

Notice of intention to accept binding
commitments in relation to certain
exclusive arrangements for the supply
of electric vehicle chargepoints

Case number 51050

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Contents

	<i>Page</i>
1. Introduction	2
2. The CMA's investigation	4
3. Background.....	12
4. The CMA's competition concerns	15
5. The Proposed Commitments	19
6. The CMA's intentions and invitation to comment	27
Appendix A: The Proposed Commitments	28

1. Introduction

- 1.1 On 22 July 2021, the Competition and Markets Authority ('CMA') opened an investigation under the Competition Act 1998 ('the Act') into the supply of electric vehicle ('EV') chargepoints on or near motorways, in respect of suspected breaches of the Chapter I prohibition and the Chapter II prohibition of the Act.
- 1.2 In its market study into EV charging ('EV Charging Market Study') published on 23 July 2021,¹ the CMA identified that The Electric Highway Company Limited ('The Electric Highway')² and Ecotricity Group Limited ('Ecotricity') had entered into long-term exclusive arrangements with three motorway service area (MSA) providers (the 'Long-Term Exclusive Arrangements' and each an 'Arrangement'). The CMA's EV Charging Market Study published on 23 July 2021 identified the Long-Term Exclusive Arrangements as one of two barriers to entry hindering the emergence of greater investment and competition in motorway EV charging, the other being grid capacity.³
- 1.3 The following companies⁴ are the subject of the CMA's investigation:
- a) The Electric Highway, Gridserve Holdings Limited ('Gridserve') and Ecotricity under both the Chapter I and Chapter II prohibitions; and
 - b) the following three MSA operators under the Chapter I prohibition only:
 - i. MOTO Hospitality Limited and MOTO Holdings Limited ('MOTO');⁵
 - ii. Roadchef Limited ('Roadchef'); and
 - iii. Extra MSA Property (UK) Limited and the following companies within the Extra group: Extra MSA Baldock Limited; Extra MSA Beaconsfield Limited; Extra MSA Blackburn Limited; Extra MSA Cambridge Limited; Extra MSA Cobham Limited; Extra MSA Cullompton Limited; and Extra MSA Peterborough Limited ('Extra'),together the 'Three MSAs'.
- 1.4 Gridserve (including The Electric Highway) and the Three MSAs are referred to collectively in this notice as the 'Parties'.

¹ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021.

² Since 4 June 2021, The Electric Highway has been a wholly-owned subsidiary of Gridserve Holdings Limited, which acquired the company from Ecotricity Group Limited.

³ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraphs 4.18 and 4.26 to 4.33.

⁴ Including other companies that, in each case, form part of the same undertaking.

⁵ MOTO Hospitality Limited is part of the MOTO group.

- 1.5 Following the Parties indicating a willingness to offer commitments, the CMA issued a summary of its competition concerns in relation to the Long-Term Exclusive Arrangements to the Parties on 21 October 2021. On 29 October 2021, the Parties proposed commitments for the purpose of addressing the CMA's competition concerns which are set out in Appendix A ('the Proposed Commitments').
- 1.6 The CMA's provisional view is that the Proposed Commitments, if implemented, would address its competition concerns. Under section 31A of the Act, read with Schedule 6A, the CMA therefore gives notice⁶ that it intends to accept the Proposed Commitments (the 'Notice') and invites representations from persons likely to be affected on this proposed course of action.
- 1.7 Formal acceptance of the Proposed Commitments by the CMA would result in the termination of its investigation, with no decision made on whether or not the Act has been infringed.
- 1.8 The CMA invites persons likely to be affected to make representations on the Proposed Commitments and the CMA will take into account such representations before making its final decision on whether to accept the Proposed Commitments. In order to assist any persons in responding to this consultation, this Notice provides information on the CMA's investigation, the Parties and the sector, and the CMA's competition concerns. The Notice then summarises the Proposed Commitments offered by the Parties and sets out why the CMA provisionally considers that the Proposed Commitments address the competition concerns it has identified. Details on how to make representations are provided at the end of this Notice. The closing date for representations is **5pm on Thursday, 2 December 2021**.

⁶ Pursuant to paragraph 2 of Schedule 6A to the Act.

2. The CMA's investigation

The investigation

- 2.1 Following agreement with the Office of Gas and Electricity Markets ('Ofgem') under the Concurrency Regulations⁷ that the CMA was best placed to proceed with the investigation,⁸ on 22 July 2021 the CMA opened a formal investigation under section 25 of the Act.
- 2.2 The CMA considers that there are reasonable grounds for suspecting that from June 2013:
- a) The Long-Term Exclusive Arrangements have or have had the effect of preventing, restricting or distorting competition in the United Kingdom (or a part(s) of it) and may affect, or may have affected trade, within the United Kingdom (or a part(s) of it) in breach of section 2(1) ('the Chapter I prohibition') of the Act;⁹ and
 - b) The Electric Highway, Gridserve and Ecotricity, through the above one or more Arrangements, have abused and/or are abusing a dominant position in breach of section 18(1) ('the Chapter II prohibition') of the Act.¹⁰
- 2.3 In particular, the CMA is concerned that the Long-Term Exclusive Arrangements may have, and may have had, the likely effect of foreclosing other chargepoint operators ('CPOs') from providing EV chargepoints on or near MSAs.
- 2.4 In addition, the CMA is concerned that going forward the Long-Term Exclusive Arrangements could impede the roll-out of the Government's anticipated Rapid

⁷ [The Competition Act 1998 \(Concurrency\) Regulations 2014](#) set out that certain sector regulators, including Ofgem, can, alongside the CMA, apply the prohibitions of the Competition Act 1998 in the sectors for which they have jurisdiction.

⁸ This was agreed in accordance with the Concurrency Regulations, Concurrency Guidelines (CMA10) and the procedure set out in section 30 of the memorandum of understanding between the CMA and Ofgem on concurrent competition powers, dated 18 January 2016 ([ofgem_cma_mou.pdf](#)).

⁹ Section 2(1) of the Act prohibits agreements between undertakings, concerted practices or decisions by associations of undertakings which have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom (or a part(s) of it), and which may affect trade within the United Kingdom (or a part(s) of it) unless they are exempt in accordance with the provisions of Part 1 of the Act or they fall within a category of excluded agreements pursuant to section 3 of the Act. The Arrangements which are the subject of the present investigation do not fall within any of the excluded cases.

¹⁰ Section 18(1) of the Act prohibits the abuse by one or more undertakings of a dominant position in a market where this may affect trade within the United Kingdom or any part of the United Kingdom, unless any of the excluded cases pursuant to section 19 of the Act apply. For these purposes, a dominant position means a dominant position within the United Kingdom or any part of the United Kingdom. The Arrangements which are the subject of the present investigation do not fall within any of the excluded cases.

Charging Fund ('RCF').¹¹ This fund is designed to finance additional or upgraded connections to the electricity grid at charging sites at MSAs and major A road service areas in order to ensure the EV charging capacity in England is able to meet demand in the future. The EV Charging Market Study also noted that this RCF-funded upgrade of grid capacity will provide a pivotal opportunity to open up and increase charging competition within motorway services.¹²

- 2.5 During the course of its investigation to date, the CMA has undertaken a number of steps to gather evidence from the companies under investigation and third parties. These steps include sending formal notices requiring documents and information under section 26 of the Act and obtaining further information through (virtual) meetings and other correspondence.
- 2.6 In addition to Ofgem as a concurrent regulator, the CMA has also worked closely with the Office for Zero Emission Vehicles ('OZEV'). OZEV has responsibility for supporting the transition to zero emission vehicles including through funding to support EV chargepoint infrastructure across the UK. On 28 September 2021, OZEV published the Future of Transport Regulatory Review¹³ in which it set out proposals for measures related to the delivery of the RCF. This consultation included proposals, consistent with the CMA's recommendations in the EV Charging Market Study, to secure competition within MSA sites between CPOs, including potentially requiring as a condition for RCF funding that, generally, at least two 'open'¹⁴ network operators operate from each MSA site receiving RCF funding.¹⁵

The products and the parties under investigation

The Products

- 2.7 An EV chargepoint delivers power to one EV at a time via one or more connectors. The CMA's investigation relates to en-route EV charging, which refers to the provision of EV chargepoints to be used by consumers during longer journeys (typically along motorways at MSAs or other major A roads).¹⁶
- 2.8 En-route charging raises a number of distinct issues:

¹¹ [Rapid charging fund](#) guidance and [HM Treasury, National Infrastructure Strategy, November 2020](#).

¹² [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Summary, paragraph 11.

¹³ [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021.

¹⁴ This means any EV can use the EV chargepoint network. The Electric Highway network of EV chargepoints is an open network. A 'closed' EV chargepoint network is one where owners of only one car manufacturer's vehicles can use the chargepoints (e.g. the Tesla network of EV chargepoints).

¹⁵ [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021, pages 10 to 11.

¹⁶ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.1.

- a) Consumers may have a limited set of charging options when travelling longer distances – unlike when travelling shorter distances where they will be able to charge at home, work or at their destination.
- b) For en-route charging options to be effective, locations need to have amenities for consumers to use while they wait, as charging an EV currently takes at least 20 minutes. Given this, there are limited suitable locations available to install chargepoints for use on long journeys, which compounds the lack of choice for consumers.
- c) It can be prohibitively expensive to install chargepoints at available locations because rapid and ultra-rapid chargepoints (those most suitable for en-route charging) use large amounts of power which may require expensive upgrades to the electricity network that supplies the site.¹⁷

2.9 MSAs are key locations for en-route EV charging. Not only do they offer the amenities set out above at paragraph b) but they are also easily accessible, have large car parks and typically have space to expand, subject to planning permission. The importance of MSAs is demonstrated by the fact that more than half of en-route charging by EV drivers in England is forecast to take place at MSAs.¹⁸

2.10 As such, the provision of EV chargepoints at MSAs is crucial for the shift to EVs because EVs are currently viewed as having a limited range and ‘range anxiety’ (the fear of running out of charge for the desired travel distance) is a key obstacle for the current take-up of EVs.¹⁹ For potential EV drivers to purchase an EV, they must be confident that there is a sufficiently comprehensive EV charging network including en-route for them to be able to charge rapidly when necessary and in line with their EV’s range.

2.11 Significant investment is needed to increase the number of rapid chargepoints to meet likely future EV charging demand at MSAs. For example, estimates indicate that the equivalent of around 2,300 ultra-rapid chargepoints are needed at MSAs in England by 2030 to support the shift to EVs (including to give drivers the confidence to switch to an EV).²⁰ However, as at July 2021, there were only over 500 rapid and ultra-rapid chargepoints at MSAs in the whole of the UK.²¹

¹⁷ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.2.

¹⁸ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.6. The remaining 44% of en-route charging takes place at other locations such as rapid charging stations at petrol stations on A roads.

¹⁹ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.1.

²⁰ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.16.

²¹ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.16.

- 2.12 The upgrades to the electricity network grid supply needed to support the expansion of rapid and ultra-rapid chargepoints can be particularly costly at MSAs, as they tend to be in locations further away from the distribution network.²² Estimates indicate that the average cost of upgrading network connections at each MSA to accommodate the electrification of all cars and vans will be around £7m, and at some sites could be as high as £27m.²³ The cost would be even higher if upgrades were carried out iteratively.
- 2.13 The costs associated with increasing grid capacity are a significant proportion of the upfront capital costs of increasing EV chargepoint provision at MSA sites and, as such, the EV Charging Market Study identified that these costs, together with the Long-Term Exclusive Arrangements, are major barriers to entry for CPOs.²⁴ The high costs of these network upgrades mean that the business case for CPOs to invest on a significant scale is challenging, especially currently and in the near term, as demand remains relatively low.²⁵
- 2.14 The UK Government recognises these challenges and plans to invest £950m in network capacity along motorways and key A roads in England, through the RCF, to prepare for the uptake of EVs. The Devolved Administrations are also developing policies and funding to support en-route charging.²⁶ The EV Charging Market Study found that the RCF should provide a pivotal opportunity to establish a basis for strong and beneficial competition in the long-term along motorways, by enabling competition between different CPOs at each MSA site.²⁷

The Parties

The MSAs

²² Although in some cases, MSAs could have connections direct to the transmission network.

²³ Estimates that full EV uptake will be achieved by circa 2050. The estimate of network upgrade costs is based on a range of simplifying assumptions for budget estimates and varies from one location to the next. The estimate of average peak power requirement is driven by a range of assumptions about battery size, vehicle efficiency, access to home charging, charging behaviour thresholds, movement patterns from the Regional Transport Models and dwell time at MSAs.

²⁴ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraphs 4.19 to 4.25. For example, the EV Charging Market Study identified that one stakeholder estimated that the cost to buy and install a 125kW rapid chargepoint is around £26,000; installing 24 of these at a MSA (which would meet estimates of the approximate average peak power requirement of 3MW in 2030) would cost £636,000, which is less than 10% of the cost of the network connection.

²⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.22.

²⁶ In relation to Scotland, Transport Scotland has recently published (21 July 2021): [Report on Public Electric Vehicle \(EV\) infrastructure in Scotland - Opportunities for Growth](#). In relation to Wales, the Welsh Government recently published (23 March 2021): [Electric Vehicle Charging Strategy for Wales](#) and an associated action plan on 26 October 2021: [action plan](#).

²⁷ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.44.

- 2.15 MOTO is an MSA operator with 61 MSA sites across England, Scotland and Wales. MOTO hosts both Tesla UK ('Tesla') and Gridserve's EV chargepoints at its sites.
- 2.16 Roadchef is an MSA operator with 28 MSA sites across England, Scotland and Wales. Roadchef currently only hosts Gridserve EV chargepoints at its sites.
- 2.17 Extra is an MSA operator with eight sites across England. Extra's sites host Ionity GmbH ('Ionity') and Gridserve EV chargepoints.
- 2.18 Details of the Three MSAs Long-Term Exclusive Arrangements with The Electric Highway are set out at paragraphs 2.25 to 2.27 below.

The Electric Highway and Gridserve

- 2.19 The Electric Highway is a CPO that operates an open network of EV chargepoints on or near motorways across Great Britain. It has operated EV chargepoints in Great Britain since June 2013.
- 2.20 The Electric Highway is present at nearly all MSAs, and had, at the time of publication of the EV Charging Market Study report, a network of 247 EV chargepoints at MSAs with a power rating of at least 50 kilowatts (kW).
- 2.21 The Electric Highway was sold by Ecotricity to Gridserve in June 2021. Gridserve is a tech-enabled sustainable energy business. In addition to operating EV chargepoints, Gridserve also builds and operates solar farms and provides remote power solutions.²⁸
- 2.22 Gridserve has stated that it is investing in replacing almost all of The Electric Highway's existing 50 kW rapid chargepoints with new technology, doubling the number of EVs that can charge at the same time.²⁹ Gridserve has informed the CMA³⁰ that it is investing over £200 million between 2021 and 2025 which includes investing over £100m in ultra-rapid EV chargepoints at MOTO and Roadchef sites to meet the Government's target of at least six ultra-rapid EV chargepoints at each MSA by 2023.³¹
- 2.23 Separately to The Electric Highway business, Gridserve also plans to invest in excess of £100m in delivering more than 50 'Electric Hubs' featuring six to 12 of

²⁸ [Gridserve website](#).

²⁹ [Gridserve press release dated 30 June 2021](#).

³⁰ *Response to CMA feedback on commitments proposal* from Gridserve dated 30 September 2021, paragraph 2.1. Gridserve further explained that it is prohibited from installing ultra-rapid EV chargepoints at Extra's sites because Extra has granted Ionity GmbH exclusivity in respect of EV chargepoints above 60kW for 15 years at each of its sites (i.e. ending in 2035, with the precise date depending on the start date for the individual site).

³¹ [Government vision for the rapid chargepoint network in England](#), 14 May 2020.

its high power 350 kW EV chargepoints across the UK. It opened its first hub at Rugby services in April 2021.

The Scope of the Long-Term Exclusive Arrangements under investigation

2.24 Under the Long-Term Exclusive Arrangements, The Electric Highway has the exclusive right, subject to certain carve-outs, to supply, install, operate and maintain EV chargepoints at the service area³² of the Three MSAs' sites that are covered by the Long-Term Exclusive Arrangements.³³ This means that, subject to certain limited exceptions described in paragraph 2.27 below, the MSAs may not, and may not permit any third party to, supply, install, operate or maintain EV chargepoints without The Electric Highway's consent.

2.25 The currently applicable exclusivity is governed by the following arrangements:

- Extra: entered into in 2016 and terminating in November 2026,³⁴
- Roadchef: entered into in 2016 and terminating in January 2031;³⁵ and
- MOTO: entered into in 2018 and terminating in July 2028.³⁶

2.26 The Electric Highway's contracts with Roadchef and MOTO provide for automatic renewal, including of exclusivity, at the end of their current term.

2.27 The CMA has identified that there are some limits to the exclusivity in the Long-Term Exclusive Arrangements, as summarised below:

- As set out at paragraph 2.24 above, Gridserve's exclusivity is limited to the service area of the MSA sites. Forecourt operators are permitted to install and operate EV chargepoints on their forecourts without Gridserve's consent.
- Tesla is able to supply, install, and operate its EV chargepoints at the Three MSAs' sites.

³² The service area generally encompasses the MSA site excluding the petrol forecourt area.

³³ Both MOTO and Roadchef have a single contract covering their network of MSAs. Extra has individual contracts for the 7 sites at which The Electric Highway is present.

³⁴ Extra previously entered into an exclusive contract in 2014.

³⁵ This 2016 agreement replaced a previous exclusive agreement from 2013.

³⁶ The 2018 agreement replaced a previous exclusive agreement from 2013.

- At the seven Extra sites at which Gridserve has exclusivity, Gridserve's exclusivity is limited to rapid EV chargepoints (up to 60kW).³⁷ Another EV operator, Ionity, has long term exclusive rights in respect of chargepoints above 60kW at these MSAs (as well as at one further existing Extra site and one planned Extra site).
- At a very small number of Roadchef's sites, petrol forecourt operators currently have the right to limit the number of EV chargepoints which can be installed in the service area.

The commitments offer

2.28 Section 31A of the Act provides that, for the purposes of addressing the competition concerns it has identified, the CMA may accept, from such person (or persons) as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate. The Procedural Guidance describes the circumstances in which it may be appropriate to accept binding commitments and the process by which parties to an investigation may offer commitments to the CMA.³⁸

2.29 In accordance with paragraph 10.21 of the Procedural Guidance, a business under investigation may offer commitments at any time during the course of the investigation until a decision on infringement is made. In this case, no decision on infringement has yet been made.

2.30 Formal acceptance of the Proposed Commitments by the CMA would result in the termination of its investigation, with no decision made on whether or not the Act has been infringed.

2.31 However, acceptance of the Proposed Commitments would not prevent the CMA from taking any action in relation to competition concerns which are not addressed by the Proposed Commitments.³⁹ Moreover, acceptance of the Proposed Commitments would not prevent the CMA from continuing the investigation, making an infringement decision or giving a direction in circumstances where the CMA had reasonable grounds for:

- a) believing that there has been a material change of circumstances since the commitments were accepted;

³⁷ Pursuant to an Agreement to Vary dated 8 November 2019 (the 'Agreement to Vary'). In addition to amending the exclusivity provisions, the Agreement to Vary also made provision in relation to the maximum number of charging points which The Electric Highway can install.

³⁸ [Procedural Guidance](#), paragraphs 10.15-10.25.

³⁹ Section 31B(3) of the Act.

- b) suspecting that a person has failed to adhere to one or more of the terms of the commitments; or
- c) suspecting that information which led the CMA to accept the commitments was incomplete, false or misleading in a material particular.⁴⁰

2.32 Following discussions with the CMA, the Parties indicated, without prejudice to their position that they have not infringed the Act, an intention to offer commitments under section 31A of the Act to address the CMA's competition concerns. Accordingly, and in line with paragraph 10.22 of *Guidance on the CMA's investigation procedures in Competition Act 1998 cases (CMA8)* (the 'Procedural Guidance'),⁴¹ the CMA proceeded to discuss with the Parties the scope of any commitments which the CMA considered would be appropriate to address the competition concerns it had identified.

2.33 Following such discussions as to the scope of any commitments, the CMA issued a summary of its competition concerns in relation to the Long-Term Exclusive Arrangements to the Parties on 21 October 2021. On 29 October 2021, the Parties submitted to the CMA the Proposed Commitments for the purpose of addressing the CMA's competition concerns.

2.34 Having considered the Proposed Commitments, and having had regard to paragraphs 10.17 to 10.20 of the Procedural Guidance, it is the CMA's provisional view that, for the reasons set out in this Notice, they will address the competition concerns it has identified and therefore it is appropriate for the CMA to exercise its discretion to close its investigation by way of a formal decision to accept commitments. In the remainder of this Notice we set out the CMA's competition concerns and why the CMA provisionally considers that it is appropriate to exercise its discretion to accept the Proposed Commitments for the purposes of addressing the competition concerns it has identified.

⁴⁰ Section 31B(4) of the Act.

⁴¹ The [Procedural Guidance](#) at paragraphs 10.17 to 10.20 incorporates the CMA's Commitments Guidance. The CMA's Commitments Guidance provides guidance as to the circumstances in which it may be appropriate to accept commitments under section 31A of the Act and guidance to which the CMA must have regard when exercising its discretion to accept commitments under that section (see section 31A(8) of the Act). References in this Notice to those paragraphs of the Procedural Guidance therefore constitute references to the CMA's Commitments Guidance.

3. Background

- 3.1 This section sets out the CMA's preliminary view of:
- a) the most plausible definitions of the relevant market(s); and
 - b) the position of the Parties.
- 3.2 The purpose of this section is to provide context to section 4 of this Notice, which describes the CMA's competition concerns.

The relevant market(s)

- 3.3 Given the early stage of this investigation under the Act, the CMA has not defined the relevant markets for the purposes of assessing the Long-Term Exclusive Arrangements. However, having regard to the findings of the EV Charging Market Study, the CMA sets out below its preliminary view on the relevant products market(s) and geographic market(s).

The relevant product market(s)

- 3.4 The CMA's preliminary view is that rapid and ultra-rapid EV chargepoints are both likely to be within the relevant market for the purpose of assessing the Long-Term Exclusive Arrangements. Rapid and ultra-rapid EV chargepoints have a minimum charging speed of 50 kW and 150 kW respectively. The CMA considers that EV chargepoints with a maximum charging speed below 50 kW are unlikely to be within the relevant market, on the basis that they charge too slowly to be useful to EV drivers charging en-route via motorways to other destinations.
- 3.5 While most of the EV chargepoints installed by The Electric Highway are rapid EV chargepoints, as described at paragraph 2.22 above, The Electric Highway is in the process of adding ultra-rapid EV chargepoints at existing MSA sites where it is permitted under its contracts to do so.
- 3.6 The Electric Highway's EV chargepoints at MSAs are part of an open network of EV chargepoints. This means any EVs, including Tesla vehicles, can use their rapid EV chargepoints. In contrast, the Tesla EV chargepoint network is, as noted above, a closed network currently only available for Tesla vehicles. The CMA's preliminary view is that closed networks are outside the relevant market as they are only a viable substitute to The Electric Highway's EV chargepoints for a very specific group of customers. As such, they are unlikely to provide an effective competitive constraint on The Electric Highway.

The relevant geographic market(s)

- 3.7 Having regard to the EV Charging Market Study's findings, the CMA's preliminary view is that the relevant geographic market, for the purpose of assessing the Long-Term Exclusive Arrangements, is likely to be no wider than EV chargepoints at MSA sites or charging sites located very close to the motorway (for example, within 0.5 miles). It is also the CMA's preliminary view that the most effective form of competition is from within-site competition and, as such, it considers that the relevant market may be the supply of open-network rapid and ultra-rapid EV charging at MSAs only, and that each MSA site may constitute a separate relevant geographic market.
- 3.8 The CMA has had regard to the findings of the EV Charging Market Study in relation to consumer behaviour, and in particular the willingness of EV drivers to leave the motorway to charge, and the extent of competitive constraints on the Electric Highway from EV chargepoints near to, but not located at, MSAs. In this context, the findings from the preliminary evidence in the EV Charging Market Study indicated that:
- a) EVs typically have smaller ranges than petrol/diesel vehicles and so detours from motorways or driving to a different MSA site, which may be a long distance away are particularly unattractive for EV drivers. Indeed, customers may be unable to drive to another MSA due to the smaller range of EVs.
 - b) Other than MSAs, few sites along the motorway are suitable for the installation of EV chargepoints.
 - c) Departing from the motorway causes inconvenience and delay.
 - d) EVs take longer to charge than it takes to refuel a petrol/diesel vehicle and so the availability of amenities (e.g. cafes and toilets) at MSAs is a key factor for EV drivers stopping at MSAs to charge, rather than elsewhere.⁴²
- 3.9 As such and as set out in the EV Charging Market Study, within-site competition is by far the most effective form of competition, as it allows customers a direct choice of CPO to which they can easily switch without having to drive to an alternative site.⁴³

⁴² [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.2(b). [CMA's EV Charging Market Study, Appendices and glossary \(publishing.service.gov.uk\)](#), Appendix A, paragraph 40.

⁴³ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.10.

Position of the Parties

3.10 The Electric Highway is by far the largest CPO operating on or near motorways. Based on the evidence which the CMA obtained in the EV Charging Market Study, the CMA estimates that in June 2021, The Electric Highway had a share of over 80% of all rapid and ultra-rapid⁴⁴ open network EV chargepoints at MSAs in Great Britain.⁴⁵ For all charging sites located on or a short distance (within 0.5 miles) from motorways, it had a share of just under 60% of all rapid and ultra-rapid open network EV chargepoints.⁴⁶

3.11 At most MSAs, The Electric Highway faces no competitors and its strong market position is reinforced by the Long-Term Exclusive Arrangements. While Tesla has a large number of rapid chargepoints at MSAs, including MOTO, its network is a 'closed' network and therefore can only currently be used by Tesla vehicles. Tesla's CEO Elon Musk has stated publicly⁴⁷ that over time he intends that Tesla will open up globally the Tesla EV chargepoint network and this program has now begun.⁴⁸ On 1 November 2021, Tesla launched a pilot in the Netherlands,⁴⁹ opening ten charging stations to non-Tesla EV drivers. However, it has confirmed to the CMA that the timeframe for opening up its network of chargers in the UK is unclear.

3.12 Between them, the Three MSAs operate around two thirds of MSAs in the UK.⁵⁰

⁴⁴ 50 kW and 150 kW respectively.

⁴⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.7 and figure 4.

⁴⁶ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Appendix A Table 2.

⁴⁷ [Elon Musk tweet of 20 July 2021](#).

⁴⁸ [Elon Musk tweet of 1 November 2021](#).

⁴⁹ [Tesla press release dated 1 November 2021](#).

⁵⁰ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraphs 4.9 and 4.27(a).

4. The CMA's competition concerns

- 4.1 In this section, the CMA sets out its competition concerns regarding the Long-Term Exclusive Arrangements.
- 4.2 The CMA is concerned that the Long-Term Exclusive Arrangements may have, or may have had, the likely effect of foreclosing other CPOs (including the MSAs themselves, which could otherwise self-supply) from providing EV chargepoints on or near MSAs. Going forward the CMA is in particular concerned that the Long-Term Exclusive Arrangements would likely impede the effective roll-out of the RCF.

Likely foreclosure effects

- 4.3 The EV Charging Market Study identified two major barriers to entry to EV charging at MSAs: the Long-Term Exclusive Arrangements and grid capacity.
- 4.4 As set out at paragraphs 2.24 to 2.27, subject to certain limited carve-outs, under the Long-Term Exclusive Arrangements other CPOs including the MSAs themselves are prevented from operating EV chargepoints at the Three MSAs' sites. This position has contributed to The Electric Highway being by far the largest CPO operating on or near motorways which, currently, at most MSA sites faces no or very limited competition:
 - a) Whilst The Electric Highway's exclusivity does not preclude EV chargepoints being installed in the petrol forecourt areas,⁵¹ such EV chargepoints are likely only to compete with The Electric Highway's to a very limited extent, because they are in a less desirable location for accessing the MSAs' amenities and face space constraints.
 - b) Due to Tesla operating a 'closed' network, it provides only a limited competitive constraint on The Electric Highway, and it has confirmed to the CMA that it has not decided if, or when, it would open up its network in the UK.
 - c) Whilst Ionity is present at or will be able to operate from eight Extra sites (and one planned site), including the seven at which The Electric Highway has exclusive agreements with Extra, these comprise a relatively small number of the sites at which The Electric Highway is active overall and Ionity only operates ultra-rapid EV chargepoints at the Extra sites. The CMA's preliminary view is that therefore the overall constraint from Ionity on The Electric Highway is likely to be weak currently.

⁵¹ See paragraph 2.27 above.

- 4.5 There remains currently significant barriers to entry and expansion in the form of the costs associated with increasing grid capacity at MSAs, which is fundamental to increasing the number of EV chargepoints at MSAs.
- 4.6 By foreclosing entry by rival CPOs (including the MSAs themselves) to the Three MSAs' sites, the Long-Term Exclusive Arrangements potentially enable The Electric Highway to maintain its strong market position by significantly limiting the competitive constraint exerted, and likely to be exerted, on The Electric Highway for the duration of the exclusivity.
- 4.7 Exclusivity is more likely to be problematic the longer its duration and the higher the share of supply that is 'tied' as a result of the exclusivity.⁵² In this regard, the CMA notes the long duration and wide market coverage of the Long-Term Exclusive Arrangements:
- a) the Long-Term Exclusive Arrangements originate in agreements entered into variously in 2016 and 2018 (see paragraph 2.25 above⁵³), with several years remaining; and
 - b) around two-thirds of MSAs in the UK are covered by the Long-Term Exclusive Arrangements.
- 4.8 Long term exclusive arrangements can be justified in certain circumstances, including in order to support investments in nascent sectors. In this regard, the CMA notes that, as set out at paragraphs 2.21 to 2.23, Gridserve is making significant investments over the period 2021 to 2025 to upgrade and expand its provision of EV chargepoints at the Three MSAs ahead of demand.⁵⁴ However, it is generally considered unlikely, based on competition law guidelines, that efficiencies achieved as a result of exclusivity of such scope and duration as the current Long-Term Exclusive Arrangements would be sufficient to outweigh the likely foreclosure effects.⁵⁵
- 4.9 In addition, exclusivity is more likely to be problematic where the business that benefits from the exclusivity holds a position of market power. The CMA's

⁵² European Commission Notice: Guidelines on Vertical Restraints, paragraph 195.

⁵³ These were preceded by agreements entered into variously in 2013 and 2014.

⁵⁴ In particular, Gridserve is investing in installing, where possible, ultra-rapid chargepoints, in order to meet the Government's target of at least six high powered, open access chargepoints (150 - 350 kilowatt capable) at MSAs in England, with some larger sites having as many as 10-12 chargepoints by 2023. See Gridserve press release: [GRIDSERVE launches the 'GRIDSERVE Electric Highway' to revolutionise EV charging across the UK, and eliminate charging anxiety](#) and [Government vision for the rapid chargepoint network in England - GOV.UK \(www.gov.uk\)](#). The CMA notes that the EV Charging Market Study found that The Electric Highway's EV chargepoints, prior to its acquisition by Gridserve, had very low customer satisfaction and poor reliability (see [CMA's EV Charging Market Study](#), Final Report, 23 July 2021 paragraphs 4.12 to 4.14).

⁵⁵ European Commission Notice: Guidelines on Vertical Restraints, paragraph 195. The guidelines state that exclusive supply agreements lasting longer than five years are for most types of investments not considered necessary.

preliminary view is that The Electric Highway is likely to hold market power as a result, in particular, of (i) the extent of its network of Long-Term Exclusive Arrangements covering around two thirds of MSAs in the UK, and (ii) the significant barriers to entry and expansion at those MSAs for competitor CPOs.

- 4.10 The current lack of competition at MSA sites means there is limited competitive pressure on The Electric Highway and this has the potential to lead to poor outcomes for consumers in the form of higher prices, lower quality, a worse service and/or insufficient investment in charging points at MSAs. This concern will become more acute in the future as demand for EVs, and so EV charging at MSAs, increases.
- 4.11 This is of particular concern to the CMA given the need for there to be, as set out in the EV Charging Market Study report, a comprehensive and competitive EV charging network to support the Government's commitment to ban the sale of new petrol and diesel cars from 2030.⁵⁶

Potential impact of the Long-Term Exclusive Arrangements on the RCF

- 4.12 The CMA is in particular concerned that the Long-Term Exclusive Arrangements would likely impede the roll-out of the RCF limiting its effectiveness in addressing a major barrier to entry and expansion in this sector and therefore to competition.
- 4.13 In addition to the Long-Term-Exclusive Arrangements themselves, the other major barrier to entry is the significant cost associated with expanding grid capacity which is required to increase EV chargepoint provision at MSAs (see paragraph 2.13).⁵⁷ In England, the RCF will significantly help to address this major barrier to increased investment and competition in the sector. OZEV currently anticipates that the RCF fund roll-out will begin in late 2022/2023 with most of the fund for expanding grid capacity at MSAs allocated by 2026. This falls within the current periods of exclusivity contained in the Long-Term Exclusive Arrangements.
- 4.14 As such, the ongoing operation of the Long-Term Exclusive Arrangements means that CPOs which may want to enter and compete with The Electric Highway by making use of RCF-funded increases in grid capacity would not be able to do so (unless Gridserve consents). This would significantly limit the

⁵⁶ [Final report \(publishing.service.gov.uk\)](#), page 5, paragraph 2.

⁵⁷ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraphs 4.19 to 4.25.

overall benefits to competition from the RCF in terms of stimulating new entry by CPOs and opening up within-site competition at MSAs.

- 4.15 Moreover, with the Long-Term Exclusive Arrangements in place, RCF funding would only benefit the existing CPOs (primarily The Electric Highway). This would therefore frustrate the aims of the RCF and indeed other similar initiatives in the future in removing the other major barrier to investment and competition at MSAs and potentially further entrench the position of The Electric Highway at MSAs.
- 4.16 In addition, whilst the final terms of the RCF fund have yet to be finalised, including the criteria for awarding funding, OZEV has stated publicly that it is considering requiring MSA operators to:
- a) have a minimum of two (and at some sites more than two) different EV CPOs at any particular site; and
 - b) tender EV chargepoint service contracts openly.⁵⁸
- 4.17 In the event that the Long-Term Exclusive Arrangements were to remain in place, the Three MSAs would potentially be prevented from applying for RCF funding for most of their sites covered by the Long-Term Exclusive Arrangements as they would be unlikely to be able to meet such criteria, potentially significantly impeding the RCF fund in facilitating the development of competition within MSA sites.
- 4.18 The CMA's provisional view is that going forward, absent the Long-Term Exclusive Arrangements coupled with significant increases in capacity through the RCF and equivalent initiatives, multiple CPOs⁵⁹ could begin to operate at most MSA sites. This would give consumers a choice of CPO at individual MSAs and drive direct competition between CPOs.
- 4.19 The Long-Term Exclusive Arrangements may therefore amount to an infringement by the Parties of Chapter I of the Act and an abuse by The Electric Highway, Gridserve and Ecotricity of a dominant position contrary to Chapter II of the Act.

⁵⁸ [Future of transport regulatory review: zero emission vehicles](#). This follows the CMA's recommendations from the EV Market Study which recommended that the Government attach conditions to the RCF funding to enable competition between EV chargepoint operators within each MSA site applying for the fund. Such recommended conditions included no future exclusivity, open tenders and 'open' networks.

⁵⁹ Note that, as stated above, these CPOs could include MSAs self-supplying EV chargepoints, which they are currently precluded from doing by the Long-Term Exclusive Arrangements.

5. The Proposed Commitments

The Proposed Commitments

- 5.1 In order to address the CMA's competition concerns (as described in section 4), and without prejudice to their position that they have not infringed the Act, the Parties have proposed formal commitments to the CMA.
- 5.2 The Parties' Proposed Commitments are set out in **Appendix A** to this Notice and are summarised in paragraphs 5.3 to 5.4 below and analysed in detail further below.

Gridserve's proposed commitments on terminating exclusivity

- 5.3 Gridserve has offered commitments that it will not:
- a) Renew or enforce, the exclusivity provisions in the Long-Term Exclusive Arrangements with the Three MSAs after 18 November 2026.
 - b) Enforce the exclusivity provisions in the Long-Term Exclusive Arrangements against the Three MSAs or against CPOs at MSA sites which are covered by the Long-Term Exclusive Arrangements where the Three MSAs or a CPO plans to utilise RCF-funded additional grid capacity to install or operate EV chargepoints. Exclusivity will cease from the point at which the RCF-funded additional capacity at the MSA site comes online and is available to be used.
 - c) Enforce the exclusivity provisions in the Long-Term Exclusive Arrangements to prevent in any way or cause any impediment to the Three MSAs from engaging with any CPOs to enable such CPOs to begin operating EV chargepoints which are intended to utilise RCF-funded additional grid capacity at an MSA site from the point at which the RCF-funded grid capacity at that MSA site comes online and is available to be used. This commitment includes Gridserve not preventing the Three MSAs from engaging with CPOs prior to the RCF-funded capacity coming online by, for example, going to tender for contracts and awarding contracts following such tenders for the hosting, installation and operation and/or maintenance of EV chargepoints.

Proposed commitments from all of the Parties on compliance

- 5.4 All the Parties, including Gridserve, have offered commitments which:
- a) require the Parties not in any way to circumvent, or otherwise frustrate the operation of, any of the commitments;

- b) require the Parties to provide the following to the CMA in order for the CMA to effectively monitor the Parties' compliance with the commitments:
- i. all information and documents reasonably required by the CMA to allow it to monitor and review the operation of the commitments;
 - ii. an annual compliance statement; and
 - iii. prompt notification of any breach of the commitments.

The CMA's assessment of the appropriateness of commitments in this case

The CMA's Procedural Guidance

5.5 The Procedural Guidance states that the CMA is likely to consider it appropriate to accept binding commitments only in cases where (a) the competition concerns are readily identifiable; (b) the competition concerns will be addressed by the commitments offered; and (c) the proposed commitments can be implemented effectively and, if necessary, within a short period of time.⁶⁰

5.6 The CMA will not accept commitments where compliance with them and their effectiveness would be difficult to discern and/or where the CMA considers that not to complete its investigation and make a decision would undermine deterrence.⁶¹

The CMA's assessment of the Proposed Commitments

5.7 The CMA has carefully considered the Parties' Proposed Commitments, as set out in Appendix A to this Notice, by reference to the three criteria set out in paragraph 5.6 above.

5.8 Following engagement with the Parties, OZEV and Ofgem, the CMA has reached the provisional view that the competition concerns it has identified will be addressed by the Proposed Commitments and that the Proposed Commitments are capable of being implemented effectively and within a short period of time.

a) The competition concerns are readily identifiable

5.9 Subject to the limited exceptions set out in paragraph 2.27 above, the Long-Term Exclusive Arrangements prevent competitor CPOs and the Three MSAs

⁶⁰ Paragraph 10.18 of the [Procedural Guidance](#).

⁶¹ Paragraph 10.20 of the [Procedural Guidance](#).

themselves from operating EV chargepoints at the MSA sites (unless Gridserve consents) until 2026 (Extra), and at least 2028 (MOTO) and 2031 (Roadchef).

5.10 As set out in section 4, the CMA has identified that the Long-Term Exclusive Arrangements may have, or may have had, the likely effect of foreclosing other CPOs (including the MSAs themselves) from providing EV chargepoints on or near MSAs. Going forward the CMA is in particular concerned that the Long-Term Exclusive Arrangements would likely impede the roll-out of the RCF. As described at paragraph 4.12 above, the RCF is anticipated to begin roll-out in late 2022/2023 and complete the main funding phase at MSAs by 2026.

5.11 In light of the above, the CMA's provisional view is that the competition concerns arising from the Long-Term Exclusive Arrangements are readily identifiable.

b) The Proposed Commitments will address the competition concerns that the CMA has identified

5.12 At this early stage in the investigation, the CMA has not undertaken a full analysis of the extent of the suspected foreclosure effects likely to have arisen to date or that may arise in the future. In addition, it has not undertaken the necessary analysis to consider the extent to which a certain period of exclusivity may be required in order to justify the significant investments made to date by The Electric Highway, and the new investments which Gridserve is making in order to update The Electric Highway's EV chargepoints including investing in new ultra-rapid EV chargepoints to support the Government's target of six ultra-rapid EC chargepoints at each MSA by 2023 (see paragraph 2.22 above).

5.13 As highlighted previously:

- a) EV Charging at MSAs is critical for EV take-up because 'range anxiety' is a key barrier to buying an EV.⁶²
- b) Following the Government's announcement that sales of new petrol and diesel cars will be banned in the UK from 2030, demand for EV charging is forecast to increase significantly as 2030 approaches.⁶³
- c) Whilst several other CPOs have expressed a willingness to provide EV chargepoints at MSAs in competition with The Electric Highway,⁶⁴ grid capacity constraints and the cost of upgrading grid capacity at many MSAs

⁶² See paragraph 2.10 above.

⁶³ See paragraph 2.11 above.

⁶⁴ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.30.

sites is a major barrier to their entry, particularly whilst demand remains relatively low.⁶⁵

- d) The RCF and other similar initiatives will help significantly in addressing these grid capacity constraints and the significant investments currently required by CPOs to secure grid capacity. On the basis of the anticipated timings of the RCF, as noted at paragraph 4.12 above, the RCF is likely to begin to be rolled out from 2022/2023 and is likely to have impacted most MSAs sites for which funding is granted by 2026.

5.14 The CMA recognises the significant investments that to date have been made by CPOs including The Electric Highway in this nascent sector at a period where demand has been low. Some period of exclusivity may have been necessary to enable such investments to be made ahead of demand. Further new significant investments are being made by Gridserve ahead of demand between 2021 and 2025 which similarly may require some period of exclusivity.⁶⁶ The CMA notes that other CPOs, whilst considering entering the sector, have highlighted the significant cost and risk of such investments whilst demand remains low. The CMA considers that in the future the RCF (and other similar initiatives) will provide a pivotal opportunity to establish a basis for strong and beneficial competition by enabling entry and expansion in this sector.

5.15 The CMA therefore considers that the risk of foreclosure effects identified from the Long-Term Exclusive Arrangements are likely to significantly increase over the coming years as (a) the RCF is rolled out and the existence of multiple CPOs operating at the same MSA site is more likely to be viable but would be prevented at MSA sites covered by the Long-Term Exclusive Arrangements and (b) EV demand increases as we approach 2030.

5.16 For the reasons set out below, the CMA's provisional view is that the Proposed Commitments, if implemented, will address the competition concerns identified because they would mean that the Long-Term Exclusive Arrangements cannot impede the roll-out of the RCF, and will be removed in a timely manner before we approach 2030.

Gridserve's commitments to remove exclusivity

5.17 Under the Proposed Commitments the exclusivity provisions in the Long-Term Exclusive Arrangements will cease to apply at any MSA site where RCF funding has been granted and from the point at which the additional grid

⁶⁵ See paragraphs 2.12 to 2.13 above.

⁶⁶ Gridserve submitted to the CMA details of its investment schedule at MSAs over the next few years and planned recoupment during the current period of exclusivity under the Long-Term Exclusive Arrangements.

capacity comes online and becomes available to be used. This will ensure that the removal of the other major barrier to entry for competing CPOs at the MSAs sites, grid capacity constraints, coincides with the removal of Gridserve's exclusivity at the relevant MSA sites.

- 5.18 Whilst the details of how the RCF will operate are yet to be finalised, OZEV has confirmed to the CMA that the proposed trigger point for removal of exclusivity at RCF-funded MSA sites under the Proposed Commitments would achieve its objectives under the RCF.
- 5.19 In addition, this trigger point for the removal of the exclusivity will provide a certain and easily identifiable date for MSAs and other CPOs as to when Gridserve would cease to enforce exclusivity. Crucially, it means that Gridserve will not retain exclusivity beyond the point at which RCF-funded additional grid capacity becomes available for other CPOs to use. To further ensure that this is the case, Gridserve would also commit to not impede any MSA operator at any MSA site from engaging with any CPOs (including going to tender and awarding contracts) to enable such CPOs to be able to begin operating EV chargepoints that will utilise RCF-funded additional grid capacity at the MSA site.
- 5.20 Accordingly, Gridserve's exclusivity should not be a barrier to MSAs applying for RCF funding or to alternative CPOs taking advantage of the additional RCF-funded grid capacity once it becomes available at individual MSA sites. In addition, removing Gridserve's exclusivity in these circumstances will also avoid reducing the incentives on the Three MSAs to apply for RCF funding, as OZEV has stated publicly that the criteria for awarding funding would likely require the relevant MSA operators to demonstrate that their site is being opened up to competing CPOs with open networks.⁶⁷
- 5.21 For sites not benefiting from RCF funding, the CMA has considered when exclusivity should cease. The CMA recognises that demand for EV charging at MSAs remains relatively low and is unlikely to reach significant levels for several years. In addition, the high cost of upgrading grid capacity at most sites will remain a major barrier to entry for competing CPOs at MSA sites.
- 5.22 Significant long-term investments are also needed in this sector ahead of demand, in order to increase consumer confidence to proceed to purchase EVs. However, such investments are inherently financially risky. The Parties have submitted that such investment by private operators, such as Gridserve,

⁶⁷ [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021.

may assist the Government in working towards its targets for the provision of EV chargepoints.⁶⁸

5.23 The Electric Highway has to date made significant investments. In addition, Gridserve is investing over £200 million between 2021 and 2025 to add to, upgrade and modernise The Electric Highway's existing EV chargepoint network, a significant proportion of which Gridserve has told the CMA will be used to upgrade and expand its provision of EV chargepoints at the Three MSA's sites. However, Gridserve has also told the CMA that absent a certain period of exclusivity, such investments may not be made by Gridserve.⁶⁹

5.24 In that context, the CMA has considered the potential justification for a continued period of exclusivity. It has taken account of the following considerations:

- a) The nascent stage of this important sector, which requires significant upfront investment well in advance of anticipated demand.
- b) The Government's EV targets in 2023 and 2030.
- c) The significant new investments which Gridserve has already committed to date since its acquisition of The Electric Highway in June 2021 and the future significant investments that Gridserve has confirmed to the CMA it will make.
- d) Most of the RCF for MSAs will have been allocated by 2026, significantly addressing the other major barrier to competition at MSAs.

5.25 In light of the above, the CMA's provisional view is that the proposed long-stop period of exclusivity to 18 November 2026 for those sites that do not benefit from RCF funding, will address the competition concerns that the CMA has identified.

The Parties' reporting commitments

5.26 In order for the CMA to monitor the Parties' compliance with the commitments effectively, the Parties have offered to provide the CMA with annual compliance statements. The Parties will provide these compliance reports in the form of Annexes 1 - 4 to the Proposed Commitments.⁷⁰ The Parties will be required by

⁶⁸ This includes, for example, the Government's targets to have six high powered, open access chargepoints (150-350kw capable) at MSAs in England, with some larger sites having as many as 10-12. [Government vision for the rapid chargepoint network in England](#).

⁶⁹ At a meeting on 5 August 2021, Gridserve informed the CMA that it had paused or slowed the roll-out of chargepoints pending the outcome of the CMA's investigation.

⁷⁰ Proposed Commitments, paragraphs 4.1(b) and 6.1(b) Annexes 1 - 4.

the Proposed Commitments to provide compliance reports for five years, with the last report being due five years after the date on which the CMA issues its formal decision to accept the commitments. This would mean that the last report is due shortly after the end of the long stop date of 18 November 2026.

5.27 The Parties will also take certain other steps for reporting and compliance purposes. For example, the Parties will promptly notify the CMA if they become aware of any breach of the Proposed Commitments, and commit to providing information about the nature and duration of such breach.⁷¹

5.28 The CMA's provisional view is that these obligations will ensure that the CMA remains in a position to effectively monitor compliance by the Parties of the Proposed Commitments, and to take appropriate enforcement steps if required.

The Parties' non-circumvention/frustration commitments

5.29 Under the Proposed Commitments, all the Parties agree that they will not circumvent or otherwise frustrate the operation of any of the commitments. The CMA's provisional view is that this provision would sufficiently capture any avoidance measures by the Parties.

c) The Proposed Commitments can be implemented effectively and, if necessary, within a short period of time

5.30 The Proposed Commitments clearly prescribe the applicable obligations on the Parties, and those obligations are not complex or onerous to put into effect.

5.31 In addition, the Parties have undertaken to act in accordance with the Proposed Commitments as of the date that the CMA publishes a decision accepting those commitments.

5.32 The CMA's provisional view is therefore that the Proposed Commitments can be implemented effectively and within a short period of time. This is also particularly important in facilitating the roll-out of the RCF.

Further considerations

5.33 The CMA's provisional view is that the trigger point – that is, the removal of exclusivity at the point at which the RCF-funded grid capacity at that MSA site comes online and is available to be used – would not be difficult to discern.⁷²

⁷¹ Proposed Commitments, paragraphs 4.1 (c) and 6.1 (c). For Gridserve, the compliance statement would relate to paragraphs 3 and 4.2 of the Proposed Commitments. For the Three MSAs the compliance statement would relate to paragraph 5.1.

⁷² See paragraph 10.20 of the [Procedural Guidance](#).

MSAs and other CPOs (including new entrants) would be able to easily understand when Gridserve would cease to enforce exclusivity. Similarly, the long-stop date (18 November 2026) as to when all the exclusivity provisions would cease, is set out clearly in the Proposed Commitments. The CMA's provisional view is therefore that compliance with, and the effectiveness of, the Proposed Commitments would not be difficult to discern.

5.34 Further, the CMA does not consider that accepting commitments in this case, instead of completing its investigation and making a decision, would undermine deterrence.⁷³ The removal of the exclusivity provisions in the Long-Term Exclusive Arrangements in order to address the CMA's competition concerns should, in the CMA's view, send a clear signal to other businesses thereby deterring them from engaging in such practices.

5.35 The CMA also considers that by accepting commitments in this case it is able to quickly resolve the competition concerns it has identified, which is particularly important in facilitating the roll-out of the RCF. It will provide certainty to the MSAs that the Long-Term Exclusive Arrangements will not prevent them from applying for RCF funding and it will also mean that the benefits of RCF-funded additional capacity will not primarily fall to Gridserve. Moreover, the Proposed Commitments mean that competitor CPOs will have certainty that (i) they will not be prevented by the Long-Term Exclusive Arrangements from entering at RCF-funded sites, and they will therefore be able to begin planning for that opportunity including tendering for contracts, and (ii) for non-RCF sites, Gridserve's contractual exclusive rights will end at the latest by 18 November 2026.

5.36 Moreover, we note also that early resolution of this investigation through the Proposed Commitments is likely to facilitate significant ongoing (and much needed) investment in the sector, including investment to achieve the Government's targets.⁷⁴

5.37 The Proposed Commitments do not preclude the CMA taking further enforcement action in relation to other breaches of competition law and/or related markets which raise competition concerns. In particular, any future exclusivity arrangements entered into by the Parties would be also subject to competition law and may be subject to enforcement action. In addition, any current exclusivity arrangements between any of the Three MSAs and any other CPOs would also be subject to competition law and may be subject to enforcement action.

⁷³ See paragraph 10.20 of the [Procedural Guidance](#).

⁷⁴ See paragraph 2.22 above.

6. The CMA's intentions and invitation to comment

- 6.1 In light of the above, the CMA provisionally considers that it is appropriate to accept binding commitments from the Parties in the present case and the Proposed Commitments offered by the Parties, as set out in Appendix A of this document, are appropriate to address the competition concerns it has identified. Therefore, the CMA intends to accept the Proposed Commitments by a means of a formal commitments decision.
- 6.2 As required by paragraphs 2 and 8 of Schedule 6A to the Act, the CMA now invites persons likely to be affected to make representations on the Proposed Commitments and will take such representations into account before making its final decision as to whether to accept the Proposed Commitments.
- 6.3 As noted above, the CMA has not reached a final view and invites all persons likely to be affected to submit observations and evidence in order to assist the CMA in its final assessment of the Proposed Commitments.

Invitation to comment

- 6.4 Any person wishing to comment on the Proposed Commitments should submit written representations to the email address given below by **5pm on Thursday 2 December 2021**. Please quote the case reference 51050 in all correspondence related to this matter.

Email: 51050-consultation@cma.gov.uk

Confidentiality

- 6.5 The CMA does not intend to publish the responses to this Notice with any commitments decision or any notice to provisionally accept any modified commitments. However, the information contained in the responses may be used or summarised on an anonymous basis in these documents.
- 6.6 In the event that the commitments are not accepted and the CMA is considering disclosing the information (such as in or with a statement of objections), it will revert to the provider of that information to obtain representations on confidentiality. The CMA will then consider those representations before deciding whether the information should be disclosed under Part 9 of the Enterprise Act 2002.⁷⁵

⁷⁵ [CMA6 Transparency and disclosure: Statement of the CMA's policy and approach \(publishing.service.gov.uk\)](#). See, in particular, paragraphs 4.11 to 4.34 of the guidance.

Appendix A: The Proposed Commitments

1. Introduction

1.1 On 22 July 2021, the CMA commenced an investigation under section 25 of the Competition Act 1998 (the **Act**) into the supply of electric vehicle chargepoints on or near motorways.

1.2 In order to address the CMA's competition concerns, GRIDSERVE Holdings Limited, Extra MSA Property (UK) Limited, MOTO Holdings Limited, MOTO Hospitality Limited, and Roadchef Limited hereby offer Commitments under section 31A of the Act.

1.3 Consistent with sections 31A and 31B of the Act, the Commitments are offered on the basis that if the CMA accepts the Commitments in accordance with section 31A(2) of the Act, it shall not continue the investigation, make a decision within the meaning of section 31(2) of the Act, or give a direction under section 35 of the Act.

1.4 The offer of these Commitments by GRIDSERVE Holdings Limited, Extra MSA Property (UK) Limited,⁷⁶ MOTO Holdings Limited, MOTO Hospitality Limited, and Roadchef Limited does not constitute an admission of any wrongdoing by them and nothing in these Commitments may be construed as implying that GRIDSERVE Holdings Limited, Extra MSA Property (UK) Limited,⁷⁷ MOTO Hospitality Limited, or Roadchef Limited agree with any concerns identified by the CMA in its investigation, including in a Commitments Decision. GRIDSERVE Holdings Limited, Extra MSA Property (UK) Limited,⁷⁸ MOTO Hospitality Limited, and Roadchef Limited have not been the subject of any infringement decision or statement of objections in respect of the investigation.

2. Definitions

2.1 For the purpose of these Commitments the following definitions apply:

'Act' means the Competition Act 1998;

'Agreement' means any of the following agreements, as varied or amended, between GRIDSERVE and a MSA Operator for the hosting, installation, maintenance and/or operation of EV Chargepoints at a MSA site or MSA sites:

⁷⁶ The commitments were also offered by the following Extra MSAs which were party to an Agreement, as defined below: Extra MSA Peterborough Limited; Extra MSA Cobham Limited; Extra MSA Cullompton Limited; Extra MSA Cambridge Limited; Extra MSA Blackburn Limited; Extra MSA Beaconsfield Limited; and Extra MSA Baldock Limited.

⁷⁷ Including the Extra entities listed in footnote 76.

⁷⁸ Including the Extra entities listed in footnote 76.

(a) agreement between GRIDSERVE and Extra MSA Peterborough Limited dated 18 November 2016;

(b) agreement between GRIDSERVE and Extra MSA Cobham Limited dated 18 November 2016;

(c) agreement between GRIDSERVE and Extra MSA Cullompton Limited dated 18 November 2016;

(d) agreement between GRIDSERVE and Extra MSA Cambridge Limited dated 18 November 2016;

(e) agreement between GRIDSERVE and Extra MSA Blackburn Limited dated 18 November 2016;

(f) agreement between GRIDSERVE and Extra MSA Beaconsfield Limited dated 18 November 2016;

(g) agreement between GRIDSERVE and Extra MSA Baldock Limited dated 18 November 2016;

(h) agreement between GRIDSERVE and Roadchef Limited dated 18 January 2016;

(i) agreement between GRIDSERVE and MOTO Hospitality Limited dated 13 July 2018;

'Chargepoint' means a chargepoint for EVs which can be used by members of the public;

'Chargepoint Operator' or **'CPO'** means an operator of Chargepoints which installs, maintains, operates and/or replaces Chargepoints;

'CMA' means the Competition and Markets Authority;

'Commitments' means these commitments, given pursuant to section 31A of the Act;

'Commitments Decision' means a formal decision by the CMA under section 31A of the Act to accept these Commitments, such that section 31B of the Act applies;

'Effective Date' means the date on which GRIDSERVE, Extra, MOTO and Roadchef receive formal notification of a Commitments Decision;

'EV' means electric vehicles comprising both plug-in hybrids and all-electric passenger vehicles (cars and light vans);

'Exclusivity Provisions' means the provisions contained in an Agreement that (subject to certain exceptions) prevent a MSA Operator (or a third party permitted by the MSA Operator) from installing, operating, maintaining and/or supplying Chargepoints at a MSA site without GRIDSERVE's prior written consent;

'Extra' means Extra MSA Property (UK) Limited (company number 03696187) and all other companies in the Extra group of companies that have entered into an Agreement;

'GRIDSERVE' means Gridserve Holdings Limited (company number 10985636) and all other members of its corporate group including The Electric Highway Company Limited (company number 08370340);

'MOTO' means MOTO Holdings Limited (company number 05754555) and all other members of its corporate group;

'MSA Operator' means Extra, MOTO or Roadchef;

'MSA site' means a motorway service area site operated by Extra, MOTO or Roadchef which is the subject of an Agreement between GRIDSERVE and a MSA Operator;

'RCF' means the Rapid Charging Fund;

'Roadchef' means Roadchef Limited (company number 01713437) and all other members of its corporate group;

'Working Day' means any day other than a Saturday, Sunday or any other day that is a public holiday in England.

3. Commitments on exclusivity offered by GRIDSERVE

3.1 GRIDSERVE will not renew or enforce the Exclusivity Provisions in its Agreements with Extra, MOTO and Roadchef after 18 November 2026.

3.2 GRIDSERVE will not enforce the Exclusivity Provisions against a MSA Operator or CPO which plans to utilise RCF-funded additional grid capacity to install or operate Chargepoints at any MSA site, from the point at which the RCF-funded additional grid capacity at that MSA site comes online and is available to be used.

3.3 GRIDSERVE will not enforce the Exclusivity Provisions to prevent in any way or cause any impediment to a MSA Operator at any MSA site from engaging with any CPOs to enable such CPOs to be able to begin operating Chargepoints which are intended to utilise RCF-funded additional grid capacity at an MSA site from the point at which the RCF-funded grid capacity at that MSA site comes online and is

available to be used. Without prejudice to the generality of the foregoing, such engagement includes going to tender for contracts and awarding contracts following such tenders for the hosting, installation, operation and/or maintenance of Chargepoints at any MSA site.

For the avoidance of doubt nothing in these Commitments will preclude GRIDSERVE from applying for or entering into any tender to install or operate Chargepoints which GRIDSERVE intends will utilise the RCF-funded grid capacity alongside other CPOs.

4. Reporting and compliance commitments offered by GRIDSERVE

4.1 GRIDSERVE

(a) will provide to the CMA all information and documents which the CMA reasonably requires for the purposes of enabling the CMA to monitor and review the operation of the Commitments or any provisions of the Commitments;

(b) will provide to the CMA a signed annual Compliance Statement within three Working Days of each anniversary of the Effective Date,⁷⁹ until and including the fifth anniversary. The Statement must be signed by the Chief Commercial Officer (or an individual with appropriate delegated authority) on behalf of GRIDSERVE and must be in the form annexed to these Commitments (**Annex 1**);

(c) will promptly notify the CMA, as soon as practicable (and, at the latest within two Working Days of becoming aware of the breach) by email at RemediesMonitoringTeam@cma.gov.uk if it becomes aware of any breach of the Commitments, and will provide at the same time or as soon as practicable (and, at the latest within a further two Working Days) information concerning the nature and duration of the breach; and

(d) may be required by the CMA to keep, maintain and produce those records specified in writing by the CMA that relate to the operation of the Commitments or any provision of the Commitments.

4.2 GRIDSERVE will not in any way circumvent, or otherwise frustrate the operation of, any of the Commitments.

⁷⁹ The first Statement will be provided to the CMA within three Working Days of the first anniversary of the Effective Date. The second, third, fourth and fifth Statements will be provided to the CMA within three Working Days of the relevant anniversary of the Effective Date.

5. Commitments on exclusivity offered by the MSAs

5.1 Each of Extra, MOTO and Roadchef will not in any way circumvent, or otherwise frustrate the operation of, any of the Commitments.

6. Reporting and compliance commitments offered by the MSAs

6.1 Each of Extra, MOTO and Roadchef:

(a) will provide to the CMA all information and documents which the CMA reasonably requires for the purposes of enabling the CMA to monitor and review the operation of the Commitments or any provisions of the Commitments;

(b) will provide to the CMA a signed annual Compliance Statement within three Working Days of each anniversary of the Effective Date, until and including the fifth anniversary. The Statement must be signed by the CEO (or an individual with appropriate delegated authority) on behalf of each of Extra, MOTO and Roadchef and must be in the form annexed to these Commitments (Extra **Annex 2**, MOTO **Annex 3**, Roadchef **Annex 4**);

(c) will promptly notify the CMA, as soon as reasonably practicable (and, at the latest within two Working Days of becoming aware of the breach) by email at RemediesMonitoringTeam@cma.gov.uk if it becomes aware of any breach of the Commitments, and will provide at the same time or as soon as practicable (and, at the latest within a further two Working Days) information concerning the nature and duration of the breach; and

(d) may be required by the CMA to keep, maintain and produce those records specified in writing by the CMA that relate to the operation of the Commitments or any provision of the Commitments.

Executed by:

Signed for and on behalf of Gridserve Holdings Limited

Signature:

Name:

Title:

Date

Executed by:

Signed for and on behalf of Extra MSA Property (UK) Limited

Signature:

Name:

Title:

Date

Executed by:

Signed for and on behalf of MOTO Holdings Limited

Signature:

Name:

Title:

Date

Executed by:

Signed for and on behalf of Roadchef Limited

Signature:

Name:

Title:

Date

ANNEX 1: TEMPLATE COMPLIANCE STATEMENT FOR GRIDSERVE

Terms and expressions used in this Compliance Statement are as defined in the Commitments.

[Note: Annual Compliance Statements should be provided to the CMA within three Working Days of each anniversary of the Effective Date for the five years following the Effective Date and must cover the 12-month period prior to the relevant anniversary of the Effective Date]

I, [insert full name], [Chief Commercial Officer/title of authorised delegate] of Gridserve Holdings Limited confirm that for the 12 months to [amend date as appropriate], GRIDSERVE has complied with the following obligations:

1. [on the fifth anniversary of the Effective Date] not to renew or enforce the Exclusivity Provisions in its Agreements with Extra, MOTO and Roadchef after 18 November 2026.
2. not to enforce the Exclusivity Provisions against a MSA Operator or CPO which plans to utilise RCF-funded additional grid capacity to install or operate Chargepoints at any MSA site, from the point at which the RCF-funded additional grid capacity at that MSA site comes online and is available to be used.
3. not to enforce the Exclusivity Provisions to prevent in any way or cause any impediment to a MSA Operator at any MSA site from engaging with any CPOs to enable such CPOs to be able to begin operating Chargepoints which are intended to utilise RCF-funded additional grid capacity at an MSA site from the point at which the RCF-funded grid capacity at that MSA site comes online and is available to be used. Without prejudice to the generality of the foregoing, such engagement includes going to tender for contracts and awarding contracts following such tenders for the hosting, installation, operation and/or maintenance of Chargepoints at any MSA site.
4. not in any way to circumvent, or otherwise frustrate the operation of any of the Commitments.

Any failures to comply with these Commitments during this 12-month reporting period were promptly notified to the CMA as soon as practicable (and, at the latest within two Working Days of GRIDSERVE becoming aware of them) and are also listed below for completeness.

Signed.....

Full name.....

Date.....

ANNEX 2: TEMPLATE COMPLIANCE STATEMENT FOR EXTRA

Terms and expressions used in this Compliance Statement are as defined in the Commitments.

I, [insert full name], [Chief Executive Officer/title or duly authorised officer] of Extra MSA Property (UK) Limited confirm that for the 12 months to [amend date as appropriate], Extra has complied with the following obligations:

1. not in any way to circumvent, or otherwise frustrate the operation of, any of the Commitments.

Any failures to comply with these Commitments during this 12-month reporting period were promptly notified to the CMA as soon as practicable (and, at the latest within two Working Days of Extra becoming aware of them) and are also listed below for completeness.

Signed.....

Full name.....

Date.....

ANNEX 3: TEMPLATE COMPLIANCE STATEMENT FOR MOTO

Terms and expressions used in this Compliance Statement are as defined in the Commitments.

I, [insert full name], [Chief Executive Officer/title of authorised delegate] of MOTO Holdings Limited confirm that for the 12 months to [amend date as appropriate], MOTO has complied with the following obligations:

1. not in any way to circumvent, or otherwise frustrate, the operation of, any of the Commitments.

Any failures to comply with these Commitments during this 12-month reporting period were promptly notified to the CMA as soon as practicable (and, at the latest within two Working Days of MOTO becoming aware of them) and are also listed below for completeness.

Signed.....

Full name.....

Date.....

ANNEX 4: TEMPLATE COMPLIANCE STATEMENT FOR ROADCHEF

Terms and expressions used in this Compliance Statement are as defined in the Commitments.

I, [insert full name], [Chief Executive Officer/title of authorised delegate] of Roadchef Limited confirm that for the 12 months to [amend date as appropriate], Roadchef has complied with the following obligations:

1. not in any way sought to circumvent, or otherwise frustrate the operation of, any of the Commitments.

Any failures to comply with these Commitments during this 12-month reporting period were promptly notified to the CMA as soon as practicable (and, at the latest within two Working Days of Roadchef becoming aware of them) and are also listed below for completeness.

Signed.....

Full name.....

Date.....