

From: Ann Pope  
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Competition and Markets Authority

8 March 2022

## **Open letter to motorway service area operators and electric vehicle chargepoint operators**

Dear Sir/Madam,

Supporting the uptake of electric vehicles (EVs) through a comprehensive and competitive charging network is of increasing importance, particularly given the UK government's recent ban on the sale of new petrol and diesel cars by 2030 and its wider commitment to make the UK net zero by 2050.<sup>1</sup> The provision of en-route EV chargepoints available for EV drivers to use during long journeys, including along motorways at motorway service areas ('MSAs'), is crucial to encouraging EV take-up. Extensive, rapid and reliable en-route charging can help address 'range anxiety' and build consumer trust in switching to EVs.

As you will be aware, the Competition and Markets Authority ('CMA')<sup>2</sup> completed last summer a market study<sup>3</sup> into EV charging which focused on, among other matters, whether the sector can deliver the scale and pace of investment needed and in a way that enables a competitive sector to develop and deliver good outcomes for consumers. The market study also considered what measures can help to unlock competition and incentivise investment in the sector.

One of the concerns that the CMA identified as part of its market study was the existence of long-term exclusive arrangements for the supply of EV chargepoints on or near motorways. In particular, the CMA identified that such arrangements at MSAs were acting as one of two major barriers to increasing investment and competition, hindering the emergence of greater investment and competition in en-

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<sup>1</sup> [Government takes historic step towards net-zero with end of sale of new petrol and diesel cars by 2030](#), 18 November 2020.

<sup>2</sup> The CMA is an independent non-ministerial UK government department and is the UK's principal competition and consumer authority.

<sup>3</sup> The CMA published its [Final Report](#) on 23 July 2021.

route EV charging (the other barrier to entry being the high cost of upgrading grid capacity).

The CMA's market study also raised concerns that the existence of these long-term exclusive arrangements could undermine the roll-out of the UK government's Rapid Charging Fund ('RCF') in England,<sup>4</sup> which aims to address grid capacity constraints.

## The CMA's investigation

In light of the issues arising in the market study, the CMA launched an investigation under the Competition Act 1998 (the 'Act') into suspected breaches of the Chapter I and Chapter II prohibitions of the Act.<sup>5</sup>

The CMA's investigation related to long-term exclusive arrangements for the supply of EV chargepoints at MSAs which were entered into between a chargepoint operator ('CPO'),<sup>6</sup> and three MSA operators<sup>7</sup> ('the Arrangements'). Under the Arrangements, the CPO has the exclusive right, subject to certain limited exceptions, to supply, install, operate and maintain EV chargepoints at the relevant MSA operators' sites.

The CMA was concerned that the Arrangements may have, or may have had, the likely effect of foreclosing other CPOs (including MSA operators themselves, which could otherwise self-supply) from providing EV chargepoints at MSAs. The CMA was also concerned that, going forward, the Arrangements would impede the effective roll-out of the RCF. The CMA's competition concerns in relation to the Arrangements are set out in section 4 of the [decision to accept commitments](#).<sup>8</sup>

Following its public consultation on proposed commitments offered to the CMA,<sup>9</sup> the CMA has concluded that for the purposes of addressing its competition concerns regarding the Arrangements, it is an appropriate exercise of its discretion to accept the commitments in this case. The CMA has therefore today announced its decision<sup>10</sup> to accept those legally binding commitments.

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<sup>4</sup> [Rapid charging fund - GOV.UK \(www.gov.uk\)](#)

<sup>5</sup> The Chapter I prohibition refers to section 2(1) of the Act which prohibits (among other matters) agreements which may affect trade within the UK (or part(s) of it) and which have as their object or effect the prevention, restriction or distortion competition within the UK (or part(s) of it). The Chapter II prohibition refers to section 18(1) of the Act which prohibits any conduct which amounts to the abuse of a dominant position within the UK (or part(s) of it) if it may affect trade within the UK (or part(s) of it).

<sup>6</sup> The Electric Highway Company Limited, which was acquired by Gridserve Holdings Limited in June 2021.

<sup>7</sup> MOTO Hospitality Limited/MOTO Holdings Limited, Roadchef Limited, Extra MSA Property (UK) Limited and the following of its subsidiaries: 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.

<sup>8</sup> [Decision to accept commitments](#).

<sup>9</sup> [Notice of intention to accept binding commitments in relation to certain exclusive arrangements for the supply of electric vehicle chargepoints](#), 17 November 2021.

<sup>10</sup> [Decision to accept commitments](#).

Whilst acceptance of the commitments means that the CMA's investigation has been closed, it does not prevent the CMA from taking further action in this sector where it suspects infringements of competition law.

### **Obligations to comply with competition law**

Long-term exclusive arrangements in this sector can be a barrier to investment by, and competition from, rival CPOs (potentially foreclosing them) and impede the take up of EVs. A period of exclusivity in agreements may be acceptable in certain circumstances, including in order to support significant investment in nascent sectors. However, each case needs to be assessed with due consideration for its specific circumstances and must be evaluated in the light of its own facts.

The CMA takes any suspected contravention of competition law seriously and is prepared to take further action in this sector if appropriate, paving the way for greater investment, choice and competition for EV drivers ahead of the 2030 ban on the sale of new petrol and diesel cars. The consequences of the CMA reaching a final finding that competition law has been infringed are significant and include the possibility of financial penalties.<sup>11</sup>

The CMA is publishing this open letter to encourage all MSA operators and CPOs to ensure that their arrangements comply with competition law and to make any necessary changes to existing commercial arrangements to ensure compliance. This applies to current and future arrangements for the supply of EV chargepoints in all locations, not just at MSAs. We encourage firms to seek independent legal advice as may be required to ensure compliance with competition law.

Yours faithfully,

Ann Pope  
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CMA

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<sup>11</sup> The CMA may impose penalties of up to 10 per cent of a company's worldwide turnover where it finds that a company has breached the Chapter I and/or Chapter II prohibitions of the Act. The CMA has discretion when deciding the amount of penalties imposed and this will vary, among other factors, according to the seriousness of the infringement and the deterrent effect.