture to different specifications.
  - (b) OES parts manufacturers sell through wholesalers, but also direct to motor factors and OEM dealers.
  - (c) 'All makes' suppliers (described in Figure 2.1 as All Makes Wholesalers) distribute their 'all makes' parts via their respective dealer networks (see 2.22).
  - (d) Independent garages generally buy PL or OES parts from motor factors but in some cases buy OEM parts from OEM dealers.
  - (e) OEM dealer garages generally buy OEM or OES parts, but in some cases buy PL parts from motor factors.
  - (f) Specialist range wholesalers also includes both niche (ie those specialised in the supply of a particular product category) and brand-specific wholesalers.

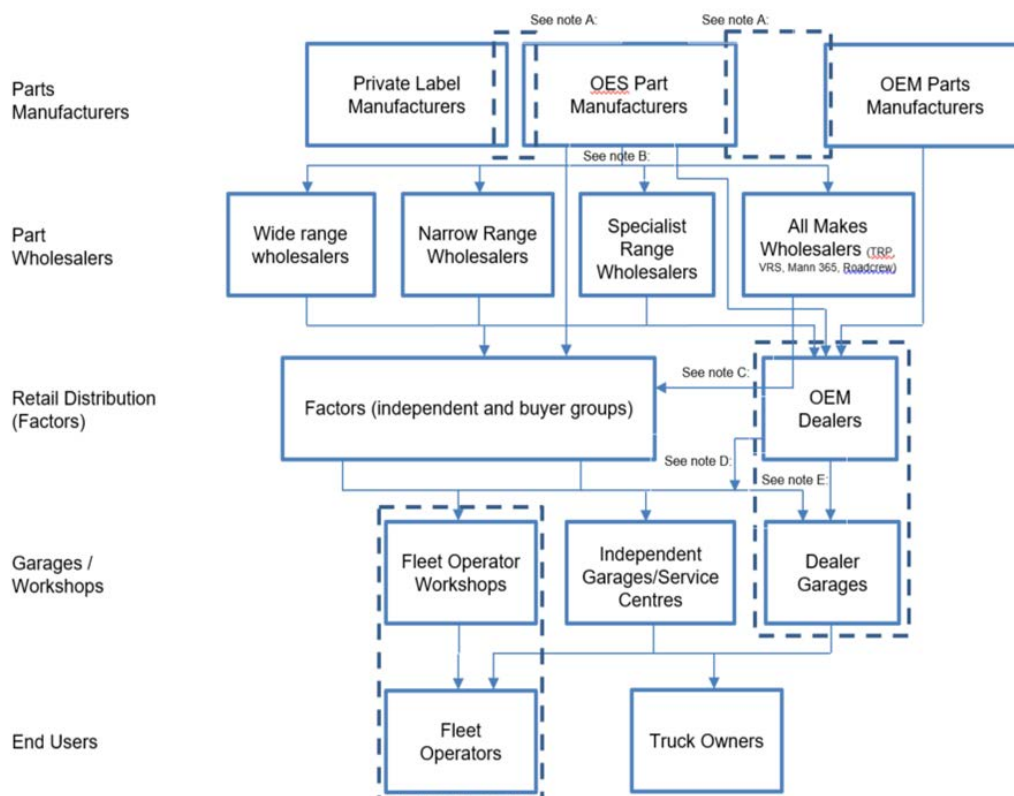
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<sup>12</sup> The Parties had previously estimated that the size of the IAM in the UK for PL parts only is over £178 million. This figure relates to PL parts only and excludes imports from wholesalers without a physical presence in the UK.

<sup>13</sup> Parties' response to Phase 1 Decision, notes to Figure 1.

2.14 We recognise that Figure 2.1 is a simplification of a complex market. For example, some of the wholesalers are vertically integrated with motor factors (who then sell on to garages, repair shops and fleets),<sup>14</sup> and some OES Part manufacturers are vertically integrated with wholesalers<sup>15</sup>

**Figure 2.1: Overview of the aftermarket for CVT parts**



Source: Parties' response to Phase 1 Decision, Figure 1.

Note: the notes referred to in the Figure are in paragraph 2.13

## Types of suppliers

2.15 There are different types of suppliers of CVT parts in the IAM.

### Manufacturers

2.16 Typically, manufacturers supply OES and PL parts to wholesalers, who then sell them on to motor factors (see paragraphs 2.4 to 2.6). The Parties told us that the largest OES manufacturers, including Bosch, Hella, Haldex, Fontaine, Mann and Hummel, ZF and Truck-Lite, all supply OES parts direct

<sup>14</sup> For example, the AAG group includes CV Logix (a wholesaler) and motor factors (see 2.27 and footnote)

<sup>15</sup> For example, the BPW group (a German based vertically integrated CVT parts manufacturer and wholesaler) includes PE Automotive (a wholesaler) and EMS-FP&S (a motor factor).

to motor factors in the UK,<sup>16</sup> although third parties told us that it was usually only the larger motor factors who purchased directly from manufacturers.

- 2.17 The Parties told us that in many cases a single CVT replacement part, produced by the same manufacturer, may be supplied in the UK as either a PL, OES or OEM branded product.<sup>17</sup>

### *Wholesalers*

- 2.18 Wholesalers are differentiated and, under the characterisation of the industry initially submitted by the Parties in this investigation, can be viewed as being in different categories:<sup>18</sup>

- (a) **Wide range wholesalers:** wholesalers stocking spare parts for a large number of product groups<sup>19</sup> (the Parties fall into this category of wholesaler). They offer a single point of purchase of a wide range of products for customers and typically assign a higher priority to features such as customer service and a lower priority to technical knowledge, instead maintaining a broad but technically limited knowledge of general truck and trailer parts.
- (b) **Narrow range wholesalers:** wholesalers stocking spare parts for a smaller number of product groups than wide range wholesalers. For their chosen product groups, they typically have a higher degree of technical knowledge and hold a wider range of parts within a particular product group than wide range wholesalers.
- (c) **Niche/specialist wholesalers:** wholesalers specialising in a single product group or brand. They typically place more emphasis on technical knowledge of their chosen product group or brand and stock a greater variety of products within that particular group.

- 2.19 While the majority of wholesalers are UK-based, some international wholesalers located outside the UK (eg Inter Cars based in Poland) also serve UK-based customers. These suppliers typically have longer delivery times (up to a week) than UK-based wholesalers. UK-based wholesalers all offer a nationwide next day delivery service and some offer a same day

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<sup>16</sup> Parties' response to Phase 1 Decision, paragraph 3.1 (ii).

<sup>17</sup> Parties' response to Phase 1 Decision, paragraph 3.1.

<sup>18</sup> These distinctions reflect the Parties' characterisation of the industry in the Merger Notice. During phase 2, the Parties told us that this characterisation is not correct. See Chapter 6 for further discussion on definitions of types of wholesaler.

<sup>19</sup> A product group is a set of parts which serve similar purposes within the repair of CVT. Examples of product groups are general chassis components or braking components.

delivery service, which may be via a courier service provider. Alternatively, orders may be collected by customers from distribution centres.

- 2.20 Some wholesalers offer rebates, which incentivise customers to purchase increased quantities of products from that wholesaler and encourage customer loyalty. We were told that the wholesaler and customer negotiate the spend for a given year and a rebate which the customer will receive when settling its account at the end of the year. The rebate is usually between 4 and 10% of the spend and can be in tiers depending on spend. The companies that spend the most will therefore receive the best price from the wholesalers.

### *'All makes' suppliers*

- 2.21 Some vehicle manufacturers such as Scania, DAF and Volvo, now have an aftermarket arm of their businesses called an 'all makes' programme. They sell parts via their own 'all makes' wholesalers. For example, in the UK, DAF supplies its 'all makes' parts through its TRP division, Scania through its VRS division, and Volvo through its Roadcrew division. 'All makes' suppliers offer parts for all brands of CVT.
- 2.22 'All makes' parts are not generally made available to independent wholesalers, such as the Parties, or to motor factors (ie the Parties' customers). They are instead supplied by 'all makes' suppliers to dealers who then may sell directly to garages, fleet operators and service centres in the IAM.<sup>20</sup>
- 2.23 Although 'all makes' suppliers are wholesalers, in our view they have a different role in the market to the other types of wholesaler described above, as they primarily supply to franchised dealers rather than to motor factors. We therefore refer to them in this report as 'all makes' suppliers rather than wholesalers.

### **Motor factors**

- 2.24 A supplier of IAM parts (including CVT parts) to the independent motor trade<sup>21</sup> is generally known as a motor factor. Motor factors vary in size and are single site or operate multiple sites.<sup>22</sup>

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<sup>20</sup> The Parties submitted that motor factors will only use 'all makes' suppliers for distress purchases. One third party also submitted that 'all makes' suppliers predominantly sell to garage workshops but also to motor factors in some instances. One third party told us that 'all makes' suppliers sell to dealers who then may sell in the IAM.

<sup>21</sup> Garages and repair shops which are not part of the truck manufacturers authorised network.

<sup>22</sup> Third party questionnaire responses and calls.

- 2.25 Motor factors generally purchase OES and PL CVT parts from wholesalers, which have typically purchased the OES and PL parts from manufacturers (many of which are located overseas). Some motor factors also purchase directly from manufacturers. Lastly, 'all makes' suppliers occasionally supply motor factors through their dealer network. Motor factors then sell these parts to local garages, fleet operators and local service centres, typically within a 15 to 20-mile radius.

### **Buying Groups**

- 2.26 Buying groups are trading groups of independent motor trade factors that negotiate supply deals with parts wholesalers on behalf of their members. The buying groups may also offer a number of other centralised functions to their members such as central invoicing, centrally collected rebates, central payment handling, marketing support, participation in trade events and training.
- 2.27 There are three main motor factor buying groups supplying CVT parts in the IAM in the UK: Group Auto Union UK & Ireland Ltd (**Group Auto**) and United Aftermarket Network Limited (**UAN**), which are both owned by Alliance Automotive UK LV Limited (**AAG**),<sup>23</sup> and Independent Motor Trade Factors Association Limited (**IFA**). Group Auto has 246 members, UAN has 180 members, and IFA has 28 members.<sup>24,25,26</sup>
- 2.28 UC and other suppliers [✂].
- 2.29 According to the evidence received from third parties, buying groups enter into supply agreements with wholesalers on the basis of tenders or individual negotiations. The duration of the supply agreements with these buying groups is usually one to three years, and at the end of the term the agreements are mostly turned into 12-month rolling contracts.

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<sup>23</sup> AAG is a distributor of passenger and commercial vehicle parts to the IAM in Europe and the UK, with revenue of around €2.6 billion. AAG owns a number of motor factors, online retailers and independent distributors who are active in the IAM. In 2017, Genuine Parts Company (a large listed US wholesaler) acquired AAG for \$2 billion from a PE fund managed by Blackstone and AAG's founders. Source: <https://allianceautomotivegroup.eu/> (accessed on 28 September 2020).

<sup>24</sup> <https://groupauto.co.uk> (accessed on 28 September 2020).

<sup>25</sup> <https://unitedaftermarket.net> (accessed on 28 September 2020).

<sup>26</sup> <https://www.imtfa.co.uk/members> (accessed on 28 September 2020).

## The Parties

### TVS EDL

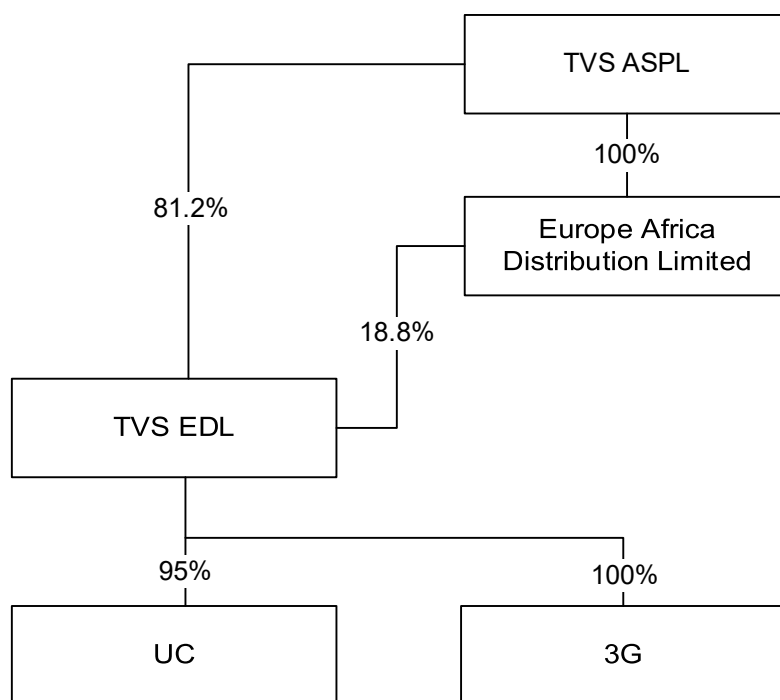
#### *Background*

- 2.30 TVS EDL is a private limited company and its principal activity is that of a holding company. TVS EDL is the holding company of UC, TVS Auto Electrics Limited (**TVS AEL**) and Scuderia Car Parts Limited (**Scuderia**).
- (a) UC is a private limited company, with TVS EDL owning 95% of the shareholding and its CEO (David Kernahan) owning the remaining 5%. UC is engaged in the wholesale distribution of a wide range of CVT parts (including PL and OES parts) to the IAM. It sells to over thirty countries around the world, including the UK (including Northern Ireland) and countries in Europe, Africa, the Middle East and Asia.
- (b) TVS AEL is 90% owned by TVS EDL. TVS AEL is a wholesale distributor of auto-electrical spare parts for commercial vehicles, including but not limited to emissions control products, starters, alternators, CCTV kits etc, and is active in the UK and the rest of Europe. TVS AEL sells all of its auto-electrical parts through UC.
- 2.31 Scuderia is 97% owned by TVS EDL. Scuderia is an e-commerce platform selling OEM parts for high performance, luxury and prestige cars directly from manufacturers to consumers. Scuderia also sells a small number of cars overseas. It is primarily active in the USA, shipping to several other countries worldwide.
- 2.32 UC was created from a CVT parts business and was acquired in 2004 by David Kernahan and Gary Hadley (former UC Director). TVS group acquired 95% of UC in 2012.<sup>27</sup>
- 2.33 Figure 2.2 shows the corporation chart of TVS Automobile Solutions Private Limited (**TVS ASPL**), based in India and the parent company of TVS EDL, and shareholding of TVS ASPL legal entities.

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<sup>27</sup> [https://www.domain-b.com/companies/companies\\_t/TVS\\_Motor/20120327\\_parts\\_supplier.html](https://www.domain-b.com/companies/companies_t/TVS_Motor/20120327_parts_supplier.html) (accessed on 14 December 2020).

**Figure 2.2: Chart showing ultimate holding company of UC and 3G, post-merger**



Source: CMA analysis

Note 1: TVS EDL is the legal entity in the UK, it trades as TVS ASL to align with the Indian parent company name TVS ASPL.

Note 2: The percentages refer to the shareholding of the relevant companies

Note 3: As regards TVS EDL, the CMA granted a [derogation](#) on 17 November 2020 for an internal restructuring, pursuant to which TVS EDL will become a 100% subsidiary of TVS ASPL. We understand that the restructuring has not taken place by the time of this final report.

- 2.34 UC has been the focus of the Merger inquiry, as its activities overlap with those of 3G. TVS AEL and Scuderia are not considered further in this report.

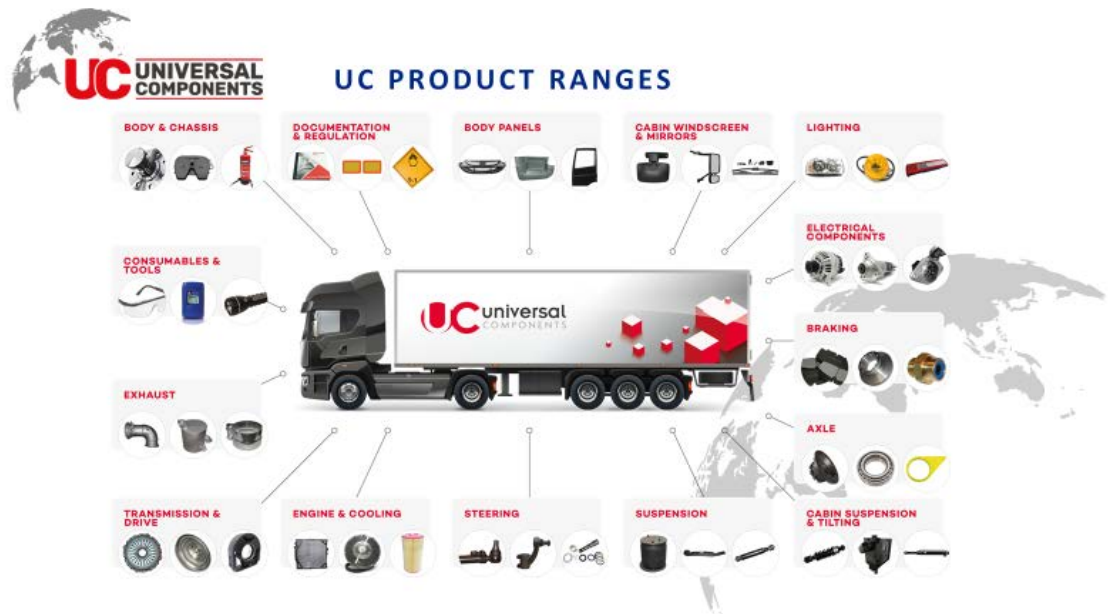
### *Operations of UC*

- 2.35 The headquarters of UC are in Barnsley, with a main distribution centre (165,000 sq ft) that distributes globally UC lists 16,000 line items, of which it keeps stock of 12,000, and has 350 CVT customers in the UK and 60 in export countries.
- 2.36 UC sells a wide range of parts for CVT (see Figure 2.3), both OES and PL. PL accounted for 83% (including both UC branded PL and Other PL) of UC's sales by revenue over the last three years.<sup>28</sup>

<sup>28</sup> CMA's calculation based on the data provided by the Parties.



Figure 2.3: UC Product ranges



Source: TVS EDL presentation

- 2.37 UC requires a minimum order of £125 for free next day delivery, and [%] of sales are for next day delivery.
- 2.38 UC supplies CVT parts to the members of buying groups as well as to independent motor factors.<sup>29</sup> During the last three years, sales to buying group members on average accounted for around [%] of UC's sales revenue.

### Financial information

- 2.39 TVS EDL had worldwide turnover of approximately £45.8 million in the financial year 2018/19, approximately £[%] million of which was generated in the UK. UC had worldwide turnover of approximately £28.1 million in financial year 2018/19, approximately £[%] million of which was generated in the UK.<sup>30</sup>
- 2.40 UC's financial performance in relation to the worldwide wholesale distribution of CVT parts is shown in Table 2.1.

<sup>29</sup> UC is ranked as [%] to Group Auto, UAN and the IFA. 3G is [%].

<sup>30</sup> Figures have been rounded to three significant figures.

**Table 2.1: UC revenue and cost for worldwide wholesale distribution of CVT parts**

	Financial year					£m
	FY16	FY17	FY18	FY19	FY20	4-year CAGR
Sales	[X]	[X]	[X]	[X]	[X]	[X]
Cost of Sales (including adjustments)	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gross margin before rebate</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gross margin (%) before rebates</b>	[X]	[X]	[X]	[X]	[X]	
Discounts/Rebates	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gross margin after rebates</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gross margin%</b>	[X]	[X]	[X]	[X]	[X]	
Operating costs	[X]	[X]	[X]	[X]	[X]	[X]
<b>Operating profit</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>EBIT margin %</b>	[X]	[X]	[X]	[X]	[X]	
Depreciation/Tax	[X]	[X]	[X]	[X]	[X]	[X]
<b>Profit after tax</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>Net profit margin %</b>	[X]	[X]	[X]	[X]	[X]	

Source: TVS EDL/UC's management accounts.

Note: UC's financial year runs from April to March.

- 2.41 As shown in Table 2.1, over the last five years, while UC's total worldwide revenue increased year-on-year (and by a Compound Annual Growth Rate (**CAGR**) of [X]%), UC's gross margin after rebates decreased by [X] percentage points, and net margin decreased by [X] percentage points.
- 2.42 UC's financial performance in relation to the UK wholesale distribution of CVT parts is shown in Table 2.2.

**Table 2.2: UC revenue and margins for the UK wholesale distribution of CVT parts by part type**

	£m			
	Financial year			
	FY18	FY19	FY20	2-year CAGR
Total UK sales	[X]	[X]	[X]	[X]
Gross margin before rebates (%)	[X]	[X]	[X]	
OES† sales	[X]	[X]	[X]	[X]
OES gross margin before rebates (%)	[X]	[X]	[X]	
UC PL§ sales	[X]	[X]	[X]	[X]
PL gross margin before rebates (%)	[X]	[X]	[X]	
PL Other¶ sales	[X]	[X]	[X]	[X]
PL Other gross margin before rebates (%)	[X]	[X]	[X]	

Source: TVS EDL/UC's management.

Note: TVS EDL provided financial information only for the last three years.

† OES parts are purchased from a manufacturer that provides parts to the commercial vehicle and trailer manufacturer for inclusion in the initial production of a commercial vehicle/trailer.

§ PL are parts which are branded as UC.

¶ PL Other are parts purchased from either a recognised brand or other private label (ie non-UC) suppliers that do not supply their parts to OEMs for inclusion in the initial production of commercial vehicles/trailers.

2.43 As shown in Table 2.2, UC's total UK revenue increased by a CAGR of [X]% in the last three years. The average revenue from PL parts accounted for over [X]% of UC's UK sales, followed by PL-Other (around [X]%), and OES parts (around [X]%).

2.44 In the last three years, PL parts achieved the highest average gross margin before rebates at around [X]%, followed by PL-Other and OES parts at around [X]%.

### 3G

#### Background

2.45 3G is a private limited company, incorporated in 2010, that specialises in the procurement and supply of a wide range of CVT parts (including PL and OES parts) in the IAM throughout the UK, the rest of Europe and other international markets. It was founded by Richard Ash, John Carr and Stewart Ashall (who joined 3G in 2011), who previously had all worked for UC.

#### Operations of 3G

2.46 3G has its head office and 40,000 sq ft distribution facility at Hellaby, Rotherham, and employs 49 staff. It sells both PL and OES parts, with PL accounting for on average [X]% of 3G's sales by revenue over the last three

years.<sup>31</sup> 3G requires a minimum order of £125 for free delivery, and [X]% of sales are next day delivery.

- 2.47 3G supplies CVT parts to over 470 motor factor customers in the UK, and also supplies members of buying groups. During the last three years, sales to buying group members on average accounted for around [X]% of 3G's sales revenue. 3G lists around 15,000 stock keeping units (**SKUs**), of which it holds stock of around [X].

### Financial information

- 2.48 3G generated worldwide turnover of approximately £14.4 million in financial year 2018/19, approximately £10.8 million of which was generated in the UK.
- 2.49 3G's financial performance in relation to the worldwide wholesale distribution of CVT parts is shown in Table 2.3.

**Table 2.3: 3G revenue and cost for worldwide wholesale distribution of CVT parts**

	Financial Year					£m
	FY15	FY16	FY17	FY18	FY19	4-year CAGR
Sales	[X]	[X]	[X]	[X]	[X]	[X]
Cost of sales (including rebates)	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gross margin after rebates</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gross margin %</b>	[X]	[X]	[X]	[X]	[X]	
Operating costs	[X]	[X]	[X]	[X]	[X]	[X]
<b>Operating profit</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>EBIT margin %</b>	[X]	[X]	[X]	[X]	[X]	
Depreciation/Tax	[X]	[X]	[X]	[X]	[X]	[X]
<b>Profit after tax</b>	[X]	[X]	[X]	[X]	[X]	[X]
<b>Net profit margin %</b>	[X]	[X]	[X]	[X]	[X]	

Source: 3G's management accounts.

1.: (i) 3G's financial year runs from June to May. (ii) 3G had provided financial information only until financial year 2019.

2. Wages and hire of equipment of equipment are included in operating costs.

- 2.50 As shown in Table 2.3, over the last five years, 3G's total worldwide revenue increased by a CAGR of [X]%. 3G's gross margin after rebates increased by [X] percentage points, and net margin decreased by [X] percentage points in the last five years.

<sup>31</sup> CMA's calculation based on the data provided by the Parties.

2.51 3G's financial performance in relation to the UK wholesale distribution of CVT parts is shown in Table 2.4.

**Table 2.4: 3G revenue and margins for the UK wholesale distribution of CVT parts by part type**

	FY18	Financial Year FY19	FY20 (10 months only)	£m 1-year CAGR
<b>Total UK sales</b>				
<b>Gross margin before rebates (%)</b>	[X]	[X]	[X]	[X]
	[X]	[X]	[X]	
OES †sales				
<b>OES gross margin before rebates (%)</b>	[X]	[X]	[X]	[X]
3G PL § sales	[X]	[X]	[X]	
<b>PL gross margin before rebates (%)</b>	[X]	[X]	[X]	[X]
PL-Other ¶ sales	[X]	[X]	[X]	
<b>PL Other gross margin before rebates (%)</b>	[X]	[X]	[X]	[X]

Source: 3G's management accounts

1. 3G provided us with financial information only for the last two years, and 10 months for current financial year. FY20 figures are only for 10 months.

†. OES parts are purchased from a manufacturer that provides parts to the commercial vehicle and trailers manufacturer for inclusion in the initial production of a commercial vehicle/ trailer.

§ PL are parts which are branded as 3G.

¶ PL Other are parts purchased from either a recognised brand or other private label (i.e. non-3G) suppliers that do not supply their parts to OEMs for inclusion in the initial production of commercial vehicles/trailers.

2.52 As shown in Table 2.4, 3G's total UK revenue increased from £[X] million to £[X] million in the last two years and for current 10 months these are around £[X] million. The average revenue from PL parts accounted for around [X]% of 3G's UK sales, followed by OES parts (around [X]%) and PL-Other (around [X]%). PL parts average gross margin before rebates is the highest at around [X]%, followed by PL-Other at around [X]% and OES parts at around [X]% in the last three years.

### 3. The Merger, merger rationale and relevant merger situation

#### The Merger

3.1 On 3 February 2020, TVS EDL acquired the entire issued share capital of 3G for a total consideration of £[X] million.

3.2 TVS EDL told us that [X], and [X]. It also told us that the [X] was in line with TVS EDL's strategic focus on [X]. Further it told us that [X], the Merged Entity's product development team would continue to explore and invest in product development in order to: (i) expand the range of products; and (ii) potentially expand into new CVT parts markets outside the UK.

3.3 TVS EDL also told us that initially the UC and 3G brands [REDACTED].

### ***Events leading up to the Merger***

3.4 TVS EDL told us that it moved to its new warehouse in Barnsley in 2016. It also attempted to expand into sectors other than the UK IAM for CVT parts but some of these failed to materialise in terms of growth and profitability.<sup>32</sup> Therefore, in 2019 TVS EDL decided to focus on its core business which is the wholesale supply of CVT parts to the IAM in the UK.

3.5 TVS EDL told the CMA in phase 1 that over the last few years there had been market consolidation in the UK IAM, where wholesalers such as LKQ, BPW and AAG had acquired companies at the motor factor level in the UK, which had placed increased competitive pressure on the UC business across key product markets. It told the CMA that these companies were at a significant competitive advantage, as the acquired motor factors tended to purchase parts from their own integrated wholesale partners and not from other wholesalers such as the Parties. It also told the CMA that if such vertical integration continued, there was a risk that its business would reduce in scale. In order to 'remain as a viable competitor in the UK to the vertically integrated commercial vehicle parts suppliers', TVS EDL submitted at phase 1 that acquiring 3G was the only credible option available. It told the CMA that an acquisition would [REDACTED].

3.6 TVS EDL told the CMA that [REDACTED].

3.7 TVS EDL also told the CMA that [REDACTED].

3.8 3G told us that [REDACTED].

### **Rationale for the Merger**

#### ***The Parties' submissions***

3.9 The Parties submitted that the Merger would allow the Merged Entity:<sup>33</sup>

- (a) To continue to offer competitively priced parts to its motor factor customers. The Parties told us that the Merger would allow UC to further broaden the range of commercial vehicle parts it stocked and reduce its

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<sup>32</sup> Examples of TVS EDL expansion: Getoffroad.com (e-commerce retailer of 4x4 car parts); TVS EAG (wholesale distributor of passenger vehicle aftermarket parts); TVS EPD (sourcing office to offer sourcing solutions from countries such as China, India, Turkey etc; and Scuderia Car Parts (e-commerce retailer of high-performance car parts). TVS EDL has now disposed/closed Getoffroad.com, TVS EAG and TVS EPD.

<sup>33</sup> Parties' response to Phase 1 Decision, paragraph 2.2 and 2.3.

costs (eg by securing volume-based cost reductions from its suppliers) to compete with the prices offered by the vertically integrated operators (see paragraph 3.5).

- (b) To expand internationally. The Parties told us that 3G already supplied various customers based outside the UK and UC could exploit those relationships to increase the Merged Entity's export activities.
- (c) To achieve synergies. 3G told us that in light of the influx of wholesalers into the UK market, it needed a higher level of investment and the synergies of bringing its business together with UC warehouse would allow it to remain competitive against an 'over-supplied marketplace'. TVS EDL also told us that the Merger would deliver purchasing synergies which would reduce the Merged Entity's cost of sales; we address these in more detail below and in Appendix B.

### ***The Parties' internal documents***

#### ***TVS EDL and UC***

3.10 Our analysis of internal documents provided by TVS EDL and UC shows that there were additional reasons for the Merger beyond those provided by the Parties in their submissions. In particular, in our view, the following internal documents provide evidence of additional reasons of UC's rationale and strategic drivers for the Merger:

- (a) 'Project Alpha Business Case' (dated 12 April 2019);
- (b) 'Project Alpha Strategic Review' (dated 26 April 2019);
- (c) 'Revitalisation of UK Strategy' presentation (dated 17 May 2019);
- (d) 'TASL UK & European Strategy' presentation (dated 9 July 2019);
- (e) 'UC Slides Presented to the Board of Directors' (dated early July 2019), and
- (f) 'TVS EDL February 2020 Board Update' (dated 12 February 2020).

#### ***The April 2019 documents***

3.11 The 'Project Alpha Business Case' and 'Project Alpha Strategic Review' were produced by [REDACTED] ([REDACTED] Director) on 12 April 2019 and 26 April 2019 respectively. 'Project Alpha' is the project name for the acquisition of 3G. These documents state that UC's aims for the Merger included:

- (a) strengthening UC's 'dominant' market position in the UK IAM. The 'Project Alpha Business Case' notes that the Merger would increase UC's share of wholesale distribution with revenues of over £[X] million in the UK IAM from [X]% to [X]% and would 'limit customers' choice of supplier'. The 'Project Alpha Strategic Review' notes that the Merger creates an opportunity for market consolidation and that the additional simultaneous acquisition of Truck and Trailer Components' (TTC)<sup>34</sup> stock would 'further strengthen UC's control of the UK IAM' and place the company in a position of 'critical importance' to its customer base. The same document also notes that 'the combination of increased market share [after these acquisitions], along with incremental pricing benefits of the business would reduce the risk of an adverse market reaction whilst further strengthening UC's position as market leader in the UK IAM';
- (b) removing the constraint imposed by 3G. The 'Project Alpha Business Case' estimates that [X]% of 3G customer accounts also have accounts with UC. It also states that UC's potential for current price increases is 'bound' by 3G's potential cheaper prices. This document goes on to state 'should the acquisition of Alpha occur, the lack of an alternative cheaper product will not be available to the customer, and UC's pricing policy would not be bound in the same way, resulting in margin gain'. The same document notes that the Merger would result in [X] significant margin gains, as there will not be a 'viable alternative supplier';
- (c) strengthening UC's negotiating position vis-à-vis customers and suppliers. The 'Project Alpha Business Case' states that the Merger would limit customer choice due to 'the lack of availability of the majority of UC parts on a next day service from any other supplier'. This document also states that the Merger would lead to a 'significant reduction of wholesale supply options for UK IAM factor businesses, leading to a short/medium-term increase in revenue to UC'. The same document also notes that UC would [X];and
- (d) raising barriers to entry and expansion. The 'Project Alpha Business Case' states that the Merger would result in significant costs for a viable competitor to establish its presence in the UK. The 'Project Alpha Strategic Review' states that the Merger would 'restrict the establishment of alternative supply options for an extended period of time (4 to 5 years)'.

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<sup>34</sup> TTC, a division of Unipart Group (**Unipart**), withdrew from the UK in June 2020.



3.12 TVS EDL submitted that the CMA should not place significant weight on the April 2019 documents referred to above:

- (a) In relation to the 'Project Alpha Business Case' TVS EDL initially submitted that:
- (i) The document was an exploratory board paper outlining the potential impact of acquiring 3G;
  - (ii) [X] (the author) was relatively new to TVS EDL/UC and had limited knowledge of the market and how it operated;
  - (iii) [X] erroneously focused only on those wholesalers that he believed stocked a comprehensive range of PL spare parts for commercial vehicles and which he believed had revenues of more than £1 million from sales of such parts in the UK; and
  - (iv) With time and better understanding of the market, it became clear to [X] that the market for CVT parts in the UK was made up of a much broader range of competing wholesalers;
- (b) In relation to the 'Project Alpha Strategic Review' TVS EDL similarly submitted that: 'This document was prepared by the author ([X]) at a time when he had not long been with the Universal Components business, and when his knowledge and understanding of the market for spare parts for commercial vehicles and trailers in the UK was relatively limited'.

3.13 In respect of the documents prepared by [X] in April 2019, as discussed above, TVS EDL also stated that these documents reflected his understanding of the market at the time they were produced and that, whilst in theory any inaccuracies in such board documentation could have been subsequently corrected or revised, any such updating or correction process did not happen with respect to these documents. TVS EDL stated that 'the later documents reflect [X] improved and increased knowledge and understanding of this market'.

3.14 While noting the submissions from TVS EDL in paragraphs 3.12 and 3.13, we also note the following:

- (a) The explanations provided by the TVS EDL in respect of the two documents dated April 2019 and produced by [X] do not dispute all of the points referenced in paragraph 3.11 in terms of the rationale for the Merger. They do not undermine the key propositions that the acquisition of 3G would lead to the removal of UC's key competitor, further

strengthening UC's existing strong position in the UK IAM and reducing price competition and choice for customers.

(b) [X] was appointed on [X] as [X] Director to [X]. He was therefore a senior level manager and had been at UC for approximately [X] at the time of drafting the documents 'Project Alpha Business Case' and the 'Project Alpha Strategic Review', both of which were considered by the board of UC. [X] would have been expected to have gathered experience of the industry during the [X] whilst he was working at UC. However, notwithstanding this point, to the extent that he was less experienced than his colleagues, in our view it is unlikely that a senior manager would have prepared detailed, factually-based and industry-specific commentary to inform strategic decision making by the Board of Directors without input and involvement from other (more experienced) colleagues. In this respect, we note that TVS EDL submitted that the 'UC Slides Presented [X] were prepared 'with input from the Commercial Director ([X], UC) where required,' who has 22 years industry experience.

(c) TVS EDL has also not provided any evidence that the contents of the 'Project Alpha Business Case' and the 'Project Alpha Strategic Review' were corrected or disputed at any point, including by the Board of Directors following presentation of this material. On the contrary, as discussed below, similar material in terms of the rationale for the Merger as set out in paragraph 3.9 was produced across multiple later documents from May 2019, including the board update document of February 2020.

3.15 TVS EDL submitted the following explanations in response to the CMA's observations set out in paragraph 3.14, in relation to how TVS ASPL perceives board documents and why, in TVS EDL's view, weight should not be assigned to the evidence contained in them:

(a) 'The independent aftermarket as a whole is operated on a relatively informal basis and Universal Components has never had reason to explain and set out an analysis of their competitors.'

(b) 'Universal Components was aware [...] that it did not have a sophisticated view of the market and it took steps to develop its understanding. Since Universal Components invested time and effort to properly consider the competitive landscape, its view of the market has corresponded to that which it holds today and that which it has presented to the CMA'.

- (c) 'After approving the transaction in principle, TVS ASPL did not request or consider the need for any information on the competitive landscape (only being interested in transaction progress and timing). This explains why no board documents that corrected Universal Components' understanding of the market were ever created [...]'.
- (d) 'TVS ASPL is a family business and that board discussions including TVS EDL are not particularly formal in nature. Board documents are used by TVS ASPL as a prompt for discussion. There is not a significant emphasis on the contents of documents and documents are not commonly reviewed by the TVS EDL directors in advance of meetings. Furthermore, the attendees would see no need to amend a document referred to in a meeting if it was not intended for external consumption. At the time these documents were prepared and discussed, the board members had no idea that the documents would ever be considered so closely or used as to evidence of their conclusive view of the competitive landscape'.
- (e) 'The board attendees would not think to amend a document that had been referred to during a meeting, on the assumption that it would never need to be referred to again.'
- (f) 'Universal Components does not foresee a large price increase on the parts it offers for sale going forward, since it would lose a considerable volume of sales were it to apply such a price increase.'

*The documents from May to July 2019*

3.16 From May to July 2019, further internal documents were produced that provide further evidence on UC's rationale for the Merger. Contrary to the TVS EDL submissions, these documents contain similar material to the April 2019 documents and do not depart or detract from the aims set out in those documents. We also note that TVS EDL told us that it had not prepared any additional strategy documentation related to the acquisition of 3G for the TVS ASPL and TVS EDL board after July 2019.

- (a) The 'Revitalisation of UK Strategy' presentation (dated 17 May 2019) referred to 'establish market dominance'; distinguished between wholesalers with revenues above and below £[~~30~~] million; referred to the benefits of market consolidation being 'reduced risk of competitor's entry into the UK market'; referred to viable competition to UC earlier than 4 to 5 years as 'highly unlikely'; and noted that the 'lack of fragmentation of the UK market would make foreign entry into the UK CV IAM highly unlikely'. This presentation described the acquisition of 3G as placing

UC 'in a position of strength within the UK IAM', as it would be 'the largest stockist of [commercial vehicle] aftermarket spare parts in the United Kingdom'. This presentation also noted the opportunity for price rises (resulting in gross margin gains), [REDACTED].

- (b) The 'TASL UK & European Strategy' presentation (dated 9 July 2019) referred to 'wide product-range wholesalers'; described 3G as a 'key competitor' and UC's 'closest competitor'; and stated that the transaction aimed to 'further strengthen the position of TVS ASL in the UK Commercial Independent Aftermarket as market leader [with an] ... enhanced position of strength'.<sup>35</sup> This document also referred to one of TVS ASL's 'Strategic Vision & Actions' as being 'Consolidation of the UK private label market' through the acquisition of 3G. We note that these slides were presented to the TVS ASPL board [REDACTED] on 17 July 2019.
- (c) The 'UC Slides Presented to the Board of Directors' (dated early July 2019)<sup>36</sup> referred to 'wide product range wholesalers'; and described the Merger's objective as being:

'to acquire our closest competitor, 3G. [REDACTED], and to further strengthen the position of TVS ASL in the UK Commercial Independent Aftermarket as market leader. This enhanced position of strength [REDACTED].

This document also noted the 'current lack of strong competition to UC [and 3G] is expected to be time-limited' and stated that 'the acquisition of [3G] would restrict the establishment of alternative supply options for an extended period of time (four to five years)'.<sup>37</sup>

3.17 We note the following explanations provided in relation to the TVS EDL's view about the market after discussions with TVS ASPL Board:

- (a) [REDACTED].
- (b) [REDACTED] said that the initial documents are an unfair reflection from where TVS EDL is now, over a year later. For example, the Long Range Plan produced by TVS EDL in May 2019 (the **24 May 2019 model**, which we

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<sup>35</sup> See [REDACTED] for a repetition of the statements that, post-Merger, UC would be the largest stockist of aftermarket spare parts in the UK, that the Merger would place UC in a position of strength within the UK IAM and that the lack of fragmentation of the UK market would make foreign entry into the UK IAM highly unlikely. See also [REDACTED] for a repetition of the statement that the positioning of a viable competitor to UC earlier than the estimated four to five year time frame was 'highly unlikely'.

<sup>36</sup> The Parties stated in the Merger Notice that this document was presented to the board in 'early July'. The CMA notes that the document properties of the version of the document provided to the CMA show that the document was created and last modified [REDACTED] on 30 August 2019.

<sup>37</sup> See also [REDACTED] for a repetition of the 4 to 5 years' time frame regarding the establishment of a viable competitor.

describe in more detail in Appendix B) [REDACTED] that TVS EDL intends to use to remain competitive in the marketplace. [REDACTED] said that these later documents are a better reflection of where TVS EDL ended up and TVS EDL and UC's position in the market rather than the documents produced in early 2019.

3G

- 3.18 3G told us that there were no 3G internal documents referring to the Merger decision or negotiations.<sup>38</sup>

*Our assessment of the weight to be placed on the Parties' internal documents*

- 3.19 We have carefully considered the TVS EDL submissions as regards the internal documents, but we are not persuaded by them for the reasons explained below.
- 3.20 In our view, it is not credible that the board of TVS ASPL and TVS EDL would not have relied on the content of a series of different (but consistent)<sup>39</sup> documents put before them between 12 April 2019 and 9 July 2019 intended to inform their decision-making in relation to the commercial rationale for the acquisition of 3G. Equally, the documentary evidence cannot be dismissed on the TVS EDL claim that TVS ASPL is a 'family business' that runs its operations on an informal basis: it is in fact, a multi-national entity with a global revenue of £[REDACTED], and the documents in question were both formal and detailed in nature. We also note that TVS EDL [REDACTED].
- 3.21 We accept that, at the time these internal documents were produced and submitted to the TVS ASPL board, TVS may not have expected them to be the subject of external scrutiny; in our view this enhances (rather than diminishes) the evidential value of these documents in terms of assessing TVS EDL's views concerning the Merger rationale.
- 3.22 TVS EDL submitted that its view of the competitive landscape of the market has evolved and changed since it received legal advice. However, we consider that TVS EDL's increased understanding of the merger control process does not undermine the evidential value of internal documentation created prior to the receipt of such advice (and may, by contrast, reduce the evidential value of documentation created after such advice). We note that UC has been active in the market for many years and its views about the

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<sup>38</sup> 3G told us that 'as discussions regarding the Transaction were considered to be highly confidential, these were not documented, but the 3G board members had a full and frank discussion'.

<sup>39</sup> See paragraphs 3.10 and 3.16.

dynamics of the market, its key competitors and the impact of the Merger, as reflected in the internal documents referenced in paragraphs 3.9 and 3.11, are therefore highly informative. We consider that there is no basis for UC's understanding of the fundamental commercial dynamics of the market to have changed so materially after receiving advice from external legal counsel, as recently as July 2019.

- 3.23 We were also told that [REDACTED]. The evidence shows that it is likely that the board presentations were prepared with inputs from TVS EDL senior management, who collectively have substantial industry experience on the contents of the documents produced from April 2019 to July 2019. We consider it extremely unlikely that the position presented in these papers did not represent the views of the senior management who had collectively prepared and reviewed the papers.
- 3.24 It was further put to us that [REDACTED] 'opinion of the market' evolved from April 2019 to November 2019 because of the discussion with the TVS ASPL board. We do not agree that [REDACTED] opinion about fundamental matters about the operation of the industry would have evolved materially from April 2019 to November 2019: [REDACTED] has 16 years industry experience, is [REDACTED]. If [REDACTED] opinion on such matters had evolved materially, we would have expected to see some contemporaneous evidence of this change in position, such as new documents for the TVS ASPL board setting out the revised rationale for the transaction.
- 3.25 In view of the above, we have placed material weight on the Parties' internal documents and consider that the views set out in them are likely to accurately reflect the Parties' rationale for the Merger.

### ***Financial modelling and synergy projections of the Merger***

- 3.26 We provide details of TVS EDL's synergy projections for the Merger and our assessment in Appendix B.
- 3.27 In summary:
- (a) TVS EDL's assessment of the forecast combined revenues of the Merged Entity has been consistent throughout the various documents we have seen – a flat combined revenue of £43 million for the period FY21 to FY24. TVS EDL has told us that this combined revenue figure reflects [REDACTED] and that this loss of revenue was implicitly included in the 24 May 2019 model. However, we have not been provided with contemporaneous evidence that sets this out explicitly, and other contemporaneous

evidence (such as the 12 February 2020 board update) implies that this loss of revenue was not included in the combined revenue estimates.

- (b) In our view, the purpose of the modelling that TVS EDL performed was primarily to assess the synergies available through the Merger. As with the forecast revenues, TVS EDL internal documents on possible synergies did not change between the first document in April 2019 and a board update document in February 2020. These documents have consistently described the synergies as including gross margin increases and reduced rebates.

- 3.28 Therefore, our view is that the Parties expected synergies in the form of higher margins and reduced rebates as well as cost reductions.

### ***Our view on the rationale for the Merger***

- 3.29 Having carefully considered the evidence and the Parties' submissions, our view is that it is appropriate to place material weight on the Parties' contemporaneous internal documents when assessing the rationale for the Merger, and our competitive assessment of the Merger in Chapter 7. These documents state that the Parties' rationale and aims for the Merger included to acquire its closest competitor, the strengthening of UC's market position and the removal of the constraint posed on UC by 3G, which would enable price rises and reductions in customer rebates and raise barriers to entry and expansion.

## **Relevant Merger Situation**

- 3.30 This section addresses the first of the two statutory questions which we are required to answer under [section 35](#) of the Act and pursuant to our Terms of Reference, namely: whether a relevant merger situation (**RMS**) has been created.
- 3.31 The concept of an RMS has two principal elements: two or more enterprises have ceased to be distinct enterprises within the statutory period for reference;<sup>40</sup> and the turnover test and/or the share of supply test is/are satisfied.<sup>41</sup>

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<sup>40</sup> The Act, [Sections 23](#) and [24](#).

<sup>41</sup> The Act, [Section 23](#).

## ***Enterprises ceasing to be distinct***

### ***Enterprises***

- 3.32 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’.<sup>42</sup> A ‘business’ is defined as including ‘a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge’.<sup>43</sup>
- 3.33 Each of TVS EDL and 3G is active in the wholesale supply of a wide range of CVT parts in the IAM in the UK. TVS EDL had a worldwide turnover of approximately £45.8 million in the financial year 2018/19, approximately £[X] million of which was generated in the UK. 3G had a worldwide turnover of approximately £14.4 million in the financial year 2018/19, approximately £10.8 million of which was generated in the UK.<sup>44</sup>
- 3.34 We are therefore satisfied that each of TVS EDL and 3G is a ‘business’ within the meaning of the Act and that, accordingly, the activities of each of TVS EDL and 3G are an ‘enterprise’ for the purposes of the Act.

### ***Ceasing to be distinct***

- 3.35 The Act provides that two enterprises cease to be distinct if they are brought under common ownership or common control.<sup>45</sup>
- 3.36 The Merger concerns the acquisition by TVS EDL of all of the shares in 3G and therefore full legal control of it. Accordingly, we are satisfied that as a result of the Merger the enterprises of TVS EDL and 3G have ceased to be distinct.

### ***Within the applicable statutory period***

- 3.37 The Merger completed on 3 February 2020 and the CMA was informed about it on 6 February 2020. The four-month deadline for a reference decision, under [section 24](#) of the Act, would have expired on 6 June 2020. On 2 June 2020, the CMA decided that the Merger gave rise to a realistic prospect of a substantial lessening of competition and extended the four-month time limit until 9 June 2020 to allow TVS EDL the opportunity to offer

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<sup>42</sup> The Act, [Section 129\(1\)](#).

<sup>43</sup> The Act, [Sections 129\(1\) and \(3\)](#).

<sup>44</sup> See paragraphs 2.34 and 2.45.

<sup>45</sup> The Act, [Section 26](#).



undertakings in lieu of a reference (**UILs**).<sup>46</sup> On 8 June 2020, TVS EDL informed the CMA that it would not offer such UILs. Accordingly, pursuant to [section 25\(5\)\(b\)](#) of the Act, the extension to the four-month time limit would have expired on 22 June 2020. The CMA made the reference for a phase 2 investigation on 12 June 2020.<sup>47</sup>

- 3.38 We are therefore satisfied that the enterprises of TVS EDL and 3G ceased to be distinct within the applicable statutory period for reference.

### ***The turnover and share of supply test***

- 3.39 The second element of the RMS test seeks to establish sufficient connection with the UK on a turnover and/or share of supply basis.

#### *The turnover test*

- 3.40 The turnover test is met where the value of the turnover in the UK of the enterprise being taken over exceeds £70 million. As the turnover of 3G in the UK in its last financial year prior to the merger agreement was approximately £10.8 million, the turnover test is therefore not met.

#### *The share of supply test*

- 3.41 The share of supply test is met where, as a result of enterprises ceasing to be distinct, the following condition prevails or prevails to a greater extent: at least one quarter of goods or services of any description which are supplied in the UK, or in a substantial part of the UK, are supplied either by or to one and the same person.<sup>48</sup> The requirement that the condition prevails or prevails to a greater extent means that the merger must result in the creation or increase in a share of supply of goods or services of a particular description and the resulting share must be 25% or more.
- 3.42 The concept of goods or services of ‘any description’ is very broad. The CMA is required by the Act to measure shares of supply by reference to such criterion (whether value, cost, price, quantity, capacity, number of

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<sup>46</sup> The Act, [Sections 25\(4\)](#) and [73A\(1\)](#).

<sup>47</sup> The Act, [Sections 22\(1\)](#) and [34ZA\(2\)](#).

<sup>48</sup> The Act, [Section 23\(2\)](#), (3) and (4). The reference to supply ‘by’ or ‘to’ one and the same person catches aggregations with regard to the supply or purchase of goods or services. The test is also met where at least one quarter of the goods or services is supplied by the persons by whom the enterprises concerned are carried on, or are supplied to or for those persons.

workers employed or some other criterion, of whatever nature), or such combination of criteria, as the CMA considers appropriate.<sup>49</sup>

- 3.43 The share of supply test is a flexible test that gives the CMA discretion to consider forms of supply separately or in combination (whether as a whole or taken in groups) and to consider whether transactions differ materially as to their nature, their parties, their terms or the surrounding circumstances.<sup>50</sup> In each case the criteria are to be such as the CMA considers appropriate in the circumstances of the case.<sup>51</sup>
- 3.44 The description of goods or services identified for the purposes of the jurisdictional test does not have to correspond with the economic market definition adopted for the purposes of determining the SLC question. The CMA will have regard to any reasonable description of a set of goods or services to determine whether the share of supply test is met. Importantly however, the parties must together supply or acquire the same category of goods or services.<sup>52</sup>
- 3.45 We have considered various shares, based on information from different sources, which result in the Parties having a combined share in 2019 of between [30 - 40]% (with an increment of [10 - 20]%) and [60 - 70]% (with an increment of [20 - 30]%) in each case by value of sales in the wide range wholesale supply of CVT parts in the IAM in the UK.<sup>53</sup>
- 3.46 In view of the above, it is our view that the share of supply test in [section 23](#) of the Act is met, and therefore the second limb of the RMS test is also met.

### ***Conclusion on jurisdiction***

- 3.47 In view of the above, we have concluded that the Merger has resulted in the creation of an RMS.

## **4. The counterfactual**

### **Introduction**

- 4.1 The assessment as to whether the creation of an RMS has resulted, or may be expected to result, in an SLC involves a comparison of the prospects for

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<sup>49</sup> The Act, [Section 23\(5\)](#).

<sup>50</sup> The Act, [Section 23\(6\) and \(7\)](#).

<sup>51</sup> The Act, [Section 23\(8\)](#).

<sup>52</sup> [Mergers: Guidance on the CMA's jurisdiction and procedure, January 2014, \(CMA2\)](#), paragraph 4.56.

<sup>53</sup> See Tables 7.1 and 7.2 for the various market shares.

competition with the merger against the competitive situation that would exist in the absence of the merger. This situation, referred to as the 'counterfactual', is the benchmark against which the CMA assesses the competitive effects of a merger.<sup>54</sup>

- 4.2 As part of its counterfactual assessment in a phase 2 investigation, the CMA may examine several likely situations, one of which may be the continuation of the pre-merger situation. The CMA will select the most likely of these, based on the facts of the case, as the counterfactual.<sup>55</sup> It will incorporate into the counterfactual only those aspects of situations that appear likely, based on the facts available to it and the extent of its ability to foresee future developments.<sup>56</sup> The foreseeable period can sometimes be relatively short.<sup>57</sup> However, even if an event or its consequences are not sufficiently certain to include in the counterfactual, they may be considered in the context of the competitive assessment.<sup>58</sup>
- 4.3 The CMA seeks to avoid importing spurious claims to accurate prediction or foresight in the assessment of the appropriate counterfactual. Given that the counterfactual incorporates only those elements of situations that are foreseeable, it will not in general be necessary to make finely balanced judgements about what is and what is not included in the counterfactual.<sup>59</sup> Where it considers that the choice between two or more counterfactual situations will make a material difference to the competitive assessment, the CMA will carry out additional detailed investigation before reaching a conclusion on the appropriate counterfactual.<sup>60</sup>
- 4.4 Depending on the evidence, the choice of the counterfactual may be a situation either more or less competitive than the competitive conditions prevailing at the time the merger occurred. Therefore, the selection of the appropriate counterfactual may increase or reduce the prospects of an SLC finding.<sup>61</sup>
- 4.5 The most notable examples of situations in which the CMA may use a counterfactual different from the prevailing conditions of competition are: an

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<sup>54</sup> [Merger Assessment Guidelines](#), paragraph 4.3.1.

<sup>55</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6.

<sup>56</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6.

<sup>57</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

<sup>58</sup> [Merger Assessment Guidelines](#), paragraph 4.3.2.

<sup>59</sup> [Merger Assessment Guidelines](#), paragraphs 4.3.2 and 4.3.6.

<sup>60</sup> [Merger Assessment Guidelines](#), paragraph 4.3.6.

<sup>61</sup> [Merger Assessment Guidelines](#), paragraph 4.3.4.

exiting firm (through failure or otherwise); the loss of a potential entrant; and where there are competing bids and parallel transactions.<sup>62</sup>

## **Parties' views on the appropriate counterfactual**

- 4.6 The Parties submitted that the appropriate counterfactual should be a continuation of the current conditions of competition, taking into consideration the recent developments involving overseas-based wholesalers opening warehouses in the UK to serve UK-based customers.
- 4.7 The Parties also submitted that the CMA should include the exit of TTC, a wide range wholesaler of CVT parts, in the counterfactual and should take account of the reasons for TTC's exit in its analysis.<sup>63</sup> In addition, the Parties submitted that it is possible that a competitor to the Parties would acquire TTC's stock, with that supplier's competitive position being strengthened accordingly. The Parties stated that they expected multiple companies to be interested in purchasing TTC's stock.
- 4.8 The Parties did not make any further submissions on the counterfactual in their response to our provisional findings.

## **Our assessment of the appropriate counterfactual**

- 4.9 In this section we address the Parties' submissions in turn. We have not received any other submissions on whether to adopt a counterfactual different from the competitive conditions prevailing at the time the Merger occurred.

### ***Recent development of entry of non-UK based suppliers***

- 4.10 The Parties submitted that the appropriate counterfactual should be a continuation of the current conditions of competition, taking into consideration the recent developments involving overseas-based suppliers operating in the UK. However, in our view, these have occurred independently of the Merger, and so would be included in the competitive conditions prevailing at the time the Merger occurred (the pre-Merger conditions of competition). We have therefore considered the extent of recent entry of non-UK based suppliers in the UK, and how this might have affected or might affect competition, in our competitive assessment. We

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<sup>62</sup> [Merger Assessment Guidelines](#), paragraph 4.3.7.

<sup>63</sup> We note that the Parties' submission on the counterfactual was made before TTC's exit was confirmed.

have also considered future entry and/or expansion of non-UK based suppliers as a countervailing factor in Chapter 8.

### ***Exit of TTC***

- 4.11 We received evidence that TTC had exited the UK market. This decision was taken by TTC's owner, Unipart Group Limited (**Unipart**), [REDACTED], and it communicated this decision to its customers and suppliers on 28 May 2020. Unipart also told us that [REDACTED].TVS EDL told us that it had expressed an intention in purchasing TTC's stock of CVT parts, but that it had since decided not to purchase the stock.
- 4.12 The sale of TTC's stock did not include the transfer of TTC's brand, [REDACTED].<sup>64</sup> [REDACTED].
- 4.13 Our view is therefore that since TTC has exited the market it should no longer be considered to be a competitive constraint on the Parties. While some of TTC's stock has been sold to third parties or transferred internally within Unipart, our view is that the extent of this stock is such that its transfer to third parties has not materially changed the competitive landscape so as to affect the counterfactual.

### **Conclusion on the counterfactual**

- 4.14 In view of the above, we have therefore adopted as the appropriate counterfactual the pre-Merger conditions of competition, as they would likely have evolved absent the Merger. We also find that TTC is no longer a competitive constraint on the Parties due to its exit from the UK market. We have taken this and other relevant market developments into account in the competitive assessment.

## **5. Customer behaviour**

### **Introduction**

- 5.1 In this chapter, we outline the typical behaviour of motor factors in purchasing CVT parts in the IAM.
- 5.2 We first provide an overview of how motor factors choose between suppliers and make purchases. We then examine the reasons why motor factors

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<sup>64</sup> [REDACTED].

choose different wholesalers and motor factors' purchasing patterns in more detail.<sup>65</sup> Finally, we focus on a particular aspect of purchasing behaviour, that is the role of wholesalers that offer a wide range of parts as a 'one stop shop' for some motor factor purchases.<sup>66</sup>

## **Overview of how motor factors purchase CVT parts**

- 5.3 As set out in Chapter 2, motor factors purchase CVT parts (PL and OES) from wholesalers, and then sell them to local garages, fleet operators and local service centres, typically within a 15 to 20 mile radius. We examine below the reasons why motor factors choose different wholesalers. We consider whether some attributes are typically seen as very important and whether the importance of other attributes varies depending on the nature of the purchase and/or supplier.
- 5.4 Motor factors typically multi-source their purchases of CVT parts across wholesalers, generally including wholesalers such as the Parties who offer a wide range of parts across all or most product categories, and also wholesalers who offer a narrow range or specialise in particular categories. Some also purchase directly from OES part manufacturers. We examine below the purchasing patterns of customers. Among other matters, we consider the number of wholesalers used by motor factors and the frequency with which they purchase from different types of wholesalers.
- 5.5 From the evidence on choice of wholesaler and purchasing patterns set out below, we identify that for some of their purchases customers typically value being able to buy a range of parts from a single wholesaler, often described by customers (and wholesalers)<sup>67</sup> as using a 'one stop shop'. While these purchases are not straightforward to characterise and quantify, our view is that the evidence on choice of wholesaler and purchasing patterns provides the basis for identifying a need for wholesalers that stock a wide range of CVT parts for some purchases.

## **Reasons for choosing a wholesaler**

- 5.6 This section sets out the evidence provided by customers on their reasons for choosing wholesalers. It looks at their views of the importance of different

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<sup>65</sup> See paragraphs 2.15 to 2.25 for descriptions of motor factors and the different types of suppliers of CVT parts to the aftermarket.

<sup>66</sup> By 'one stop shop' we do not mean that the motor factor only purchases from one wholesaler, but rather that a single wholesaler is used for a proportion of purchases that could in principle be made from a group of other wholesalers. This point is discussed further below (see paragraph 5.40).

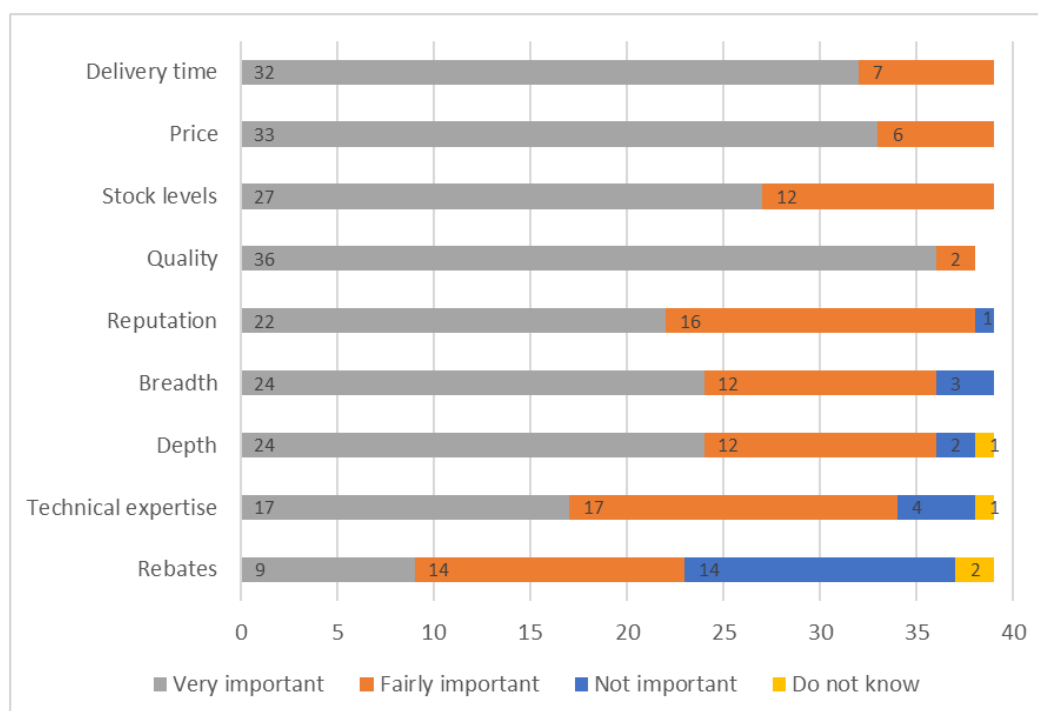
<sup>67</sup> Comments from wholesalers on this issue are addressed further in paragraph 6.20.

choice attributes and their comments on the reasons for choosing different suppliers from the third party questionnaires sent to customers, and more detailed evidence gathered in our calls with customers.<sup>68</sup>

## Choice attributes

5.7 We asked customers to rate the importance of different possible choice attributes for suppliers.<sup>69</sup> Figure 5.1 below shows the number of customers who rated the different choice attributes as ‘very important’, ‘fairly important’ or ‘not important’. Quality, price and delivery time are the three attributes most frequently rated as ‘very important’ by customers. Breadth of range was rated as very important by 24 customers out of 39 who answered this question. These ratings do not appear to vary much by customer size.<sup>70</sup>

**Figure 5.1: Number of customers rating various supplier choice attributes as ‘very important’, ‘fairly important’ or ‘not important’**



Source: Responses to third party questionnaire

<sup>68</sup> Further information on the third party questionnaires sent to customers is set out in Appendix C.

<sup>69</sup> Third party questionnaire to customers: The question was worded as ‘How important are the following criteria when you choose which supplier to buy commercial vehicle and trailer parts from?’, and the different attributes were labelled as: price, breadth of range of products offered (ie the number of product categories), depth of range of products offered (ie the number of products in each product category), stock levels (ie the number of each SKU typically held by the wholesaler), quality of products offered, technical expertise, delivery time, rebates, and reputation. For each choice attribute, customers also had the option of stating whether this was more relevant for some product categories than others.

<sup>70</sup> More specifically, these results do not change if we consider only the large customers (27 of the 41 customers who responded to the third party questionnaire); the four most important characteristics of a supplier for these customers are price, quality, stock availability and delivery time.

- 5.8 In their response to our working papers, the Parties submitted that this evidence shows that the breadth of range offered by suppliers is at best of secondary importance to customers. We disagree with this interpretation of the evidence. Although other characteristics were rated slightly higher, in our view the fact that 'breadth' was rated as fairly important or very important by 36 of the 39 customers that responded to our questionnaire means that it should not be treated as only of secondary importance. Second, while 14 of the 39 customers who answered this question rated price as more important than breadth, 22 rated price and breadth at the same level and 3 rated breadth as more important than price. Third, this question was asked with respect to customers' purchases in general so reflects average ratings across products – breadth may be more important for some types of purchases than for others.
- 5.9 In response to our provisional findings, the Parties submitted that it is the ranking rather than the rating of attributes that is relevant, that we had only compared ratings of breadth of range to those for price rather than to other attributes that also scored highly, and that we had not provided any evidence to support our view that breadth of range may be more important for some types of purchases than for others.<sup>71</sup>
- 5.10 With respect to rating versus ranking of attributes, our view is that the choice attributes are not mutually exclusive - customers may rate several attributes as very important, and this is precisely what the evidence shows. With respect to comparisons, similar results are obtained when these are made in relation to delivery, stock levels and quality.<sup>72</sup> In relation to range being more important for some types of purchases than for others, we discuss this further below.<sup>73</sup>

### ***Reasons why customers use their main suppliers***

- 5.11 We asked customers to state the reasons why they use the different suppliers listed as their largest 10 suppliers. We did not prompt answers to these questions so that respondents could describe motives in their own terms. To analyse these responses, we categorised reasons by reference to

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<sup>71</sup> [Parties' response to the Provisional Findings](#), paragraph 4.3.

<sup>72</sup> In the case of quality: 14 customers rated quality as more important than breadth of range, 22 rated quality and breadth of range at the same level and 2 rated breadth of range as more important than quality. In the case of delivery time: 12 customers rated delivery time as more important than breadth of range, 25 rated delivery time and breadth of range at the same level and 2 rated breadth of range as more important than delivery time. In the case of stock levels: 9 customers rated stock levels as more important than breadth of range, 25 rated stock levels and breadth of range at the same level and 5 rated breadth of range as more important than stock levels.

<sup>73</sup> In particular, we discuss circumstances where customers value depth of range and expert advice (paragraph 6.28) or quality (paragraph 6.58) rather than range.



the terms used by respondents (eg 'quality', 'price', 'availability') and counted the number of mentions of each term for each supplier.<sup>74</sup> Table 5.1 below summarises the results of this analysis for the eight suppliers who received the largest number of mentions. The figures in this table refer to the number of customers that mentioned each reason for each supplier.

**Table 5.1: Reasons given by customers for using different suppliers**

<i>Reasons given by customers for using different suppliers</i>	<i>Supplier</i>							
	<i>UC</i>	<i>3G</i>	<i>CV Logix</i>	<i>Automint</i>	<i>EBS</i>	<i>Knorr</i>	<i>BPW</i>	<i>TTC</i>
Price	17	15	6	3	3	1	0	2
Range	7	5	2	4	2	1	1	1
Availability	17	14	6	2	2	0	0	3
Quality	3	3	0	4	0	2	3	1
Service	4	4	0	1	1	0	1	0
Delivery	4	3	0	0	0	0	0	3
Rebates	1	2	0	0	0	0	0	0
Customer requirement	0	0	0	0	0	2	3	0
Convenience	2	2	0	0	0	0	0	0
Relationship	2	2	0	0	0	0	0	0
Safety	0	0	0	0	0	1	0	0
Affiliated to customer	0	0	1	0	0	0	0	0
OEM products	0	0	0	0	0	3	2	0
Buying group deal	2	1	2	1	1	2	0	0
Total number of reasons given	59	51	17	15	9	12	10	10
Total number of mentions	26	21	9	8	6	6	5	5

Source: Responses to third party questionnaire

5.12 We do not place significant weight on this evidence as some suppliers attracted relatively few mentions in total<sup>75</sup> and the interpretation of some of the terms is unclear.<sup>76</sup> However, it shows that price and availability are the key reasons why customers purchase from the Parties. It is also illustrative

<sup>74</sup> In a small number of cases, we categorized comments provided by customers based on them expressing similar concepts. For example, we recategorized 'Part of our buying group' as 'Buying group deal', 'Captive items' as 'Customer requirement', and 'OE manufacturer of safety critical braking systems' as both 'Safety' and 'OEM products'. There were 11 comments or mentions that were difficult to interpret and that we therefore excluded from this analysis. These were: 'only 3 in Country' (3 mentions), 'on rare occasions we purchase generic products that some PSV applications' (1 mention), 'Main air brake supplier' (1 mention), 'small basket of goods' (3 mentions), 'now closed' (1 mention), 'Electrical' (1 mention), 'Pad material' (1 mention).

<sup>75</sup> UC and 3G received a relatively high number of mentions – more than 20. However, other suppliers received fewer than 10 mentions.

<sup>76</sup> For example, it is not clear whether 'range' refers to the breadth of range of products offered (ie the number of product categories), or to the depth of range of products offered (ie the number of products in each product category).

of the fact that customers choose different suppliers for different reasons, which is consistent with other evidence provided to us during the inquiry.

### ***Evidence from our calls with customers***

- 5.13 We had detailed follow-up calls with a number of customers and one of the topics explored was the reasons why they use different wholesalers. As noted above, price, quality and delivery speed are key factors.
- 5.14 In relation to price, Fleet Factors explained that price is important to Fleet Factors and that it is always monitoring prices. It added that its customers 'force it down this route' by having a focus on prices themselves. Likewise, Allspares told us that the choice of supplier comes down to the price and quality. Picksons told us that in choosing a supplier it would consider a range of factors, such as price, quality of product and terms of delivery.
- 5.15 We were also told that quality is particularly important in relation to safety critical parts. For example, Allspares explained that customers may demand an OES product for braking and steering – these are safety critical products and a quality product is required. Linings and Hoses told us that, for safety critical parts, the quality of parts fitted was important.
- 5.16 On delivery, customers told us that using wholesalers that can provide the products they need quickly allows them to hold less stock which would otherwise be costly. For example, EMS-FP&S explained that, while it would prefer to source from PE Automotive (PE) (as EMS-FP&S and PE are both owned by BPW Ltd and are part of the BPW Aftermarket Group), that supplier has a two-week lead time and a garage is not going to wait that long, so EMS-FP&S would either have to stock the item, which would be a 'big cost', or source it from UC for delivery the next day.
- 5.17 For some purchases, advice and expertise on the part of the wholesaler is valued. Some customers noted the advantages of using narrow-range or niche wholesalers in this regard. For example, [X] said that 'niche wholesalers have more knowledge' and Truck & Trailer Equipment stated that being a specialist in one area is an advantage as the wholesaler can offer the complete range of that product and the expertise to advise on fitments etc. Other respondents highlighted the disadvantage of wide range wholesalers in this regard. EMS-FP&S said that companies that offer a whole range of products often cannot provide the back-up or expertise of companies that specialise in certain areas.
- 5.18 We discussed with customers the reasons why they use the Parties and other wholesalers that stock a wide range of products. Most of the customers

we spoke to explained that while in theory they could source the parts from a multiplicity of other suppliers, there are a number of cost and convenience factors that would make it less efficient or impractical to do so.

- 5.19 First, by using wholesalers that stock a wide range of parts, customers can group their purchases so as to meet the free delivery threshold and avoid carriage charges. EMS-FP&S explained that if it orders ten products from ten different suppliers, then it has to process ten invoices and possibly incur ten carriage charges whereas it can make one order from UC and incur no carriage charge. Similarly, Fleet Factors explained that while it was possible to source about 80% of the parts bought from UC, 3G or TTC from other suppliers, instead of a single order this would involve purchasing from 20 to 30 different companies. It is likely that many of these individual orders would incur delivery charges (which could be £20 to £40 per order). Fleet Factors further explained that, for some parts, it would not be viable to use suppliers other than UC or 3G as the carriage charges would be more than the cost of the part itself. Likewise, Complete Commercial Components (CCC) said that if it bought different parts from several different companies, CCC may incur a £15 to £20 carriage charge from each company whereas if it spends £150 or more on a particular day then 3G will deliver overnight without charge.
- 5.20 Second, customers seek to simplify and improve the efficiency of their purchasing process by avoiding multiple invoices and delivery arrangements with different suppliers:
- (a) CCC said that UC and 3G are essentially 'one stop shops'. If CCC had to go to individual companies to purchase equivalent parts, a lot of invoices would need to be generated and there would be more carriage charges.
  - (b) Picksons told us that, when doing a next day order, it will generally order from UC or 3G. It said that it is easy to buy from UC and 3G because of their range (which other suppliers do not have) which means it can buy several products on one order. Picksons further noted that it would be time consuming and a logistical challenge to replace UC and 3G with other suppliers and administrative costs would be higher.
  - (c) EMS-FP&S said that the total cost savings build up for EMS-FP&S by making one order and the convenience factor is a big benefit for using UC and 3G. EMS-FP&S could source 80 to 85% of the products direct from other suppliers, but this would involve placing multiple orders.
  - (d) Linings and Hoses said that it is easier and more efficient to deal with fewer suppliers. Linings and Hoses noted that it has accounts with 450

suppliers and explained that if it ordered from each of these suppliers each month, it would be administratively difficult.

- 5.21 Third, concentrating their purchases on a small set of suppliers allows customers to benefit from rebates if they meet the rebate targets.<sup>77</sup> EMS-FP&S told us that rebates are one of the important reasons why it purchases from UC and 3G. It explained that it could source a product from a different supplier but taking the spend away from the UC account would make the rebate levels more difficult to achieve. EMS-FP&S further explained that although it may be able to source a part at £16 from an OES parts manufacturer rather than at £17 from UC, ordering from UC would contribute to a bigger rebate at the end of the year. Linings and Hoses said that UC will offer a target which encourages firms to purchase more from it to try to hit these targets and gain the additional rebate. Allspares said that UC and 3G are the ‘go-to companies’ for rebates. It also told us that suppliers who do not offer rebates tend not to make its main supplier list.
- 5.22 These comments show that customers, in addition to valuing factors such as quality, price and delivery time, see benefits from using wholesalers that have a wide range and allow them to buy a variety of parts in a single basket because this allows them to reduce delivery charges and administrative costs and gain additional rebates.
- 5.23 The Parties have submitted that this evidence is unreliable because it is qualitative in nature and two of the customers interviewed are affiliated with wholesalers. During the main party hearing, UC submitted that these particular firms might have ‘axes to grind’ if they believed that the Merged Entity would be more competitive.
- 5.24 We disagree with the Parties’ submissions on this evidence for the following reasons:
- (a) First, in merger investigations, the CMA obtains a range of evidence, including qualitative and quantitative evidence, from different sources and then assesses the relative weight of evidence or factors arising from the evidence.<sup>78</sup> The CMA has a margin of appreciation, or degree of evaluative discretion, in weighing up the totality of the evidence to reach its conclusions.<sup>79</sup> In the present case, we note that although the statements provided by customers are qualitative in nature, they are consistent with a range of evidence, including quantitative evidence,

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<sup>77</sup> See paragraph 2.20.

<sup>78</sup> [Tobii v Competition and Markets Authority](#) [2020] CAT 1 at [354] and [365].

<sup>79</sup> [Tobii v Competition and Markets Authority](#) [2020] CAT 1 at [302], [365] and [367].

which we have considered in the round as set out more fully in the competitive assessment chapter. Therefore, we disagree with the Parties' submission that the qualitative nature of the evidence means that it is unreliable.

- (b) Second, we have taken account of the fact that some customers are affiliated with wholesalers and hence of the possible incentives for them to respond in a particular way. However, we note that we interviewed customers of the Parties in their capacity as customers, and our questions focused on their purchasing behaviour and preferences as customers (that is, matters in the ordinary course of their business). We weighed up the responses provided with the responses of customers who are not affiliated with wholesalers and have reached our conclusions on the totality of the evidence taken in the round.

- 5.25 In response to our provisional findings, the Parties submitted that the comment from Fleet Factors (see paragraph 5.19) relates to what they have described as 'ad hoc purchases'.<sup>80</sup> We discuss this concept in paragraphs 7.56 to 7.58 and in Appendix F,<sup>81</sup> but note here that Fleet Factors was describing the inconvenience it would face in splitting all of its purchases from the Parties between other suppliers. It made no reference to the Parties being convenient for a small subset of its purchases from them.
- 5.26 The Parties also submitted that for 'customers that are already making 'primary' orders from a narrow range or niche wholesaler, there is no saving [from using the Parties] as they will already be paying for delivery for those orders (or have already met the free delivery threshold). Therefore, wide range wholesalers will only have a delivery advantage if there is no existing order from a narrow range wholesaler and the requirement is urgent, but these are precisely the set of ad hoc orders which the Parties have examined'.<sup>82</sup>
- 5.27 We recognise that a proportion of demand for CVT parts is met by narrow range wholesalers. However, the Parties have not provided evidence for their proposition that the large majority of the demand which they serve could, from a customer perspective, equally well be met by narrow range wholesalers. Whether the customer sees a narrow range wholesaler as a close substitute to the Parties for a particular purchase will depend on factors such as the urgency of the requirement, and whether the customer is

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<sup>80</sup> [Parties' response to Provisional Findings](#), paragraph 4.14.

<sup>81</sup> As set out in Appendix F, paragraphs 10 to 24, we do not consider that the Parties have demonstrated that there is a distinct category of 'ad hoc' purchases which are an insignificant part of competition in the market.

<sup>82</sup> [Parties' response to Provisional Findings](#), paragraph 4.23.

already ordering other parts from a narrow range wholesaler whose range covers the part in question.

- 5.28 In our view, a substantial number of motor factors have a strong preference for the Parties, for the parts or types of parts they currently order from them.<sup>83</sup> This is supported by the discussions we have had with customers about their purchasing preferences and behaviour, and also by the fact that most respondents to our questionnaire expressed concerns that the Merger would reduce competition – which is not consistent with a view that they could easily switch to other suppliers.
- 5.29 The Parties further submitted that rebates are not a reason for customers to favour wide range wholesalers. They said that since customers buy some parts from narrow range wholesalers, ‘it is clear that customers consider that any small benefit from a possible rebate is outweighed by what they see as the benefit of buying from a narrow range wholesaler’.<sup>84</sup> They also noted that some narrow range wholesalers also offer rebates, and said that questionnaire responses indicated rebates were not an important determining factor in choosing UC.
- 5.30 We recognise that many customers prefer to purchase some parts from narrow range wholesalers. This may be due to a range of factors including price, quality and expertise. However, in our calls with customers, several customers (EMS-FP&S, Linings and Hoses, and Allspares) referred to the Parties’ rebates as being important in their choice of supplier. As set out in Figure 5.1, most respondents to our questionnaire saw rebates as at least fairly important, and some saw them as very important, when choosing between suppliers. We remain of the view that rebates are a factor in customer preferences for wide range wholesalers over other suppliers.

## **Purchasing patterns of customers**

- 5.31 This section considers the purchasing patterns of the customers, namely motor factors. It looks at evidence from the third party questionnaires sent to customers on how their purchases are spread across suppliers and the frequency with which they purchase from different suppliers.<sup>85</sup>

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<sup>83</sup> The Parties submitted that we do not explain ‘why customers would favour a wide range wholesaler where they are already buying from a narrow range wholesaler’. ([Parties’ response to the Provisional Findings](#), paragraph 4.22.) We have not stated or implied that this is the case – it follows that where customers are buying from a narrow range wholesaler, that is their preference for those purchases.

<sup>84</sup> [Parties’ response to Provisional Findings](#), paragraph 4.25.

<sup>85</sup> See Appendix C for more detail about the third party questionnaires sent to customers.

### ***Sourcing from multiple suppliers***

- 5.32 As noted above, motor factors typically multi-source their purchases of CVT parts across wholesalers, generally including wholesalers such as the Parties who offer a wide range of parts across all or most product categories, and also wholesalers who offer a narrow range or specialise in particular categories. Some motor factors also purchase direct from OES part manufacturers.
- 5.33 Evidence from responses to our customer questionnaires is consistent with the Parties' customers purchasing from a range of wholesalers. We asked customers to list their 10 most important suppliers and indicate the proportion of purchases made from each supplier. Of the 39 customers who answered this question, 24 listed the maximum number of 10 suppliers, with the suppliers listed accounting for 76% of their total purchases on average.
- 5.34 The Parties' customers also vary significantly in the extent to which they concentrate their purchases with the Parties. Of the 31 motor factors who provided details of their purchases from the Parties in the last six months in response to our questionnaire:
- (a) One purchased the large majority (over three quarters) of its requirement for CVT parts from the Parties and three purchased around a half;
  - (b) A further 12 purchased between 20% and 40% of their requirement from the Parties;
  - (c) The remaining 15 purchased less than 20% of their requirement from the Parties.
- 5.35 Consistent with this, the Parties submitted an analysis of their transaction data showing that a significant proportion of their sales goes to customers who only purchase a small proportion of the product groups from either party.<sup>86</sup> The Parties submitted, and we agree, that as their customers are motor factors who must stock and supply the full range of CVT parts, this implies that customers are purchasing many parts from other suppliers.

### ***Frequency of orders from different suppliers***

- 5.36 Motor factors have a limited capacity to hold stocks, relative to the tens of thousands of CVT parts available. As a result, they typically make multiple purchases from wholesalers every week.

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<sup>86</sup> Appendix E addresses the Parties' submissions on multi-sourcing in more detail.

5.37 We asked customers to report the frequency with which they order from different suppliers. Table 5.2 below shows that customers typically place more frequent orders (that is, four or more times a week) with the Parties than they do with the majority of other suppliers.<sup>87</sup> These variations in the frequency of purchase across different suppliers are consistent with customers using suppliers for different reasons.

**Table 5.2: Frequency of orders from different suppliers**

<i>Company</i>	<i>Less than once a week</i>	<i>Frequency used 1-3 times a week</i>	<i>4 or more times a week</i>	<i>Number of Mentions Total</i>
CV Logix	0	1	7	8
Knorr	0	1	7	8
UC	3	4	26	33
3G	0	6	22	28
BPW	0	2	4	6
TTC	1	2	3	6
Imexpart	0	3	3	6
TMD Friction	0	3	2	5
Automint	1	6	4	11
EBS	2	4	3	9
Amipart	0	4	1	5
Winnard	0	7	1	8
EXB	1	4	0	5
Granning	1	5	0	6
Others	34	72	48	155

Source: Responses to third party questionnaire.

Notes: 'Others' includes all suppliers that received four or less mentions.

5.38 In response to our provisional findings, the Parties submitted that the CMA speculates that variations in the frequency of purchases are consistent with customers using suppliers for different reasons.<sup>88</sup> The Parties instead submitted that these variations may simply reflect the fact that customers purchase more product groups from the Parties than they do from narrow range suppliers.<sup>89</sup> We provide evidence on how customers use different suppliers for different reasons that result in different frequencies of purchases in the chapter on market definition below.<sup>90</sup>

<sup>87</sup> The other suppliers from whom customers predominantly purchase very frequently are CV Logix and Knorr-Bremse, an OES part manufacturer of braking systems.

<sup>88</sup> [Parties' response to the Provisional Findings](#), paragraph 4.20.

<sup>89</sup> [Parties' response to the Provisional Findings](#), paragraph 4.19.

<sup>90</sup> For example, we discuss circumstances where variations in frequency are linked to the type of purchase customers make from different suppliers in paragraph 6.65.



## Wide range wholesalers as a ‘one stop shop’

- 5.39 In summary, customer evidence shows that customers use different types of suppliers for different reasons. While quality, price and delivery time were the criteria typically seen as most important by customers that responded to our questionnaire, customers see benefits from wholesalers with a wide range, as this allows them to save on carriage charges and transaction costs and concentrate purchases in order to benefit from rebates. Some wholesalers and customers saw wide range wholesalers as being able to provide a convenient ‘one stop shop’ for buying a range of parts whereas narrow range wholesalers were better placed to provide specialist knowledge and a deeper range of parts within the categories they supply.
- 5.40 Although the term ‘one stop shop’ has been widely used by both customers and other wholesalers, this term may be unhelpful in the context of this inquiry as it could be interpreted to mean a situation in which customers buy **all** the products they require from one supplier. However, the evidence in this case is that some customers value the option of sourcing some of their purchases from those suppliers that can offer a wide range of parts.
- 5.41 The Parties have submitted that because customers are purchasing many parts from other suppliers, this implies that they do not have a preference for ‘one stop’ shopping.<sup>91</sup> We do not agree with this reasoning. In our view the evidence presented in this chapter shows that customers use different suppliers for different reasons, and that for some purchases some customers value the option of a supplier that can offer a broad range of products in a single transaction. This implies that, for such purchases, narrow-range suppliers are not close substitutes, even though they are used commonly by customers for other types of purchases.
- 5.42 In response to our provisional findings, the Parties submitted that ‘given the provisional finding that the Transaction should effectively be prohibited, it is surprising that the CMA does not attempt to quantify what proportion of customers actually have this alleged preference [for being able to buy a range of parts from a single wholesaler], over what proportion of their purchasing requirements they have it, or indeed what value they attribute to it.’<sup>92</sup> They add that the provisional findings ‘make no serious attempt to explain how the Parties might be able to exploit the existence of such a preference’.

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<sup>91</sup> The Parties reiterated this point in their [Parties’ response to the Provisional Findings](#), paragraphs 3.1 and 3.2.

<sup>92</sup> [Parties’ response to the Provisional Findings](#), paragraph 3.4.

- 5.43 As set out above, many respondents to our questionnaire rated breadth of range of products as important and in our conversations with customers they identified several advantages to dealing with wide range wholesalers such as the Parties. We address the point on how the Parties could exploit a customer preference for range to increase prices post-Merger in Appendix E, paragraphs 2 to 12. We address the Parties' submissions that any such preference is limited to a small proportion of purchasing requirements in Appendix F, paragraphs 10 to 24.

## **6. Market definition**

- 6.1 Market definition provides a framework for assessing the competitive effects of a merger.<sup>93</sup> It is a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger in any mechanistic way. The CMA may take into account constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.<sup>94</sup> We take these factors into account in our competitive assessment.
- 6.2 In this chapter, we consider first the relevant product market. We outline the Parties' views on the relevant market, then consider evidence concerning the extent to which the market should be segmented according to product range. We then consider whether the relevant market should be extended to include supply by OES parts manufacturers to motor factors and 'all makes' suppliers before concluding on the relevant product market. We then consider the relevant geographic market before concluding on the relevant market for our assessment of the Merger.

### **Product market**

- 6.3 The Parties overlap in the wholesale supply of CVT parts in the IAM in the UK. The Parties both supply motor factors which, in turn, supply garages, workshops, fleet operators and service centres. Given this overlap, our view is that the appropriate starting point in our analysis to determine the relevant market is the wholesale supply of CVT parts in the IAM in the UK. In this section we consider whether the relevant product market should be segmented on the basis of the product range offered by wholesalers, or should be broadened to include: (i) the supply of parts by OES parts

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<sup>93</sup> [Merger Assessment Guidelines](#), paragraph 5.2.1.

<sup>94</sup> [Merger Assessment Guidelines](#), paragraph 5.2.2.

manufacturers to motor factors; and (ii) the supply of parts by ‘all makes’ suppliers to workshops.

- 6.4 In making this assessment, we have focused on the closeness of substitution between wide range wholesalers and other wholesalers as we consider that in the present case this is the most appropriate way of capturing the most significant competitive alternatives available to the customers of the Parties and the sources of competition to the Parties that are the immediate determinants of the effects of the Merger. Constraints from outside the relevant market, as well as those within that market, are taken into account in our competitive assessment in Chapter 7.

### ***Parties’ views***

- 6.5 In their merger notice provided to the CMA in its phase 1 investigation the Parties submitted that the relevant product frame of reference is the wholesale supply of PL and OES parts for commercial vehicle and trailers to the IAM and should include different types of suppliers.<sup>95</sup> The Parties submitted that most motor factors tend to purchase CVT parts from a range of wholesalers<sup>96</sup> and that a wholesaler does not need to stock the same number of parts as the Parties in order to exert a significant competitive constraint on them.
- 6.6 In their response to the Phase 1 Decision, the Parties told us that there is little or no physical difference between a given CVT part supplied under PL, OES or OEM branding.<sup>97</sup> The Parties submitted that the wholesale supply of CVT parts takes place on a category-by-category basis<sup>98</sup> and that the Merger should be assessed for each category taking into account (at a minimum) all providers of CVT parts within that category that sell to independent motor factors.<sup>99</sup>
- 6.7 In particular, the Parties submitted that: the conditions of competition vary significantly between categories of CVT parts;<sup>100</sup> customers’ purchasing decisions are made on a category-by-category basis;<sup>101</sup> and the Parties take into account the prices charged by all significant competitors, including those

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<sup>95</sup> All makes suppliers (or wholesalers) are included in the shares of supply table submitted by the Parties in the Merger Notice.

<sup>96</sup> For example, UC’s top five customers purchased only a small proportion of their requirements from UC.

<sup>97</sup> [Parties’ response to Phase 1 Decision](#), paragraph 3.1.

<sup>98</sup> [Parties’ response to Phase 1 Decision](#), paragraph 1.2.

<sup>99</sup> [Parties’ response to Phase 1 Decision](#), paragraphs 5.1 to 5.4.

<sup>100</sup> [Parties’ response to Phase 1 Decision](#), paragraph 4.5.

<sup>101</sup> [Parties’ response to Phase 1 Decision](#), paragraph 4.8.

with a greater focus on particular component categories.<sup>102</sup> The Parties further submitted that OES parts manufacturers that supply directly to motor factors are significant competitors,<sup>103</sup> as there is little difference between OES and PL parts and OES parts manufacturers can supply motor factors on similar terms to those offered by wholesalers.<sup>104</sup>

- 6.8 The Parties also submitted that ‘all makes’ supply is a significant indirect constraint on the Parties because they supply to workshops, garages and repair centres in the IAM (ie the customers of motor factors). If a wholesaler increased its prices then this would result in an increase in motor factors’ prices. This, in turn, would result in motor factors’ downstream customers (garages, workshops and repair centres) instead buying spare parts from ‘all makes’ suppliers.
- 6.9 In addition, the Parties submitted that the AAM is a constraint because when the warranty of a vehicle expires, the vehicle operator has the option of having the vehicle served in the AAM or in the IAM. As the vehicle operator has the option to rely on the AAM, this latter segment constitutes a competitive constraint on any CVT parts wholesaler that does not have access to the AAM.<sup>105</sup>

### ***Segmentation on the basis of product range***

- 6.10 This section considers whether it is appropriate to distinguish a separate market for wide range wholesaling of CVT parts or whether all types of wholesalers, irrespective of their range, compete on a product category by product category basis.
- 6.11 In chapter 5 we considered demand side factors. We found that customers typically purchase from multiple suppliers and that they use different suppliers for different reasons. In particular, we found that for some purchases some customers value the option of a supplier that can offer a broad range of products in a single transaction because this allows them to save on carriage charges and transaction costs and concentrate purchases in order to benefit from rebates. This implies that, for such purchases, narrow range suppliers are not close substitutes, even though they are used commonly by customers for other types of purchases. This in turn implies

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<sup>102</sup> [Parties’ response to Phase 1 Decision](#), paragraph 4.10.

<sup>103</sup> [Parties’ response to Phase 1 Decision](#), paragraph 4.10.

<sup>104</sup> [Parties’ response to Phase 1 Decision](#), paragraph 3.1.

<sup>105</sup> [Parties’ response to Phase 1 Decision](#), paragraph 6.7 and 6.8. Submissions at phase 1 with regard to the AAM offer an alternative view: The Parties also submitted that the relevant product frame of reference is the wholesale supply of PL and OES parts for commercial vehicle and trailers to the IAM.

that, from a demand side perspective, there is a separate market for the wide range wholesale supply of CVT parts to motor factors.

6.12 In this section, we consider the supply side. We examine whether the lack of substitutability between wide range and narrow range wholesalers for certain purchases, as described above, is reflected in which types of companies different wholesalers see themselves as competing with. We consider evidence:<sup>106</sup>

- (a) from wholesalers on their characteristics in terms of the range of products distributed;
- (b) from different market participants – wholesalers, OES parts manufacturers, ‘all makes’ suppliers and customers – on their views on market segmentation between different types of wholesalers and their definition of a wide range wholesaler;
- (c) from UC’s strategy documents, including evidence on how UC thinks about the IAM in the UK and whether it uses terms such as ‘wide range’ wholesaler; and
- (d) from wholesalers on who their closer competitors are.

### *Characteristics of wholesalers*

6.13 We looked at whether the data on products distributed by wholesalers indicated the existence of clear boundaries segmenting them in terms of product range. We asked wholesalers to submit the product fields in which they distributed parts.<sup>107</sup> We received responses from 25 wholesalers<sup>108</sup> which are presented in Figure 6.1.

6.14 There is a clear heterogeneity across the sample in terms of product range, ranging from wholesalers such as UC, 3G, Inter Cars, CV Logix, Diesel Technic and DT Truck, which supply more than 30 (out of 45) product fields, to more specialist wholesalers like Automint, Roadlink and Dinex, which supply fewer than 10 product fields. There is a spectrum of different sizes of product range, with no clear and significant dividing lines separating wholesalers into different groups. For example, between those with the widest range and the specialist wholesalers, there are several wholesalers

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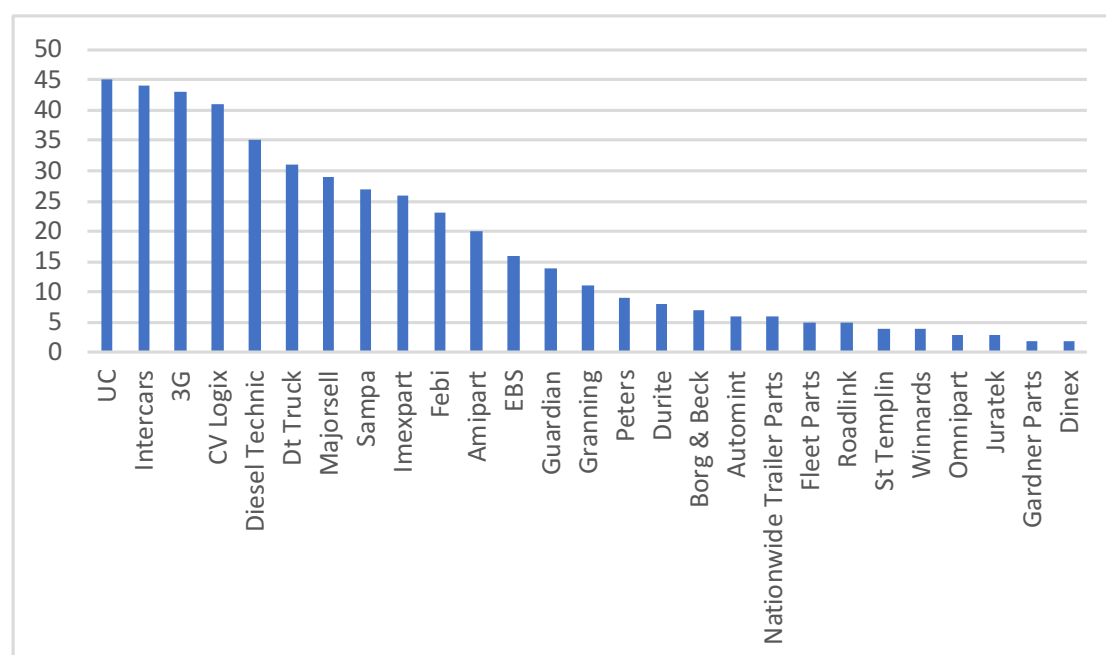
<sup>106</sup> We provide details on our evidence gathering from customers and competitors in Appendices C and D.

<sup>107</sup> The list of 45 product fields was supplied by the Parties in response to the Market Questionnaire and is set out in Table D2 in Appendix D.

<sup>108</sup> Responses to third party questionnaires: Appendix D provides detailed information on how we gathered evidence from competitors.

that supply between 20 and 30 product fields (such as Majorsell, Sampa, Imexpart, Febi and Amipart) and some that sell between 10 and 20 product fields (such as EBS, Granning and Guardian).

**Figure 6.1: Product fields distributed by wholesalers**



Source: Responses to third party questionnaires, and Parties' response to the Market Questionnaire.

## ***Views on market segmentation***

- 6.15 We asked market participants whether they viewed distinctions between wide, narrow and niche wholesaler as relevant.<sup>109</sup> We also asked them to provide a definition of what they regarded as being a 'wide range' wholesaler.<sup>110</sup>
- 6.16 A majority of wholesalers that responded to our questionnaire found terms such as 'wide', 'narrow' or 'niche' range wholesaler to be relevant and

<sup>109</sup> Third party questionnaire: The question for suppliers was worded as follows: 'We understand that some market participants make a distinction between wide range, narrow range, specialist or niche and 'all makes' wholesalers of truck and trailer parts – do you consider that these distinctions are relevant? Please describe how you categorise the suppliers of truck and trailer parts in the market in the ordinary course of your business and provide examples of documents that illustrate your categorization. Please explain how the categorisation that you use compares to the categorisation listed above and describe your positioning within these categories'. The question for customers was worded as follows: 'We understand that some market participants make a distinction between wide range, narrow range and niche wholesalers. Do you consider these distinctions to be relevant? If so, provide a definition of these different types of suppliers and explain how you use them?' Note that we were not provided with any documents in response to the questionnaire.

<sup>110</sup> Third party questionnaire: The question for suppliers was worded as follows: 'How would you define a wide range wholesaler? Is there a minimum number of product groups a wholesale supplier has to supply to be considered 'wide range'? Are there any other important features besides the product range? Explain your response'.

identified a definition of a wide range wholesaler. In most cases, they considered that this type of wholesaler has to supply a complete or wide range of products and in some cases they explicitly linked this concept to that of a 'one stop shop'.

- 6.17 Of the 11 wholesalers who responded to this question, nine<sup>111</sup> considered the distinction between 'wide' and 'narrow' range wholesalers to be relevant. For example, Automint responded that wide range suppliers supply across all UC's product fields, narrow range supply over a few of them and specialists or niche suppliers may supply in only one or two; Winnard responded that there is a distinction between wide range distributors, such as UC or 3G, who would aim to stock 80% of a wide product range and others, such as Winnard, EBS or Juratek who specialise in specific areas; and Amipart told us that it uses these definitions when considering competitors. Two of these nine wholesalers submitted that they recognised the categorisation, although typically they use a different terminology - EBS said it would use the terms 'generalist' and 'specialist' instead and Borg & Beck described suppliers as 'vertical' (one product group supplied) or 'horizontal' (a range of product groups).
- 6.18 Two wholesalers (CV Logix and Diesel Technic) said that they did not consider the distinctions to be relevant. Diesel Technic said that when looking at its competitors, the range that they offer is not something that it would specifically focus on. However, CV Logix noted that having a wide range was an advantage for wholesalers as it makes it easier for customers to purchase from them (avoiding carriage charges and having to deal with multiple invoices).
- 6.19 We asked wholesalers how they would define 'wide range' wholesalers and 12 wholesalers responded to this question. In most cases, they considered that this type of wholesaler has to supply a complete, 'vast' or wide range of products. For example, Granning said that wide range wholesalers 'try to have all components for truck and trailer available (either as a PL or an OES part) in a short time for delivery'; Sampa responded that a wide range wholesaler is one that covers a vast range of all the essential parts for truck and trailer which realistically 'should be more than 20,000 different articles'; and Dinex submitted that it 'categorises suppliers such as Universal and 3G as offering a wide range of vehicle parts to the market'.
- 6.20 In some cases, wholesalers explicitly linked the concept of a wide range wholesaler to a 'one stop shop'. For example, Automint responded that a

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<sup>111</sup> Automint, Dinex, Roadlink, Winnard, Borg & Beck, EBS, Amipart, Sampa, and Granning,

‘wide range wholesaler is a “one stop shop” for a motor factor. They can buy almost anything they require from one’; Winnard defined a wide range supplier using a retail analogy as ‘a supermarket where you would reasonably expect to be able to buy the majority of day to day parts needed on commercial vehicles’; and Granning said that ‘the strategy for these companies is that the customer will not be calling simply for one part, so [they] look to provide the customer with easy access to other parts and be really valuable to the customer.’

- 6.21 Only a minority of OES parts manufacturers (four<sup>112</sup> out of 17 respondents who answered this question) considered the distinction between ‘wide’ and ‘narrow’ range wholesalers to be relevant. When we asked OES parts manufacturers how they would define ‘wide range’ wholesalers, seven of the 14 suppliers that responded to this question referred explicitly to product range coverage. For example, Boydell and Jacks told us that ‘a wide range wholesaler is a wholesaler offering a one stop shop. A motor factor will approach wide range wholesalers as they supply 90% of the parts that motor factors and their customers want. They will have a wide range, but not much depth in their inventory – they are not specialists.’ Rota considered that a ‘wide range wholesaler must have the majority of the product groups which are used in commercial vehicles’ and keep ‘stock of most of them’. BPW considered a wide range wholesaler to be ‘a multi brand company with a breadth of product range across the fast moving parts’.
- 6.22 Seven respondents did not make references to range and provided definitions based on other features. For example, Fontaine considered a wide range wholesaler to be a distributor with multiple sites across the UK, stock availability and ordering in larger quantities to increase efficiency. Three suppliers thought about this term more in relation to the stock wide range wholesalers would hold of their product. For example, Tube Gear said that a wide range wholesaler ‘would have their own branding and take a wide range of our specialist product groups and reasonable stock quantity of our ranges’.
- 6.23 Roadcrew, the only ‘all makes’ supplier that responded to our phase 2 third party questionnaire,<sup>113</sup> considered that the above categorisation is ‘relevant, but not something we focus on given our current operation’. Roadcrew did

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<sup>112</sup> Business Lines, Wabco, Tube Gear and Rota.

<sup>113</sup> Two other ‘all makes’ suppliers (MAN and Scania) did not respond to the third party questionnaire as they considered that they do not compete with the Parties. TRP did not submit a response to the third party questionnaire.



not provide a definition of wide range wholesaler, but told us that smaller motor factors use UC as a 'one stop shop'.

- 6.24 We asked the Parties' customers (ie the motor factors they supply) whether they make a distinction between wide range, narrow range, and niche wholesalers, and whether this distinction is relevant to them. Of the 33 customers who responded to this question, 25 said that they did not recognise these terms or did not consider the distinction to be relevant to them.<sup>114</sup> Few of these 25 customers provided additional explanations. Picksons considered that suppliers could in theory be categorised loosely into the above categories, but it had no use or reason to do so. It told us that it buys from whatever supplier best suits the needs of its business in terms of quality, price, commercial terms, availability, etc. Bison Parts stated that it uses suppliers based on 'price, availability, brand and quality'.
- 6.25 The remaining eight respondents recognised this terminology and explained that wide and narrow range wholesalers serve different purposes. Some of these respondents emphasised the characteristics and selling points of narrow range and niche suppliers. For example, [X] said that 'niche wholesalers have more knowledge' and Truck & Trailer Equipment stated that being a specialist in one area is an advantage as the wholesaler can offer the complete range of that product and the expertise to advise on fitments etc. Similarly, other respondents highlighted the disadvantage of wide range wholesalers in this regard. EMS-FP&S said that companies that offer a whole range of products often cannot provide the back-up or expertise of companies that specialise in certain areas. Other respondents who recognised this terminology commented on some of the benefits of using wide-range wholesalers. Partservice stated 'I like to use a one stop-shop to keep carriage costs down'.
- 6.26 The Parties submitted that the evidence above shows that 'non-wide range wholesalers' are an important competitive constraint on the Parties.<sup>115</sup> However, in our view it shows that customers rely on narrow range wholesalers and wide range wholesalers for different reasons.
- 6.27 While the majority of customers stated that they did not recognise a distinction between wide and narrow range suppliers,<sup>116</sup> some of the same

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<sup>114</sup> The difference in responses between large and other customers is not substantial: 16 of 20 large customers (80%) did not think of the wide/narrow/niche split to be relevant, in comparison with 8 of 12 (67%) other customers.

<sup>115</sup> [Parties' response to the Provisional Findings](#), paragraph 5.8.

<sup>116</sup> The Parties went further in submitting that the views from customers provide strong support that a segmentation between narrow and wide suppliers is not relevant ([Parties' response to the Provisional Findings](#), paragraph 5.6).

customers explained that while, in theory, they could source the parts from a multiplicity of other suppliers, there were a number of cost and convenience factors that would make it less efficient or impractical to do so. These same customers also expressed concerns about the Merger (which are addressed in Chapter 7) on the basis that there were few or no alternatives to the Parties for purchasing a large number of different products together at one time (ie a large ‘basket’ of products).<sup>117</sup>

- 6.28 In summary, while third parties varied in the extent to which they recognised and considered relevant the categorisation of wholesalers into ‘wide range’ and ‘narrow range’ (with these terms not resonating with the majority of customers in particular), many market participants identified that these wholesalers had different strengths. Some wholesalers and customers saw wide range wholesalers as being able to provide a convenient ‘one stop shop’ for buying a range of parts, whereas narrow range wholesalers were better placed to provide specialist knowledge and a deeper range of parts within the product fields they supply.
- 6.29 These views reflect the evidence presented in Chapter 5, which shows that customers use different types of suppliers for different reasons. While quality, price and delivery time were the choice attributes typically seen as most important by customers that responded to our questionnaire, the majority of customers place considerable importance in wholesalers having a wide range, as this allows them to save on carriage charges and transaction costs and concentrate purchases in order to benefit from rebates.

#### *UC strategy documents*

- 6.30 We asked the Parties to provide internal documents where they had set out the rationale for the Merger or assessed or analysed the Merger. UC submitted 18 documents. 3G did not submit any documents.<sup>118</sup>
- 6.31 We have used UC’s strategy documents to explore how UC thinks about the market, whether and how it segments it and how it views constraints from different types of wholesalers.<sup>119</sup> In general, when UC describes the market it does it as a whole, without segmenting it on a product-by-product basis. For example, when it refers to wholesalers’ revenues, it generally refers to overall revenues in the UK IAM (Figure 6.2 provides an example). Where

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<sup>117</sup> See paragraphs 7.105 and 7.106.

<sup>118</sup> 3G told us that they did not have any documents.

<sup>119</sup> See Chapter 3 for more details of the UC strategy documents.

revenue figures are given for individual wholesalers, these are generally wide range wholesalers.

**Figure 6.2: Excerpt from UC's strategy documents on wholesalers' revenues in the UK IAM**

[REDACTED]

Source: Merger Notice.

- 6.32 We have not found any document where UC assesses the market by reference to the 23 product categories which it submitted should be considered as the 'relevant markets' for the analysis of the Merger. There is one document that provides wholesalers' revenues at 'product field' level for the following product fields: '[REDACTED]'.<sup>120</sup> The revenue figures provided in the document include wide and narrow range wholesalers, manufacturers and 'all makes' suppliers. There are also two documents where UC discusses product development in a given product category ([REDACTED]) and provides market shares that include manufacturers.
- 6.33 We also note that UC consistently uses the expressions 'wide range wholesalers' and 'niche wholesalers' and provides revenues for each of these categories in some of the documents where it refers to the UK IAM. For example, TASL UK & European Strategy July 2019 includes the graphic in Figure 6.3 below. This shows that these expressions are used in the ordinary course of their business and that UC typically segments wholesalers in the UK IAM in terms of the extent of their range rather than by product category.

**Figure 6.3: UC graphic of UK CV Independent Aftermarket**

[REDACTED]

Source: TASL UK & European Strategy, July 2019

- 6.34 In some documents UC names wholesalers that it considers wide range. In some of these documents only a few suppliers are mentioned: for example, [REDACTED] are the only competitors mentioned in the 'Main Competitor Review'. However, in a later document, UC mentions more names, including in addition [REDACTED]. As set out in Table 6.1 below, the wholesalers named as 'wide range' in all of these documents supply at least 20 of the product fields that UC supplies.

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<sup>120</sup> Parties' response to Phase 1 Decision: [REDACTED] is not included as a relevant product market in the Parties' response to the Phase 1 Decision.

**Table 6.1: Wide range wholesalers mentioned in UC's internal documents**



Source: CMA analysis of UC internal documents

6.35 In summary, UC's strategy documents make many references to wide range

wholesalers and identify certain wholesalers as being in this category.

6.36 In response to our provisional findings, the Parties submitted that some documents contain references to wide range wholesalers but they also contain references to narrow range wholesalers as effective competitors to UC in the wider market.<sup>121</sup> We acknowledge that some UC strategy documents contain mentions of competitors that are not wide range wholesalers. However, mentions of wide range wholesalers are significantly more frequent than mentions of any other type of supplier. Moreover, UC's Main Competitor Review only includes wide range wholesalers (paragraph 6.34). This is consistent with UC seeing wide range wholesalers as a more significant competitive constraint.

#### *Wholesalers' views on their closer competitors*

6.37 Next we assess evidence from wholesalers on who their closer competitors are. In this section we have distinguished between wide range and other wholesalers in order to compare their views. For the purposes of defining what we mean by a wide range wholesaler we have included all the wholesalers that UC identifies as 'wide range' in any of the strategy documents discussed above and all other wholesalers that supply at least as many product fields as each wholesaler which UC has identified as 'wide range'. This means that all wholesalers that supply at least 20 product fields have been treated as wide range wholesalers.

6.38 We asked wholesalers to rate their main competitors from 1 to 5, with a score of 5 for their closest competitors.<sup>122</sup> Seven wide range wholesalers responded to this question, mentioning on average nine competitors each. Figure 6.4 provides a distribution of scores across different suppliers' categories. Wide range wholesalers identified competitors in several categories of supplier, including other wide range wholesalers, narrow range wholesalers, and manufacturers. However, they rated other wide range

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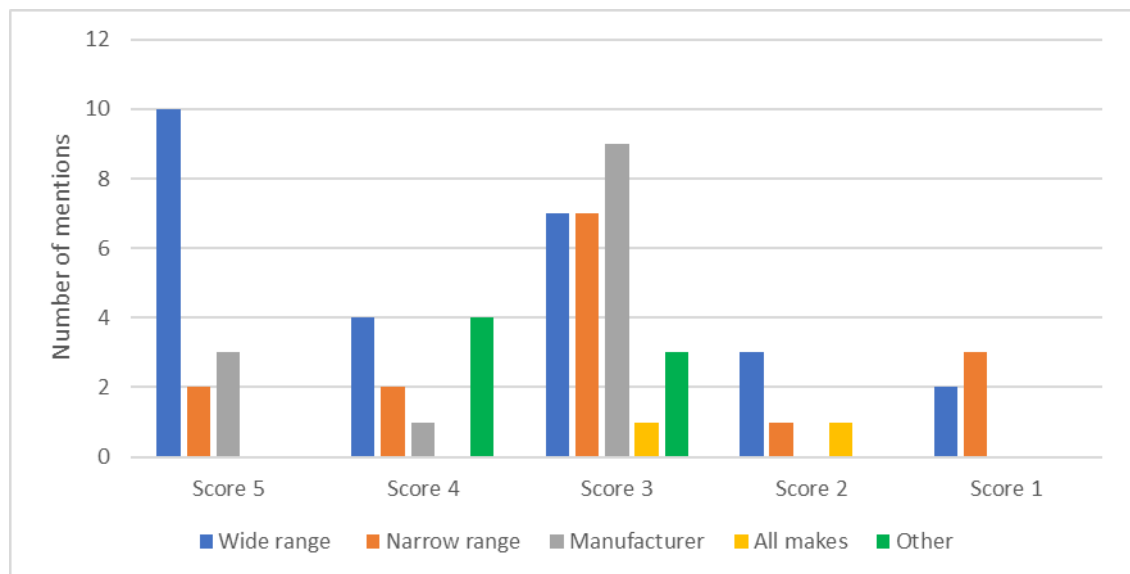
<sup>121</sup> [Parties' response to the Provisional Findings](#), paragraph 5.10.

<sup>122</sup> Third party questionnaire: The question was worded as follows: 'Rate your main competitors (on a scale of 1 to 5) based on how close the competitor is to you (with 1 being not close at all and 5 being very close) and explain the reasons why you consider them to be your main competitors'.

wholesalers as close competitors (scoring 5 or 4) much more frequently than other types of suppliers: 14 out of 26 mentions of competitors rated with 5 or 4 were wide range wholesalers, while four were narrow range wholesalers and four were manufacturers.<sup>123,124</sup>

6.39 In response to our provisional findings, the Parties submitted that 12 out of 26 competitor mentions were not wide range wholesalers, which ‘provides strong evidence that wide range wholesalers view a significant proportion of their competitors as being different types of suppliers.’<sup>125</sup> However, as we note, four of these 12 mentions correspond to motor factors mentioned by one wide range wholesaler that also supplies garages and other end customers. In addition, half of the mentions of narrow range wholesalers and manufacturers correspond to just one respondent (Sampa), that is both a manufacturer and wide range wholesaler. Moreover, some of the narrow range wholesalers and manufacturers which are mentioned both by Sampa and other respondents are specialized in air braking or suspension. This is consistent with competition being stronger in particular types of products where safety or quality are particularly important, as we explain further below.<sup>126</sup>

**Figure 6.4: Wide range wholesalers’ rating of competitors\***



Source: Responses to third party questionnaires

\*Mentions of each type of supplier in competitors scoring (5 to 1). 5 indicates very close competitor; ‘Other’ includes seven motor factors, all mentioned by Imexpart.

<sup>123</sup> ‘Manufacturer’ refers to OES parts manufacturers or other type of independent manufacturers.

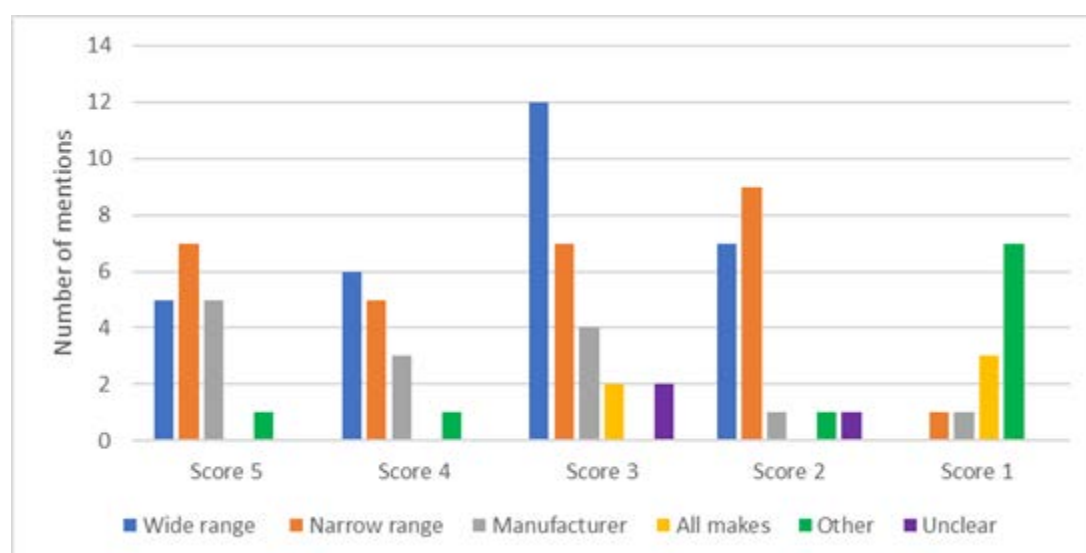
<sup>124</sup> There were four mentions of ‘other’ as close competitors (with a score of 4). These were four motor factors mentioned by Imexpart (Digraph, Dingbro, HGV Direct and Omnipart).

<sup>125</sup> Parties’ response to the Provisional Findings, paragraph 5.9.

<sup>126</sup> In particular, we discuss circumstances where customers may rely on OES parts manufacturers where the product has a safety critical element or quality is particularly relevant (paragraph 6.58).

- 6.40 Of the seven wide range wholesalers that responded, three rated UC as a very close competitor (5) and one as a close competitor (4), while the remaining three gave UC a lower score or did not mention it. Only one rated 3G as a very close competitor (5), while four others rated it as 3 or lower, and two did not mention 3G.
- 6.41 Thirteen narrow range wholesalers responded to this question, mentioning on average seven competitors each (Figure 6.5). Narrow range wholesalers<sup>127</sup> rated both wide range wholesalers and narrow range wholesalers as close competitors and, to a lesser extent, some saw manufacturers as close competitors. Among the competitors with a score of 5 or 4, 11 out of 33 mentions were wide range wholesalers, 12 out of 33 were narrow range wholesalers and eight out of 33 were manufacturers. Three mentioned both UC and 3G as close competitors (a score of 5 or 4), and a further three mentioned either UC or 3G as a close competitor.

**Figure 6.5: Narrow range wholesalers' rating of competitors\***



Source: Responses to third party questionnaires.

\*Mentions of each type of supplier in competitors scoring (5 to 1). 5 indicates very close competitor. 'Other' includes the following other suppliers: with score 5 - OE dealerships; with score 4 – Ring Automotive; with score 2 Ring Automotive, with score 1 (all mentioned by Automint) - two bus parts suppliers Davy Engineering and Partline, and the following suppliers: Mercedes, Iveco, Renault Kogel, Schmitz. 'Unclear' includes the following suppliers (product range supplied is unclear): All-Ind (3), VTP (3), Fleet Services (Lawrence) (2).

- 6.42 In summary, the evidence set out above shows that wide range wholesalers see other wide range wholesalers as a more significant competitive constraint than other types of wholesalers or suppliers. Narrow range wholesalers see both wide range and narrow range wholesalers as close competitors, and some also see manufacturers as competitors.

<sup>127</sup> Narrow here includes both narrow and niche wholesalers.

### *Conclusion on segmentation on the basis of range of parts stocked*

- 6.43 Taken in the round, we found that the evidence above supports defining a separate market for the wide range wholesale supply of CVT parts within the IAM.
- 6.44 On the demand side, we found that for some purchases some customers value the option of a supplier that can offer a broad range of products in a single transaction because this allows them to save on carriage charges and transaction costs and concentrate purchases in order to benefit from rebates. This implies that, for such purchases, narrow range suppliers are not close substitutes, even though they are used commonly by customers for other types of purchases.
- 6.45 The limited substitutability between wide and narrow range wholesalers for some purchases was also recognised by suppliers. Whilst a terminological distinction between wide range and narrow range wholesalers was not universally recognised in the market, most market participants indicated that different types of wholesalers had different strengths. In particular, some wholesalers and customers saw wide range wholesalers as being able to provide a convenient 'one stop shop' for buying a range of parts and considered that narrow range wholesalers were better placed to provide specialist knowledge and a deeper range of parts within the categories they supply. In our view, assessing competition separately within each product category, as the Parties have suggested, would not capture the importance of benefits that wide range wholesalers offer to customers. Moreover, UC strategy documents do not generally look at the market on a product by product basis and the evidence we assess in the competitive assessment is also consistent with a separate market for wide range wholesalers.
- 6.46 We recognise that there is a spectrum of wholesalers and there is not a clear-cut distinction between those that are wide range and those that are narrow range. For the purposes of defining what we mean by a 'wide range wholesaler' we have included all the wholesalers that UC identifies as 'wide range' in any strategy document and all other wholesalers that supply at least as many product fields. This means that we have treated as wide range all wholesalers that supply at least 20 product fields.<sup>128</sup> We have treated all other wholesalers, including 'specialist' or 'niche' wholesalers, as narrow range wholesalers.

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<sup>128</sup> The wholesalers that we have included as wide range wholesalers in our market definition are: UC, 3G, CV Logix, Imexpart, Diesel Technic, Amipart, DSS, DT Truck, Emmerre, Febi, Inter Cars, Majorsell and Sampa. TTC also met the criterion we are using to define a wide range wholesaler before it exited the market.

- 6.47 We also recognise that there is a degree of competitive interaction between wide range wholesalers and narrow range wholesalers. While we consider that the differentiation between them is such that it is appropriate to define a market for the wide range wholesale supply of CVT parts, narrow range wholesalers are an out-of-market constraint which we take into account in our competitive assessment.

### ***Supply by OES parts manufacturers***

- 6.48 This section considers whether the relevant product market should be extended to include the supply of parts by OES parts manufacturers to motor factors.
- 6.49 In this section, we consider the following:
- (a) Evidence on the characteristics of OES parts manufacturers;
  - (b) Evidence on the reasons for using OES parts manufacturers;
  - (c) Evidence from UC strategy documents; and
  - (d) Evidence from OES parts manufacturers on who their closer competitors are.

### ***Characteristics of OES parts manufacturers***

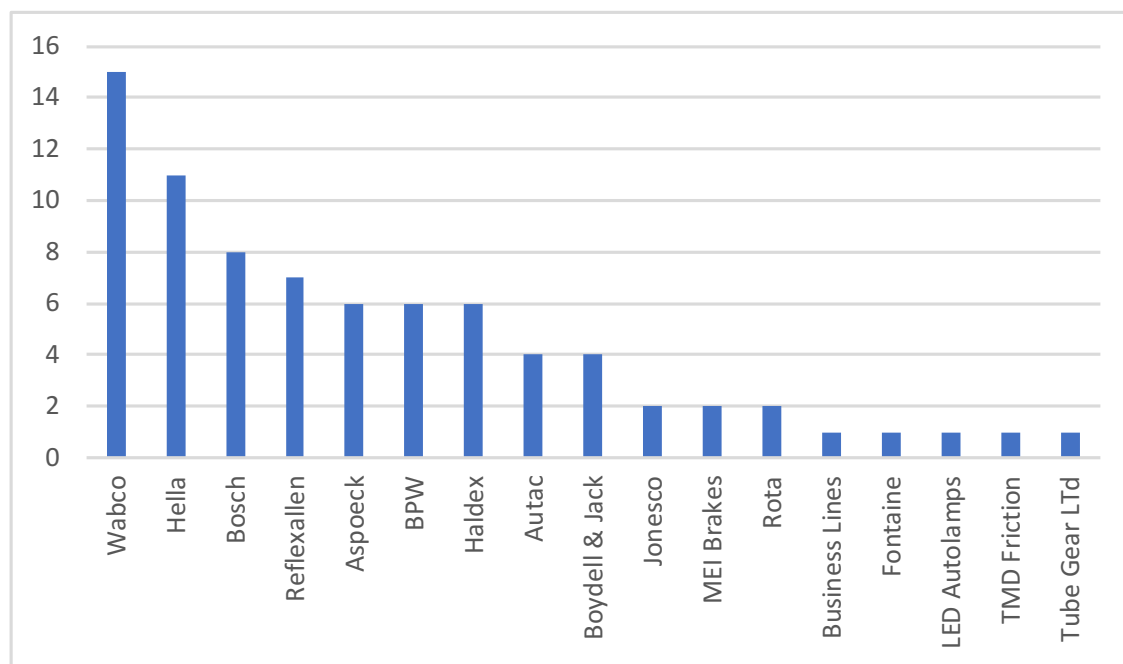
- 6.50 In this section we assess the characteristics of OES parts manufacturers. First, we assess the range of products they cover. Second, we describe their main routes to market in the UK IAM and their customer mix. Third, we explore the relevance of next day delivery orders in their sales and the conditions under which they offer free next day delivery.
- 6.51 OES parts manufacturers<sup>129</sup> tend to have a narrow range focusing on a small set of products. Approximately half of the OES parts manufacturers who responded to our third-party questionnaire sell one or two product fields (Figure 6.6). None of the OES parts manufacturers sell 20 or more product fields (ie enough to be included in our definition of a wide range wholesaler) and only two of the 17 respondents sell more than 10 product fields.

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<sup>129</sup> OES parts manufacturers focus on producing OES parts but they also produce OEM parts for original vehicle manufacturers in the AAM.



**Figure 6.6: Product fields distributed by OES parts manufacturers**



Source: Responses to third party questionnaires.

6.52 OES parts manufacturers often have two routes to the UK IAM, ie via wholesale distributors and selling directly to motor factors. The extent to which they sell directly to motor factors varies significantly (see Figure 6.7 below). For example, Fontaine and Jonesco generate approximately [%] and [%] respectively of their revenues through wholesalers whereas Hella, Bosch, and Boydell and Jack generate significantly more revenues through sales to motor factors.

**Figure 6.7: OES parts manufacturers' sales corresponding to motor factors as % of their total sales. 2019**

[%]

Source: Responses to third party questionnaires

6.53 Those OES parts manufacturers that do supply directly to motor factors tend to focus on large motor factors. Jonesco (an OES parts manufacturer) explained that its preferred business model for all products it manufactures is distribution via wholesalers, as larger customers purchase 'trailer loads' on a regular basis, as opposed to smaller independent businesses which order smaller quantities less regularly. Jonesco told us that it has tried to move away from selling to smaller businesses by using higher order value thresholds. Similarly Unipart (which was the owner of TTC) said that manufacturers want volume orders and not to deal with smaller customers and Roadcrew (an 'all makes' supplier) told us that some manufacturers, such as Knorr-Bremse, would not sell to small motor factors and instead would ask them to use an agent in their area.

6.54 We looked at whether OES parts manufacturers offered next day delivery, the share of their sales (by revenue) which they deliver next day and the conditions under which they offer this service. Most (13 out of 17) of the OES parts manufacturers that responded to our questionnaire offer next day delivery.<sup>130</sup> In the four other cases, next day delivery is restricted and not the standard service offered to customers (Jonesco and Aspoeck) or it is not provided at all (Rota, Haldex).<sup>131</sup> The proportion of OES parts manufacturers' sales which have next day delivery varies substantially (see Figure 6.8 below). In some cases, such as [X], Wabco, Jonesco or MEI Brakes, next day deliveries represent [X]% or less of their sales. In contrast, Boydell and Jacks, BPW, Business Lines and TMD Friction have shares of sales with next day delivery of [X]% or higher.

**Figure 6.8: OES manufacturers' sales parts corresponding to next day delivery**

[X]

Source: Responses to third party questionnaire

6.55 OES parts manufacturers differ in the conditions on which they offer free next day delivery (Table 6.2). Three out of 12 OES parts manufacturers who provided information on this do not provide free next day delivery. Eight of the respondents do provide this service, although the order values to qualify for free next day delivery vary from £100 to £750. The remaining respondent provides free delivery for orders over a certain limit (£300) but did not specify whether deliveries are made the next day or take longer.

**Table 6.2: OES parts manufacturers' conditions for free next day delivery**

<i>Supplier (type)</i>	<i>Conditions for free next day delivery</i>
Bosch	No free next day delivery. Overnight Vehicle Off Road (VOR) service is chargeable at £7.50 per consignment.
Fontaine	Free next day delivery for higher value orders. Carriage prices agreed on order.
Jonesco	No free next day delivery.
MEI Brakes	Free next day delivery on orders over £100
Reflexallen	Free next day delivery on orders over £750
TMD Friction	Free next day delivery on orders over £100
Tube Gear	Free next day delivery on orders over £150
Autac	Free next day delivery on orders over £300.
Aspoeck	No free next day delivery. VOR service is £25.

<sup>130</sup> OES parts manufacturers responses to third party questionnaire.

<sup>131</sup> Hella stated that it offers next day delivery, but it did not provide the conditions clearly.

Hella	Free delivery for orders over £125 – did not specify whether deliveries are made the next day or take longer.
Wabco	Free next day delivery on orders over £100
BPW	Free next day delivery on orders over £350

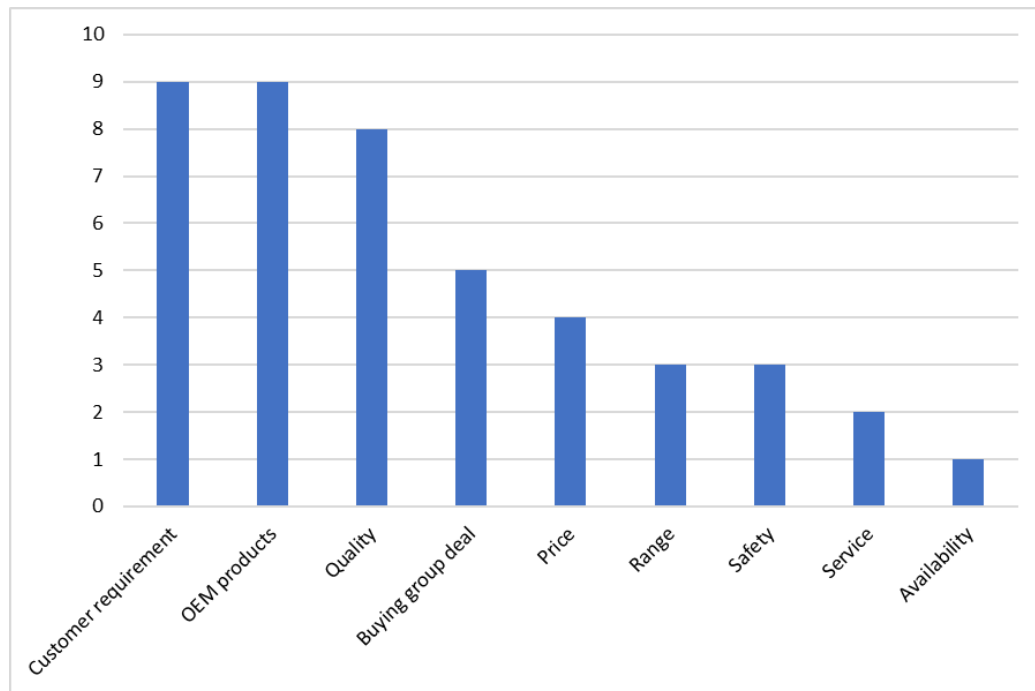
Source: Responses to third party questionnaire.

### *Reasons for using OES parts manufacturers*

6.56 In this section, we consider evidence from customers and competitors on the reasons why customers use OES parts manufacturers.

6.57 We considered the reasons customers gave for using their most important suppliers, focusing on the six OES parts manufacturers with the highest number of mentions. Figure 6.9 presents the results. As discussed in paragraph 5.12, we do not place significant weight on this evidence. We note, however, that the results for quality and availability contrast with those for wide range wholesalers. Quality is one of the reasons most frequently mentioned by customers for choosing an OES parts manufacturer (together with ‘customer requirement’ and ‘OEM products’) whereas availability is the reason which is the least frequently mentioned by customers. In contrast, availability is – together with price – the reason most frequently mentioned by customers in the cases of UC, 3G and CV Logix. This difference is consistent with the other evidence we have gathered, as discussed below.

**Figure 6.9: Reasons given by customers for using OES parts manufacturers**



Source: Responses to CMA third party questionnaire; CMA analysis aggregating evidence from the six OES parts manufacturers with the highest number of mentions; total number of reasons given (44), total number of mentions (21).

- 6.58 Follow-up calls with UC's and 3G's customers also provided evidence on why customers may rely on OES parts manufacturers for their purchases. They told us that customers may approach OES parts manufacturers for specialist parts, or where the part has a safety critical element or quality is particularly relevant for the customer. For example, Picksons told us that air braking parts are safety critical and most customers insist on or expect genuine OE parts. Linings and Hoses told us that it will not buy BPW brake drums from UC but will go directly to BPW.
- 6.59 The differences in reasons why customers purchase from OES parts manufacturers appear to result in customers purchasing less frequently from OES parts manufacturers than from suppliers such as UC and 3G. For example, Picksons told us that it orders from UC on a daily basis whereas it orders from specialist suppliers on a less frequent basis (it could be three or four times a week or once a month). Allspares told us that orders from OES parts manufacturers such as Wabco and Knorr-Bremse are made every two or three days, whereas orders from UC and 3G are made every day. GAU/UAN considered that, generally, motor factors rely on wide range suppliers such as UC and 3G for daily purchases, whereas they rely on manufacturers for less frequent stock orders.
- 6.60 Some suppliers also indicated that there are differences in how customers use OES parts manufacturers and wide range wholesalers. Customers tend to use wide range wholesalers for next day purchases and to purchase a

range of parts, avoiding carriage charges, and tend to purchase from manufacturers for large stock orders. For example, Boydell and Jacks told us that if the customer relied on a manufacturer for the sort of purchases it makes from UC and 3G this would take more time and would be more expensive due to carriage charges and that motor factors will use a manufacturer like Boydell and Jacks every month to restock products. Jonesco told us that its business model is to 'ship out' large orders, rather than provide a next day service.

### *UC strategy documents*

- 6.61 Our assessment of UC's strategy documents shows that OES parts manufacturers are much less frequently mentioned than wide range wholesalers. UC did not include OES parts manufacturers in its 'Main Competitor Review',<sup>132</sup> which only refers to 3G and other wide range wholesalers. We did, however, identify two documents that assess product development in air braking, which include mentions of OES parts manufacturers as competitors.
- 6.62 OES parts manufacturers are also less frequently mentioned in other types of internal documents (price negotiation emails, price benchmarking documents, sales meeting presentations, overstrikes reports, etc) that we assess in Chapter 7.

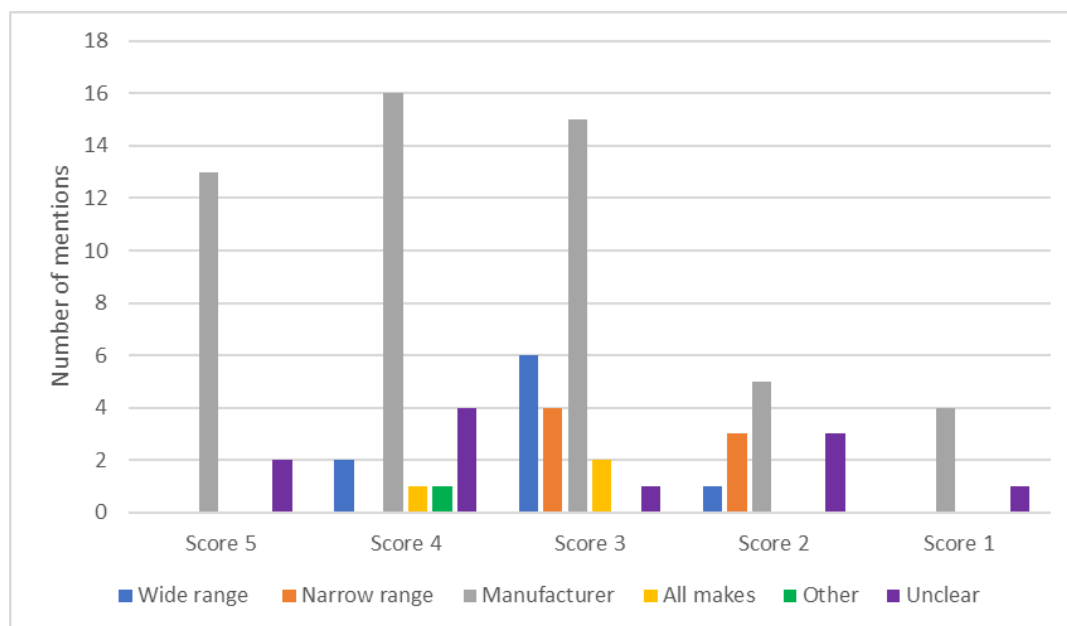
### *OES parts manufacturers' views on their closer competitors*

- 6.63 In this section, we assess evidence from OES parts manufacturers on who their closer competitors are.
- 6.64 OES parts manufacturers rated other manufacturers as close competitors (score of 5 or 4) much more frequently than other types of suppliers, as shown in Figure 6.10. OES parts manufacturers do not see wide range wholesalers as a close competitor. Only three out of 17 suppliers who responded to this question rated UC and 3G as either a 4 or a 3.

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<sup>132</sup> Project Alpha Business Case (April 2019) contains a 'Main Competitor Review' where UC only includes as competitors [X]. The review includes a brief assessment of these competitors.

**Figure 6.10: OES parts manufacturers' rating of competitors\***



Source: Responses to third party questionnaires.

\* Mentions of each type of supplier in competitors scoring (5 to 1). 5 indicates very close competitor. We have not been able to verify the type of some suppliers, which are included in the category 'unclear'. 'Other' suppliers is a single mention of 'Chinese imports'.

### *Conclusion on OES parts manufacturers*

- 6.65 On the basis of the evidence above, we have concluded that OES parts manufacturers should not be included within the relevant product market. OES parts manufacturers have a different business model from wide range wholesalers, in particular being less focused on supplying to motor factors or providing next-day delivery, and typically have a limited range, with most of them supplying only one or two product fields. Motor factors tend to use OES parts manufacturers for specialist products and in cases where the product is safety critical or where quality is particularly important. They also tend to purchase from OES parts manufacturers less frequently than they do from wide range wholesalers, and purchases are often for large stock orders for which speed is less important rather than smaller orders that are needed the next day. Wide range wholesalers do not see OES parts manufacturers as close competitors and OES parts manufacturers see other manufacturers as their closer competitors.
- 6.66 We recognise that there is a degree of competitive interaction between wide range wholesalers and OES parts manufacturers. While we consider that the differentiation between them is such that they do not fall within the same product market, OES parts manufacturers are an out-of-market constraint which we take into account in our competitive assessment.

### ***Supply by ‘all makes’ suppliers***

- 6.67 This section considers whether the relevant product market should be extended to include the supply of parts by ‘all makes’ suppliers.
- 6.68 As discussed in Chapter 2, historically the AAM operated separately from the IAM, with manufacturers servicing and repairing their own brand vehicles. However, some vehicle manufacturers such as Scania, DAF and Volvo now have an aftermarket arm of their businesses called an ‘all makes’ programme.
- 6.69 ‘All makes’ parts are not generally made available to independent wholesalers, such as the Parties, or to motor factors (ie the Parties’ customers). They are instead supplied by ‘all makes’ suppliers to dealers who then may sell directly to garages, fleet operators and service centres in the IAM.
- 6.70 The Parties submitted that ‘all makes’ suppliers constitute an indirect constraint on wholesalers in the IAM because they supply to workshops, garages and repair centres in the IAM, in competition against the motor factors who are the immediate customers of wholesalers in the IAM. The Parties submitted that if a wholesaler in the IAM, such as one of the Parties, increased its prices to motor factors then this would result in an increase in motor factors’ own prices. This, in turn, would result in motor factors’ downstream customers (garages, workshops and repair centres) instead buying spare parts from ‘all makes’ suppliers, resulting in lost sales to the IAM wholesaler.
- 6.71 The CMA Merger Assessment Guidelines state that the CMA may consider widening the relevant product market to include products that are not directly substitutable because of indirect competition.<sup>133</sup> We have therefore considered whether ‘all makes’ suppliers are a sufficient competitive constraint on the Parties to be included in the relevant market.
- 6.72 In this section, we consider the following evidence:
- (a) Characteristics of ‘all makes’ suppliers.
  - (b) Evidence from UC strategy documents.
  - (c) Views on competition between wholesalers and ‘all makes’ suppliers.

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<sup>133</sup> [Merger Assessment Guidelines](#), paragraph 5.2.20, first bullet point.

### *Characteristics of 'all makes' suppliers*

- 6.73 We received one response to our third party questionnaire from an 'all makes' supplier, Roadcrew.
- 6.74 Roadcrew's range is comparable to that of the Parties, as it supplies 45 product fields. Most of its sales (90%) are next day delivery. However, there are differences in terms of depth of range and branding between Roadcrew and the Parties. Roadcrew told us that UC's range is far greater than Roadcrew's, which has around 6,000 SKUs,<sup>134</sup> and Roadcrew's product range also targets fewer truck brands than UC's range caters for. Roadcrew is also specialized in the wholesale of OES parts, with PL only a minimal part of its sales.

### *UC strategy documents*

- 6.75 UC's 'Main Competitor Review' does not refer to 'all makes' suppliers. We have identified only a single reference to 'all makes' suppliers in its strategy documents.
- 6.76 'All makes' suppliers are also less frequently mentioned in other types of internal documents (price negotiation emails, price benchmarking documents, sales meeting presentations, overstrikes reports, etc) that we assess in Chapter 7.

### *Views on competition between wholesalers and 'all makes' suppliers*

- 6.77 We considered the views of both 'all makes' suppliers and of wholesalers as to whether they are in competition with one another.
- 6.78 Of the 'all makes' suppliers, Roadcrew told us that they do compete with wide range wholesalers and take their pricing into consideration when setting their own prices. Roadcrew considers that wide range wholesalers are not direct competitors, but they consider them an indirect competitor because they sell to motor factors who then sell into dealer networks.
- 6.79 We also asked 'all makes' suppliers to rate their main competitors from 1 to 5, 5 being the closest competitor.<sup>135</sup> Roadcrew submitted that it was focused

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<sup>134</sup> For example, Roadcrew's category for brake discs may carry 20 units, whereas UC's brake disc category may carry 200 units.

<sup>135</sup> Third party questionnaire: The question was worded as follows: 'Rate your main competitors (on a scale of 1 to 5) based on how close the competitor is to you (with 1 being not close at all and 5 being very close) and explain the reasons why you consider them to be your main competitors'.



on other 'all makes' suppliers. It rated UC with a score of 2 and did not rate 3G.

- 6.80 Scania did not submit a response to our third party questionnaire at phase 2. At phase 1, it submitted that it considered neither UC nor 3G to be its competitors in the wholesale supply of commercial vehicle and trailer parts in the UK, but rather to be its suppliers.
- 6.81 MAN did not submit a response to the questionnaire. It explained that it supplies genuine MAN parts to its 68 strong UK dealer network and does not wholesale parts to the IAM. It added 'we are not a wholesale parts competitor to Universal Components or 3G'.
- 6.82 We asked wholesalers whether 'all makes' suppliers competed with them in the supply of parts to the UK IAM and whether they took into consideration 'all makes' suppliers' prices when setting their prices.<sup>136</sup> Among those who replied to our questionnaire, 18 out of 22 wholesalers responded to this question.<sup>137</sup>
- 6.83 Six<sup>138</sup> out of seven wide range wholesalers did not consider 'all makes' suppliers as competitors or stated that any such competition was limited. The exception was Majorsell, which submitted that it competed 'a lot' with 'all makes' suppliers. [X] (see paragraph 7.167). CV Logix told us that it does not track 'all makes' suppliers' prices or take their prices into consideration.<sup>139</sup> Two suppliers (DSS and Inter Cars) submitted that, unlike 'all makes' suppliers, they do not supply garages or workshops.
- 6.84 In contrast, five<sup>140</sup> out of eleven narrow range wholesalers who responded to our third party questionnaire saw 'all makes' suppliers as a relevant competitor. However, only two respondents specifically mentioned 'all makes' suppliers when we asked them to rate their main competitors.<sup>141</sup> In particular, Winnard submitted that 'all makes' suppliers such as TRP, VRS or Roadcrew are its most significant competitors and it considers their pricing

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<sup>136</sup> Third party questionnaire: The question was worded as follows: 'We understand that garages and workshops also source products from 'all makes'. To what extent do these 'all makes' compete with you in the supply of parts to the IAM? Do you take into consideration 'all makes' prices when setting your prices?'. 'All makes' was defined as an aftermarket arm of vehicle manufacturer's business.

<sup>137</sup> Sampa did not provide information on whether 'all makes' suppliers competed with them; Febi provided an unclear response; Juratek and ST Templin completed shorter questionnaires which did not have this question.

<sup>138</sup> Diesel Technic, CV Logix, DSS, Inter Cars, Imexpart and Amipart.

<sup>139</sup> While CV Logix submitted that it tracks 'all makes' wholesalers' prices and takes 'all makes' prices into consideration, on the call, CV Logix clarified that its response referred to suppliers such as 3G and UC which supply parts for all makes of vehicles and not to OEM 'all makes' programmes (such as TRP, VRS or Roadcrew), which CV Logix does not take into consideration.

<sup>140</sup> Automint, Dinex, Guardian, Winnard, and EBS.

<sup>141</sup> Automint and EBS.

when setting Winnard's own prices. Automint stated that 'all makes' suppliers are 'a significant concern' and it sees them as a medium-term threat.' Dinex stated that 'all makes' suppliers 'are very competitive in the market and often we benchmark versus OE prices'. Dinex noted that they 'have been forced to drive down their prices to compete with all makes'.

- 6.85 The remaining six<sup>142</sup> narrow range wholesalers submitted that they did not consider 'all makes' suppliers to be a relevant competitor. For example, Durite and Nationwide submitted that they supply 'all makes' suppliers, while Fleet Parts submitted that 'all makes' suppliers are 'very little competition with regards to supplying the IAM' and would consider them more as a potential customer. Roadlink said that 'all makes are customer and competitor' but that they do 'not normally impact' when Roadlink sets prices. Granning indicated that it is 'not bothered by all makes suppliers'.
- 6.86 Wholesalers' views on who are their closer competitors – assessed in paragraphs 6.37 to 6.42 above – are that generally neither wide range nor narrow range wholesalers see 'all makes' suppliers as close competitors.

#### *Conclusion on competition from 'all makes' suppliers*

- 6.87 As set out above, we have seen little evidence from the Parties' internal documents that they see competition from 'all makes' suppliers as a constraint. Similarly, most wide range wholesalers, and around half of narrow range wholesalers, did not see themselves as competing with 'all makes' suppliers, and generally they do not rate 'all makes' suppliers as close competitors. One 'all makes' supplier saw itself as competing indirectly with wide range wholesalers. However, two other 'all makes' suppliers did not see themselves as competing with the Parties.
- 6.88 In light of the above, we conclude that 'all makes' suppliers should not be included in the relevant product market but we take into account any constraint they provide in our competitive assessment in Chapter 7.

#### ***Treatment of AAM***

- 6.89 As described in Chapter 2, prices tend to be higher in the AAM than in the IAM. OEM products are more expensive than OES products, which the Parties told us are 10 to 15% more expensive than PL products. This price differential explains why customers tend to use the IAM once the vehicle warranty expires.

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<sup>142</sup> Borg & Beck, Durite, Nationwide, Fleet Parts, Roadlink and Granning.

- 6.90 In view of the above, we do not include the AAM within the relevant product market but we consider whether the AAM is an indirect constraint in Chapter 7.

### ***Conclusion on the relevant product market***

- 6.91 In Chapter 5 we considered demand side factors. We found that customers typically purchase from multiple suppliers and that they use different suppliers for different reasons. In particular, we found that for some purchases some customers value the option of a supplier that can offer a broad range of products in a single transaction because this allows them to save on carriage charges and transaction costs and concentrate purchases in order to benefit from rebates. This implies that, for such purchases, narrow range suppliers are not close substitutes, even though they are used commonly by customers for other types of purchases. This in turn implies that there is a separate market for the wide range wholesale supply of CVT parts to motor factors.
- 6.92 On the supply side, whilst a terminological distinction between ‘wide range’ and ‘narrow range’ wholesalers was not universally recognised by those who provided evidence to us, the views of most third parties were that different types of wholesalers had different strengths. In particular, some wholesalers and customers saw wide range wholesalers as being able to provide a convenient ‘one stop shop’ for buying a range of parts and considered that narrow range wholesalers were better placed to provide specialist knowledge and a deeper range of parts within the categories they supply. We recognise that there is a spectrum of wholesalers and there is not a clear-cut distinction between those that are ‘wide range’ and other wholesalers. We have defined ‘wide range wholesalers’ as including all the wholesalers that UC identifies as ‘wide range’ in the strategy documents we have reviewed and all other wholesalers that supply at least as many product fields, that is all wholesalers that supply at least 20 product fields.<sup>143</sup>
- 6.93 We also recognise that there is a degree of competitive interaction between wide range wholesalers and narrow range wholesalers, and between wide range wholesalers and OES parts manufacturers. While our view is that the differentiation between them is such that it is appropriate to define a market for the wide range wholesale supply of CVT parts, we have taken the constraint from narrow range wholesalers and OES parts manufacturers into account in our competitive assessment.

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<sup>143</sup> See Appendix D, Table D2 for an explanation of the product fields.

- 6.94 We have similarly concluded that ‘all makes’ suppliers are not within the relevant product market but take any indirect constraint they provide into account in our competitive assessment. We also do not include the AAM in the relevant market but consider whether it is an indirect constraint in Chapter 7.
- 6.95 Taking the evidence in the round, we have concluded that the relevant product market is the wide range wholesale supply of CVT parts to motor factors in the IAM.

## Geographic market

- 6.96 The Parties submitted that the market for the supply of CVT parts to the IAM is at least UK-wide and may be wider. The Parties submitted that both Parties have activities outside the UK and that some international wholesalers, such as Inter Cars, supply parts to the UK.
- 6.97 In this phase 2 inquiry, we have not received any additional evidence on this point from the evidence submitted to the CMA during the phase 1 investigation.
- 6.98 In our view, a national market definition is appropriate for the following reasons:
- (a) UC’s internal documents generally refer to the UK IAM.
  - (b) Most wholesalers active in the UK IAM, including the Parties, are UK-based.<sup>144</sup>
  - (c) Non-UK based wholesalers – such as Inter Cars (see paragraph 7.133) – offer longer delivery times. [✂].
  - (d) Competitive conditions are similar across the UK, with the same wholesalers active across the entire UK territory. Products tend to be delivered across the UK from wholesalers’ central warehouses.<sup>145</sup>
- 6.99 Taking the evidence in the round, we have concluded that the relevant geographic market is the UK.

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<sup>144</sup> Calls with wholesalers.

<sup>145</sup> The Parties told us that they believe most wholesalers with a physical presence in the UK tend to serve customers from a single location.

## Conclusion on the relevant market

6.100 In view of the above, we have concluded that the relevant market in this case is the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK. We have taken account of other wholesalers as the closest out of market constraint in Chapter 7, where we also consider out of market constraints from manufacturers and ‘all makes’ suppliers.

## 7. Competitive assessment

7.1 In this chapter, we assess the competitive effects of the Merger as they relate to the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK. We have assessed whether removing one Party as a direct independent competitor would likely allow the Merged Entity profitably to increase prices or lower the quality of its products or customer service.<sup>146</sup> This is a horizontal unilateral effects theory of harm.

7.2 The chapter is structured as follows:

- (a) We consider the market shares of the Parties and other suppliers.
- (b) We assess the closeness of competition between the Parties.
- (c) We assess the remaining constraint on the Parties from other competitors.
- (d) Finally, we set out our assessment of the impact of the Merger on competition.

### Market shares

7.3 In this section we consider the market shares of the Parties and other suppliers in the market for the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.

#### *Parties’ submissions on market shares*

7.4 The Parties submitted that the relevant markets affected by the Merger should be assessed on a product category by product category basis,<sup>147</sup>

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<sup>146</sup> [Merger Assessment Guidelines](#), paragraphs 5.4.1, 4.1.2 and 4.2.3.

<sup>147</sup> [Parties’ response to Phase 1 Decision](#), paragraph 5.1.

taking into account (at a minimum) all providers of CVT parts within that category that sell to independent motor factors.

7.5 The Parties submitted market shares for the top 23 categories in which TVS generates sales and said that UC and 3G were each relatively minor players in all of these product categories,<sup>148</sup> and in particular that:

- (a) UC's market share is below 5% in five 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 has 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%.
- (c) The Parties' combined market share is below 15% in 15 of 23 product categories and below 25% in 22 of 23 product categories.<sup>149</sup> There is only one market where the Parties' combined share exceeds 30% (hub components).

### **Market share estimates**

7.6 As explained in Chapter 6, we have found that the relevant market in this case is the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK. We have classified a wholesaler as wide range if its supply in the UK IAM covers at least 20 product fields, as described in paragraph 6.46.

7.7 Table 7.1 presents our market share estimates for 2019. In classifying wholesalers as wide range, and estimating their revenues, we have used information from the wholesalers themselves where available; otherwise (in one case) we have used an estimate from the Parties.

7.8 In the first two data columns of Table 7.1, we have set out market shares first on the basis of revenues in the UK IAM, and then on the basis of revenues from sales to motor factors only. In line with our market definition, we focus on the share of revenues from sales to motor factors. In some cases, wholesalers also sell to other wholesalers so using total revenues can result in double counting. However, we have also included shares based on total revenues because they are illustrative of the firm's overall scale in the IAM. The combined market share of the Parties on the basis of revenues

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<sup>148</sup> Parties' response to Phase 1 Decision, paragraph 5.4.

<sup>149</sup> Parties' response to Phase 1 Decision, paragraph 5.5.

from sales to motor factors is [REDACTED] [40 - 50]%.<sup>150</sup> CV Logix's market share is [REDACTED] [30 - 40]%. Each of the other wholesalers has a share of less than 10%.

7.9 In the final column of Table 7.1 we make two further adjustments to take account of the following:

(a) First, that CV Logix focuses on supplying members of the AAG Group, of which CV Logix is itself a member. We understand that [REDACTED]% of CV Logix's sales are made to motor factors within AAG, rather than in competition against other wide range wholesalers such as the Parties.<sup>151</sup>

(b) Second, that TTC has now exited the market.

7.10 Accordingly, we have recalculated the market shares excluding sales by TTC and intragroup sales by CV Logix. In effect this assumes that TTC's sales are redistributed across the remaining competitors in proportion to their market share. This is a conservative assumption – as discussed further in the assessment of closeness of competition section below,<sup>152</sup> there is evidence that UC and 3G were relatively close competitors to TTC, in which case may have attracted a higher share of purchases from TTC's previous customers than we have assumed.<sup>153</sup>

7.11 In our view, excluding sales by TTC, and CV Logix's intra group sales is the most appropriate approach to deriving market shares which are representative of the Parties' market position. On this basis, the Parties have a combined share of [REDACTED] [50 - 60]% of wide range wholesale revenues from motor factors.

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<sup>150</sup> In the main body of the text, we only refer to market shares based on revenues from motor factors.

<sup>151</sup> [REDACTED]% of sales are to subsidiary/owned business.

<sup>152</sup> See for example Figure 7.3, Figure 7.5 to Figure 7.9, and paragraphs 7.108 and 7.109.

<sup>153</sup> We have not sought to identify how former TTC demand was allocated among other providers when it left the market. Given that motor factors multi-source across providers and purchase many different parts, in our view there is no basis to establish with confidence whether specific purchases can be seen as a redistribution from TTC.

**Table 7.1: Market shares of wide range wholesalers of CVT parts in the IAM in the UK based on revenues, 2019**

Wholesaler	Market share		
	Total revenues in the IAM	Revenues from motor factors	Excluding TTC and intra-group sales by CV Logix
UC	[X] [20 - 30]	[X] [20 - 30]	[X] [30 - 40]
3G	[X] [10 - 20]	[X] [10 - 20]	[X] [20 - 30]
<b>Combined</b>	[X] [30 - 40]	[X] [40 - 50]	[X] [50 - 60]
CV Logix	[X] [20 - 30]	[X] [30 - 40]	[X] [10 - 20]
Imexpart	[X] [10 - 20]	[X] [5 - 10]	[X] [5 - 10]
Diesel Technic	[X] [5 - 10]	[X] [5 - 10]	[X] [5 - 10]
TTC	[X] [5 - 10]	[X] [5 - 10]	n/a
Amipart	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
DSS	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
DT Truck	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
Emmerre*	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
Febi	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
Inter Cars	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
Majorsell	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
Sampa	[X] [0 - 5]	[X] [0 - 5]	[X] [0 - 5]
<b>Total</b>	<b>100</b>	<b>100</b>	<b>100</b>

Sources:

1. UC revenues and share of sales to motor factors.
2. 3G revenues and share of sales to motor factors.
3. Emmerre revenues.
4. Third party revenues.

\* Based on Parties' estimate and assuming all sales are to motor factors.

7.12 We considered whether any alternative definitions of 'wide range' could lead to a different outcome in terms of market concentration and the Parties' combined market share. In Table 7.2 below, we present market shares for 2019 based on two alternative definitions of 'wide range'. First, we include only those wholesalers supplying into the UK IAM that are mentioned as 'wide' in UC strategy documents (see Figure 6.1). On this basis the Parties' combined market share is [X] [40 - 50]% or [X] [60 - 70]% if we exclude CV Logix's intra-group sales and TTC sales. Second, we include any wholesaler supplying into the UK IAM that the Parties called 'wide' in their response to the Initial Factual Questionnaire when submitting their list of competitors. On this basis the Parties' combined market share is [X] [30 - 40]%, or [X] [30 - 40]% if we exclude CV Logix's intra-group sales and TTC sales. We consider this approach to understate the Parties' market shares – for example Automint accounts for [X] [5 – 10]% of the market on this basis, but it distributes within only 6 product fields.



**Table 7.2: Market shares of wide range wholesalers with alternative ‘wide range’ definitions**

%

Described as ‘wide’ in UC strategy documents			Described as ‘wide’ Parties’ response to Initial Factual Questionnaire		
Wholesaler	Market share	Market share	Wholesaler	Market share	Market share
	% revenues from motor factors	% of revenues excluding TTC and intra-group sales by CV Logix		% revenues from motor factors	% of revenues excluding TTC and intra-group sales by CV Logix
UC	[X] [20 – 30]%	[X] [30 – 40]%	UC	[X] [10 – 20]%	[X] [20 – 30]%
3G	[X] [10 – 20]%	[X] [20 – 30]%	3G	[X] [10 – 20]%	[X] [10 – 20]%
<b>Combined</b>	[X] <b>[40 – 50]%</b>	[X] <b>[60 – 70]%</b>	<b>Combined</b>	[X] <b>[20 – 30]%</b>	[X] <b>[30 – 40]%</b>
CV Logix	[X] [30 – 40]%	[X] [10 – 20]%	CV Logix	[X] [20 – 30]%	[X] [10 – 20]%
Imexpart	[X] [5 – 10]%	[X] [5 – 10]%	Automint	[X] [5 – 10]%	[X] [5 – 10]%
Amipart	[X] [0 – 5]%	[X] [0 – 5]%	EBS	[X] [5 – 10]%	[X] [5 – 10]%
DSS	[X] [0 – 5]%	[X] [0 – 5]%	Granning	[X] [5 – 10]%	[X] [5 – 10]%
DT Truck	[X] [0 – 5]%	[X] [0 – 5]%	Amipart	[X] [0 – 5]%	[X] [0 – 5]%
Febi	[X] [0 – 5]%	[X] [0 – 5]%	Borg & Beck	[X] [0 – 5]%	[X] [0 – 5]%
Sampa	[X] [0 – 5]%	[X] [0 – 5]%	Diesel Technic	[X] [0 – 5]%	[X] [0 – 5]%
TTC	[X] [5 – 10]%	n/a	DSS	[X] [0 – 5]%	[X] [0 – 5]%
			DT Truck	[X] [0 – 5]%	[X] [0 – 5]%
			Emmerre	[X] [0 – 5]%	[X] [0 – 5]%
			Febi	[X] [0 – 5]%	[X] [0 – 5]%
			Fleet Parts	[X] [0 – 5]%	[X] [0 – 5]%
			Gardner	[X] [0 – 5]%	[X] [0 – 5]%
			Imexpart	[X] [0 – 5]%	[X] [0 – 5]%
			Inter Cars	[X] [0 – 5]%	[X] [0 – 5]%
			Juratek	[X] [0 – 5]%	[X] [0 – 5]%
			Majorsell	[X] [0 – 5]%	[X] [0 – 5]%
			Nationwide TP	[X] [0 – 5]%	[X] [0 – 5]%
			Omnipart	[X] [0 – 5]%	[X] [0 – 5]%
			PE Automotive <sup>15</sup>	[X] [0 – 5]%	[X] [0 – 5]%
			Sampa	[X] [0 – 5]%	[X] [0 – 5]%
			ST Templin	[X] [0 – 5]%	[X] [0 – 5]%
			TTC	[X] [0 – 5]%	[X]

Sources:

1. UC revenues and share of sales to motor factors.
2. 3G revenues and share of sales to motor factors.
3. Emmerre revenues.
4. Third party revenues.

\* Based on Parties’ estimate and assuming all sales are to motor factors.

7.13 We have assessed the sensitivity of the Parties’ market share to our definition of a wide range wholesaler as being one with at least 20 product fields. In Table 7.3 below, we list wholesalers in descending order of the number of product fields they supply, and we set out how the Parties’ implied combined market share would decrease with the addition of each wholesaler to the competitive set. The point at which [X] (which supplies [X] product fields) is added gives the Parties a combined share of [X] [50 – 60]%, corresponding to the final column of Table 7.1 above. If our threshold had been 15 product fields, the Parties would have a combined market share of [X] [40 – 50]%, and with a threshold of 10 product fields they would

<sup>154</sup> PE Automotive told us it supplies only wholesalers in the UK (response to third party questionnaire, and call with PE Automotive on 22 September 2020). However EMS-FP&S, a motor factor, told us it was supplied by PE Automotive. Both PE Automotive and EMS-FP&S are owned by BPW.

have a combined market share above 40%. Figure 7.1 illustrates these results. On this basis, our view is that the Parties' combined market share would be high such as to be an indicator of potential competition concerns on any plausible definition of a wide range wholesaler, and on some definitions it would be particularly high.

**Table 7.3: Parties' combined market shares variation based on competitors included in the competitive set**

[✂]

Sources:

1. UC revenues and share of sales to motor factors.
2. 3G revenues and share of sales to motor factors.
3. Emmerre revenues.
4. Third party revenues.

**Figure 7.1: Parties' combined market shares sensitivity to definition of wide range wholesaler**

[✂]

Sources:

1. UC revenues and share of sales to motor factors.
2. 3G revenues and share of sales to motor factors.
3. Emmerre revenues.
4. Third party revenues.

## ***Conclusion on market shares***

7.14 Our analysis of market shares shows that:

- (a) The market is concentrated, with the three largest providers accounting for over two-thirds of supply (on most bases).<sup>155</sup>
- (b) The Merger would combine two of the three largest suppliers in the market, giving the Merged Entity a significantly larger share than any of its competitors.

7.15 The market share of the Merged Entity, on any of the above bases, is high such as to be an indicator of potential competition concerns, and on some bases it is particularly high.

7.16 As part of its assessment of the effects of a merger on competition, the CMA may use market shares among other data.<sup>156</sup> The combined market shares of the merger firms, when compared with their respective pre-merger market shares, can provide an indication of the change in market power resulting from a merger. In horizontal mergers in markets involving undifferentiated

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<sup>155</sup> Including providers who meet our categorisation as wide range (see Table 7.1) or are described as such in UC's strategy documents (see Table 7.2).

<sup>156</sup> [Merger Assessment Guidelines](#), paragraph 5.3.1.

products, unilateral effects are more likely where the merger results in a firm with a large market share.<sup>157</sup> However, where products are differentiated (ie similar but not perfect substitutes for one another) and some products are closer competitors to each other than to others in terms of, for example, branding, quality, characteristics or geographical location,<sup>158</sup> it should not be assumed that all firms in the market exercise competitive constraints upon one another in proportion to their market shares.

- 7.17 In the present case, we therefore need to consider whether the Parties are (at least) as significant competitors to each other as their market shares imply, or whether they may not in fact be significant competitive constraints on each other, for example because they are highly differentiated or operate in a wider market than that which we have defined.

## **Closeness of competition**

- 7.18 In this section we assess a range of evidence on how closely UC and 3G compete with one another, relative to their closeness of competition with other suppliers in the market.

### ***Parties' views***

- 7.19 The Parties submitted that, within each category of part, they 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', in addition to other wide range wholesalers.<sup>159</sup>
- 7.20 The Parties submitted that the 'vast majority of CVT parts are supplied at the wholesale level by businesses with deep technical expertise and experience of a relatively small number of core CVT part categories'. They said that these category experts were a very significant competitive constraint on the Parties and that 'in almost every market in which the Parties overlap, the Parties' largest competitor is not a so-called 'wide range' wholesaler, but rather a competitor focused on the relevant CVT parts category'.<sup>160</sup>
- 7.21 Within each category, in addition to other wide range wholesalers, the Parties submitted that they face 'strong competition from suppliers with

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<sup>157</sup> [Merger Assessment Guidelines](#), paragraph 5.3.4.

<sup>158</sup> [Merger Assessment Guidelines](#), paragraph 5.3.2.

<sup>159</sup> [Parties' response to Phase 1 Decision](#), paragraph 4.5.

<sup>160</sup> [Parties' response to Phase 1 Decision](#), paragraph 1.3.

different business models, including suppliers focused on one or a smaller number of product categories – so-called “narrow” or “niche” wholesalers’.

### ***Outline of evidence on closeness of competition***

7.22 We begin by noting that the Parties have broadly similar offers. As set out in Chapter 2, both Parties offer a similarly wide range of parts (UC around [X] and 3G around [X]). PL parts account for the majority of sales of each of the Parties (UC 83%<sup>161</sup> and 3G [X]% over the past three years). Both offer free next-day delivery above a minimum order threshold of £125, and next day delivery accounts for circa [X]% of 3G sales and [X]% of UC sales.

7.23 We consider evidence on closeness of competition in the following categories:

(a) Evidence on how much the Parties influence each other’s pricing:

- (i) Pricing benchmarks used by the Parties.
- (ii) Competitors considered in the Parties’ internal documents – these include internal discussions of prices, the Parties’ discussions with customers and records in UC’s Customer Relationship Management (CRM) database.
- (iii) Reasons recorded for price reductions by the Parties.
- (iv) Other providers that the Parties’ customers invite to quote for their business.

(b) Evidence of customer switching and diversion:

- (i) Competitors from whom the Parties win business or see opportunities to win business.
- (ii) Competitors to whom the Parties lose business.
- (iii) The Parties’ switching analysis.
- (iv) Our assessment of customer diversion:

(c) UC’s merger rationale documents.

(d) Customer and competitor views on the Merger.

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<sup>161</sup> Including both UC branded PL and other PL (see notes to Table 2.2)

### ***Evidence on how much the Parties influence each other's pricing***

- 7.24 We have considered a range of evidence, particularly from the Parties' internal documents, about their influence on each other's pricing decisions relative to other providers.

#### ***Pricing benchmarks***

- 7.25 We have examined the Parties' internal documents for evidence as to which other providers they use as 'benchmarks' or comparators for their own performance (eg on price competitiveness). Such evidence is potentially informative as to which providers the Parties see as close competitors.

- 7.26 UC provided annual 'Master Price Review'<sup>162</sup> documents for the years 2017 to 2019, with information at a product (part) level on product costs, prices and margins for UK motor factors. The 2019 'Master Price Review' document also contains equivalent prices (where available) for:<sup>163</sup>

(a) [REDACTED]

(b) [REDACTED]<sup>164</sup> and

(c) [REDACTED].

- 7.27 UC told us that it uses Master Price Reviews primarily to assess whether [REDACTED].

- 7.28 In addition, UC submitted 'Price Review Guidelines – 1<sup>st</sup> Aug Launch' (Aug 2019), which include a section with the heading 'Competitor Considerations' that notes [REDACTED],<sup>165</sup> [REDACTED].

- 7.29 3G submitted that [REDACTED] and commented that:

(a) [REDACTED].<sup>166</sup>

- 7.30 3G provided:

(a) documents referred to as Price Reviews which contain detailed [REDACTED];

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<sup>162</sup> UC maintains a Price Matrix, which is a live document containing competitor prices. Master Price Review documents are snapshots of the Price Matrix.

<sup>163</sup> The 2017 and 2018 reviews do not contain competitor prices.

<sup>164</sup> [REDACTED].

<sup>165</sup> [REDACTED].

<sup>166</sup> [REDACTED].

(b) documents referred to as Price Lists. These contain information [REDACTED];<sup>167</sup> and

(c) a price review document for [REDACTED].<sup>168</sup>

7.31 In our view, the fact that 3G [REDACTED] is consistent with UC being 3G's closest competitor.

#### *Analysis of UC's price benchmarking*

7.32 We have looked at the frequency with which other providers' prices are benchmarked by UC, as an indicator of the relative competitive closeness to UC of these other providers. We have assessed price benchmarking for approximately 11,000 UC parts for which at least one supplier was benchmarked in UC's 2019 'Master Price Review' document.<sup>169</sup> We have also assessed the same price benchmarking of products within each of the high level categories, ie general chassis, engine, transmission, axle, braking, body, electrical, steering & suspension, and consumables,<sup>170</sup> which together cover all products in the market.

- *Results across products*

7.33 Looking across all the products included in the analysis, wide range suppliers are benchmarked far more often than any other type of wholesaler or supplier. [REDACTED]% of products are benchmarked against at least one wide range supplier, compared with [REDACTED]% benchmarked against at least one narrow range wholesaler and [REDACTED]% benchmarked against at least one '[REDACTED]' price. For [REDACTED]% of the products only wide range wholesalers are benchmarked. Wide range wholesalers and at least one narrow range wholesaler are benchmarked for a further [REDACTED]% of the products and wide range wholesalers and at least one OEM dealer are benchmarked for [REDACTED]% of the products. The [REDACTED]% of products benchmarked against at least one narrow range wholesaler are in most cases ([REDACTED]% out of [REDACTED]%) benchmarked against a single narrow range wholesaler, with only [REDACTED]% out of [REDACTED]% benchmarked against more than one narrow range wholesaler, from which we infer that UC is not facing strong competition from multiple narrow

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<sup>167</sup> The 2017 price review document includes [REDACTED].

<sup>168</sup> Excluding obsolete and superseded products, [REDACTED] products (out of total [REDACTED]) have an equivalent UC price.

<sup>169</sup> We have excluded the following products: [REDACTED].

<sup>170</sup> The Master Price review document also contains an additional product group (coded TV). The products in this group cover electrical and engine products and these were assigned to either electrical product category or engine product category.

range wholesalers for most of these products. [X]% are benchmarked only against narrow range wholesalers ([X]%) or OEM dealers ([X]%).

- 7.34 Similar results are obtained when the products are weighted by the value of sales, in order to reflect the relative importance of the products concerned. [X]% of the products are benchmarked against at least one wide range supplier (Figure 7.2), compared with [X]% benchmarked against at least one narrow range wholesaler and [X]% benchmarked against at least one OEM dealer. More than half of prices are benchmarked only against other wide range wholesalers ([X]%). Wide range wholesalers and at least one narrow range wholesaler are benchmarked for a further [X]% of the products and wide range wholesalers and at least one OEM dealer are benchmarked for [X]% of the products. The [X]% of products benchmarked against at least one narrow range wholesaler are in most cases ([X]% out of [X]%) benchmarked against a single narrow range wholesaler, with only [X]% out of [X]% benchmarked against more than one narrow range wholesaler. Fewer than [X]% are benchmarked only against narrow range wholesalers ([X]%) or OEM dealers ([X]%).

**Figure 7.2: Share of products (weighted by sales) on which each type of supplier or combination of suppliers is benchmarked in UC's 2019 Master Price Review**

[X]

Source: CMA analysis of UC internal documents.

- 7.35 As shown in Figure 7.3 below, 3G is benchmarked for [X]% of the products ([X]% weighted by sales), which is more than any other wide range wholesaler or any other supplier. The Parties submitted that 'this figure over-represents 3G and simply reflects that 3G is active in many categories and mentioned alongside other competitors'. We do not agree that this figure overstates the importance of 3G as a competitor to UC. The fact that 3G is active in many of UC's categories is in itself an indicator of the extent of competition between the Parties. In addition, 3G is benchmarked against far more products than other wide range wholesalers with the exception of [X], which was the second most frequently benchmarked supplier ([X]% of products, [X]% when weighted by sales). The next highest was [X] ([X]%, or [X]% weighted by sales) and [X] was benchmarked for very few products ([X]%, or [X]% weighted by sales).

- 7.36 Considering the proportion of competitor mentions ([X] mentions in total), 3G is the most frequently benchmarked competitor ([X]%), followed by [X] with [X]%. As TTC has now exited the market, figures which include TTC may understate the future closeness of competition between the Parties, relative to the competition they face from other providers. If [X] is excluded, 3G accounts for [X]% of mentions in UC's benchmarking, followed by [X]

with [REDACTED]%. Narrow range wholesalers account for a cumulative [REDACTED]% of total mentions.

**Figure 7.3: Mentions of competitors in UC's 2019 Master Price Review (unweighted by value of sales)**

[REDACTED]

Source: CMA analysis of UC internal documents.

7.37 These results are consistent with wide range wholesalers being a more significant competitive constraint on the Parties than narrow range wholesalers. They are also consistent with 3G being UC's closest competitor.

- *Results across categories*

7.38 Within each product category, wide range wholesalers are benchmarked for at least [REDACTED]% of products and up to [REDACTED]% of products. In some categories – Consumables, General Chassis, Electrical – wide range wholesalers are benchmarked for all or almost all products, with limited or no benchmarking of narrow range wholesalers or OEM dealers. In two categories – Body, Steering & Suspension – a majority of products are benchmarked against narrow range wholesalers and OEM dealers, although more are benchmarked against wide range suppliers.

**Table 7.4: Share of products (weighted by sales) on which each type of supplier or combination of suppliers is benchmarked in UC's 2019 Master Price Review across main product categories**

						%
Category	Wide	Narrow	OEM dealer	Wide and narrow	Wide and OEM dealer	
General Chassis	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Engine	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Transmission	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Axle	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Braking	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Body	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Electrical	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Steering & Suspension	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	
Consumables	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	

Source: CMA analysis of UC internal documents.

**Figure 7.4: Share of products (weighted by sales) on which wide range wholesalers are (i) benchmarked alone, (ii) with narrow range wholesalers and (iii) with OEM dealers in UC's 2019 Master Price Review across main product categories.**

[REDACTED]

Source: CMA analysis of UC internal documents.



### *Competitors considered in internal documents*

- 7.39 A mention of a competitor in an internal document may be informative of the constraint exerted by that competitor. However, this can depend on the context in which the competitor is mentioned. In the present case, we have essentially conducted a quantitative analysis of the number of times a given competitor is mentioned, rather than looking at the specific wording in the documents. Given the nature of the internal documents we are considering – ie pricing discussions, pricing negotiations, discussions of losses to competitors etc – our view is that the number of times a competitor is mentioned in such documents is informative of the constraint it exerts on the Party concerned.
- 7.40 We asked the Parties to provide all internal documents related to negotiations with customers from June 2017 to June 2020. UC provided 2,146 documents and 3G provided 380 documents.
- 7.41 To analyse these documents, we distinguished between purely internal emails where the staff of one of the Parties discusses pricing, and documents recording external correspondence between one of the Parties and one of their customers. We address these two categories of documents in turn below.
- 7.42 We analysed a random sample of 40% of UC's documents,<sup>171</sup> and all 380 documents provided by 3G. One of these 3G documents relates to records of price negotiations conducted via its website chat function<sup>172</sup> between 2017 and 2020 (the 'customer chat document').
- 7.43 We excluded documents that did not identify a competitor or did not relate clearly to either price negotiations or competitor pricing, duplicates, and a small number of documents that were unreadable for technical reasons.<sup>173</sup>
- 7.44 Our final assessment used 602 UC documents (108 price negotiation emails and 494 internal emails discussing competitor pricing) and 536 3G documents (225 webchat negotiations, 69 price negotiation emails, and 242 internal emails discussing competitor pricing).

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<sup>171</sup> The sample documents were selected randomly in Stata.

<sup>172</sup> Webchat is a format that allows customers to communicate directly with brands online, often on their websites and in real time.

<sup>173</sup> In some cases, an element of judgement was required in identifying whether a company was being mentioned as a competitor. For example, in the case of references to OES parts manufacturers, we considered the context of the reference to determine whether it was to prices offered for the manufacturer's parts by other wholesalers or the prices that the manufacturer was offering as a supplier to motor factors.

### *Internal emails containing discussions of prices*

- 7.45 Figure 7.5 and Figure 7.6 below report the frequency of mentions of different competitors in internal emails discussing pricing. 3G accounts for [REDACTED]% of total mentions in UC's documents (more than three times as many mentions as the next most frequently mentioned supplier), and UC accounts for [REDACTED]% of total mentions in 3G's documents (more than twice as many mentions as the next most frequently mentioned supplier). If mentions of TTC are excluded, 3G accounts for [REDACTED]% of mentions in UC's documents and UC accounts for [REDACTED]% of mentions in 3G's documents. Overall, wide range wholesalers account for [REDACTED]% of mentions in UC's documents, and narrow range for [REDACTED]%, while in 3G's documents wide range wholesalers account for [REDACTED]% of mentions and narrow range wholesalers for only [REDACTED]%.

**Figure 7.5: Frequency of mentions of different competitors in UC's emails discussing pricing**

[REDACTED]

Source: CMA analysis of UC internal documents

**Figure 7.6: Frequency of mentions of different competitors in 3G's emails discussing pricing**

[REDACTED]

Source: CMA analysis of 3G internal documents

### *Competitors mentioned in pricing negotiations*

- 7.46 Next we look at which other providers were mentioned as potential competitors in price negotiations between the Parties and their customers.
- 7.47 We categorised a document as negotiation correspondence if it showed: an exchange between a customer and one of the Parties in respect of the sale of a specific SKU (or a group of SKUs); an email request or webchat from a customer to the Parties in respect of an SKU; or an internal email request from the Parties to match a competitor on a given SKU for a given customer.
- 7.48 In some communications between the Parties and customers, the customer uses a quote from another supplier as 'leverage' to obtain a better price. The customer typically approaches one of the Parties to request pricing on one or several SKU(s) and may mention a competitor price at the outset or in the course of the exchange. There are also examples of the Parties approaching customers to instigate pricing negotiations, or to understand which

competitors they are up against during price negotiations. Both UC and 3G use email for such exchanges, while 3G also uses webchats.<sup>174</sup>

- 7.49 Figure 7.7 and Figure 7.8 below report the results of our analysis of these documents for UC and 3G, respectively. For each competitor, these charts report the number of mentions of that competitor divided by the total number of mentions of all competitors in the documents reviewed ('proportion of total mentions'), and the share of documents in which the competitor is mentioned ('proportion of documents'). In UC's documents, 3G is mentioned in [%] of documents and accounts for [%] of mentions.<sup>175,176</sup> In 3G's documents, UC is mentioned in [%] of documents and accounts for [%] of mentions.<sup>177,178</sup>

**Figure 7.7: Mentions of competitors in negotiations with UC (emails)**

[%]

Source: CMA analysis of UC internal documents

**Figure 7.8: Mentions of competitors in negotiations with 3G (emails and webchats)**

[%]

Source: CMA analysis of 3G internal documents.

### *UC's Customer Relationship Management database*

- 7.50 In addition to individual emails, UC provided an extract of its Customer Relationship Management (**CRM**) database, which summarises its sales representatives' discussions with customers. The notes generally include information [%] (these are discussed in paragraph 7.74 below).
- 7.51 We focused on the period from January 2019 to June 2019, in which there were 373 entries, excluding the 180 entries related to leakages and 251 entries that did not mention any competitors. Figure 7.9 shows the number of entries (out of 373 entries) in which each competitor is mentioned divided by the total number of competitor mentions (449 mentions).<sup>179</sup> This shows that

<sup>174</sup> Similar negotiations may take place without generating any documentary evidence, eg online or phone calls.

<sup>175</sup> In UC's documents, at least one wide range wholesaler is mentioned in [%] of documents and they account for [%] of total mentions when including TTC. Documents that account for only wide range wholesalers account for [%] of documents whilst [%] of documents mention only narrow range wholesaler when including TTC.

<sup>176</sup> If TTC is excluded, 3G accounts for [%] of total mentions.

<sup>177</sup> In 3G's documents, at least one wide range wholesaler is mentioned in [%] of documents and wide range wholesalers account for [%] of total mentions when including TTC. Documents that account for only wide range wholesalers account for [%] of documents whilst [%] of documents mention only narrow range wholesalers when including TTC.

<sup>178</sup> If TTC is excluded, UC accounts for [%] of total mentions.

<sup>179</sup> If a competitor is mentioned several times in one entry, this is counted as one mention.

3G is the competitor most frequently mentioned ([REDACTED]% of mentions) by some distance, followed by TTC ([REDACTED]%) and CV Logix ([REDACTED]%). Wide range wholesalers account for approximately [REDACTED]% of mentions and narrow range wholesalers for [REDACTED]%. If TTC is excluded, 3G accounts for [REDACTED]% of mentions.

**Figure 7.9: Share of entries each competitor is mentioned in UC's CRM database**

[REDACTED]

Source: CMA analysis of UC internal documents.

#### *Reasons recorded for price reductions*

7.52 UC submitted a spreadsheet containing data on 'overstrikes' recorded from April 2019 to July 2020. An overstrike is an instance where a given customer is granted a price reduction for a particular part(s).

7.53 The spreadsheet includes [REDACTED]. Figure 7.10 below shows some examples of entries from the 'overstrikes' spreadsheet.

**Figure 7.10: Extracts from overstrikes spreadsheet.**

[REDACTED]

Source: UC response to RF12.

7.54 We have considered entries where the reasons behind the overstrike relate to explicit price matching of a supplier.<sup>180</sup> These entries typically contain records such as '[REDACTED]', '[REDACTED]' under a 'reason' column. In approximately [REDACTED]% of cases<sup>181</sup> ([REDACTED] entries) the overstrikes were not explicitly related to competition. We have counted how often different competitors were identified as a reason for a price reduction in the remaining [REDACTED]% of cases ([REDACTED] entries).

7.55 Figure 7.11 below summarises the results of the analysis. 3G accounts for [REDACTED]% of reasons given for a price reduction, [REDACTED]% if TTC is excluded. All other suppliers are identified in [REDACTED]% or fewer of reasons given. Wide-range suppliers together account for [REDACTED]% of mentions and narrow range wholesalers account for [REDACTED]% of mentions. While this evidence supports a view that 3G is UC's closest competitor, we have given less weight to this analysis because, as noted above, this analysis only relates to the [REDACTED]% of cases where competitors are recorded and we would also expect other price

<sup>180</sup> [REDACTED].

<sup>181</sup> We have excluded all customers from Republic of Ireland for this analysis.

reductions, where no competitor is recorded, to be largely driven by competitive pressure.

**Figure 7.11: Share of different suppliers mentioned as a reason for price reduction, (%).**



Source: CMA analysis of UC internal documents.

### *The Parties' representations on negotiation documents*

- 7.56 As discussed in paragraph 5.43, the Parties submitted that there is a distinction between 'ad hoc' and 'primary' sales'. The Parties describe 'ad hoc' sales as 'sales for which 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'.<sup>182</sup> The Parties submitted that when making 'ad hoc' purchases, customers might value the ability to add the item to a pre-existing order, and on average it is more likely that a customer will have a pre-existing open order with a wide range wholesaler when an 'ad hoc' requirement for a part arises. The Parties submitted that 'ad hoc' purchases were a very small proportion of their sales, but that a large proportion of the email negotiation and overstrike documents discussed above relate to 'ad hoc' sales, and this explained the relative frequency of 3G mentions in these documents.
- 7.57 We have not seen a distinction between 'ad hoc' and 'primary' sales in the Parties' internal documents, nor have customers described such a distinction (either using this terminology or a similar concept in substance) to us in our discussions with them.<sup>183</sup> While most of the Parties' price negotiation documents relate to one or a small number of products, they do not necessarily relate to one-off purchases. In many of these emails and webchats, the customer brings up a competitor's price and asks to be 'set up' for that particular price in UC's or 3G's system, often with no mention of an immediate purchase. UC has also told us that information gathered from price negotiations is regularly fed into price benchmarking documents.<sup>184</sup> In our view, this practice would not make sense if price negotiations related to very specific circumstances that are not representative of broader competitive conditions. Similarly with respect to overstrikes, UC told us that this information is used to inform broader business views on the companies'

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<sup>182</sup> [Parties' response to Provisional Findings](#), paragraph 4.21.

<sup>183</sup> Except that in response to a customer questionnaire Alliance Automotive Group commented 'We have preferred supplier routes plus ad hoc.' In this context, we have interpreted 'ad hoc' to refer to purchases outside preferred suppliers, rather than necessarily to one-off purchases.

<sup>184</sup> [REDACTED].

competitiveness.<sup>185</sup> In our view, this practice would not make sense if overstrikes related purely to ‘ad hoc’ transactions that reflected different conditions of competition.

7.58 In response to our provisional findings, the Parties reiterated<sup>186</sup> that as wide range wholesalers they are closer competitors for ‘ad hoc’ sales, and said that a large proportion of email negotiations and ‘overstrike’ reports relate to these sales.<sup>187</sup> The Parties submitted that the CMA has not attempted to establish whether the distinction between ‘ad hoc’ and ‘primary’ sales is meaningful to customers.<sup>188</sup>

7.59 We consider the Parties’ further submissions in relation to ‘ad hoc’ sales in Appendix F, paragraphs 10 to 24. In our view, the evidence does not show that there is a clear distinction between ‘ad hoc’ and ‘primary’ sales, with price negotiations focused on the former category. In addition, even if there were a meaningful distinction between ‘ad hoc’ and ‘primary’ sales, competition for ‘ad hoc’ sales would be an important element of the competitive interaction between the Parties.

#### *Other providers invited to quote*

7.60 We asked customers whether they requested quotes from alternative suppliers when deciding to purchase from either of the Parties.<sup>189</sup> Of the nine customers who answered this question with respect to purchases from UC and named alternative suppliers, eight named 3G, five of whom also mentioned one or more other competitors (in three cases this included TTC). Of the 12 customers who answered this question with respect to purchases from 3G and named alternative suppliers, 11 named UC,<sup>190</sup> four of whom also mentioned one or more other competitors (with three mentions of TTC).<sup>191</sup>

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<sup>185</sup> UC told us that ‘The overstrike is used by us to try and understand how many price negotiations we are doing at any given time. So, if we run the overstrike report, we can run it by customer, or we can cut the report by customer by product, by time, by operator, and we can use this information to try and understand if we are remaining competitive in the marketplace; who is our most aggressive sales person in the sales office that might be overstriking more than others; what products are getting overstruck more than others; and the margins that we are making on those items. And so, we then use this information as a business catalyst, a business tool, to review where we need to buy products better, or whether we need to have a pricing review policy.’

<sup>186</sup> The Parties’ earlier views are summarised in paragraph 7.56.

<sup>187</sup> [Parties’ response to the Provisional Findings](#), paragraph 6.4.

<sup>188</sup> [Parties’ response to the Provisional Findings](#), paragraph 6.19.

<sup>189</sup> Third party questionnaire: The question was worded as follows: When you purchase from [UC/3G]: 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.

<sup>190</sup> 10 of these 11 customers were customers of both UC and 3G. One was a customer of 3G only.

<sup>191</sup> TTC was mentioned four times with UC; Amipart once, Truckwise once, and Digraph once. 10 of these customers were 3G and UC customers.

## *Summary of evidence on how much the Parties influence each other's pricing*

7.61 In summary:

- (a) 3G [X] (paragraph 7.29), while UC benchmarks its prices against other wide range wholesalers much more often than against narrow range wholesalers or OEM dealers (paragraph 7.34), and it benchmarks against 3G [X] as any other individual wholesaler [X] (paragraph 7.35).
- (b) In both UC and 3G's internal communications discussing pricing, a range of competitors are mentioned, but the Parties mention one another in around [X] documents, which [X] times (in the case of UC's documents) as often as any other competitor (paragraph 7.45, Figure 7.5 and Figure 7.6). 3G accounts for [X]% of competitor mentions in UC's CRM database (paragraph 7.51 and Figure 7.9), far more than the next highest suppliers ([X] at [X]% and [X] at [X]%).
- (c) In email price negotiations with customers, 3G is mentioned in over [X] UC email exchanges, and UC is mentioned in [X] 3G email and webchat exchanges. [X] is mentioned in a small minority of email exchanges, and no other competitor is mentioned by name in more than [X]% of exchanges (paragraph 7.49 and Figure 7.7 and Figure 7.8).
- (d) In recording reasons for offering price reductions, UC mentions 3G in [X]% of cases where a reason is given, while other competitors are each mentioned in [X]% of cases or fewer. Wide range suppliers are most commonly mentioned ([X]%) (paragraph 7.55).
- (e) Among customers who named alternative suppliers from whom they requested quotes when deciding to purchase from the Parties, almost all of those who had purchased from one of the Parties had requested quotes from the other one, with few mentions of other competitors, particularly if TTC is excluded (paragraph 7.60).

7.62 This evidence shows that, while UC has regard to a range of competitors in setting its prices, its main focus is on wide range wholesalers and in particular on 3G, which is far more prominent in its internal documents on pricing than any other competitor. 3G's pricing also appears to be very strongly influenced by UC: [X], and UC is named in a large majority of its price negotiations with customers. In our view, the evidence, taken in the round, points towards the Parties being one another's closest competitors. By some measures, each of the Parties is as important a constraint on the other as all other competitors combined.

## ***Evidence of customer switching and diversion***

- 7.63 Next we consider evidence from the Parties as to the competitors from which they have won business, or see as offering an opportunity to win business, and those to which they have lost business.
- 7.64 This is potentially informative as to which providers may be a competitive constraint on the Parties – ie where they might lose business if they were to increase prices above competitive levels, and in particular the extent to which they have been a competitive constraint on one another to date.

### ***Wins and opportunities***

- 7.65 UC sales managers prepare regular presentations which include ‘wins’ which they have ‘personally achieved this month’ (identifying the previous supplier), and ‘opportunities’ among the customers of their competitors. Figure 7.12 below shows an example of such reports, but the presentation of ‘wins’ and ‘opportunities’ vary across presentations. As illustrated, ‘wins’ can refer to sales of individual parts, with values as low as under £100 and typically under £500, and in many cases a competitor is not recorded. ‘Opportunities’ show values over twelve months (£500 to £5,000 in the example shown).<sup>192</sup>

**Figure 7.12: Example of a ‘wins’ and ‘opportunities’ analysis.**

[REDACTED]

Source: CMA analysis of UC internal documents.

- 7.66 We have reviewed all 17 presentations provided by UC,<sup>193</sup> covering the period June 2017 to May 2020. Figure 7.13 below summarises the results for ‘wins’.<sup>194</sup> While a range of suppliers are mentioned, 3G is referenced significantly more often than any of the other suppliers, accounting for [REDACTED]% of wins ([REDACTED] out of a total of [REDACTED] wins), and [REDACTED]% if TTC is excluded. Wide range suppliers account for [REDACTED]% of wins and narrow range for [REDACTED]% ([REDACTED]% and [REDACTED]% respectively if TTC is excluded).

**Figure 7.13: Share of mentions of different suppliers in UC’s analysis of wins (%)**

[REDACTED]

Source: CMA analysis of UC internal documents.

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<sup>192</sup> The presentation dated August 2018 also contains a ‘swot’ analysis (Strengths, Weaknesses, Opportunities, Threats). The analysis only identifies one competitor ([REDACTED]) among its opportunities (other opportunities appear largely to relate to service improvements), and notes that the main threats are [REDACTED].

<sup>193</sup> Four regional presentations do not contain ‘wins’ or ‘opportunities’.

<sup>194</sup> We note that some of the wording in these action points is open to interpretation.



7.67 Figure 7.14 below summarises the results for opportunities. Similar to ‘wins’, a range of suppliers are mentioned but 3G is referenced significantly more often than any of the other suppliers, accounting for [REDACTED]% of a total of 209 supplier mentions ([REDACTED]% if TTC is excluded). Wide range suppliers account for [REDACTED]% of opportunities and narrow range for [REDACTED]% ([REDACTED]% and [REDACTED]% respectively if TTC is excluded). As discussed below (paragraph 7.70), [REDACTED]. This may be reflected in the fact that 3G and (wide range wholesalers) appear [REDACTED] in UC’s ‘opportunities’ than in its ‘wins’.

**Figure 7.14: Share of mentions of different suppliers in UC’s analysis of opportunities (%)**

[REDACTED]

Source: CMA analysis of UC internal documents.

### *UC sales meeting minutes*

7.68 UC has also submitted the minutes for 34 sales meetings that took place in 2019 (full year) and February 2020. These include action points, many of which appear<sup>195</sup> to relate to price monitoring and the identification of sales opportunities.

7.69 Figure 7.15 below reports the frequency of mentions of competitors in these action points. 3G is mentioned most often ([REDACTED]% of times (out of total 101 mentions), [REDACTED]% if TTC is excluded), followed by [REDACTED] ([REDACTED]%), and [REDACTED] ([REDACTED]%). There is a long tail of competitors, with approximately half of the competitors being referred to only once. Wide range wholesalers account for [REDACTED]% of mentions, and narrow range wholesalers account for [REDACTED]%.

**Figure 7.15: Share of mentions of different competitors in UC’s sales meeting minutes (%)**

[REDACTED]

Source: CMA analysis of UC internal documents.

7.70 The meeting minutes for June 2019 show a desire to broaden the scope of competitive efforts beyond 3G: ‘[REDACTED]’.

7.71 The more substantial comments relating to individual competitors are reported in Table 7.5. The emphasis of the comments does not appear to vary materially between different competitors – most of them relate to specific customer or product opportunities.

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<sup>195</sup> Some of the wording in these action points is open to interpretation.

**Table 7.5: Action points referring to particular competitors in Sales Meeting Minutes**

<i>Competitor</i>	<i>Quotes regarding a competitor (not a full list of quotes)</i>
Several competitors – wide range	[REDACTED]
Several competitors – wide and narrow range	[REDACTED]
3G	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Source: CMA analysis of UC internal documents.

7.72 The Parties submitted that ‘opportunities’ are more relevant when assessing the closeness of competition on these [‘primary’] sales as they more accurately reflect the full interaction between UC and different suppliers. In contrast ‘wins’ capture the constraint of UC on these suppliers’. We see no basis for the proposition that recorded opportunities ‘reflect the full interaction’ between suppliers in a way that recorded wins do not. Moreover, the identification of business opportunities is necessarily subjective, whereas winning business from another provider is evidence of actual competitive interaction.

7.73 The Parties further submitted that ‘the proportion of wins in the regional sales meeting presentations do not provide a proxy for the competitive constraint of 3G’.<sup>196</sup> However, we note that the fact that 3G accounts for almost half of UC’s ‘wins’ is evidence that UC is a constraint on 3G, rather than that 3G is a constraint on UC.

### *Losses to competitors*

7.74 UC’s CRM database (see paragraph 7.50) includes entries that record ‘leakages’,<sup>197</sup> ie loss of sales, whether of individual products or product groups.<sup>198</sup> As shown in Table 7.6, 3G was the most frequently identified

<sup>196</sup> Parties’ response to the Provisional Findings, footnote 59.

<sup>197</sup> 180 entries record leakages, many of which have information about multiple leakages. In total 379 leakages have identified causes and 114 leakages have unclear causes.

<sup>198</sup> [REDACTED].

competitor ([REDACTED] [REDACTED])% of leakages to competitors, [REDACTED]% if TTC is excluded), followed by [REDACTED] and [REDACTED].<sup>199</sup>

**Table 7.6: Causes of leakages identified in UC's CRM database**

[REDACTED]

Source: CMA analysis of UC internal documents.

### *The Parties' switching analysis*

- 7.75 The Parties estimated switching rates based on their sales data.<sup>200</sup> They identified a 'loss event' when one Party sold a part to a customer for three consecutive months but not in the next three months. They identified this as a 'switching event' where the customer increased its purchase of the same or equivalent part from the other Party in the second three-month period. Based on this approach, in 2019 switching to 3G accounted for [REDACTED]% [5 – 10]% of UC's loss events, and switching to UC accounted for the same proportion ([REDACTED]% [5 – 10]%) of 3G's loss events.<sup>201</sup> Using six month periods to identify loss and switching events, the estimates increase to [REDACTED]% [10 – 20]% from UC to 3G and [REDACTED]% [10 – 20]%, from 3G to UC. Treating any increase in quantity by one Party as a complete switch from the other (even if the increase does not amount to the volumes lost by the other party), and identifying loss and switching events on a six-month basis, these estimates of switching increase to [REDACTED]% [20 – 30]% and [REDACTED]% [20 – 30]%, respectively.
- 7.76 We note that both Parties sell a very large range of parts, and that most customers multi-source between the two Parties and other providers. In this context, it is not clear that meaningful measures of switching can be derived from transaction data. As illustrated in Table 7.6 above, a customer can stop buying a part for a wide range of reasons, and in [REDACTED] ([REDACTED]%) of cases recorded in UC's CRM database ([REDACTED] in Table 7.6) the reason was not to switch to another provider. In addition, as the figures in the previous paragraph show, the proportion of 'switching events' between the Parties is highly sensitive to the assumptions adopted. We address these submissions in detail in Appendix E. In light of these shortcomings, our view is that the analysis does not provide reliable evidence on customer switching behaviour.

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<sup>199</sup> In some cases, depending on the context, we have assumed that reference to a branded part is a reference to leakage to supply of that part by the relevant OES part manufacturer.

<sup>200</sup> Further details are provided in Annex E.

<sup>201</sup> CRA reported around 6,000 loss events per annum based on 3 month periods, but only around 300 loss events per annum based on 6 month periods, although the latter were more valuable on average.

## *Diversion to different types of suppliers*

- 7.77 A diversion ratio between Provider A and Provider B represents the proportion of sales that would divert to Provider B (as opposed to Providers C, D, E etc) as customers' second choice in the event of a price increase by Provider A.<sup>202</sup> Other things being equal, a high diversion ratio between two merging parties means that a price rise by the merged entity will be less costly, in terms of lost business, than if there was little diversion of demand between the merging parties. Accordingly, it is a factor which points towards a merger resulting in unilateral horizontal effects.
- 7.78 We asked UC customers which suppliers they would use to source those parts they bought from UC in a scenario where UC were not available to purchase from, and the percentage of those purchases they would make from each other supplier. We asked 3G customers the corresponding question for a scenario where 3G were not available.
- 7.79 As these questions were asked in a questionnaire, rather than a formal survey, they cannot automatically be applied to the whole population of UC or 3G customers.<sup>203</sup> However, as most customers who responded reported that they would allocate these purchases between several suppliers, it is not meaningful simply to report the number of customers who would switch purchases to each supplier. Instead we have reported percentages of purchases as a way of summarising and comparing the results.
- 7.80 Figure 7.16 and Figure 7.17 below show the results for UC and 3G, respectively.<sup>204</sup> The expenditure weighted diversion between the Parties is [X] [50 - 60]% from UC to 3G, and [X] [50 - 60]% from 3G to UC.<sup>205</sup> Wide range suppliers accounted for [X] [70 - 80]% of diversion from UC, with [X] [10 - 20]% to narrow range suppliers and [X] [0 - 5]% to OES parts manufacturers. Similarly, wide range suppliers accounted for [X] [70 - 80]%

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<sup>202</sup> See, by analogy in relation to Products A and B, [Merger Assessment Guidelines](#), footnote 52 to paragraph 5.2.15(a).

<sup>203</sup> See the discussion of sample size in the CMA guidance [Good practice in the design and presentation of customer survey evidence in merger cases](#), May 2018.

<sup>204</sup> These diversion ratios are weighted by the value of customer purchases as reported by customers in their questionnaire responses. Let  $DR_{ij}$  denote the diversion ratio from supplier  $i$  to supplier  $j$ ,  $C_i$  the subset of customers who purchase parts from supplier  $i$  in the sample,  $d_{kij}$  the proportion of customer  $k$ 's purchase from supplier  $i$  that would be purchased from supplier  $j$  if supplier  $i$  was unavailable, and  $p_{ki}$  the value of customer  $k$ 's purchases from supplier  $i$ , then  $DR_{ij} = \frac{\sum_{k \in C_i} d_{kij} p_{ki}}{\sum_{k \in C_i} p_{ki}}$ . When using the value of customer purchases as reported in

the Parties' sales data as weights, the diversion is [X]% from UC to 3G and [X]% from 3G to UC.

<sup>205</sup> Unweighted diversion is [X]% from UC to 3G, and [X]% from 3G to UC.

of diversion from 3G, with [REDACTED] [10 - 20]% to narrow range suppliers, and [REDACTED] [0 - 5]% to OES parts manufacturers.<sup>206</sup>

**Figure 7.16: Weighted diversion from UC to other suppliers**

[REDACTED]

Source: CMA analysis of evidence from third parties.

**Figure 7.17: Weighted diversion from 3G to other suppliers**

[REDACTED]

Source: CMA analysis of evidence from third parties

- 7.81 Because we asked the diversion question with respect to past purchases, some customers reported some diversion to TTC. If diversion to TTC is reallocated to other suppliers pro-rata to diversion excluding TTC, diversion from UC to 3G increases to [REDACTED] [60 – 70]%, and diversion from 3G to UC increases to [REDACTED] [60 – 70]%.
- 7.82 The Parties have submitted that the wording of our diversion questions was biased, firstly because it related to all parts bought from UC over the past 6 months without making distinction between categories, and secondly because the first sub-point of the question mentioned the possibility of using a single alternative supplier. The Parties further submitted that the latter point ‘immediately eliminates the possibility of customers identifying more than one other wide range supplier’.
- 7.83 We do not accept that the wording or structure of our diversion question was biased. The wording of the first sub-point of the question explicitly allowed for the possibility of splitting purchases between more than one supplier. Moreover, the following subpoint asked respondents to state the categories that they would have bought from the primary alternative, implying that diverting different categories to different suppliers was a valid and expected answer.<sup>207</sup>
- 7.84 In practice, only nine customers out of 38 named just one alternative supplier, and these were generally small customers. The other respondents named between two and 39 alternative suppliers. Many respondents also named several wide range suppliers in their responses – implying that they

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<sup>206</sup> These diversion ratios have been updated since the provisional findings to include the response from an additional customer.

<sup>207</sup> We also note that a diversion question asks respondents to consider a complex, hypothetical scenario, and breaking up the question into smaller steps can help to limit the scope for confusion or misinterpretation. Also, it would not have been feasible to ask individual diversion questions for different products.

understood that even if they had a preference for sourcing baskets of goods, they could do so from multiple suppliers.

- 7.85 The Parties commented further on this point in their response to the provisional findings.<sup>208</sup> They reiterated their view that the wording of the question focused responses on a single supplier, and commented that the fact that customers named multiple suppliers cannot be interpreted as them having understood the question without knowing how many suppliers they would have named with a differently-worded question.
- 7.86 We have considered the Parties' representations and for the reasons set out below we conclude that their position that the wording of the question is biased is not supported by the available evidence.
- 7.87 The question was clear on its face that naming multiple suppliers, as applicable, was valid and expected, with references to 'alternative supplier(s)' and using more than one alternative supplier, and a request for details of 'all the other suppliers you would have used'.<sup>209</sup>
- 7.88 The Parties' comment about the responses received implies that customers who only named the Parties would have mentioned more suppliers with a differently-worded question. However, even excluding customers who only mentioned one other supplier (in most cases UC or 3G), the response would lead to a value-weighted diversion of [X] [40 – 50]% from UC to 3G and of [X] [40 – 50]% from 3G to UC, which remains indicative of close competition between the Parties.<sup>210</sup>
- 7.89 We have also considered the possibility (not raised by the Parties) that the mention of each of the Parties in the questionnaire, prior to the diversion question, may have influenced responses. As with all such requests for information in relation to a merger, it is necessary to mention the Parties at the outset in explaining the purpose of the questionnaire. The Parties are

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<sup>208</sup> Parties' response to the Provisional Findings, paragraphs 6.26 and 6.27.

<sup>209</sup> The question (in the form relating to purchases from UC) asked: '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?' Respondents were asked to provide details including the '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)'. Respondents were also asked '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?' Finally they were asked: 'Please provide details for all the other suppliers you would have used to buy the parts that you previously bought from Universal Components' and presented with a table to complete, setting out the percentage of purchases they would make with each other supplier.

<sup>210</sup> An alternative interpretation of the Parties' submission is that even customers who named multiple suppliers might have recorded more diversion to third parties with a differently-worded question. In our view, this does not appear plausible: these customers clearly understood the question as allowing diversion to multiple suppliers and responded accordingly.

also both mentioned in Question 5, prior to the diversion questions, and respondents were asked to answer a diversion question about 3G having already answered one about UC.

7.90 However, we note that:

- (a) Most respondents were already regular customers of both Parties, so it is highly likely that they would have considered them among possible alternatives in any case.<sup>211</sup>
- (b) As noted above, diversion between the Parties was high among respondents who also identified other providers for diversion.

7.91 We have considered our diversion estimates as a broad indicator of closeness of competition between the Parties, and of remaining competitive constraints from other providers. We remain of the view that they are a useful part of the evidence and we have considered them in the round alongside other evidence.

#### *Summary of customer switching and diversion*

7.92 In summary:

- (a) Where UC has identified 'wins' from identified competitors, 3G was the losing competitor in [X]% of cases, and all other wide range wholesalers in a further [X]% of cases (paragraph 7.66).
- (b) Among business opportunities which UC has identified, [X]% are from customers of 3G. One reason that this figure is not higher may be that UC has recently sought to broaden its competitive activities beyond 3G (paragraph 7.70). In total [X]% of UC's business opportunities are from customers of wide range wholesalers.
- (c) In UC's sales meeting minutes, which largely relate to price monitoring and opportunities, [X]% of competitor mentions are of 3G and in total [X]% are of wide range wholesalers (paragraph 7.69).
- (d) In UC's CRM database, 3G was the most frequently cited source of leakages to competitors, accounting for [X]% of such leakages (paragraph 7.74).

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<sup>211</sup> Of the 30 UC customers who mentioned 3G, 26 were 3G customers, of whom 19 ordered from 3G four or more times per week (the others ordered weekly or did not specify frequency of ordering). Of the 27 3G customers who mentioned UC, 25 were customers of UC, of whom 22 used UC four or more times per week.

- (e) In our view, the Parties' analysis does not provide reliable evidence of switching rates.
- (f) Based on questionnaire responses, our estimates of diversion between the Parties are [X]% from UC to 3G, and [X]% from 3G to UC (paragraph 7.80) – ie half or more of each Parties' sales would be diverted to the other.

7.93 This evidence shows that 3G is an important competitor to UC in terms of the business it wins, opportunities, and the losses and competitive threats it faces, while an estimated half or more of diversion from the Parties would be to one another. This is broadly what we might expect in a market for wide range wholesalers where UC accounts for [X] [30 - 40]% share and 3G accounts for [X] [20 - 30]% (or around one-third of the remaining [X]%). Our view is therefore that the evidence set out above, taken in the round, points towards the Parties being one another's closest competitor, and potentially more important to one another than other competitors in combination.

### ***The Parties' merger rationale and strategy documents***

- 7.94 A number of points made in UC's internal documents relating to the rationale for the Merger are informative as to the likely competitive effects of the Merger. Details of these documents are set out in Chapter 3 and Appendix B.
- 7.95 In these documents, UC highlights the closeness of competition between UC and 3G, stating that the object of the Merger is 'to acquire our closest competitor' and noting that almost all 3G customers also have accounts with UC, referring to the 'current lack of strong competition' to UC and 3G.
- 7.96 UC also discusses the expected effects of the Merger, noting that:
- (a) The Merger would give UC an [X]% share among wholesalers with revenues over £[X] million in the UK IAM.
  - (b) 'The acquisition would limit customer's choice of supplier due to the lack of availability of the majority of UC parts on a next day service from any other supplier.'
  - (c) UC's prices are currently bound by the risk that 3G will not increase its prices in line with UC, and the Merger would remove this constraint, as 'an alternative cheaper product will not be available to the customer', resulting in margin gains.



- (d) 'UC are currently under pressure to match Alpha's [ie 3G's] [REDACTED], costing the business [REDACTED]'. The Merger would remove this constraint, resulting in lower customer rebate charges and significant margin gains.
- (e) The Merger would lead to 'strengthening of UC's dominant position in the UK IAM', reducing the likelihood of a viable competitor establishing a foothold in the market.<sup>212</sup> Elsewhere in this document UC notes that its post-Merger dominance would be time-limited, but it would take 3 to 4 years<sup>213</sup> for a valid alternative supplier to establish itself.
- (f) [REDACTED].

- 7.97 A further UC document sets out that post-Merger prices are expected to increase 'in excess of [REDACTED]%', and that combined rebate payments can be [REDACTED].
- 7.98 We also considered references to other competitors in UC's merger rationale and strategy documents. Aside from 3G, the suppliers most frequently mentioned in the documents are TTC, Amipart and DSS,<sup>214</sup> while some documents also refer to CV Logix, Sampa, Inter Cars. References to other wholesalers and OES parts manufacturers are rare.<sup>215</sup>
- 7.99 One UC document refers to CV Logix as its 'competitor' and [REDACTED]. Another document lists CV Logix, alongside Sampa and TTC, [REDACTED]. UC also states that acquiring TTC stock could deny [REDACTED] the opportunity to [REDACTED] gaining a significant presence in the UK aftermarket'.

### ***Customer and supplier views on the Merger***

- 7.100 In this section, we consider views expressed to us by the Parties' customers and suppliers about closeness of competition.

#### ***Customer views on the Merger***

- 7.101 We sent questionnaires to 341 customers of UC, 3G or both. We received 41 responses, representing 110 of the customers we contacted,<sup>216</sup> and the customers from whom we received a response accounted for 38% of UC's

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<sup>212</sup> The document notes that this would be due to the significant costs of establishing a foothold for a viable competitor.

<sup>213</sup> Another UC document notes that it would take four to five years for an alternative supplier to establish itself. The document also lists the reasons for this timeframe: 'the requirement for a large investment in premises and stock, along with the time required to integrate a new brand into the market and build customer trust.' The document further notes that [REDACTED].

<sup>214</sup> Also, they are the only companies mentioned in the 'Main Competitor Review'..

<sup>215</sup> [REDACTED] [REDACTED] Also, [REDACTED][REDACTED].

<sup>216</sup> Some responses represented several different branches which we had contacted separately.

sales and 32% of 3G's sales. Further details of our approach and responses are in Appendix C.

- 7.102 We begin by setting out customer views on the Merger, including concerns about a lack of alternatives to the Parties, and more general comments about a reduction in competition arising from the Merger. Next we consider other comments relating to closeness of competition between the Parties.
- 7.103 We asked if customers had any views on the Merger.<sup>217</sup> Of the 41 customers who submitted a written response to our questionnaire:
- (a) 23 said that the Merger would reduce competition, accounting for four fifths (23 out of 29) of customers who expressed a view.
  - (b) One customer had a neutral view of the Merger.<sup>218</sup>
  - (c) Four customers had a mixed view, highlighting some potential concerns but also some possible mitigating factors or benefits.
  - (d) The remaining questionnaire respondents did not express a view on the Merger.
- 7.104 Six other customers also commented on the Merger in calls or emails, and had a similar range of views as those who responded to our questionnaire, with most expressing some concern.

#### *Lack of alternatives to the Merged Entity*

- 7.105 Some respondents to our questionnaire emphasised the lack of suitable alternatives to UC and 3G in the market, in particular because other providers did not offer the same 'full range' or breadth of product choice:
- (a) 'The main disadvantage is that there will only be one CV parts complete range supplier in the UK and so the previous advantage of competition will be lost.' [Truck and Trailer Equipment]
  - (b) 'The 2 companies have provided us as a business with a good alternative to one another, I'm not sure where we may be able to find this in the near future.' [Linings and Hoses]

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<sup>217</sup> Third party questionnaire, Question 21: If you have any other views or comments on the merger and its potential impact on the IAM, provide them below.

<sup>218</sup>. [X].

- (c) 'TTC, 3GT and UCC were my supplier base. With TTC pulling from UK market only leaves 3GT and UCC. If they merge I have no choice but to use UCC' [Partservice]
- (d) 'A merger would limit the level of competition at the wholesale level and would give the new entity a huge amount of power in the market, with minimal viable competition. It would give factors in the IAM limited choice on where they can go for their wide range private label truck and trailer products.' [Picksons]
- (e) [REDACTED].
- (f) 'If this goes ahead you'll only effectively have one supplier of this type in the market place as Unipart TTC has since ceased trading. There are other suppliers but none with the breadth of product choice especially on the trailer side of the market.' [AC Commercials]

7.106 Two other customers who expressed concerns to us by email noted that the Parties offered a one stop shop, and the alternatives would be difficult (doing 10 to 12 orders a day [North Lincs Comp Ltd], or 'running around going to different locations to get products' [CPS Limited]. North Lincs also noted that most manufacturers prefer not to supply motor factors directly, and many do not keep stock in the UK.

#### *Reduction in competition*

7.107 Other customers responded to our questionnaire in more general terms with concerns about the lack of competition following the Merger.

- (a) 'This merger will damage the market and our business in my opinion. There would be little competition (if any) and therefore the commitment to the customer would not need to be priority. The holding company would basically be able to do what they want when they want with pricing and service.' [Pro Parts (Kent)]
- (b) 'It is of real concern that a merger reduces our ability to make sure pricing is kept competitive, also rebate I feel would be affected which is important, also competition is lost leaving a company I feel that has full market [and will be] very complacent.' [Benella]
- (c) 'Increases prices, less choice, less availability, reduced quality, poorer customer services, [REDACTED], company too powerful to negotiate with.' [Bison Parts]

- (d) 'I believe that the merger would not be a good thing and would ultimately lead to less options of where we can purchase and lessen our ability to negotiate improved terms.' [Fleet Components]
- (e) 'Worried the merger could increase prices across the complete market place.' [Truckwise]
- (f) 'The merger significantly reduces the competition when purchasing.' [Wrightpart]
- (g) 'They would have to push prices up as they would have too much of market share as they also supply to the OEMs for the aftermarket.' [Anglesey Commercial Spares]
- (h) 'If Universal components and 3G merge then there will be little or no competition in the market place.' [Fleet Factors]

#### *Exit of TTC*

- 7.108 Some customers were especially concerned about the Merger occurring following the exit of TTC from the market, and made specific comments referring to the similarity of product ranges between TTC and the Parties, and the 'capacity to supply' of TTC and the Parties, thereby implying that they viewed TTC as having been the only alternative to UC and 3G:
- (a) '1 year ago I would have said no real impact, but with TTC now ceased trading as of June 12th 2020 I can see no other supplier currently available to me to compete with the if successful merger, unless 3G start up again under a different name much like they did around 10 years ago with PBL – Peter Beaumont LTD'. [K&S Commercial Components]
  - (b) 'There will not be enough competition in the aftermarket supply chain. TTC have gone. There are now only UC and 3G which is not enough anyway.' [✂]
  - (c) 'The bulk of our purchases are made through TTC, UC and 3G. TTC have now ceased trading, therefore a merger between 3G and UC would leave us with a single supplier.' [Complete Commercial Components]
  - (d) 'With now the closure of TTC that now leaves the only two suppliers competing doing 95% similar product ranges which is 3G & UC which over time if left to merge will increase & fix pricing if not closing one of them. In my opinion would be bad for not only us but the end user.' [Wessex Truck and Trailer Supplies]

- (e) 'Lack of variety in the marketplace, no alternative suppliers with the capacity to supply now that TTC have withdrawn from the market.'  
[Southern Components Group Limited]

7.109 Others did not specifically refer to TTC as the only alternative to the Parties, but mentioned TTC in expressing concerns about the lack of competition following the Merger:

- (a) 'Competition will be vastly reduced. Especially after the closure of TTC. Will NOT be good for the industry' [NorthEast Truck Parts]
- (b) 'They will work together to push prices up as we won't be able to buy elsewhere now TTC have closed too.' [Allspares]
- (c) 'A big impact especially since the demise of TTC as the competition is needed to keep prices down and stock level availability.' [Eurotrucks]

*Customers who were not concerned*

7.110 Three customers expected not to be affected, or to be in a strong position following the Merger, because of their importance to both Parties.

- (a) Digraph, the Parties' biggest customer, told us that the Merger was likely to be positive for its business. This was because it would be spending £3.5 million with the combined entity (rather than £1.5 million to £2 million with UC and 3G separately).
- (b) [REDACTED]
- (c) 'For our own part, as a customer of both we will be more important to them as combined as they will have more to lose if they upset us.' [LCP Automotive].

*Closeness of competition between the Parties*

7.111 Generally, customers viewed the Parties as very close competitors, notably in terms of their ranges.

- (a) Allspares told us that UC and 3G have a vast range of parts from air brakes to exhausts and cover most of the products from other suppliers to Allspares in some part of their product range. Allspares explained that it could switch suppliers away from UC and 3G in some products but only TTC had a similar range to UC and 3G. UC and 3G did not have the variety of stock of Knorr-Bremse and Wabco, but they would have the fast moving parts that they can buy in bulk and sell in the aftermarket.

- (b) Linings and Hoses explained that 3G started as an alternative to UC, run by ex-UC management who knew the business well and had the same connections with suppliers for own-branded parts. 3G had expanded its range successfully over the last four or five years to offer a broadly comparable range of products to that of UC.

*Competition from other providers*

7.112 Some hoped that other competitors, notably CV Logix and Sampa, could expand to replace the competitive constraint lost from the Merger, but some noted that this was uncertain or would only happen following price increases.

- (a) Digraph said that, typically, UC, 3G and Winnard will sell the same products but that Winnard's staff have a better technical expertise than staff at UC and 3G. Digraph uses these three companies - rather than one – to help keep it competitive, manage exposure, and help with the cashflow.
- (b) Allspares said that CV Logix has started introducing its own range of parts, which will compete against UC and 3G's PL products. It said that CV Logix appears to be competing for UC's customers and will probably be a serious competitor to the merged entity. If the Merger resulted in UC/3G's prices rising, there will be an opportunity for someone to enter and make money.
- (c) EMS-FP&S said that CV Logix would likely become a large scale wholesaler to the aftermarket in the next few years. But EMS-FP&S did not want to give business to a company that also competes at EMS-FP&S' level of the supply chain.
- (d) Picksons said Sampa could be an alternative supplier to UC and 3G for some customers and products, but it currently is just 'a drop in the ocean' and would need to invest heavily in stock, range, distribution and personnel. In Pickson's view, Alliance Automotive - with CV Logix - is the only other viable option to become like UC and 3G, and that CV Logix could easily expand its range. However, Picksons acknowledged that CV Logix is owned by a buying group with the primary goal of supplying their members, so are not seen as a viable option by many motor factors. Some motor factors see CV Logix as their 'competition' as it is owned by a group of motor factors.

### *Customer views expressed to 3G employees*

7.113 3G submitted internal emails reflecting customer views expressed to its employees.<sup>219</sup> A general theme is that of customers having negative views of UC compared to 3G. However, these emails also provide some evidence relating to closeness of competition between the Parties. On the one hand, some express customer concerns about being in a weaker negotiating position (because of a reduction in alternative suppliers). On the other hand, some customers were reported as considering switching some of their business to smaller providers.

(a) [REDACTED].

(b) [REDACTED].

(c) [REDACTED].

### *Suppliers' views on the Merger*

7.114 We engaged with third party suppliers through calls and questionnaires, including in remedies discussions following our provisional findings, and we also took into account the evidence provided to the CMA in phase 1. Wide range wholesalers in general indicated that the Parties are alternatives to each other. Five out of nine expected the Merger would reduce competition. Of the others, one thought the Merger might provide more competition to CV Logix, one believed the market to be competitive and one said that the Parties' strength is in the trailer business, which is the least congested sector. The remaining one did not provide clear views on the Merger.

7.115 Five out of eight narrow range wholesalers thought that the impact of the Merger might be negative. Four of these expected a reduction in competition while the fifth was concerned that it would not be able to compete with the Merged Entity. Two narrow range wholesalers did not have any concerns related to the Merger and said that there is a lot of competition in the market.<sup>220</sup> Two suggested that there could be some negative effects, such as reduced choice or increased concentration, but that these would be mitigated by customers switching some supply to other suppliers.

7.116 OES parts manufacturers had a range of views: three of 13 who expressed a view expected the Merger would reduce choice (although one of these said customers were price sensitive and would consider other options), five

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<sup>219</sup> We note that these emails are summaries by 3G employees of customer concerns, rather than direct evidence from customers.

<sup>220</sup> Nationwide and Automint.

expected no impact on competition as there were many alternatives, and the remaining five did not express a clear view in either direction.

### *Summary of customer and supplier views on the Merger*

- 7.117 In summary, among customers who expressed a view on the Merger in response to our questionnaire, the large majority expressed concerns that the Merger would reduce competition. Many of these thought that the Parties were the only credible alternatives to one another, particularly since TTC's exit from the market. Comments to 3G by customers appear to have reflected similar concerns, and also a concern that UC did not offer the same quality and service as 3G.
- 7.118 Other providers expressed a range of views, with just over half of the wide range and narrow range wholesalers we spoke to, and some OES parts manufacturers, expecting that the Merger would reduce competition.

### ***Conclusion on closeness of competition***

- 7.119 In summary, the evidence both of influences on the Parties' pricing decisions, and of customer switching and diversion, consistently points towards the Parties being one another's closest competitors. This is further supported by UC's Merger rationale documents and third party views on the Merger. Therefore, on the basis of the evidence set out above, taken in the round, our view is that the Parties are one another's closest competitors.

### **Remaining competitive constraints**

- 7.120 In this section we consider the strength of the remaining competitive constraints on the Parties. We first consider the constraint from other suppliers within the market, before considering the constraint from narrow range wholesalers, OES parts manufacturers, 'all makes' suppliers and the AAM.

#### ***Other wide range wholesalers***

- 7.121 We first consider the extent to which other wide range wholesalers will likely be a constraint on the Parties. The Parties told us that they 'already face fierce competition from a range of new entrants – in particular CV Logix, Sampa and Inter Cars [...] – who are able to offer their customers prices that are already lower than the Parties' own prices.' In view of this, we begin by considering the degree of competitive constraint on the Parties from each of CV Logix, Sampa and Inter Cars. We then briefly describe other wide range



wholesalers in the market and consider the overall constraint on the Parties from wide range wholesalers.

### *CV Logix*

- 7.122 CV Logix is owned by AAG. AAG entered the UK market in 1997 and opened a dedicated commercial vehicles distribution centre named CV Logix in March 2017.<sup>221</sup> CV Logix told us that AAG acquired 10 to 12 commercial vehicle motor factors in the UK. The current revenue of UK motor factors owned by AAG is around £[REDACTED] million. Only ([REDACTED]%) of its revenues are generated from sales outside of AAG's network and affiliated members. It offers around 17,000 SKUs across a wide range of product groups with next day delivery (which represents [REDACTED]% of sales).
- 7.123 CV Logix told us it believed that it has a wider range of truck products, while UC and 3G have a wider range of trailer parts, but CV Logix, 3G and UC sell a lot of the same products. It thought that prices offered, rebates, technical services (including warranties and certificates) are comparable to UC's and 3G's, while quality of products and customer advice is of higher quality compared to UC and 3G. CV Logix rated both UC and 3G as a very close competitor with a score of 5 out of 5 (indicating maximum closeness).

### *Parties' submissions*

- 7.124 The Parties said that CV Logix has established itself as a key player since entering the wholesale market in 2017, and that it had claimed to have a wider range and better quality than the Parties, with comparable prices, rebates and technical services. The Parties also noted that, based on our customer questionnaire, more customers place very frequent orders from CV Logix than from other suppliers, and one competitor<sup>222</sup> (Majorsell) thought that the Merger would create a counterweight to CV Logix.
- 7.125 The Parties submitted that CV Logix exerts a strong competitive constraint on UC and 3G, and that this was illustrated by two internal UC emails. The first of these refers to the need to sell a part at a particular price to compete with CV Logix and to a 'leakage quantity' for this part. The second notes a 'lost sale to alliance group'. The Parties also said that UC's internal documents cited CV Logix as a 'challenge', a 'competitor' and a 'threat', and said that CV Logix 'figures prominently' in UC's win/loss analysis.

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<sup>221</sup> See [GroupAuto website](#) (assessed on 19 August 2020).

<sup>222</sup> The Parties' referred to Majorsell as a customer in their response to Working Papers.

### *Our assessment*

- 7.126 As set out in Figure 7.2, we estimate that CV Logix accounts for around [REDACTED] [10 – 20]% of supply of CVT parts to motor factors by wide range wholesalers, excluding TTC and CV Logix's own intra-group sales. If intra-group sales are included, CV Logix has higher sales revenue from motor factors than either UC or 3G, though it is smaller than the two combined.
- 7.127 CV Logix has at most a limited presence in the Parties' internal documents:
- (a) As illustrated in Figure 7.3, CV Logix receives very few mentions in UC's 2019 benchmarking, even compared to wide range wholesalers with smaller market shares, such as [REDACTED] and [REDACTED], and to several individual specialist wholesalers, such as [REDACTED].
  - (b) It accounts for only [REDACTED]% of mentions in UC's internal emails discussing pricing (see Figure 7.5), although it is more prominent in 3G's internal emails discussing pricing with [REDACTED]% of mentions (see Figure 7.6). It is mentioned in fewer than [REDACTED]% of UC's emails negotiating pricing (see Figure 7.6) and [REDACTED]% of 3G's emails and webchats negotiating pricing (see Figure 7.8).
  - (c) CV Logix was slightly more prominent in UC's CRM database in January to June 2019, being mentioned in around [REDACTED]% of entries (see Figure 7.9).
  - (d) However, it was only mentioned in around [REDACTED]% of reasons recorded by UC for a price reduction, compared to almost [REDACTED]% for 3G, and was again behind [REDACTED] and [REDACTED] (and others, see Figure 7.11).
  - (e) It accounted for around [REDACTED]% of mentions in UC's sales meeting minutes, behind [REDACTED] but comparable to [REDACTED] (see Figure 7.15).
  - (f) CV Logix accounted for around [REDACTED] ([REDACTED]) of UC's leakages that were identified as due to switching to a competitor (see Table 7.6).
- 7.128 Our diversion analysis estimates diversion to CV Logix just below [REDACTED] [0 - 5]% from both UC and 3G (see Figure 7.16 and Figure 7.17).
- 7.129 While CV Logix is identified in some Merger rationale documents, it is mentioned less frequently than several other competitors (paragraph 7.98 and 7.99).
- 7.130 As discussed in paragraph 7.112, some customers mentioned CV Logix as a possible alternative to the Parties. However, in general they did not appear to see CV Logix as a strong constraint on the Parties at present, but rather a

provider with scope for future expansion. In addition, two said that the fact of CV Logix being owned by a buying group meant that some motor factors would see it as their competition.

- 7.131 Taking the above evidence in the round, our view is that there is clearly some competitive interaction between CV Logix and the Parties and that, following TTC's exit, it may be the Parties' next-closest competitor after one another. However, the evidence does not support a view that CV Logix has consistently been able to beat the Parties on price or that it imposes a strong competitive constraint on the Parties. In addition, its ownership by a buying group may limit its attractiveness to motor factors which are not part of that buying group. Our view is that CV Logix at present exerts a moderate competitive constraint on the Parties. In Chapter 8 we consider the extent to which CV Logix may expand in future.

### *Inter Cars*

- 7.132 Inter Cars opened its UK operations in April 2019 and is entirely supplied from Poland.<sup>223</sup> Inter Cars supplies [REDACTED], primarily to large motor factors (80%) and other wholesalers (20%) although Inter Cars in Poland has a wider range. Inter Cars told us that it has very limited resources in the UK, with fewer than five employees, [REDACTED].
- 7.133 Inter Cars said it was cheaper than the Parties but had a week-long lead time for deliveries, [REDACTED].
- 7.134 [REDACTED].

### *Parties' submissions*

- 7.135 The Parties submitted that Inter Cars was able to offer very competitive prices, claimed to have the largest range of CVT parts (both PL and OEM/OES) in Europe and had introduced a sophisticated webshop. They said that most UK motor factor customers have an account with Inter Cars.
- 7.136 The Parties said that [REDACTED].

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<sup>223</sup> Inter Cars established its UK office in April 2019. While it has a small warehouse in the UK, this is used for stocking some small automotive parts; Inter Cars does not have a warehouse to stock CVL parts. Prior to opening its UK office, Inter Cars supplied the UK IAM directly from its Poland warehouse.

### *Our assessment*

- 7.137 As set out in Table 7.1, we estimate that Inter Cars accounts for around [REDACTED] [0 - 5]% of supply of CVT parts by wide range wholesalers, excluding TTC and CV Logix' intra-group sales.
- 7.138 Our analysis of the Parties' internal documents, set out above, provides little evidence of competition from Inter Cars.
- (a) In most cases, we did not identify a significant number of mentions of Inter Cars.
  - (b) Inter Cars accounted for [REDACTED]% of competitor mentions in UC's internal emails discussing pricing (Figure 7.5) and in [REDACTED]% of those of 3G (Figure 7.6).
  - (c) It was mentioned in fewer than [REDACTED]% of reasons recorded by UC for a price reduction (Figure 7.11).
  - (d) Inter Cars accounted for around [REDACTED]% of mentions in UC's sales meeting minutes (Figure 7.15).
- 7.139 We have identified two mentions of Inter Cars in the Parties' strategy documents (paragraph 7.99) including the comment noted by the Parties in paragraph 7.136 above. Inter Cars is also mentioned in 3G's reports of customer views as an alternative to the Parties (paragraph 7.113).
- 7.140 Our diversion analysis did not identify any significant diversion to Inter Cars from either UC or 3G (Figure 7.16 and Figure 7.17).
- 7.141 In our view there is limited evidence of competitive interaction between Inter Cars and the Parties. The evidence does not support a view that Inter Cars has consistently been able to beat the Parties on price or that it imposes a strong competitive constraint on the Parties. Its current inability to offer next day delivery is likely to be a significant limitation on how much it can constrain the Parties. Our view is therefore that Inter Cars at present exerts a limited competitive constraint on the Parties. In Chapter 8 we consider the extent to which Inter Cars may expand in future.

### *Sampa*

- 7.142 Sampa is a manufacturer [REDACTED] with a range of [REDACTED] products. About [REDACTED] Sampa's 2019 sales revenues were to [REDACTED] and [REDACTED] were to [REDACTED]. Sampa offers next day delivery (which represents [REDACTED]% of its sales).

- 7.143 [REDACTED]. Some competitors saw Sampa as having a negative reputation for quality.
- 7.144 Sampa opened a UK warehouse in February 2020, [REDACTED].
- 7.145 [REDACTED].

*Parties' submissions*

- 7.146 The Parties submitted that, as a well-established European wholesaler, Sampa was able to develop new products more quickly and cheaply than the Parties. They said that, following the opening of its Manchester warehouse in early 2020, Sampa is now competing directly and aggressively for the Parties' customers – including by offering short delivery times and low prices, and [REDACTED].
- 7.147 The Parties provided four examples of emails from its representatives reporting that they had been outbid on price by Sampa, three dated 13 to 17 February 2020 and one from July 2020. They also provided an emailed brochure from Sampa advertising nine Air Springs products and submitted that the prices shown were lower than those of UC and 3G.

*Our assessment*

- 7.148 As set out in Figure 7.1, we estimate that Sampa accounts for less than [REDACTED] [0 - 5]% of supply of CVT parts by wide range wholesalers, excluding TTC and CV Logix' own intra-group sales.
- 7.149 Sampa has a very limited presence in the Parties' internal documents:
- (a) As illustrated in Figure 7.3 Sampa is not mentioned in UC's 2019 benchmarking.
  - (b) It accounts for [REDACTED]% of mentions in UC's and less than [REDACTED]% in 3G's internal emails discussing pricing (see Figure 7.5 and Figure 7.6), and is not mentioned in UC's and 3G's external emails discussing pricing (see Figure 7.6 and Figure 7.7).
  - (c) Sampa was mentioned in fewer than [REDACTED]% of entries in UC's CRM database in January to June 2019 (Figure 7.9).
  - (d) It was mentioned in around [REDACTED]% of reasons recorded by UC for a price reduction (see Figure 7.11).
  - (e) It accounted for fewer than [REDACTED]% of mentions in UC's sales meeting minutes, behind [REDACTED] but comparable to [REDACTED] (see Figure 7.15).

- 7.150 We recognise that Sampa's importance as a competitor may have increased since it opened a UK warehouse in February 2020, and this will not be reflected in the Parties' internal documents covering earlier periods. In addition, we note that Sampa is identified in some UC Merger rationale and strategy documents (paragraph 7.99).
- 7.151 On the other hand, the Parties have presented only very limited evidence of the competition they face from Sampa – namely four internal emails and a brochure. Each of the emails refers to one instance of losing the sale of an individual part or a small number of parts to a single customer (in the context of a market in which the Parties sell thousands of parts to hundreds of customers).<sup>224</sup>
- 7.152 As regards the Parties' submission that Sampa is undercutting them on prices, we note that:
- (a) It is not clear whether the Air Springs brochure was directed at wholesalers, motor factors, or both. As noted above, around [X] Sampa's sales are to wholesalers, including the Parties. We would not necessarily expect it to offer wholesale prices which were the same as the Parties' own prices to motor factors.
  - (b) The products offered in the Air Springs brochure appear to be PL (ie they are manufactured by Sampa). Whether prices in the emails are for PL parts is not stated (although PL parts account for around [X]% of UC's sales). Different PL versions of the same part may not be directly comparable in quality, and customers may make a price/quality trade-off in deciding which to purchase. A possible example of this is that, in the Parties' price comparison based on the Air Springs brochure, the price difference between Sampa and UC was no greater, and usually significantly less than, the price difference between UC and 3G for the same part.
- 7.153 Our diversion analysis estimates are based on responses to our third party questionnaire to customers, which were received in August to September 2020, and as such may be seen as a reflection of recent competition in the market. We estimated diversion to Sampa around [X]% from UC and [X] [X]% from 3G (Figure 7.16 and Figure 7.17).
- 7.154 Taking this evidence in the round, in our view there is limited evidence of competitive interaction between Sampa and the Parties. The evidence does not support a view that Sampa has consistently beaten the Parties on prices

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<sup>224</sup> The July email states [X]. It is therefore unclear whether the sale was lost to Sampa or to [X].

to motor factors or that it exerts a material competitive constraint on the Parties. Our view is that Sampa at present exerts a limited competitive constraint on the Parties. In Chapter 8 we consider the extent to which Sampa may expand in future.

#### *Additional wide range wholesalers*

- 7.155 In the following, we consider the competitive offers from additional wide range wholesalers (listed alphabetically) and then provide our assessment of them.

#### *Amipart*

- 7.156 Amipart has a range of 2,500 part numbers, and largely sells PL parts to motor factors, offering next day delivery. Amipart said it served similar customers to the Parties, who were its biggest competitors, and offered similar quality of products, customer advice and technical services (including Warranties). However, it has a materially smaller trailer product range than the Parties.
- 7.157 Amipart is relatively prominent in some of the Parties' internal documents, but less so in others:
- (a) UC benchmarks [X] % of product types against Amipart (Figure 7.3). It accounts for [X] % of competitor mentions in UC internal pricing discussions (Figure 7.5) but only [X] % of mentions in UC customer negotiations (Figure 7.7). It accounts for [X] % of competitor mentions in 3G internal pricing discussions (Figure 7.6) and [X] % of mentions in 3G customer negotiations (Figure 7.8).
  - (b) Amipart accounts for [X] % of competitor mentions by UC in reasons for a price reduction (Figure 7.11). It also accounts for around [X] % of mentions in UC's sales meeting minutes (Figure 7.15). However, it accounts for [X] of the [X] leakages to competitors identified by UC (shown in Figure 7.12). Amipart is also mentioned in UC's merger rationale documents (paragraph 7.98).
- 7.158 While these internal documents show some awareness among the Parties of competition from Amipart, this should be considered in the context of its small market share ([X] [0 - 5] %).

### *Diesel Technic*

- 7.159 Diesel Technic has a range of around [X]. Diesel Technic generates about 60% of its revenues from motor factors and the rest from wholesalers, and offers free next day delivery. Diesel Technic did not include 3G or UC among its main competitors in the questionnaire.
- 7.160 Diesel Technic told us that it saw 3G as more of a competitor than UC, because UC's products were lower price and quality, but all three served the same customer base.
- 7.161 UC benchmarks [X]% of products against Diesel Technic (Figure 7.2). However apart from this Diesel Technic is mentioned only infrequently in the Parties' internal documents.

### *DSS*

- 7.162 DSS is a specialist wholesaler for Scania, Volvo, DAF and Renault Vehicle, and most of its sales are next day delivery (which represents [X]% of its sales).
- 7.163 DSS said it serves the same customers as UC and 3G and has similar prices and technical services (including warranties, certificates), but a smaller range as it does not supply trailer parts. DSS said that it offers better quality of products and better customer advice compared to UC and 3G and did not regard them as close competitors. The Parties [X]. It is mentioned in [X]% of 3G internal documents and only infrequently in UC internal documents.

### *Ferdinand Bilstein UK Ltd*

- 7.164 Ferdinand Bilstein UK Ltd (Febi Truck) primarily supplies motor factors and offers free next day delivery. Febi submitted that there is 'consistent work to expand our range,' in line with the 'strategic aim to be considered a 'one stop shop' for truck and trailer parts'. However, Febi did not provide any further specific details. The Parties [X] and it is mentioned only infrequently in their internal documents.

### *Imexpart*

- 7.165 Imexpart offers 'all "hard parts" from bumper to bumper' (around [X] SKUs) and engine parts, supplying end users, garages, motor factors and engine re-conditioners, etc. Imexpart offers free next day delivery for order values of £150 or higher.



7.166 Imexpart submitted that its range on common products compares well to the Parties, and that it is better than the Parties on less common/hard to source parts. Imexpart considered that both UC and 3G work on smaller margins and may offer better rebates, but considered that UC's product quality is lower.<sup>225</sup> Imexpart also considered that its technical services (including warranties, certificates) and customer advice are comparable to those of UC and 3G. Imexpart rated UC with a 5 and 3G with a 2 when scoring competitors. The Parties [X] and it is mentioned only infrequently in their internal documents.

### *Majorsell*

7.167 Majorsell offers approximately 5,000 truck and bus parts, focused on airbrake and caliper parts. Most sales are to motor factors, with the same customers served as UC and 3G. Majorsell offers free next day delivery for order values higher than £100.

7.168 Majorsell told us that it is more specialized in airbrake and caliper parts while UC's and 3G's product range is more general (with 3G specialising in lighting and electrical). Majorsell considered that its PL parts are higher quality than UC's and that it is more customer focused. Majorsell described UC and CV Logix as 'like a huge Argos for truck parts'. Majorsell rated UC with a 4 and 3G with a 3 within its main competitors. The Parties [X] and it is mentioned only infrequently in their internal documents.

### *Our assessment*

7.169 Each of the wide-range wholesalers described above competes with the Parties to some degree, with several seeing UC, 3G or both Parties, as close competitors. Most offer next day delivery and see themselves as serving a similar customer base to the Parties.

7.170 While some have a similar range to the Parties, others (Amipart and Majorsell) have smaller ranges. Some considered themselves to offer higher quality or service than the Parties (DSS, Amipart, Majorsell) or than UC (Imexpart, Diesel Technic). Imexpart saw the Parties as operating on lower margins, while Diesel Technic saw UC as offering lower-priced parts.

7.171 In view of the evidence set out above, our view is that each of these individual wide range wholesalers above exerts, at best, only a very limited

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<sup>225</sup> Imexpart did not comment on 3G's product quality.

competitive constraint on the wide range wholesale supply of CVT parts by the Parties.

- 7.172 Our view is that other wide range wholesalers, including CV Logix, Sampa and Inter Cars, collectively exert only a limited competitive constraint on the Parties. This is consistent with their current market shares relative to the Parties (see Table 7.1), and to the evidence from customers in relation to the impact of the Merger.

### ***Narrow range wholesalers***

- 7.173 We have also assessed the competitive constraint on the Parties from narrow range wholesalers. We have classified wholesalers as ‘narrow range’ if they supply fewer than 20 UC product fields.<sup>226</sup>

### ***Parties’ views***

- 7.174 The Parties told us that ‘when setting prices for specific product categories, the Parties take account of the prices charged by all significant competitors that supply CVT parts to motor factors, including those with a greater focus on particular component categories, as well as OES suppliers that supply directly to motor factors’. [REDACTED].<sup>227</sup>
- 7.175 The Parties said that ‘wholesalers that focus on a smaller number of CVT part categories will typically carry a very extensive number of lines within their core range(s), while also benefitting from a reputation for expertise and greater technical service and support levels’.<sup>228</sup>

### ***Views of narrow range wholesalers***

- 7.176 In general, narrow range wholesalers saw themselves as distinct from the Parties, but as having a degree of competitive interaction with them:
- (a) Automint said that the Parties ‘have a lot of competition amongst parts of their range’. It described wide range wholesalers as a ‘one stop shop’ for motor factors. It rated Granning as its closest competitor, followed by Sampa (which had a focus on Automint’s product groups), and then UC and 3G rated 3 out of 5 on closeness, noting ‘all our range available from them. Geographically close’. It said that the more ‘core’ a product was to Automint, the more price-competitive it was with the Parties.

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<sup>226</sup> See Appendix D, Table D2 for list of the product fields

<sup>227</sup> Parties’ response to Phase 1 Decision, paragraphs 4.10 and 4.11.

<sup>228</sup> Parties’ response to Phase 1 Decision, paragraph 4.12.

- (b) Granning, which has acquired J4, told us that it saw itself as having a different strategy to the Parties. It said that customers go to Granning for its expertise whilst also going to bigger wholesalers to purchase the various remaining products they need.
- (c) Juratek scored Winnard and UC as 4 out of 5 on closeness of competition.
- (d) Winnard told us that 'all makes' suppliers were its most significant competitors. It listed UC and 3G as sixth and seventh among its closest competitors with a score of 3 out of 5 for closeness of competition, noting 'significant overlap of our product range', with its closest competitors being 'OEM', Juratek, and TMD Friction (all scoring 5). Winnard commented that 'All our products are safety critical. We have in house engineering. UC sell a wide range of products that are not all safety critical'.

7.177 Some narrow range wholesalers noted that UC and 3G offer a wider range of products in general but have a smaller range within the particular product groups offered by these wholesalers. Examples are Winnard in braking components, Durite<sup>229</sup> and Guardian in electrical parts, Dinex in exhaust solutions, and Juratek in braking and steering and suspension.

7.178 The product ranges of EBS, Granning, Borg & Beck and Automint<sup>230</sup> are wider (ie covering more product categories) than the more specialised wholesalers, but still much narrower than the range offered by the wide range wholesalers such as UC and 3G. Some but not all have greater depth of range within certain product categories: Automint and Borg & Beck submitted that the Parties offer all of their range whereas Granning considered itself to have a narrower range in general, but to sell more products within their offered product categories, and considered itself to be a leader in Airsprings, CV springs and truck body panels. EBS (which specialises in air brake and associated components) considered that it competes with UC and 3G on fast-moving parts (about 10% of EBS range), but not on the long tail of specialist products.

7.179 Some narrow range wholesaler responses indicated that they are not close competitors to the Parties because they focus on different parts of the IAM supply chain or offer different product lines. For example, Nationwide told us that it had only a small crossover of products with the Parties, and that only about [X]% of its sales are to motor factors, with [X]% of sales going to

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<sup>229</sup> Only about [X]% of Durite's sales are to motor factors.

<sup>230</sup> [X] of Automint's revenues came from the steering and suspension product group.

independent garages/fleet operators and similar customers. Roadlink submitted that it is more involved in the remanufacture of brake shoes and callipers than in distribution, [REDACTED]. Similarly, Fleetparts, a remanufacturer of callipers, submitted that the cross-over of products supplied between Fleetparts and UC and 3G is low because the Parties do not sell remanufactured callipers, which is the main product line for Fleetparts.

#### *Parties' internal documents*

- 7.180 UC's 2019 'Master Price Review' contains equivalent prices for [REDACTED] (see paragraph 7.26). Its August 2019 Price Review guidelines also mention several narrow range wholesalers.
- 7.181 However only [REDACTED]% of its products, accounting for [REDACTED]% of sales, are benchmarked against one or more narrow range wholesalers (paragraphs 7.33 and 7.34). J4 is benchmarked against around [REDACTED]% of products, Juratek, Borg & Beck, Dinex and Granning against between [REDACTED]% and [REDACTED]% of products, and five other narrow range wholesalers are benchmarked against [REDACTED]% of products or fewer (Figure 7.3). Mentions of narrow range wholesalers tend to be concentrated in three categories – steering and suspension, body, and braking (Table 7.4).
- 7.182 Narrow range wholesalers account for [REDACTED]% of mentions in UC's CRM database (paragraph 7.55), and [REDACTED]% of mentions as reasons given for a price reduction (paragraph 7.55). In addition, they account for [REDACTED]% of identified switches to a competitor in UC's CRM database ([REDACTED] out of [REDACTED]) (Figure 7.9), more than 3G with [REDACTED]% ([REDACTED] out of [REDACTED]).

#### *Diversion*

- 7.183 As set out in paragraph 7.81, our estimates of diversion from the Parties to narrow range wholesalers are limited ([REDACTED] [10 - 15]% in each case) compared to diversion between the Parties ([REDACTED] [50 - 60]% from UC to 3G and [REDACTED] [50 - 60]% from 3G to UC).

#### *Customer views*

- 7.184 Customers we spoke to, or who responded to our questionnaire, did not indicate that they saw narrow range wholesalers, individually or collectively, as imposing a competitive constraint on the Parties (with the exception of Digraph which mentioned Winnard as a competitor to the Parties – see paragraph 7.112).

7.185 Rather, customers were concerned about the lack of suitable alternatives to the Parties, or more generally about a reduction in competition following the Merger (paragraphs 7.103 to 7.109).

#### *Our assessment*

7.186 As set out above, narrow range wholesalers collectively account for a substantial number of mentions of competitors in the Parties' internal documents. In the case of leakages and opportunities, narrow range wholesalers combined accounted for slightly more mentions than 3G. However, on other measures 3G appears to be a more important competitor to UC than all narrow range wholesalers combined. In particular, 3G is mentioned twice as often as narrow range wholesalers as the reason for a price reduction by UC.

7.187 In addition, our estimates of diversion show that diversion from the Parties to narrow range wholesalers is low, and much lower than their diversion to one another.

7.188 The evidence provided to us by customers does not support a view that they saw narrow range wholesalers as a strong competitive constraint to the Parties. Rather they were concerned about the lack of alternatives following the Merger. We would not expect customers who saw narrow range wholesalers as a good alternative to the Parties to have such concerns. These comments are consistent with customers viewing the 'one stop shop' offered by the Parties as important (see Chapter 5).

7.189 Our view is therefore that narrow range wholesalers, in combination, exert only a limited competitive constraint on the Parties.

#### ***OES parts manufacturers***

7.190 As discussed in Chapter 2, many OES parts manufacturers serve motor factors directly, with next day delivery and comparable price and quality to the Parties. However, OES parts manufacturers are generally focused on a limited range of products, with all except Wabco and Hella selling fewer than ten product fields in three or fewer categories (see Figure 6.6).

#### *Parties' views*

7.191 The Parties submitted that OES parts manufacturers were 'a very significant direct competitive constraint on the Parties'.<sup>231</sup> They said that while 'certain

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<sup>231</sup> [Parties' response to Phase 1 Decision](#), paragraph 4.22.

OES parts manufacturers will require a higher minimum order value to qualify for free delivery than the Parties (TVS has a minimum order value of £125), this is not the case for all OES suppliers'.<sup>232</sup> They provided a table showing the current minimum order volume for free carriage of some of the largest OES parts manufacturers, with minimum orders ranging from zero to £500, with seven at £150 or lower, and four at £250 or £500, and noting that the major OES parts manufacturers supply to the wholesale level and also to motor factors (and in one case to CVT fleets).<sup>233</sup>

- 7.192 The Parties further submitted that often there is no physical or functional difference between the PL, OES and OEM versions of a particular component, that purchasing directly from an OES parts manufacturer allowed the motor factor to avoid a wholesaler mark-up,<sup>234</sup> and that 'the higher order threshold to qualify for free carriage is often easily met in practice by motor factors given that these OES manufacturers all supply "fast moving" (and therefore high volume) CVT parts'.<sup>235</sup>

#### *Customer views*

- 7.193 As noted in paragraph 6.58, some customers told us that they tended to use OES parts manufacturers for specialist parts with limited availability, or where quality is critical. In addition, customers said that in some cases next day delivery is offered on less attractive terms than wholesalers (eg higher thresholds for free delivery). Customers told us that OES parts manufacturers are typically used for stock orders and wholesalers for daily purchases.

#### *Provider views*

- 7.194 Views differ as to whether OES parts and PL parts (and OEM parts) are comparable:
- (a) Boydell and Jacks (an OES parts manufacturer) said that, generally, PL parts and OEM parts 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.

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<sup>232</sup> Parties' response to Phase 1 Decision, paragraph 4.18

<sup>233</sup> Parties' response to Phase 1 Decision, Table 1.

<sup>234</sup> [REDACTED]. [REDACTED].

<sup>235</sup> Parties' response to Phase 1 Decision, paragraphs 4.19 to 4.21.

- (b) Unipart (owner of TTC, a former wide range wholesaler) said that PL parts [REDACTED].
- (c) Dinex (a narrow range wholesaler) said there would be a difference in the products labelled under OEM, OES and PL. Dinex thought that whilst PL parts can be of lower quality, provided they perform to an OEM standard and are validated, then they can be released in the aftermarket. Dinex believes that differences in terms of price between OEM, OES and PL versions of a part relate to differences in quality.
- (d) Roadcrew (an 'all makes' supplier) said that PL is not perceived to have the same value or quality as OEM. Some PL and OES products may have the same physical and functional features, but for the majority there is a difference, particularly with safety critical parts.

### *Our assessment*

- 7.195 As discussed earlier in this chapter, the Parties' internal documents show that they are primarily focused on one another as competitors, and to a lesser extent on other wide range wholesalers.
- 7.196 These internal documents also show a degree of competitive interaction with OES parts manufacturers. In particular, UC attributes [REDACTED]% of 'leakages' to competitors to OES parts manufacturers ([REDACTED], see Table 7.6), and OES parts manufacturers account for [REDACTED]% of competitor mentions in UC's internal discussions. On the other hand, [REDACTED], and OES parts manufacturers account for only [REDACTED]% of mentions of competitors in UC's price negotiations, and only [REDACTED]% of its 'overstrike' discounts in response to competitors. On balance, we infer from these internal documents that OES parts manufacturers exert only a limited competitive constraint on the Parties.
- 7.197 It is possible, in principle, that customers could switch some of their demand to OES parts manufacturers in response to a price increase by the Merged Entity. However, in doing so they would have to place a larger number of orders than before, and to pay delivery fees where they did not meet the minimum threshold on those orders. In addition, some OES parts manufacturers appear to be focused on supplying to wholesalers rather than motor factors.
- 7.198 In light of the above, our view is that no individual OES parts manufacturer exerts an effective competitive constraint on the wide range wholesale supply of CVT parts by the Parties; and when they are taken in combination, OES parts manufacturers exert only a limited competitive constraint.

7.199 In view of the points set out above, our view is that the OES parts manufacturers exert, at most, a limited constraint on the Parties.

***‘All makes’ suppliers***

7.200 The Parties submitted<sup>236</sup> that ‘all makes’ suppliers are a significant competitive constraint and are able to offer same day or next day delivery via their local dealership networks.

7.201 As set out in paragraphs 6.78 to 6.81, ‘all makes’ suppliers told us that they do not see themselves as competing with wholesalers. In addition, as set out in paragraphs 6.83 to 6.85, of seven third party wide range wholesalers only Majorsell, one of the smallest, saw ‘all makes’ suppliers as competitors, and fewer than half of narrow range wholesalers saw ‘all makes’ suppliers as competitors. The Parties’ internal documents include very little consideration of ‘all makes’ suppliers.

7.202 If ‘all makes’ suppliers were an indirect constraint on the Parties, we would expect the Parties’ customers, ie motor factors, to see ‘all makes’ suppliers as competitors. In response to our questionnaire, 19 out of 38 motor factors said they monitor prices of ‘all makes’ suppliers and 19 did not.

7.203 The customers who said they monitor the prices of ‘all makes’ suppliers had differing views on the strength of competition from them: some said they carried out limited monitoring or on ‘ad hoc’ basis, but others said that they compete with ‘all makes’ suppliers.

(a) Truck and Trailer Equipment said: ‘To some degree but our competitors in the main are factors the same as us and so driven by their purchase price which in the main is the same as ours.’

(b) Picksons said: ‘We are aware of the regular price offers advertised by the main dealers. We use this as useful market information and react when and if we need to.’

(c) EMS–FP&S said: ‘Yes - 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

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<sup>236</sup> Parties’ response to Phase 1 Decision, paragraph 6.2.



aftermarket, we don't compete with our customers who run workshops, our business is parts.'

(d) Guest Truck said: 'Yes because that is who we are competing with in the non-franchise side of the business.'

7.204 The customers who said they do not monitor the prices set by 'all makes' suppliers gave a variety of reasons. Some said that they do not have the capacity to do so. Others said that they compete more on service. UK Truckparts said that it is 'generally more competitive [than 'all makes'] anyway'.

7.205 We also asked motor factors whether their own customers also purchase from 'all makes' suppliers and whether they are aware of instances when their customers have switched between them and 'all makes' suppliers.<sup>237</sup> Of the 38 customers who answered this question, 15 responded in the affirmative, although again these customers disagreed on the extent to which this happened. The extent of competition differed depending on issues such as proximity to outlets, relative quality, and the type of demand.

(a) Benella said: 'all main dealers use 'all makes' wholesalers which has had a major effect on our business.'

(b) Picksons said: 'We don't have any access to this kind of information, but I would imagine some customers do buy off 'all makes' suppliers to some degree, whether it be due to special offers, a personal relationship, or proximity to the branch.'

(c) Truck and Trailer Equipment said: 'Yes, this happens when some OEMs do special prices, also several are now doing 'all makes' programs and finally, in some instances quality of alternative parts have been questionable.'

(d) Coefficient Brake Services said: 'This only tends to happen in export markets where the route to market rules or historic understandings seen in the UK don't apply.'

7.206 We also asked customers whether a hypothetical price increase of 5% of all UC and 3G products would influence the prices set for their customers.<sup>238</sup>

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<sup>237</sup> Third party questionnaire: The question was 'Do your customers also purchase from 'all makes' wholesalers? Are you aware of any instances where your customers have switched purchases from you to 'all makes' wholesalers? Or switched from 'all makes' wholesalers to you? If so, why did they switch?'

<sup>238</sup> Third party questionnaire: The question was 'If Universal Components and/or 3G increased the prices of all their products by 5%, would this have any influence on the prices that you set for your customers? If so, explain how much and why your price would change.'

Out of 41 customers who provided an answer to that question, 36 said that they were likely to increase their prices to customers in response to such a price increase by UC and 3G at least to some degree.

- 7.207 In our view, this points towards ‘all makes’ suppliers not being a strong constraint on the prices of motor factors.
- 7.208 The Parties submitted that questions about the constraint from ‘all makes’ suppliers may understate this constraint, if these suppliers do not compete with motor factors across the full range of CVT parts. The Parties have not explained why this would lead to an understatement – we would expect that if ‘all makes’ suppliers only competed with motor factors across a subset of CVT parts, the competitive constraint on motor factors, and hence the indirect constraint on the Parties, would be less than if ‘all makes’ suppliers competed on the full range
- 7.209 We also explored competition with ‘all makes’ suppliers on calls with customers. Customers said that ‘all makes’ suppliers were a constraint on their business, but some customers said that the level of expertise and service offered by ‘all makes’ suppliers is generally poorer than that offered by motor factors.
- (a) [X] said that it loses sales to both ‘all makes’ suppliers and other motor factors, depending on who was active in the local market, and it tried to price match with both. [X] told us that the proportion of price matching requests received from its customers related to ‘all makes’ suppliers would be around 30% to 50%. In [X] experience, DAF appears to be prepared to offer parts at any price to get the sale. [X].
- (b) Digraph estimated that it is competing with TRP in at least one in every five or ten enquiries. Digraph’s customers use TRP in a similar way to how they use Digraph. However, in Digraph’s view, the ‘all makes’ providers do not have a very high service level. For example, Digraph offers an ‘on demand’ delivery service, which means that most customers receive their order within an hour, whereas ‘all makes’ tend to offer only morning or afternoon slots. Digraph considers that ‘all makes’ dealers are competitive with motor factors. It told us that main dealers tend to be really strong on their own brand and their representatives have superb knowledge on their brand products, but they do not have the breadth of knowledge that Digraph staff have.
- 7.210 In summary, we have not seen strong evidence that the Parties or other wholesalers see themselves as competing against ‘all makes’ suppliers. Some motor factors see themselves as facing competition from ‘all makes’

suppliers, but others do not. In addition, motor factors did not consider that they would be unable to pass on a wholesale price increase to their customers, as one might expect if they were competing closely on price with ‘all makes’ suppliers.

- 7.211 In view of this, we conclude that ‘all makes’ suppliers exert, at most, a limited constraint on the Parties.

### ***Authorised aftermarket***

- 7.212 This section considers whether and the extent to which the supply of CVT parts in the AAM imposes an indirect competitive constraint on the Parties.

- 7.213 The Parties submitted that when the warranty of a vehicle expires, the vehicle operator has the option of having the vehicle served in the AAM or in the IAM. As the vehicle operator has the option to rely on the AAM, this latter segment may constitute an indirect competitive constraint on any CVT parts wholesaler that does not have access to the AAM.<sup>239</sup>

- 7.214 In this section, we consider the following:

- (a) Evidence from UC’s strategy documents on how UC views the CVT aftermarket.
- (b) Evidence from other wholesalers on how end customers use both the IAM and the AAM.

### ***UC strategy documents***

- 7.215 In many of the strategy documents where UC assesses the UK aftermarket for CVT parts, [REDACTED]. An example is Project Alpha Business Case (April 2019), in which UC states that [REDACTED]. Similar references and graphs appear in several other documents.

- 7.216 As discussed above, UC’s pricing documents, including its benchmarking, internal discussions about pricing, and negotiations with customers, are focused on potential competition from other wholesalers. UC benchmarks against OEM dealers for [REDACTED]% of products (paragraph 7.33), accounting for [REDACTED]% of sales by value (paragraph 7.34), and OEM dealer prices account for [REDACTED]% of mentions in its benchmarking (Figure 7.3). However, overall these documents are focused on other wholesalers rather than the AAM. Similarly, UC’s internal documents about interactions with competitors are focused on

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<sup>239</sup> Parties’ response to Phase 1 Decision. paragraph 6.7 and 6.8.

wins, opportunities, losses and threats from other wholesalers, not from the AAM. We have seen no evidence in its internal documents that UC takes account of switching to the AAM by customers of the garages that are supplied by motor factors.

#### *Evidence from other wholesalers*

7.217 Some wholesalers commented on interactions between the AAM and the IAM. For example:

- (a) Boydell and Jacks told us that end vehicle operators will shop around and go where they get the best deal, whether in the aftermarket (garages, workshops) or the authorized aftermarket (franchised service centres).
- (b) Dinex told us that OEM dealers are tying in customers in the authorized aftermarket through repair and maintenance programmes (R&M). Customers who would have gone to the aftermarket, are tied in the AAM.
- (c) Roadcrew considered that when the warranty expires the proportion of users that go to the IAM increases, but that for some parts, such as safety critical parts, end users may still rely more on the AAM.

7.218 We note that the comments from Dinex and Roadcrew relate to end-users remaining in the AAM, rather than switching away from the IAM to the AAM based on the relative price of the two. The AAM is typically a more expensive option than the IAM, so price-sensitive end users may be unwilling to switch from the IAM to the AAM.

7.219 Furthermore, the wholesale cost of parts is only one aspect of the service that garages and workshops offer. Other things being equal, this reduces the likelihood that any price increase by the Parties would in itself result in substantial switching to the AAM.

7.220 In view of the above, we conclude that the AAM exerts, at most, a limited constraint on the Parties.

#### **Conclusion on competitive assessment**

7.221 As set out in paragraph 7.117, in our view the Parties are one another's closest competitors, and this is supported by evidence of influences on the Parties' pricing decisions, evidence on customer switching and diversion, UC's Merger rationale documents, and third party views on the Merger.

- 7.222 The Parties also face a degree of competition from other wide range wholesalers, and narrow range wholesalers. However, in our view this competition is significantly less of a constraint on the Parties than they are on one another, in particular because:
- (a) Other wide range wholesalers, individually and collectively, have a more limited presence in the market than the Parties (when sales by CV Logix to other members of the AAG Group are excluded); and
  - (b) Narrow range wholesalers serve a different demand than wide range wholesalers – ie they do not offer a ‘one stop shop’ which is the main reason motor factors use wide range wholesalers (as set out in Chapter 5).
- 7.223 This is supported by the Parties’ internal documents – for example UC benchmarks more than [X] of its products against 3G (Figure 7.3), fewer than 20% against [X], and around 10% or fewer against any other wholesaler, while 3G is mentioned in around [X]% of UC price negotiation documents, with each other wholesaler (excluding TTC) mentioned in fewer than [X]% of documents (Figure 7.7). 3G [X], and UC is mentioned in around [X]% of its price negotiation documents, with each other wholesaler mentioned in [X]% of documents or fewer (Figure 7.8).
- 7.224 In addition, the estimated expenditure weighted diversion from UC to 3G is [X] [50 - 60]%, and that from 3G to UC is [X] [50 - 60]%, from which we infer that they are at least as important a competitive constraint on one another as all other competitors combined.
- 7.225 The Parties face at most a limited constraint from respectively OES parts manufacturers, ‘all makes’ suppliers and the AAM. This is evidenced by the Parties’ internal documents and our diversion estimates, where OES parts manufacturers do not appear as an important constraint, and ‘all makes’ suppliers and the AAM are hardly present.
- 7.226 In our view, other providers do not collectively exert an effective competitive constraint on the Parties. This is supported by UC’s Merger rationale documents (paragraphs 7.92 to 7.96), which describe the effects of the Merger as giving UC a ‘dominant’ position, reducing customer choice, and the removal of constraints on UC’s pricing and rebates. Our view is further supported by the concerns raised by the large majority of customers who expressed a view on the Merger, with many commenting on the lack of alternatives to the Parties, or concerns about a lack of competition or higher prices following the Merger (paragraphs 7.101 to 7.106).

7.227 For the reasons given above we conclude that, subject to any countervailing factors, the Merger may be expected to result in an SLC in the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.

## 8. Countervailing factors

8.1 When considering whether a merger has resulted, or may be expected to result, in an SLC, the CMA considers factors that can mitigate the effect of a merger on competition (countervailing factors) which in some cases may mean that there is no SLC. These factors include:<sup>240</sup>

- (a) the responses of other suppliers (such as rivals or potential new entrants) to the merger, for instance the entry into the relevant market of new providers or expansion by existing providers;
- (b) the ability of customers to exercise buyer power; and
- (c) the effect of any rivalry-enhancing efficiencies arising as a result of the merger.

8.2 In this chapter we consider each of these factors in turn.

### Entry and expansion

8.3 As set out in the CMA Merger Assessment Guidelines, the analysis of a possible SLC should take into account the responses of others, including rivals. The CMA will consider whether the entry of new firms, or the expansion of operations by existing firms, would mitigate the initial effect of a merger on competition to such an extent that no SLC would arise. In assessing whether entry or expansion might prevent an SLC, the CMA will consider whether it would be timely, likely and sufficient to do so.<sup>241</sup> This assessment involves a consideration of any barriers to entry or expansion that may exist, alongside other factors that affect firms' incentives or ability to enter or expand in a market.<sup>242</sup>

8.4 We first assess the extent to which there are any barriers to entry or expansion, before we examine whether there is evidence that entry and/or expansion within the relevant market is timely, likely and sufficient to prevent an SLC.

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<sup>240</sup> [Merger Assessment Guidelines](#), sections 5.7 to 5.9.

<sup>241</sup> [Merger Assessment Guidelines](#), paragraph 5.8.3.

<sup>242</sup> [Merger Assessment Guidelines](#), paragraphs 5.8.1 to 5.8.4.

## ***Barriers to entry and/or expansion***

- 8.5 Barriers to entry and/or expansion are specific features of a market that give incumbent firms advantages over potential competitors. Where such barriers are low, the merged entity is more likely to be constrained by entry; conversely, this is less likely where barriers are high.<sup>243</sup>

### ***Parties' views***

- 8.6 The Parties told us that there were limited barriers for expansion for an existing non-UK wholesaler in the relevant market. The Parties told us that wholesalers who wanted to start supplying CVT parts in the UK would need to invest in staff, premises, a basic technical understanding of product lines, and hold a stock of spare parts as well as obtain knowledge of market conditions, customer requirements and the commercial vehicles being operated in the UK.
- 8.7 The Parties also told us that wholesalers tended to have supply agreements in place with their key customers, although they submitted that these agreements were not necessarily exclusive and could be terminated with reasonable notice. For instance, the Parties told us that both UC and 3G had formal agreements with their buying group customers which were valid for a period of 12 months and could be terminated following a three- or six-month notice period, respectively.
- 8.8 The Parties also submitted that barriers to expansion for existing wholesalers were low. In particular, the Parties submitted that motor factors would purchase spare parts from existing wholesalers provided they were competitively priced, available for delivery and the wholesaler provided a good level of service. However, the Parties acknowledged that for a narrow range wholesaler to expand and start supplying a wide range of CVT parts, it would need to invest in stock, marketing, technical staff, warehouse capacity, infrastructure (such as forklift trucks, racking/shelving) and operational capability.
- 8.9 The Parties told us that the cost of entry to the UK was not high. UC told us that it was estimated that it would require £[REDACTED] million (£[REDACTED] million for stock and £[REDACTED] million for facilities) for initial set-up. 3G told us that it entered in 2010 with an initial capital investment of £[REDACTED] million.
- 8.10 3G also told us that imports from abroad faced limited barriers to entry as they could be carried out without a UK warehouse. For instance, the Parties

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<sup>243</sup> [Merger Assessment Guidelines](#), paragraph 5.8.4.

told us that Sampa had supplied some motor factor customers in the UK for several years before opening a warehouse in Manchester and had next day delivery terms.

### *Our assessment*

8.11 Based on the submissions we received from the Parties and third parties, which we describe in more detail below, we considered the following potential barriers to entry and/or expansion in the relevant market:

- (a) Costs and timescales of establishing a wholesale business;
- (b) Importance of wholesalers' reputation and branding; and
- (c) Economies of scale.

### *Costs and timescales of establishing a wholesale business*

- 8.12 We have considered the evidence relating to the costs and timescales for a competitor to become a wholesale distributor of a wide range of CVT parts to motor factors in the UK with product fields similar to those of the Parties and competitors.
- 8.13 We note that much of the evidence set out in this section on the cost and time required to establish a wholesale business also relates to the cost and time required to build a reputation, which we address in the next section.
- 8.14 The Parties submitted that a wholesaler did not need to be as big as the Parties in order to compete effectively with the Parties. UC submitted that it could take between five and ten years for a new entrant without any established reputation, and between two and three years for an established wholesaler in the EU, to achieve a 5% share of supply in the IAM for the wholesale supply of PL CVT parts in the UK.
- 8.15 The Parties also told us that it would take between two and five years to start supplying a wide range of CVT parts in the relevant market. 3G told us that this timeframe could be less than 12 months for a wholesaler already supplying one or more product categories of CVT parts in the UK, or 6 to 12 months for an existing wide range wholesaler operating outside the UK.
- 8.16 TVS EDL's internal documents state that it did not expect entry and/or expansion which could meaningfully constrain the Merged Entity to occur in the next four to five years:



- (a) 'the dominance of UC in the UK IAM would be time-limited, as the demand from factor business for alternative options of supply would become great, and competitors attempting to position themselves in this way would eventually see high-growth, with sales taken directly from UC. [...] It is estimated that this opportunity would be available from the date of acquisition of [3G], for 3 to 4 years before a valid alternative supplier establishes itself';
- (b) 'The current lack of strong competition to UC and [3G] is expected to be time-restricted. The current makeup of the UK IAM indicates that the acquisition of [3G] would restrict the establishment of alternative supply options for an extended period of time (4 to 5 years)';
- (c) 'it is apparent that significant short-term revenue gains would be achievable during the 3 to 4 years post acquisition. The risk after this period is that a strong alternative competitor, who would be at a size capable of providing extra flexibility to service customer would establish itself in the marketplace'; and
- (d) 'The requirement for a large investment in premises and stock, along with the time required to integrate a new brand into the market and build customer trust, would make the positioning of a viable competitor to UC earlier than 4 to 5-year estimate time-frame highly unlikely'.

8.17 In addition to these initial set-up costs, we note that TVS EDL's internal documents show that the Merger was considered to reduce the likelihood of competitive entry and/or expansion occurring:

- (a) One document refers to '[r]educed risk of competitor's entry into the UK' as one of the strategic benefits of market consolidation in the UK. The same document also mentions that 'the lack of fragmentation of the UK market would make foreign entry into the UK commercial vehicles IAM highly unlikely. The timeframe required for this task would be in excess of the timeframe required for UC to consolidate within the UK IAM, which would further reduce this risk'.
- (b) Another document notes that 'with the strengthening of UC's dominant position in the UK IAM should an acquisition occur, the cost for a viable competitor to establish a foothold in the market would be significant. The acquisition would therefore lessen the likelihood of a viable competitor establishing a presence in the UK'.

8.18 One third party (EBS) told us that it would take a new entrant two to three years to introduce a similar scale of products as the Parties, and would require hiring product managers, training a sales team, product quality

assessment and marketing. Two third parties (Aspoeck and Boydell and Jacks) told us that it will take five to ten years to reach similar size and scale as the Parties in relation to a wholesaler's reputation, product groups offered and contracts with customers and/or manufacturers.

- 8.19 We note that Sampa set up a warehouse in February 2020, which had taken [REDACTED] and an investment of [REDACTED]. In relation to potential investments, one third party (AAG) stated that the cost of expansion was high due to the size of warehouse required and that it would require around £4 million of investment by a motor factor to enter as a wholesaler in the relevant market. Further, two third parties (Roadlink and IFA) stated that it would be time consuming to expand in terms of stock value, marketing, warehouse, selling and distribution.
- 8.20 The evidence provided to us by the Parties and third parties (Sampa and AAG), as set out above, is that a new entrant would need at least £1 million to establish a warehouse, as well as the additional investment needed to provide a wide range of products akin to that offered by the Parties.

*Importance of wholesalers' reputation and branding*

- 8.21 In relation to potential demand-side factors as a potential barrier, we considered the importance of reputation/brand to a customer when choosing from which supplier to buy CVT parts.
- 8.22 We note that the Parties recognised the importance of a wholesaler's reputation as a trusted supplier as an important factor in a customer's choice of supplier, meaning that new entrants without any existing reputation might find it difficult to win new customers as well as secure supply arrangements with manufacturers. The Parties also stated that the reputation of a wholesaler for reliability and quality is the first thing a motor factor will consider.
- 8.23 A customer (Linings and Hoses) also noted the importance of a new entrant's reputation, stating that it was 'unsure of the quality' of Sampa's product range as it was a new entrant in the market.
- 8.24 In relation to ensuring the success of any entry or expansion, one third party (Automint) told us that when it entered into a new product category, it entered 'slowly' so it could build a trusted brand with its customers. Further, one third party (Sampa) told us that as a manufacturer it supplied to OEMs (eg [REDACTED]) and therefore [REDACTED] would trust its products because being a supplier to OEMs was a 'good reference for quality'. Another third party (BPW) told us that investment required in building a brand would be an 'immense

barrier'. One third party (EBS) told us that in order to expand, each year it would invest in its marketing activities, new product development and quality assurance.

- 8.25 In response to our Customer Questionnaire, 22 of the 39 customers considered reputation to be 'very important' and 16 of the 39 customers considered reputation to be 'fairly important' when choosing the supplier (see Figure 5.1). Some of the customers also added that brand/reputation was relevant for all product categories.
- 8.26 The evidence set out above shows that a wholesaler's reputation (eg as a 'trusted supplier'), in particular for reliability and quality and to a lesser extent its branding, are seen as important by both the Parties and customers, and these take time and investment to establish.

### *Economies of scale*

- 8.27 Economies of scale arise where average cost falls as the level of output rises,<sup>244</sup> allowing existing large suppliers to benefit from lower costs. Potential entrants or small suppliers need to make additional initial investments in order to build up scale and benefit from these reduced costs in order to act as an effective competitive constraint on the Merged Entity.
- 8.28 In relation to economies of scale as a potential barrier to entry and/or expansion, the Parties told us that:<sup>245</sup>
- (a) there were no economies of scale benefiting wide range wholesale suppliers over suppliers who focused on one or a smaller number of CVT part markets;
  - (b) there were some advantages which could be achieved with increased volume and these could benefit all types of wholesale suppliers of CVT parts including suppliers focusing on just one CVT component category;
  - (c) wholesalers typically purchased different types of products from different manufacturers, so any scale advantages were limited to the volumes ordered from any given manufacturer and not volumes across the range of CVT parts sourced from different suppliers. The Parties told us that this meant that narrow or niche range suppliers often had a greater

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<sup>244</sup> [Merger Assessment Guidelines](#), paragraph 5.8.5.

<sup>245</sup> We note that the Parties told us that one feature of the Merger rationale was volume-based cost reductions from suppliers (paragraph 3.9).

advantage where they purchased greater volumes for certain types of products;

(d) there were small savings that could be achieved on warehouse cost with increased volume; and

(e) there were some economies of scale arising from shipping increased volumes to individual customers. The Parties told us that narrow range or niche wholesalers had an advantage over wide range wholesalers as they tended to trade greater volumes of their more limited range of CVT parts with a smaller number of customers.

8.29 Several third parties (Bosch, CV Logix, TMD Friction, Roadlink, and Winnard) told us that there were scale benefits associated with increased volumes. One third party (Business Lines) told us that buying in bulk helped to get supplier rebates. One third party (Autac) however told us that the procurement and logistics cost benefits were limited.

8.30 The evidence we received in relation to economies of scale as a potential barrier to entry or expansion was mixed. However, we note that the Parties acknowledge the benefits of scale (eg in terms of volumes) and that smaller suppliers can at least partially benefit from such scale benefits when supplying within narrow product ranges.

#### *Our view on potential barriers to entry and/or expansion*

8.31 Based on the evidence above, we have found that although opening a warehouse and establishing a sufficient stock of parts requires investment and takes some time, these constitute a low barrier to entry and/or expansion.

8.32 However, we have found that the need for a new or expanding wholesaler to develop a strong reputation and, to a lesser extent branding, is likely to be a material barrier to entry and/or expansion.

8.33 We are also of the view that a new entrant would be likely to take at least two years, and possibly longer, to establish a warehouse with access to sufficient stock and also develop a sufficiently credible reputation in the market to enable it to act as an effective competitive constraint on the Merged Entity.

8.34 It is also our view that there are some economies of scale for suppliers who achieve high volumes in particular product lines. The effect of these is that a new entrant or small supplier would be likely to face the need for higher

initial investment to achieve sufficient size to benefit from these scale economies.

***Possible sources of entry and/or expansion***

- 8.35 We considered potential sources of entry into, and/or expansion in, the relevant market by looking at the recent history of entry and/or expansion, specific evidence of planned entry or expansion by third parties, and the scope for entry from adjacent or related markets.

***Recent history of entry and/or expansion and planned expansion by third parties***

- 8.36 The Parties identified the following firms as competitors who had entered and/or expanded in the relevant market over the past ten years: Sampa, Inter Cars, CV Logix, Diesel Technic, J4 Truck Components, Borg & Beck, Bison Truck Parts, EBS and BPW. We provide below the evidence we have received on these companies from the Parties, from other third parties, and from the competitors themselves about their entry and/or planned expansion.

***Sampa***

- 8.37 The Parties told us that Sampa, a Turkish parts manufacturer, was a 'large competitor' with a significant range which Sampa would expand over time. The Parties also told us that Sampa currently offered a range of printed catalogues, competitive pricing and an extensive web shop in the UK. The Parties further told us that Sampa opened a warehouse in Trafford Park in February 2020 in order to increase its customer base in the UK and Ireland (which it had previously been supplying from outside the UK). The Parties told us that Sampa had reached a stockholding of around £1 million within three months of inception and had a target to reach around £10 million within 3 years. 3G told us that Sampa has opened accounts for many of 3G's existing factor customers.
- 8.38 One third party (Boydell and Jacks) told us that Sampa would expand its product range in the next three to five years and would replace TTC 'easily' and 'quite quickly' to become a 'big player' in the market. Two third parties (AAG and Linings and Hoses) told us that Sampa's product range and service were not 'strong enough' compared to the Parties. Two third parties (CPS and IFA) told us that while it was possible that Sampa could expand its product range to be similar to the Parties', Sampa could not compete with the Parties on a like-for-like basis in the next two years.

- 8.39 Two third parties (CV Logix and [REDACTED]) told us Sampa did not have a good reputation in the market as it had previously had product quality issues with its supplies to CV Logix.
- 8.40 Sampa told us that it opened a warehouse in Trafford Park in March 2020. We note that Sampa supplies [REDACTED], with [REDACTED]. Sampa's UK sales to [REDACTED] are [REDACTED] compared to the Parties' sales to [REDACTED]. Its UK [REDACTED] from [REDACTED] in 2015 to [REDACTED] in 2017 [REDACTED] in 2019.
- 8.41 [REDACTED].
- 8.42 Sampa told us that it had increased its product portfolio in the last three years and [REDACTED]. However, Sampa told us that it wanted to focus on [REDACTED].

#### *Inter Cars*

- 8.43 The Parties told us that the strategy of Inter Cars, a Polish parts distributor in central and eastern Europe, was to move into the UK market initially using franchises and then subsequently opening its own facility, once it had information on the market. 3G told us that Inter Cars had opened an office/warehouse in the UK, with a view to offering an overnight delivery service in near future. The Parties also told us that Inter Cars offered two to three deliveries per week to the UK and that its expansion into the UK had been successful as it had an established product range available to motor factors in the UK.
- 8.44 Two third parties (AAG and IFA) told us that Inter Cars' product range and service were not 'strong enough' compared to the Parties. One third party (IFA) told us that it did not consider that Inter Cars could expand in the UK in the next two years as it would need to invest in warehousing and distribution in the UK, and also align its product range to UK vehicle parts. One third party (Dinex) however told us that Inter Cars 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. One third party (CV Logix) told us that Inter Cars has a good range, quality and competitive price, but customers have to wait for their stock order. One third party (Granning) told us that Inter Cars would require a warehouse in the UK to provide next day delivery, and it will take a 'long time' for them to match the Parties' product fields in the UK.
- 8.45 Inter Cars told us that it would expand its revenues by [REDACTED]% year-on-year in the relevant market [REDACTED], and that it would take [REDACTED] to reach the same level of sales as the Parties. Inter Cars also told us that currently it has [REDACTED]

working across its CVT and automotive operations in the UK and it had [REDACTED]. It told us that it [REDACTED].<sup>246</sup> It further told us that the Inter Cars group [REDACTED].

### *CV Logix*

- 8.46 The Parties told us that CV Logix entered the UK market at the wholesale level in 2017. The Parties also told us that CV Logix's product offering in the relevant market was mainly in OES parts, and that in the past 12 months, it had started to offer PL parts.
- 8.47 Several third parties (Allspares, Dinex, EMS-FP&S, Granning, IFA, Majorsell, Picksons, Roadlink and TMD Friction) told us that CV Logix had expanded its range of products and number of product groups. Some of these third parties also told us that CV Logix had a central warehouse for its buying group members (GAU and UAN), and now, similar to UC, had started supplying to the IAM more generally and offered a 'one stop shop' solution. Further, they told us that CV Logix had acquired a number of wholesalers (such as Apec Braking, Platinum Batteries, BTN Turbo, FPS) to increase and strengthen its product offering.<sup>247</sup>
- 8.48 With respect to CV Logix's entry and expansion plans, CV Logix submitted that it intended to expand its offering for PL parts, and also to develop its business activities to sell to non-group motor factors.
- 8.49 CV Logix's revenue increased from £[REDACTED] million in 2018 to £[REDACTED] million in 2019 and CV Logix expected revenue to increase to around £[REDACTED] million in 2022. We note that most of the expected increase in revenue is through sales to its own group motor factors and its own group buying groups. However its revenue to non-group motor factors is forecast to increase by £[REDACTED] million (from £[REDACTED] million to £[REDACTED] million) in the next two years (2021 to 2022). CV Logix told us that currently its warehouse is at full capacity and it will build temporary structures outside its current warehouse. It told us that it plans to move to another warehouse in three years but that this will be an AAG group decision.

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<sup>246</sup> Inter Cars told us that it has a small warehouse in the UK, but that is to hold stock of some small cheap automotive parts that Inter Cars UK have started importing directly from China.

<sup>247</sup> IFA, Picksons, Dinex, Roadlink, TMD Friction, EMS-FP&S, Allspares, Majorsell and Granning.

### *Diesel Technic*

- 8.50 The Parties told us that Diesel Technic, a German PL parts supplier, had expanded in the UK, and dispatched its product from Europe for delivery to the UK.
- 8.51 One third party (Boydell and Jacks) told us that Diesel Technic was established in the UK and was likely to expand its product range to a wide range supplier. It also told us that Diesel Technic would not be supplying from Germany in the near future. One third party (Granning) told us that Diesel Technic is a large German company with good product range but it had not been successful in gaining market share in the UK after its entry in the UK.
- 8.52 Diesel Technic told us that it had opened a UK warehouse in 2015. It told us that it had expanded its range of products in the last three years, and that it currently had [REDACTED] in the UK which would increase depending on the demand for the products. It told us that [REDACTED].

### *Granning*

- 8.53 The Parties told us that J4 Truck Components (now owned by Granning),<sup>248</sup> had a comprehensive range of truck body panel products and had become the largest supplier of PL aftermarket body components in the UK.
- 8.54 Two third parties ([REDACTED] and Roadcrew) told us that in the last 10 years, Granning had expanded its product range and had also acquired J4 Truck Components.
- 8.55 Granning told us that in the last few years it had acquired three companies: Switzer Distribution (distributor of clutches and bearings, predominately active in Republic of Ireland), J4 (manufacturer of aftermarket body panels based in UK), and Braketech (manufacturer of brake shoes based in UK). Granning told us that [REDACTED]

### *Borg & Beck*

- 8.56 The Parties told us that Borg & Beck had established an extensive PL offering in the UK due to the backing of its parent company, First Line Limited, a UK based distributor. They also told us that Borg & Beck had in 2015 expanded its product lines to become a wide range wholesaler to

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<sup>248</sup> Granning Group acquired J4 Truck Components in June 2020 (see [J4 website](#)).



supply CVT parts (before 2015, Borg & Beck was active in the supply of parts for passenger vehicles).

- 8.57 Borg & Beck told us that it had expanded its product range in the last 18 months but in order to [REDACTED]. It also told us that it [REDACTED].

*Bison Truck Parts Limited*

- 8.58 The Parties told us that Bison, an online motor factor which entered in 2010, offered an extensive product range in the UK.
- 8.59 Bison told us that it does not have [REDACTED].

*EBS Aftermarket Group Limited*

- 8.60 The Parties told us that EBS had in the last five years expanded its range of product lines to become a wide range wholesaler. It also told us that EBS included turbo chargers (a line not offered by UC), axle braking, steering and engine electrical in its product range.
- 8.61 One third party (Majorsell) specialising in airbrakes mentioned EBS as its 'main competitor' for products relating to airbrake parts.
- 8.62 EBS told us that it would like to grow its revenue by [REDACTED]% year on year from £[REDACTED] million in the next [REDACTED], and its market share by [REDACTED]. It further told us that the majority of the future growth will come [REDACTED].
- 8.63 We also note that EBS' revenue [REDACTED] in 2015 to [REDACTED] in 2018, before revenue in 2019. EBS told us that it is not certain why the revenue [REDACTED] in 2019.

*BPW*

- 8.64 The Parties told us that BPW (a German OES parts wholesaler mainly of axle, brake and steering and suspension parts) had started acquiring motor factors in the UK.
- 8.65 BPW told us that it would grow its revenue by 5% year-on-year from £[REDACTED] in the next two years, but that it would [REDACTED]. It also told us that [REDACTED].
- 8.66 We are aware of one motor factor (EMS-FP&S Limited), owned by BPW, which buys parts from BPW's warehouse in Germany, but note that it also buys parts from UK based wholesalers depending on cost, delivery lead time and ability to service nationally. One third party (Granning) told us that BPW's acquisition of EMS-FP&S had not been successful as it had not

invested in infrastructure, ‘good staff’ and ‘underappreciated the tightness of the market’.

*Entry and/or expansion by parts manufacturers who supply to wholesalers*

- 8.67 We considered whether parts manufacturers who supply to wholesalers have any plans to expand in the relevant market. We note that some parts manufacturers do supply some large motor factors directly, although in our view this is materially different to being a ‘wide range’ wholesaler, in particular because most parts manufacturers tend to offer a narrower range of product groups compared to wide range wholesalers. In addition, motor factors tend to use manufacturers for large stock orders rather than requiring same day or next day delivery.
- 8.68 In relation to whether parts manufacturers had plans to enter into the relevant market, several parts manufacturers (Jonesco, MHT Europe, Reflexallen, Ran Sinai Mamuller Otomotiv, MEI Brakes, Rota, Tube Gear and Worldwide) responded to our questionnaire. All of these third parties told us that they had no intention or specific plans to vertically integrate and become a wholesaler in the relevant market.<sup>249</sup>

*Entry and/or expansion by motor factors*

- 8.69 The Parties told us that LKQ, Euro Car Parts’ parent company, had acquired Digraph,<sup>250</sup> a motor factor, and was setting up its own central warehouse and depot network, thereby cutting out UC. One third party (Business Lines Limited) told us that Digraph had successfully expanded in the last ten years.
- 8.70 LKQ told us it acquired a [X]% stake in Digraph in 2017, with an option to [X]. It also told us that it had no plans for expansion in the relevant market (outside of its participation in Digraph). LKQ’s plans for expansion are not considered further given that it has no plans for entry and/or expansion in the relevant market.
- 8.71 The Parties and third parties we approached were not aware of any other motor factor with plans to enter the relevant market.

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<sup>249</sup> Jonesco, Reflexallen, MHT Europe, Rota, Worldwide, Rota and MEI Brakes.

<sup>250</sup> LKQ brought motor factor Digraph in 2017. (<http://www.catmag.co.uk/sukhpal-and-lkq-significant-investment-in-hgv-factor-chain>)

*Entry by new players in adjacent or related markets that are not currently present in the UK*

- 8.72 One third party (Boydell and Jacks) told us that ‘a large German wholesaler’ was ‘looking to enter in the UK’, and that it had advised the German wholesaler on a possible location for its warehouse. The third party was however unable to provide any evidence to substantiate this or to name the wholesaler.
- 8.73 The Parties and third parties we approached were not aware of any other international competitors who are wholesalers in CVT parts and not present in the relevant market in the UK, with plans to enter the relevant market.

***Our assessment of whether entry or expansion would be timely, likely and sufficient to prevent an SLC***

- 8.74 To constrain the Merged Entity and thereby prevent any SLC arising as a result of the Merger, entry or expansion would need to be timely, likely and of sufficient scope. In order to do this, a new or expanded competitor would need to act as an effective competitive constraint on the Merged Entity, for example in respect of goods (eg product range), services, quality and price, or do so in aggregate with other new entrants or expanding competitors.
- 8.75 In terms of recent entry in this market, apart from 3G’s entry in 2010,
- (a) Diesel Technic and CV Logix have (in 2015 and 2017 respectively) set up dedicated warehouse facilities to compete in the relevant market.
  - (b) Sampa also set up a dedicated warehouse in 2020, but [REDACTED] as discussed in paragraph 8.40.
- 8.76 We note that it has taken 3G a decade to reach sales of £10.8 million in the relevant market. Third parties (Boydell and Jack and Winnard) told us that only 3G had established itself as a major player in the relevant market in the last ten years. A third party (Winnard) also said that 3G was established by former UC staff with significant industry experience and contacts and this was cited as the main factor behind its quick growth.
- 8.77 In addition, CV Logix has seen significant revenue growth from motor factors and buying groups since 2016, with these revenues reaching around £[REDACTED]million by 2019, and being forecast to further increase to around £[REDACTED]million by 2022. However, in our view there are specific circumstances relating to the growth of CV Logix: CV Logix’s expansion in the relevant market has been driven by the AAG group’s (CV Logix’s parent company)

acquisition of motor factors and wholesalers. A high proportion ([REDACTED]) of CV Logix's sales are to AAG-owned motor factors.

- 8.78 In relation to the future expansion plans of the wholesalers suggested by the Parties, we found that any expansion would likely be limited in scope (eg in relation to target customers or product range), specifically:
- (a) while Sampa had plans [REDACTED], we note that: (i) [REDACTED]; and (ii) the evidence from both Sampa and certain third parties shows that any such expansion [REDACTED] would likely take longer than 2 years for it to be able to offer a product range that would act as an effective competitive constraint on the Merged Entity;
  - (b) in relation to Inter Cars, we noted that Inter Cars had [REDACTED] over the next 2 years;
  - (c) while CV Logix has plans to increase its revenues quite significantly over the next 2 years including revenue to non-group motor factors forecast to increase by £[REDACTED] million, we noted that [REDACTED] its forecast revenue growth over the next 2 years was [REDACTED];
  - (d) while Diesel Technic entered the relevant market in 2015 and captured around [REDACTED] [5 - 10]% market share, we received no evidence that Diesel Technic [REDACTED]. Our view is therefore that any increase in Diesel Technic's revenue would be unlikely to significantly change the strength of its competitive constraint on the Merged Entity; and
  - (e) in relation to Borg & Beck, BPW, EBS and Granning we have not seen any evidence that these wholesalers were intending to [REDACTED] in order to act as an effective competitive constraint on the Merged Entity.
- 8.79 We note that the Parties told us that they will also face increased competition from other players already active in the UK market (for example Dinex and BPW expecting an increase in sales). We have assessed the competitive constraint imposed by narrow range wholesalers in Chapter 7 and in our view this competitive pressure from existing wholesalers, potentially including increases in the products they offer or in their market share as part of this competitive process, does not constitute expansion that would materially change the constraint they currently impose on the Parties.
- 8.80 With regards to adjacent or neighbouring markets, we have not seen any evidence that parts manufacturers, motor factors or non-UK entrants had any sufficiently developed plans for entry or expansion in the UK. In the absence of any such plans, our view is that it is not likely that actual (or the

threat of) entry into, or expansion in, the relevant markets could be expected to materialise over the next two years and therefore in a timely manner.

- 8.81 In relation to the likelihood of new entry into the relevant market, we have not seen any evidence of sufficiently developed plans that such entry would take place in a timely manner (ie over the next two years).
- 8.82 We also considered the extent to which the combined effect of the entry and/or expansion plans of new or existing suppliers in the market (discussed in paragraphs 8.36 to 8.73) may act as an effective competitive constraint on the Merged Entity. We note that in each instance in which potential entry or expansion has been assessed, we have not been provided with sufficient evidence to conclude that this will likely be achieved at sufficient scale and in a timely manner. In our view, the evidence is such that we have also concluded that, even when taken in combination, the potential entry and/or expansion by several firms would not be likely, timely and sufficient in scope to constrain the Merged Entity such as to prevent an SLC from arising.

### ***Responses to our provisional findings***

- 8.83 We did not receive any further submissions on entry and/or expansion from the Parties in their response to our provisional findings.

### ***Conclusion on entry and/or expansion***

- 8.84 In summary, our view is that entry and/or expansion would not be timely, likely and sufficient in scope for the following reasons:
- (a) the Parties' internal documents show that it would take around four to five years for a supplier to establish a UK business which would act as an effective competitive constraint on the Merged Entity;
  - (b) our view is that reputation/brand recognition is a barrier to entry and/or expansion, and establishing the reputation necessary to become an effective competitor in the relevant market would be unlikely to be achieved within two years; and
  - (c) we have assessed the entry and/or expansion plans of new or existing suppliers in the market, but the evidence provided to us was not sufficient to enable us to conclude that the requisite growth, whether taken individually or in combination, would be likely to be achieved in a timely manner such as to act as an effective competitive constraint on the Merged Entity.

- 8.85 In light of the above, our view is therefore that entry and/or expansion would not be likely, timely and sufficient in scope to constrain the Merged Entity such as to prevent an SLC from arising.

## **Buyer power**

- 8.86 In some circumstances, a customer may be able to use its negotiating strength to limit the ability of a merged firm to raise prices. We refer to this as countervailing buyer power. The existence of countervailing buyer power may make an SLC finding less likely.<sup>251</sup>

## ***Parties' submissions***

- 8.87 The Parties submitted<sup>252</sup> that all their customers (not only buying groups) demand competitive prices and will simply divert to other wholesalers if the prices offered by the Merged Entity are not competitive.
- 8.88 The Parties also submitted that to the extent that any customer is able to join a buying group, the countervailing buying power of such a group would provide protection to all customers. During the last three years, sales to buying group members on average accounted for around [X]% of UC's sales revenue and [X]% of 3G sales revenue.
- 8.89 The Parties submitted that in all the relevant markets in which the Parties overlapped (which the Parties submitted should be each CVT part category), the Merged Entity would continue to face a large number of competitors to whom its customers could very easily switch. They therefore disagreed that the possibility of countervailing buyer power could be dismissed due to the lack of options from which a customer could choose.<sup>253</sup>

## ***Our assessment***

- 8.90 The CMA's Merger Assessment Guidelines provide that if all customers of the merged firm possess countervailing buyer power post-merger, then an SLC is unlikely to arise. However, often only some, not all, customers of the merged firm possess countervailing buyer power. In such cases, the CMA assesses the extent to which the countervailing buyer power of these customers may be relied upon to protect all customers.<sup>254</sup> Where individual

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<sup>251</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

<sup>252</sup> [Response to Phase 1 Decision](#), paragraph 2.5.

<sup>253</sup> [Parties' response to Phase 1 Decision](#), paragraph 2.4 to 2.5.

<sup>254</sup> [Merger Assessment Guidelines](#), paragraph 5.9.1.

negotiations are prevalent, the buyer power possessed by any one customer will not typically protect other customers from any adverse effect that might arise from the merger.<sup>255</sup>

- 8.91 The CMA's Merger Assessment Guidelines also provide that typically the ability to switch away from a supplier will be stronger if there are several alternative suppliers to which the customer can credibly switch.<sup>256</sup> Moreover, for countervailing buyer power to prevent an SLC, it is not sufficient that it merely existed before the merger, it must also remain effective following the merger.<sup>257</sup>
- 8.92 As discussed in the previous chapter, the vast majority of those customers who commented on the Merger told us that they are concerned and the majority of these said that it will lead to a situation in which there is no credible alternative to the Merged Entity. Of the 28 customers who gave their views on the Merger, 22 said that the Merger would reduce competition,<sup>258</sup> and 13 of these emphasised the lack of suitable alternatives to UC and 3G in the market. As set out in Chapter 5, the ability to order from a 'one stop shop' provider is important to customers, and many customers did not see any other provider as being able to provide such a 'one stop shop'.
- 8.93 Digraph, one of the Parties' larger customers, told us that it is not concerned about the Merger because it expects to be able to negotiate a good deal with the Merged Entity. Digraph considered itself to be in a strong position, as it would be a key customer for the Merged Entity. If the Merged Entity raised prices or used suppliers who have a quality that Digraph 'are not happy with, then [Digraph] will switch [its] business elsewhere'.
- 8.94 Even if some individual customers consider that they hold strong negotiating positions, we have not seen evidence that any ability they may have to keep prices down would protect other customers. While the Parties have price lists, negotiation with individual customers and buying groups is widespread. 3G told us that over [X]% of its sales are made at prices below those set out in its published price list. The Merged Entity could negotiate lower prices to retain the business of a firm which could otherwise switch elsewhere without having to offer the same prices to other customers who have fewer options.
- 8.95 As with individual firms, the ability of a buying group to exercise buyer power will depend on the availability of alternative providers. IFA submitted that if the Merged Entity were to increase prices to IFA, it would be difficult to

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<sup>255</sup> [Merger Assessment Guidelines](#), paragraph 5.9.6.

<sup>256</sup> [Merger Assessment Guidelines](#), paragraph 5.9.3.

<sup>257</sup> [Merger Assessment Guidelines](#), paragraph 5.9.8.

<sup>258</sup> See paragraph 7.103.

challenge that price increase too much, as there would be no real alternative to challenge UC. IFA said it could cover the contract for some products with alternative suppliers ([X]) but would find it difficult to cover all of the products. It said there were 'pockets of products' for which the IFA could spend 'weeks and weeks' looking for alternatives.

- 8.96 IFA also noted that it ran a tender for what it termed a 'super wholesaler'. This covered a basket of parts, some of which overlapped with other product tenders. Last time this was tendered IFA approached TTC, UC and 3G as these were the only companies who have 'super wholesaler' range and products. If the IFA were to run a new tender exercise for the UC contract, then the invitation to quote would be sent to UC and 3G and also to the likes of Sampa and a few others, [X] and [X].
- 8.97 GAU/UAN said that in negotiations with UC, it would compare the prices offered by UC with those of CV Logix and other suppliers such as 3G, but that it is difficult to find a company to compare UC with as there are not many other suppliers like UC 'out there' since it has 'such a wide basket'.
- 8.98 GAU/UAN told us that if the Merged Entity were to increase prices to GAU/UAN, then more business would be driven through CV Logix. It considered that it would be able to source [X]% of the parts purchased through UC and 3G through CV Logix.
- 8.99 The evidence provided to us shows that for GAU/UAN members CV Logix would likely be a suitable alternative for most but not all of the products supplied by the Parties, although the choices for members of IFA would likely be more limited. While we note that many of the products are available from alternative suppliers, there are limited options for suppliers that can offer the advantages of purchasing a range of parts in a single transaction as described in Chapter 7.
- 8.100 Even if buying groups were able to protect their members, a substantial proportion of the Parties' customers are not members of a buying group. The Parties submitted that any customer is able to join a buying group. However, there are conditions that buying groups require to be met when considering applications from motor factors to join a buying group:
- (a) Buying groups require their members to meet a minimum annual turnover threshold. IFA requires that motor factors wanting to join IFA need to have an annual turnover of £2 million or be close to that level and demonstrate that they will reach that level in the short term. GAU requires a minimum annual turnover of £1 million and UAN requires a turnover of £0.5 million.



(b) Both IFA and GAU/UAN allow for applications to be vetoed if the motor factor applying is a close competitor to an existing buying group member.<sup>259</sup> In the last 12 months, IFA has rejected [X] on this basis.

(c) GAU/UAN indicated that they reject applications if the applicant's financial situation raises risks for the buying group.

8.101 GAU/UAN told us that it rejects [X] of the applications it receives each year – usually on the basis of the business's financials, in particular the applicant not reaching the turnover requirement.

8.102 Finally, we note that UC's strategy documents acknowledge that the Merger will lead to less choice, higher prices and lower rebates (see paragraphs 3.10 to 3.29).

### ***Response to provisional findings***

8.103 The Parties did not make any further submissions on buyer power in their response to our provisional findings.

### ***Conclusion on buyer power***

8.104 For the reasons above, we conclude that buyer power would not prevent an SLC in the present case.

## **Rivalry-enhancing efficiencies**

8.105 As a further countervailing factor, we have considered whether any efficiencies arising from the Merger will enhance rivalry, with the result that the Merger does not result in an SLC.

8.106 To form a view that any claimed efficiencies will enhance rivalry so that a merger does not result in an SLC, the CMA must expect that the following criteria will be met: the efficiencies must be timely, likely and sufficient to prevent an SLC from arising (having regard to the effect on rivalry that would otherwise result from the merger); and the efficiencies must be merger-specific, that is a direct consequence of the merger, judged relative to what would happen without it.<sup>260</sup>

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<sup>259</sup> Motor factors are local distributors that compete on a local basis. Hence, if the applicant is a motor factor located in the same geographical area as one of the buying group members, its application may be rejected.

<sup>260</sup> [Merger Assessment Guidelines](#), paragraphs 5.7.4.

### ***Parties' views***

8.107 The Parties have not made any specific representations about rivalry enhancing efficiencies or that the transaction will generate benefits for customers.

### ***Our assessment***

8.108 Efficiency claims can be difficult for the CMA to verify because most of the information concerning efficiencies is held by the merging firms. We therefore expect the Parties to provide sufficient evidence to demonstrate that rivalry enhancing efficiencies will arise as a result of the Merger.

8.109 We note that there are synergy savings that will allow the Merged Entity to negotiate better prices with suppliers, and there will be cost savings from better utilisation of warehouse space (see Appendix B, paragraphs 1 and 14 to 18). However, the Parties have not submitted, nor have we seen evidence, that these cost savings will be passed on to the customers in terms of consumer price reductions.

### ***Responses to provisional findings***

8.110 The Parties did not make any further submissions on efficiencies in their response to our provisional findings.<sup>261</sup>

### ***Conclusion on rivalry enhancing efficiencies***

8.111 We conclude that the Parties have not demonstrated that the Merger will result in rivalry-enhancing efficiencies such as to prevent an SLC resulting from the Merger.

## **9. Conclusions**

9.1 As a result of our assessment, we have decided that the completed acquisition by TVS EDL of 3G has resulted in the creation of a relevant merger situation.

9.2 We have also decided that the creation of that situation may be expected to result in an SLC in the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.

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<sup>261</sup> The Parties made representations on purchasing synergies in their [TVS EDL response to the Remedies Notice](#) and Remedies Working Paper, in which they submitted that these synergies were relevant customer benefits. These submissions are addressed in the Remedies Chapter.

## 10. Remedies

### Introduction

- 10.1 This chapter sets out our assessment of, and final decision on, the appropriate remedy to the SLC and resulting adverse effects we found.
- 10.2 In reaching our decision on the appropriate remedy, we considered the evidence we gathered from the Parties and from third parties, including: (a) their responses to our public consultation on our notice of possible remedies<sup>262</sup> (**Remedies Notice**); (b) our response hearings with the Parties and various third parties and (c) the Parties' response to our remedies working paper (**RWP**).<sup>263</sup>

### Framework for the assessment of remedies

- 10.3 Where the CMA finds an SLC, it must decide what, if any, action should be taken to remedy, mitigate or prevent that SLC or any adverse effect resulting from the SLC.<sup>264</sup>
- 10.4 The Act requires that when deciding on remedial action, the CMA shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the substantial lessening of competition and any adverse effects resulting from it'.<sup>265</sup>
- 10.5 To fulfil this requirement, the CMA will seek remedies that are effective in addressing the SLC and any resulting adverse effects.<sup>266</sup> The effectiveness of a remedy is assessed by reference to its: (a) impact on the SLC and its resulting adverse effects; (b) duration and timing – remedies need to be capable of timely implementation and address the SLC effectively throughout its expected duration; (c) practicality in terms of its implementation and any subsequent monitoring and enforcement; and (d) risk profile, relating in particular to the risk that the remedy will not achieve its intended effect.<sup>267</sup>

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<sup>262</sup> Our [Remedies Notice](#) was published on the CMA website on 21 October 2020.

<sup>263</sup> We received emails following the Remedies Notice from [X]. We also held separate response hearings with each of the Parties on 17 November 2020 and with the following third parties: [X]. We also approached [X] for a response hearing, but they directed us to their previous submissions.

<sup>264</sup> The Act, [Section 35\(3\)](#).

<sup>265</sup> The Act, [Section 35\(4\)](#).

<sup>266</sup> [Merger remedies guidance CMA87](#) (13 December 2018), paragraphs 3.4 and 3.5. In [Ecolab Inc. v Competition and Markets Authority](#) [2020] CAT 12, the Tribunal held that the duty to find as comprehensive a solution as is reasonable and practicable is encapsulated in the concept of an 'effective remedy' (see paragraphs 74 and 75 of that judgment).

<sup>267</sup> [Merger remedies guidance CMA87](#), paragraph 3.5.

- 10.6 Having decided which remedy options would be effective, the CMA will then select the least costly and intrusive remedy that it considers to be effective.<sup>268</sup> The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>269</sup> The CMA may also have regard, in accordance with the Act,<sup>270</sup> to the effect of any remedial action on any relevant customer benefits (**RCBs**) arising from the merger.

## Nature of the SLC

- 10.7 In Chapter 9, we found that the Merger may be expected to result in an SLC in the wide range wholesale supply of CVT parts to motor factors in the IAM in the UK.
- 10.8 We also concluded that the SLC may be expected to result in adverse effects, for example in the form of higher prices and/or lower quality of products or customer service than would otherwise have been the case absent the Merger.<sup>271</sup>

## Overview of remedies options

- 10.9 Remedies are conventionally classified as either structural or behavioural.<sup>272</sup> In merger inquiries, the CMA prefers structural remedies over behavioural remedies because:<sup>273</sup>
- (a) structural remedies are more likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring rivalry;
  - (b) behavioural remedies are less likely to have an effective impact on the SLC and its resulting adverse effects, and are more likely to create significant costly distortions in market outcomes; and
  - (c) structural remedies rarely require monitoring and enforcement once implemented.

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<sup>268</sup> [Merger remedies guidance CMA87](#), paragraphs 3.4 and 3.6.

<sup>269</sup> [Merger remedies guidance CMA87](#), paragraphs 3.4 and 3.6.

<sup>270</sup> The Act, [Section 35\(5\)](#).

<sup>271</sup> See paragraph 7.226.

<sup>272</sup> Structural remedies, such as divestiture, are generally one-off measures that seek to restore or maintain the competitive structure of the market by addressing the market participants and/or their shares of the market. Behavioural remedies are normally ongoing measures that are designed to regulate or constrain the behaviour of the merging parties ([Merger remedies guidance CMA87](#), paragraph 3.34).

<sup>273</sup> [Merger remedies guidance CMA87](#), paragraph 3.46.

- 10.10 In the Remedies Notice, we stated our initial view that a full divestiture of 3G by TVS EDL was likely to be the only effective and proportionate remedy, and that at that stage we had not been able to identify a differently configured or smaller divestiture package that could form the basis of an effective remedy.<sup>274</sup>
- 10.11 We stated in the Remedies Notice that while a divestiture of UC instead of 3G would be another potentially effective remedy, we did not consider this remedy option further on the basis that the Parties would prefer to divest 3G rather than UC.<sup>275</sup> TVS EDL confirmed its view that a divestment of UC (rather than 3G) would be unnecessarily costly, intrusive and disproportionate.<sup>276</sup>
- 10.12 We stated in the Remedies Notice that our initial view was that a behavioural remedy was very unlikely to be effective in comprehensively addressing the SLC and/or resulting adverse effects given in particular the broad scope of the adverse effects we had provisionally found, the significant risks in designing effective behavioural remedies and the likely need for extensive and ongoing monitoring.<sup>277</sup>
- 10.13 In our public consultation on our Remedies Notice, we invited views on the effectiveness of a remedy requiring the full divestiture of 3G and on its design, as well as whether there were any other practicable remedy options we should be considering.<sup>278</sup>

## Summary of responses

- 10.14 TVS EDL told us that a full divestiture of 3G would be intrusive and disproportionate as the Parties would not be able to secure purchasing cost synergies across their suppliers.<sup>279</sup>
- 10.15 TVS EDL told us that a smaller divestiture package ie the divestiture of 3G's stock and/or warehouse facilities would represent a comprehensive solution to all aspects of the SLC provisionally found.<sup>280</sup> In its response to the RWP, TVS EDL maintained its view that a remedy was not required on the basis that there was no SLC, but that if the CMA were to maintain its position, then the partial divestiture of 3G's stock and/or warehouse should be considered

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<sup>274</sup> Remedies Notice, paragraphs 11 and 12.

<sup>275</sup> Remedies Notice, footnote 10.

<sup>276</sup> TVS EDL response to the Remedies Notice, paragraph 3.2.

<sup>277</sup> Remedies Notice, paragraph 14.

<sup>278</sup> Remedies Notice, paragraph 15.

<sup>279</sup> TVS EDL response to the Remedies Notice, paragraph 2.3.

<sup>280</sup> TVS EDL response to the Remedies Notice, paragraph 2.3.

at the very least (dependent on UC identifying a suitable purchaser) alongside a full divestiture of 3G (if no such purchaser could be identified) in the alternative.

- 10.16 Third parties told us that full divestiture of 3G would be effective and no third party told us that we should be considering an alternative remedy to a full divestiture of 3G.
- 10.17 None of the Parties or third parties told us that we should be pursuing a behavioural remedy option.
- 10.18 In the following sections we first set out our views on the effectiveness of different remedy options. We then go on to consider the proportionality of any effective remedies.

## **Effectiveness of remedy options**

- 10.19 In this section, we cover the effectiveness of different remedy options, and conclude on those which we consider would represent an effective remedy to the SLC and/or any of its adverse effects which we have found. In doing this we consider the effectiveness of:

- (a) Divestiture remedies, paragraphs 10.20 to 10.82; and
- (b) Behavioural remedies, paragraphs 10.83 to 10.91.

### ***Divestiture remedy***

- 10.20 Under a full divestiture remedy, TVS EDL would be required to divest the whole of the 3G business to a suitable purchaser within a timeframe specified by the CMA.
- 10.21 We also consider in this section whether a divestiture of less than the entirety of 3G (a partial divestiture) would be effective, for example the proposal by TVS EDL in which it would divest 3G's stock and/or warehouse facilities to a suitable purchaser.

### *Views of Parties and third parties on divestiture*

- 10.22 TVS EDL told us (without prejudice to its view that there was no SLC resulting from the Merger) that a full divestiture of 3G would be intrusive and disproportionate to address the SLC we have found.<sup>281</sup>
- 10.23 TVS EDL also told us that the full divestiture of 3G would remove the RCBs that would otherwise arise from the Merger.<sup>282</sup> We consider whether full divestiture of 3G would result in loss of RCBs when we turn to our assessment of proportionality and RCBs later in this chapter.
- 10.24 In relation to the overall effectiveness of a full divestiture remedy, all of the third parties we heard from told us that only a full divestiture of 3G would represent an effective remedy:
- (a) [X] told us that a full divestiture of 3G would represent an effective remedy as it would create a 'good quality competitor' in the market, and would ensure that 3G's management (which it described as the 'key asset' of 3G) remains with the 3G business.
  - (b) [X] told us that it considered a full divestiture of 3G would be an effective remedy as this would restore the pre-Merger market structure.
  - (c) [X] told us that only a full divestiture of 3G could effectively restore competition in the market, provided that it was sold to a suitable purchaser who would not raise competition concerns.
- 10.25 No party told us that full divestiture of 3G would not be an effective remedy.

### *Assessment of the effectiveness of divestiture of all of 3G*

- 10.26 A successful divestiture will effectively address at source the loss of rivalry resulting from a merger by changing or restoring the structure of the market.<sup>283</sup>
- 10.27 Overall, we would expect that a full divestiture remedy, if designed to address the practical risks normally associated with any divestiture remedy (see paragraph 10.28), would re-establish the structure of the market and thereby restore the dynamic process of competition existing between the Parties prior to the Merger. It would address all of our concerns at source by reversing the Merger which has given rise to the SLC, and would therefore

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<sup>281</sup> [TVS EDL response to the Remedies Notice](#), paragraph 2.3.

<sup>282</sup> [TVS EDL response to the Remedies Notice](#), paragraph 2.3.

<sup>283</sup> [Merger remedies guidance CMA87](#), paragraph 3.38.

represent a comprehensive solution to all aspects of our SLC and/or its adverse effects.

### *Divestiture remedy design*

10.28 There are three broad categories of risk that may impair the effectiveness of any divestiture remedy:<sup>284</sup>

- (a) composition risk arises if the scope of the divestiture package is too constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
- (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and
- (c) asset risk arises if the competitive capability of the divestiture package deteriorates before completion of the divestiture, for example through the loss of customers or key members of staff.

10.29 An effective divestiture remedy should give us confidence that these practical risks can be properly addressed in its design. We therefore consider the following design issues:

- (a) the appropriate scope of the divestiture package;
- (b) the identification and availability of suitable purchasers; and
- (c) ensuring an effective divestiture process and maintaining the competitive capability of the divestiture package.

10.30 We consider each of these in turn below, where we set out the views of the Parties and third parties on each aspect of the remedy design, before setting out our views.

### *Scope of the divestiture package*

10.31 In considering the appropriate scope for a divestiture package, we have sought to ensure that it: (a) addresses the SLC and/or any resulting adverse effects; (b) is attractive to potential purchasers; and (c) enables the eventual purchaser to operate the divested business as an effective competitor.

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<sup>284</sup> [Merger remedies guidance CMA87](#), paragraph 5.3.



- *Parties' and third parties' views on the scope of the divestiture package*

10.32 TVS EDL told us that a smaller divestiture package (ie the divestiture 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.'<sup>285</sup>

10.33 In the response hearing TVS EDL told us that [REDACTED].

10.34 TVS EDL told us that [REDACTED]:

(a) [REDACTED];

(b) [REDACTED]; and

(c) [REDACTED].

10.35 In relation to the overall effectiveness of a partial divestiture remedy, third parties told us that the partial divestiture of 3G would not represent an effective remedy.

(a) [REDACTED] told us that there did not appear to be a partial divestiture remedy available and that it was difficult to see what a split would be.

(b) [REDACTED] told us selling the warehouse and the stock to a purchaser would not be sufficient for a business to enter and compete in the market as the purchaser will need to know the suppliers and be able to guarantee the quality of the products and provide aftersales service.

10.36 We considered what the essential elements of the 3G business were which would need to be included in any divestiture. [REDACTED] told us that it could be possible to divest 3G's own brand parts business, with the supply chain behind it and the current management team.

10.37 Third parties told us that the following elements are critical and would need to be included in any divestiture.

10.38 On management:

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<sup>285</sup> TVS EDL response to the Remedies Notice, paragraph 2.4.

- (a) [X] told us that the 3G management know the business well, they are trusted and are an important asset for the business. It would be crucial for any purchaser that the people transfer with the business.
- (b) [X] said that the 3G management are the key asset of 3G as they are well regarded in the market and have many years of experience; that without the 3G management, any purchaser is just buying debtors, customer lists and stock; and that customer lists are not particularly important as the Parties' have the same customers.
- (c) [X] told us that the management is the key element for 3G and needs to stay with the company; 3G's other assets (warehouse, stock etc) could be covered with investment. 3G's management team bring (i) product and customer base knowledge, so they know what to sell at what price, and (ii) supplier knowledge of the market, so they know where to source supply from effectively.

10.39 As regards brand:

- (a) [X] told us that the 3G brand has established its name over the years, and it is a trusted supplier in the market (along with UC, CV Logix, TTC). It also told us that customers value 3G and trust it to provide quality goods at a reasonable price.
- (b) [X] said that there is value in the 3G brand; however this is because of the reputation of the management team.
- (c) [X] told us that 3G is a valuable brand: if the purchaser did not have a recognisable brand itself, then the 3G brand could be seen as a valuable asset that could be used to build up a presence in the UK market.

10.40 In terms of other parts of the business that could be excluded from any divestiture, [X] told us that, potentially, 3G could still be competitive without supplying OES products and that there might be some brands that 3G are not successful with which it could lose without impacting greatly on the overall business.

10.41 In the response hearing TVS EDL told us that [X].

- *Our assessment of the scope of the divestiture package*

10.42 In defining the scope of a divestiture package that will satisfactorily address an SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that

includes all the relevant operations pertinent to the area of competitive overlap.<sup>286</sup>

- 10.43 The aim of divestiture is to address an SLC through the disposal of a business or assets from the merger parties to create a new source of competition (if sold to a new market participant) or to strengthen an existing source of competition (if sold to an existing participant independent of the merger parties).<sup>287</sup>
- 10.44 We have noted above that third parties ([X]) indicated the importance of the 3G management, the 3G brand and the 3G own label business with the supply chain supporting it.
- 10.45 In our view, narrowing the scope of a divestiture package from full divestiture of 3G to a partial divestiture would substantially increase the risk that a divestiture remedy would not be an effective solution to the SLC. There are a number of reasons for this:
- (a) In our view a partial divestiture of 3G would need the following elements to enable it to be a viable, stand-alone business that would be able to compete successfully on an ongoing basis: a strong management team, the 3G brand and the 3G own label business.
  - (b) Divestiture of only the stock and/or warehouse of 3G (along with the 'stock profile'), as proposed by TVS EDL, would not create a viable, stand-alone business that can compete successfully on an ongoing basis. For such a divestiture to address the SLC we have found, the remedy would be dependent on a purchaser being able, with only the stock and/or warehouse, to restore the competition lost as a result of the Merger (that is, to restore pre-Merger levels of competition). We have seen no evidence that there is a potential purchaser which needs only these elements to enable it to compete effectively in this way. We therefore consider that there is a high risk that this divestiture would not effectively remedy the SLC we have found.
  - (c) In our view the divestiture package proposed by TVS EDL, that is, the provision of stock and/or a warehouse, would also not be sufficient to enable new entry so as to restore pre-Merger levels of competition. Our analysis of barriers to entry shows that the most important barriers are the need for a strong reputation and brand. As we note in paragraph 8.22, the Parties recognised the importance of a wholesaler's reputation

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<sup>286</sup> [Merger remedies guidance CMA87](#), paragraph 5.7.

<sup>287</sup> [Merger remedies guidance CMA87](#), paragraph 3.37.

as a trusted supplier as an important factor in a customer's choice of supplier, meaning that new entrants without any existing reputation might find it difficult to win new customers.

- 10.46 We have also considered whether there is an alternative partial divestiture package that would include all the elements that we consider to be essential to the business, but it has not been possible to identify one that would not carry substantial risk. Any split of the 3G business would risk losing the staff and management and their existing knowledge of the supply chain, or damaging 3G's reputation in the market and its customer relationships, which would reduce the ability of the divested parts to compete successfully on an ongoing basis.
- 10.47 We also note that the Parties compete across their product ranges and our SLC is not limited, for example by customer type, product category or geography, and so we could not devise a split of the business that would address the SLC that we have found.
- 10.48 We therefore conclude that only full divestiture of 3G would be an effective remedy. We also conclude that it would be a straightforward exercise to determine the scope of the divestiture package under a full divestiture remedy.
- 10.49 For the reasons set out in paragraphs 10.45 to 10.48, we have concluded that partial divestiture would not be an effective remedy and that only full divestiture would be effective. Therefore it would not be appropriate to adopt the divestiture of 3G's stock and/or warehouse as a first option and only resort to full divestiture if a suitable purchaser for the partial divestiture cannot be identified, as partial divestiture would not be an effective remedy.
- 10.50 A full divestiture remedy requires TVS EDL to sell 3G to a suitable purchaser, who would acquire all of the 3G business acquired by TVS EDL and currently protected by interim measures, including the current 3G management, all of its assets and all of its staff. This would effectively reverse the Merger and thereby minimise the composition risk of omitting (or TVS EDL retaining) any key assets or key staff from the divestiture package.

*Identification and availability of suitable purchasers*

- 10.51 We consider below the risks that 3G may be sold to a weak or otherwise inappropriate purchaser or that a suitable purchaser may not be available. These risks, if not properly addressed, could undermine the effectiveness of any divestiture remedy.

- 10.52 We seek to mitigate the risks of an acquisition by an unsuitable purchaser by satisfying ourselves that:<sup>288</sup>
- (a) a prospective purchaser is independent of the acquirer: in this case, UC, TVS EDL (UC majority and controlling shareholder) and TVS ASPL (TVS EDL/UC's ultimate parent company);
  - (b) a prospective purchaser has the necessary capability to compete in the relevant market;
  - (c) a prospective purchaser is committed to competing in the relevant market; and
  - (d) the divestiture will not create further competition concerns.
- 10.53 The eventual purchaser and final transaction documents will be subject to CMA approval.
- 10.54 In the Remedies Notice, we invited views on whether there were any specific factors to which we should have regard in assessing purchaser suitability, and whether there were risks that a suitable purchaser would not be available.<sup>289</sup>
- 10.55 There was broad consensus from the TVS EDL and third parties on the need for a suitable purchaser to meet our normal purchaser suitability criteria (see paragraph 10.52).<sup>290</sup> TVS EDL told us that it 'does not consider that any specific purchasers or types of purchasers should be ruled out at this stage'.<sup>291</sup>
- 10.56 In relation to the likely availability of a suitable purchaser, TVS EDL told us that there is no reason to believe that such a purchaser is unlikely to be available.<sup>292</sup> We also understand that the TVS EDL have received at least two expressions of interest and have engaged a consultant to test interest in the market for an acquisition of 3G.
- 10.57 As part of the CMA's purchaser assessment process, the CMA will ensure that any purchaser has the necessary capability, which includes financial resources to support and invest in the 3G business.

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<sup>288</sup> [Merger remedies guidance CMA87](#), paragraph 5.21.

<sup>289</sup> [Remedies Notice](#), paragraph 22.

<sup>290</sup> [TVS EDL response to the Remedies Notice](#), paragraphs 5.2 and 5.3.

<sup>291</sup> [TVS EDL response to the Remedies Notice](#), paragraph 5.3.

<sup>292</sup> [TVS EDL response to the Remedies Notice](#), paragraph 5.4.

- 10.58 No parties expressed concern about the availability of a suitable purchaser for 3G. Four third parties ([REDACTED], [REDACTED]) stated that there are likely to be interested purchasers for the whole 3G business.
- 10.59 Based on the evidence received, and on our knowledge of 3G, we consider that it is likely that there will be a suitable purchaser for the 3G business. At this stage we have not ruled out any particular type of purchaser. This view is supported by the fact that 3G is an established stand-alone business and would not be dependent on finding a purchaser with strongly complementary assets or operations.
- 10.60 Based on the above, we consider the purchaser risk associated with a full divestiture of 3G to be low.

*Ensuring an effective divestiture process and maintaining the competitive capability of the divestiture package*

- 10.61 An effective divestiture process will protect the competitive potential of the divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale, as well as allowing prospective purchasers to make an appropriately informed acquisition decision.<sup>293</sup>
- 10.62 The incentives of merger parties may serve to increase the risks of divestiture. Although merger parties will normally have an incentive to maximise the disposal proceeds of a divestiture, they will also have incentives to limit the future competitive impact of a divestiture on themselves. Merger parties may therefore seek to sell their less competitive assets/businesses and target them to firms which they perceive as weaker competitors. They may also allow the competitiveness of the divestiture package to decline during the divestiture process.<sup>294</sup>
- 10.63 We next consider the following aspects of the divestiture process:
- (a) the appropriate timescale for divestiture to take place;
  - (b) whether, and under what circumstances, there is a need to appoint an external and independent trustee to complete a divestiture (Divestiture Trustee) to mitigate the risk that the divestiture does not complete within the timescales specified; and
  - (c) the role of interim measures during the divestiture process.

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<sup>293</sup> [Merger remedies guidance CMA87](#), paragraph 5.33.

<sup>294</sup> [Merger remedies guidance CMA87](#), paragraph 5.4.

- *Timescale allowed for divestiture*

- 10.64 We considered what would be an appropriate timescale to allow TVS EDL to implement the required divestiture (the **Initial Divestiture Period**). The Initial Divestiture Period would normally run from the acceptance of final undertakings or the making of a final order (for which the statute provides a period of up to 12 weeks after the final report)<sup>295</sup> until effective disposal of a divestiture package to a suitable purchaser (ie a sale to a purchaser approved by the CMA).<sup>296</sup>
- 10.65 In considering an appropriate Initial Divestiture Period, our Remedies Guidance states that the CMA will seek to balance factors which favour a shorter duration, such as minimising asset risk and giving rapid effect to the remedy, with factors that favour a longer duration, such as canvassing a sufficient selection of potential suitable purchasers and facilitating adequate due diligence. The Initial Divestiture Period will normally not exceed six months.<sup>297</sup>
- 10.66 TVS EDL told us that there are factors militating in favour of a divestiture period of no shorter than [REDACTED]. TVS EDL told us that these factors are in particular the ‘need to canvass a sufficient selection of potential suitable purchasers and the need for potential purchasers to conduct commercial due diligence’.<sup>298</sup>
- 10.67 We note that TVS EDL is already starting to explore potential purchasers, which we expect should enable it to run an efficient sale process. However, TVS EDL told us that in these ‘unprecedented times’ (citing the end of the transition period following the United Kingdom’s departure from the European Union and a second Coronavirus (Covid-19)-related national lockdown) it would [REDACTED]. We note that UC’s purchase of 3G took around seven months.
- 10.68 In its response to the RWP, TVS EDL told us that the divestiture period should be set at [REDACTED] because of the ‘unprecedented economic uncertainties resulting from the on-going impact of Coronavirus (Covid-19) and the end of the Brexit transition period’. It also told us that this would ensure that the divestment period is not so constrained as to put off potential remedy takers because of their need to conduct commercial due diligence.

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<sup>295</sup> [Merger remedies guidance CMA87](#), paragraph 4.68.

<sup>296</sup> [Merger remedies guidance CMA87](#), paragraph 5.40.

<sup>297</sup> [Merger remedies guidance CMA87](#), paragraph 5.41.

<sup>298</sup> [TVS EDL response to the Remedies Notice](#), paragraph 6.2.

- 10.69 Third parties ([REDACTED]) told us that the divestiture process of 3G would probably take up to six months. However, two of these third parties ([REDACTED]) also noted that it could take longer, up to 12 months, because of factors such as finding a potential purchaser, gaining board approval, carrying out due diligence, establishing and checking cashflow models.
- 10.70 In light of the lack of integration between UC and 3G and, as noted above, the relatively low purchaser risk, in our view a full divestiture of 3G would be relatively simple to implement in an efficient and orderly fashion using external advisers to assist where appropriate.
- 10.71 Given the relative simplicity of implementing such a divestiture we also considered whether a shorter period would be appropriate. The 3G business appears to be operating successfully, which reduces the necessity for the divestment transaction to be completed quickly. We also note the third parties' views we received which suggested six months was appropriate.
- 10.72 We therefore conclude that the Initial Divestiture Period should be [REDACTED] from the date of any final undertakings or final order. We recognise the potential impact on the process of Coronavirus (COVID-19) and the end of the transition period following the United Kingdom's departure from the European Union and will take this into account during the divestiture period, including extending the period if necessary.

- *Provision for appointment of a divestiture trustee*

- 10.73 The CMA's standard practice is to provide for the appointment of a Divestiture Trustee to dispose of the divestiture package if the divesting party (in this case, TVS EDL) fails to achieve an effective disposal within the Initial Divestiture Period, or if the CMA has reason to be concerned that TVS EDL will not achieve an effective disposal within the Initial Divestiture Period. This helps ensure that TVS EDL has a sufficient incentive to implement the divestiture promptly and effectively.
- 10.74 In line with the CMA's normal practice, if appointed, a Divestiture Trustee would be tasked with completing the divestiture to a potential purchaser approved by the CMA within a specified period and at the best available price in the circumstances.<sup>299</sup>

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<sup>299</sup> [Merger remedies guidance CMA87](#), paragraph 5.43.



- 10.75 In the Remedies Notice, we invited views on whether the circumstances of this Merger necessitated the appointment of a Divestiture Trustee at the outset of the divestiture process.<sup>300</sup>
- 10.76 TVS EDL told us that it does not believe there would be any reason that a Divestiture Trustee should be appointed at the outset of a divestiture process.<sup>301</sup>
- 10.77 We consider that any potential risks can be mitigated through the continued use of interim measures during the sales process (as described below), along with the continued involvement of a monitoring trustee.
- 10.78 Based on the above, we currently do not see a need to require a Divestiture Trustee to be appointed at the outset of the divestiture process to ensure a timely completion of this remedy, although we reserve our right to appoint a Divestiture Trustee in any of the following situations:
- (a) TVS EDL fails to complete the divestiture process within the Initial Divestiture Period;
  - (b) the CMA reasonably believes that there is a risk that the divestiture process would be delayed or fail to complete within the Initial Divestiture Period;
  - (c) TVS EDL is not engaging constructively with the divestiture process, eg if it does not comply with its obligations under any final undertakings or order; and
  - (d) there is a material deterioration in the divestiture package during the divestiture process.
- *The role of interim measures during the divestiture process*
- 10.79 We have put in place interim measures to govern the conduct of 3G during the investigation. We have also appointed a Monitoring Trustee to monitor compliance with the interim measures, among other things.<sup>302</sup>
- 10.80 In the Remedies Notice, we invited views on whether the functions of the Monitoring Trustee should be expanded during the divestiture process to

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<sup>300</sup> Remedies Notice, paragraph 26.

<sup>301</sup> TVS EDL response to the Remedies Notice, paragraphs 6.1 to 6.4.

<sup>302</sup> The Monitoring Trustee was appointed at the start of the CMA's phase 2 investigation to monitor the Parties' compliance with these interim measures, including ensuring that there was no deterioration of the 3G business.

ensure that the operations and assets to be divested are maintained and properly supported during the course of the process.<sup>303</sup>

- 10.81 TVS EDL told us that it 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’.<sup>304</sup> TVS EDL told us that it does not believe there would be any reason to expand the existing functions of the Monitoring Trustee.<sup>305</sup>
- 10.82 We conclude that the Monitoring Trustee’s appointment should continue in order to monitor the Parties’ compliance with the divestiture measures. At this stage we agree with TVS EDL that there is no need to expand the functions of the Monitoring Trustee. The Monitoring Trustee’s obligations should instead be slightly amended to focus primarily on the independent operation and preservation of the divestiture package (ie the 3G business) rather than the preservation of the UC or TVS ASPL businesses.

### ***Behavioural remedies***

- 10.83 Behavioural remedies are ongoing measures that are designed to regulate or constrain the behaviour of merger parties.<sup>306</sup>
- 10.84 As stated in paragraph 10.9, in merger inquiries the CMA prefers structural remedies, such as divestiture or prohibition, over behavioural remedies.
- 10.85 In the Remedies Notice, we stated that we were not proposing behavioural remedies as the primary source of remedial action in this case, as our initial view was that behavioural remedies were very unlikely to be effective in addressing the SLC that we have found and/or any resulting adverse effects. We stated that we would consider any behavioural remedies put forward as part of the consultation, but absent any such submission, the CMA was minded not to pursue behavioural remedies any further.<sup>307</sup>
- 10.86 TVS EDL told us that there is no requirement to put in place a behavioural remedy to safeguard the effectiveness of a structural remedy.<sup>308</sup>
- 10.87 In the response hearing TVS EDL told us that it would be open to behavioural remedies, for example [X]. It told us that this [X]. TVS EDL did not provide further information on this in the response hearing or in response

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<sup>303</sup> Remedies Notice, paragraph 24(b).

<sup>304</sup> TVS EDL response to the Remedies Notice, paragraph 6.3.

<sup>305</sup> TVS EDL response to the Remedies Notice, paragraph 6.4.

<sup>306</sup> Merger remedies guidance CMA87, paragraph 3.34.

<sup>307</sup> Remedies Notice, paragraphs 14 and 15.

<sup>308</sup> TVS EDL response to the Remedies Notice, paragraph 4.2.

to the RWP or explain how this would be effective in comprehensively addressing the SLC and its resulting adverse effects.

10.88 Several third parties told us that it would be difficult to devise an effective behavioural remedy and no third party submitted that a behavioural remedy would be an effective remedy.

10.89 Our Remedies Guidance states that the CMA will generally only use behavioural remedies as the primary source of remedial action where:

- (a) structural remedies are not feasible;
- (b) the SLC is expected to have a short duration; or
- (c) in a phase 2 investigation, behavioural measures will preserve substantial RCBs that would be largely removed by structural measures.<sup>309</sup>

10.90 In the present case:

- (a) structural remedies are clearly feasible (including divestiture, as discussed above);
- (b) the SLC is not time-limited, and there is no reason to expect it will have a short duration. We note the Parties' proposal of a short-term price cap to cover the period until new entry occurs; however we have not found a time-limited SLC and hence, setting aside the risks associated with designing an effective price cap,<sup>310</sup> this remedy would fail to address the SLC through its expected duration; and
- (c) we have been provided with no convincing evidence of substantial RCBs that would be largely removed by structural measures (this is discussed in more detail in paragraphs 10.110 to 10.117).

10.91 Accordingly, we conclude that there is no behavioural remedy which would represent an effective remedy in this case.

### ***Conclusion on effectiveness of remedy options***

10.92 It is our view that full divestiture of 3G will address our competition concerns at source and therefore prevent any SLC and consequently any resulting

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<sup>309</sup> [Merger remedies guidance CMA87](#), paragraph 7.2.

<sup>310</sup> [Merger remedies guidance CMA87](#), paragraph 7.34

adverse effects. It therefore represents a comprehensive solution to every aspect of the SLC we have found and to its resulting adverse effects.

- 10.93 We would expect the full divestiture of 3G, as described above, to restore the market structure and dynamic rivalry expected in the absence of the Merger, and therefore to have an immediate and comprehensive effect in addressing the SLC and its resulting adverse effects.
- 10.94 In relation to the practicality of implementing a full divestiture remedy, we are able to specify clearly the scope of the divestiture package (in particular given the limited integration of the Parties to date). We also expect a full divestiture remedy to involve little risk of omitting any key staff or key assets that may be necessary to ensure 3G's stand-alone viability and competitive capability and therefore ensure 3G's ongoing ability to be an effective competitive constraint in the relevant markets.
- 10.95 We have set out above our view on the criteria for a suitable purchaser (paragraphs 10.51 to 10.60 and the procedural safeguards which should be put in place to ensure an effective divestiture process (paragraphs 10.61 to 10.82). Our view is that the risk of not finding a suitable purchaser is low.
- 10.96 Therefore, with regard to the practicality of this remedy, it is our view that it is capable of effective implementation, it has low purchaser, asset and composition risks and will require minimal ongoing monitoring after its full implementation.
- 10.97 Given that a full divestiture of 3G will address the SLC and its resulting adverse effects at source, it is also our view that there is a high degree of certainty that this remedy will achieve its intended effect. We therefore conclude that the risks in terms of the effectiveness of a full divestiture remedy are low.
- 10.98 We conclude that a full divestiture of 3G represents the only effective comprehensive remedy to the SLC and its resulting adverse effects.

## **Proportionality**

- 10.99 In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, of those remedy options that it considers will be effective. If the CMA is choosing between two remedies which it considers will be equally effective, it will select the remedy that

imposes the least cost or that is least restrictive.<sup>311</sup> In this case we have only identified one effective remedy, full divestiture of 3G.

10.100 In addition, the CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.<sup>312</sup>

10.101 In conducting this proportionality assessment, we first consider whether there are any RCBs which would affect our decision on remedies, before considering the issue of proportionality more generally.

### ***Relevant customer benefits***

10.102 When deciding on remedies, the CMA may have regard to the effect of remedial action on any RCBs.<sup>313</sup> In this section, we consider whether there are any RCBs that should be taken into account in our remedy assessment.

10.103 An effective remedy to an SLC, such as full divestiture of 3G in this case, could be considered disproportionate if it prevents customers from securing benefits resulting from the Merger. Insofar as these benefits constitute RCBs for the purposes of the Act,<sup>314</sup> the statutory framework allows us to take them into account when we decide whether any remedy is proportionate.

10.104 RCBs that will be foregone due to the implementation of a particular remedy may be considered as costs of that remedy. The CMA may modify a remedy to ensure retention of an RCB or it may change its remedy selection. For instance, it may decide to implement an alternative effective remedy, or in rare cases it may decide that no remedy is appropriate.<sup>315</sup>

### ***Framework for assessment of RCBs***

10.105 The Act defines an RCB as a benefit to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services in any market in the UK, or greater innovation in relation to those goods or services.<sup>316</sup> For these purposes, relevant customers are direct and indirect customers (including future customers) of the merger parties at any point in

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<sup>311</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>312</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>313</sup> The Act, [Section 35\(5\)](#).

<sup>314</sup> The Act, [Section 30](#).

<sup>315</sup> [Merger remedies guidance CMA87](#), paragraph 3.16.

<sup>316</sup> The Act, [Section 30\(1\)\(a\)](#).

the chain of production and distribution – they are not limited to final consumers.<sup>317</sup>

10.106 In addition, in the case of completed mergers, the CMA must believe that:<sup>318</sup>

- (a) the benefit has accrued as a result of the creation of the relevant merger situation or may be expected to accrue within a reasonable period as a result of that situation; and
- (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

10.107 The burden of proof regarding RCBs is on the merger parties. Our Remedies Guidance states that the merger parties will be expected to provide ‘convincing evidence’ regarding the nature and scale of RCBs that they claim to result from the merger and to demonstrate that these fall within the statutory definition of such benefits.<sup>319</sup>

10.108 When assessing the merger parties’ evidence on the claimed benefits, the CMA must therefore ask itself whether each claimed benefit has accrued as a result of the merger or may be expected to accrue within a reasonable period as a result of the merger (paragraph 10.106(a)), and, whether that benefit was, or is, unlikely to accrue without the merger or a similar lessening of competition (paragraph 10.106(b)). With regard to the latter, in practice the CMA will need to be satisfied that the claimed benefit could not be achieved by plausible less anti-competitive alternatives to the merger.<sup>320</sup>

10.109 In the Remedies Notice, we invited views on the nature of any RCBs, the scale and likelihood of such benefits and the extent (if any) to which these are affected by the full divestiture of 3G.<sup>321</sup>

### *Views of the Parties and third parties*

10.110 TVS EDL told us that the Merger is expected to result in ‘significant variable cost synergies by leveraging the Parties’ combined purchasing power across their respective suppliers’.<sup>322</sup> TVS EDL told us that purchasing synergies are variable cost reductions of the kind that the CMA recognises as RCBs as

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<sup>317</sup> The Act, [Section 30\(4\)](#); [Merger remedies guidance CMA87](#), paragraph 3.18.

<sup>318</sup> The Act, [Section 30\(2\)](#) of the Act.

<sup>319</sup> [Merger remedies guidance CMA87](#), paragraph 3.20.

<sup>320</sup> [Merger remedies guidance CMA87](#), paragraph 3.24.

<sup>321</sup> [Remedies Notice](#), paragraph 33.

<sup>322</sup> [TVS EDL response to the Remedies Notice](#), paragraph 2.1.

they ‘tend to stimulate competition and are more likely to be passed on to customers in the form of lower prices’.<sup>323</sup>

10.111 In the response hearing, TVS EDL told us that the Merger will lead to reductions in its variable costs and that some proportion of these would be expected to be passed on to customers.

10.112 TVS EDL told us that the driver for the Merger was to enable it to remain competitive and so it will not raise prices after the Merger. TVS EDL also told us that it would not be able to raise prices without the risk that customers would leave. However, we have seen no evidence of plans to reduce prices after the Merger.

10.113 In the response hearing, TVS EDL told us that [REDACTED]:

[REDACTED].

10.114 In response to the RWP, TVS EDL maintained its view that there are RCBs resulting from the Merger but did not provide further evidence on the RCBs.

10.115 Third parties told us that there would be purchasing synergies, but it was unlikely that these would be passed on to customers. For example, [REDACTED] told us that UC would have a bigger size and bargaining position with suppliers and could save 10 to 15%. It said that UC may also become attractive to some suppliers that it did not have access to before because of its size. However, [REDACTED] questioned whether any of these savings would be passed on to the customers.

### *Our assessment of RCBs*

10.116 We conclude that the cost synergies referred to by TVS EDL should not be considered to be RCBs for the following reasons:

(a) We have seen no evidence that TVS EDL may be expected to pass on within a reasonable period any such savings to their customers in terms of price reductions. We assessed TVS EDL evidence regarding purchasing cost synergies and found that TVS EDL had not provided evidence that any cost savings would be passed on to customers in terms of consumer price reductions.<sup>324</sup>

(b) The valuation of 3G was based on a model that attributed financial value to these synergies, indicating that the shareholders had effectively paid

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<sup>323</sup> TVS EDL response to the Remedies Notice, paragraph 2.2.

<sup>324</sup> See paragraph 8.109.

for these synergies in the purchase price for 3G and expected to receive this value (rather than the savings being passed on to customers). We also note that TVS EDL's financial projections including the 3G acquisition showed that there would be additional EBITDA for the Parties and that there would be a reduction in customer rebates.

- (c) We have seen no evidence that the cost savings were, or are, likely to accrue only through the Merger or a similar lessening of competition. As noted above, at the response hearing TVS EDL acknowledged that another (less anticompetitive) merger could give these price benefits. We are therefore not satisfied that these savings could not also be achieved by plausible less anti-competitive alternatives to the Merger.

10.117 Therefore, we conclude that the statutory test in respect of RCBs is not met in this case.

### ***The proportionality of effective remedies***

#### *Framework for assessment of proportionality of merger remedies*

10.118 When considering the proportionality of remedies, and consistent with our Remedies Guidance, we have followed the established criteria set out by the EU and UK courts, which have been explicitly endorsed by the Competition Appeal Tribunal in the context of the assessment of merger remedies. These are that the remedy selected:

- (a) must be effective to achieve the legitimate aim in question;
- (b) must be no more onerous than is required to achieve that aim;
- (c) must be the least onerous, if there is a choice of equally effective measures; and
- (d) in any event must not produce adverse effects which are disproportionate to the aim pursued.<sup>325</sup>

10.119 As regards effectiveness ((a) above), we have explained in paragraphs 10.92 to 10.97 the basis of our conclusion that only full divestiture of 3G would be effective in achieving the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects.

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<sup>325</sup> See [Tesco plc v Competition Commission](#) [2009] CAT 6 at [137], drawing on the formulation by the European Court of Justice in Case C-331/88 R v Ministry of Agriculture, Fisheries and Food, ex p. Fedesa, ECLI:EU:C:1990:391, para 13. See also [Merger remedies guidance CMA87](#), paragraphs 3.4 and 3.6.



- 10.120 As regards proportionality, given that in the present case there is not a choice of equally effective remedies ((c) above), we set out our assessment below of whether the proposed remedy is (i) no more onerous than is required to achieve the legitimate aim ((b) above) and (ii) will not produce adverse effects which are disproportionate to the aim pursued ((d) above).
- 10.121 In doing so, we first consider whether there are any relevant costs associated with the proposed remedy. The costs of a remedy may arise in various forms, including (but not limited to):<sup>326</sup>
- (a) distortions in market outcomes;
  - (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
  - (c) the loss of any RCBs from the Merger which are foregone as a result of the remedy (see paragraphs 10.102 to 10.117).
- 10.122 As the merger parties have the choice of whether or not to proceed with the merger, the CMA will generally attribute less significance to the costs of a remedy that will be incurred by the merger parties than the costs that will be imposed by a remedy on third parties, the CMA and other monitoring agencies.<sup>327</sup>
- 10.123 Having identified the relevant costs associated with the proposed remedy, we then conduct the proportionality assessment by reference to the SLC and its resulting adverse effects.<sup>328</sup> In doing so, we compare the extent of harm associated with the SLC (and its adverse effects) with the relevant costs of the proposed remedy.

#### *Views of the Parties and third parties*

- 10.124 TVS EDL has submitted that since a full divestiture of 3G would eliminate the possibility of the Parties securing purchasing cost synergies (thereby removing this RCB), it would be both unnecessarily intrusive and disproportionate.<sup>329</sup>
- 10.125 No third parties have provided submissions on the proportionality of any potential remedies.

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<sup>326</sup> [Merger remedies guidance CMA87](#), paragraph 3.10.

<sup>327</sup> [Merger remedies guidance CMA87](#), paragraph 3.8.

<sup>328</sup> [Merger remedies guidance CMA87](#), paragraph 3.6.

<sup>329</sup> [TVS EDL response to the Remedies Notice](#), paragraphs 2.3 and 3.2.

## *CMA assessment of proportionality*

*Is the remedy no more onerous than is required to achieve the legitimate aim?*

- 10.126 As full divestiture of 3G is the only effective remedy (see paragraph 10.97), we have concluded that it is no more onerous than is required to achieve the legitimate aim of comprehensively remedying the SLC and its resulting adverse effects.

*Does the remedy produce adverse effects which are disproportionate to the aim pursued?*

- 10.127 We have considered whether full divestiture of 3G would produce adverse effects which are disproportionate to the legitimate aim of remedying the SLC and its resulting adverse effects. In doing so, we have compared the level of harm which is likely to arise from the SLC (and its resulting adverse effects) that we have found with the costs of the proposed remedy.
- 10.128 With regard to the potential cost associated with lost RCBs, as we have noted in paragraph 10.117, we have concluded that the statutory test in respect of RCBs is not met in this case.
- 10.129 We have received no submissions that there would be other relevant costs caused by this remedy.
- 10.130 As we have described above, we expect full divestiture of 3G to re-establish the structure of the market and thereby restore the dynamic process of competition existing between the Parties prior to the Merger. Such a remedy would not cause any distortion in market outcomes and would require no ongoing compliance costs.
- 10.131 Our view is therefore that there are no relevant costs to this remedy. In view of this and given our finding that the Merger may be expected to result in an SLC with resulting adverse effects (for example, in the form of higher prices and/or lower quality of products or customer service) that would be avoided by implementing an effective remedy, we have concluded that full divestiture of 3G is not disproportionate to its legitimate aim.

## ***Conclusion on proportionality***

- 10.132 On the basis of the above, we conclude that divestiture is no more onerous than is required to achieve the legitimate aim of comprehensively remedying

the SLC and its resulting adverse effects and that it is not disproportionate to that aim.

## Final decision on remedies

10.133 In view of the above, we have decided that full divestiture of 3G would be an effective and proportionate remedy that constitutes as comprehensive a solution as is reasonable and practicable to the SLC and its resulting adverse effects that we have found.

## Remedy implementation

10.134 The CMA has the choice of implementing any final remedy decision either by accepting final undertakings if the Parties and TVS ASPL wish to offer them, or by making a final order.<sup>330</sup> Either the final undertakings or the final order must be implemented within 12 weeks of publication of our final report (or extended once by up to six weeks), including the period for any formal public consultation on the draft undertakings or order as specified in Schedule 10 of the Act.<sup>331</sup>

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<sup>330</sup> The Act, [Section 82](#) (final undertakings) and [Section 84](#) (final orders).

<sup>331</sup> [Merger remedies guidance CMA87](#), paragraph 4.68. An extension may be made if the CMA considers there are 'special reasons' for doing so (The Act, [section 41A\(2\)](#)).