

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

Case number 51050

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Executive Summary

1. The UK Government has committed to ban the sale of new petrol and diesel vehicles from 2030.¹ The transition from petrol and diesel cars and vans to electric vehicles ('EVs') is key to achieving the UK's commitment to reducing greenhouse gas emissions by 78% by 2035 compared to 1990 levels and moving to net zero by 2050.² To achieve this transition, it is essential that there is a comprehensive and competitive EV charging network in place.³
2. More than half of en-route charging by EV drivers in England is forecast to take place at motorway service areas ('MSAs').⁴ As such, the provision of EV chargepoints at MSAs is crucial for the shift from petrol and diesel cars and vans to EVs. However, the development of a comprehensive EV charging network presents certain unique challenges:
 - (a) For potential EV drivers to purchase an EV, they must be confident that there is a sufficiently comprehensive EV charging network, as 'range anxiety' (the fear of running out of charge for the desired travel distance) is currently a key obstacle for the future take-up of EVs.⁵
 - (b) Significant investment is needed now to increase the number of EV chargepoints, and in particular ultra-rapid chargepoints, to meet likely future EV charging demand at MSAs. The Government has set a target of at least six ultra-rapid EV chargepoints at each MSA by 2023.
 - (c) The costs associated with increasing grid capacity and upgrading the grid network, which are needed to support the expansion of EV charging at MSAs and which require significant upfront capital investment.
 - (d) The high upfront costs of these network upgrades, as well as other infrastructure costs, mean that the business case for chargepoint operators ('CPOs') to invest on a significant scale is challenging, especially currently and in the short-term, as demand remains relatively low.⁶
3. The UK Government recognises these challenges and plans to invest £950m in upgrading network grid capacity and connections along motorways and key A roads in England, through the Rapid Charging Fund ('RCF'). The EV Charging

¹ [The Ten Point Plan for a Green Industrial Revolution](#), 18 November 2020, page 14.

² [UK enshrines new target in law to slash emissions by 78% by 2035](#), 20 April 2021.

³ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Summary, paragraph 2.

⁴ [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.

⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.1.

⁶ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.22.

Market Study found that the RCF should provide a pivotal opportunity to open up and increase EV chargepoint competition within MSAs.⁷ Obtaining this funding will likely be contingent on multiple CPOs having the opportunity to access the RCF-funded capacity at the relevant MSA sites through an open competitive bidding process.⁸

4. The Competition and Markets Authority (the 'CMA') has found that The Electric Highway has long-term exclusive arrangements (the 'Long-Term Exclusive Arrangements') in place with MOTO, Roadchef and Extra (the 'Three MSAs') providing The Electric Highway the exclusive right (subject to certain limited exceptions) to install and operate EV chargepoints at the Three MSAs' sites.⁹ The arrangements cover approximately two-thirds of all MSAs in the UK and, at the majority of the MSA sites they cover, exclusivity ends in 2028 or 2031 (and can be automatically renewed).
5. The CMA identified the following competition concerns arising from the Long-Term Exclusive Arrangements:
 - (a) other CPOs (including the Three MSAs themselves, which could otherwise self-supply) may be foreclosed from providing EV chargepoints at the Three MSAs' sites covered by the arrangements; and
 - (b) going forward, the effective roll-out of the RCF, which is anticipated to begin in late 2022/early 2023, would be impeded, thereby limiting its effectiveness in addressing a major barrier to entry and expansion, and therefore to investment and competition, in this sector.
6. The CMA has a broad discretion in determining which cases are suitable for commitments and whether any commitments offered by parties should be accepted. On 29 October 2021, Gridserve and the Three MSAs (the 'Parties') offered commitments (set out in Appendix A to the decision) (the 'Commitments'). In assessing the Commitments, the CMA considered a range of factors in the round, including:
 - (a) the nascent stage of this strategically important sector which requires significant upfront high risk investments to be made now to help achieve the Government's targets and wider de-carbonisation policy.

⁷ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Summary, paragraph 11.

⁸ The Office for Zero Emission Vehicles ('OZEV') has stated publicly that it is considering requiring (as part of the criteria for awarding funding) MSAs to demonstrate that their site(s) in question is (or are) being opened up to competing CPOs with open networks by (i) tendering CPO contracts openly and (ii) having a minimum of 2- and at some sites more than 2- different CPOs at any particular site. [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021.

⁹ The relevant legal entities of each of the parties under investigation are set out in paragraphs 1.1 and 2.1.

- (b) evidence from the Parties and CPOs on whether, and the extent to which, a period of exclusivity is needed to make these significant investments commercially viable, as well as the viability and likely timing of further at-scale entry and expansion of EV charging at MSAs.
 - (c) the importance to the future development of the sector of the effective roll-out of the RCF in late 2022/early 2023.
7. For the reasons set out in this decision, having fully considered the evidence and consultation responses in the round, the CMA has concluded that the Commitments address the competition concerns it has identified arising from the Long-Term Exclusive Arrangements and that it is appropriate to accept the Commitments for the purposes of addressing those competition concerns, in particular, because the Commitments:
- (a) Enable Gridserve to commit to making significant investments of over £200m between 2021 and 2025 ahead of anticipated significant increases in demand in the lead up to 2030. The first phase of the investment, which is in its final stages,¹⁰ has involved 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.¹¹ This programme of investment also includes an investment of over £100m in ultra-rapid EV chargepoints. The CMA recognises that these new significant and necessary investments to help achieve the UK Government's de-carbonisation policy are inherently risky and that Gridserve will not recoup its investments until well beyond the periods of exclusivity under the Commitments.
 - (b) Enable earlier new entry than would have been the case under the Long-Term Exclusive Arrangements. Further new entry at the amenity areas of the Three MSAs will be possible at all sites receiving RCF funding at the point at which the RCF-funded additional capacity comes online and is available to be used, and at the latest from November 2026. The RCF will provide a pivotal opportunity to establish a basis for strong and beneficial competition in the long-term. The Commitments therefore ensure that exclusivity will be removed at a point when competition would likely become more viable at more sites across the MSA network due to RCF funding and when it is anticipated consumer demand will likely materially increase in the lead up to 2030.

¹⁰ This was confirmed by Gridserve in a meeting with the CMA on 19 January 2022.

¹¹ [Gridserve press release dated 30 June 2021](#).

- (c) Remove the impediment arising from the Long-Term Exclusive Arrangements to the effective roll-out of the RCF, anticipated to begin in late 2022/early 2023.
 - (d) Provide certainty by addressing the competition concerns the CMA has identified quickly and clearly without the need for a full in-depth and lengthy investigation. The Commitments can be effectively implemented and within a short space of time. In particular, all industry participants will be aware of when The Electric Highway's exclusivity will end and can plan accordingly, including as regards RCF funding.
 - (e) Benefit consumers by enabling the planned investments to be made by Gridserve, and providing certainty that the effective roll-out of the RCF will not be impeded by the Long-Term Exclusive Arrangements, thereby enabling greater future investments and competition in the sector. Consumers will also benefit from potentially increased competition at the Three MSAs' sites much earlier than may otherwise have been the case absent the Commitments and well in advance of 2030.
 - (f) Include robust anti-avoidance, reporting and compliance measures.
8. The CMA has also had regard to the consumer benefit of early resolution of this case.
9. The CMA is satisfied that whilst Gridserve will continue to face limited competition at some of the Three MSAs' sites until at the latest November 2026, the Commitments, by enabling Gridserve's planned significant investments to proceed and the effective roll-out of the RCF, will benefit consumers.
10. As a result of accepting the Commitments and in accordance with section 31B(2) of the Competition Act 1998 (the 'Act'), the CMA is discontinuing its investigation. No decision as to whether the Act has been infringed has been made, and the offering of the Commitments does not constitute an admission of an infringement of the Act by the Parties.

1. Introduction

- 1.1 In this decision made under section 31A of the Act, the CMA accepts the commitments offered by Gridserve Holdings Limited¹² ('Gridserve'); MOTO Hospitality Limited¹³ and MOTO Holdings Limited¹⁴ ('MOTO'); Roadchef Limited¹⁵ ('Roadchef'); and Extra MSA Property (UK) Limited¹⁶ and a number of its subsidiaries¹⁷ ('Extra') (together referred to as the 'Parties') as set out in Appendix A to this decision.
- 1.2 The Parties offered the Commitments to the CMA during its investigation into suspected anticompetitive conduct in the supply of EV chargepoints on or near motorways. Specifically, the Commitments seek to address the CMA's competition concerns, which are set out in Section 4 of this decision.
- 1.3 As a result of accepting the Commitments, the CMA has closed its investigation with no decision made as to whether or not the Parties infringed the prohibition in section 2(1) of the Act (the 'Chapter I prohibition'),¹⁸ and/or the prohibition in section 18(1) of the Act (the 'Chapter II prohibition').^{19 20}

¹² Registered office address: Thorney Weir House, Thorney Mill Lane, Iver, England, SL0 9AQ. Company number: 10985636, registered in the UK.

¹³ Registered office address: Toddington Services Area, Junction 11/12, M1 (Southbound), Toddington, Bedfordshire, England, LU5 6HR. Company number: 00734299, registered in the UK.

¹⁴ Registered office address: Toddington Services Area, Junction 11-12 M1 Southbound, Toddington, Bedfordshire, LU5 6HR. Company number: 05754555, registered in the UK.

¹⁵ Registered office address: Roadchef House, Norton Canes Msa, Betty's Lane, Norton Canes, Cannock Staffordshire, WS11 9UX. Company number: 01713437, registered in the UK.

¹⁶ Registered office address: Peterborough Services Great North Road, Haddon, Peterborough, Cambridgeshire, PE7 3UQ. Company number: 03696187, registered in the UK.

¹⁷ Extra MSA Peterborough Limited (Jersey company number: 106530); Extra MSA Cobham Limited (Jersey company number: 106523); Extra MSA Cullompton Limited (Jersey company number: 106528); Extra MSA Cambridge Limited (Jersey company number: 106526); Extra MSA Blackburn Limited (Jersey company number: 106531); Extra MSA Beaconsfield Limited (Jersey company number: 106529); and Extra MSA Baldock Limited (Jersey company number: 106527).

¹⁸ Section 2(1) of the Act prohibits agreements between undertakings, decisions by associations of undertakings, or concerted practices 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 long-term exclusive arrangements which have been the subject of the present investigation do not fall within any of the excluded cases.

¹⁹ Section 18(1) of the Act prohibits any conduct on the part of one or more undertakings which amounts to the abuse of a dominant position in a market if it may affect trade within the United Kingdom, or any part(s) 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(s) of the United Kingdom. The long-term exclusive arrangements which have been the subject of the present investigation do not fall within any of the excluded cases.

²⁰ The CMA has also closed its investigation and not made any decision as to whether The Electric Highway or Ecotricity (The Electric Highway's former parent), have infringed the Chapter I and/or Chapter II prohibitions.

- 1.4 Acceptance of the Commitments does not prevent the CMA from continuing its investigation, making an infringement decision, or giving a direction where the CMA has reasonable grounds for:
- (a) believing that there has been a material change of circumstances since the Commitments were accepted,
 - (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.²¹
- 1.5 If a person from whom the CMA has accepted commitments fails, without reasonable excuse, to adhere to the commitments, the CMA may apply to the court for an order requiring, among other matters, the default to be made good.²²
- 1.6 The remainder of this decision is structured as follows:
- (a) Sections 2 and 3 set out relevant background, including details of the CMA's investigation, the Parties and the market context in which the investigation was carried out.
 - (b) Section 4 sets out the CMA's competition concerns.
 - (c) Section 5 summarises the Commitments.
 - (d) Section 6 sets out the CMA's assessment of the Commitments.
 - (e) Section 7 and Appendix B set out the representations received from third parties and the CMA's assessment of those representations.
 - (f) Section 8 sets out the CMA's decision to accept the Commitments.
 - (g) Appendix A sets out the Commitments.

²¹ Section 31B(4) of the Act.

²² Section 31E of the Act.

2. The CMA's investigation

The investigation

- 2.1 In its market study into EV charging ('EV Charging Market Study') published on 23 July 2021,²³ the CMA identified that The Electric Highway Company Limited ('The Electric Highway')²⁴ and Ecotricity Group Limited ('Ecotricity') had entered into long-term exclusive arrangements with Extra, MOTO and Roadchef for the supply of EV chargepoints at MSAs (the 'Long-Term Exclusive Arrangements').
- 2.2 Following agreement with the Gas and Electricity Markets Authority ('Ofgem') under the Concurrency Regulations²⁵ that the CMA was best placed to proceed with the investigation,²⁶ on 22 July 2021 the CMA opened a formal investigation under section 25 of the Act into the supply of EV chargepoints on or near motorways, in respect of suspected breaches of the Chapter I prohibition and the Chapter II prohibition of the Act.
- 2.3 The following companies²⁷ have been the subject of the CMA's investigation:
- (a) The Electric Highway, Gridserve and Ecotricity under the Chapter I and Chapter II prohibitions; and
 - (b) The Three MSAs under the Chapter I prohibition only.
- 2.4 On 22 July 2021, the CMA commenced a formal investigation under the Act, having determined that there were 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 the Chapter I prohibition; and
 - (b) The Electric Highway, Gridserve and Ecotricity, through the above one or more Long-Term Exclusive Arrangements, have abused and/or (in the

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

²⁴ 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.

²⁵ [The Competition Act 1998 \(Concurrency\) Regulations 2014](#), SI 2014/536. These Regulations make provision for the CMA and the regulators who can exercise functions of the CMA under Part 1 of the Act concurrently with it to co-ordinate the performance of those functions.

²⁶ 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, [CMA and Ofgem memorandum of understanding](#), dated 18 January 2016.

²⁷ Including other companies that, in each case, form part of the same undertaking.

case of The Electric Highway and Gridserve) are abusing a dominant position in breach of the Chapter II prohibition.

- 2.5 In particular, the CMA was concerned that the Long-Term Exclusive Arrangements may have, and may have had, the likely effect of foreclosing other CPOs from providing EV chargepoints at the Three MSAs' sites covered by the Long-Term Exclusive Arrangements.
- 2.6 In addition, the CMA was concerned that going forward the Long-Term Exclusive Arrangements would impede the effective roll-out of the Government's anticipated RCF.²⁸ The RCF is designed to invest £950m in upgrading network grid capacity and connections along motorways and key A roads in order to ensure the EV charging capacity in England is able to meet anticipated demand in the future. The EV Charging Market Study found that the RCF should provide a pivotal opportunity to open up and increase charging competition within MSAs.²⁹ Since obtaining this funding will likely be contingent on multiple CPOs having the opportunity to access the RCF-funded capacity at the relevant individual MSA sites, through an open competitive bidding process, the Long-Term Exclusive Arrangements would impede the effective roll-out of the RCF.³⁰
- 2.7 During the course of its investigation, the CMA undertook a number of steps to obtain evidence from the parties to the investigation and from third parties. These steps included sending formal notices requiring documents and information under section 26 of the Act, obtaining further information through (virtual) meetings and other correspondence and consulting publicly on the commitments offered by the Parties.
- 2.8 The CMA also worked closely with Ofgem, as a concurrent regulator, and with the OZEV. OZEV has responsibility for supporting the transition to zero emission vehicles, including through funding under the RCF to support EV chargepoint infrastructure across the UK.

The commitments offered and consultation process

²⁸ [Rapid charging fund](#) guidance and [HM Treasury, National Infrastructure Strategy, November 2020](#).

²⁹ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Summary, paragraph 11.

³⁰ OZEV has also publicly stated that the RCF could be subject to legal challenge on state subsidy or other grounds where there are exclusive arrangements in place at the majority of motorway service areas in England. [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021. In addition, OZEV has stated publicly that it is considering requiring (as part of the criteria for awarding funding) MSAs to demonstrate that their site(s) in question is (or are) being opened up to competing CPOs with open networks by (i) tendering CPO contracts openly and (ii) having a minimum of two and at some sites more than two different CPOs at any particular site.

- 2.9 Following the Parties indicating a willingness to offer commitments, on 21 October 2021 the CMA provided to them a summary of its competition concerns in relation to the Long-Term Exclusive Arrangements.
- 2.10 On 29 October 2021, without prejudice to their position that they had not infringed the Chapter I and/or Chapter II prohibitions of the Act, the Parties submitted a formal proposal to offer commitments for the purposes of addressing the CMA's competition concerns under section 31A of the Act.
- 2.11 On 17 November 2021, the CMA issued the Notice of intention to accept binding commitments (the 'NIAC'), setting out the commitments offered, the reasons why the CMA proposed to accept them and inviting interested third parties to make representations (the 'Consultation').³¹
- 2.12 The Consultation closed on 2 December 2021 and representations were received from 15 interested parties. The Consultation responses and the CMA's consideration of them are summarised in Section 7 and Appendix B of this decision.
- 2.13 The CMA has given full consideration to all the relevant material in its possession and has concluded that, for the reasons set out in Sections 6 and 7 of this decision, the Commitments address its competition concerns in this case and that it is appropriate to accept the Commitments for the purposes of addressing those competition concerns. The CMA has therefore decided to accept the Commitments. Accordingly, the CMA has closed its file in respect of this investigation with no decision made on whether or not the Act has been infringed.

The products and the parties under investigation

The Products

- 2.14 An EV chargepoint delivers power to one EV at a time via one or more connectors. The subject matter of the CMA's investigation related 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).³²
- 2.15 En-route charging raises a number of distinct issues, most notably:

³¹ [Notice of intention to accept binding commitments in relation to certain exclusive arrangements for the supply of electric vehicle chargepoints](#), 17 November 2021.

³² [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.1.

- (a) Consumers have a more limited set of charging options when travelling longer distances – unlike when travelling shorter distances where they will have greater flexibility whether to charge at home, work or at (or near) 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 20 minutes to an hour. 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 EV chargepoints at available locations because rapid and ultra-rapid EV chargepoints (which are most suitable for en-route charging) use large amounts of power which may require expensive upgrades to the electricity network that supplies the site.³³

2.16 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.³⁴

Strategic Importance of this sector and its distinct challenges

2.17 The provision of EV chargepoints at MSAs is crucial for the shift to EVs. This is 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 currently a key obstacle for the future take-up of EVs.³⁵ 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.

2.18 Significant upfront investment is needed now to increase the number of EV chargepoints, and in particular ultra-rapid chargepoints, to meet anticipated future EV charging demand at MSAs. For example, estimates indicate that the equivalent of around 2,300 ultra-rapid EV chargepoints are needed at MSAs in England alone by 2030 to support the shift to EVs (including to give drivers the confidence to switch to an EV).³⁶ However, as at July 2021, there were only

³³ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.2.

³⁴ 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.

³⁵ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.1.

³⁶ CMA’s EV Charging Market Study, Final Report, 23 July 2021, paragraph 4.16.

over 500 rapid and ultra-rapid EV chargepoints at MSAs in the whole of the UK.³⁷

- 2.19 The upgrades to the electricity network grid supply needed to support the expansion of rapid and ultra-rapid EV chargepoints can be particularly costly at MSAs, as they tend to be in locations further away from the distribution network.³⁸ 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.³⁹ The cost would be even higher if upgrades were carried out iteratively.⁴⁰
- 2.20 The costs associated with increasing grid capacity and upgrading the grid network needed to support the expansion of EV charging at MSAs, and connecting to the network, are a significant proportion of the upfront capital costs of increasing EV chargepoint provision at MSA sites. 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.⁴¹
- 2.21 The EV Charging Market Study further identified that the high upfront costs of these network upgrades as well as other infrastructure costs mean that the business case for CPOs to invest on a significant scale is challenging, especially currently and in the short-term, as demand remains relatively low.⁴²
- 2.22 Gridserve is making significant investments of over £200m over the period 2021 to 2025 to upgrade and expand its provision of EV chargepoints at the Three MSAs ahead of demand increasing. This programme of investment also includes an investment of over £100m in ultra-rapid EV chargepoints. However, it has told the CMA that it requires a period of exclusivity in order to reduce the risk of its upfront investments, of over £200m, to an acceptable level. It has forecast that it will not achieve a return on its investment for many years, well beyond the period of exclusivity under the Commitments.

³⁷ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.16.

³⁸ Although in some cases, MSAs could have connections direct to the transmission network.

³⁹ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.20 and footnote 72, which notes that this 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.

⁴⁰ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.20.

⁴¹ [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.

⁴² [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.22.

- 2.23 The CMA also received submissions from two CPO respondents to the NIAC that exclusivity was required in order to render upfront private investment in this sector viable.⁴³ One CPO respondent considered that additional within-site competition was feasible currently at the amenity area of some MSA sites, particularly where EV charging demand was expected to be highest and/or grid upgrade costs were relatively low. However, it acknowledged that it had not undertaken a feasibility study as regards installing EV chargepoints in the amenity areas at MSA sites and that at some sites some form of exclusivity, or at least limited exclusivity (eg in competition with Gridserve but not a third CPO), would be required.⁴⁴
- 2.24 Another CPO respondent acknowledged that there was a balance to be struck between promoting competition and enabling a CPO to recoup its investments and that at MSA sites with limited numbers of rapid chargers or limited capacity, promoting competition should not be a primary consideration.⁴⁵
- 2.25 As reflected in the EV Charging Market Study, it is crucial that there is entry by other CPOs to intensify EV charging competition within MSAs, particularly in the medium to longer-term as demand rises. The most effective form of competition is within-site competition. In particular, within-site competition will enable consumers to switch more easily without having to locate and drive to alternative sites (which may not be possible given the smaller range of EVs) and therefore will lower switching costs and incentivise CPOs to compete on the price and quality of their service. Competition within MSAs will lead to high quality, reliable and competitively priced charging.⁴⁶ As set out above, significant upfront capital investment is needed now to upgrade and increase the number of EV chargepoints to meet anticipated future EV charging demand at MSAs at a time when the business case for investment at many sites is very challenging.
- 2.26 Based on the evidence provided to the CMA, the CMA considers that the viability of entry, in particular at present, is very site dependent, reflecting amongst other factors the costs and the level of demand at individual sites. In addition, such entry is likely to be limited in terms of scale and/or primarily focused on potentially more profitable MSA sites that are more heavily frequented and/or where the costs of grid upgrades are currently relatively low.

⁴³ [REDACTED]. During the course of the EV Charging Market Study, several CPOs submitted that they would be willing to compete within-site, in principle. However, they noted that the business case would become attractive at more sites after the RCF which would ensure there would be sufficient network capacity to support the large expansion in the number of chargepoints that would be needed as EV uptake increased. [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Appendix A, paragraph 65.

⁴⁴ [REDACTED]

⁴⁵ [REDACTED]

⁴⁶ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.41.

The likely timing of such investments, in particular prior to the RCF, is also uncertain.⁴⁷

Initiatives to address these challenges

2.27 The UK Government recognises these challenges and plans to invest £950m in upgrading network grid capacity and connections 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.⁴⁸ 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.⁴⁹

2.28 Other initiatives being taken to address these challenges include Ofgem's Green Recovery Scheme ('GRS')⁵⁰ and Ofgem's Access and Forward-looking Charges Significant Code Review ('Access SCR').⁵¹ The GRS and the Access SCR both facilitate the provision of EV chargepoints, including at MSAs, by accelerating network upgrades and reducing the costs of connection.

2.29 Under the GRS, planned network investments by Distribution Network Operators ('DNO') identified as a priority for investment have been accelerated so that they take place under the current RIIO price control for electricity distribution which ends on 31 March 2023 (RIIO-ED1). The GRS enables DNOs to accelerate Ofgem approved planned network upgrades, to meet shorter-term grid capacity needs, even where such investment would otherwise exceed their existing RIIO-ED1 investment allowances.⁵²

2.30 A significant focus of these accelerated DNO investments is increasing network capacity to enable ultra-rapid charging of EVs, including at MSAs.⁵³ Ofgem has

⁴⁷ See Section 7 paragraphs 7.10 to 7.18.

⁴⁸ In relation to Scotland, Transport Scotland has published (21 July 2021): [Report on Public Electric Vehicle \(EV\) infrastructure in Scotland - Opportunities for Growth](#). In relation to Wales, the Welsh Government published (23 March 2021): [Electric Vehicle Charging Strategy for Wales](#) and an associated action plan on 26 October 2021: [action plan](#).

⁴⁹ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.44.

⁵⁰ [Decision on the RIIO-ED1 Green Recovery Scheme](#), 26 August 2021.

⁵¹ [Access and Forward-Looking Charges Significant Code Review – Updates to our Minded-to Positions](#), 24 January 2022.

⁵² [Decision on the RIIO-ED1 Green Recovery Scheme](#), 26 August 2021. Under the RIIO-ED1, DNOs were allocated investment allowances. Investments within such allowances can be recouped by the DNO through the DNO's customer network charges. For investments above such allowances, the DNO can only recoup 50% of the investment through customer network charges. Under the GRS, Ofgem approved investments can be fully recouped through network charges even where such investments would involve expenditure above the DNOs' investment allowances under RIIO-ED1.

⁵³ [Decision on the RIIO-ED1 Green Recovery Scheme](#), 26 August 2021, page 5.

approved proposals for network investments at 40 MSA sites under the GRS.⁵⁴ Under the scheme, such network investments should in principle be completed by April 2023.

- 2.31 The CMA has received evidence⁵⁵ that at MSA sites where network upgrades are being accelerated under the GRS, the connection charges that DNOs have quoted their customers are substantially lower compared with the original DNO quote issued prior to the DNO's network upgrades under the GRS.⁵⁶ The extent of savings varies on a site-by-site basis and at some sites the connection costs absent the accelerated DNO network upgrades would have been uneconomic.
- 2.32 Under the Access SCR, Ofgem is currently considering consultation responses on changes which, if implemented, would result in grid reinforcement costs being reduced or removed from the upfront connection charge.⁵⁷ This would mean that grid reinforcement costs are funded by the DNO, and recovered from customers through the ongoing network charges paid by all DNO customers, rather than by charging each individual customer the upfront capital cost for reinforcing the network where this would be needed for a new or modified connection request.⁵⁸ If implemented, Ofgem intends to make these changes from the beginning of the RIIO-ED2 price control period, which commences in April 2023.

The Parties

The Three MSAs

- 2.33 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 in the amenity areas at its sites.
- 2.34 Roadchef is an MSA operator with 28 MSA sites across England, Scotland and Wales. Roadchef currently only hosts Gridserve's EV chargepoints at the amenity areas at its sites.

⁵⁴ [Decision on the RIIO-ED1 Green Recovery Scheme](#), 26 August 2021, page 16.

⁵⁵ Submissions from one MSA [redacted] and three CPOs [redacted], Gridserve and [redacted].

⁵⁶ If a new or upgraded grid connection request is made to a DNO by a customer eg a CPO or MSA, under the current regime the connection charge quoted will include the costs of any network upgrades required for that connection. As the DNO will be undertaking upgrades as part of its planned investments at the 40 sites in most instances, the new or upgraded connection requests will not require network upgrades (or at least less costly upgrades).

⁵⁷ [Access and Forward-Looking Charges Significant Code Review – Updates to our Minded-to Positions](#), 24 January 2022.

⁵⁸ This change would therefore apply to the reinforcement (upgrades to existing network), but not the extension asset (new network) component of connection charges.

2.35 Extra is an MSA operator with eight sites across England. The amenity areas at Extra's sites host Ionity GmbH ('Ionity') and, at seven of those sites, it also hosts Gridserve EV chargepoints.

2.36 Details of the Three MSAs' Long-Term Exclusive Arrangements with The Electric Highway are set out at paragraphs 2.41 to 2.44 below.

The Electric Highway and Gridserve

2.37 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 2011⁵⁹.

2.38 The Electric Highway is present at nearly all MSAs in Great Britain, and had, at the time of publication of the EV Charging Market Study Final Report, a network of 247 EV chargepoints at MSAs with a power rating of at least 50 kilowatts (kW).

2.39 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.⁶⁰

2.40 Gridserve has informed the CMA⁶¹ that it is investing (and plans to invest) over £200 million between 2021 and 2025. The first phase of the investment, which is in its final stages,⁶² has involved 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.⁶³ This programme of investment also includes an investment of 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 2023⁶⁴ with further significant investment planned in 2025 in ultra-rapid chargepoints. These investments include more than 50 'Electric Hubs' featuring six to 12 high power 350 kW EV chargepoints across Great Britain, the first of which was opened at Rugby services in April 2021.⁶⁵

⁵⁹ [Ecotricity website](#).

⁶⁰ [Gridserve website](#).

⁶¹ *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 (ie ending in 2035, with the precise date depending on the start date for the individual site).

⁶² This was confirmed by Gridserve in a meeting with the CMA on 19 January 2022.

⁶³ [Gridserve press release dated 30 June 2021](#).

⁶⁴ [Government vision for the rapid chargepoint network in England](#), 14 May 2020.

⁶⁵ Rugby services is a MOTO MSA.

The Scope of the Long-Term Exclusive Arrangements under investigation

2.41 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 amenity area⁶⁶ of the Three MSAs' sites that are covered by the Long-Term Exclusive Arrangements.⁶⁷ This means that, subject to certain limited exceptions described in paragraph 2.44 below, the Three MSAs may not, and may not permit any third party to, supply, install, operate or maintain EV chargepoints at the Three MSAs' sites that are covered by the Long-Term Exclusive Arrangements without The Electric Highway's consent.

2.42 Prior to the CMA accepting the Commitments, the duration of the exclusivity under the Long-Term Exclusive Arrangements was as follows:

- (a) Extra: arrangements entered into in 2016 and terminate in November 2026;⁶⁸
- (b) Roadchef: arrangement entered into in 2016 and terminates in January 2031;⁶⁹ and
- (c) MOTO: arrangement entered into in 2018 and terminates in July 2028.⁷⁰

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

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

- (a) As set out at paragraph 2.41 above, The Electric Highway's exclusivity is limited to the amenity area of the Three MSAs' sites. Petrol forecourt operators are permitted to install and operate EV chargepoints on their forecourts without The Electric Highway's consent.
- (b) Tesla is not prevented from supplying, installing, or operating its EV chargepoints at the Three MSAs' sites.

⁶⁶ The amenity area generally encompasses the MSA site excluding the petrol forecourt area.

⁶⁷ Both MOTO and Roadchef have a single contract covering their network of MSAs. Extra has individual contracts for the seven sites at which The Electric Highway is present.

⁶⁸ Extra previously entered into an exclusive contract in 2014.

⁶⁹ The 2016 arrangement replaced a previous exclusive arrangement made in 2013.

⁷⁰ The 2018 arrangement replaced a previous exclusive arrangement made in 2013.

- (c) At the seven Extra sites at which The Electric Highway has exclusivity, The Electric Highway's exclusivity is limited to rapid EV chargepoints (up to 60kW).⁷¹ Ionity has long-term exclusive rights until 2035⁷² in respect of EV chargepoints above 60kW at these Extra MSA sites (as well as at one further existing Extra site and one planned Extra site).

- (d) 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 amenity area.

⁷¹ Pursuant to an Agreement to Vary dated 8 November 2019. In addition to amending the exclusivity provisions, this agreement also made provision in relation to the maximum number of chargepoints which The Electric Highway can install.

⁷² Precise end dates depending on the start date for the individual site.

3. Background: the relevant market(s) and the position of the Parties

3.1 Given that the CMA has not conducted a full, in-depth investigation following the offer of commitments, 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 decision, which sets out the CMA's competition concerns.

The relevant market(s)

3.3 Having had regard to the findings of the EV Charging Market Study, the CMA sets out below its preliminary view on the relevant product 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 2.40 above, The Electric Highway is in the process of upgrading its network of EV chargepoints, including installing ultra-rapid EV chargepoints at existing MSA sites where it is permitted under its contracts to do so.⁷³

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 its rapid EV chargepoints. In contrast, the Tesla EV chargepoint network is a closed network currently only available for Tesla vehicles. The CMA's preliminary view is that closed networks may be outside the relevant market as they are only a viable substitute to The Electric Highway's EV chargepoints for

⁷³ As set out at paragraph 2.44(c) above, Gridserve is precluded under the terms of Extra's contract with Ionity from installing ultra-rapid chargepoints at Extra sites.

a very specific group of customers. As such, they may not provide an effective competitive constraint on The Electric Highway.

The relevant geographic market(s)

- 3.7 Having had 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 open network rapid and ultra-rapid EV chargepoints at MSA sites or charging sites located very close to the motorway (for example, within 0.5 miles). However, as the most effective form of competition is from within-site competition, the CMA considers that the relevant market may be narrower and 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 In forming its preliminary view on the relevant geographic market, the CMA has had regard to the findings of the EV Charging Market Study in relation to consumer behaviour, and in particular the lack of 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 support a narrow geographic market definition and 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 (eg cafes and toilets) at MSAs is a key factor for EV drivers stopping at MSAs to charge, rather than elsewhere.⁷⁴
- 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

⁷⁴ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.2(b). [CMA's EV Charging Market Study, Appendices and glossary](#), Appendix A, paragraph 40.

customers a direct choice of CPO to which they can easily switch without having to drive to an alternative site.⁷⁵

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-rapid⁷⁶ open network EV chargepoints at MSAs in Great Britain.⁷⁷ 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.⁷⁸
- 3.11 At most MSAs in Great Britain, The Electric Highway faces no competition at the amenity area (or only limited competition from Tesla's closed network) 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 at MOTO sites, as explained above at paragraph 3.6, its network is a 'closed' network. Tesla's CEO Elon Musk has stated publicly⁷⁹ that over time he intends that Tesla will open up globally the Tesla EV chargepoint network and this programme has now begun.⁸⁰ On 1 November 2021, Tesla launched a pilot in the Netherlands,⁸¹ opening ten charging stations to non-Tesla EV drivers. However, Tesla has confirmed to the CMA that the timeframe for opening up its network of chargers in the UK is unclear.⁸²
- 3.12 Between them, the Three MSAs operate around two-thirds of MSAs in the UK.⁸³

⁷⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.10.

⁷⁶ 50 kW and 150 kW respectively.

⁷⁷ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.7 and figure 4.

⁷⁸ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Appendix A Table 2.

⁷⁹ [Elon Musk tweet of 20 July 2021](#).

⁸⁰ [Elon Musk tweet of 1 November 2021](#).

⁸¹ [Tesla press release dated 1 November 2021](#).

⁸² Meeting between the CMA and Tesla on 4 October 2021.

⁸³ [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 Three MSAs themselves, which could otherwise self-supply) from providing EV chargepoints at the Three MSAs' sites covered by the Long-Term Exclusive Arrangements. In addition, going forward, the CMA is in particular concerned that the Long-Term Exclusive Arrangements would 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 2.41 to 2.44 above, subject to certain limited carve-outs, under the Long-Term Exclusive Arrangements, other CPOs including the Three MSAs themselves are prevented from operating EV chargepoints at the Three MSAs' sites that are covered by the Long-Term Exclusive Arrangements. 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 The Electric Highway's exclusivity does not preclude EV chargepoints being installed in the petrol forecourt areas,⁸⁴ such EV chargepoints are likely only to compete with The Electric Highway's EV chargepoints to a limited extent, because they are in a less desirable location for accessing the MSAs' amenities and face space constraints.⁸⁵
- (b) Due to Tesla operating a 'closed' network, it provides only a limited competitive constraint on The Electric Highway, and it has confirmed to

⁸⁴ See paragraph 2.44 above.

⁸⁵ One CPO respondent to the NIAC [redacted] commented that whilst the petrol forecourt area was a less desirable area for EV drivers to charge their EVs than the amenity area, it was feasible to install EV chargepoints at petrol forecourts and that these would compete directly with EV chargepoints at the amenity area. However, due to certain safety measures there was a limit as to the number of chargepoints that could be installed at petrol forecourts. A different CPO respondent [redacted] stated that at large fuel retailers, space was a constraint. Unlike EV drivers at most MSAs, EV drivers visiting large fuel retailers also had the option of visiting other sites operated by a different CPO in the vicinity. This respondent submitted that it did not believe it would be beneficial for large fuel retailers to host chargers operated by more than one CPO. The CMA notes that the Commitments do not concern the contractual arrangements at the petrol forecourts.

the CMA that, as noted above at paragraphs 3.11, whilst Tesla has stated publicly that it currently intends to open up its network, the timeframe for opening up its network in the UK is unclear.

(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. The CMA's view is that therefore the overall constraint from Ionity on The Electric Highway is currently likely to be weak.

4.5 There remain significant barriers to entry and expansion, in particular the costs associated with increasing grid capacity at MSAs, which is fundamental to increasing the number of EV chargepoints at MSAs.

4.6 Through the likely foreclosure of entry by rival CPOs (including the MSAs themselves) to the Three MSAs' sites, the Long-Term Exclusive Arrangements would likely 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.⁸⁶ 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 2.42 above⁸⁷), with several years remaining (and in the case of MOTO and Roadchef sites can be automatically renewed beyond the end of their current term (2028 and 2031 respectively)); and

(b) around two-thirds of MSAs in the UK are covered by the Long-Term Exclusive Arrangements.

4.8 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 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 UK⁸⁸, and (ii) the significant barriers to entry and expansion at those MSAs for competitor CPOs.

⁸⁶ See, for example, [European Commission Notice: Guidelines on Vertical Restraints](#), paragraphs 133 and 195.

⁸⁷ These were preceded by agreements entered into variously in 2013 and 2014.

⁸⁸ See paragraph 3.12.

- 4.9 The current lack of effective competition at most 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 EV chargepoints at MSAs. This concern will become more acute in the future as demand for EVs, and so EV charging at MSAs, increases.
- 4.10 This is of particular concern to the CMA given the need for there to be, as set out in the EV Charging Market Study Final Report, a comprehensive and competitive EV charging network to support the uptake of EVs and the Government's commitment to ban the sale of new petrol and diesel cars and vans from 2030.⁸⁹

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

- 4.11 The CMA is in particular concerned that the Long-Term Exclusive Arrangements would impede the effective roll-out of the RCF.
- 4.12 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 2.19 above).⁹⁰ In England, the RCF will significantly help to address this major barrier to entry and expansion and therefore to investment and competition. 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.
- 4.13 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 The Electric Highway consents). This would significantly limit the overall benefits of competition from the RCF in terms of stimulating new entry and investment by CPOs and opening up within-site competition at MSAs.
- 4.14 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 similarly structured initiatives in the future in removing the other major barrier to

⁸⁹ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Summary, paragraph 2.

⁹⁰ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraphs 4.19 to 4.25.

investment and competition at MSAs and potentially further entrench the position of The Electric Highway at MSAs.

4.15 In addition, whilst the final terms of the RCF fund have yet to be finalised, including the criteria for awarding funding, OZEV has stated that RCF funding will likely be contingent on multiple CPOs having the opportunity to access the RCF-funded grid capacity at the relevant MSA sites through an open competitive bidding process. It is therefore considering (whether through legislation and/or the criteria of the RCF) to require MSA operators to:

(a) have a minimum of two (and at some sites more than two) open network CPOs at each MSA site in receipt of RCF funding; and

(b) tender EV chargepoint service contracts openly.⁹¹

4.16 In the event that the Long-Term Exclusive Arrangements were to remain in place, the Three MSAs would therefore be inhibited from applying for RCF funding for most of their sites as they would be unlikely to be able to meet such criteria. This would potentially significantly impede the opportunity that the RCF creates to increase competition within MSA sites.

4.17 The CMA's view is that going forward, absent the Long-Term Exclusive Arrangements coupled with significant increases in capacity through the RCF and similar other initiatives, and material increases in anticipated demand, multiple CPOs⁹² 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.

4.18 The Long-Term Exclusive Arrangements may therefore amount to an infringement by the Parties of the Chapter I prohibition and an abuse by The Electric Highway, Gridserve and Ecotricity of a dominant position contrary to the Chapter II prohibition.

⁹¹ [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021. This follows the CMA's recommendations from the EV Charging Market Study which recommended that the Government attach conditions to the RCF funding to enable competition between CPOs within each MSA site applying for the fund. Such recommended conditions included no future exclusivity, open tenders and 'open' networks.

⁹² 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 Commitments

The Commitments

5.1 The Commitments are set out in **Appendix A** to this decision and summarised in paragraphs 5.2 to 5.3 below.

Gridserve's Commitments on terminating exclusivity

5.2 Under the Commitments Gridserve will not:

- (a) Renew or enforce, the exclusivity provisions in the Long-Term Exclusive Arrangements with the Three MSAs after 18 November 2026 (Commitment 3.1).
- (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 (Commitment 3.2).
- (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 (Commitment 3.3).

Commitments from all of the Parties on compliance

5.3 Under the Commitments all the Parties, including Gridserve, will:

- (a) not in any way circumvent, or otherwise frustrate the operation of, any of the Commitments (Commitments 4.2 and 5.1);

(b) provide the following to the CMA in order for the CMA to effectively monitor the Parties' compliance with the Commitments (Commitments 4 and 6):

- (i) all information and documents reasonably required by the CMA;
- (ii) an annual compliance statement; and
- (iii) prompt notification of any breach of the Commitments.

6. The CMA's assessment of the Commitments

6.1 For the reasons set out below, the CMA has concluded that its competition concerns are addressed by the Commitments and that it is appropriate to accept the Commitments for the purposes of addressing those competition concerns. In summary, the CMA considers that the Commitments in the round address its competition concerns because they:

- (a) **Enable significant investments** of over £200m to be made by Gridserve between 2021 and 2025 ahead of anticipated significant increases in demand in the lead up to 2030. The first phase of the investment, which is in its final stages,⁹³ has involved 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.⁹⁴ This programme of investment also includes an investment of over £100m in ultra-rapid EV chargepoints. The CMA recognises that these new significant and necessary investments, which help achieve the UK Government's de-carbonisation policy, are inherently risky and that Gridserve will not recoup its investments until well beyond the periods of exclusivity under the Commitments.
- (b) **Remove a significant impediment to the effective roll-out of the RCF** which is anticipated to begin in late 2022/early 2023. OZEV's intention is that RCF funding will be contingent on within-site competition at MSAs. The Electric Highway's exclusivity will cease at MSA sites benefitting from the RCF once the additional RCF-funded grid capacity has been rolled out. Absent the Commitments, the Three MSAs would potentially be impeded from successfully applying for RCF funding when the RCF is anticipated to begin to be rolled out in late 2022/early 2023.
- (c) **Enable earlier new entry** than would have been the case under the Long-Term Exclusive Arrangements. As within-site competition becomes more viable following significant new publicly-funded grid capacity under the RCF (and other similar initiatives) and anticipated demand materially increases, the Three MSAs will be able to appoint multiple operators at their sites.
- (d) **Provide certainty**: the Commitments address the competition concerns the CMA has identified quickly and clearly without the need for a full in-depth and lengthy investigation, and can be effectively implemented and within a short space of time. In particular, all industry participants will be

⁹³ This was confirmed by Gridserve in a meeting with the CMA on 19 January 2022.

⁹⁴ [Gridserve press release dated 30 June 2021](#).

aware of when The Electric Highway's exclusivity will end and can plan accordingly, including as regards the RCF.

(e) **Benefit consumers** since by enabling the planned investments to be made by Gridserve and providing certainty that the effective roll-out of the RCF will not be impeded by the Long-Term Exclusive Arrangements, they will enable greater future investments and competition in the sector. Consumers will also benefit from potentially increased competition at the Three MSA sites much earlier than may otherwise have been the case absent the Commitments and well in advance of 2030.

(f) **Include robust anti-avoidance, reporting and compliance measures.**

6.2 In reaching the decision to accept the Commitments, the CMA has fully considered the evidence and the representations made in response to the NIAC. Section 7 summarises and assesses the main substantive responses received in response to the NIAC. Appendix B contains a more detailed summary of those responses and the CMA's assessment.

The CMA's approach to assessing the Commitments

6.3 Pursuant to section 31A of the Act, for the purposes of addressing the competition concerns it has identified, the CMA may accept from such person (or persons) concerned as it considers appropriate, commitments to take such action (or refrain from taking such action) as it considers appropriate.

6.4 The CMA's guidance on its investigation procedures under the Act⁹⁵ ('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.⁹⁶

6.5 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

⁹⁵ 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 decision to those paragraphs of the Procedural Guidance therefore constitute references to the CMA's Commitments Guidance.

⁹⁶ Paragraph 10.18 of the [Procedural Guidance](#).

not to complete its investigation and make a decision would undermine deterrence.⁹⁷

- 6.6 Commitments are a means of resolving investigations more quickly and efficiently: in summary, the CMA accepts binding promises from one or more parties under investigation in relation to their future conduct so as to address the competition concerns identified by the CMA for the future. The Competition Appeal Tribunal has noted that '[t]he CMA's power to accept binding commitments is intended to allow it to resolve cases more quickly and efficiently by avoiding the need for a full investigation, thereby enabling the CMA to use its limited resources for a broader range of enforcement purposes.'⁹⁸
- 6.7 The CMA cannot require parties to an investigation to offer commitments or particular commitments. It is solely for each party to an investigation to determine what, if any, commitments they are willing to offer the CMA. The CMA then assesses whether any commitments offered should or should not be accepted. In order to accept commitments, the CMA must consider that the commitments offered will address the competition concerns the CMA has identified and the CMA must consider, in the exercise of its discretion, that it is appropriate to accept commitments in the case in question.⁹⁹
- 6.8 The CMA has a broad discretion in determining which cases are suitable for commitments and whether the commitments offered should be accepted.¹⁰⁰ In that connection, the Competition Appeal Tribunal has acknowledged that, in the exercise of the competition authority's judgement when accepting commitments, it is legitimate for the competition authority to 'strike a balance' in terms of the appropriate level of intervention in a case, provided that in doing so, it takes proper account of material points drawn to its attention and avoids obvious error.¹⁰¹
- 6.9 In the CMA's view, commitments are appropriate for addressing specific competition concerns identified by the CMA as arising from the conduct under investigation. They are not a suitable means of addressing potentially wider competition concerns not arising from such conduct.¹⁰²
- 6.10 In the present case, the Parties put forward commitments shortly after the CMA's investigation was opened with a view to seeking to address the CMA's

⁹⁷ Paragraph 10.20 of the [Procedural Guidance](#).

⁹⁸ *Skyscanner Limited v Competition and Markets Authority* [2014] CAT 16, at [21].

⁹⁹ See paragraphs 10.15 to 10.20 of the [Procedural Guidance](#).

¹⁰⁰ See paragraphs 10.17 to 10.21 of the [Procedural Guidance](#).

¹⁰¹ *Skyscanner Limited v Competition and Markets Authority* [2014] CAT 16, at [130] and [132].

¹⁰² See also paragraph 7.77.7 of this decision and footnote 144 thereto.

competition concerns arising from the Long-Term Exclusive Arrangements.¹⁰³ Those concerns were communicated to the parties under investigation and are set out in Section 4 above.

6.11 In conducting its assessment of whether the Commitments address its competition concerns, the CMA has not undertaken the detailed and complex analysis that would otherwise have been pursued under a full in-depth investigation to determine more precisely:

- (a) the extent of the suspected likely foreclosure effects (past and ongoing) arising from the Long-Term Exclusive Arrangements; and
- (b) the period of exclusivity that would be permissible under the Long-Term Exclusive Arrangements in relation to (i) the significant investments that have already been made to date by The Electric Highway and (ii) the new investments of over £200m which Gridserve is making (and planning to make) between 2021 and 2025 in upgrading and expanding The Electric Highway's network of EV chargepoints.¹⁰⁴

6.12 The CMA's approach to assessing the Commitments (including their appropriateness) has involved an assessment in the round based on the evidence on the legal and economic context in which the Long-Term Exclusive Arrangements are likely to operate going forward, in particular:

- (a) The nascent stage of this strategically important sector and the importance of addressing range anxiety in encouraging the take-up of EVs which is necessary to achieve the Government's de-carbonisation policy, including the ban on the sale of new petrol and diesel cars and vans in 2030.¹⁰⁵
- (b) The need for significant upfront risky investment to be made now to help to achieve the Government's EV strategy including the Government's target of at least 6 high powered EV chargepoints at each MSA by 2023.¹⁰⁶
- (c) The high costs of upgrading grid capacity as well as other infrastructure costs making the business case for CPOs to invest at-scale challenging, especially in the short-term as those costs remain significant and demand remains relatively low.¹⁰⁷

¹⁰³ Commitments were first offered by the Parties on 26 August 2021. The CMA is less likely to consider it appropriate to accept commitments that are offered at a very late stage in an investigation (see paragraph 10.21 of the [Procedural Guidance](#)).

¹⁰⁴ This figure includes investment by Gridserve in new ultra-rapid EV chargepoints to support the Government's target of at least six ultra-rapid EV chargepoints at each MSA by 2023 (see paragraph 2.40 above).

¹⁰⁵ See further Section 2, paragraph 2.17 above.

¹⁰⁶ See further Section 2, paragraphs 2.18 to 2.21 above.

¹⁰⁷ See further Section 2, paragraphs 2.20 to 2.21 above.

- (d) Government and other initiatives such as the RCF aimed at addressing the significant costs of upgrading grid capacity to deliver the increase in EV chargepoints to meet anticipated significant increase in demand as 2030 approaches and the need for a degree of certainty to allow existing and new entrant CPOs to benefit from these initiatives and invest.¹⁰⁸
- (e) The evidence from the Parties, CPOs and other third parties on entry and expansion, in particular the viability and timing of further at-scale entry and expansion at MSAs,¹⁰⁹ and on whether, and the extent to which, a period of exclusivity is necessary in order to make viable investments in this sector ahead of anticipated increased demand.¹¹⁰
- (f) The importance of within-site competition as the sector develops in order to ensure that consumers have access to a high quality and competitively priced EV chargepoint network at MSAs.¹¹¹

6.13 In accordance with the CMA's Procedural Guidance, the remainder of this Section is structured as follows:

- (a) Assessment of whether the competition concerns are readily identifiable.
- (b) Assessment of whether the Commitments address the CMA's competition concerns.
- (c) Further considerations relevant to the CMA's assessment for accepting the Commitments.

Assessment of whether the competition concerns are readily identifiable

6.14 As set out in Section 4 above, the CMA has identified that the Long-Term Exclusive Arrangements may have, and/or may have had, the likely effect of foreclosing other CPOs (including the Three MSAs themselves) from providing EV chargepoints at the Three MSAs' sites. The CMA is also particularly concerned that the Long-Term Exclusive Arrangements would impede the effective roll-out of the RCF. As described at paragraph 4.12 above, OZEV

¹⁰⁸ See Section 2 paragraphs 2.27 to 2.32 above.

¹⁰⁹ See Section 2 paragraphs 2.23 to 2.24 above. See also paragraphs 6.23; 7.3(b); 7.10 to 7.18; Appendix B paragraphs 10, 11, 29 and 32 to 46 below.

¹¹⁰ The CMA has also had regard to general guidance in relation to the duration of exclusive agreements under competition law: European Commission Notice: Guidelines on Vertical Restraints (see, for example, paragraphs 133 and 195 to the effect that exclusive agreements lasting longer than five years are for most types of investments not considered necessary). The Guidelines note, however, that they cannot be applied mechanistically; rather they must be applied with due consideration for the specific circumstances of each case and each case must be evaluated in the light of its own facts (paragraph 3).

¹¹¹ See Section 2 paragraphs 2.25. See also Section 3 paragraphs 3.7 to 3.9 above.

anticipates that it will begin to accept applications for RCF funding in late 2022/early 2023 and will begin issuing funding in late 2023, with the main funding phase for MSAs to be completed by 2026.

6.15 In light of the above, the CMA considers that the competition concerns arising from the Long-Term Exclusive Arrangements are readily identifiable.

Assessment of whether the Commitments address the CMA's competition concerns

6.16 As set out at paragraph 6.12 above, the CMA has considered a range of factors in its assessment of the Commitments.

6.17 In the following Sections, the CMA sets out its assessment of each key element of the Commitments for the purposes of assessing whether, in combination, they address the CMA's competition concerns.

Gridserve's commitments to remove exclusivity (Commitment 3)

6.18 As set out in Section 4 above, under the Commitments, Gridserve will not renew or enforce the exclusivity provisions in the Long-Term Exclusive Arrangements after 18 November 2026 (Commitment 3.1). It will also not enforce exclusivity in respect of any MSA site covered by the Long-Term Exclusive Arrangements, that plans to utilise RCF-funded capacity once that capacity comes online and is available to be used (Commitment 3.2). The Commitments also provide that Gridserve will not enforce the exclusivity provisions to impede in any way the Three MSAs from engaging with other CPOs to enable such CPOs to be able to begin operating EV chargepoints, once RCF-funded grid capacity comes online and is available to be used (Commitment 3.3).

6.19 As set out in Section 5, the CMA has identified that the duration of the Long-Term Exclusive Arrangements may have the likely effect of foreclosing competition given the number of MSA sites covered by, and the duration of, the exclusivity provision in the Long-Term Exclusive Arrangements. In particular, the Long-Term Exclusive Arrangements cover a total of 96 sites and the MOTO and Roadchef contracts, which alone cover 89 sites, are not due to end until 2028 and 2031 respectively and their exclusivity provisions are automatically renewable after this period.

6.20 The CMA recognises that significant upfront long-term investments are needed in this sector now ahead of anticipated demand, in order to increase consumer confidence to purchase EVs. As described at paragraphs 2.18 to 2.20, the

Parties and several respondents to the NIAC have submitted¹¹² that investment by private operators is necessary now to assist the Government in working towards its targets for the provision of EV chargepoints and its wider de-carbonisation policy.¹¹³ However, such investments are inherently financially risky. The Parties and several respondents have also stated that significant upfront long-term investments are high risk and that some period of exclusivity is necessary to enable such investments to be made.¹¹⁴

6.21 The Electric Highway has to date made significant investments. In addition, and importantly in the context of the Commitments, Gridserve is investing (and plans to invest) over £200 million between 2021 and 2025 to add to, upgrade and modernise The Electric Highway's existing EV chargepoint network.¹¹⁵ Gridserve has told the CMA that a substantial majority of these investments will be used to upgrade and expand its provision of EV chargepoints at the Three MSAs' sites. However, Gridserve has also told the CMA that absent a certain period of exclusivity, such investments would not be commercially viable and that, based on its forecasted returns, it will not make a return on its investments until well beyond the periods of exclusivity provided under the Commitments.¹¹⁶

6.22 In addition, Gridserve has stated that whilst it has nearly completed the first stage of its investment, its plans to invest over £100m in ultra-rapid EV chargepoints at MOTO and Roadchef sites have been slowed significantly and new spending has been paused pending the outcome of the CMA's investigation. As set out at paragraph 6.20 above, Gridserve explained that it considers that it requires a period of exclusivity in order to reduce the risk of its upfront investments to an acceptable level. The uncertainty to its investment plans resulting from the CMA's investigation has, Gridserve submitted, materially increased the investment risk and therefore it has paused or slowed further significant investments until it has clarity on the outcome of the CMA's investigation.¹¹⁷

¹¹² See also Appendix B, paragraphs 8 and 40.

¹¹³ This includes, for example, the Government's targets to have at least 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.](#)

¹¹⁴ [REDACTED].

¹¹⁵ This includes investing over £100m on installing ultra-rapid chargers at MOTO and Roadchef's sites between 2021 and 2023.

¹¹⁶ This was first evidenced by Gridserve on 26 August 2021 and subsequently confirmed in meetings including the meeting held on 19 January 2022 and in its written submission dated 26 January 2022.

¹¹⁷ This was submitted at a meeting on 5 August 2021. As set out at paragraph 2.44(c) above, Gridserve has also explained that it is not investing in ultra-rapid EV chargepoints at Extra's sites as it is precluded from installing ultra-rapid chargepoints due to Ionity's exclusive arrangements with Extra. Similarly, at Welcome Break sites where Gridserve operates under non-exclusive arrangements, it is similarly not investing in ultra-rapid chargepoints.

6.23 The CMA recognises that, inherently, any long-term exclusive arrangement is likely to have some foreclosure effects, ie in the present case at some sites in the absence of The Electric Highway’s exclusivity, other CPOs may be willing in principle to enter in the amenity area in competition with Gridserve now or at least before November 2026 without RCF funding. The CMA therefore agrees with two Consultation respondents that it may be viable at some individual MSA sites¹¹⁸ for within-site competition to develop prior to RCF-funded capacity coming online and prior to November 2026 which would be prevented by the Long-Term Exclusive Arrangements. As reflected in responses to the Consultation and in evidence provided to the CMA, the viability of such entry in particular at present is very site dependent, reflecting amongst other factors significant variations in grid upgrade costs, chargepoint connections costs and the level of demand at individual sites. As set out in paragraph 6.11 above, in assessing the Commitments, the CMA has not undertaken the detailed site-by-site analysis to determine at which sites competing CPOs would be willing and able to enter and compete with Gridserve and by when, in particular in advance of RCF funding.

6.24 However, based on the evidence provided to the CMA, the CMA considers that such entry is likely to be limited in terms of scale and/or primarily focused on potentially more profitable MSA sites that are more heavily frequented or where the costs of grid upgrades are currently relatively low. The likely timing of such investments in particular prior to the RCF is also uncertain.¹¹⁹

6.25 In addition, Gridserve is not only investing in sites that are the most commercially viable, and where competitors may be most willing to enter now. It is also investing in sites that are less commercially viable due to lower levels of demand/higher costs and where the investment risks are greater. Retaining exclusivity at certain more commercially viable sites therefore allows Gridserve to offset some of the risks it is taking in investing at other, less commercially viable sites. This investment strategy is likely to benefit consumers through providing more comprehensive geographic coverage of EV chargepoints at MSAs in the short-term. As noted above, Gridserve has told the CMA that it has forecast that it will not achieve a return on its investment for many years, well beyond the period of exclusivity under the Commitments.

¹¹⁸ One respondent (CPO) [redacted] stated that there is private sector investment to install competing ultra-fast EV chargepoints at MSAs that could take place without exclusivity ‘now’ or at least with only limited exclusivity (eg in competition with Gridserve but not a third CPO) and that there would be viable opportunities to compete outside the circumstances in which RCF funding would be available. It added that it believed that investment was likely to be viable without public subsidy at those MSA sites where EV charging demand was expected to be highest and/or grid upgrade costs were relatively low. The other respondent (CPO) [redacted] noted that reputable CPOs, including itself, were willing and able to deploy funds now to build a reliable charging infrastructure. See further Appendix B, paragraphs 33 to 37 and 40.

¹¹⁹ See Section 7 paragraphs 7.10 to 7.18.

- 6.26 By reducing the period of exclusivity under the Commitments so that exclusivity is removed at all MSA sites covered by the Long-Term Exclusive Arrangements by 18 November 2026 at the latest, this will enable Gridserve to make the significant necessary investments now. However, it will also mean that the Three MSAs will not be prevented by Gridserve from appointing additional CPOs at their sites as consumer demand materially increases in the lead up to 2030.
- 6.27 Moreover, under the Commitments, to the extent that RCF-funded grid capacity comes online and is available to be used at individual MSA sites covered by the Long-Term Exclusive Arrangements before 18 November 2026, exclusivity will end at that point. This will ensure the effective roll-out of the RCF, which is anticipated to begin in late 2022/early 2023, and that the benefits of increased capacity to enable greater investment and competition are not impeded by the Long-Term Exclusive Arrangements.
- 6.28 OZEV has confirmed to the CMA that the intention of the RCF is to future-proof grid capacity at all MSAs in the long-term through a one-off public investment. In developing the criteria of the fund, OZEV is aiming to create the right incentives for all MSA operators for each of their sites to apply for RCF funding in the first tranche of the RCF roll-out, which is anticipated to begin in late 2022/early 2023. The RCF will therefore be available for all MSA sites, and potentially even where it may be economically viable for private operators on an incremental basis to fund sufficient grid capacity.
- 6.29 In addition, whilst the details of how the RCF will operate are yet to be finalised, OZEV has confirmed to the CMA that the Commitments, including the trigger point for removal of exclusivity at RCF-funded MSA sites, would achieve the objectives of the RCF. In addition, this trigger point for the removal of exclusivity will provide a certain and easily identifiable date for MSAs and other CPOs as to when Gridserve will cease to enforce exclusivity.¹²⁰ Crucially, it means that The Electric Highway will not retain exclusivity beyond the point at which RCF-funded additional grid capacity comes online and is available for other CPOs to use.
- 6.30 Moreover, to further ensure that this is the case, as part of the Commitments, Gridserve also commits to not impede any of the Three MSAs at any of their

¹²⁰ The CMA received no responses to the NIAC raising concerns as to how the RCF commitment will operate, in particular as regards the trigger point or the commitment to enable the MSAs to engage with other CPOs to ensure that such CPOs are able to benefit from the additional RCF-funded capacity and begin operations as soon as such additional capacity comes online and is available to be used. One respondent (CPO) submitted that it was premature to accept commitments before the 'mechanics' of the RCF had been finalised. (See Appendix B, paragraphs 51 and 52(c). Another respondent submitted that in light of 'lack of public visibility' over the roll-out of the RCF, the trigger point for the removal of exclusivity did not provide an easily identifiable date (See Appendix B, paragraph 52(b)).

MSA sites 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 when such capacity comes online and is available to be used.

6.31 Accordingly, The Electric Highway's exclusivity will not be a barrier to the Three MSAs applying for RCF funding or to alternative CPOs taking advantage of the additional RCF-funded grid capacity once it has come online and is available to be used at individual MSA sites. Removing The Electric Highway'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 will likely require the relevant MSAs to demonstrate that their site is being opened up to competing CPOs with open networks.¹²¹

6.32 The CMA has also had regard to the fact that in the absence of the Commitments, this fast-developing sector would be required to await the outcome of a full in-depth and lengthy investigation by the CMA as to whether there has been an infringement of Act and until the conclusion of such an investigation (including any appeal), the Long-Term Exclusive Arrangements would:

- (a) continue to be likely to foreclose competition at the sites covered by the Long-Term Exclusive Arrangements until resolution of the CMA's investigation (including any subsequent appeal); and
- (b) remain an impediment to the Government's roll-out of the £950m RCF.

6.33 By enabling the planned investments to be made by Gridserve and providing certainty that the effective roll-out of the RCF will not be impeded by the Long-Term Exclusive Arrangements, the Commitments will pave the way for greater future investments and competition in the sector. Consumers will also benefit from potentially increased competition at the Three MSAs' sites much earlier than may otherwise have been the case absent the Commitments and well in advance of 2030.

The Parties' compliance and reporting Commitments (Commitments 4 and 6)

6.34 In order for the CMA to monitor the Parties' compliance with the Commitments effectively, the Parties have committed to provide the CMA with annual compliance statements. The Parties will provide these compliance statements in the form of Annexes 1 to 4 to the Commitments.¹²² The Parties are required

¹²¹ [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021. See further paragraphs 4.15 to 4.16 above.

¹²² Commitments, paragraphs 4.1(b) and 6.1(b) Annexes 1 to 4.

by the Commitments to provide compliance statements for five years, with the last statement being due five years after the date of this decision to accept the Commitments. This means that the last statement will be due shortly after the end of the long-stop date of 18 November 2026.

6.35 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 Commitments, and they have committed to providing information about the nature and duration of such breach.¹²³

6.36 The CMA considers that these obligations provide a comprehensive framework which ensures that the CMA is in a position to effectively monitor compliance by the Parties with the Commitments, and to take appropriate enforcement steps if required.¹²⁴

The Parties' anti-avoidance commitments (Commitments 4.2 and 5)

6.37 Under the Commitments, the Parties will not circumvent or otherwise frustrate the operation of any of the Commitments. The CMA considers that this Commitment is robust and will preclude any avoidance measures by the Parties.¹²⁵ In addition, it will be open to any CPOs and indeed the Three MSAs themselves to report to the CMA any concerns with regard to any steps taken by Gridserve or the Three MSAs to circumvent or frustrate any of the Commitments.

Further considerations

6.38 As summarised in Section 5, the Commitments clearly prescribe the applicable obligations on the Parties, and those obligations are not complex or onerous to put into effect.

6.39 In addition, the Parties have undertaken to act in accordance with the Commitments as of the date of this decision.

6.40 The Commitments can therefore be implemented effectively and with immediate effect. The Commitments will come into force from the date of this decision.

¹²³ Commitments, paragraphs 4.1 (c) and 6.1 (c). For Gridserve, the compliance statement relates to paragraphs 3 and 4.2 of the Commitments. For the Three MSAs the compliance statement would relate to paragraph 5.1.

¹²⁴ The CMA did not receive any responses to the NIAC raising concerns with the compliance and reporting obligations in the Commitments. See Appendix B, paragraphs 59 to 63.

¹²⁵ The CMA did not receive any responses to the NIAC raising concerns with the anti-avoidance Commitments. See Appendix B, paragraphs 59 to 63.

6.41 In addition, the CMA considers that the Commitments are not difficult to discern and accepting the Commitments would not undermine deterrence for the following reasons:

- (a) The long-stop of 18 November 2026 for ending exclusivity is clear and unambiguous.
- (b) 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 – will not be difficult to discern. The process for and progress in awarding funding under the RCF to individual MSA sites will be publicly available information. The Three MSAs and other CPOs (including new entrants) will be able to easily identify at which MSA, Gridserve will cease to enforce exclusivity and when.
- (c) 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.¹²⁶

6.42 The CMA also considers that by accepting commitments in this case it is able to address the competition concerns it has identified quickly, which is particularly important in providing certainty in this important nascent sector to enable necessary investments to be made now and in the future and in facilitating the effective roll-out of the RCF in late 2022/early 2023. Early resolution of this investigation through the Commitments in particular will facilitate significant ongoing (and much needed) investment, including investment to achieve the Government’s targets.¹²⁷ Greater certainty and early resolution of the CMA’s investigation will also benefit consumers by potentially increasing competition at the Three MSAs’ sites much earlier than may otherwise have been the case absent the Commitments and well in advance of 2030.

6.43 In addition, the Commitments will provide certainty to the Three 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 inevitably fall primarily to Gridserve. Moreover, the 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

¹²⁶ The CMA will send an open letter to industry participants informing them of its decision in this case. The letter will encourage all MSA operators and CPOs to ensure that their arrangements comply with competition law and make any necessary changes to existing commercial arrangements to ensure compliance.

¹²⁷ See paragraph 2.40 above.

opportunity including tendering for contracts, and (ii) for non-RCF sites, Gridserve's contractual exclusive rights will end by 18 November 2026.

6.44 Accepting the Commitments does not preclude the CMA taking further enforcement action in relation to other suspected breaches of competition law concerning the supply of EV chargepoints and/or in 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 will remain subject to competition law and may be subject to enforcement action.

7. Assessment of the NIAC responses

- 7.1 As set out in paragraphs 2.7 and 2.8 above, the CMA consulted extensively with the Parties, Ofgem, OZEV and third parties, including through the NIAC, throughout its investigation.¹²⁸ The CMA has carefully considered all the views expressed to the CMA during the course of its investigation including the representations made by third parties in response to the NIAC, to determine whether the Commitments address its competition concerns and whether it is appropriate to accept the Commitments for the purposes of addressing those competition concerns. Appendix B contains a more detailed summary of the third party responses to the NIAC. In this Section, the CMA summarises the key points raised by the third party responses and its assessment of those responses. The CMA then sets out in Section 8 its decision on whether to accept the Commitments.
- 7.2 In summary, as set out in Appendix B, none of the substantive responses to the NIAC disagreed with commitments being an appropriate way to resolve the investigation. Seven respondents (including five CPOs) welcomed resolution of the CMA's investigation by way of commitments.¹²⁹
- 7.3 Several respondents made a number of suggested amendments as to the periods of exclusivity provided for under the Commitments:
- (a) **Sector restructuring:** two respondents (CPOs)¹³⁰ submitted that The Electric Highway's exclusivity should end immediately to enable a complete restructuring of the sector under which all MSAs (including those not party to the Long-Term Arrangements)¹³¹ would invite CPOs to openly tender to operate EV chargepoints at individual MSA sites on the basis of long-term exclusive contracts.

¹²⁸ One respondent [redacted] (Consumer organisation) requested that the CMA ensure, before making a final decision, that it had sought the views of MSAs, other than the Three MSAs, about the impact of the Commitments on their ability to participate in the sector. The CMA did not receive any responses from other MSAs to the NIAC. However, the Commitments do not concern the contractual arrangements that other MSAs have now or will have in the future nor their ability to self-supply. See Appendix B, paragraphs 14 to 18.

¹²⁹ [redacted]. Two of the responses were from a CPO and its parent company expressing the same views. In those instances, here and elsewhere, where they made the same response we refer to them as one CPO. One respondent [redacted] (CPO), submitted that the competition concerns had not been 'readily identified' by the CMA such that the Commitments would not 'comprehensively address them' and requested that the CMA investigate further the economics of investment in EV chargepoints for competitor CPOs as the respondent considered there should be competition between rather than within MSA sites. See Appendix B, paragraphs 23 to 24. As mentioned at footnote 120 above, one further respondent [redacted] submitted that it was premature to accept commitments before the 'mechanics' of the RCF had been finalised. See Appendix B, paragraphs 51 and 52(c).
¹³⁰ [redacted] and [redacted].

¹³¹ [redacted] submitted that an open tender process for the provision of charging infrastructure should apply to every MSA in the country.

- (b) **Viability of new entry:** two respondents (CPOs)¹³² submitted that The Electric Highway’s exclusivity should end immediately because it was commercially viable for other CPOs to operate at some MSA sites without exclusivity now or at least with only limited exclusivity (eg in competition with Gridserve but not a third CPO) absent any public subsidy under the RCF in particular.
- (c) **Ofgem’s Green Recovery Scheme and Access SCR (if implemented):** two respondents (CPOs)¹³³ submitted that The Electric Highway’s exclusivity at all sites or at least at those sites which will benefit from accelerated network upgrades under Ofgem’s GRS should end by no later than April 2023 to reflect the lower connection costs at such sites (and/or lower costs following Ofgem’s Access SCR, if implemented, from April 2023). The same two respondents submitted that in the alternative there should be a commitment analogous to that for sites which receive RCF funding, under which The Electric Highway would no longer enforce its exclusivity at those sites benefitting from accelerated investment under the GRS, from the point at which that upgraded grid capacity comes online and is available to be used. Both respondents also submitted that the same should apply to similar funds or schemes now or in the future, or any form of public funding.

7.4 The CMA has assessed each of the three categories of suggested amendments to the exclusivity provisions in paragraphs 7.5 to 7.28 below. Other than the responses in favour of extending the RCF Commitment to other schemes as summarised above, no respondents to the NIAC proposed amendments to the RCF Commitment. In addition, with the exception of one respondent,¹³⁴ no respondents proposed amendments or raised concerns in respect of the anti-avoidance, compliance and reporting obligations under the Commitments.

Sector restructuring

7.5 Most respondents identified that significant upfront investments were required in the sector and that such investments were high risk.¹³⁵ Several respondents (CPOs) stated that, in a context where significant upfront investment is required well ahead of anticipated demand increasing (given relatively low utilisation of EV chargepoints) and where there is low profitability, exclusive long-term contracts were essential to ‘de-risk’ a substantially risky investment.¹³⁶ These

¹³² [redacted] and [redacted].

¹³³ [redacted].

¹³⁴ [redacted]. See Appendix B, paragraphs 60 and 63.

¹³⁵ These included 4 EV drivers and 3 CPOs [redacted], [redacted]. See Appendix B.

¹³⁶ [redacted].

CPO respondents submitted therefore that CPOs should be provided with exclusivity over each MSA site at which they operate.¹³⁷ A further respondent (EV driver) also highlighted the benefits to CPOs of exclusivity to more effectively manage their investments.¹³⁸ That respondent and another respondent (EV driver) also highlighted that having more than one CPO at an MSA could be confusing to consumers.¹³⁹

7.6 However, two CPO respondents proposed that The Electric Highway's exclusivity and indeed its contractual arrangements should nevertheless cease immediately in order to enable a complete restructuring of the sector. They proposed that all MSAs (including those not party to the Long-Term Exclusive Arrangements)¹⁴⁰ be required to put in place new open tender processes at each of their sites.¹⁴¹ CPOs would be invited to tender for individual long-term exclusive contracts to operate EV chargepoints at each MSA site, resulting in a similar structure for EV charging as for petrol and diesel where the forecourt operators are generally granted long-term exclusive contracts at each MSA site.¹⁴²

7.7 The CMA's competition concerns primarily arise from the period of exclusivity provided for under the Long-Term Exclusive Arrangements and not Gridserve's contractual ability to operate from the MSA sites as such (on a non-exclusive basis).¹⁴³ The CMA considers that in order to address the competition concerns arising from the Long-Term Exclusive Arrangements, it is therefore not necessary to effect such a wholesale restructuring of the sector.¹⁴⁴

7.8 Further, the CMA remains of the view, as reflected in the EV Charging Market Study,¹⁴⁵ that the most effective form of competition is within-site competition. In particular, within-site competition will enable consumers to more easily

¹³⁷ One of those CPOs submitted that a 10-year period of exclusivity would be warranted (and a longer period if the CPO funds upgraded grid capacity). A further respondent (CPO) indicated that at some sites some form of exclusivity may be required, for example limiting the number of CPOs to two [REDACTED]. It also noted that its own feasibility analysis was premised on competing alongside Gridserve.

¹³⁸ [REDACTED]. See Appendix B, paragraph 10(b).

¹³⁹ [REDACTED]. See Appendix B, paragraph 13 where the CMA specifically addresses this concern.

¹⁴⁰ [REDACTED] indicated that an open tender process for the provision of charging infrastructure should apply to every MSA in the country.

¹⁴¹ [REDACTED]. See Appendix B, paragraphs 22 to 27.

¹⁴² [REDACTED]. Although the same forecourt operator will not have exclusivity over every MSA's sites.

¹⁴³ For example, Gridserve is also present at Welcome Break's MSA sites but not under exclusive arrangements. These arrangements were not within the scope of the investigation due to the lack of exclusivity under the arrangements.

¹⁴⁴ In addition, the CMA considers that the commitments process under the Act would not be an appropriate or feasible mechanism under which to undertake such a wholesale restructuring of the sector. The CMA also refers in this context to the CMA's decision not to launch a market investigation into the sector on 26 May 2021: [Notice decision not to make a market investigation reference \(publishing.service.gov.uk\)](#)

¹⁴⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.10.

switch without having to locate and drive to alternative sites, therefore resulting in lower switching costs and incentivising CPOs to compete on the price and quality of their service.¹⁴⁶

- 7.9 The approach proposed by such respondents would embed long-term exclusivity at each MSA site (albeit that such exclusivity would benefit potentially a greater number of CPOs depending on the outcome of any tender process), as opposed to delivering within-site competition and the resulting benefits of within-site competition for consumers.

Viability of new entry

- 7.10 Two respondents (CPOs)¹⁴⁷ submitted that The Electric Highway's exclusivity should end immediately in particular because it was commercially viable for other CPOs to operate at some MSA sites without exclusivity now,¹⁴⁸ or at least with only limited exclusivity (eg in competition with Gridserve but not a third CPO), absent any public funding under the RCF in particular.¹⁴⁹
- 7.11 One of those respondents further submitted that demand for EV charging outstrips current levels of supply at MSAs, resulting in excess demand, and that this in turn demonstrated that new entry in this sector was currently commercially viable for other CPOs at some MSA sites.¹⁵⁰
- 7.12 That respondent further submitted that the viability of investments was likely to increase within the next 18 months in particular at those sites benefitting from the GRS and potentially at all sites if Ofgem's Access SCR review were to be implemented from 1 April 2023.¹⁵¹ The respondent in particular submitted this could be the case at sites where EV charging demand was expected to be highest and/or grid upgrade costs were relatively low.¹⁵²
- 7.13 As set out at paragraph 6.23 above, the CMA agrees that in principle greater within-site competition at some MSA sites would, absent the Long-Term Exclusive Arrangements, be feasible now, and could increase within the periods of exclusivity afforded to The Electric Highway under the Commitments.

¹⁴⁶ Contrary to some respondents' submissions, the Commitments do not 'mandate' or require within-site competition at any MSA site. The Commitments prevent Gridserve from enforcing exclusivity after the long-stop date of 18 November 2026, or as soon as RCF-funded additional grid capacity at an MSA comes online and is available to be used, at which point the Three MSAs will be able to appoint additional CPOs in order to meet customer demand.

¹⁴⁷ [REDACTED].

¹⁴⁸ [REDACTED].

¹⁴⁹ [REDACTED].

¹⁵⁰ This submission was made in a meeting with the CMA on 5 January 2022. [REDACTED]. The other respondent [REDACTED] also gave an example of a particular charging hub where there were regular reports of queuing at busy times.

¹⁵¹ [REDACTED].

¹⁵² [REDACTED].

However, that does not mean that the Commitments, by affording The Electric Highway a period of exclusivity, are not capable of addressing the CMA's competition concerns for the reasons set out in Section 6 of this decision.

- 7.14 Several CPOs, as set out at paragraph 7.5 above, submitted that exclusivity was required in order to render upfront private investment in this sector viable.¹⁵³ In addition, one further CPO respondent acknowledged that, whilst it considered that additional within-site competition was feasible currently at the amenity area of some MSA sites, it had not undertaken a feasibility study as regards installing EV chargepoints in the amenity areas at MSA sites and acknowledged that at some such sites some form of exclusivity would be required, for example limited to one further CPO.¹⁵⁴ Submissions made by CPOs to the CMA during the course of the CMA's EV Market Study¹⁵⁵ also indicated that whilst they would be willing, in principle, to compete within-site, the business case would become attractive at more sites with the planned Government funding for network connections as part of the RCF, which would ensure there is sufficient network capacity to support the large expansion in the number of chargepoints that will be needed as EV uptake increases.
- 7.15 Whilst acknowledging the potential for within-site competition to develop in particular at some larger, potentially more profitable, MSA sites in advance of the ending of exclusivity under the Commitments, the evidence does not show that such entry would be on a material scale and would be imminent. The Commitments, by setting clear end dates for exclusivity under the Long-Term Exclusive Arrangements, will enable potential competing CPOs to undertake the necessary investments, including engagement with the Three MSAs, with a view to entry much earlier than may otherwise have been the case, absent the Commitments, and with greater certainty.
- 7.16 Further, as set out at paragraph 2.40 above, Gridserve is making significant investments over the period 2021 to 2025 to upgrade and expand its provision of EV chargepoints, including ultra-rapid chargepoints, at the Three MSAs ahead of anticipated demand increasing.
- 7.17 That investment is being deployed across the entire estate of all MSA sites covered under the Long-Term Exclusive Arrangements, including at sites where such investment would not otherwise be viable for any CPO currently, rather than only at specific sites that are the most commercially viable and where other respondents may have sought to enter the sector before The Electric Highway's exclusivity will have ceased under the Commitments. Those investments are aimed at providing a comprehensive and reliable network of

¹⁵³ [REDACTED].

¹⁵⁴ [REDACTED].

¹⁵⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Appendix A, paragraph 65.

EV chargepoints across the Three MSAs, thereby benefitting EV drivers more widely, rather than targeting investments at a selection of larger, potentially more profitable MSAs.

7.18 The Commitments will materially reduce The Electric Highway's periods of exclusivity, particularly as regards (i) the MOTO and Roadchef contracts, and (ii) any of the Three MSAs' sites benefitting from RCF capacity if that additional capacity were to come online and be available to be used before 18 November 2026. The Commitments will therefore ensure that within-site competition is not prevented by the Long-Term Exclusive Arrangements beyond, at the latest 18 November 2026, and that the Long-Term Exclusive Arrangements do not impede the effective roll-out of the RCF.

GRS and Access SCR

7.19 As set out in more detail in Appendix B, the CMA received representations that the GRS and the Access SCR would result in lower connection costs and that therefore the viability of new entry in the short-term at many sites would be increased. Two respondents (CPOs)¹⁵⁶ therefore proposed modifications to the Commitments as described in paragraphs 47 to 49 of Appendix B. Those respondents¹⁵⁷ submitted that such modifications to the Commitments were necessary as otherwise incumbent CPOs (Gridserve but also Tesla and Ionity) would receive 'virtually free' or much lower grid connections due to the GRS whilst other new entrant CPOs would not be able access them at sites where The Electric Highway has exclusivity.

7.20 The CMA has engaged closely with Ofgem and OZEV on these points.

7.21 The CMA recognises that the GRS and the Access SCR (if implemented), by reducing connection costs, may reduce overall investment costs and risks for a new entrant CPO at MSA sites and therefore potentially lower barriers to entry. The CMA also recognises that the accelerated investments made by the DNOs under the GRS may lead to materially lower connection costs for Gridserve (and indeed other incumbents) at MSA sites where new or modified connections are needed as part of their investments to install ultra-rapid chargepoints. Gridserve, like all DNO customers, will also benefit after April 2023 from the Access SCR reforms, if implemented, should it require new or modified grid connections at MSA sites which would otherwise have entailed it paying the upfront capital cost for any required network reinforcement.

¹⁵⁶ [REDACTED].

¹⁵⁷ [REDACTED].

7.22 Ofgem¹⁵⁸ has noted in this regard that:

- (a) The additional grid capacity that is created through the accelerated investments under the GRS will be allocated in the usual way by the DNOs to customers, ie according to the order in which the DNOs receive connection requests.
- (b) Nothing prevents new entrant CPOs from applying for a grid connection when The Electric Highway's exclusivity ceases (by 18 November 2026 at the latest), at which time any reinforcement triggered by CPOs connection will benefit from lower connection costs as a result of the proposed Access SCR reforms.¹⁵⁹
- (c) The Access SCR, if implemented in April 2023, will lower capital investment costs for new entrant CPOs (where reinforcement of the existing network is required) in contrast to the upfront significant costs incurred by Gridserve (and other incumbents) prior to the new regime. Ofgem has also expressed the view that whereas the Long-Term Exclusive Arrangements would impede the effective roll-out of the RCF, it does not appear to Ofgem that they would prevent the accelerated DNO investments being made under the GRS or indeed implementation of the Access SCR.

7.23 The CMA has obtained further information from Gridserve on the impact of the GRS on its investment plan and its forecasted rate of return to determine whether the long-stop date of 18 November 2026 would be acceptable in the context of this case. Gridserve has stated that:¹⁶⁰

- (a) It is planning, subject to the CMA accepting the Commitments, to invest more than £200m in upgrading the Electric Highway's EV chargepoints between 2021 and 2025, of which more than £100m will be invested in ultra-rapid EV chargepoints at MOTO and Roadchef sites;
- (b) Based on quotes received to date from DNOs where Gridserve requires a new or modified connection, the GRS will result in significant cost savings in grid connection costs. However, Gridserve has stated that these savings only translate into an overall reduction in expected costs of investment of approximately [1-5%] to its investment plan.

¹⁵⁸ This was discussed in a meeting between Ofgem and the CMA on 21 January 2022.

¹⁵⁹ Because the Access SCR reforms only address the funding of reinforcement work, if a new CPO were to apply for a connection and there was sufficient grid capacity then the Access SCR reforms would not affect the connection costs.

¹⁶⁰ Gridserve written submission, 'Summary of Impact of Green Recovery Scheme on Gridserve's Investment Plan', 26 January 2022.

- (c) Based on Gridserve's forecast assumptions, assuming a cost saving of [1-5%], the payback period to cover its investment and the same rate of return previously submitted to the CMA across the Three MSAs' contracts would only drop marginally by a few months (from [X] years to [X] years¹⁶¹), and Gridserve's forecasts show that it would not achieve a return on its investment for many years, well beyond the period of exclusivity under the Commitments.
- (d) Any such savings have effectively been neutralised by the fact that many of Gridserve's other costs have also increased in the period since February 2021 when Gridserve's investment plan was modelled, due in particular to the rising cost of material and installation. The increase in these costs is directly linked to its investments in ultra-rapid chargepoints which would benefit from the reduced grid connection costs flowing from the GRS, and is expected to outweigh any cost savings from the GRS.¹⁶²

7.24 In light of the fact that the Access SCR reforms have not yet been approved and implemented, the CMA understands that their impact cannot yet be quantified by Gridserve. However, at those sites where Gridserve will, by April 2023, have already connected to the grid and secured adequate capacity, Gridserve will have incurred the network reinforcement reimbursement connection costs. It will therefore not benefit from the Access SCR reforms until such time as (and only if) it requires to modify its connection, which at many sites will be well beyond the long-stop date of November 2026 under the Commitments.¹⁶³ Moreover, its ongoing network charges will increase as it will incur the higher network customer charges through the proposed means of recovering network reinforcement costs under the Access SCR.¹⁶⁴

7.25 In light of the fact that Gridserve's investment plans and rate of return remain materially unchanged, and Ofgem's confirmation that new entrant CPOs would not be precluded from benefitting from any lower connection charges going

¹⁶¹ The payback period is the number of years it would take Gridserve to recover its investment. Gridserve informed the CMA that a cost saving of [1-5%] would mean that Gridserve would recover its investment in [X] years compared to [X] years absent the cost saving well beyond its periods of exclusivity under the Commitments. [X]

¹⁶² In addition, one of the Three MSAs noted that where CPOs are given access to connections made available by the GRS, they will still have substantial costs to install and energise charging equipment including the costs of connecting to the inbound electricity supply and the charging heads and other on-site infrastructure; the connection to the DNO network is only a relatively small portion of their overall investment. Roadchef's written response to the CMA's follow up queries, 31 January 2022.

¹⁶³ It is likely that as and when such additional capacity is required, it is likely at most sites to be RCF-funded capacity and therefore the costs will be determined by the terms of the RCF funding (which is yet to be finalised).

¹⁶⁴ As set out in paragraph 2.32, grid reinforcement costs would be funded by the DNO, and recovered through the ongoing network charges paid by all DNO customers, rather than by charging the individual customer the upfront capital cost for reinforcing the network where this would be needed for a new or modified connection. Each of the DNO customers would not however necessarily pay an equal contribution.

forward, the CMA considers that it is not necessary for the exclusivity under the Long-Term Exclusive Arrangements to end either now or by April 2023 (either at all MSA sites or those befitting for accelerated upgrades under the GRS) in order for the CMA's competition concerns to be addressed under the Commitments.

7.26 In addition, the CMA considers, as reflected in the CMA's EV Charging Market Study findings¹⁶⁵, that the RCF could not, as currently envisaged, be rolled out at the Three MSAs' sites whilst the Long-Term Exclusive Arrangements were in place, thereby frustrating the aim of the RCF in addressing long-term grid capacity and in providing a key opportunity to open up competition at MSAs. In contrast, the Long-Term Exclusive Arrangements do not impede the DNOs from accelerating investment under the GRS, or indeed any other current or future network investments that may be made by DNOs under the current or next price control before 18 November 2026.¹⁶⁶ The CMA therefore considers that it is not necessary for the Commitments to also have an equivalent provision for the GRS (or any similar fund or scheme)¹⁶⁷ as for the RCF in order to address its competition concerns.

RCF conditions

7.27 The CMA notes the representations it has received from industry participants objecting to the potential conditions for RCF funding, namely the need to hold open tenders in order for there to be at least two (or in some cases more) CPOs at any one site. As set out in paragraphs 4.15 to 4.17, the CMA considers that such a condition will open up competition and benefit consumers. The CMA recommended in the EV Charging Market Study that the UK Government roll-out the RCF as quickly as possible and attach conditions to this funding to enable competition between CPOs within each MSA site – including no exclusivity in future, open tenders and open networks.¹⁶⁸ OZEV is

¹⁶⁵ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.32. OZEV told the CMA that a likely condition for obtaining funding under the RCF will be to require the relevant MSA operators to demonstrate that their site is being opened up to competing CPOs with open networks through an open competitive bidding process. See paragraph 4.15 above.

¹⁶⁶ In addition, the CMA also notes that the RCF involves a significant public subsidy of £950m and under the proposed scheme it will be the MSAs, not the DNOs or indeed CPOs, who will apply for, and if successful be granted, the public funding under the RCF.

¹⁶⁷ In addition, the CMA considers that commitments which would extend Commitment 3.2 to 'similar funds or schemes' to the RCF or the GRS or the proposed Access SCR reforms or 'any form of public spending' would not be sufficiently certain in scope and therefore would fail the requirement that commitments must be capable of being implemented effectively. Moreover, compliance with, and the effectiveness of, any such commitments would be difficult to discern. The CMA also notes that no respondents have referred to any other potential schemes or funds that may be relevant in this context.

¹⁶⁸ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, page 47.

currently considering the evidence obtained during its informal consultation with stakeholders in October and November 2021.

Conclusion

7.28 Having considered all the evidence, including the responses to the NIAC, the CMA has decided for the reasons set out in Sections 6 and 7 of this decision to accept the Commitments for the purposes of addressing the competition concerns it has identified arising from the Long-Term Exclusive Arrangements.

8. The CMA's decision

8.1 For the reasons set out in this decision, the CMA has concluded that the Commitments as set out in Appendix A to this decision address the competition concerns it has identified arising from the Long-Term Exclusive Arrangements and that it is appropriate to accept the Commitments for the purposes of addressing those competition concerns. Accordingly:

- (a) The CMA has decided to accept the Commitments by means of this decision; and
- (b) The CMA will discontinue its investigation with effect from the date of this decision.

Signed:

Ann Pope

Senior Responsible Officer and Senior Director, Antitrust

For and on behalf of the Competition and Markets Authority

Date: 8 March 2022

Appendix A: The 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 agrees to make the following Commitments under section 31A of the Act.

1.3 The agreement to make these Commitments by Gridserve Holdings Limited,¹⁶⁹ Extra MSA Property (UK) Limited,¹⁷⁰ MOTO Holdings Limited,¹⁷¹ MOTO Hospitality Limited,¹⁷² and Roadchef Limited¹⁷³ 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,¹⁷⁴ 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,¹⁷⁵ 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:

¹⁶⁹ Registered office address: Thorney Weir House, Thorney Mill Lane, Iver, England, SL0 9AQ. Company number: 10985636, registered in the UK.

¹⁷⁰ Registered office address: Peterborough Services Great North Road, Haddon, Peterborough, Cambridgeshire, PE7 3UQ. Company number: 03696187, registered in the UK. The commitments were also offered by the following Extra MSAs which were party to an Agreement, as defined below: Extra MSA Peterborough Limited (Jersey company number: 106530); Extra MSA Cobham Limited (Jersey company number: 106523); Extra MSA Cullompton Limited (Jersey company number: 106528); Extra MSA Cambridge Limited (Jersey company number: 106526); Extra MSA Blackburn Limited (Jersey company number: 106531); Extra MSA Beaconsfield Limited (Jersey company number: 106529); and Extra MSA Baldock Limited (Jersey company number: 106527).

¹⁷¹ Registered office address: Toddington Services Area, Junction 11-12 M1 Southbound, Toddington, Bedfordshire, LU5 6HR. Company number: 05754555, registered in the UK.

¹⁷² Registered office address: Toddington Services Area, Junction 11/12, M1 (Southbound), Toddington, Bedfordshire, England, LU5 6HR. Company number: 00734299, registered in the UK.

¹⁷³ Registered office address: Roadchef House, Norton Canes Msa, Betty's Lane, Norton Canes, Cannock Staffordshire, WS11 9UX. Company number: 01713437, registered in the UK.

¹⁷⁴ Including the Extra entities listed in footnote 170.

¹⁷⁵ Including the Extra entities listed in footnote 170.

'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:

(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 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 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,¹⁷⁶ 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.

¹⁷⁶ 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 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 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.

Signed for and on behalf of Gridserve Holdings Limited

Signature:

Name:

Title:

Date

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

Signature:

Name:

Title:

Date

Signed for and on behalf of MOTO Holdings Limited

Signature:

Name:

Title:

Date

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.....

Appendix B: NIAC responses

1. The CMA received:
 - (a) Five responses from EV drivers;
 - (b) One response from a consumer organisation; and
 - (c) Nine responses¹⁷⁷ from former or current CPOs.
2. The CMA held meetings with two respondents¹⁷⁸ in order to clarify aspects of their responses. It also sought clarification from another respondent.¹⁷⁹
3. Several respondents¹⁸⁰ welcomed resolution of the CMA's investigation by way of commitments. None of the substantive responses disagreed with commitments being an appropriate way to resolve the matter under investigation.¹⁸¹
4. Respondents broadly agreed (or did not disagree) with the CMA's assessment of the competition concerns arising from the Long-Term Exclusive Arrangements.¹⁸² The CMA received one response¹⁸³ (from a CPO) which specifically raised concerns with the nature of the CMA's assessment of the competition concerns and in particular the CMA's preliminary views on the relevant market, the extent of Gridserve's market power and the likely foreclosure effects of the Long-Term Exclusive Arrangements.¹⁸⁴ That respondent however stated that, notwithstanding, they considered that the Commitments were a pragmatic, fair and proportionate outcome to the investigation and it did not propose any substantive amendments to the Commitments.¹⁸⁵

¹⁷⁷ As mentioned at footnote 129, two of the responses were from a CPO and its parent company expressing the same views. In those instances, here and elsewhere, where they made the same response we refer to them as one CPO.

¹⁷⁸ [REDACTED].

¹⁷⁹ [REDACTED].

¹⁸⁰ Five CPOs [REDACTED], one EV driver [REDACTED] and the consumer organisation [REDACTED].

¹⁸¹ As mentioned at footnote 120 above, one further respondent (CPO) [REDACTED] noted that accepting the Commitments before the mechanics of the RCF were finalised introduced a greater risk of consumer detriment because the rules around the RCF may be subject to change.

¹⁸² Where a respondent did not raise concerns with the CMA's assessment of the competition concerns arising from the Long-Term Exclusive Arrangements, the CMA has taken that to mean that they did not disagree with the CMA's assessment.

¹⁸³ [REDACTED].

¹⁸⁴ [REDACTED].

¹⁸⁵ [REDACTED]. For the reasons set out in this decision, the CMA remains of the view that the Long-Term Exclusive Arrangements are likely to foreclose competition including its preliminary assessment of the relevant product and geographic markets and The Electric Highway's position on that market(s).

5. One further CPO¹⁸⁶ stated that the CMA's assessment of the competition concerns was incomplete because it assumed that competition within sites was necessary. The CPO considered that the CMA should drive, through commitments, competition between MSA sites rather than competition within MSAs. It also considered that the Commitments should directly address Gridserve's incumbency which, it submitted, would become unassailable by November 2026. Its consequential suggestions for the CMA to re-structure the sector are described and assessed in more detail in Section 7 paragraphs 7.5 to 7.9 above and in more detail at paragraphs 23 to 31 below.
6. The CMA describes in more detail below the responses to the NIAC received together with its assessment of those responses where not addressed earlier in this decision.

EV drivers' responses

7. The CMA received 5 responses from EV drivers.
8. The majority of EV drivers¹⁸⁷ stated that investment in EV charging infrastructure is required. Two respondents further submitted that there should be greater provision of EV chargepoints.¹⁸⁸ In addition, another respondent¹⁸⁹ stated that insufficient investment in EV charging infrastructure had contributed to a delay in the uptake of EVs.
9. The responses further identified that since Gridserve's ownership of The Electric Highway, significant investments had been made, for example by rapidly replacing chargepoints and upgrading the network.¹⁹⁰ One EV driver further submitted that Gridserve had set new standards for the EV charging sector.¹⁹¹
10. In relation to the period of exclusivity afforded to Gridserve under the Commitments, EV drivers said the following:
 - (a) One driver considered that the long-stop date of 2026 may be too long;¹⁹²

¹⁸⁶ [REDACTED] See Appendix B, paragraphs 23 to 24.

¹⁸⁷ [REDACTED].

¹⁸⁸ [REDACTED].

¹⁸⁹ [REDACTED].

¹⁹⁰ [REDACTED].

¹⁹¹ [REDACTED].

¹⁹² [REDACTED]. The respondent submitted that five years seemed a very long period for one CPO to have exclusive use of 'prime charging sites' given the poor provision of high power EV chargepoints both on or near the motorway at present. The respondent did not provide evidence to support this view. The CMA refers to Sections 6 and 7 as to why it considers that the periods of exclusivity under the Commitments address its competition concerns.

- (b) Two EV drivers¹⁹³ queried whether there should be more than one CPO at any MSA site. They noted that competing offerings at individual MSA sites could result in consumer confusion on the competing offers' costs and energy source.¹⁹⁴ One stated that CPOs would find it difficult to predict their income and cover costs if they had to compete with other CPOs at an MSA site.¹⁹⁵ The same driver further noted that maintenance costs may be higher if CPOs operated a small number of chargepoints across many sites, rather than a greater number of chargepoints across a few sites thereby leading to higher costs;
- (c) One driver was supportive of the removal of exclusivity under the RCF Commitment on the basis that Government funding to facilitate the expansion of chargepoints was vital and should not be limited to only one provider.¹⁹⁶

The CMA's assessment

11. With regard to the financial viability for CPOs of within-site competition, the CMA has assessed a number of factors in the round in considering whether to accept the Commitments, as set out in paragraph 6.12(a) to 6.12(f) above. Based on this approach to assessing the Commitments and these considerations, and, in particular, for the reasons set out in the CMA's assessment of Commitment 3 in Section 6 above, the CMA considers that a period of exclusivity is acceptable in the context of this case in order to enable Gridserve to make the necessary investments. In offering the Commitments, Gridserve has confirmed that it will make its significant investments on the basis of the periods of exclusivity provided for under the Commitments.¹⁹⁷
12. The CMA refers to Section 3 paragraphs 3.7 to 3.9 above regarding its findings in the EV Charging Market Study¹⁹⁸ that the most effective form of competition for EV chargepoints is within-site competition.
13. The CMA also acknowledges the concerns raised that the operation of multiple CPOs at an MSA site may create confusion for customers. In that regard, the CMA considers that this concern can be addressed by CPOs ensuring that all offerings are clear and relevant information is easily accessible. In its EV Charging Market Study, the CMA made a number of

¹⁹³ [REDACTED].

¹⁹⁴ [REDACTED].

¹⁹⁵ [REDACTED].

¹⁹⁶ [REDACTED].

¹⁹⁷ See paragraph 7.23(a).

¹⁹⁸ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.10.

recommendations on this point, and which were not limited to MSAs, to make this easier for consumers.¹⁹⁹

Consumer organisations

14. One consumer organisation responded to the Consultation and agreed in principle with the Commitments. However, it was keen for the CMA to understand, before making a final decision, the views of other MSA operators about how the Commitments are likely to impact on their ability to participate in the market, including in practice how the trigger point for ending exclusivity under the RCF commitment will operate. The consumer organisation submitted that in principle it agreed that the proposed trigger point under the RCF commitment should provide a certain and easily identifiable date for MSA operators and CPOs as to when Gridserve would cease to enforce exclusivity, thus enabling MSAs and CPOs to participate in the market.
15. The consumer organisation further highlighted the need for any commitments to improve the ability of other MSAs to secure investment and enter into arrangements with CPOs, enabling them to participate in the market. It also considered that more competition, supported by the removal of exclusivity clauses, should encourage innovation and drive up standards in customer service and consumer choice.

CMA's assessment

16. The CMA did not receive responses to the NIAC from MSAs which are not party to the Long-Term Exclusive Arrangements. The Commitments do not affect the contractual arrangements that other MSAs may have now or in the future with CPOs or their ability to self-supply. The CMA has not received any evidence that the Commitments will in any way impede the ability of other MSA operators to secure investment or otherwise participate in the sector.
17. The CMA also engaged closely with OZEV in particular to understand the implications of the Commitments on MSAs' ability to apply for RCF funding and, as set out in paragraphs 4.11 to 4.17, confirmed that the Commitments would enable the effective roll-out of the RCF.
18. The CMA agrees that competition can support innovation and improve quality but that for the reasons set out in Sections 6 and 7 above, taken in the round, the CMA considers that the Commitments address the competition concerns identified by the CMA arising from the Long-Term Exclusive Arrangements. In particular, the Commitments enable the necessary and significant investments

¹⁹⁹ See, for example, the measures to make public charging easier in [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, Section 7.

to be made now to upgrade The Electric Highway's network and to assist in meeting the Government's target of at least six ultra-rapid chargepoints at each MSA by 2023. By removing, through the Commitments, all exclusivity under the Long-Term Exclusive Arrangements at the latest by November 2026 and importantly by removing the likely impediment to the effective roll-out of the RCF expected in late 2022/early 2023, all CPOs including new entrants will be able to benefit from the significantly expanded publicly-funded grid capacity under the RCF and have certainty that the Long-Term Exclusive Arrangements will not preclude entry at the latest by November 2026.

CPOs

19. The CMA received nine responses from CPOs, including from two in the same corporate group (parent and subsidiary).²⁰⁰ Most welcomed resolution of the investigation by way of commitments and the shortening of exclusivity under the Commitments.²⁰¹ However, as described at paragraph 7.3 above, most CPOs proposed amendments to remove exclusivity altogether and/or shorten the periods of exclusivity provided under the Commitments.
20. Five CPOs²⁰² submitted that the Commitments should provide that exclusivity cease immediately and/or for an earlier long-stop date than 18 November 2026. The reasons and proposed amendments to the Commitments given by the five CPOs differed significantly and are addressed in more detail below under the following headings:
 - (a) Submissions seeking a restructuring of the sector;
 - (b) Submissions that exclusivity was not justified as entry by other CPOs was viable now;
 - (c) Submissions that the Commitments should be amended to take into account Ofgem's GRS and Access SCR.
21. One CPO²⁰³ submitted that exclusivity until November 2026 for MSA sites not benefitting from RCF funding could be a deterrent to competition at some sites. However, the same respondent acknowledged that there was a balance to be made between promoting competition and enabling Gridserve to recoup its investments and that at MSA sites with limited numbers of rapid chargers or limited capacity, promoting competition should not be a primary

²⁰⁰ [REDACTED].

²⁰¹ Only one respondent ([REDACTED]) did not agree with the CMA's assessment of the competition concerns arising from the Long-Term Exclusive Arrangements. See paragraph 4 of Appendix B above.

²⁰² [REDACTED] and [REDACTED].

²⁰³ [REDACTED].

consideration. That CPO did not propose any amendments to the Commitments in light of its response nor did it submit that early resolution of the investigation with commitments was not appropriate.

CPO submissions seeking a restructuring of the sector

22. As set out in Section 7 paragraph 7.5, three CPOs submitted²⁰⁴ that exclusive contracts, or at least some form of exclusivity, were necessary to justify investment in this sector. Two CPOs stated that the CMA should not therefore focus on within-site competition but rather on competition between MSA sites. Rather than allowing The Electric Highway to maintain exclusivity for any period, the CMA should pursue options to re-structure the sector immediately so as to create a level playing field through a process of open tenders at individual sites for exclusive contracts by all MSAs (not just the Three MSAs).
23. One CPO²⁰⁵ submitted that the CMA should not through the commitments 'mandate' within-site competition²⁰⁶ but rather offer CPOs exclusivity at MSAs and drive competition between MSAs.²⁰⁷ The same CPO also submitted that in 5 years' time, Gridserve's incumbency at each site at which it is present (not only those sites where it has exclusivity) would be entrenched and unassailable. It gave as an example, Gridserve's investment at Rugby MSA (operated by MOTO) where it had invested in installing 12 high powered chargepoints in addition to the chargepoints operated by Tesla. In its view, no other CPO would invest in installing additional chargepoints at Rugby MSA and this situation would be replicated across most Gridserve sites by November 2026. As a result, no other CPOs would be able to justify investment and Gridserve would be the sole beneficiary of the RCF.
24. This CPO therefore submitted that the CMA should not accept the Commitments but instead undertake a deeper analysis of the competition concerns affecting EV charging at MSAs with a view to considering options which focus on between-site competition. Such options would include imposing limits on the number and location of MSA sites at which CPOs could operate and requiring all MSAs in the UK to openly tender for EV charging at each of their sites.

²⁰⁴ [REDACTED].

²⁰⁵ [REDACTED].

²⁰⁶ The Commitments do not 'mandate' within-site competition at each MSA. The aim of the Commitments is to ensure that the Long-Term Exclusive Arrangements do not preclude within-site competition. OZEV, in the context of the RCF, may impose as a condition for RCF funding that there is within-site competition (see paragraph 4.15) and the CMA remains of the view that within-site competition is the most effective approach; [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.10.

²⁰⁷ This CPO submitted that a 10-year period of exclusivity would be warranted (and a longer period if the CPO funded upgraded grid capacity).

25. Another CPO²⁰⁸ also disagreed with the CMA that within-site competition was the appropriate model for the sector given the scale of the investments required well ahead of anticipated demand and profitability. Whilst this CPO welcomed Gridserve's offer to shorten the terms of its exclusivity, the respondent considered that the next two to three years were key to investment in the sector ahead of 2030 and that as the Commitments (and the RCF) were designed to secure within-site competition, they would not make it commercially or practically feasible for new entrants to invest in high quality infrastructure at MSAs in 2026 or beyond. Without site-level exclusivity, this CPO considered that it would be all but impossible for new entrants to invest.
26. This respondent also submitted that MSAs should be required to openly tender at their sites immediately to prevent Gridserve (and indeed all other incumbent operators) from having an incumbency advantage over new entrants.²⁰⁹ In terms of commitments, the respondent submitted that Gridserve should be allowed to maintain exclusivity at a set number of MSA sites (or an agreed number of sites within a geographical area) with all remaining sites being re-tendered through an open and fair process with new exclusive contracts being awarded to other CPOs.²¹⁰
27. The respondent²¹¹ submitted that if the CMA were to pursue within-site competition, exclusivity should be reduced to, for example, 2023 in the Commitments.²¹² This respondent also submitted that MSAs should be required to re-tender the provision of EV chargepoints in order to benefit from the RCF. In addition, the respondent submitted that restrictions should be imposed on Gridserve as to how it could use its remaining exclusivity in developing its operations at individual sites to ensure that new entrants would have access to sites and grid capacity. This respondent also submitted that there should also be other measures aimed at ensuring that MSAs operated open and fair tender processes and to enforce fair competition once contracts had been awarded. The respondent further submitted that all MSAs should be prevented from exploiting their position as recipients of RCF funding and landlords to secure an unfair advantage in the CPO sector.

The CMA's assessment

²⁰⁸ [REDACTED].

²⁰⁹ The respondent submitted that Gridserve 'will have the opportunity to invest in a prime location on the site and establish its brand and user-base'.

²¹⁰ [REDACTED].

²¹¹ [REDACTED].

²¹² The respondent gave 2023 as an example but did not give a further explanation for 2023 being an appropriate date for ending exclusivity.

28. The CMA refers to paragraphs 7.5 to 7.9 above in which it addresses within-site competition and why proposals to re-structure the sector along the lines advocated by these respondents is not necessary to address the CMA's competition concerns arising from the Long-Term Exclusive Arrangements.
29. The CMA recognises that Gridserve (and indeed other CPOs) will have some incumbency advantages over new entrants and that such advantages could become more entrenched during the period of exclusivity provided for under the Commitments. However, based on the CMA's approach to assessing the Commitments, as set out in paragraph 6.12(a) to (f) above and for the reasons set out in the CMA's assessment of the Commitments in Sections 6 and 7 of this decision, taken in the round, the CMA considers that the Commitments address the competition concerns identified by the CMA. In particular, as regards to the periods of exclusivity provided for under the Commitments that are acceptable in the context of this case. In addition, as regards Gridserve's ability to actively entrench its position, the CMA observes that:
- (a) At most MSAs the amenity space available for EV chargepoints is considerably larger than the space required by The Electric Highway.
 - (b) Under the terms of its contracts with the relevant MSAs, The Electric Highway must obtain the agreement of the MSAs on the number and location of EV chargepoints that The Electric Highway can install.²¹³
 - (c) Gridserve is taking a significant risk with the planned significant upfront investments it is making and will not make a return on its investments until well beyond the long-stop date in the Commitments. It is therefore highly unlikely that it will make significant additional investment (even if agreed to by the Three MSAs) at the relevant MSA sites without exclusivity until November 2026.²¹⁴
 - (d) The RCF will create sufficient capacity for EV charging for the long-term, which would become available to all CPOs (whether incumbent or new) that successfully tender for the open tender contracts. Moreover, any new entrants will be able to request additional capacity in the usual way through the DNOs and, if the Access SCR review is implemented, they

²¹³ In addition, as described at paragraph 2.44(c) above, at Extra sites, Gridserve cannot install ultra-rapid chargepoints and is limited from installing any additional chargepoints.

²¹⁴ We note that, at a meeting on 5 August 2021, Gridserve informed the CMA that it had paused or slowed the roll-out of chargepoints because of uncertainty over its exclusive rights pending the outcome of the CMA's investigation.

will potentially benefit from lower connection costs than those that Gridserve has incurred to date and/or will incur until April 2023.²¹⁵

- (e) Demand for EV charging is anticipated to increase significantly between now and 2030 and well beyond. The CMA refers to estimates that in England alone by 2030, 2,300 high powered chargepoints will be needed at MSAs to support the shift to EVs.²¹⁶
30. It is also unclear to the CMA, what type of restrictions would be appropriate to impose on Gridserve under the Commitments to address the respondent's concerns (as set out at paragraphs 25 to 27 above) over Gridserve's incumbency advantages at the end of the period of exclusivity that would be sufficiently clear and certain to be effective.²¹⁷ Moreover, the CMA does not consider that it is appropriate for the CMA to limit the extent of Gridserve's planned investments at individual MSA sites. Gridserve's investments are necessary in order to facilitate the Government's de-carbonisation agenda including meeting the Government's 2023 target for at least six ultra-rapid chargepoints at each MSA.
31. With regard to the conditions that may or may not be imposed on MSAs in order to obtain funding under the RCF, that is a matter for OZEV. OZEV has consulted on some aspects of the fund and will be consulting further during the course of 2022 with a view to having the final terms and award criteria for the RCF in place in early 2023. As described at paragraph 4.15, OZEV has been consulting on requiring MSA operators to have a minimum of two CPOs at any particular site (excluding closed network CPOs) and requiring MSAs to commit to openly tendering for EV chargepoints. These requirements would be in line with the CMA's recommendations in the EV Charging Market Study.²¹⁸

Submissions that exclusivity is not justified and/or should be shortened even further as entry is viable now

²¹⁵ At Roadchef sites, Gridserve does not have the direct relationship with the DNOs. Roadchef allocates grid capacity it obtains from the relevant DNO between the amenity area, EV CPOs and the forecourt operators.

²¹⁶ See paragraph 2.18 above. One respondent [redacted] submitted that the Government should not mandate a progressive increase in the number of chargepoints provided at MSAs or large fuel sites. CPOs should be given the opportunity to make a commercial return on assets. If a mandate was consistently ahead of existing demand, the locations would not be commercially viable. The respondent submitted that CPOs would respond to market forces to meet demand. The CMA notes that mandating the number of EV chargepoints is not a matter for it (but would be a matter for Government for example in any conditions for example imposed by the RCF and/or wider legislative requirements that might be put in place [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021).

²¹⁷ The respondent suggested reducing the period of exclusivity in addition to placing restrictions on the extent to which Gridserve could use its remaining exclusivity to develop the site (ensuring that when competitors did have access to the site, there would be sufficient space and grid capacity).

²¹⁸ [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.45.

32. In addition to the CPO respondent²¹⁹ submission referred to at paragraph 25 above, three further CPOs²²⁰ suggested that The Electric Highway's exclusivity should be ended immediately or shortened even further under the Commitments.²²¹
33. One CPO respondent,²²² whilst agreeing that commitments were an appropriate way of resolving the investigation, did not consider that the Commitments fully addressed the CMA's competition concerns. This was primarily because it considered that, but for the Long-Term Exclusive Arrangements, it and other CPOs were able to invest in the short-term and would be willing to compete against Gridserve at the amenity areas of MSA sites without the need for public subsidy (including the RCF).²²³ By allowing The Electric Highway's exclusivity to continue until November 2026, this would unnecessarily restrict the development of competition for a significant period and at a time when competition was necessary to accelerate investment in EV chargepoint roll-out. It highlighted that in addition, it considered that the levels of investment required to enter and compete would in the short to medium-term reduce as a result of (i) the GRS²²⁴ and (ii) Ofgem's proposed Access SCR review, after April 2023, if implemented.

²¹⁹ [REDACTED].

²²⁰ [REDACTED].

²²¹ Another [REDACTED] submitted that there were challenges arising in the provision of charging at MSAs and barriers to the expansion of en-route charging at these locations, despite significant investment interest – notably where exclusive contracts were in place.

²²² [REDACTED].

²²³ In addition to its own plans, this respondent cited evidence of other CPOs willing to compete against Gridserve including evidence from the EV Charging Market Study. It also cited Ionity at Extra sites and Instavolt at Welcome Break sites. As set out at paragraph 2.44 above, Ionity has a long-term exclusive contract to install ultra-rapid chargepoints at Extra's sites and Gridserve is precluded under the terms of that contract from installing such chargepoints. Gridserve does not have exclusivity at Welcome Break's sites and is therefore not investing in installing ultra-rapid chargepoints at Welcome Break sites. The respondent also cited Gridserve's planned investments as evidence that investment is attractive to CPOs without the need for public funding. However, such investment is being made on the basis of the Long-Term Exclusive Arrangements and therefore it is unclear to the CMA how Gridserve's planned investments evidences the viability of within-site competition currently. As regards its own plans, the respondent indicated that whilst it had not undertaken a feasibility assessment of entering at the amenity areas of MSAs in direct competition with Gridserve, it considered based on its knowledge of the costs of installing and operating chargepoints that this would be feasible currently although some form of exclusivity (eg limiting sites to two CPOs) may be necessary at some sites.

²²⁴ The respondent contrasted the GRS with the RCF on the basis that the additional network capacity under the GRS was certain as the relevant projects at the 40 MSAs had been approved and the upgrades should in principle be completed by April 2023. This contrasted with the RCF where there was still considerable uncertainty as to when and which MSA sites would benefit from RCF funding. The same respondent also made a number of points on the structure of the GRS and in particular sought to characterise the GRS as providing 'additional funding by DNOs' to CPOs due to the substantially lower connection costs following the network upgrades. The CMA (having consulted Ofgem) disagrees with this characterisation. The GRS does not provide funding by the DNOs to customers such as the MSAs or CPOs. The CMA notes in this context that the GRS merely incentivises the DNOs to accelerate planned network upgrades under their current price control and does not change, as implied by the respondent, the way in which the DNOs charge customers for network upgrades undertaken as

34. In respect of the RCF in particular, the respondent highlighted that it was far from clear that the RCF would apply to all MSA sites and from when it would apply. It referred to Government guidance issued in September 2021 which stated that the Government would only intervene when there was clear market failure.²²⁵ The respondent therefore submitted that RCF funds would not be available at MSA sites where investment was viable and therefore competition would be frustrated the longest at those MSA sites where investment would otherwise be viable without the RCF eg because EV chargepoint demand was sufficiently high and/or because grid connection costs were not prohibitive.
35. In addition, whilst the RCF was designed to future-proof grid capacity in the long-term (25 to 30 years), profitable private investment could occur on a shorter time horizon and the Commitments would prevent such competition which would otherwise occur. Even at those MSA sites where public subsidy was necessary, competition could take place without the benefit of the RCF in light of other schemes, in particular the GRS which was accelerating grid capacity upgrades and would significantly reduce grid connection costs.
36. Moreover, this CPO respondent disagreed with the CMA that the investments that Gridserve was making ‘justified’ any further period of exclusivity. The respondent submitted that The Electric Highway had already benefitted from many years of exclusivity and that another five years of exclusivity were therefore unlikely to be justifiable based on The Electric Highway/Gridserve’s need for it to make a return on its initial or subsequent investments.²²⁶ The respondent also submitted that any justification for any further period of exclusivity needed to be weighed against the likely foreclosure effects of the exclusivity. The respondent submitted that, based on the CMA’s own evidence and analysis, the Long-Term Exclusive Arrangements were already having foreclosure effects and in its view these were significant and therefore there was no compelling evidence that such foreclosure should be allowed to continue.
37. The CPO respondent submitted that the Commitments should be amended to:
- (a) Require Gridserve to cease enforcing exclusivity immediately; or

part of their planned investments. Moreover, a significant proportion of the accelerated network investments are being carried out within the DNOs’ existing allowances under the current price control.

²²⁵ The respondent [redacted] referenced <https://www.gov.uk/guidance/rapid-charging-fund> (28 September 2021).

²²⁶ In this context the respondent referred to the sources of funding that The Electric Highway obtained prior to Gridserve acquiring The Electric Highway and the lack of network growth between 2016 and Gridserve’s acquisition of The Electric Highway, together with the evidence referred to in the EV Charging Market Study on customer dissatisfaction. The CMA notes that The Electric Highway under its previous ownership was loss-making (source: The Electric Highway accounts for year ended 30 April 2021 as filed at Companies House).

- (b) At the very least firstly, require Gridserve not to renew or to enforce the exclusivity provisions in the Long-Term Exclusive Arrangements after 1 April 2023 at the latest; and secondly, include in references to EV chargepoints which benefit from the RCF-funded additional grid capacity (or to the RCF-funded grid capacity more broadly), EV chargepoints that have benefited from the GRS and any similar funds or schemes now or in the future. This would allow Gridserve a further 18 months taking into account to the extensive period of exclusivity that The Electric Highway had already enjoyed. The CMA refers to paragraphs 7.19 to 7.26 above and paragraphs 47 to 50 below with regard to the submissions made on the impact of the GRS and Ofgem’s Access SCR review which were cited as the reason why investment would be more viable even in the absence of the RCF by April 2023. The CMA also refers to paragraph 7.26 concerning similar funds or schemes now or in the future.
38. Another of these CPOs²²⁷ noted that exclusivity should cease ‘in the very near future’ because Gridserve would otherwise remain the largest incumbent CPO at almost every MSA site for the foreseeable future and retain a very high share of the market (greater than 50%) for public rapid charging at MSA sites in the UK. The CPO added that even where exclusivity arrangements at MSA sites had ended, the significant investments made by Gridserve in the intervening period were likely to help preserve their dominant position and would likely deter other competing CPOs from making investments. The respondent submitted that a further potential consequence of the Commitments was that the RCF could prove to predominantly support the business activities of one dominant incumbent.
39. In order to more successfully open up competition in the market, this respondent therefore recommended: first, for Gridserve’s exclusivity periods at a substantial proportion of its MSA sites to cease ‘in the very near future’; and second to ensure competition between MSA sites, as well as competition within MSA sites, such that Gridserve should be prevented from holding a presence at every MSA site.²²⁸
40. A further one of these CPOs²²⁹ noted that CPOs, including the respondent, were willing and able to invest now in order to build a reliable charging infrastructure, and that competition should be opened up immediately – whether or not the RCF was utilised – to ensure the industry was working in

²²⁷ [REDACTED].

²²⁸ The respondent submitted that this could be achieved by requiring divestment of some sites and enforcing an open tender process for the provision of charging infrastructure. Further, this tender process should be accessible to any CPO that could demonstrate sufficient experience/competence and had no neighbouring sites. The CMA refers to paragraphs 7.5 to 7.9 above in relation to restructuring the sector.

²²⁹ [REDACTED].

the best interest of consumers. This respondent submitted that in order to achieve the Government's 2030 objective, drivers needed confidence to make the switch to an EV presently, otherwise delivering that transition in the final years of the current decade would be impossible. It submitted that drivers needed to see a reliable, national charging infrastructure that included sufficient motorway provision. If drivers could see positive steps to improve motorway charging presently, there was an opportunity to accelerate uptake.

41. In respect of demand for EVs, this respondent submitted that the CMA was failing to accept that demand would only likely be low until 2026 because drivers did not yet have the confidence in public charging to make the switch. If drivers could see positive steps to improve motorway charging presently, there was an opportunity to accelerate uptake.²³⁰
42. The respondent²³¹ also submitted that where Gridserve benefitted from exclusivity, it had the competitive advantage of being able to access all of the economically viable grid capacity at MSA sites thereby potentially hindering future competition.

The CMA's assessment

43. The CMA refers to paragraphs 6.12(a) to (f) on the CMA's approach to assessing the Commitments and, in particular, the CMA's assessment of Commitment 3 in Section 6 above as to why, notwithstanding the likely foreclosure effects of The Electric Highway's exclusivity, the CMA considers that taking into account Gridserve's new investments, as well other relevant and material factors set out in those paragraphs above, a further period of exclusivity as provided under the Commitments is acceptable in the context of this case.
44. The CMA acknowledges that The Electric Highway has already had the benefit of a lengthy period of exclusivity. By accepting the Commitments, the CMA is not taking a decision as to whether or not these previous periods of exclusivity were in breach of the Act. In the context of assessing whether the Commitments address the CMA's competition concerns, the CMA has assessed the question on a forward-looking basis only as described in

²³⁰ Specifically in relation to the number of chargepoints, this CPO noted that whilst Gridserve had made progress swapping the older, unreliable charging units to modern units during 2021, there had been no expansion in capacity. Without significant expansion, most MSAs subject to Gridserve's exclusivity had just one or two rapid chargers on site (excluding the Tesla closed network). The CPO estimated that this meant that fewer than 50 cars could be charged at each location per day, which it considered to be already insufficient at the current time, as it considered 16 rapid chargepoints to be the minimum number of required chargepoints currently. The CMA notes in this context that, as at September 2021, The Electric Highway had 281 50kW EV chargepoints. Gridserve's planned investments will deliver an additional [REDACTED] high powered EV chargepoints by [REDACTED].

²³¹ [REDACTED].

paragraphs 6.6 and 6.12 above. It has focused its assessment on the new and significant investments being made by Gridserve between 2021 and 2025 in the context of the sector as it is currently and is likely to develop in the short to medium-term.²³²

45. The CMA also refers to paragraphs 29 and 31 above with regard to the points made on Gridserve's incumbency advantage and market share (linked to the proposal that exclusivity should cease and the market should be restructured), and its ability to access all available grid capacity. The CMA also refers to paragraphs 2.6 and paragraph 6.27 to 6.31 above on the nature and scope of the RCF, and the CMA's assessment of the Commitments in relation to the RCF which will likely be contingent on multiple CPOs having the opportunity to access the RCF-funded capacity at the relevant individual MSA sites, through an open competitive bidding process (rather than only 'supporting' one incumbent), and, which is not intended to be limited to MSAs where it is not economically viable on an incremental basis for private investment to secure required grid capacity.
46. As regards uncertainty regarding the RCF, the CMA refers to paragraph 54 below.

Submission that the Commitments should be modified such that exclusivity ceases when the GRS or public funding schemes support EV charging infrastructure at a site

47. In addition to the CPO respondent²³³ who considered that at the very least exclusivity should cease by 1 April 2023 as described in paragraphs 33 to 37 above, a further CPO²³⁴ submitted Commitment 3.2 should be extended to MSA sites which had successfully attracted GRS 'funding' (or any other form of public funding).²³⁵
48. This respondent²³⁶ submitted that the GRS connections at MSA sites provide an important stop-gap measure for bringing much needed capacity until RCF funding arrives. Without GRS 'funding', the costs for bringing this additional capacity online would be prohibitively expensive and would have to wait for the RCF. This respondent also submitted that, as a result of the GRS, incumbents would receive 'virtually free' connections whilst others (such as

²³² See paragraphs 6.3 to 6.13 above for further details on the approach taken by the CMA in assessing whether the Commitments address its competition concerns in this case.

²³³ [REDACTED].

²³⁴ [REDACTED]. One of these CPOs [REDACTED] also supported the immediate cessation of The Electric Highway's exclusivity provisions and in any event, by April 2023 at the latest.

²³⁵ The nature of the GRS is described in Section 2 paragraphs 2.28 to 2.32 above. The GRS does not involve 'funding' by Ofgem or indeed any form of public funding, unlike the RCF.

²³⁶ [REDACTED].

itself) would not be able to access them at sites where The Electric Highway has exclusivity.

49. Both respondents²³⁷ also considered that the Commitments should not only be modified such that exclusivity would cease when investments made under the GRS are completed but that the same should apply to:
- (a) 'any similar funds or schemes now or in the future';²³⁸ or
 - (b) 'any other form of public spending'.²³⁹

The CMA's assessment

50. The CMA refers to Section 7 paragraphs 7.19 to 7.26 above in particular where it addresses these submissions.

RCF commitment

51. No CPO respondents submitted that there should not be an RCF commitment.²⁴⁰ One respondent (CPO)²⁴¹ noted that accepting the Commitments before the 'mechanics' of the RCF were finalised introduced a greater risk of consumer detriment because the rules around the RCF may be subject to change. Most respondents²⁴² who specifically addressed the RCF Commitment welcomed the RCF Commitment.
52. No respondents proposed any modifications to the RCF Commitment with the exception of:
- (a) the two respondents²⁴³ (CPOs) described in paragraphs 47 to 49 above who wanted its provisions extended to cover the GRS and any other schemes; and
 - (b) one CPO²⁴⁴ commented that in light of the lack of public visibility over the roll-out of the RCF, the trigger point for the removal of The Electric

²³⁷ [redacted].

²³⁸ [redacted].

²³⁹ [redacted].

²⁴⁰ Save implicitly to the extent that CPOs called for exclusivity to be removed immediately in which case, the RCF Commitment would be unnecessary as described in paragraphs 32 to 42 above.

²⁴¹ [redacted].

²⁴² [redacted].

²⁴³ [redacted].

²⁴⁴ [redacted]. This CPO noted that there was a lack of public visibility on the RCF scheme roll-out and how the scheme will become operational and that in light of this, it was not clear when the existing exclusivity arrangements will cease.

Highway's exclusivity did not provide an easily identifiable date for MSAs and other CPOs as to when Gridserve would cease to enforce exclusivity.

- (c) One further respondent (CPO)²⁴⁵ did note that accepting the Commitments before the 'mechanics' of the RCF are finalised introduces a greater risk of consumer detriment because the rules around the RCF may be subject to change.

The CMA's assessment

- 53. In relation to the request for the provisions of the RCF Commitment to be extended to cover the GRS and other schemes, reference is made to the assessment at paragraphs 7.19 and 7.26 above.
- 54. In response to the submission raised by one of the CPO respondents that the trigger point for the removal of The Electric Highway's exclusivity did not provide an easily identifiable date for MSAs and other CPOs as to when Gridserve would cease to enforce exclusivity, OZEV has confirmed that key dates in relation to the RCF would be clearly identified and publicised in advance. This would include dates concerning:
 - (a) the deadline for applying for RCF funding in order to allow CPOs and MSAs to participate in the sector, and
 - (b) the timing for RCF-funded grid capacity to be online and available to be used at each site, and therefore when exclusivity would cease. This would be communicated to successful applicants for RCF funding.
- 55. In response to the CPO respondent's submission that the CMA should not accept the Commitments before the 'mechanics' of the RCF are finalised, the CMA notes that 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.²⁴⁶

²⁴⁵ [REDACTED].

²⁴⁶ [Future of transport regulatory review: zero emission vehicles](#), 28 September 2021. This follows the CMA's recommendations from the EV Charging Market Study which recommended that the Government attach conditions to the RCF funding to enable competition between CPOs within each MSA site applying for the fund. Such recommended conditions included no future exclusivity, open tenders and 'open' networks (see [CMA's EV Charging Market Study](#), Final Report, 23 July 2021, paragraph 4.45)

56. The CMA also notes in this context that the Commitments address the competition concerns quickly and clearly and there is benefit to consumers in Gridserve's planned investments being rolled out quickly in particular in light of the Government 2023 target of at least six ultra-rapid chargepoints at each MSA.
57. Further, as set out in paragraph 6.9 above commitments are appropriate for addressing specific competition concerns arising from the conduct under investigation; they are not a suitable means of re-shaping a market in order to seek to achieve the most competitive all-round outcome without the benefit of a full in-depth investigation whether under the Act or under the CMA's broader market investigation powers.
58. The Commitments address the CMA's competition concerns by removing the impediment arising from the Long-Term Exclusive Arrangements to the effective roll-out of the RCF, which is anticipated to begin in late 2022/early 2023. Enabling the RCF to be rolled out effectively is not contingent on the finalisation of the RCF mechanics and OZEV has confirmed that the Commitments address the impediments to the effective roll-out of the RCF arising from the Long-Term Exclusive Arrangements. In the absence of the Commitments, the Long-Term Exclusive Arrangements would continue to impede the effective roll-out of the RCF, thereby limiting the effectiveness of the RCF in addressing a major barrier to entry and expansion in this sector and therefore to investment and competition. It would also be difficult for the MSAs to begin to prepare to make applications for RCF funding with no certainty as to whether they would be able to meet the criteria for such funding due to the Long-Term Exclusive Arrangements.

Further modifications to the Commitments proposed by respondents

59. On the question of the industry working for consumers, one CPO respondent²⁴⁷ noted that there is no clear commitment from Gridserve in respect of what will happen between now and 2026, including whether it will install enough EV chargepoints.
60. Another respondent (CPO)²⁴⁸ submitted that the Commitments would benefit from a clear and fast track dispute resolution procedure in the event that a CPO believed that Gridserve had failed to comply with the Commitments.

The CMA's assessment

²⁴⁷ [REDACTED].

²⁴⁸ [REDACTED].

61. In response to the CPO respondent's submission that there is no clear commitment from Gridserve in respect of what will happen between now and 2026, as set out in paragraph 2.40 above Gridserve has confirmed to the CMA²⁴⁹ that it is investing (and plans to invest) over £200 million between 2021 and 2025. This programme of investment also includes an investment of over £100m in ultra-rapid EV chargepoints.
62. Moreover, acceptance of the Commitments does not prevent the CMA from continuing its investigation, making an infringement decision, or giving a direction where, among other matters, the CMA has reasonable grounds for believing that there has been a material change of circumstances since the Commitments were accepted²⁵⁰ (for example, in the event that such investments are not made by Gridserve).
63. In response to the CPO respondent's submission that there should be a clear and fast track dispute resolution procedure, the Commitments provide for the Parties to provide the CMA with all information and documents reasonably required by the CMA to monitor and ensure compliance and also to report annually to the CMA on compliance. Moreover, CPOs will be able to raise compliance concerns directly with the Parties and/or the CMA. In the event of non-compliance without reasonable excuse, the CMA has the power to apply to the court for an order requiring the default to be made good.²⁵¹

²⁴⁹ *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 (ie ending in 2035, with the precise date depending on the start date for the individual site).

²⁵⁰ Section 31B(4) of the Act.

²⁵¹ Section 31E(1) of the Act.