

COMPLETED ACQUISITION BY COPART, INC. OF GREEN PARTS SPECIALIST HOLDINGS LTD (HILLS MOTORS)

Issues statement

13 January 2023

The reference

1. On 9 December 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the **Act**), referred the completed acquisition by Copart UK Limited, a wholly owned subsidiary of Copart, Inc. (**Copart**) of the entire issued share capital of Green Parts Specialist Holdings Ltd (formerly named ILT Project Limited) (**Hills Motors**) (the **Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**). Copart¹ and Hills Motors are together referred to as, the **Parties** or, for statements referring to the future, the **Merged Entity**.
2. In exercise of its duty under section 35(1) of the Act, the CMA must decide:
 - (a) whether a relevant merger situation has been created; and
 - (b) if so, whether the creation of that relevant merger situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the United Kingdom (**UK**) for goods or services.

Purpose of this issues statement

3. In this issues statement, we set out the main issues we are likely to consider in reaching a decision on the SLC question (paragraph 2(b) above), taking into account the evidence available to us to date, including the evidence obtained in the CMA's phase 1 investigation, and further evidence that will be obtained during our phase 2 investigation. This does not preclude the consideration of any other issues which may be identified during the course of our investigation.

¹ In this issues statement, Copart refers to Copart, Inc. together with all entities under common ownership or common control, or over which it exerts material influence within the meaning of section 26 of the Act, excluding Hills Motors.

4. The CMA's phase 1 decision² (the **Phase 1 Decision**) contains much of the detailed background to this issues statement. We are publishing this issues statement to assist parties submitting evidence to our phase 2 investigation.
5. As noted above, this issues statement sets out the main issues we are likely to consider in our investigation and we invite parties to notify us if there are any additional relevant issues which they believe we should consider.

Background

The Parties

6. Copart is headquartered in the United States with operations in countries across Asia, Europe, and South America. The turnover of Copart in the financial year ending 31 July 2022 was approximately £2.2 billion worldwide, of which approximately £[redacted] million was generated in the UK.³
7. Hills Motors is headquartered in the UK. The turnover of Hills Motors in the financial year ending 30 November 2021 was approximately £[redacted] million worldwide, of which £[redacted] million was generated in the UK.⁴
8. Both Parties supply salvage vehicle commercialisation services (**salvage services**) and salvage vehicles⁵ in the UK. Hills Motors also has in-house dismantling capability and supplies recycled official manufacturer (**OEM**) parts (**green parts**).

The transaction

9. On 5 July 2022, Copart UK Limited, a wholly owned subsidiary of Copart, acquired the entire issued share capital of Hills Motors.⁶
10. The Parties submitted that the rationale for the Merger is for Copart to provide salvage service customers with an in-house, end-to-end salvage and dismantling service, including the supply of green parts.⁷

² Available on the case page, [Copart / Hills Motors merger inquiry - GOV.UK \(www.gov.uk\)](https://www.gov.uk).

³ Final Merger Notice submitted to the CMA on 30 September 2022 (**FMN**), paragraph 25.

⁴ FMN, paragraph 26.

⁵ Salvage vehicles are damaged vehicles that are typically deemed no longer fit for use on the road and/or uneconomical for repair and can be classified into four categories according to their physical state, in accordance with insurance industry categories set out in Association of British Insurer's [code of practice](#): category A (vehicles deemed not suitable to be repaired and must be crushed in their entirety); category B (vehicles deemed not suitable for repair but whose useable parts can be recycled); category S (repairable vehicles that have sustained structural damage); category N (repairable vehicles that have sustained non-structural damage) (the **ABI categories**). Salvage vehicles may fall outside of these categories, eg where they have not been categorised by an insurance or other salvage service customer. Phase 1 Decision, paragraph 3 and footnote 24.

⁶ FMN, paragraphs 4, 9 and Annex 1.

⁷ FMN, paragraph 10. Parties' response to the CMA's phase 1 issues letter submitted on 4 November 2022.

Our inquiry

11. Below we set out the main areas of our intended assessment in order to help parties who wish to make representations to us.

Assessment of the competitive effects of the Merger

Jurisdiction

12. We will consider the question of jurisdiction in our investigation.
13. In the context of a completed transaction, a relevant merger situation exists where the following conditions are satisfied:⁸
- (a) two or more enterprises have ceased to be distinct; and
 - (b) either:
 - (i) the value of the target enterprise's UK turnover exceeded £70 million in its last fiscal year (the **turnover test**);⁹ or
 - (ii) the enterprises ceasing to be distinct both supply or acquire goods or services of any description in the UK and, post-Merger supply or acquire 25% or more of those goods or services in the UK or in a substantial part of it (the **share of supply test**).¹⁰
14. In its Phase 1 Decision, the CMA found that it is or may be the case that:
- (a) each of Copart and Hills Motors is an enterprise and that these enterprises ceased to be distinct as a result of the Merger; and
 - (b) the share of supply test is met, on the basis that Copart and Hills Motors have a combined share of supply of more than 25% in the supply of salvage services in the UK with an increment arising as a result of the Merger.¹¹

⁸ Section 23 of the Act.

⁹ Section 23(1)(b) of the Act.

¹⁰ Section 23(3) and (4) of the Act.

¹¹ Phase 1 Decision, paragraph 20. The CMA estimated that the Parties have a combined share of supply of [60–70]% with an increment of [5–10]% resulting from the Merger on the basis of the number of vehicles in damage categories A, B, N or S handled on behalf of salvage service customers (Phase 1 Decision, paragraphs 41 and 42). The Parties estimated that they have a combined share of supply of salvage services in the UK of [40–50]% (Phase 1 Decision, paragraph 39).

Counterfactual

15. We will compare the prospects for competition resulting from the Merger against the competitive situation without the Merger: the latter is called the 'counterfactual'. The counterfactual is not a statutory test but rather an analytical tool used in answering the question of whether a merger gives rise to an SLC.¹²
16. For completed mergers, the CMA generally adopts the pre-Merger conditions of competition as the counterfactual against which to assess the impact of the merger. In assessing whether a different counterfactual is appropriate, the CMA will often focus on significant changes affecting competition between the merger firms, where there are reasons to believe that those changes would make a material difference to its competitive assessment.¹³ In its Phase 1 Decision, the CMA assessed the impact of the Merger against a counterfactual of the pre-Merger competitive conditions and considered the impact of the developments in the importance of green parts on competition in the supply of salvage services where relevant in its competitive assessment.¹⁴
17. Our starting point is that the pre-Merger conditions of competition form the most likely counterfactual to the Merger and that developments in the importance of green parts should be considered within the competitive assessment. We welcome any evidence on this as part of our assessment.

Market definition

18. Where the CMA makes an SLC finding, this must be 'within any market or markets in the United Kingdom for goods or services'.¹⁵ The CMA is therefore required to identify the market or markets within which an SLC exists. An SLC can affect the whole or part of a market or markets.
19. Within that context, the assessment of the relevant market is an analytical tool that forms part of the analysis of the competitive effects of a merger and should not be viewed as a separate exercise.¹⁶ The boundaries of the market do not determine the outcome of the analysis of the competitive effects of the merger in any mechanistic way, as it is recognised that there can be constraints on merging parties from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more

¹² [MAGs](#), paragraph 3.1.

¹³ [MAGs](#), paragraphs 3.8 and 3.9.

¹⁴ [Phase 1 Decision](#), paragraph 26.

¹⁵ [Section 35\(1\)\(b\)](#), the Act.

¹⁶ [MAGs](#), paragraph 9.1.

important than others. We will take these factors into account in our competitive assessment.¹⁷

20. In its Phase 1 Decision, the CMA assessed the impact of the Merger on:
 - (a) the supply of salvage services in the UK;
 - (b) the supply of salvage vehicles in the UK; and
 - (c) the supply of green parts in the UK.

21. In relation to product scope, the CMA assessed competitive dynamics relevant to the activities of the Parties.
 - (a) Considering the supply of salvage services,¹⁸ the CMA did not receive evidence that it was necessary to distinguish separate product frames of reference by customer type (such as insurance companies, fleet management companies, etc).

 - (b) As regards the supply of salvage vehicles,¹⁹ the CMA did not receive evidence to suggest that the competitive impact of the Merger would differ if assessed by reference to the supply of all salvage vehicles (overall) or to the supply of a particular subset of salvage vehicles (for example, salvage vehicles sourced from a particular upstream customer type, or a falling into a particular damage category). In particular, the CMA considered that:
 - (i) as all salvagers active in the supply of salvage services in the UK are also active in the supply of salvage vehicles to downstream customers in the UK, the competitive presence of salvagers in the downstream supply of salvage vehicles will closely reflect their competitive presence in the upstream supply of salvage services; and

 - (ii) while different types of salvage vehicle may be more or less substitutable for certain downstream customers' needs, given that the range of salvage vehicles supplied will reflect the range of vehicles sourced, the relative presence of salvagers in the supply of salvage vehicles (whether all salvage vehicles or a specific subset of salvage vehicles) will be similar to their presence in the supply of salvage services.

¹⁷ MAGs, paragraph 9.4.

¹⁸ Phase 1 Decision, paragraph 31(a).

¹⁹ Phase 1 Decision, paragraph 31(b).

- (c) In relation to the supply of green parts,²⁰ the CMA did not consider salvage vehicles and green parts to be substitutes to one another given their differing characteristics and intended use. From a supply-side perspective, the evidence received in phase 1 indicated that while many salvagers are also dismantlers, conditions of competition in the supply of green parts and the supply of salvage vehicles differ (with some salvagers, such as Copart, not being active in the supply of green parts).
22. In relation to geographic scope,²¹ the CMA found that the appropriate geographic scope for each product frame of reference was UK-wide. To the extent there is regional variation in competition for the supply of salvage services, salvage vehicles or green parts, at phase 1, the CMA did not receive evidence to suggest that this would have a material impact on its competitive assessment.
23. We will consider the Parties' and other submissions and evidence on these points but we do not expect market definition to be determinative in the outcome of our assessment.

Theories of harm

24. The term 'theory of harm' refers to the hypothesis about how the process of rivalry could be harmed as a result of a merger. Theories of harm provide a framework for assessing the competitive effects of a merger and whether or not it could lead to an SLC relative to the counterfactual.²²
25. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of:
- (a) horizontal unilateral effects in the supply of salvage services in the UK (**TOH 1**);
 - (b) horizontal unilateral effects in the supply of salvage vehicles in the UK (**TOH 2**); and
 - (c) input foreclosure of rival suppliers of green parts in the UK through restricted access to salvage vehicles (**TOH 3**).
26. We are minded to focus our competitive assessment on these theories of harm at phase 2.

²⁰ [Phase 1 Decision](#), paragraph 31(c).

²¹ [Phase 1 Decision](#), paragraphs 34 and 35.

²² [MAGs](#), paragraph 2.11.

27. Identifying a theory of harm in this issues statement does not preclude an SLC being identified on another basis following further work, or receipt of additional evidence. However, subject to new evidence being submitted, we do not currently intend to investigate any other theories of harm in relation to this Merger.
28. Our assessment of mergers is generally forward-looking and considers the competitive effects of the merger in question now and in the future.²³

Horizontal unilateral effects

29. 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 own and without needing to coordinate with its rivals. Unilateral effects giving rise to an SLC can occur in relation to customers at any level of a supply chain, for example at a wholesale level or retail level (or both), and is not limited to end consumers.²⁴ When assessing whether a merger may give rise to an SLC as a result of horizontal unilateral effects, the CMA's main consideration is whether there are sufficient remaining good alternatives to constrain the merged entity post-merger.²⁵
30. In order to investigate the horizontal unilateral effects theories of harm identified above, we will consider whether there are sufficient remaining good alternatives to constrain the Merged Entity post-Merger, having regard to: shares of supply, the closeness of competition between the Parties and other evidence regarding the constraint from alternative suppliers that will remain post-Merger. In our assessment, we will consider the competitive effects of the Merger now and in the future, having regard to evidence on the Parties' and third parties' competitive trajectory to date and likely future position absent the Merger.
 - *Horizontal unilateral effects in the supply of salvage services in the UK (TOH 1)*
31. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of salvage services in the UK. In particular, based on the evidence available to it, the CMA found that:

²³ MAGs, paragraph 2.14.

²⁴ MAGs, paragraph 4.1.

²⁵ MAGs, paragraph 4.3

- (a) the Merger combines the largest and fourth largest suppliers and, based on the share data gathered by the CMA, the Merged Entity would have a high combined share of supply (in excess of 60%) that is substantially greater than that of the next largest supplier, IAA, Inc. (IAA);²⁶
- (b) based on the share data available to the CMA, there is only a small number of significant suppliers in this segment with Copart, IAA and e2e Total Loss Vehicle Management (e2e) being substantially larger than other suppliers;²⁷
- (c) while Hills Motors is a relatively small supplier, it provided a material constraint to Copart, and was in a position to provide an even stronger constraint in future;²⁸
- (d) while there may be increasing customer demand for green parts, the evidence available to the CMA – including tender data and internal documents submitted by the Parties – did not suggest that this change has undermined Copart’s position in the market or that Copart is no longer a very material competitor;²⁹ and
- (e) taking account of evidence submitted by customers, competitors and the Parties: IAA will continue to provide a strong competitive constraint on the Merged Entity post-Merger;³⁰ pre-Merger, e2e provided a moderate competitive constraint on Copart (although there was some evidence which indicates that the departure of Hills Motors from the e2e consortium could leave e2e a weaker competitor post-Merger);³¹ and other suppliers such as SureTrak, ASM, Recycling Lives, Charles Trent, Jonathan Lloyd and Silverlake will provide a weak constraint on the Merged Entity post-Merger.³²

32. In order to investigate this theory of harm, we expect to consider evidence relating to:

- (a) salvage service customer preferences and requirements – including as to the importance of a salvager being able to (i) offer an in-house green

²⁶ [Phase 1 Decision](#), paragraphs 41 and 42.

²⁷ [Phase 1 Decision](#), paragraphs 41 and 42.

²⁸ Given, in particular, in the CMA’s Phase 1 assessment: (i) customer evidence indicated that the Parties are two of a few salvagers who compete for national contracts (with Hills Motors having recently taken on certain UK-wide contracts); (ii) competitors considered the Parties to be competing closely; (iii) absent the Merger, the Parties would have been two of a few players who operate a proprietary auction platform (as, prior to the Merger, Hills Motors had been developing an auction platform); and (iv) the Parties’ internal documents indicated that they considered each other to be competitors and opportunities data showed that they have been invited to compete against each other directly on recent occasions. [Phase 1 Decision](#), paragraphs 47(a), 47(b), 49, 50 and 52.

²⁹ [Phase 1 Decision](#), paragraph 51.

³⁰ [Phase 1 Decision](#), paragraph 56.

³¹ [Phase 1 Decision](#), paragraphs 57 and 58.

³² [Phase 1 Decision](#), paragraph 59.

parts supply service and (ii) service contracts on a national (UK-wide) basis independently (as opposed to through outsourcing) – when selecting a salvager, having regard to recent tender data and requirements;

- (b) whether and how such customer preferences and requirements have changed or might in future change, and the impact of such change on competition in the supply of salvage services;
 - (c) shares of supply taking account of volume (number of vehicles) of salvage vehicles handled overall (including vehicles in the ABI categories and informally- or un-categorised vehicles);
 - (d) the extent to which the Parties compete closely, including with respect to their ability to compete for national (UK-wide) contracts;
 - (e) the Parties' plans and likely competitive trajectory absent the Merger; and
 - (f) the constraint remaining from alternative suppliers post-Merger, including from e2e and whether smaller players may be expected to expand to constraint the Merged-Entity.
- *Horizontal unilateral effects in the supply of salvage vehicles in the UK (TOH 2)*

33. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of horizontal unilateral effects in the supply of salvage vehicles in the UK. The CMA did not receive evidence to suggest the relative competitive strength of the Parties or their rivals will differ materially between the supply of salvage services and the supply of salvage vehicles.³³ We therefore expect that the evidence base and assessment of TOH 2 will not materially differ to that for TOH 1.

Vertical effects

34. Vertical effects may arise when a merger involves firms at different levels of the supply chain, for example a merger between an upstream supplier and a downstream customer or a downstream competitor of the supplier's customers. The concern with an input foreclosure theory of harm is that the merged entity may use its control of an important input to harm its downstream rivals' competitiveness, for example by refusing to supply the input (total foreclosure) or by increasing the price or worsening the quality of

³³ [Phase 1 Decision](#), paragraph 64.

the input supplied to them (partial foreclosure). This might then harm overall competition in the downstream market, to the detriment of customers.³⁴

- *Input foreclosure of rival suppliers of green parts in the UK through restricted access to salvage vehicles (TOH 3)*

35. In its Phase 1 Decision, the CMA found that the Merger gave rise to a realistic prospect of an SLC as a result of input foreclosure of rival suppliers of green parts in the UK through restricted access to salvage vehicles. In its assessment, the CMA considered whether the Merged Entity would restrict access to salvage vehicles that are needed by dismantlers in order to effectively compete in the supply of green parts, having regard to: (i) the Merged Entity's ability to foreclose rival suppliers of green parts; (ii) its incentive to do so; and (iii) the effect of a foreclosure strategy on competition in the supply of green parts.
36. With regard to ability,³⁵ the CMA considered that the Merged Entity would have a very high share of supply of salvage vehicles upstream (including salvage vehicles used in the supply of dismantling) and there are few alternatives that rival suppliers of green parts could switch to. To the extent that there are constraints on the Merged Entity's in-house dismantling capacity, the CMA considered that they would not materially limit the Merged Entity's ability to foreclose rivals.³⁶ The CMA's assessment of the ability of the Merged Entity to foreclose its rivals did not place material weight on contractual protections.
37. As regards the Merged Entity's incentive to foreclose rivals,³⁷ the CMA considered whether the overall magnitude of any potential gain in sales from the supply of green parts would be outweighed by the overall magnitude of any loss of sales of salvage vehicles to third-party dismantlers. In this regard, the CMA considered that, given the stated rationale for the Merger (see paragraph 11 above), Copart has a strong incentive to deploy and develop Hills Motors' existing dismantling capabilities for the purposes of supplying green parts to service its upstream customers. The CMA therefore did not consider it necessary to infer the Merged Entity's behaviour from a detailed assessment of its financial incentives.³⁸ The CMA noted that an analysis of

³⁴ MAGs, paragraph 7.9.

³⁵ Phase 1 Decision, paragraphs 71-75.

³⁶ Given that the CMA received evidence that, in its phase 1 assessment: (i) the Merged Entity may not need to refuse to supply all salvage vehicles used in the supply of green parts for rivals to be foreclosed (as a reduction in the supply of 'high value' vehicles – or a reduction in the pool of salvage vehicles available from which 'high value' vehicles are selected – may harm rivals); and (ii) Copart intends to expand this capacity in order to meet upstream customers' requests for a green parts supply service.

³⁷ Phase 1 Decision, paragraphs 76-77.

³⁸ The CMA further considered that, given Copart's leading positions in the supply of salvage services and salvage vehicles, Copart likely has the scale and financial backing to withstand any short term losses from

(short term) upstream losses submitted by the Parties takes into account all vehicles salvaged by Copart (and not just those that would be dismantled in-house following the Merger) and is thus unrealistic. As such, the CMA did not place any weight on this analysis.

38. As regards the effect of foreclosure on competition in the supply of green parts,³⁹ when it has been established that there will be harm to competitors this will often directly imply there will be harm to overall competition where the foreclosed firms play a sufficiently important role in the competitive process on the downstream market. In this regard, the CMA noted that some rivals in the supply of green parts are salvagers with in-house dismantling capability – in particular, IAA and e2e – who are able to source salvage vehicles from their upstream customers. However, several salvagers (including several e2e members) indicated that they source salvage vehicles for use in the supply of green parts from the Parties and raised concerns about the impact of the Merger on the availability of salvage vehicles for use in the green parts supply chain. Further, other green parts suppliers who do not supply salvage services to upstream customers (independently, or as part of a consortium) source vehicles from salvagers.
39. In order to investigate this theory of harm at phase 2, we expect to consider evidence relating to:
- (a) Copart's position in the supply of salvage vehicles used in the supply of green parts and the alternatives available to rival green parts suppliers;
 - (b) to what extent there is differentiation within the subset of salvage vehicles used as an input to supply of green parts in terms of the 'value' of a vehicle for use in the supply of green parts;
 - (c) Hills Motors' capacity for dismantling salvage vehicles in order to supply green parts and to what extent this can be expanded post-Merger;
 - (d) the quantity of salvage vehicles required by Copart to meet salvage service customers' demands for in-house supply of green parts post-Merger and its plans for using Hill Motors to meet such demand;
 - (e) whether and to what extent Copart's business model limits its ability or incentive to restrict access to salvage vehicles used as an input to supply green parts;

restricting the sale of salvage vehicles to third parties in pursuit of gains in the medium to long term through developing its green parts supply offering (and, as such, an assessment of downstream gains and upstream losses in the short term may not reflect the Merged Entity's longer-term incentives).

³⁹ [Phase 1 Decision](#), paragraphs 78-79.

- (f) the relatively profitability of sales of salvage vehicles used as an input to supply green parts at auction as compared to dismantling in-house; and
- (g) the competitive landscape in the supply of green parts in the UK.

Countervailing factors

- 40. We will consider whether there are countervailing factors which prevent or mitigate any SLC that we may find. Some of the evidence that is relevant to the assessment of countervailing factors may also be relevant to our competitive assessment.
- 41. We will consider evidence of entry and/or expansion by third parties and whether entry and/or expansion would be timely, likely and sufficient to prevent any SLC from arising as a result of the Merger.⁴⁰
- 42. We will also consider any relevant evidence submitted to us by the Parties that the Merger is likely to give rise to efficiencies that will enhance rivalry, such that the Merger may not be expected to result in an SLC.⁴¹

Possible remedies and relevant customer benefits

- 43. Should we conclude that the Merger may be expected to result in an SLC within one or more markets in the UK, we will consider whether, and if so what, remedies might be appropriate.
- 44. In any consideration of possible remedies, we may have regard to their effect on any relevant customer benefits that might be expected to arise as a result of the Merger and, if so, what these benefits are likely to be and which customers would benefit.⁴²

Responses to this issues statement

- 45. Any party wishing to respond to this issues statement should do so in writing, no later than **17:00 (UK time) on Friday 27 January 2023** by emailing copart.hills-motors@cma.gov.uk.

⁴⁰ [MAGs](#), paragraphs 8.28–8.46.

⁴¹ In order to reach a view that such efficiencies prevent or mitigate any SLC found, the CMA must be satisfied that the evidence shows that that the merger efficiencies: (a) enhance rivalry in the supply of those products where an SLC may otherwise arise; (b) are timely, likely and sufficient to prevent an SLC from arising; (c) merger-specific; and (d) benefit customers in the UK ([MAGs](#), paragraphs 8.8 to 8.20).

⁴² [Merger Remedies \(CMA87\) \(13 December 2018\)](#), paragraphs 3.4 and 3.15–3.24.