

Anticipated acquisition by Ritchie Bros. Auctioneers Incorporated of Euro Auctions Group

Decision on relevant merger situation and substantial lessening of competition

ME/6958/21

The CMA's decision on reference under section 33(1) of the Enterprise Act 2002 given on 4 March 2022. Full text of the decision published on 14 April 2022.

Please note that [X] indicates figures or text which have been deleted or replaced in ranges at the request of the parties or third parties for reasons of commercial confidentiality.

SUMMARY

1. Ritchie Bros. Auctioneers Incorporated (**Ritchie Bros**) has agreed to acquire Euro Auctions Group (which consists of Euro Auctions Limited, William Keys & Sons Holdings Limited, Equipment Sales Ltd, and Equipment & Plant Services Ltd and their subsidiaries, as well as certain assets belonging to Euro Auctions FZE, together **Euro Auctions**) (the **Merger**). Ritchie Bros and Euro Auctions are together referred to as the **Parties**.
2. The Parties facilitate the sale and purchase of used heavy machinery for the construction, agriculture and transport industries via auctions, listing websites and marketplaces.
3. The Competition and Markets Authority (**CMA**) believes that it is or may be the case that each of Ritchie Bros and Euro Auctions is an enterprise; that these enterprises will cease to be distinct as a result of the Merger; and that the turnover test is met. Accordingly, arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation.

Frame of reference

4. In determining the product frame of reference, the primary overlap between the Parties is in the supply of auction services for used heavy construction machinery. Sales within this frame of reference account for the majority of the Parties' gross transaction value (**GTV**) in the UK. The Parties' auction services operate as two-sided platforms, with the Parties competing to attract buyers of machinery on one side and sellers on the other.
5. The CMA assessed whether the product frame of reference should be widened to include auction services for heavy machinery used in agriculture and transport. Based on the evidence received from the Parties and third parties, the CMA found on the demand-side that:
 - (a) for buyers with demand for specific machinery (eg particular construction equipment), machinery for other industries (eg agriculture or transport) is generally not substitutable;
 - (b) buyers with a general demand for heavy machinery (such as resellers) tend to specialise in a particular industry (eg construction) and will seek platforms with a large volume of machinery for that particular industry; and
 - (c) sellers of heavy machinery typically specialise in a particular industry and seek platforms that have a large pool of buyers for machinery for that particular industry.
6. On the supply-side, the CMA found that:
 - (a) the Parties' sales are mostly derived from auctions of construction machinery; and
 - (b) other auction services suppliers are mainly focused on one particular industry.
7. In light of this evidence, the CMA did not consider it appropriate to widen the frame of reference to include auction services for heavy machinery used in agriculture and transport.
8. The CMA also assessed whether the other methods of sale for heavy machinery should be included in the product frame of reference, including marketplaces, listings, brokers, dealers and OEM sales. Based on the evidence from the Parties and third parties, the CMA found that:
 - (a) other sales methods offer materially different services for buyers and sellers of heavy machinery; for example, marketplaces offer less liquidity than auctions (with fewer buyers and sellers), they offer "buy now" functionality (which auctions do not offer), they require sellers and buyers

to deal directly with each other (unlike auction services, which are intermediate), and they do not generally offer storage options for equipment prior to sale (unlike auction services);

- (b) the vast majority of the Parties' buyers and sellers did not list providers of other methods of sales as alternatives to the Parties; and
 - (c) the Parties' internal documents did not indicate that their auction services face a strong constraint from other methods of sales, nor that customers see marketplaces as an alternative to auctions.
9. The CMA therefore did not consider it appropriate to widen the frame of reference to include other methods of sale for heavy machinery.
10. In terms of the geographic frame of reference, the CMA assessed the Merger on a UK-wide basis in light of evidence that:
- (a) both Parties have physical auction and storage sites in the UK, and the equipment sold through their auctions is often heavy and therefore expensive to transport long distances;
 - (b) the Parties' customers did not consider overseas auction providers to be an alternative; and
 - (c) the set of competitors active in the UK is distinct from other countries.
11. The CMA has therefore assessed the impact of the Merger in the supply of auction services for used heavy construction machinery in the UK.

Competitive assessment

12. The CMA's competitive assessment considered the closeness of competition between the merging parties; the constraint from alternative suppliers of auction services for used heavy construction machinery; and the constraint from alternative methods of sale.
13. The CMA found that the Parties have a very high combined share of supply of [80-90]% by GTV in the supply of auction services for used heavy construction machinery in the UK, with an increment of [10-20]%. The CMA found that Euro Auctions is by far the largest supplier of auction services for used heavy construction equipment in the UK, with Ritchie Bros being the next largest UK supplier.
14. The CMA found that the Parties compete closely, as evidenced by their internal documents and third-party views. Ritchie Bros' internal documents identify Euro Auctions as the market leader in the UK – from which Ritchie

Bros' must win customers in order to grow. Similarly, Euro Auctions' internal documents benchmark its performance against Ritchie Bros. Customers also generally considered the Parties to be close competitors with few alternative suppliers available, while the majority of competitors ranked both Parties as their top two competitors.

15. The CMA also found that the Merged Entity would face no other significant competitors post-Merger. Its next largest competitor in the supply of auction services for used heavy construction machinery would have a significantly smaller share of only [5-10]% and all remaining competitors would have shares of less than [0-5]%. In addition, the Parties' internal documents and third-party views did not indicate that other auction services suppliers pose a significant constraint on the Parties. The CMA therefore found that other auction suppliers do not compete closely with the Parties and offer a limited competitive constraint.
16. The CMA also considered the competitive constraint from alternative methods of sale for used heavy construction machinery, which the Parties submitted pose a constraint on their business. The CMA did not see any evidence, either from third parties or internal documents, to suggest that online marketplaces act as a significant constraint on auction services. The CMA also considered the potential constraint from private listings, OEMs, brokers and dealers. On the basis of third-party evidence and internal documents, the CMA found that these methods of sale do not materially constrain the role played by auctions and may act as complementary ways to achieve a sale rather than as substitutes to an auction.
17. The majority of the Parties' customers and competitors that engaged with the CMA's investigation also expressed concerns about the Merger, including that it would lead to a reduction in choice and price increases.

Barriers to entry

18. The CMA found that there are likely to be high barriers to entry for suppliers of auctions for used heavy machinery, which may be exacerbated by the two-sided nature of the market.
19. Competitors highlighted challenges in establishing reputation and scale; raising the necessary significant investment; and building a physical presence. Reputation and physical location were generally submitted by buyers and sellers as being important factors when choosing an auctioneer.
20. Competitors suggested that it would take five to ten years to establish a reputation in the market. This is consistent with the fact that Ritchie Bros, an

experienced auction provider with a significant presence in North America, took more than five years to build a modest UK market share of [10-20]%

21. The CMA noted that network effects arising from the two-sided nature of a market are likely to reinforce any barriers to entry, as the cost of building a sufficiently large customer base on both sides of the market to attract other customers, and therefore compete, is likely to be high. Buyers and sellers of the Parties' auction services generally stated that they preferred larger sized auctioneers: for buyers this meant a large number of heavy equipment suppliers to buy from, and for sellers a large pool of bidders. As such, the CMA considers that network effects are likely to be present in this market.
22. The CMA therefore found that entry and/or expansion by third parties would not be sufficiently timely, likely or sufficient to offset the effects of the Merger on competition.

Conclusion

23. The CMA therefore believes that the Merger gives rise to a realistic prospect of a substantial lessening of competition (**SLC**) as a result of horizontal unilateral effects in the supply of auction services for used heavy construction machinery in the UK.
24. The CMA is therefore considering whether to accept undertakings under section 73 of the Enterprise Act 2002 (**the Act**). The Parties have until 11 March 2022 to offer an undertaking to the CMA that might be accepted by the CMA. If no such undertaking is offered, then the CMA will refer the Merger pursuant to sections 33(1) and 34ZA(2) of the Act.

ASSESSMENT

Parties

25. Ritchie Bros supplies auction services for the sale and purchase of used and unused heavy machinery in the UK, Canada, Australia, United States and Europe. Ritchie Bros also provides listing services, through its Mascus website, and also is active in online marketplaces for heavy machinery, through its Marketplace-E. Ritchie Bros is headquartered in Canada and listed on the Toronto Stock Exchange and New York Stock Exchange. Ritchie Bros' worldwide turnover in the financial year ending 31 December 2020 was £[✂] billion, of which £[✂] million was generated in the UK.¹

¹ The Parties' Final Merger Notice submitted to the CMA on 4 January 2022 (**FMN**), paragraph 6.1, and Annex 7d.1.

26. Euro Auctions supplies auction services for the sale and purchase of used heavy machinery, primarily in the UK and also in the United States. It is also active in online marketplaces in the UK through its 24/7 Daily Marketplace, which was launched in 2020. Euro Auctions is a family-owned business incorporated in Northern Ireland. Its worldwide turnover in the financial year ending 31 December 2020 was £[redacted] million, of which £[redacted] million was generated in the UK.² 24/7 Daily Marketplace accounts for a very limited percentage (less than [redacted]) of Euro Auctions' GTV in the UK.³

Transaction

27. On 8 August, pursuant to a sale and purchase agreement, Ritchie Bros (through its wholly owned subsidiary, Ritchie Bros. UK Holdings Ltd) agreed to acquire the entire issued share capital of Euro Auctions from Gardrum Holdings Limited, and members of the Keys family being Derek Keys, Lynden Keys, Wendy Keys, Trevor Keys and Jolene Keys for £775 million.⁴
28. Under the terms of the sale and purchase agreement, Ritchie Bros also undertook to offer [redacted] of Euro Auctions FZE [redacted], and [redacted] to acquire its assets for consideration of [redacted].
29. The Parties informed us that the Merger is not subject to review by any other competition authority.

Rationale

30. Ritchie Bros submitted that the Merger will assist with its growth in Europe, as Euro Auctions complements Ritchie Bros' global footprint. Euro Auctions generates [redacted] of its global gross transaction value (**GTV**) in the UK, compared to [redacted] generated by Ritchie Bros in the UK.⁵ The CMA's review of Ritchie Bros' internal documents supports this rationale.⁶
31. Euro Auctions submitted that the Merger represents an exit opportunity for the Sellers. The CMA considered that the internal documents submitted by Euro Auctions were broadly consistent with Euro Auctions' stated rationale for the Merger.⁷

² FMN, paragraph 6.1, and Annex 7d.2.

³ FMN, paragraph 3.15; The Parties submitted that Euro Auctions made [redacted] machine sales of [redacted] since its launch in 2020, FMN, footnote 66.

⁴ FMN, paragraphs 2.5, 2.9 and 2.14; See FMN, Annex 7b.1 (the sale and purchase agreement), Schedule 1 and 2; Euro Auctions (as described in paragraph 1 above) is 100% owned by members of the Keys family (ie Derek Keys, Lynden Keys, Wendy Keys, Trevor Keys and Jolene Keys) and/or entities ultimately owned by them.

⁵ FMN, paragraph 2.32.

⁶ For example, see FMN, Annex 8.4 – [redacted].

⁷ Euro Auctions, s109 1 Response, Annex 2 and Annex 3.

Procedure

32. The Merger was considered at a Case Review Meeting.⁸

Jurisdiction

33. An anticipated merger must meet the following two criteria to constitute a relevant merger situation (**RMS**) for the purposes of the Enterprise Act 2002 (the **Act**):⁹
- (a) first, the arrangements in progress or in contemplation will, if carried into effect, lead to enterprises ceasing to be distinct; and
 - (b) second, either:
 - (i) the UK turnover associated with the enterprise which is being acquired exceeds £70 million (the **turnover test**), or
 - (ii) the enterprises which cease to be distinct supply or acquire goods or services of any description and, after the merger, together supply or acquire at least 25% of all those particular goods or services of that kind supplied in the UK or in a substantial part of it. The merger must also result in an increment to the share of supply or acquisition (the **share of supply test**).
34. The CMA believes that the Merger constitutes arrangements in progress or contemplation for the purposes of the Act.¹⁰ Each of Ritchie Bros and Euro Auctions is an enterprise within the meaning of section 129 of the Act. As a result of the Merger, these enterprises will cease to be distinct for the purposes of sections 23(1)(a) and 26 of the Act.
35. The UK turnover of Euro Auctions exceeds £70 million, so the turnover test in section 23(1)(b) of the Act is satisfied.¹¹
36. The CMA therefore believes that it is or may be the case that arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of an RMS.
37. The initial period for consideration of the Merger under section 34ZA(3) of the Act started on 10 January 2022 and the statutory 40 working day deadline for a decision is therefore 4 March 2022.

⁸ See [Mergers: Guidance on the CMA's jurisdiction and procedure](#) (CMA2revised), January 2022, page 43.

⁹ Section 23 of the Act.

¹⁰ Section 33(1)(a) of the Act.

¹¹ FMN, paragraph 6.1.

Background

The Parties' services

38. The Parties overlap in the facilitation of the sale and purchase (**supply**) of used heavy equipment,¹² mainly via intermediary services such as auctions and online marketplaces.¹³
39. The Parties' services cover three heavy machinery industries: construction (eg excavators and diggers), agricultural (eg tractors) and transport machinery (eg trucks). Construction equipment accounts for the vast majority of the Parties' gross transaction value (**GTV**): [X]for Ritchie Bros and [X]for Euro Auctions (in the period 2018-2020).¹⁴

Auctions

40. Auctions account for the majority of GTV for both Parties (over [X] of each Party's global GTV) in 2020.¹⁵ Both Parties also own physical auction sites located in the UK where machinery is stored and displayed.¹⁶
41. The Parties' auctions are run either:
- (i) live, where the bidding process is run by an auctioneer with bidding/attendance taking place either online or onsite (ie at a physical location) where the equipment is located; or
 - (ii) in a timed format – these take place without an auctioneer and bids are exclusively made online.¹⁷
42. Euro Auctions mainly runs live onsite auctions whereas Ritchie Bros runs standalone timed online auctions in the UK and Europe.¹⁸ The Parties hold auctions periodically throughout the year (eg Euro Auctions holds 14 on average each year).¹⁹
43. The Parties charge commissions to buyers and sellers using their auction services.²⁰ There are a large number of businesses that act as buyers and

¹² Throughout this decision the terms 'equipment' and 'machinery' are used interchangeably.

¹³ FMN, paragraphs 11.1-11.2. The Parties submitted that only Ritchie Bros provides classified advertising/listing services and brokerage services.

¹⁴ FMN, paragraph 14.29.

¹⁵ FMN, paragraphs 3.4, 3.13 and 12.39.

¹⁶ Ritchie Bros owns a physical auction site located in Maltby, UK, whereas Euro Auctions owns two physical auction sites, one located in Yorkshire, Leeds and the other in Dromore, Northern Ireland. FMN, paragraph 3.5 and 3.13.

¹⁷ FMN, paragraph 3.1. A standalone timed auction service is unconnected to a live auction. The CMA understands that pricing is generally unreserved in both auction formats.

¹⁸ FMN, paragraphs 11.2-11.7.

¹⁹ Response to Issues Letter, paragraph 1.5.

²⁰ FMN, paragraph 3.20.

sellers of used heavy equipment, sometimes interchangeably. These businesses include original equipment manufacturers (**OEMs**), end-users (eg construction companies), trade sellers, and other owners such as dealers and rental companies.²¹

Marketplaces

44. The Parties' online marketplaces are online transactional platforms that offer businesses or customers the opportunity to buy and sell equipment with a variety of pricing and timing options (eg a 'buy now' function).²²
45. While Ritchie Bros runs three online marketplaces (Marketplace-E, GovPlanet and IronPlanet),²³ Euro Auctions offers a limited online marketplace (24/7 Daily Marketplace) which has made *de minimis* sales since its launch in 2020.²⁴

Additional services

46. The Parties also provide a range of value-added and ancillary services to customers in support of the supply of used heavy equipment, eg shipping and storage services.²⁵

Sourcing

47. The Parties also **source** used heavy equipment – ie purchase equipment from owners to subsequently sell through their own intermediary services.²⁶

Characteristics of auction services

48. The CMA considers that the Parties' auction services operate as two-sided platforms, with the Parties competing to attract buyers on one side and sellers on the other. Two-sided platforms are often characterised by network effects, where the value of the product for customers on one side of the platform depends on the volume of users either on the same side (direct network effects) or on the other side (indirect network effects). Where network effects are present, the growth of a two-sided platform may be self-reinforcing: growth in customer numbers increases network effects; increased network

²¹ FMN, paragraphs 12.6-12.7.

²² Online marketplaces are not linked to a live auction event, and can be in an unreserved or reserved format.

²³ FMN, paragraphs 11.12-11.13.

²⁴ FMN, paragraph 11.13, footnotes 66 and 93; Euro Auctions sold [X] machines for [X] since its launch of 24/7 Daily Marketplace in 2020 (less than [X] of Euro Auctions GTV in the UK).

²⁵ Ritchie Bros also owns a data services intelligence company, Rouse, that provides benchmarking and appraisal services for construction equipment, FMN, paragraph 3.9.

²⁶ FMN, paragraph 11.17.

effects attract more customers; more customers lead to greater network effects, and so on.²⁷

49. The value of the Parties' services to both buyers and sellers of used heavy machinery is interlinked. For buyers, the value depends on the volume (and variety) of used heavy equipment available on the platform: the greater the volume and variety, the higher the value. For sellers, the value of the platform will depend on whether there is a sufficiently large number of buyers on that platform to achieve a sale at a competitive price. Therefore, the CMA considers that the Parties' auction services are characterised by indirect network effects.
50. When assessing competitive effects in mergers involving two-sided platforms, the CMA may consider each side of the platform separately, or it may consider the overall competition between the platforms (incorporating both sides in one assessment). The CMA's approach will depend on how competition works in the market; competitive conditions in the market; and the nature and strength of the network effects.
51. First, where competition primarily involves platform operators improving aspects of their offer that affect one side of the platform (for example, charges applied or service levels offered to users on one side), the CMA may assess each side separately.²⁸ In this case, the Parties each levy charges on both sides of the market, which can be adjusted independently from each other. As such, the CMA has analysed closeness of competition between the Parties on both the seller and buyer side of the market.
52. Second, where competitive conditions, such as the number and strength of alternatives available, are different on the two sides of the platform, a platform operator may have different incentives as regards what it offers to users on either side.²⁹ In this case, the CMA found that competitive conditions are broadly similar on both sides of the market. As such, the assessment of competitive constraints has not been split by buyers and sellers.
53. Third, where indirect network effects are strong, the platform operator's incentive to compete for users on each side of the platform is more likely to be influenced by competitive conditions on the other side of the platform.³⁰ While the CMA considers that indirect network effects are likely to exist in this market, since the competitive conditions on each side of the platform are

²⁷ In some circumstances, this may lead to a 'tipping' effect, where one platform becomes dominant and smaller platforms exert only a weak constraint and find it difficult to expand: The [Merger assessment guidelines \(CMA129\) – 2021 revised guidance](#) ('Merger Assessment Guidelines'), paragraph 4.22.

²⁸ [Merger assessment guidelines](#), paragraph 4.24.

²⁹ [Merger Assessment Guidelines](#), paragraph 4.24.

³⁰ [Merger Assessment Guidelines](#), paragraph 4.24.

considered to be similar, this has not significantly affected the CMA's overall approach to its competitive assessment.

Counterfactual

54. The CMA assesses a merger's impact relative to the situation that would prevail absent the merger (ie the counterfactual).³¹ For anticipated mergers, the CMA generally adopts the prevailing conditions of competition as the counterfactual against which to assess the impact of the merger. However, the CMA will assess the merger against an alternative counterfactual where, based on the evidence available to it, it believes that, in the absence of the merger, the prospect of these conditions continuing is not realistic, or there is a realistic prospect of a counterfactual that is more competitive than these conditions.³²
55. In determining the appropriate counterfactual, the CMA will generally focus only on potential changes to the prevailing conditions of competition where there are reasons to believe that those changes would make a material difference to its competitive assessment.³³
56. The Parties submitted that the Merger should be analysed against the current or pre-existing competitive situation, in accordance with the CMA's established approach.³⁴ The CMA did not receive any evidence from the Parties or third parties that indicates that a different counterfactual is more appropriate.
57. Therefore, the CMA believes the prevailing conditions of competition to be the relevant counterfactual.

Frame of reference

58. Where the CMA finds a substantial lessening of competition (**SLC**), this must be 'within any market or markets in the United Kingdom for goods or services'.³⁵ The assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of the merger and should not be viewed as a separate exercise.³⁶ It involves identifying the most significant competitive alternatives available to customers of the merger firms

³¹ [Merger Assessment Guidelines](#), paragraph 3.1.

³² [Merger Assessment Guidelines](#), paragraph 3.12.

³³ [Merger Assessment Guidelines](#), paragraph 3.9.

³⁴ FMN, paragraph 10.1.

³⁵ [Merger Assessment Guidelines](#), paragraph 9.1.

³⁶ [Merger Assessment Guidelines](#), paragraph 9.1.

and includes the sources of competition to the merger firms that are the immediate determinants of the effects of the merger.³⁷

59. The CMA's assessment of competitive effects of the Merger does not need to be based on a highly specific description of any particular market (including, for example, descriptions of the precise boundaries of the relevant market(s) and bright-line determinations of whether particular products of services fall within it).³⁸

Product scope

60. The determination of the product frame of reference starts with the relevant products of the merger firms.³⁹ The Parties primarily overlap in the supply of auction services for used heavy construction machinery, which accounts for the vast majority of both Parties' GTV.⁴⁰
61. Both Parties sell construction machinery through a number of channels, including auctions, marketplaces and listing sites. However, both Parties are mainly focused on auctions, which account for over [X] of their global GTV (for Euro Auctions, the vast majority of its remaining GTV is from its sourcing business).⁴¹ Euro Auctions launched its marketplace offering in 2020 and this only generates *de minimis* sales.
62. Therefore, the CMA's starting point for the frame of reference was the principal overlap between the Parties, which is in the supply of used heavy machinery via auctions. The CMA considered whether the frame of reference should be widened to include:
- (a) used heavy machinery for agricultural and transport industries; and
 - (b) other sale methods (eg marketplaces).

Possible widening of the frame of reference to include used heavy machinery for the agricultural and transport industries

The Parties' submissions

63. The Parties submitted that they overlap in the supply of used heavy equipment.⁴² The Parties further submitted that used heavy construction

³⁷ [Merger Assessment Guidelines](#), paragraph 9.2.

³⁸ [Merger Assessment Guidelines](#), paragraph 9.5.

³⁹ [Merger Assessment Guidelines](#), paragraph 9.6.

⁴⁰ As Ritchie Bros' activities in the supply of auction services for transport and agricultural machinery is very limited, the CMA believes that there is no realistic prospect of an SLC in relation to these products as a result of horizontal unilateral effects, and therefore this is not discussed further in this Decision.

⁴¹ See paragraph 4 above, and FMN, paragraph 3.18.

⁴² FMN, paragraph 11.1.

machinery should not be assessed separately from used heavy agricultural and transport machinery, as this approach does not reflect how buyers source equipment, nor how sellers interact with buyers and how suppliers compete for business of those buyers and sellers. The Parties submitted that this is because.⁴³

- (a) On the demand-side, a large proportion of used heavy machinery can be used by end-users in multiple end-use categories (for example an excavator may be advertised as being suitable for both agricultural and construction work).⁴⁴ In addition, buyers generally search online for a particular piece of equipment rather than for a particular industry.⁴⁵ The Parties also submitted that buyers who are not end-users are generally sophisticated and will not restrict their activities to a particular industry: their aim is to resell equipment to a large number of buyers.⁴⁶ Similarly, the aim of sellers is to make a sale and limiting their product to buyers active in a particular industry would limit their ability to attract a large pool of buyers.⁴⁷ The vast majority of the Parties' lots sold are not focused on a particular industry.⁴⁸
- (b) On the supply-side, suppliers of auction services cover a range of used heavy machinery which are not restricted by industry.⁴⁹ For example, Protruck ran a plant and machinery auction and also sells a large number of excavators, diggers, telelifts, etc. on its website.⁵⁰ Other auction suppliers are also not focused on a particular industry and supply a range of equipment (such as Cheffins, CVA, etc).⁵¹

CMA' assessment

64. In determining the relevant product frame of reference, the CMA will pay particular regard to demand-side factors (ie the behaviour of customers). The CMA may also consider supply-side factors.⁵²
65. With regards to demand-side substitutability, the CMA found that on the buyer side:
- (a) Buyers with a specific demand will not substitute to a different product even within the same narrow product category (eg a large digger will not

⁴³ The Parties' response to CMA's Issues Letter, 11 February 2020 (**Response to Issues Letter**).

⁴⁴ Response to Issues Letter, paragraph 3.4.

⁴⁵ Response to Issues Letter, paragraphs 3.4 and 3.8.

⁴⁶ Response to Issues Letter, paragraph 3.9.

⁴⁷ Response to Issues Letter, paragraph 3.10.

⁴⁸ Parties' Issues Meeting presentation, slide 35 and Response to Issues Letter, paragraphs 3.4 and 3.5.

⁴⁹ Response to Issues Letter, paragraph 3.11.

⁵⁰ Response to Issues Letter, paragraph 3.11.

⁵¹ Response to Issues Letter, paragraph 3.11.

⁵² [Merger Assessment Guidelines](#), paragraph 9.6.

be substitutable for a smaller one). For these types of buyers, there is no substitutability across industries.

- (b) The CMA considered the Parties' argument, submitted at the Issues Meeting, that buyers are interested in specific equipment, and that some equipment may be used in more than one industry. The CMA considers that the Parties' evidence is largely anecdotal (eg that a specific excavator can be used both in construction and agriculture and is available via auction providers serving both industries). The CMA considers that this evidence is insufficient to support a finding that there is broad demand-side substitutability across a significant part of the machinery between construction and agriculture, and notes that it is not supported by the evidence that the CMA received from buyers.
- (c) The CMA found some evidence that buyers with a more general demand are likely to focus on products suitable for a particular industry (eg construction or agriculture), as this type of buyer will need to ensure that they themselves have sufficient buyers to whom they can sell the product, and this is more easily achieved if they focus on a particular industry due to reputation with buyers and the necessary expertise as regards repair. To take one example, a customer of the Parties told the CMA that it purchases used construction equipment from Ritchie Bros and Euro Auctions, makes the necessary repairs to the equipment and then resells the goods.⁵³ The CMA has received no evidence to indicate that these buyers will switch to a material extent to buying agricultural or similar products if there was a price rise in used heavy construction machinery.
- (d) Only a few buyers (ie those using the Parties to purchase products) that responded to CMA's Merger investigation described their business as including agriculture or transport equipment; the vast majority of buyers' businesses were focused on construction or construction-related equipment.⁵⁴ The CMA reviewed the websites of the additional non-end customers listed by the Parties in response to the Issues Meeting, which indicate that they specialise in a particular industry or have a particular area of focus. For example, SJH-All Plant Group's website says: '[We] specialise in heavy construction plant equipment and machinery'.⁵⁵ Lloyd's website has separate segments for agriculture, construction, ground-care, etc. Under agriculture, the website states that '[it] is one of

⁵³ [REDACTED].

⁵⁴ [REDACTED].

⁵⁵ See [SJH-All Plant Group's website](#).

the of the largest dealers in the UK...of agricultural machinery' and '[has] been awarded "Tractor Dealer of the Year".⁵⁶

66. On the seller side, certain sellers who use the Parties' services to sell their products told the CMA that they will seek platforms that have a sufficiently large pool of buyers seeking the type of product they are selling (eg construction equipment).⁵⁷ The CMA believes that the existence of these network effects will tend to lead buyers and sellers to specialise in particular industries, as evidenced by the third-party responses set out in paragraph 65(a) above and paragraph 68(b) below. Responses from sellers (such as plant hire or rental hire companies) also showed that these companies typically supply products for a particular industry (eg construction or agriculture). For example, one seller told the CMA that it sells [redacted] through Euro Auctions and exclusively operates in the construction industry.⁵⁸
67. The CMA has not seen any evidence to show that there is demand-side substitution between buyers and sellers across different industries, eg a customer who normally buys construction equipment switching to purchase agricultural equipment. The CMA considers that the Parties' anecdotal examples of equipment that may be suitable for use across different sectors do not show that buyers and sellers generally consider that equipment is substitutable across industries.
68. On the supply-side, the evidence available to the CMA shows that the conditions of competition are not similar across auction services for different industries and that different firms are focused on particular industries: ie construction, agriculture or transport. In particular:
- (a) The Parties' services are heavily skewed towards construction machinery (see paragraph 40 above), which accounts for [redacted] (Ritchie Bros) and [redacted] (Euro Auctions) of the Parties' GTV (in the period 2018-2020).⁵⁹ This shows that both Parties are focused primarily on the supply of construction machinery.
 - (b) There is evidence of other firms focussing on a particular industry, which the CMA notes is likely due to the network effects that cause firms to attract more buyers and sellers in the area in which they specialise. For example, Protruck is largely focussed on transport vehicles, CVA is also largely focused on vehicles, and Malcolm Harris is focused on commercial vehicles and construction equipment. One seller stated that it would use auction houses that best target the audience for the type and age of used

⁵⁶ See [Lloyd's](#) website.

⁵⁷ [redacted].

⁵⁸ [redacted].

⁵⁹ FMN, paragraph 14.29.

heavy equipment it sells.⁶⁰ The CMA notes the specialisms of these firms on a particular industry do not preclude them from supplying products across other industries where they do not focus – ie they may compete on the fringes for non-focus industries.⁶¹ The CMA has not received any evidence that firms specialising in one industry regularly switch to specialising in another.

69. On the basis of the above evidence, the CMA believes that it is not appropriate to widen the product frame of reference to include auction services for heavy agriculture and transport machinery. However, the CMA has taken into account any constraint on the Parties posed by other auction providers specialising in agriculture or transport machinery in its competitive assessment below.

Possible widening of the supply of auction services of used heavy construction machinery to include other methods of sale

Parties' submissions

70. The Parties submitted that the product frame of reference should be wider than auctions because:
- (a) Buyers are not bound by sales methods or platforms and look for availability and price.⁶² Sellers are looking to achieve the highest net price possible for its used heavy equipment and this can be achieved using a number of different sales formats.⁶³ All of the intermediaries exist to facilitate transactions and not for different or complementary purposes;⁶⁴
 - (b) Buyers are also looking for equipment and deals rather than a sales format and commence their search online.⁶⁵ In 2021, online search was [redacted] for attracting traffic to its website whereas auctions are not as easy to find [redacted]. For example, [redacted] of Ritchie Bros' [redacted] web traffic in 2021 came from [redacted] and [redacted] ([redacted]) and direct traffic was only [redacted]. This shows that auction providers cannot rely solely on their [redacted] to attract buyers [redacted];⁶⁶

⁶⁰ [redacted].

⁶¹ FMN, Annex 14.

⁶² Response to Issues Letter, paragraph 3.15.

⁶³ Response to Issues Letter, paragraph 3.24.

⁶⁴ Response to Issues Letter, paragraph 2.13.

⁶⁵ Response to Issues Letter, paragraphs 3.20 and 3.22.

⁶⁶ Response to Issues Letter, paragraph 3.21.

- (c) Mascus, Ritchie Bros' listing website, received almost [REDACTED] times the number of inquiries on listings from potential buyers as the number of buyer registrations on Ritchie Bros' auctions last year;⁶⁷
- (d) Auctions are not unique or differentiated from other methods of facilitating sales between buyers and sellers and in eBay/Adevinta, the CMA assessed marketplaces and listing websites marketing heavy equipment together;⁶⁸
- (e) Buyers and sellers have a large number of options to choose from which they use interchangeably such as online marketplaces, listing sites, auction providers, dealers, brokers, OEMs, private sales, etc;⁶⁹
- (f) The Parties regularly lose high value sales opportunities to a broad range of channels including trade-in, private sales and dealers/brokers. The Parties submitted some examples for Ritchie Bros' recent losses to alternative channels (for example [REDACTED], [REDACTED]);⁷⁰
- (g) The Parties submitted data collected by Ritchie Bros' Rouse showing that UK sellers (not restricted to Ritchie Bros' sellers) multi-home.⁷¹

CMA's assessment

- 71. The vast majority of buyers and sellers that responded to the CMA's Merger investigation did not list alternative methods of sale (including online marketplaces and/or listing sites) as alternatives to Ritchie Bros or Euro Auctions.⁷² The CMA notes that only a limited number of customers indicated that they consider marketplaces and/or listing sites as alternatives.⁷³ Even fewer buyers and sellers mentioned dealers and none mentioned OEMs.⁷⁴
- 72. The CMA considers that auctions and marketplaces/listing sites have different characteristics:
 - (a) Auctions are infrequent (eg Euro Auctions runs auctions only 14 times on average in a year) and the pricing is generally unreserved. Auctions can be online and/or onsite providing sellers the option to store their machinery and buyers the option to inspect the machinery before purchasing.

⁶⁷ Response to Issues Letter, paragraph 3.23a.

⁶⁸ Response to Issues Letter, paragraph 3.16 and 3.34(b)

⁶⁹ Response to Issues Letter paragraph 1.10.

⁷⁰ Response to Issues Letter, paragraph 3.30.

⁷¹ Response to Issues Letter, Paragraphs 4.18-4.28.

⁷² [REDACTED].

⁷³ [REDACTED].

⁷⁴ [REDACTED].

- (b) Marketplaces/listings are offered online (ie 24/7), offer buyers/sellers the ‘buy now’ option and require sellers/buyers to deal directly with the buyer/seller. Marketplaces/listing sites (such as eBay) do not generally offer sellers the option to store the equipment before it is sold.⁷⁵
73. In response to a question as to how they choose their sales method for heavy machinery, sellers generally indicated that the Parties’ unreserved auctions are quicker for obtaining cash. For example, a third-party seller, provided several reasons why it uses auctions [REDACTED], including:
- (a) ‘the biggest open market for sale with their large customer databases in the UK and abroad’;
 - (b) transparency and clarity as assets are sold to the highest bidder;
 - (c) the ability to move large amounts of volume due to the frequency of the auctions; and
 - (d) an expediated mechanism to generate cash for used equipment that is no longer required.⁷⁶
74. One seller stated that it would use auction houses that best target the audience for the type and age of used heavy equipment it sells.⁷⁷ Two other sellers stated that auctions are its preferred choice if it has machines that are either taking too long to sell, or need to be sold quickly.⁷⁸
75. Consistent with the comments received from third parties, internal documents produced by Ritchie Bros do not indicate that alternative methods of sale (such as online marketplaces, listing sites, OEMs, dealers, brokers, etc) impose a strong constraint on the Parties, nor that buyers and sellers view other sales methods as alternatives to auction sites in the UK:
- (a) The CMA has not seen any Ritchie Bros internal documents which mention eBay or Facebook marketplace as a competitor to the Parties in the UK.⁷⁹

⁷⁵ The CMA further considers that, in eBay/Adevinta (ME/6897/20), the Parties were primarily active in marketplaces and listing sites and these overlaps were taken as the starting point of the CMA analysis. In addition, one merging party in that case had a very limited presence in agricultural machinery, construction machinery and trucks. Accordingly, the CMA considers that the relevance of eBay/Adevinta for the purpose of the analysis of this Merger is limited.

⁷⁶ [REDACTED].

⁷⁷ [REDACTED].

⁷⁸ [REDACTED].

⁷⁹ FMN, Annex 12 titled ‘[REDACTED]’ dated 2018, slide 6 lists several competitors. [REDACTED] and [REDACTED] are mentioned as competitors, but only with regard to the US. Likewise, Annex 9.3 titled ‘[REDACTED]’, from February 2021, states with regard to the UK on slide 6 that: ‘[REDACTED]’ are present. The same document also mentions that Ritchie Bros’ own online marketplace IronPlanet [REDACTED]. In addition, Annex 9.6 titled ‘[REDACTED]’, from February 2021, does not list any other marketplaces (nor dealers or OEMs) with regard to the competitive brandset in the UK, but mentions, with the exception of [REDACTED], only auction service providers such as [REDACTED].

- (b) There is also very little reference to the competitive constraint imposed by listing sites as regards the UK.⁸⁰
- (c) Dealers, brokers and OEMs are not discussed often in internal documents and the large dealers listed by the Parties, eg [REDACTED], [REDACTED] and [REDACTED] and [REDACTED], are not discussed at all as competitors or described in an US context.⁸¹ The CMA also considers that the internal documents submitted by the Parties after the Issues Meeting also do not show that dealers and OEMs impose a constraint on the Parties in the UK. Three of these documents do not talk about competitive constraints at all,⁸² and the remaining internal document discusses the competitive landscape but does not list a segment separately for OEMs, dealers, and brokers as it does for auctions, listing services and online marketplaces.⁸³

76. The Parties provided several pieces of analysis in response to the issues paper that they submitted demonstrate substitution from auctions to other services. The CMA has considered each of these:

- (a) The Parties provided data and analysis on a limited number of lost sales opportunities, which the Parties claim shows substitution to other sales channels. However, this data does not demonstrate that customers switched from an auction to another sales method for the sale of any products. It shows that certain customers have decreased their spend with Ritchie Bros. It is unclear whether this was due to a decrease in sales overall or due to other reasons. As discussed at paragraph 71, the CMA has not received any evidence from third-party sellers suggesting that they view marketplaces, listing sites or other options as close competitors to the Parties' auctions services.
- (b) The Parties provided a Google traffic analysis, which they suggest shows that customers use a search engine in the [REDACTED] and are not searching for [REDACTED]. However, this analysis does not provide any evidence of substitution from auctions to other methods of sale by the Parties' existing customers.⁸⁴

⁸⁰ FMN, Annex 9.1 lists [REDACTED] and [REDACTED] as global listing players in heavy equipment and other listing companies do not seem to be active in the UK. [REDACTED] is also described as a global player in one document (Annex 14, Ritchie Bros response to CMA's section 109 notice 1), but the CMA notes that [REDACTED] is described as having significantly fewer listings than Mascus and it is unclear to what extent [REDACTED] is active in the UK.

⁸¹ [REDACTED] is discussed in relation to its US activities, see page 6 of Annex 14, response to first s109. The CMA further notes that [REDACTED], a [REDACTED] equipment dealer, which according to the Parties is a constraint with its '[REDACTED]' (see Response to Issues Letter, para 4.42(e)), does not seem to have such a [REDACTED] in the UK.

⁸² Response to the Issues Letter, Annex 2, 3 and 4.

⁸³ Response to the Issues Letter, Annex 1, slide 8.

⁸⁴ The CMA considers that it is unclear from the Parties' analysis whether the customers visiting the Ritchie Bros' site via Google have searched for Ritchie Bros or for a particular machinery. The CMA therefore considers that the Google analysis does not show that customers visiting the Ritchie Bros' website have considered other sales channels.

- (c) Rouse data submitted by the Parties suggests that most sellers have a preference for a given sales channel. Of the [X] cited in the analysis, [X] sold more than [X] of their GTV through a single channel. The CMA therefore considers that this evidence does not support the view that sellers significantly multi-home between different sales channels.⁸⁵ Consequently, the CMA is of the view that this analysis does not show that a seller who has chosen to sell a given product through an auction would substitute to a different method of sale in the event of a price increase.
- (d) Data submitted by the Parties on numbers of enquiries shows that Mascus (a listings site) achieves around [X] times the number of enquiries as Ritchie Bros' auction site. Whilst this suggests that listing sites may be a popular method of sale, it does not provide any evidence of substitution from auctions to listing sites.

77. Based on the evidence above, the CMA believes that it is not appropriate to widen the frame of reference to include alternative methods of sale. However, the CMA has taken any constraint posed by these providers into account in its competitive assessment.

Conclusion on product scope

78. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of auction services for used heavy construction machinery. The CMA has assessed the closeness of competition between the Parties separately for each side of the platform (buyers and sellers), while the competitive constraints faced from other industry specialist auction providers and from other methods of sales has been assessed for both sides of the platform together, for the reasons set out at paragraphs 51 and 52 respectively.

Geographic scope

The Parties' submissions

79. The Parties submitted that the appropriate geographic scope is wider than the UK.⁸⁶
- (a) The Parties submitted that Ritchie Bros' UK-based customers buy and sell a material proportion of equipment abroad.⁸⁷ On the buyer-side, between

⁸⁵ Response to Issues Letter, paragraph 3.32.

⁸⁶ Response to Issues Letter, paragraph 3.39.

⁸⁷ Response to Issues Letter, paragraph 3.39.

2019-2021, [REDACTED] of the GTV generated by Ritchie Bros' UK buyers related to its auctions outside the UK, while [REDACTED] of the GTV generated by Ritchie Bros' UK buyers on its marketplaces related to items located outside the UK.⁸⁸ On the seller-side, between 2019-2021, [REDACTED] of Ritchie Bros' GTV generated by UK sellers related to its auctions outside the UK, and [REDACTED] of its GTV generated by UK sellers on its marketplaces related to items located outside the UK.⁸⁹ The Parties submitted that the fact that UK-based customers use non-UK options to such an extent indicates that Ritchie Bros is constrained by non-UK based rivals.

- (b) The Parties also submitted that the fact that a more significant proportion of Euro Auctions' GTV generated by UK buyers and sellers related to auctions in the UK is not representative of the wider market. As such, it should carry limited weight for the geographic frame of reference.⁹⁰
- (c) The Parties also submitted that approximately [REDACTED] of buyers at Euro Auctions' UK auctions and [REDACTED] of buyers at Ritchie Bros' UK auctions are from overseas. The Parties submitted these customers would be willing to switch to a wide range of international offerings.⁹¹

80. In light of this, the Parties submitted that they compete with both UK and overseas competitors, which will continue post-Merger.⁹²

CMA's Assessment

81. The CMA considers that the available evidence, including from third parties and the Parties' internal documents, supports a geographic frame of reference that is limited to the UK. In particular:

- (a) The CMA has seen no evidence from UK-based sellers that responded to the CMA's Merger investigation that they would substitute from auction providers based in the UK to auction providers located and hosting auctions outside the UK in response to a price increase.
- (b) Responses from third parties also did not cite any competitors outside the UK as effective competitive constraints to the Parties in the UK.⁹³ One continental Europe-based competitor, [REDACTED], stated it had attempted to expand into the UK, although it had mostly been unsuccessful. In the last

⁸⁸ Response to Issues Letter, paragraph 3.40.

⁸⁹ Response to Issues Letter, paragraph 3.41.

⁹⁰ Response to Issues Letter, paragraph 3.43.

⁹¹ Response to Issues Letter, paragraph 3.44.

⁹² Response to Issues Letter, paragraph 3.45.

⁹³ [REDACTED].

three years, it had attempted to grow its construction business, but its revenues remained mostly stagnant.⁹⁴

- (c) The Parties' internal documents discuss the strategy and competitive conditions separately for the UK. For example, a June 2020 Ritchie Bros internal document titled '[REDACTED]' discusses '[REDACTED]' and '[REDACTED]'.⁹⁵ Likewise, the Parties' internal documents also indicate that the competitor set in the UK is different from, for example, Germany.⁹⁶ This supports the view that the UK is a separate geographic market.
- (d) As regards the Parties' argument that Ritchie Bros' UK buyers and sellers generate a large proportion of their auction sales outside the UK and that more than half of the Parties' buyers are located outside the UK, the CMA does not consider that this shows that, in the event of a price rise in the UK, those customers would switch to an auction provider outside the UK, in particular having regard to the fact that no third-party customer mentioned that it would divert to auctioneers outside the UK.

82. Based on the evidence above, the CMA believes that the appropriate geographic frame of reference is the UK.

Conclusion on geographic scope

83. For the reasons set out above, the CMA has considered the impact of the Merger in the UK. The CMA has taken account of non-UK competitors in the competitive assessment.

Conclusion on frame of reference

84. For the reasons set out above, the CMA has considered the impact of the Merger in the supply of auction services for used heavy construction machinery in the UK.

Competitive assessment

Horizontal unilateral effects

85. Unilateral effects can arise in a horizontal merger when one firm merges with a competitor that previously provided a competitive constraint, allowing the merged entity profitably to raise prices or degrade non-price aspects of its competitive offering (such as quality, range, service and innovation) on its

⁹⁴ [REDACTED].

⁹⁵ FMN, Annex 7e.2, Slide 6.

⁹⁶ See for example FMN, a Ritchie Bros' internal document, Annex 9.6, slide 5; and Euro Auctions' internal document, FMN, Annex 8.1, slide 19.

own and without needing to coordinate with its rivals.⁹⁷ Horizontal unilateral effects are more likely when the merging parties are close competitors and when competitive constraints are weak.⁹⁸

86. The CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger. Where there are few existing suppliers, the merger firms enjoy a strong position or exert a strong constraint on each other, or the remaining constraints on the merger firms are weak, competition concerns are likely.⁹⁹
87. The CMA assessed whether it is or may be the case that the Merger has resulted, or may be expected to result, in an SLC in relation to horizontal unilateral effects in the supply of auction services for used heavy construction machinery in the UK. Accordingly, the concern under this theory of harm assessed below is that the removal of one party as a competitor could allow the Merged Entity to increase prices, lower quality, reduce the range of their services and/or reduce innovation.
88. In order to assess the likelihood of the Merger resulting in unilateral effects, the CMA considered:
 - (a) Shares of supply;
 - (b) Closeness of competition between the Parties; and
 - (c) Competitive constraints from alternative suppliers.

Shares of supply

89. The Parties estimated that they have a combined share of supply of [0-5]% (by share of GTV) in the supply of used heavy equipment in the UK in 2020 with an increment of [0-5]% brought about by the Merger. For construction equipment only, the Parties estimated that they have a combined share of supply of [30-40]% (by share of GTV) with an increment of [30-40]% brought about by the Merger, while the next largest competitor (Wilson's Auctions) has a share of supply of [30-40]%.¹⁰⁰ The Parties also submitted that their sourcing businesses (where they potentially act as dealers selling to other dealers and which represents more than a third of Euro Auctions' GTV) should not be included in the share of supply calculations.¹⁰¹

⁹⁷ [Merger Assessment Guidelines](#), paragraph 4.1.

⁹⁸ [Merger Assessment Guidelines](#), paragraphs 4.3, 4.8 and 4.10.

⁹⁹ [Merger Assessment Guidelines](#), paragraph 4.3.

¹⁰⁰ FMN, Annex 2.

¹⁰¹ Response to Issues Letter, paragraphs 4.7 – 4.10.

90. In the absence of any reliable publicly available data on shares of supply, the CMA sought relevant GTV data from the Parties' competitors. The CMA has made its own calculations of shares of supply based on data obtained from the Parties and third parties, the results of which are shown in Table 1 below.

Table 1: Share of auction services of used heavy construction machinery in the UK (% of total GTV), 2019 – 2021

	2019	2020	2021
Ritchie Bros	[10-20]	[10-20]	[10-20]
Euro Auctions	[70-80]	[70-80]	[70-80]
Parties' combined	[80-90]	[80-90]	[80-90]
Wilsons Auctions	[0-5]	[0-5]	[0-5]
Protruck (The Fleet Auction Group)	[0-5]	[0-5]	[0-5]
CVA	[0-5]	[0-5]	[0-5]
Troostwijk	[0-5]	[0-5]	[0-5]
Cheffins	[0-5]	[0-5]	[0-5]
Brightwells	[5-10]	[0-5]	[0-5]
AMS Auctions	[0-5]	[0-5]	[0-5]
Equippo	[0-5]	[0-5]	[0-5]

Source: CMA's analysis of data provided by the Parties and third parties.

Notes: Parties' data was used to estimate their shares of supply and for [§]. Third-party data was used for [§]. The total market size was estimated by summing data received and Parties' estimates for individual competitors where actual data was not available. The estimated shares of supply may be an overestimate as no data or shares of supply estimates are available for other smaller auction providers. However, the CMA considers it unlikely that these estimates would materially change with the inclusion of other smaller providers. Rounding may mean sums do not add up and totals may not sum to 100%.

91. As set out in Table 1 above, the CMA's share of supply estimates indicate that the Parties substantially underestimated their shares in 2020. As the CMA's analysis is also based on third-party data, the CMA considers that its own estimates are more accurate than those provided by the Parties (and has therefore given them more weight in its assessment). The CMA also notes that heavy construction machinery sales from auction competitors specialised in other segments (eg transport such as ProTruck and agriculture such as Cheffins) have been included in Table 1.
92. Table 1 shows that Euro Auctions is by far the largest provider of auction services for used heavy construction machinery in the UK, with [70-80]% share of supply. The next largest provider is Ritchie Bros with [10-20]% share of supply, meaning the Parties have a very high combined share of supply of [80-90]%. All the other providers are significantly smaller than the combined entity, with shares of supply below [0-5]% for 2021. The minimal presence of other competitors is also consistent with the Parties' internal documents

(which make very limited reference to competitors other than the other Party) and third-party views, as discussed below.¹⁰²

93. The CMA disagrees with the Parties' submission that GTV generated from sourcing activities should be excluded from the share of supply calculations. As noted above, this market is characterised by network effects, such that the Parties' sourcing activities strengthen their position in auction services by allowing them to attract more buyers and therefore sellers. The CMA therefore considers that it is reasonable to include the sourcing GTV in the share of supply calculation. However, even if the Parties' sourcing GTV were excluded, the shares of supply would not significantly change, as the Parties would still have a combined share of [80-90]% with an increment of [10-20]%, while other competitors' shares would remain significantly smaller [0-5]%.
94. Moreover, in a market with indirect network effects, as discussed in paragraph 53 above, the CMA considers that unilateral effects may be exacerbated. In such markets, smaller rivals are unlikely to provide an effective constraint as their lack of buyers and sellers means they are a weaker option than they would be in markets without indirect network effects such that competition is focused between the largest platform suppliers.
95. The CMA therefore considers that the Parties' very high combined share of supply raises significant *prima facie* competition concerns.

Closeness of competition

96. The CMA considers that closeness of competition is a relative concept. Where there is a degree of differentiation between the merging firms' products, they may nevertheless still be close competitors if rivals' products are more differentiated, or if there are few rivals. The CMA will consider the overall closeness of competition between merging firms in the context of the other constraints that would remain post-merger. For example, where the CMA finds evidence that competition mainly takes place among few firms, any two firms would normally be sufficiently close competitors that the elimination of competition between them would raise competition concerns, subject to evidence to the contrary. The smaller the number of significant players, as in this market, the stronger the *prima facie* expectation that any two firms are close competitors. In such a scenario, the CMA will require persuasive

¹⁰² The CMA also calculated share of supply estimates for the supply of auction services taking into account the Parties' and competitors' GTV in construction, agriculture and transport. The CMA found that the Parties' combined share of supply is still very high ie [60-70]% and they are still the largest competitors, with other competitors having shares of supply of [0-10]%. These estimates are based on the share of supply estimates provided by the Parties, and adjusted for third-party data where known. The CMA notes that it has not sought to market test the shares of supply estimates for agriculture or transport with all relevant third parties but has mainly focussed its investigation on construction machinery, such that these share of supply estimates may overstate the Parties' position.

evidence that the merging firms are not close competitors in order to allay any competition concerns.¹⁰³

97. The CMA has examined the closeness of competition between the Parties by reference to:

- (a) The Parties' submissions;
- (b) The Parties' analysis of buyer behaviour;
- (c) Third party views on closeness of competition; and
- (d) Evidence from internal documents.

The Parties' submissions

98. The Parties submitted that they are not close competitors, as they offer UK sellers and UK bidders different propositions.¹⁰⁴ In particular, the Parties submitted that:

- (a) Ritchie Bros has a significantly broader business model with a focus on providing customers a broad range of methods of sale whereas Euro Auctions' focus is on auctions.¹⁰⁵ The Parties differ in terms of their sourcing businesses, where Euro Auctions has a far greater focus on acting as a dealer than Ritchie Bros.¹⁰⁶ According to the Parties, Euro Auctions and Ritchie Bros differ as regards [redacted].¹⁰⁷
- (b) Ritchie Bros sets its commercial strategy centrally at a global level and therefore Ritchie Bros' UK-specific internal documents have a limited bearing on Ritchie Bros commercial strategy and competitive landscape.¹⁰⁸ Ritchie Bros submitted that its internal documents show a large number of different sorts of competitors constraining it, eg auction sites outside the UK, listing services, dealers and online marketplaces.¹⁰⁹
- (c) The Parties' references to each other in their internal documents are not evidence of close competition between the Parties as the Parties operate in a highly fragmented market with limited availability of data which is difficult to monitor.¹¹⁰ The Parties submitted that Ritchie Bros refers to a

¹⁰³ [Merger Assessment Guidelines](#), paragraph 4.10.

¹⁰⁴ FMN, paragraph 14.11.

¹⁰⁵ Response to the Issues Letter, paragraph 4.13.

¹⁰⁶ Response to the Issues Letter, paragraph 4.14.

¹⁰⁷ Response to the Issues Letter, paragraph 4.16.

¹⁰⁸ Response to the Issues Letter, paragraph 4.30.

¹⁰⁹ Response to the Issues Letter, paragraph 4.30; Ritchie Bros response to CMA's section 109 notice 2, Annex 8, page 3 and Ritchie Bros response to CMA's section 109 notice 3, Annex 12, page 6.

¹¹⁰ Response to the Issues Letter, paragraph 4.31.

broader range of competitors in a number of internal documents than Euro Auctions.¹¹¹

The Parties' analysis of buyer behaviour

99. The Parties submitted an analysis of the Parties' registrants and buyers (**buyer behaviour**) at their UK auctions. According to the Parties, this analysis shows:
- (a) For customers who registered with Ritchie Bros, [X] bought with them within 180 days of registering; for Euro Auctions this was [X].
 - (b) Of those customers that registered but did not purchase, which the Parties consider to be lost opportunities, [X] of Ritchie Bros and [X] of Euro Auctions registrants purchased from the other Party.
 - (c) Of customers who placed a bid at a Ritchie Bros auction, [X] did not purchase within 180 days; of these, [X] purchased from Euro Auctions.
100. The Parties submitted that this suggests that diversion between the two parties is low, and as such they must be constrained by other outside options.
101. The CMA recognises that switching data can be informative of the degree of closeness of competition between merger parties.¹¹² However, the CMA does not consider that the data provided by the Parties is switching data and it does not allow for the calculation of diversion ratios. In particular, the CMA considers that this analysis rests on certain assumptions that may or may not be true:
- (a) First, it assumes that observing the first preferences of customers who did not purchase from a Party is a good proxy for the second preferences of customers who did purchase. The Parties have not presented any evidence for the CMA to allow it to assess whether this is appropriate.
 - (b) Second, it assumes that all registrants who did not buy from the Party with which they registered had the intention to purchase and/or went on to shop around beyond the Parties, and ultimately made a purchase. The CMA has seen no evidence that shows whether or from where these registrants went on to buy construction machinery.

¹¹¹ Response to the Issues Letter, paragraph 4.32; Examples of internal document references: Ritchie Bros response to CMA's section 109 notice 2, Annex 7, page 17; Ritchie Bros response to CMA's section 109 notice 3, Annex 2, page 8; FMN, Annex 9.3, page 7, Annex 9.5 and 9.6; and slide 41 of the Parties' issues meeting presentation.

¹¹² [Merger Assessment Guidelines](#), paragraph 4.13.

102. The CMA has therefore attached very limited weight to this analysis.

Third party views

- *Customers: buyer side*

103. Most of the buyers that responded to the CMA's Merger investigation stated that the Parties compete closely with each other in the auctioning of used heavy equipment,¹¹³ with some of them stating the Parties compete very closely.¹¹⁴ Some buyers expressed concerns about the Merger having a negative impact on competition.¹¹⁵ Several of these buyers explained that this is due to the Parties already being large in the market.¹¹⁶

- *Customers: seller side*

104. Almost all of the sellers that responded to the CMA's Merger investigation stated that the Parties compete closely with each other in the auctioning of used heavy equipment,¹¹⁷ with many of them stating the Parties compete very closely.¹¹⁸ One seller noted that the Parties' are the only real competitor to each other in the UK', and another seller noted that 'they are No 1 in UK'.¹¹⁹ Most sellers also expressed concerns about the Merger having a negative impact on competition.¹²⁰ Several of these sellers explained that this is due to the Parties already being large in the market.¹²¹

- *Competitors*

105. Competitors that responded to the CMA's Merger investigation were mostly concerned about the Merger's impact on competition. For example, two competitors stated that the Merger would make it difficult to enter and compete in the UK within auction services for used heavy equipment.¹²² One

¹¹³ The CMA notes that all customers that responded to the CMA's Merger investigation use the Parties' services to buy/sell construction equipment, a small number of these customers also used the Parties to buy/sell transport and/or agricultural machinery. Therefore, the CMA believes that customer responses are mostly focussed on construction equipment; [REDACTED].

¹¹⁴ [REDACTED].

¹¹⁵ [REDACTED].

¹¹⁶ [REDACTED].

¹¹⁷ The CMA notes that all customers that responded to the CMA's Merger investigation use the Parties' services to buy/sell construction equipment, a small number of these customers also used the Parties to buy/sell transport and/or agricultural machinery. Therefore, the CMA believes that customer responses are mostly focussed on construction equipment; [REDACTED].

¹¹⁸ [REDACTED].

¹¹⁹ [REDACTED].

¹²⁰ [REDACTED].

¹²¹ [REDACTED].

¹²² [REDACTED].

of them stated that the Merger would allow Ritchie Bros to have a monopoly and therefore have the power to dictate prices and restrict new entrants.¹²³

106. A few competitors stated a positive view of the Merger, although one of these competitors also noted that ‘the reduced choice would be bad for sellers.’ The CMA considers that these views reflect the perceived benefits of the Merger for these competitors (rather than for competition in the market), as they stated that they may gain unhappy customers and customers switching to them if the Parties raised commissions.¹²⁴
107. The CMA considers that, overall, the third-party responses to the CMA’s Merger investigation indicate that the Parties are seen as close competitors, with a material proportion of third-party responses expressing reasoned and competition-specific concerns in relation to the Merger.

Internal documents

108. Euro Auctions submitted very few internal documents relating to competitive conditions. All [REDACTED] of the internal documents produced by Euro Auctions on competitive conditions benchmark its performance against Ritchie Bros.¹²⁵ One of these documents also mentions that Euro Auctions and Ritchie Bros ‘are similar in nature’ while noting that Ritchie Bros also offers some ancillary services.¹²⁶
109. The internal documents submitted by Ritchie Bros indicate that it has been focussing on growing its presence in the UK for a number of years and, in most internal documents that assess the UK market, Euro Auctions is discussed in much more detail than other competitors. For example:
- (a) In a presentation on the UK market in June 2018, Ritchie Bros sets out that in the last five years (2013-18) it grew ‘[REDACTED]’.¹²⁷ Ritchie Bros also opened its Maltby site in 2018 to attract more customers and store more equipment.¹²⁸ This focus on the UK is supported by other internal documents including the ‘[REDACTED]’, which states that Ritchie Bros’ aim is to ‘[REDACTED]’¹²⁹ and the ‘[REDACTED]’ business plan from June 2020, in which the UK is labelled as a [REDACTED].¹³⁰

¹²³ [REDACTED]

¹²⁴ [REDACTED]

¹²⁵ FMN, Annexes 9.14 – 9.20.

¹²⁶ FMN, Annex 9.14, Slide 8.

¹²⁷ Ritchie Bros response to CMA’s section 109 notice 3, Annex 4, slide 2.

¹²⁸ Ritchie Bros response to CMA’s section 109 notice 3, Annex 2, July 18, page 8 which states that ‘[REDACTED]’.

¹²⁹ Ritchie Bros response to CMA’s section 109 notice 3, Annex 5, slide 14.

¹³⁰ FMN, Annex 7e.2, slide 18.

- (b) Ritchie Bros' '[REDACTED]' business plan from June 2020 states that '[REDACTED]'.¹³¹ The same presentation notes that Ritchie Bros did not [REDACTED] [REDACTED] in the UK, allowing Euro Auctions to '[REDACTED]'.¹³²
- (c) In Ritchie Bros' [REDACTED] '[REDACTED]', from November 2018, one of the stated aims is to '[REDACTED]', for the reason that '[REDACTED]'.¹³³ The same document shows that Ritchie Bros also benchmarks itself against Euro Auctions, stating that Ritchie Bros' biggest success factor was that '[REDACTED]'.¹³⁴
- (d) A Ritchie Bros '[REDACTED]' to [REDACTED] in February 2021 focuses on Euro Auctions in a slide looking at competition, [REDACTED], the size of [REDACTED], whilst only mentioning the other UK auctioneers, ie [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], without any further analysis.¹³⁵ In the same presentation, on a slide titled '[REDACTED]', it is noted to '[REDACTED]' as '[REDACTED]'.¹³⁶ The CMA considers the [REDACTED] that was submitted by Ritchie Bros,¹³⁷ is an EU-wide study and therefore is of limited value as regards the competitive conditions in the UK specifically. However, the CMA considers that this document indicates that the Parties are competing closely as '[REDACTED]';¹³⁸ [REDACTED]';¹³⁹ and the [REDACTED] [REDACTED] indicate that the Parties' brands are close to one another.¹⁴⁰
- (e) The [REDACTED] [REDACTED] of 2021 submitted by Ritchie Bros, seems to indicate that Ritchie Bros is lesser known than Euro Auctions among the UK respondents of the [REDACTED] [REDACTED].¹⁴¹ However, Ritchie Bros' brand Iron Planet is among the closest brands to Euro Auctions in consideration of use.
- (f) In Ritchie Bros' internal documents that assess competition on a pan-European and/or global scale, Euro Auctions is often listed as the main player for the UK and Europe.¹⁴²

110. The CMA considers that the limited discussion of other players in the supply of auction services for used heavy construction equipment in the UK supports the view that the Parties are the main auction services suppliers and other suppliers are very small (as supported by share of supply estimates). As noted at paragraph 96, in a market characterised by a small number of significant players, the CMA will require persuasive evidence that the merging

¹³¹ FMN, Annex 7e.2, slide 4.

¹³² FMN, Annex 7e.2, slide 6.

¹³³ Ritchie Bros response to CMA's section 109 notice 3, Annex 1, slide 4.

¹³⁴ Ritchie Bros response to CMA's section 109 notice 3, Annex 1, slide 2.

¹³⁵ FMN, Annex 9.3, slide 7.

¹³⁶ FMN, Annex 9.3, slide 14.

¹³⁷ FMN, Annex 9.5.

¹³⁸ FMN, Annex 9.5, slide 7.

¹³⁹ FMN, Annex 9.5, slide 12.

¹⁴⁰ FMN, Annex 9.5, slide 44 and 51-53, in particular the [REDACTED] [REDACTED] for sellers.

¹⁴¹ FMN, Annex 9.6, slide 22

¹⁴² See for example, FMN, Annex 14, slide 4; Annex 5, slide 24; and Annex 9.5, slide 7 stating that '[REDACTED]'. See also Annex 11, slide 50.

firms are not close competitors in order to allay any competition concerns. Such evidence has not been received in this case.

111. The CMA further considers that Ritchie Bros' argument that its strategy is set centrally and on a global level does not diminish the evidentiary value of the documents relating to the UK. These documents show the competitive conditions (as perceived by Ritchie Bros UK) in the UK and the competitive constraints Ritchie Bros is facing in the UK, identifying Euro Auctions as the primary constraint and not other UK auction service providers. Although other players (auction providers, listing sites etc) are mentioned in an international context, the CMA considers that most of these competitors are not focussed on the UK and therefore compete significantly less closely with the Parties in the UK.
112. The CMA therefore considers that the evidence from the internal documents supports the view that the Parties are close competitors.

Conclusion on closeness of competition

113. On the basis of the evidence above, the CMA considers that the Parties are close competitors in the supply of auction services for used heavy construction machinery in the UK.

Competitive constraints

114. Horizontal unilateral effects are more likely where customers have little choice of alternative supplier.¹⁴³ The CMA has considered whether there are alternative suppliers which would provide a sufficient competitive constraint on the Merged Entity.
115. The CMA notes that alternative auction suppliers for heavy construction machinery in the UK have a much smaller share of supply than the Merged Entity, accounting for a total of only [0-10]% (see Table 1 above). The CMA is assessing the constraints from alternative suppliers in light of:
- (a) The Parties' submissions;
 - (b) Evidence from internal documents; and
 - (c) Third party views on alternatives.

¹⁴³ [Merger Assessment Guidelines](#), paragraph 4.3.

The Parties' submissions

116. The Parties submitted they will continue to face strong competition post-Merger. In particular:
- (a) The Parties are constrained by several auction providers in the UK such as [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] that perform similar or better from a brand perspective than Ritchie Bros.¹⁴⁴
 - (b) The Parties provided examples of sellers to whom they have lost business, such as [REDACTED], [REDACTED], [REDACTED] and [REDACTED].¹⁴⁵ The Parties indicated that these sellers are either selling directly to dealers or use other auction providers or marketplaces. The Parties also submitted that in [REDACTED] and [REDACTED], [REDACTED] [REDACTED] [REDACTED] companies disposed of a significant volume of equipment through various channels and Ritchie Bros only [REDACTED] a small proportion globally.¹⁴⁶
 - (c) The Parties noted that the CMA has not considered dealers, brokers and OEMs as competitive constraints on the Parties despite the Parties regularly losing business to them, sometimes of high value.¹⁴⁷ The Parties consider these alternatives facilitate a large volume of transactions involving used heavy equipment and fulfill many of the functions that auctions provide. The Parties provided examples of dealers that have recently started auctions, such as Morris Leslie, SJH-All Plant Group, Wyles Hardy & Co and Witham Specialist Vehicles.¹⁴⁸ The Parties submitted there are numerous internal documents indicating that there is competition from these other methods of buying and selling of used heavy equipment (particularly noting dealers, traders, OEMs, ebay, etc.)¹⁴⁹ and third-party evidence also indicates that other methods of sale would impose a strong constraint on the Parties if there were a price increase, suggesting substitutability (instead of complementarity).¹⁵⁰

Third party views

117. Third parties that responded to the CMA's Merger investigation generally considered there to be few alternatives to the Parties, both in terms of auction

¹⁴⁴ Response to Issues Letter, paragraph 42(d)(ii).

¹⁴⁵ [REDACTED].

¹⁴⁶ Response to the Issues Letter, paragraphs 4.39 and 4.40.

¹⁴⁷ Response to the Issues Letter, paragraph 4.35.

¹⁴⁸ Response to the Issues Letter, paragraph 4.35.

¹⁴⁹ Response to Issues Letter, paragraph 4.42.

¹⁵⁰ Response to Issues Letter, paragraph 4.41.

services and other methods of sale, and that the alternative auction services providers do not compete closely with the Parties. In particular:¹⁵¹

- (a) The majority of buyers and sellers stated that in 2020 they only used auction services of the Parties and no other suppliers compete closely with the Parties.¹⁵² Several customers noted the reason for this is that other suppliers are unable to compete closely due to the Parties' size: for example, one buyer noted '[i]n the UK there are multiple smaller auctioneers within the market but none of the size of both Ritchie Bros and Euro Auctions.'¹⁵³
- (b) Buyer responses to the CMA's Merger investigation indicated there are few alternatives to the Parties, with less than half using auction services other than the Parties in 2020, and only a few using more than two other auction services. Brightwells, Cheffins and Protruck were only mentioned once.¹⁵⁴ Additionally, only one buyer used a marketplace in 2020, which was Euro Auctions' marketplace.¹⁵⁵
- (c) The majority of sellers did not mention any other auction provider they were using in addition to the Parties. The few that mentioned others named Watts Auctions, Gateway, Wilsons, Hussey and Thimbleby & Shoreland (once each). Additionally, only a very limited number of sellers also used a marketplace in 2020, one of which used the marketplace of one of the Parties and only two other marketplaces were mentioned (once each): Gateway and Machinery Trader.¹⁵⁶
- (d) When buyers and sellers were asked what other methods of purchasing or selling used heavy equipment they use, they generally also listed using private means of buying/selling, close to half listed dealers and only a few listed marketplaces and/or listing sites.¹⁵⁷ The CMA considers that using other buying/selling methods alongside auctions may indicate that these methods are complementary to each other rather than alternatives.
- (e) When asked what buyers and sellers would do if commission rates increased by five percent, the majority stated that they would at least investigate alternatives.¹⁵⁸ However, the CMA notes that none of the

¹⁵¹ The CMA notes that all customers that responded to the CMA's Merger investigation use the Parties services to buy/sell construction equipment, a small number of these customers also used the Parties to buy/sell transport and/or agricultural machinery. Therefore, the CMA considers that customer responses are mostly focussed on construction equipment.

¹⁵² [REDACTED]

¹⁵³ [REDACTED]

¹⁵⁴ [REDACTED]

¹⁵⁵ [REDACTED]

¹⁵⁶ [REDACTED]

¹⁵⁷ [REDACTED]

¹⁵⁸ [REDACTED]

respondents mentioned specific alternative suppliers (with one third party-seller highlighting that other auction providers lack the scale of the Parties), and dealers, brokers and OEMs were not mentioned at all by sellers, which supports the view that there are few suitable alternatives to which customers can switch.

- (f) The majority of competitors that responded to the CMA's Merger investigation ranked both Parties as their top two competitors.¹⁵⁹ The CMA considers that this shows that other suppliers impose a weaker competitive constraint on the Parties as the Parties are consistently ranked as the main competitors.¹⁶⁰ Malcolm Harrison was named by very few competitors but was ranked lower and third parties mentioned that it was focused on transport. Likewise, Brightwells was only mentioned by very few competitors, and those competitors mentioned the localised nature of Brightwells' activities. Thimbleby & Shoreland, Cheffins and Watts were only mentioned once and were among the lowest ranked competitors, due to their small scale or localised activities.
- (g) All competitors noted that there is some competition from other methods of buying/selling used heavy equipment (for example dealers, traders, OEMs, eBay etc).¹⁶¹ However, one of these competitors highlighted that '[auctioning] is unique by being time sensitive meaning buyers have to make a decision on a set day and time to participate and bid on the assets'.¹⁶² Another stated that Ritchie Bros' and Euro Auctions' auction services model of selling '[without] reserve... tends to attract greater interest and therefore bidding.'¹⁶³

118. On the basis of the above evidence, the CMA therefore considers that third-party views indicate that other UK auction competitors only impose a limited constraint on the Parties and no third-party mentioned international auction providers as a constraint. Third-party evidence further indicates that marketplaces and listing sites are only used sparingly by buyers and sellers of the Parties; none of them mentioned Facebook and only one mentioned eBay as an alternative. Likewise, OEMs, brokers or dealers were mentioned by a very limited number of third-party buyers and sellers as an alternative in the event of a price rise.

159 [REDACTED]
160 [REDACTED]
161 [REDACTED]
162 [REDACTED]
163 [REDACTED]

- *Internal documents*

119. The CMA considers that the Parties' internal documents do not appear to support the Parties' submissions on the number and breadth of competitors that they face.
120. As regards UK auction competitors, the internal documents from Ritchie Bros focus to a very large extent on Euro Auctions and other auctioning companies are only mentioned briefly. Dealers, OEMs and traders are rarely mentioned. For example:
- (a) In Ritchie Bros' '[REDACTED]' to [REDACTED] in February 2021, competitors other than Euro Auctions, all five of which are other auction providers ([REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED]), are named without any commentary, while Euro Auctions is analysed in more detail focussing on the [REDACTED] and other parameters.¹⁶⁴
 - (b) In Ritchie Bros' '[REDACTED]', from October 2021, other than Euro Auctions, only three UK auction providers ([REDACTED], [REDACTED] and [REDACTED]) are listed. However, they are estimated to have significantly lower annual GTV than Euro Auctions (which is substantiated by the CMA's own share of supply estimates set out above).¹⁶⁵
 - (c) Euro Auctions' 'Information Memorandum' mentions that:
 - (i) 'Euro Auctions has very few competitors with the [REDACTED].¹⁶⁶ CVA, Malcolm Harrison and Cheffins are mentioned, but the document sets out that [REDACTED].
 - (ii) In the same document, a '[REDACTED]' is planned and a recent (2020) [REDACTED] in [REDACTED] to have been '[REDACTED]', further indicating that Euro Auctions faces limited competitive constraint.¹⁶⁷
121. The CMA therefore considers that the internal documents are consistent with the other evidence discussed above that other UK auction providers only impose a very limited constraint on the Parties.
122. As regards international auction service providers for heavy construction machinery, Ritchie Bros' internal documents do not analyse auction

¹⁶⁴ FMN, Annex 9.3, slide 7.

¹⁶⁵ Ritchie Bros response to CMA's section 109 notice 2, Annex 7.

¹⁶⁶ FMN, Annex 8.1, slide 19.

¹⁶⁷ FMN, Annex 8.1, slides 27 and 55.

companies from outside the UK, such as [REDACTED], [REDACTED] and [REDACTED], in any detail and, where they are discussed, this is in a European-wide or global context.¹⁶⁸

123. The CMA further considers that online marketplaces, OEMs, dealers and brokers are very rarely mentioned as a competitive constraint in Ritchie Bros' internal documents as regards the UK.¹⁶⁹ Moreover, Euro Auctions' 'Information Memorandum' states that '[REDACTED]'.¹⁷⁰

- *CMA assessment of the Parties' other arguments on third party constraints*

124. The CMA also considered the Parties' other submissions on the extent to which they face third-party constraints.

125. As regards the dealers that were identified by the Parties as offering auctions, the CMA notes that Morris Leslie's website states that its auctions offer buyers and sellers 'cars, plant and light commercial vehicles',¹⁷¹ Wyles Hardy & Co's current auctions are for trains, planes and automobiles,¹⁷² and Witham Specialist Vehicles run auctions only for vehicles.¹⁷³ The CMA considers that these dealers do not appear to run auctions for heavy construction machinery and are therefore not directly competing with the Parties. The CMA also considers that none of these providers were mentioned in the Parties' internal documents or by any third-party.

126. As regards the examples submitted by the Parties of their lost deals from large, commonly served sellers,¹⁷⁴ the CMA considers that the Parties have not provided any evidence of whether these are actual losses rather than those sellers selling less in general. Similarly, the CMA has not seen any evidence as to whether the GTV lost for each Party relates to heavy construction machinery. The CMA therefore considers these submissions on loss data do not show that the Parties are constrained from sellers in the supply of auction services for heavy construction machinery in the UK.

Conclusion on constraints from alternative suppliers

127. Based on the above evidence, the CMA considers that although there are several alternative UK auction service providers for used heavy construction machinery in the UK, they are much smaller than the Parties and offer only a

¹⁶⁸ See for example Annex 14, slide 4 and Ritchie Bros response to CMA's section 109 notice 3, Annex 10, slide 5.

¹⁶⁹ See the documents listed in footnote 79 above for marketplaces and paragraph 75(c), footnote 81 for dealers and OEMs.

¹⁷⁰ FMN, Annex 8.1, slide 19.

¹⁷¹ See [Morris Leslie's](#) website.

¹⁷² See [Wyles Hardy & Co's](#) website.

¹⁷³ See [Witham Specialist Vehicles](#) website.

¹⁷⁴ Response to Issues Letter, paragraph 4.39.

limited competitive constraint. The CMA further considers that the available evidence consistently indicates that the competitive constraint from alternatives such as OEMs, dealers, brokers, marketplaces and listing sites is also limited.

Conclusion on horizontal unilateral effects

128. For the reasons set out above, the CMA considers that the Parties are each other's closest competitor in the UK, with both having significantly larger shares of supply than the next largest competitor. The majority of third-party buyers and sellers were concerned about the Merger and noted the absence of credible alternatives. Third-party evidence and internal documents further indicate that out of market constraints, from auction providers outside the UK, marketplaces, listing sites, dealers and OEMs, are not seen as viable alternatives by customers and impose a limited constraint on the Parties. Accordingly, the CMA found that the Merger raises significant competition concerns as a result of horizontal unilateral effects in relation to the supply of auction services for used heavy construction machinery in the UK.

Barriers to entry and expansion

129. Entry, or expansion of existing firms, can mitigate the initial effect of a merger on competition, and in some cases may mean that there is no SLC. In assessing whether entry or expansion might prevent an SLC, the CMA considers whether such entry or expansion would be timely, likely and sufficient.¹⁷⁵ If effective entry and/or expansion occurs as a result of the merger and any consequent adverse effect, the effect of the merger on competition may be mitigated. In these situations, the CMA might conclude that no SLC arises as a result of the merger. In order to prevent an SLC, entry or expansion would need to be timely, likely and sufficient.¹⁷⁶

130. The Parties submitted that the barriers to entry in relation to auctions are not high, specifically noting the following:

(a) The recent entry of Williams Auctions and UK Auctions (both with physical auction sites) is evidence that barriers to entry are low.¹⁷⁷

(b) There are no significant challenges for a new entrant to build reputation and scale as the significant shift of business online has removed many of the fixed costs that live auction providers previously faced.¹⁷⁸ For example, Troostwijk has successfully expanded its online auctions in both

¹⁷⁵ [Merger Assessment Guidelines](#), from paragraph 8.40.

¹⁷⁶ [Merger Assessment Guidelines](#), paragraph 8.33.

¹⁷⁷ Response to Issues Letter, paragraph 5.1.

¹⁷⁸ Response to Issues Letter, paragraphs 5.4-5.5.

Europe and the UK.¹⁷⁹ Equippo has successfully expanded its operations in Europe and has recently started to operate in the UK where its GTV reached almost £5 million in 2020. Others such as Morris Leslie, a plant hire and dealer, has set up its online sales business for its used heavy equipment.¹⁸⁰

- (c) Costs of entering are not significant: for auctions, the Parties state that the largest capital expense used to be the physical sites which is no longer important for an auction provider's offering. Physical sites can be leased by providers rather than purchased, or a 'satellite yard' model (ie owning or leasing smaller sites) can be utilised.¹⁸¹ Some auction providers have moved online, removing the need for investment in a physical location.¹⁸²
- (d) Though not a material barrier, brand recognition may add some value in attracting sellers, which in turn is likely to attract buyers.¹⁸³ For example, [REDACTED] outperformed [REDACTED] for positive reception, consideration of use, and use within [REDACTED] months.¹⁸⁴

131. The CMA believes that, contrary to the Parties' submissions, competitor responses to CMA's Merger investigation largely support the view that there are high barriers to entry and expansion, particularly in building scale and reputation, and incurring significant costs in acquiring physical auction sites.¹⁸⁵ In particular:

- (a) One competitor submitted that it would take several years to enter and grow in the market.¹⁸⁶ Two other competitors submitted that it would take up to five to ten years to establish a reputation in the market, with one of the two stating that this time would include developing a buyer base and seller network and that acquiring physical auction sites requires scale of a business to be profitable.¹⁸⁷ The other stated that this time was required to compete with the larger established auctioneers and an easier method to compete would be through an acquisition of an auctioneer.¹⁸⁸ Only one competitor stated that it was easy to enter the market with no licences or regulations.¹⁸⁹ The CMA also notes that it took Ritchie Bros, a very experienced and large auction service provider, more than five years to

¹⁷⁹ Response to Issues Letter, paragraph 5.5.

¹⁸⁰ Response to Issues Letter, paragraph 5.7.

¹⁸¹ FMN, paragraph 19.5, and Response to Issues Letter.

¹⁸² FMN, paragraphs 19.7, and Response to Issues Letter.

¹⁸³ FMN, paragraphs 19.9, and Response to Issues Letter.

¹⁸⁴ Response to Issues Letter, paragraph 5.9.

¹⁸⁵ [REDACTED]

¹⁸⁶ [REDACTED]

¹⁸⁷ [REDACTED]

¹⁸⁸ [REDACTED]

¹⁸⁹ [REDACTED]

build a modest UK market share of [10-20]%.¹⁹⁰ A Ritchie Bros internal document also notes the importance of customer loyalty, observing '[REDACTED]'.¹⁹¹

- (b) The majority of competitors stated that investment of millions of pounds was required, which included costs of setting up the platform (including an online dedicated platform), locating and purchasing physical auction sites, maintenance costs of the infrastructure and costs relating to labour and advertising.¹⁹² This was also supported by internal documents from Ritchie Bros setting out the [REDACTED] for Ritchie Bros' new site in Maltby, which highlighted the necessity to have a [REDACTED] auction site to handle the many '[REDACTED]' lots which are needed to offer the higher value equipment; this entailed a [REDACTED] [REDACTED] [REDACTED] of around £[REDACTED] per annum.¹⁹³
- (c) The majority of competitors responding to CMA's Merger investigation considered that physical inspection of used heavy equipment was important due to auctioning laws and contracts, as well as a requirement of certain buyers.¹⁹⁴ This indicates that having a physical location is important for entry and expansion. One buyer and two sellers indicated that an auction provider having a physical location in the UK was important.¹⁹⁵ A number of these customers explained that this is so they can inspect the condition of used heavy equipment before purchasing.¹⁹⁶ The CMA considers that the new entrants mentioned by the Parties are stated to have entered with 'physical auction sites'.

132. While a number of competitors stated their future intentions of developing or expanding their auction services of used heavy equipment in the UK, their plans are based on investment, development and construction of physical auction sites.¹⁹⁷ One third-party stated that the Merger would in their view make it more difficult for it to enter the market.¹⁹⁸

133. Of the new entrants listed by the Parties (see paragraph 130(a) above), Wilsons Auctions' website says it is not yet operational and the CMA was unable to find a website for UK Auctions. Of the competitors that the Parties submitted have successfully expanded in the UK, a number of them explained to the CMA the difficulties of entering and expanding, including the long periods of time to gain traction and significant costs of setting up that are

¹⁹⁰ FMN, Annex 9.3, slide 10

¹⁹¹ FMN, Annex 9.3, slide 10.

¹⁹² [REDACTED]

¹⁹³ See Ritchie Bros response to CMA's section 109 notice 3, Annex 2, page 7 which states that '[REDACTED].'

¹⁹⁴ [REDACTED]

¹⁹⁵ [REDACTED]

¹⁹⁶ [REDACTED]

¹⁹⁷ [REDACTED]

¹⁹⁸ [REDACTED]

required.¹⁹⁹ For example, one third-party has tried to expand in the last three years but has not managed to gain market share. Another third-party submitted that it takes several years to enter and reach size with investments in the millions.²⁰⁰ The CMA further considers that no buyer or seller mentioned either Troostwijk, Equippo or Morris Leslie as (potential) alternatives to the Parties.²⁰¹ In addition, all of the entrants and current UK competitors are much smaller in size compared to the Parties, as shown in Table 1 above.

134. Overall, the evidence available to the CMA does not show that entry or expansion will be timely, likely or sufficient to mitigate the competition concerns arising from the Merger. Further, network effects arising from the two-sided nature of the market are likely to reinforce the barriers to entry that have been identified above, making it more difficult for smaller platforms to enter or expand. In a market characterised by network effects, the cost to a customer of switching to a new supplier increases as their current supplier grows, as the customer loses the benefits from network effect, which makes switching less attractive. This means that the cost of entering and building a sufficiently large customer base on both sides of the market to attract other customers, and therefore compete, is likely to be high.
135. For the reasons set out above, the CMA believes there are high barriers to entry and expansion in the supply of auction services for used heavy construction machinery in the UK. As a result, the CMA believes that entry or expansion would not be timely, likely or sufficient to prevent a realistic prospect of an SLC as a result of the Merger.

Conclusion on substantial lessening of competition

136. Based on the evidence set out above, the CMA believes that it is or may be the case that the Merger may be expected to result in an SLC as a result of horizontal unilateral effects in relation to the supply of auction services for used heavy construction machinery in the UK.

Decision

137. Consequently, the CMA considers that it is or may be the case that (i) arrangements are in progress or in contemplation which, if carried into effect, will result in the creation of a relevant merger situation; and (ii) the creation of

¹⁹⁹ [REDACTED].
²⁰⁰ [REDACTED]
²⁰¹ [REDACTED]

that situation may be expected to result in an SLC within a market or markets in the United Kingdom.

138. The CMA therefore determines that it is under a duty to refer under section 33(1) of the Act. However, the duty to refer is not exercised whilst the CMA is considering whether to accept undertakings under section 73 of the Act instead of making such a reference.²⁰² The Parties have until 11 March 2022²⁰³ to offer an undertaking to the CMA.²⁰⁴ The CMA will refer the Merger for a phase 2 investigation²⁰⁵ if the Parties do not offer an undertaking by this date; if the Parties indicate before this date that they do not wish to offer an undertaking; or if the CMA decides²⁰⁶ by 18 March 2022 that there are no reasonable grounds for believing that it might accept the undertaking offered by the Parties, or a modified version of it.

David Stewart
Executive Director
Markets and Mergers
Competition and Markets Authority
4 March 2022

²⁰² Section 33(3)(b) of the Act.

²⁰³ Section 73A(1) of the Act.

²⁰⁴ Section 73(2) of the Act.

²⁰⁵ Sections 33(1) and 34ZA(2) of the Act.

²⁰⁶ Section 73A(2) of the Act.