

## RESPONSE TO THE PHASE 2 ISSUES STATEMENT

### 1. EXECUTIVE SUMMARY AND INTRODUCTION

1. As part of the CMA's review of the acquisition by Copart UK Ltd ("**Copart**") of Hills Motors Salvage and Recycling Ltd ("**Hills Motors**") and, together with Copart, the "**Parties**") (the "**Transaction**"), the CMA published an Issues Statement setting out the main issues it is likely to consider in assessing whether the Transaction gives rise to a substantial lessening of competition ("**SLC**"). The Issues Statement ("**Issues Statement**") outlines that the CMA intends to consider the scope for an SLC in horizontal effects in the supply of salvage services and salvage vehicles, and input foreclosure of rival suppliers to Hills Motors of green parts through restricted access to salvage vehicles.
2. The Parties set out in this submission, first, their views on, and responses to, the main issues the CMA intends to consider as part of its review, and second, the market context and supportive evidence on the key issues that are critical to understanding the sector, assessing competition in the sector, and demonstrating that the Transaction does not give rise to an SLC.
3. No SLC will arise for the reasons set out in this submission. In summary:
  - Fundamentally, Copart and Hills Motors provide different salvaging services. Copart is first and foremost a remarketing company reselling on behalf of its customers, used, wholesale and salvage vehicles. Hills Motors, on the other hand, is a regional dismantler and recycling specialist.
  - As a result, and as demonstrated in this submission, the Parties do not compete for the supply of salvage services. Hills Motors does not have the capabilities nor the infrastructure to compete for nationwide salvaging contracts. To compete for such contracts, salvagers must be able to provide: i) national coverage (i.e., multiple locations across the country from where vehicles can be collected and processed), ii) considerable storage capacity to effect speedy and cost-efficient collection of the vehicles, thereby meeting SLAs, and iii) a competitive auction platform which will attract a large volume of buyers. Hills is unable to offer such capabilities and infrastructure. Its only involvement with nationwide contracts is through a consortium of other members (i.e., e2e and Suretrak). The Ageas contract is an outlier as Ageas, unlike other upstream customers, has historically dealt with a number of providers to meet its needs. Whilst Hills Motors did invest in the development of an auction platform, it never intended to launch it, let alone compete with other existing auction platforms. The lack of such capabilities has meant that Hills did not

typically tender for national contracts and has also seldom been invited to compete for these contracts.

- The premise posed in the Issues Statement that the Parties are close competitors and that Hills Motors poses a “material constraint” on Copart does not stand up to scrutiny. Hills Motors cannot provide any material constraint to Copart, and has in fact never competed head-to-head with Copart. The CMA’s evidence of competition has no basis in fact. Being invited to tender against each other does not constitute competition, and cannot be considered to constitute a “material constraint”, in particular when considering the large pool of upstream customers (c.1,500). The evidence which the CMA relies upon is factually incorrect.
  - The Parties are not two of a few salvagers that compete for national contracts.
  - Competitors considering the Parties to compete closely is no basis to rely on an SLC decision on.
  - Hills Motors does not operate an independent auction platform nor did it have plans to do so.
  - Far from contradicting this evidence, the Parties’ internal documents support the fact that the Parties are not close competitors
- The Issues Statement significantly overstates both Hills Motors’ and Copart’s share of supply of vehicles downstream. The CMA’s assessment in its Phase 1 decision is flawed as it failed to take into account other salvagers focused on other upstream segments (e.g., fleets, finance companies, local authorities, etc.) whose vehicles compete on auctions downstream. Instead, it only took into consideration the vehicles sourced from insurers. Consequently, the CMA neglected to consider other well-resourced competitors, including IAA/SYNETIQ and e2e as well as a range of other players (e2e individual members, BCA, Manheim, Recycling Lives, Jonathan Lloyd, Suretrak, etc.) who will continue to pose a material constraint to the Merged Entity. Therefore, it is not the case that the Transaction will lead to an SLC based on horizontal unilateral effects in the supply of salvage services or salvage vehicles in the UK.
- Finally, the Issues Statement presents a vertical foreclosure theory of harm which is unrealistic and cannot materialise. The Phase 1 decision failed to

properly understand how green parts are sourced, and therefore wrongfully focused on an extremely narrow source of salvage vehicles for dismantling for green parts. In particular, the decision not only failed to take into consideration several alternative sources of supply of vehicles suitable for green parts which extends much wider than salvage vehicles, but it also failed to consider the actual proportion of vehicles which are suitable for dismantling. As a result, the CMA significantly overstated Copart's insignificant role in the supply of such an input, which means that it has no ability to foreclose suppliers of green parts.

- Further, the lack of basis of such theory is further compounded by the Phase 1 decision's failure to consider the financial incentives to foreclose. By not having carefully considered the actual foreclosure incentives, it failed to consider key aspects of the way in which salvaging and dismantling processes interact and thus, critically, the economic feasibility of foreclosure. Instead, the decision simply overstated the benefits of foreclosure and devalues the actual significant costs. Only through examining the gains and losses that arise from foreclosure will the CMA recognise that Copart diverting volumes to Hills Motors' single dismantling facility would be irrational and that, as a result, Copart has neither the ability, nor any incentives to foreclose suppliers of green parts. As explained in this submission, this analysis cannot ignore the actual significant losses which Copart would suffer should it reduce the volumes of cars sold through its auction platform. As explained at the site visit, a large proportion of its revenue derives from the auction platform. It therefore cannot risk losing any upstream customers as such loss would represent a cost which cannot be offset by the actual gains (if any) in incremental green parts revenues downstream which will remain relatively minimal. Even in the hypothetical scenario that Copart were to attempt to foreclose rival dismantlers, it would not have the incentives to do so as transport costs alone are very significant and would mean that Copart would have to engage in a costly and nonsensical change to its business model to divert vehicles to Hills Motors. As such, it is clear that the Transaction will not give rise to an SLC as a result of vertical effects from an input foreclosure of rival suppliers of green parts in the UK.

## 2. HORIZONTAL EFFECTS: SALVAGE SERVICES

### 2.1. Copart and Hills Motors provide a fundamentally different salvaging service

4. The Issues Statement notes that: *“While Hills Motors’ green-parts offering differentiates it from Copart, and may provide it with a competitive advantage in certain cases, the Parties’ core salvaging services offerings directly overlap.”* This statement misunderstands the fundamental differences that exist between the Parties which mean that they are not in fact close competitors.
5. Copart is active in the resale and remarketing of used, wholesale and salvage vehicles. Its core business is seeking maximum value from damaged vehicles via its member-only auction, which it does almost entirely on a profit-share model with its clients. Copart is active nationally and sees itself primarily as a marketplace firm.
6. In contrast, Hills Motors is a regional dismantler and recycling specialist. The stark difference between the Parties could be clearly seen at the site visits and is further demonstrated by the differences in offering in Table 1 below.

**Table 1: Parties’ Offering**

Offering	Copart	Hills
National capabilities	Yes	No
Number of sites	15 sites	1 dismantling site 2 storage sites 1 distribution centre 1 parts distribution yard <sup>1</sup>
Operational acres	405.5	27.93
Auction platform	Yes	No
Number of insurance upstream customers	[§<]	[§<]
Number of employees	499	194
Headcount per acre	1.23	6.95

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<sup>1</sup> This yard is currently leased to [§<].

Dismantling capabilities / green parts	No	Yes
Sales model	Profit share	Purchase

*\* Volumes distant from key sites (or due to capacity constraints) outsourced.*

7. The statement that Hills Motors has a “*competitive advantage in certain cases*”, presumably as a result of its green parts offering, assumes that the Parties compete head-to-head for the same contracts; this is simply not true as is explained below.

## **2.2. Copart and Hills Motors do not compete for the supply of salvaging services**

### **2.2.1. Hills Motors does not have the national coverage enabling it to compete**

8. To compete for nationwide contracts, salvage companies need to have several locations across the country from where vehicles can be collected from and processed. As explained below, without a network of sites, and collection and delivery infrastructure at those sites, the transportation costs of collection make servicing the contract unfeasible.
9. Alongside its HQ site, which is used almost entirely for dismantling, Hills Motors has two storage sites in the North West, in Burscough and Stanley.
10. As a result, Hills Motors has not historically competed for national contracts and its only involvement with nationwide contracts is through a consortium of other members. Principally this has taken place through e2e; e2e competes for the contracts directly (without necessarily informing its members) and allocates volumes based on postcode proximity to the dismantler’s site. This can clearly be seen in Figure 2 when considering Hills Motors’ activity through e2e using as a focal point Hills Motors’ collection locations.

### **Figure 2: Hills Motors’ Activity through e2e is Regionally Focused**

[X]

11. Similarly, its involvement in providing a service to SureTrak is more regionally focused, although covering a larger territory.
12. To show that Hills Motors is not able to supply nationwide contracts, the Parties have taken an example nationwide upstream contract from Copart and, using the location of the vehicles collected by Copart as part of this contract, have estimated the transportation costs to Hills Motors of servicing this contract (i.e., transporting the vehicles to Hills Motors' site). While Copart's national infrastructure enables it to process vehicles in relatively close proximity to where they are collected, Hills Motors would have to transport the vehicles to its site. The overall costs to Hills Motors are estimated to be £[>] (or £[>] per vehicle). As a result, it is not viable for Hills Motors to service nationwide contracts. These additional costs mean that Hills Motors is not able to offer upstream customers a sufficiently high purchase price to compete.
13. Hills Motors does service one nationwide contract, further details of which are provided below. However, Hills Motors does not tender for national contracts, nor did it have plans to do so and therefore it is inaccurate to suggest that it may be "*an even stronger constraint in future*".

#### **2.2.2. The Ageas contract is anomalous and not indicative of future 'national' competition**

14. As explained at the site visit, the vast majority of customers prefer to deal with one company only that will fulfil the contract nationwide (and this question is asked at RFP stage), which is why Hills Motors does not typically tender for nationwide contracts. Ageas is an outlier as it has historically dealt with a number of providers to meet its needs.
15. Not only does Hills Motors not tender for national contracts but it is seldom invited to compete for these or considered by other upstream customers that require national coverage.
16. It is therefore not the case that Hills Motors is a national player nor that it is likely to become one in the future. If, nonetheless, the CMA consider that it could offer nationwide coverage, that is also true of a number of other e2e network members that could work together to service a contract, particularly if 'sponsored' by a large upstream customer.

#### **2.2.3. Hills Motors does not have the salvaging storage capacity to compete**

17. To compete as a salvager requires significant storage capacity. Upstream customers require specific time for collections (i.e., the vehicle must be collected within a pre-determined short period) or else claims costs increase, as well as additional latent capacity for 'surge' events such as extreme weather events. Sites across the country are required to minimise transport costs and road miles for upstream customers' ESG targets, as well as to allow ready access to policyholders' personal effects (if the upstream customer is an

insurer). Salvage sites require dedicated space for motorcycle cover, for reinforced concrete for environmental waste management, and for HGV storage. This is clear from the fact that many RFPs request details on a supplier's capacity (see for example RFPs from [REDACTED] (FMN Annex 4), [REDACTED] (FMN Annex 5) or [REDACTED] (FMN Annex 6).

18. Hills Motors does not have the storage capacity to compete with Copart as a salvager. Hills Motors has only three sites. Hills Motors' main HQ site is used primarily for dismantling and so provides no storage capacity for salvaging volumes (unless those salvaged cars will be dismantled). Hills Motors stacks vehicles at its main HQ site meaning that the storage facilities are designed for vehicles to be dismantled rather than as storage capacity for resale. Hills Motors has two satellite sites in Stanley and Burscough, which it uses for salvaging, and which have a combined storage capacity for only 1,800 vehicles. Hills Motors therefore has very limited capacity to store salvaged vehicles.<sup>2</sup>
19. Hills Motors' inability to compete for national contracts can be illustrated by considering the storage required for an illustrative nationwide upstream salvaging contract. Copart's [REDACTED] contract involves collecting [REDACTED] vehicles a year (or, on average, [REDACTED] to [REDACTED] per month). At Hills Motors' two salvage storage sites, with a capacity of [REDACTED], Hills Motors is currently storing [REDACTED] vehicles and therefore has space for only [REDACTED] vehicles. Hills Motors is therefore not capable of storing the vehicles that would be collected under one national upstream contract, let alone more than one.<sup>3</sup>

#### **2.2.4. Hills Motors does not have an independent auction platform intended to compete with other existing auction platforms**

20. There are a number of providers that have an auction platform, including Copart, IAA SYNETIQ, e2e and Recycling Lives. However, Hills Motors is not one of them as Hills Motors previously used e2e's auction platform; there is no reason to suggest that this would have changed absent the Transaction.
21. Hills Motors invested in building its own auction platform as a defensive move to avoid dependence on third parties, in case the auction platform became unavailable. However, not only is the Hills Motors platform not fully functioning, but Hills Motors did not have any plans to launch the platform. Launching the platform would not only require the additional technological work but would also require marketing to attract (i) downstream customers to join; and (ii) potentially upstream, which would only happen in the event

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<sup>2</sup> Hills Motors acquired an additional site in Dumfries with storage capacity for [REDACTED] vehicles, which is primarily used for green parts distribution.

<sup>3</sup> The [REDACTED] contract is not one of Copart's largest. For example, [REDACTED].

of sufficient vehicle volumes offered on the platform, which may not be the case if depending solely on Hills Motors' volumes.

### 2.3. Hills Motors Motors's presence in the salvage market is minimal

#### 2.3.1. The CMA has overstated Hills Motors' market presence and competitive strength, including its share of supply in salvaging

22. As noted in the Initial Submission (and recognised by the CMA in previous decisions), the Parties consider that shares of supply do not fully capture competitive dynamics given the lumpy nature of tender markets. Nevertheless, the Parties consider it important to clarify Hills Motors' share of supply estimates given that these are overstated in the Phase 1 decision and that the CMA will consider evidence relating to shares of supply as part of its analysis.<sup>4</sup>
23. First, **Hills Motors' activity through e2e should not be included within Hills Motors' volumes.** Hills Motors has no visibility of any customer or tenders that e2e competes to supply. e2e competes for these without consultation of its members. Hills Motors and other members do not compete to supply the contract and have no involvement in the competitive process. Hills Motors only finds out about the contract or tender when it has been won and they deliver on behalf of e2e. The contract and thus obligation to deliver the contract terms lies with e2e irrespective of the members that collect the volumes on behalf of e2e.
24. Supporting this, when SYNETIQ left e2e, e2e did not lose any contracts and no customers were 'retained' by SYNETIQ. Instead, the volumes previously collected by SYNETIQ were reallocated and collected by other members (in particular, Overton). Similarly, Hills Motors no longer collects volumes on behalf of e2e. These volumes have been easily reallocated to other members. As a result, Hills Motors' volumes through e2e, accounting for approximately [X] vehicles and £[X] million in net revenue in 2021 (prior to any e2e reallocation to other members that has arisen since the Transaction) should be attributed to e2e not to Hills Motors for the purposes of assessing competition.
25. Second, **Hills Motors' activity through SureTrak should equally not count towards its total volumes.** As with e2e, Hills Motors has no role in the competitive process of winning the contracts tendered by SureTrak (including the [X] contract). Hills Motors acts only as a sub-contractor for SureTrak. If Hills Motors was not a sub-contractor, SureTrak would replace Hills Motors with another firm. As a result, Hills Motors volumes

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<sup>4</sup> Issues Statement, paragraph 32(c).



through SureTrak, accounting for approximately [X] vehicles and £[X] million in net revenue in 2021, should be attributed to SureTrak and not Hills.

26. Third, volumes that are sourced not from upstream customers but rather from salvage companies equally do not represent vehicles that Hills has salvaged (i.e., these are not vehicles that are part of any salvage service that Hills provides to upstream customers). Hills Motors purchases vehicles for its dismantling operation, including from Copart and IAA-SYNETIQ thus the vehicles it sources is not equivalent to the vehicles it salvages.
27. As a result, Hills Motors’ total salvage volumes for the purposes of shares of supply should exclude each of these and are [X]. Of this, note that [X] are sourced through the Ageas contract (only [X] of which Hills Motors salvaged itself) and [X] are sourced through the redundant AA (Kent & Essex) contract (none of which Hills Motors salvaged itself). On the same basis that the e2e and SureTrak volumes should be excluded, the Parties acknowledge that the Ageas and AA (Kent & Essex) volumes should be included for the purposes of estimating Hills Motors’ position. However, the exceptional circumstances of both these contracts – and the lack of inference that can be drawn from either as to the competitive effects of the Transaction – are considered in detail elsewhere in this Response.

**Table 3 : Hills Motors Volumes and Share of Supply**

Source	Volume	Share of total
Hills Motors direct salvage volumes before adjustment	[X]	[X]
e2e	[X]	[X]
SureTrak	[X]	[X]
Purchased (not salvaged)	[X]	[X]
Drop-ins/ offs (not salvaged)	[X]	[X]
Regional salvage volumes <sup>5</sup>	[X]	[X]
Hills Motors salvage volumes after adjustment	[X]	[X]

<sup>5</sup> Regional salvage volumes are vehicles salvaged by Hills Motors within 80 miles. Ageas volumes are not included in this regional volume (even if collected regionally) as this is a national contract.

Source	Volume	Share of total
<i>Of which Ageas</i>	[X]	[X]
<i>Ageas - salvaged by Hills Motors directly</i>	[X]	[X]
<i>Of which AA (Kent &amp; Essex)</i>	[X]	[X]
<i>AA (Kent &amp; Essex)- salvaged by Hills Motors directly</i>	[X]	[X]
Hills Motors direct salvage volumes without Ageas & AA	[X]	[X]
<i>Of which salvaged by Hill directly</i>	[X]	[X]

**2.3.2. Hills Motors is of a comparable size to a number of other competitors that would provide a similar competitive constraint to Hills**

28. The CMA considered that the Merger combines the largest and fourth largest suppliers, indicating that Hills Motors is the fourth largest salvager in the UK. This is incorrect as other players are of a similar size or larger. Even when including regional salvage volumes from above, Hills Motors sourced approximately [X] vehicles and generated gross revenue (not excluding payments to upstream customers) of around £[X] million from salvage services. By comparison:

- **Charles Trent** states that it salvages (i.e., collects, processes and resells) 50,000 vehicles annually across its two sites in Poole and Rugby. If e2e vehicles are excluded (as above for Hills), Charles Trent salvages directly approximately 40,000 vehicles. This is significantly more than Hills Motors’ salvaging volume as shown above. The ABP estimates Charles Trent’s salvaging revenue £39 million (£12.5 million more than the previous year<sup>6</sup>).
- **Recycling Lives** indicates that it recycles over 150,000 cars annually. Copart supplies approximately [X] of these.<sup>7</sup> If we assume, conservatively, that IAA-SYNETIQ and e2e members supply the same, this means that Recycling Lives salvages approximately [X] vehicles annually, again more than Hills Motors’

<sup>6</sup> See FMN Annex 20 – APB Yearbook 2021-2022.

<sup>7</sup> Copart vehicle sales to Recycling Lives in 2022 were [X].

direct salvaging volume. The ABP estimate Recycling Lives salvaging turnover of £64 million.

- **Redcorn** currently contracts with 23 local authorities for salvaging and indicates that it disposes of 150,000 cars annually. Copart makes no sales to Redcorn. This indicates that Redcorn has significantly greater salvaging volumes to Hills. The ABP estimate Redcorn's salvaging turnover to be £42.5 million (and is ranked 4<sup>th</sup>).
- Details of other competitors were provided in the Initial Submission (see section 3.3).

29. It is therefore inaccurate to state that Hills Motors provides a "material constraint" with other suppliers, including those listed above, providing a "weak constraint".

#### **2.4. Copart's presence in salvaging services has been significantly overstated**

30. The Issues Statement notes that, *"in considering the supply of salvage services, the CMA has received no evidence supporting a distinction between customer types (such as insurance companies, fleet management companies, etc)."*<sup>8</sup> The Parties believe that this reflects how salvaging services work in practice. However, this approach must also be applied when assessing shares of supply.

31. The Motor Insurers Anti-Fraud and Theft Register (MIAFTR), an independent third-party source, suggests that total salvaging volumes for insurers only in 2022 were approximately 600,000. However, MIAFTR includes only Category A, B, S and N vehicles and so excludes X and U vehicles (which account for approximately 20% of Copart sales and a significantly higher proportion of salvage service competitors).<sup>9</sup>

32. In addition, MIAFTR is an insurer register so, by the nature of the data collection process, it excludes salvaging for many other upstream customers that may not be processed for insurance purposes, including much of the salvaging activity undertaken on behalf of fleet management companies, leasing/finance companies, car rental companies (where there is no insurance claim) and local authorities.

33. For example, the vehicles coming through de-fleeting (including total loss disposal) are subject to the same requirements for collection, storage, auctioning and, where relevant, breaking and dismantling (and traceability) as the vehicles Copart is salvaging. The

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<sup>8</sup> Issues Statement, paragraph 21(a) and Phase 1 decision, paragraph 31(a).

<sup>9</sup> The numerator for Copart in any share of supply estimate must be treated on a like-for-like basis as the denominator.

Parties estimate that salvage services provided to fleet management companies<sup>10</sup> account for approximately 150,000 vehicles annually.<sup>11</sup> Salvage services provided to car rental companies, local authorities, and police authorities must also be included. These are upstream customers and involve processing and disposal of salvage vehicles.<sup>12</sup> The Parties estimate that the number of vehicles sourced through rental companies is approximately 260,000.<sup>13</sup>

34. As a result, total salvaged vehicles in the UK are estimated to be approximately around 1.1 million annually. The volume of Copart vehicles salvaged on behalf of upstream customers was [X] in 2022, thus giving Copart an estimate upstream share of supply of [X]%.<sup>14</sup> This is significantly less than the over 60% share of supply of the Parties noted in the Issues Statement which is clearly overstated.

## **2.5. Hills Motors does not provide a material constraint nor does the Parties compete head-to-head**

35. In the Issues Statement, the CMA notes that “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” and that “it will consider the extent to which the parties compete closely with respect to their ability to compete for national (UK-wide) contracts.” As is explained below,

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<sup>10</sup> For example, Lex Autolease has a fleet size of close to 300,000, Arval 180,000, LeasePlan UK 170,000, ALD Automotive 142,000, and Alphabet 132,000.

<sup>11</sup> The SMMT estimate there are approximately 800,000-900,000 new fleet cars registered annually (*Source: SMMT fleet registrations, 2021-22*). The FN50 provides an estimate for the fleet sizes of the largest 50 fleet financing companies (approximately 1.7 million), which shows that the fleet stock is typically constant year-on-year (i.e. that new vehicles are matched by de-fleeted vehicles). (*Source: FN50 listing, Fleet News*). As a result, approximately 850,000 vehicles are de-fleeted each year. This is a conservative estimate as it does not include LCVs and HGVs. The Parties estimate that around 15-20% of these will either involve some damage that puts them into the equivalent of categories B, S or N, or be similar category U vehicles to those Copart handles (i.e., 127,000 to 170,000).

<sup>12</sup> For example, see Hudson Kapel’s salvage vehicle auction site, which Copart understands sells on behalf of Enterprise, amongst others. Hudson Capel currently lists over 200 salvage vehicles for sale on its auction sites (42% S, 26% U, 15% B, 19% N).

<sup>13</sup> The Parties do not have full visibility of precise figures. However, based on evidence available on Hills Motors limited police contracts, which each have volumes approximately [X] vehicles, scaled up by the number of police authorities in the UK (45), this gives approximately [X] vehicles from police authorities alone. The Parties consider similar volumes are likely to be sourced from local authorities (e.g., based on Redcorn’s stated values noted above).

<sup>14</sup> This share estimate, based on a more balanced and accurate view of the supply of salvaging services to all upstream customers, taking account of the available data and evidence, suggests Copart’s upstream share of supply is significantly less than the 60-70% the CMA estimated in its Phase 1 review. Even this share estimate likely overstates Copart’s position given its recent loss of the LV contract accounting for approximately [X]-[X] vehicles annually.

it is inaccurate to suggest that Hills Motors provides a material constraint to Copart and the Parties welcome the CMA's desire to assess this point further.

### **2.5.1. The Parties have not knowingly competed in tenders**

**The Parties have never knowingly competed against each other to supply a single customer<sup>15</sup>**

36. As noted in the Initial Submission, the Parties do not consider that merely being invited to tender against each other (on three recent occasions), constitutes competition. Even if it did, with an estimated 1,500 significant upstream customers in the UK,<sup>16</sup> this can hardly be considered to constitute meaningful competition or "a material constraint".

37. With regard to the three instances of alleged competition where the Parties were both invited to tender, the Parties did not both tender and in each of the three cases, Hills Motors did not or could not compete.

- The [X] contract was in fact an e2e tender and Hills Motors had no visibility it was even being bid for.
- The [X] contract: Hills Motors did not compete for this as it was no capable of supplying the contract.
- [X] contract: Hills Motors could not compete for this contract as it was not capable of supplying the contract.

38. As a result, there is no evidence of direct head-to-head competition between the Parties for the supply of salvage services. Indeed, Hills Motors does not proactively seek or bid for any national salvaging supply (and never has done) as noted above. It would therefore be inaccurate to suggest that Hills Motors provides a material constraint now or would have been in a position to provide an even stronger constraint in future.

### **2.5.2. CMA's evidence of competition has no basis in fact**

39. The Issues Statement notes that the evidence for an assessment of a closeness of substitution between the Parties is: (i) customer evidence that the Parties are two of a few salvagers who compete for national contracts (with Hills Motors having recently taken

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<sup>15</sup> For completeness, the Parties have reviewed volume data over the past three years (2020-2022) and have noted a small number of instances in which the Parties both supplied services to a single customer. In each case, the smaller (by volume for that customer) salvager sourced fewer than 15 vehicles per year. These include [X], where Hills Motors sourced only [X] over three years, [X], for which Hills sourced only [X] over three years and [X] for which Hills sourced fewer than [X] in 2020/2021 and [X] in 2022. It also includes [X] where Copart sourced [X] in 2020 and [X] in 2021/2022. The Parties do not consider these overlaps point to any competition.

<sup>16</sup> For example, the BVRLA has 1,000 members, including leasing and fleet management, rentals, commercial vehicles.

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.

40. The Parties address each of these in turn:

- (i) As noted above (see 2.3.3), *the Parties are not two of a few salvagers that compete for national contracts.*
- (ii) *Competitors considering the Parties to compete closely is no basis to rely on SLC decision on.* The Parties fully expect some competitors do not want the Transaction to go ahead and competitor evidence should be afforded the appropriate weighting as a result.
- (iii) *As noted above, Hills Motors does not operate an independent auction platform nor did it have plans to do so.* Its development of a platform was a defensive move only to protect its business but does not mean that Hills Motors was planning to launch the platform in the absence of foreclosure by IAA SYNETIQ (which the CMA ruled out in its IAA/SYNETIQ decision).
- (iv) *No evidence in the internal documents showing that the Parties are close competitors*

41. As noted in the Initial Submission (see paragraph 50), the Parties' internal documents do not support the conclusion that they are close competitors; indeed, they support the opposite conclusion.

- The two Hills Motors documents that are referenced in the Phase 1 decision as showing close competition show something altogether different; namely, that Hills Motors competes for the supply of green parts rather than salvaging. This is not evidence of close competition.
- Similarly, Copart's internal documents do not demonstrate close competition between the Parties. In the majority of internal documents that make reference to competitors, it is IAA/SYNETIQ and e2e that are referenced. In those few documents in which Hills Motors is mentioned, a range of other competitors (such as [X]) are also mentioned, showing (as also noted above) that other competitors offer a similar competitive constraint to that imposed by Hills. See paragraph 52 of the Initial Submission for further details.

42. Similar evidence can be found in documents provided to the CMA in response to the Phase 2 – Notice 1 dated 22 December 2022. For example, in the weekly proposal trackers which monitor business opportunities, eight competitors are mentioned, but not Hills Motors (see for example COP\_0000005).

## 2.6. Copart’s business faces significant risk of loss upstream

43. The Issues Statement notes that: *“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.”*

44. Such a conclusion is not borne out by the evidence on the ground. In particular, and as explained in detail in the Initial Submission:

- Copart recently lost **its third largest customer** at the time, LV, to its closest competitor, IAA-SYNETIQ, as a direct result of not having green parts capability.<sup>17</sup> LV accounted for approximately [X] vehicles and £[X] million of gross sales value, which represented around [X]% of Copart’s overall salvaging activity.
- Copart recently [X].
- Copart is seeing the early warning signals that other customers are at significant risk of switching. Green parts capability has been increasingly formally sought by potential customers in tenders and Copart remains the only national salvager which does not offer end-to-end salvage, dismantling and green parts. Copart has come under pressure in the last couple of years by its customers who want to know what Copart is doing in green parts (including [X])<sup>18</sup> and/or have started to include questions about green parts in their RFPs (including [X])<sup>19</sup>. These customers represent a significant proportion of

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<sup>17</sup> FMN Annex 9.

<sup>18</sup> See FMN Annex 2 in relation to enquiries from [X] and [X]. See also document COP\_0000529, in which securing green parts supply is described as the biggest focus and issue for [X] and document COP\_0000472 in relation to discussions with [X] relating to green parts.

<sup>19</sup> See FMN Annex 3 (p 16-18) in relation to [X], FMN Annex 4, question 7 in relation to [X], FMN Annex 5 in relation to [X], FMN Annex 6 (question 12) in relation to [X], FMN Annex 7 (p 8-9) in relation to [X], FMN Annex 8 in relation to [X], P2 – Initial Submission Annex 2 in relation to [X] and P2 – Initial Submission – Annex 3 in relation to [X].

Copart's customers. For example, [X] together represent approx. [X]% of Copart's salvaging business ([X] vehicles and £[X] gross revenue).<sup>20</sup>

- Copart is unable to compete to supply fleet companies because it cannot provide a green parts solution<sup>21</sup>. As outlined above, the Parties estimates fleet management companies likely account for approximately 150,000 vehicles each year, equivalent to over [X]% of the total vehicles Copart salvages.

45. As noted previously, Copart's rationale for entering into the Transaction is to remain competitive and avoid losing tenders and customers. This is because Copart considers that a large portion of its business is at material risk – without a supply of vehicles from upstream customers, Copart cannot operate a profitable and competitive auction platform. While there may not be a direct reduction in historical share of supply, with the exception of LV, to suggest that there has been no impact on Copart's business, including the risks it faces, would be inaccurate.

### 3. HORIZONTAL UNILATERAL EFFECTS IN THE SUPPLY OF SALVAGE VEHICLES IN THE UK

#### 3.1. Copart's share of supply of vehicles downstream has also been significantly overstated

46. The Issues Statement considers ToH1 and ToH2 together as it *“did not receive evidence to suggest that 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”*.

47. As described above, the Parties consider that not only has Hills Motors' position in these markets been overstated, but Copart's position in the supply of salvage services has been overstated with the Parties combined having less than 40%.

48. Whilst the Parties welcome the Issues Statement's consideration of the supply of salvage services as not being broken down by customer type, when considering the supply of vehicles downstream, the Issues Statement takes an overly narrow view of the supply, limited to Copart and other salvage providers. This ignores the real choice that downstream customers have, in particular, in relation to (i) other competitors such as

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<sup>20</sup> This excludes the tenders for new customers that have highlighted green parts in the RFP, where Copart's is less effective competitor (see [X]).

<sup>21</sup> See for example COP\_0000546, an internal Copart presentation, in which it states that [X], as well as the statement that Copart are [X].



IAA, e2e, e2e members, BCA and Mannheim, as well as (ii) non-salvage vehicles supplied downstream.

49. In assessing the second theory of harm, it is critical that the CMA takes into account salvagers focused on other upstream segments, whose vehicles compete on auctions downstream alongside those sourced from insurers. Buyers will purchase vehicles from a wide range of diverse sources. For example, BCA and Cos are pre-eminent in salvaging vehicles from contract hire and leasing companies as well as dealers due to their exclusive arrangements. The competitive constraint they pose has been ignored in the CMA's analysis to date.
50. Similarly, the Issues Statement fails to take into account the large volumes sourced by the Parties and their competitors (such as BCA and Manheim) from other non-insurance customers.
51. Specifically:

- **Constellation Automotive Group (BCA, WeBuyAnyCar, cinch)** is one of Copart's closest competitors in the supply of vehicles and, to the best of Copart's knowledge, sells significantly more vehicles than CopartBuyers that purchase from upstream customers through Copart's auction will also source from Constellation. Copart understands that Constellation sources its vehicles primarily through contracts with upstream customers (in particular fleet management companies) and through its own sourcing network, WeBuyAnyCar, which has over 500 branches across the UK. Copart estimates that Constellation sources around 400,000 to 500,000 vehicles through WeBuyAnyCar alone (i.e., not including upstream contracts). Constellation therefore sources and supplies all types of vehicles for resale, including damaged cars that are sold to ATFs, repairers and bodyshops. This is clear from its website. Constellation will also source damaged cars through its upstream contracts. Similar to Copart, Constellation's upstream contract will not specify only certain types of vehicle.



Q: My car is damaged or in need of repairs, will you still buy it?

Yes, we buy damaged and cars in need of repair.

We do recommend that you declare any faults or damage as they may affect your final valuation.

Faults or damage can be added after completing a valuation on our valuation confirmation page, or can be completed at your appointment.

- **Cox Enterprises (AutoTrader, Manheim Auctions, Dealer Auction)** is also one of Copart's closest competitors, selling vehicles similar to those sold by Copart.
  - AutoTrader is the UK's largest automotive marketplace and so vehicle sales are significantly higher than Copart's. While the Parties do not have full visibility of the vehicles sold by AutoTrader, it currently has listings for 8,799 vehicles in category S, C, D and N (alone). By comparison, Coparts has only 4,986 vehicles listed for sale in those categories on its auction website. In addition, AutoTrader has a huge volume of category U vehicles. AutoTrader is therefore at least double the size of Copart in the supply of similar vehicle sales (and likely significantly larger than this).
  - Mannheim has 15 UK sites. Manheim has 6,927 vehicles listed and so is likely similar in size as Copart.<sup>22</sup> Manheim used NAMA gradings rather than the insurers categories. Nevertheless, it is active and supplies significant volumes of damaged vehicles of different degrees.
- **eBay**. The CMA cannot ignore different sales channels that buyers are frequently using and substituting between. The Parties have web-scraped all vehicles currently for sale on eBay that are specifically noted as being sold for 'spares' or 'repair' (i.e., most similar to the vehicles Copart is selling). Based on eBay's current listings, the Parties estimate that around 220,000 vehicles are sold on eBay for spares or repair in competition with Copart every year.<sup>23</sup>

52. The supply of salvaged vehicles is very fragmented and disperse. While those outlined above are some of Copart's strongest competitors there are a large number of auctions taking place for salvaged vehicles across the UK.<sup>24</sup> The source for these is far wider than the limited set of upstream customers for salvage services as significant volumes take place *outside* of these channels. This is why WeBuyAnyCar and eBay are so successful.

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<sup>22</sup> This is also confirmed by its annual turnover for FY 21 of £152 million.

<sup>23</sup> There are currently approximately 2,300 vehicles listed for sale specifically for spare or repair on eBay with an average sale time of approximately 3.75 days.

<sup>24</sup> The example provided above regarding Hudson Kapel is another example of an online auction. Similarly, the largest auction in the UK is operated by MMA (auctioneers.co.uk) which auction a wide range of different vehicles of different levels of damage. Aston Barclay currently has 2,065 vehicles for sale specifically that in the total loss category.

The CMA's narrow focus on supply of vehicles only sourced from a limited set of upstream customers ignores the vast majority of salvage vehicles taking place.

#### **4. CONCLUSION ON HORIZONTAL UNILATERAL EFFECTS**

53. It is therefore clear that the premise posed in the Issues Statement that the Parties are close competitors and that Hills Motors poses a "material constraint" on Copart does not stand up to scrutiny. The merged entity will continue to face strong competition from well-resourced competitors, including IAA/SYNETIQ and e2e as well as a range of other players.
54. As has been the case to date, the Parties have to continue to develop their offering in order to attract both upstream customers, and downstream customers to their auction platform, and this will continue post-Transaction. This is evident from the recent loss of a major and long-standing upstream customer as Copart has become less competitive.
55. As such, it is clear that the Transaction will not give rise to an SLC as a result of horizontal unilateral effects either in the supply of salvage services in the UK (ToH1) or the supply of salvage vehicles in the UK (ToH2).

#### **5. VERTICAL EFFECTS: NO POSSIBILITY FOR INPUT FORECLOSURE**

##### **5.1. Background to green parts**

56. Used car parts (also known as "green parts" or "recycled car parts") are undamaged and reusable parts of end-of-life and written-off vehicles which are reclaimed during the dismantling and recycling process. Green parts can be reclaimed from salvage and non-salvage vehicles.
57. A salvage vehicle is a generic term used to describe unwanted goods. In relation to insurance upstream customers, this term generally applies to a car that has been written off (because its cost to repair is greater than the vehicle is worth) and the insurance company has taken possession of the vehicle. For other upstream customers (e.g., fleets) it may refer to a fleet company replacing its relatively new cars for electric vehicles. It will therefore inevitably involve a spectrum of conditions and damage, ranging from very limited damage (e.g., if a fleet company is de-fleeting relatively new cars) to extreme damage (e.g., following a serious car accident).
58. Salvage vehicles can vary in damage from light cosmetic to deeper mechanical problems. Depending on the extent of the damage (i.e., damage categories), the vehicles can either be fixed and resold (Cat S, N, U and X), or dismantled for its reusable parts (Cat B) or scrapped (Cat A).

59. Non-salvage vehicles are used vehicles that have not gone through the above salvage process and are graded by BVRLA<sup>25</sup> and NAMA<sup>26</sup>. For insurance upstream customers, this includes unrecorded vehicles outside the ABI Code of practice, i.e., vehicles which were not classified as a total loss under the code. Whilst these vehicles have not been classed as salvage, they have usually suffered some damage and/or are no longer deemed road worthy (due to, for example, a failed MOT, standard wear and tear (i.e., too old), mechanical failure, involved in an accident but not claimed back through an insurance etc.).
60. All of these vehicles can contain salvageable parts which are purchased by mechanical repairers, independent or corporate repairer, bodyshops, consumers, etc.

*Wide choice of vehicle sources*

61. As explained further below at Section 5.2, vehicles used for green parts can be sourced from various supply channels. These include but are not limited to:
- Consumer drop-ins
  - Local markets
  - Local public sector (e.g., police fleets)
  - Website leads
  - Independent garage referrals
  - Directly from a salvager's own website and/or through its auction platform
  - Direct contracts (e.g., fleet companies, finance companies, insurance, etc.)
  - Independent bodyshop referrals.

*Different type of green parts*

62. Whilst all green parts reclaimed can be used to repair a vehicle, not all green parts will be used to repair a vehicle that is subject to an insurance claim. According to Thatcham Research,<sup>27</sup> green part(s) should only be used in certain circumstances, and other parts

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<sup>25</sup> <https://www.bvrla.co.uk/>

<sup>26</sup> <https://www.nama-uk.com/>

<sup>27</sup> Thatcham Research is a 'not for profit' insurer funded research centre which was established by the motor insurance industry in 1969, with the specific aim of containing or reducing the cost of motor insurance claims while maintaining safety standards. For further details, please see <https://www.thatcham.org/about/>

should only ever be replaced with brand new components (i.e., new OEM parts or non-OEM parts).<sup>28</sup> The Parties understand that insurers will always follow the Thatcham Research's Guidance<sup>29</sup> ("**Guidance**") when authorising the use of a green parts instead of a new OEM part.

63. It is important to note that whilst this Guidance was prepared for insurers, it is widely considered to be a benchmark reference by repairers more generally. In accordance with this guidance, certain risk factors must be closely considered when repairers plan to use green part(s). These factors mainly relate to vehicle safety.

- High-risk parts

These parts are a component in safety systems that can be considered either active or passive. Often the system is related to the ability to stop or control the vehicle.

This category is deemed high risk as it can be very difficult to test whether the part is fully functioning, in accordance with OEM guidelines.

- Medium-risk parts

These parts are related to the structure and safety of a vehicle. However, they are not deemed part of an active or passive safety system, as set out in the high-risk parts section (above). Nor do these items play a part in stopping or controlling the vehicle.

Medium-risk parts should be considered and used with care to ensure the safety of the vehicle isn't compromised. They can be tested and inspected as fully functioning, as intended by the OEM.

- Low-risk parts

These parts have a limited effect on safety no matter where they appear on the vehicle. As such, the only check they usually need is a visual inspection.

The table below contains an example of parts that would fall into high-, medium- or low-risk categories.

**Figure 4: Parts falling within the high-, medium- or low-risk categories for use as green parts**

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<sup>28</sup> Thatcham Research Bulletin, *Green part/s: Guidance for repair*, 23 September 2020. A copy is provided at **P2 - Response to IS - Annex 1**.

<sup>29</sup> *Ibid.*



High risk (should not be used as green part/s)	Medium risk	Low risk
Parts associated with: SRS system, airbags, modules, sensors, couplings	Bumpers/exterior with potential to affect ADAS or pedestrian safety system performance	Bumpers/exterior with no potential to affect ADAS or pedestrian safety system performance
Sacrificial interior trims/facias released on deployment of SRS system	Bumper reinforcements	Standard interior trims/facias not released on SRS system deployment
Seats & seatbelts	Bolted deformation panels	Aperture rubbers, mouldings & weather seals
ADAS: sensors, cameras, control units, radars	Bolted panels, doors, wings, bonnet, tailgate	Arch liners, under shields
ABS: modulator, control unit, valves	Exterior lighting, headlights, taillights	Bumper retainer guides
Steering wheel, racks & boxes	Locks & catches unrelated to pedestrian safety system	Door component carriers
Suspension parts	Bolted front panels	
Parts associated with deployment of pedestrian safety system	Bonded glass	
Welded panels & panel hinges	Headlining	
Isofix brackets	Door handles & mirrors	

## 5.2. No ability to foreclose

### 5.2.1. Copart lacks market power in the supply of vehicles suitable for dismantling for green parts

#### (a) Green parts supply extends much wider than salvage vehicles

64. The Issues Statement notes that it: “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” and that it will consider “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”<sup>30</sup>.
65. The CMA’s focus in its Phase 1 decision on the supply of vehicles for dismantling for green parts for only the salvage channel is overly narrow and fails to understand how green parts are sourced. The Parties welcome the CMA’s focus in Phase 2 on the alternatives available.
66. As can be seen from the above, the green parts ecosystem is very wide and extends far beyond salvaging. This is evident when considering Copart’s total supply of Category B vehicles (13<1) relative to an independent third-party source for the number of damaged vehicles in the UK, the DVLA’s certificates of destruction. The Certificate of Destruction (“CoD”) and Notification of Destruction (“NoD”) service allows an authorised treatment facility (ATF) to notify DVLA when vehicles are depolluted or destroyed.

<sup>30</sup> Issues Statement, paragraphs 36 and 39(a).

67. As can be noted from the table below, over 1.1 million vehicles were destroyed in 2021. Yet, very few of Copart's total Category B vehicles are sold to (or suitable for) dismantlers for use as green parts.
68. The Parties have used category B vehicles to demonstrate and evidence several substantive points throughout this document as these are the most well-suited for dismantling. Whilst these may be the best suited, there are other vehicles which are suitable for dismantling.

**Table 5 Supply of Vehicles for Green Parts**

[REDACTED]

69. There are several alternative sources of supply of damaged vehicles for green parts:
- First, those that have damaged their car in an accident will commonly only process it through insurance if a third party was involved and will instead choose to self-fund or write-off the vehicle themselves (e.g., to protect their no claims bonus). Copart has no sight of these vehicles.
  - Second, the vast majority of vehicle "damage" occurs outside of accidents. For example, MOT failures, blown engines, flooding, breakdowns. Commonly the vehicle owner will be able to 'limp home'. Copart has no sight of these vehicles.
70. Copart is never involved in the sourcing or supply of these vehicles into the green parts supply chain. These vehicles are going through entirely different channels to the salvage channel.
71. To help the CMA further understand these other sources of supply, the Parties list below a number of alternative channels (a number of which are described further in Section 3.1 above).
- Local authorities;
  - Direct supply (incl. drop-ins, cash for cars, etc.);

- eBay Motors;
- BCA (incl. webuyanycar and cinch brands);
- Cox Automotive (including Manheim);
- Autotrader;
- BMS;
- Cartakeback; and
- Jonathan Pye.

72. The above channels represent significant volumes of supply for suppliers of green parts.

**(b) Copart's supply of green parts is limited**

73. Copart sourced approximately [X] vehicles through its salvaging services in 2022. However, only a negligible proportion of these vehicles are sold to dismantlers for use in the supply of green parts (and none are sold for use in the supply of green parts to the insurance sector).

74. First, **a significant proportion are not suitable for dismantling**. Over three-quarters [X]% of this total volume is of vehicles that are typically not suitable for dismantling (i.e., Categories S, N, U and X) and therefore are unlikely to be used for the supply of green parts.<sup>31</sup> These are vehicles that will likely be repaired rather than used for green parts. Copart's supply of cars that are suitable for dismantling and in the supply of green parts is therefore limited to the [X] Category B vehicles it sources, around [X]% of its total.

75. Copart has only limited interest in these vehicles as it makes significantly less money on them than other vehicles it sources. For example, while Category B vehicles account for [X]% of the total volume of vehicles sold by Copart, they account for only [X]% of the revenue generated by Copart in the sale of salvage vehicles.

**Figure 6 : Copart Vehicles Sourced**

[X]

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<sup>31</sup> As noted above, although the majority of cars that are dismantled are Category B vehicles, other vehicles can also be suitable for dismantling, in particular where these are of low value.



76. Second, **only limited volumes are sold to actual dismantlers**. Of these vehicles that are suitable for dismantling, only [X], less than a third of the Category B vehicles sourced by Copart, are being sold to firms active in dismantling (i.e., [X]% of the total vehicles sourced by Copart). The remainder are being sold to (i) firms active only in scrapping ([X]% of the Category B vehicles), (ii) small or individual buyers that are not sourcing sufficient quantities to be active in supply of green parts ([X]% of total Category B vehicles sourced); and (iii) exporters for use outside the UK ([X]% of total Category B vehicles sourced).

**Figure 7 : Copart Category B Customer Types**

[X]

77. Third, **salvaging is not well-suited to supply vehicles to dismantlers of green parts for the insurance sector**. Copart's salvaged vehicles will typically have been involved in an accident. The parts that are supplied to the insurance sector as green parts are very limited (primarily bonnets, doors, side-panels). However, these are also the external parts of cars that are typically damaged in accidents. To demonstrate this, Copart has provided below the damage assessment for each of its Category B cars that are suitable for dismantling. Damage that occurs to the front-end or all over the car (Copart categories: all-over, burn-over, fire, rollover) will not be suitable for use as green parts yet these damage assessments account for over two-thirds ([X]%) of Copart's Category B vehicles in 2022.

**Figure 8 : Damage Assessment of Copart Cat. B Vehicles**

[X]

78. Supporting this further, an analysis of Copart's vehicle data reveals a mismatch between the average age of vehicles processed by Copart most likely to provide green parts (Category B) and those vehicles most likely to be receive green parts (Category N and S). Copart's data reveals that the average vehicle used for parts is [X] years old. However,

repair vehicles are on average 7 years old. As the parts are, on average, substantially older than and the vehicles needing repaired, the parts are commonly unfit for the supply of green parts.

79. Subsequently, as Category B vehicles are, on average, substantially older than Category S and N vehicles, this implies that a large subset of the Category B vehicles are unfit for the supply of green parts. Copart's data reveals that [%] of Category B vehicles are "younger" than the average Category S vehicle ([%] years), whereas [%] of Category B vehicles are "younger" than the average Category N vehicle ([%] years).
80. In summary, the evidence suggests that Copart's supply to dismantlers for use of green parts, far from being critical, is actually extremely limited and has limited scope for growth. Thus, Copart has no ability to foreclose suppliers of green parts access to vehicles suitable for dismantling.

### **5.3. No incentive to foreclose**

81. The CMA did not, in its Phase 1 decision, consider it relevant to assess the financial incentive to foreclose, instead noting that *"an analysis of (short term) upstream losses submitted by the Parties takes into account all vehicles salvaged by Copart (and not just those that would be dismantled inhouse following the Merger) and is thus unrealistic."* The Phase 1 decision relies on the erroneous assumption that 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"*. Unfortunately, in doing so and not considering the actual foreclosure incentives, the CMA has failed to consider key aspects of the way in which salvaging and dismantling processes interact and thus, critically, the economic feasibility of foreclosure. Specifically, only through assessing the gains and losses that arise from foreclosure will the CMA recognise that Copart diverting volumes to Hills Motors' single dismantling facility would be irrational and that, as a result, Copart not only has not ability, but also has not incentive to foreclose suppliers of green parts.

#### **5.3.1. Significant losses would result from foreclosure**

82. In the event Copart sought to foreclose competing dismantlers, it would incur such significant costs that it would be irrational to do so with the exception of a narrow locale in the North West. Alongside the margin on sales to dismantlers downstream, the Parties specifically consider transport costs. Transporting cars salvaged by Copart across the UK to Hills' single dismantling facility in the North West is not economically feasible without incurring huge losses.

*Collection and dismantling take place within very narrow catchment areas*

83. Copart has sites across the UK. As part of its salvaging operations, Copart (and other salvagers) must collect vehicles as efficiently as possible with the minimum distance between collection and processing site. Copart (and other salvagers) use complex systems that determine more efficient collection routes to minimise costs.<sup>32</sup> These collection routes take the form of ‘milkrounds’ and never involve transporting vehicles cross-country.
84. Copart therefore collects and processes vehicles within narrow catchment areas. Copart operates narrow post-code zones around each site and collection does not occur outside this zone (indeed sites are not aware of collections in other zones). Dismantlers also operate on very narrow catchment areas reflecting transportation costs and the very tight margins they operate on. Copart has analysed the distance between the site at which it collects the vehicle, processes the vehicle and the buyer location.<sup>33</sup>
- The average distance from where Copart collects the vehicle and the site it processes the vehicle at is [X] miles (with a median distance of [X] miles). This distance is broadly the same for all buyers or specifically for dismantlers.
  - The average distance between Copart’s salvage site and the delivery address is [X] miles (with a median distance of [X] miles). This distance falls to an average of [X] miles and a median [X] miles of when we consider only sales to dismantlers.<sup>34</sup>
85. Therefore, the total average distance between where the vehicle is collected by Copart and dismantled by the Copart buyer is only [X] miles when we take the distance between the collection of the vehicle and the actual delivery address.

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<sup>32</sup> At 3pm each day, Copart’s planning cycle takes place for the following day, running the system to determine the most efficient collection/delivery routes given the number of drivers and collection vehicles, vehicles to be collected and delivered.

<sup>33</sup> All distances are drive-time distances. We consider only Category B vehicles salvaged in 2022, most suited to dismantling.

<sup>34</sup> Copart collects information on the buyer post code. However, in many cases this will not be the site at which the vehicle is dismantled (e.g., where there are multi-site buyers or the corporate address differs from the dismantling site address), Copart has therefore examined a sub-set of the purchases where Copart delivers the vehicle and so has data on the exact site the vehicle is delivered to. This likely reflects where it will be dismantled. These deliveries account for approximately [X]% of all purchases so provide a reasonable proxy for the overall customer base. Delivery will typically be requested when the dismantler is busy and so there is no reason why distances for delivered vehicles will differ from those that are picked-up by the dismantler.

***Foreclosure would require Copart to transport vehicles to Hills Motors dismantling site changing its efficient (and cost effective) transport model***

86. Hills Motors has a single dismantling site in Skelmersdale. In order for Copart to divert volumes it has foreclosed from competing dismantlers to Hills Motors' dismantling site, it would need to transport them from where the vehicle is collected to Hills Motors' site (according to the ToH3). This is irrational and unrealistic:

- First, as outlined above, Copart's main customers are all located very far away from Hills' site. None of Copart's top [X] customers<sup>35</sup> sourcing more than [X] vehicles a year are located within [X] miles of Hills Motors' site.
- Second, the average distance between where Copart collects its vehicles and Hills Motors' dismantling site is [X] miles.<sup>36</sup>

87. In order to engage in this foreclosure strategy, Copart would therefore have to significantly alter its business model to start to transport salvage vehicles significantly further than it does currently. Such diversion of vehicles to Hills Motors' site would up-end Copart's efficient 'milkrounds' collection model and involve Copart transporting vehicles (that are currently used for efficient local collection and delivery) large distances across the country and incurring significant transport costs.

***Transport costs are very significant and make Copart diverting vehicles to Hills Motors uneconomical***

88. Transporting vehicles from collection point to processing site to dismantling site involves fuel, maintenance, driver and insurance costs. Taking these costs together mean that transport costs range from £[X] to £[X] per car.<sup>37,38</sup> The weighted average across all Copart sites is around £[X] per car.

89. If Copart were to engage in foreclosure, it would be forced to incur these additional costs, i.e., these would be losses that would result from implementing the cited foreclosure strategy.

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<sup>35</sup> Customers classified as dismantlers or dismantlers/scrappers.

<sup>36</sup> Vehicles sold to dismantlers.

<sup>37</sup> While, in principle, Copart could transport more than one car from its sites to Hills Motors' dismantling site (thereby lowering the cost per car), in practice this is not possible with green parts. For example, if a green part for a Jaguar repair is required, Copart must transport the Jaguar for dismantling, it cannot stack up multiple cars to be transported with that Jaguar.

<sup>38</sup> In practice, these transport costs can actually be significantly higher due to capacity constraints at Copart's sites. For example, Copart's closest site to Hills Motors is Chester, 96 miles away roundtrip. However, the Cheshire site is currently at full capacity.

**Table 9 : Copart Transport Costs to Deviate to Hills Motors by Site**

[X]

90. By applying these costs to the associated volume of cars sourced that are potentially suitable for dismantling at each Copart site, this provides an estimate for the total additional costs that would be incurred by Copart if they were to direct all cars potentially suitable for dismantling to Hills Motors' dismantling site.<sup>39</sup> **The total additional transportation costs required under the hypothetical foreclosure strategy is £[X] million (or approximately £[X] per car).** Note this relates solely to the transportation costs associated with foreclosure (not the additional costs to dismantle, which are considered as part of the green parts profit margin). While the CMA is considering a foreclosure strategy that applies only to 'high value' vehicles, such that the absolute value will be less if considering only a sub-set of vehicles, the incremental transportation costs per car remain the same, and as such, even a foreclosure strategy limited to 'high value' vehicles would remain uneconomical.
91. Given the large costs associated with transporting the vehicles for dismantling to Hills Motors' site, the margin on sales of green parts (taking account of other costs associated with dismantling) would have to be greater than this to justify foreclosure.

***Copart would need to invest in cross-country transport infrastructure***

92. As outlined above, Copart currently operates an efficient local collection process whereby it determines the most efficient collection route, given the available vehicles and drivers. These collection routes are designed to transport salvage cars to Copart's closest site with capacity. For Copart to shift this model to begin transporting vehicles cross-country from its current sites to Hills Motors' dismantling site would involve significant investment in a new fleet of transportation vehicles and additional drivers.

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<sup>39</sup> In the counterfactual, these vehicles would be processed and sold at Copart's sites and so no transportation costs would be incurred (the dismantling buyers either collect the vehicles or pay Copart to deliver them) thus the transportation costs between Copart's site and Hills Motors' dismantling site are costs incremental to the foreclosure strategy.

***Copart must obtain the highest price for insurers***

93. The CMA has raised concerns that Copart would retain ‘high value’ salvage vehicles in-house (and continue to auction ‘low value’ vehicles), to the disadvantage of rival green parts suppliers. The CMA also has to date not placed weight on contractual protections for insurance companies.<sup>40</sup> The Parties respectfully submit that this does not capture how supply of salvage services works in practice and the likely costs to Copart.

- First, if Copart were to engage in this strategy (retaining high value, auctioning lower value), intuitively information asymmetries would lead to some increase in the costs of Hills Motors’ rivals but such an information asymmetry alone is not sufficient for foreclosure to arise.
- Second, if Copart starts auctioning ‘lemons’, then after a period of time, the attractiveness of its auction platform and the price achieved by Copart for auctioned vehicles would fall and insurers would also be losing.
- Third, it is not clear how, practically, the CMA envisages that Copart would continue to maximise sales value for insurers for those vehicles retained in-house. Regardless of any specific contractual provision, Copart would have to pay the insurer an equivalent or close to equivalent amount to that which it would obtain through auction (presumably through the gains received from additional green parts sales). If it did not do so, it risks losing the customer as there is no evidence to suggest the insurers’ objective function has shifted from minimising loss and maximising profit (alongside having the capability to market green parts usage).

94. Given the rationale for the Transaction is to minimise the risk of insurers switching away (because Copart cannot provide green parts capability), engaging in a foreclosure strategy that then increases this risk would not seem rational. Regardless, the increased risk of loss in the supply of salvage services following foreclosure would represent a cost to Copart. That cost must be offset by significant gains in incremental green parts profitability downstream.

**5.3.2. Very limited gains from foreclosure**

***The profit margin on green parts is very small***

95. Hills Motors estimates its profit margin on the supply of green parts to be insufficient to justify moving vehicles from Copart’s sites to Hills’ site. This takes account of the revenue

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<sup>40</sup> Issues Statement footnote 36 and paragraph 36.

from the sale of green parts less the variable costs of storing vehicles waiting to be dismantled, the dismantling of the vehicle, storage of the green parts and delivery of the green parts, and the opportunity cost of dismantling for green parts (as the parts could instead be sold for scrap).<sup>41</sup>

96. The green parts margin strongly indicates that Copart would have no incentive to pursue such a hypothetical foreclosure strategy.
97. Furthermore, given that Copart only sources approximately [X] vehicles suitable for use in green parts, the absolute value of the possible gains from such a strategy are very limited. Any gains associated with foreclosure are dwarfed by the potential losses.

***Hills Motors has limited capacity to take on additional dismantling volumes***

98. Furthermore, the hypothetical foreclosure strategy assumes that Hills Motors' single dismantling site can take on all of the additional volumes that Copart transports (at great cost) from across the UK. This is not the case. Only a single dismantling site will transfer from Hills Motors to Copart (the other two sites will be retained by Hills Motors and are not dismantling sites while the site in Scotland is a small green parts storage site).
99. In the Issues Statement, the CMA notes that capacity restrictions would not limit the Parties' ability to foreclose rivals because foreclosure may involve retaining high-value vehicles.<sup>42</sup> However, this would still require Hills Motors to expand its dismantling output.
100. In the Issues Statement, the CMA notes that: "Copart intends to expand this capacity in order to meet upstream customers' requests for a green parts supply service." There is no evidence to support this. Indeed, Copart's internal documents pointed to only [X] vehicles being dismantled at the site each year.
101. Hills Motors' dismantling site has capacity for approximately [X] vehicles. On site, it has approximately:
- [X] vehicles in varying states of dismantling
  - [X] vehicles in stock awaiting dismantling (the backfill of vehicles)
  - [X] vehicles awaiting breaking.

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<sup>41</sup> The Parties will follow-up with a precise estimate of Hills' margin in the supply of green parts. Certain data has been difficult to gather following the cyberattack.

<sup>42</sup> Issues Statement, paragraph 36.

102. In addition, it has part of its dismantling site used for storage of green parts. It has [X] parts currently stored on-the-shelf.
103. Hills Motors has restricted capacity to hold significantly more vehicles, in particular given that once dismantling begins, the value of the stock deteriorates and depreciates quickly.

*No gains upstream*

104. To the extent that, as a result of the Transaction, Copart is able to retain or win business upstream, these are not “gains” that can be assessed in relation to the foreclosure strategy. Indeed, as outlined above, the foreclosure strategy would instead put at risk significant business upstream. It is therefore unclear what downstream gains may arise and self-evident that Copart has no incentive to foreclose.

**5.4. No effect on competition**

105. Even if it could be established that there is an ability and incentive to foreclose (which the Parties have shown would not be the case), there would, in any event, be no effect on competition.

**5.4.1. There are very few dismantlers that could be foreclosed due to costs of vehicle collection**

106. The CMA must identify potential foreclosure targets that are reliant on Copart that, if foreclosed, would have a meaningful impact on competition. As outlined above, Copart does not supply many dismantlers. For example, of its top [X] buyers of Category B vehicles, accounting for over [X] of its total Category B vehicle sales, half are solely scrappers or repairers and not active in dismantling for green parts.<sup>43</sup> As a result, there are only a very limited number of downstream firms that Copart could feasibly foreclose.
107. Copart supplies [X] dismantlers that source more than 300 Category B vehicles annually from Copart.<sup>44</sup> Of these:
- **Primarily scrappers:** [X] out of Copart’s top [X] customers (by volume) are involved in scrapping and are therefore unlikely to be involved in the supply of green parts.

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<sup>43</sup> This includes [X].

<sup>44</sup> The Parties have selected 300 on the basis of materiality.



- **Primarily exporters:** A number of dismantlers purchase primarily for export and so have no effect on the supply of green parts in the UK.<sup>45</sup>
- **Vertically integrated:** Several dismantlers are also active upstream as salvagers and so have their own self-supply of vehicles. This vertical integration means these customers are highly unlikely to be reliant on Copart and would therefore be unaffected by any hypothetical foreclosure strategy. For example, [X] is Copart's fifth largest customer, sourcing [X] Category B vehicles in 2022, yet [X].<sup>46</sup>

108. As Copart is active across the UK, these customers source from various Copart sites across the UK. As the Parties outline and provided detailed evidence for elsewhere in this Response, the distances over which vehicles are collected and then transported to a dismantling facility is very narrow. As the CMA is aware, Hills Motors operates a single dismantling site in Skelmersdale. The only possible foreclosure targets are therefore located in proximity to Hills' dismantling facility.

109. Of the [X] dismantler buyers that source more than [X] category B cars from Copart, **not a single one is located within 80 miles of Hills Motors' dismantling facility.** Indeed, the [X] dismantlers are located well over 100 miles away in [X], the largest dismantling customer by some margin), [X].

**Figure 10 : Copart Dismantling Customers by Purchases and Distance to Hills**

[X]

**Figure 11 : Copart Category B buyers by location**

[X]

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<sup>45</sup> These include: [X].

<sup>46</sup> Conservatively applying the same proportion for Cat. B of Copart to [X], this would give [X] vehicles. Source: [X].

110. Extending of the analysis to Copart's top 50 dismantling customers, shows that only five are located within 80 miles of Hills: [X] ([X] miles away, sourcing only [X] Category B vehicles in 2022), [X] ([X] miles away, sourcing only [X] Category B vehicles in 2022), [X] ([X] miles away, sourcing only [X] Category B vehicles in 2022), [X] ([X] miles away, sourcing only [X] Category B vehicles in 2022), and [X] ([X] miles away, sourcing only [X] Category B vehicles in 2022).. Together these account for [X]% of Copart's Category B sales to dismantlers. As a result, there is no possibility that a foreclosure strategy by Copart would have any impact on competition.
111. This means that, for these dismantling customers, the supposed foreclosure targets, they are actually purchasing from Copart sites in other parts of the UK very far from Hills Motors' dismantling facility. If Copart were to foreclose these customers, it would not only lose the incremental profit generated from sale to these customers, it would also have to pay the significant costs of transporting the vehicles, sourced elsewhere across the UK, all the way across the country, to Hills Motors dismantling facility. As outlined below, foreclosure of these customers is not economically feasible.

#### 5.4.2. Supply of green parts is national

112. Even if dismantlers in the North West could be identified and these accounted for a high proportion of Copart's overall sales (which they do not), the supply of green parts is national. Supporting this, Hills Motors ships green parts across the UK. As a result, **hypothetical regional foreclosure may make an impact on dismantlers in the North West but would not affect downstream competition, which takes place nationally.**

#### 5.4.3. OEM supply is a strong constraint on green parts supply

113. As outlined above, green parts account for a very small proportion of the parts used by repairers (estimated to be approximately 5%). Currently, OEM parts still account for the vast majority of parts used by UK repairers. While green parts and non-OEM parts are increasingly forming an important part of the parts basket for repairs, there is never a repair that requires green parts. The Parties understand that in the majority of cases, repairers usually use non-OEM parts and/or green parts when new OEM parts are not available. The repairer can always switch to OEM parts (as they currently do, given OEM parts account for approximately 95% of the parts used) or non-OEM parts. Indeed, green parts likely will never account for more than 5-10% of the total parts used in repairs, and will continue to be a weak substitute to new OEM and non-OEM parts.

**6. THE TRANSACTION WILL NOT LEAD TO VERTICAL FORECLOSURE**

114. In conclusion, the Transaction is aimed at ensuring that Copart is able to remain competitive in a changing marketplace, not at foreclosure of suppliers of green parts through restricted access to salvage vehicles. As noted above, Copart would not be able to foreclose suppliers of green parts due to (i) the wide range of sources of vehicles suitable for dismantling for green parts; and (ii) Copart's insignificant role currently in the supply of this "input" which necessarily suggests that Copart cannot be considered a "key input". Secondly, even in the hypothetical scenario in which it was able to foreclose, it has no incentive to do so given the local nature of collection services and the transport costs which would make a foreclosure strategy extremely costly for no or unclear gains. Finally, any hypothetical foreclosure strategy would have no effect due to the limited existing supply to these suppliers and the ability of these suppliers to source salvage (or indeed non-salvage) vehicles suitable for dismantling.

115. As such, it is clear that the Transaction will not give rise to an SLC as a result of vertical effects from an input foreclosure of rival suppliers of green parts in the UK.