

**Case No ME/70010/22**

**ACQUISITION BY COPART UK LIMITED**

**OF**

**HILLS SALVAGE AND RECYCLING LIMITED**

**INITIAL SUBMISSION**

**5 January 2023**



## 1. Executive Summary<sup>1</sup>

1. The Phase 1 Decision sets out that the acquisition by Copart UK Limited, a wholly owned subsidiary of Copart, Inc. (**Copart**) of Green Parts Specialist Holdings Ltd (formerly named ILT Project Limited) (**Hills Motors**) (together, the “**Parties**” or the “**Merged Entity**” if referring to the future) (the “**Transaction**”) gives rise to a realistic prospect of a substantial lessening of competition (“**SLC**”) arising from three theories of harm, which are
  - a) Horizontal unilateral effects in the supply of salvage services in the UK (**ToH1**);
  - b) Horizontal unilateral effects in the supply of salvage vehicles in the UK (**ToH2**); and
  - c) Vertical effects in the UK resulting from the foreclosure of rival suppliers of green parts through restricted access to salvage vehicles (**ToH3**).
2. The Phase 1 Decision is vitiated by an undue reliance on observations from competitors seeking to disrupt the Transaction and an insufficient reliance on evidence from salvage customers who have been actively driving this Transaction. Copart’s success in salvaging is due to providing high returns to its upstream customers via a revenue share model on its auction platform for approximately 70% of salvaged vehicles deemed repairable. The remainder are crushed or dismantled for green parts by third parties. Recently, Copart has been asked by its upstream customers to provide additional services such as engineering and claims handling, etc . Having an in-house green parts operation is the latest such request. Copart’s decision to acquire Hills Motors was designed to fulfil this customer need. Absent this request from upstream customers, Copart would have no interest in acquiring a dismantler (and no interest in specifically acquiring Hills). The Transaction will therefore offer upstream customers additional choice amongst vertically integrated salvagers with dismantling/green parts services.
3. The CMA’s first theory of harm has no basis for a number of reasons. First, the CMA has overstated and misrepresented the increment from Hills Motors in salvaging in a manner entirely inconsistent with its findings in its recent *IAA/SYNETIQ* merger review, and with Hills actual salvaging activity. Second, while Copart is a leading salvager, its market size has also been overstated by the CMA. Third, the merging Parties are not close competitors. Indeed, there is no evidence of the Parties competing head-to-head. Hills Motors, unlike Copart, is not an independent competitor for national contracts, as it is reliant on other members of the e2e network. The Parties’ tender data demonstrates that they do not compete head-to-head. This is corroborated by the Parties’ internal documents. In particular, the Hills Motors’ documents cited by the CMA show Hills Motors competing for green parts services and not salvaging. The focus of Copart’s competitor monitoring in its internal documents is on *IAA/SYNETIQ* and e2e. Fourth, customers will continue to have plenty of choice for salvaging services from the Parties’ competitors, and would simply not have supported the Transaction had they been concerned about reducing their choice. Copart’s business model is constrained by its customers.

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<sup>1</sup> Please note that this submission does not address every aspect of the Phase 1 Decision. Failure to address specific part of the Phase 1 Decision does not mean that the Parties accept the CMA’s reasoning. The parties reserve the right to respond to other aspects of the Phase 1 Decision during the remainder of Phase 2.

4. The CMA's second theory of harm is largely bound up with the first and therefore does not stand up to scrutiny for the reasons above.
5. Contrary to the CMA's third theory of harm, the Parties would not have the ability or incentive to foreclose competing dismantlers. First, this bears no relation to the Parties' rationale for the Transaction or any evidence in the Parties' internal documents. Second, the Parties would not have market power in the supply of salvage vehicles suitable for dismantling, given there are plenty of other sources: the other vertically integrated competitors have their own sources of vehicles and, of the 1,600 registered authorised treatment facilities in the UK, only c. [§<] are supplied with any vehicles from Copart's auctions. Third, Copart would not be incentivised to jeopardise the success of its revenue share model for insurers by siphoning off vehicles from its auctions for green parts. In its Phase 1 Decision the CMA simply dismissed Copart's financial reasoning on this point out of hand. Fourth, Hills Motors will remain capacity constrained in dismantling, which means it could not dismantle large volumes of vehicles necessary for a foreclosure strategy.
6. For the reasons set out in more detail in this submission, the CMA's Phase 1 Decision is unsound. The Transaction does not involve any SLC, but is rather a pro-competitive venture driven by Copart's customers. It should therefore be cleared unconditionally by the CMA.

## **2. A Transaction driven by Copart's customers**

7. The rationale for the Transaction is for Copart to provide customers with an end-to-end salvage and dismantling service, including a bespoke green parts service. This is following the recent industry changes and requests by a number of large existing customers to provide dismantling and recycling services in order to facilitate their increased use of green parts which have environmental and financial benefits.
8. This Transaction therefore brings together two complementary businesses for the sole benefit of Copart's customers. In particular, it enables Copart to provide its upstream and downstream customers with an end-to-end salvage and dismantling service (including a green parts service).

### **2.1. Impact of COVID-19 pandemic and the climate change crisis**

9. Since the end of the lockdown periods, there has been a gradual reopening of vehicle assembly lines, dealerships and car sales operations but the effects of the pandemic Brexit, import costs and latterly the war in Ukraine (where many German-marked car products were manufactured), have led to considerably prolonged supply chain issues including new car assembly lines and vehicle repairs (due to the shortage of semi-conductor chips and new parts). In 2020, the number of parts and components imported by the UK car market plummeted to the lowest point since 2012.<sup>2</sup> This shortage led to delays and a reduction in the production of new cars and car parts, thereby significantly uplifting the value of used cars and recycled car parts. Since 2012, the total annual salvage volumes have risen consistently. Whilst those volumes fell sharply during the COVID-19 pandemic (i.e., circa 50% in April 2020), these levels

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<sup>2</sup> See FMN Annex 17, [§<], slide 5.

have been on a gradual increase. As of September 2021, total notifications to the Motor Insurer’s Bureau stood at approximately 70% of previous levels.<sup>3</sup>

10. The natural consequence of this has been that salvage values have performed strongly due to the lack of availability of new and used vehicles which in turn has increased demand for green “reclaimed” parts to address the shortages and delays experienced by the OEMs. This increasing demand for green car parts has been and continues to be largely led by insurance companies (e.g., Allianz, Aviva, LV, Ageas, Direct Line, Axa) as recycled car parts have emerged as one of the key elements that may not only bring financial savings but more importantly, carbon emission ones too. Supporting this increased demand for green parts, and insurer support in facilitating this increased usage, the independent Association of Auto Body Professionals (ABP) notes in its 2022/23 Yearbook that:<sup>4</sup>

*“Parts supply chain issues have... increased the used of ‘green parts’ by body shops, with many insurers now apparently supporting their role... It is anticipated that as more insurers allow the use of green parts, their availability will assume greater significance.”*

Insurer	Quote
Allianz <sup>5</sup>	<i>“For Allianz, green parts are one of many sustainability initiatives, but it is a very tangible one. It’s a quantifiable way for an insurer to demonstrate its credentials...The green parts approach has now been implemented across Allianz’s whole repairer network.”</i>
Aviva <sup>6</sup>	<i>“eBay UK is joining forces with insurers Aviva &amp; LV to encourage the use of recycled ‘green’ car parts within the automotive sector... Insurers, like eBay’s partners, are now offering customers these recycled options... Aviva has been working closely with eBay and the VRAC to support the development of a high quality, safe, environmentally responsible and sustainable supply chain to help meet its commitment to its customers and the environment.”</i>
LV <sup>7</sup>	<i>“LV= launches green heart standard across branded bodyshop network in drive to be more environmentally sustainable”</i>
Ageas <sup>8</sup>	<i>“One of the UK’s largest car insurers has combined its salvage operation with its green car parts supply, significantly increasing its capacity for green repairs... Leading the charge...Ageas has been using green car parts for more than a year.”</i>
Direct Line <sup>9</sup>	<i>“As a major UK motor insurer we believe our ‘green’ USP should be to insure and fix electric vehicles, while aiming to do this in the most energy-efficient repair network in the UK... Offering customers the option of ‘green’ parts could reduce the need for new replacement parts. It could also provide confidence about what can be recycled from salvage operations if motorists select this option when fitting parts to their vehicle.”</i>

<sup>3</sup> FMN Annex 20 - [§<].

<sup>4</sup> Ibid. – Salvage update.

<sup>5</sup> <https://atfpro.co.uk/how-allianz-is-supporting-the-adoption-of-green-parts/>

<sup>6</sup> <https://youtalk-insurance.com/broker-news/ebay-uk-joins-forces-with-aviva-and-lv-to-improve-use-of-recycled-car-parts>

<sup>7</sup> <https://www.lv.com/insurance/press/lv-launches-green-heart-standard-across-branded-bodyshop-network>

<sup>8</sup> <https://www.ageas.co.uk/press-releases/2020-press-releases/ageas-sets-up-seamless-supply-of-green-car-parts-with-hills-salvage/>

<sup>9</sup> [https://www.directlinegroup.co.uk/content/dam/dlg/corporate/images-and-documents/investors/oar-2021/pdfs/Direct\\_Line\\_Group\\_2021\\_Annual\\_Report.pdf](https://www.directlinegroup.co.uk/content/dam/dlg/corporate/images-and-documents/investors/oar-2021/pdfs/Direct_Line_Group_2021_Annual_Report.pdf) (page 74).

Insurer	Quote
AXA <sup>10</sup>	<p><i>“AXA Green Business Program... AXA encourages the use of recycled spare parts as it is beneficial from both a financial and an environmental perspective : Recycled car parts are generally cheaper... the use of recycled car parts thus generally reduces the total cost of the repair, and in turn may contribute to a lower insurance premium.”</i></p>

11. Another major impact which the COVID-19 pandemic had is the renewed focus on climate change.<sup>11</sup> Coupled with a sharp rise in public demand for action, this has led to corporations such as Copart and its customers being increasingly asked to consider factors beyond the maximization of near-term profit or return on capital in their strategic and operational decisions (i.e., Environmental, Social, and Governance (“ESG”)).

## 2.2. Upstream customers’ ESG renewed commitments

12. Shortly after the COVID-19 pandemic, many of Copart’s customers made new and renewed commitments to more ethical and sustainable practices, especially net-zero targets, and publicly affirmed their devotion to demonstrating their ESG credentials.<sup>12</sup> As part of these commitments, most of Copart’s customers have now extended their ESG requirements to their entire supply chain. Just like in many other industries, the majority of an upstream customer’s ESG footprint (e.g., for insurers, finance companies and fleet operators) is hidden deep within their supply chain, not as a result of their direct operations. Therefore, creating programmes and solutions directly tied to the supply chain can lead to the most impactful results. It is a natural extension of other customer supply chain demands, such as compliance with emissions reporting, corporate social responsibility (CSR), equality, diversity and inclusion (EDI) and modern slavery imperatives.

13. As a result, upstream customers are now actively seeking to partner with suppliers which align to their ESG strategy and vision.<sup>13</sup> Insurers and other upstream customers of the Parties are increasingly requesting, as part of the supply contracts, that salvagers provide dismantling and recycling services in order to capture the entire footprint of their operations.

14. Insurers are also subject to managing vehicle thefts which lead to criminal dismantling of vehicles and part sales. It is therefore critical that access to a green parts network is through credible organisations who can demonstrate provenance of parts back to salvage vehicles.

15. As it can be noted above, insurance companies are supporting and encouraging the use of green parts, and have all therefore been amending their vehicle insurance terms

<sup>10</sup> [https://www.axa-com.cdn.axa-contento-118412.eu/www-axa-com/befe0836-b990-4709-a04b-90b8266e8ab8\\_Green\\_Insurance\\_Memo\\_External\\_vf.pdf](https://www.axa-com.cdn.axa-contento-118412.eu/www-axa-com/befe0836-b990-4709-a04b-90b8266e8ab8_Green_Insurance_Memo_External_vf.pdf)

<sup>11</sup> <https://www.jpmorgan.com/insights/research/covid-19-esg-investing>

<sup>12</sup> <https://oxbowpartners.com/blog/esg-and-the-insurance-industry/>. See also [https://www.allianz.com/en/press/news/commitment/environment/220429\\_Allianz-reinforces-its-commitment-to-net-zero-strategy.html](https://www.allianz.com/en/press/news/commitment/environment/220429_Allianz-reinforces-its-commitment-to-net-zero-strategy.html) / <https://www.avivainvestors.com/en-gb/about/company-news/2021/04/aviva-investors-delivers-an-active-esg-engagement-commitment/>

<sup>13</sup> Since 2021, the insurance and automotive sector publishes their ESG policy and commitments and is reviewing their entire supply chain to ensure all business supplier also have a defined strategy to reach carbon net zero in a stipulated time frame. One of the key requirements has been access to green parts as opposed to OEM or non-OEM parts.

to allow green parts to be used in accident repairs. Currently insurers use new OEM and non-OEM parts, however access to green parts (which are effectively used OEM parts) will help reduce the number of total losses. This has a threefold benefit to insurers in that fewer vehicles are deemed a total loss, premiums can reflect the cost savings and it is a positive environmental outcome.

### **2.3. Upstream customers dictate the supply chain and drive increased green parts usage**

16. Upstream customers control all levels of the supply chain and so dictate demand both upstream and downstream. To see this, consider Copart's business model. The salvager never takes ownership of the vehicle. Instead, the upstream customer retains ownership even as Copart processes and markets the vehicle for sale. Copart provides only "agency" or "consignment" or "revenue share" services relating to collection, processing and sale. The upstream customer releases the car for ownership transfer only once Copart has sold it. The upstream retains the revenue generated from the sale (and Copart pays this to the insurer on sale) less that which is paid to Copart.
17. Similarly, consider for example Allianz's role in driving green parts demand downstream. Allianz is the second largest auto insurer in the UK and uses IAA-SYNETIQ as its vertically integrated salvager, dismantler and green parts supplier. To persuade end-customers to use green parts to repair their vehicles, permission is sought *when the insurance policy is purchased* (not when the customer needs the vehicle repaired). In personal lines Allianz builds permission into policy wordings while for commercial lines (such as fleet managers) Allianz obtains explicit permission and can provide data on the amount of CO2 saved using recycled spare parts rather than new spare parts to persuade sign-up.
18. Allianz has also worked with IAA-SYNETIQ to make the process for sourcing green parts easier for repairers with the introduction of the *mygreenparts* ordering system, which automates the sourcing of green parts.<sup>14</sup> When repairers generate an estimate for a vehicle repair, the software automatically notifies SYNETIQ's stock control system of the parts required and offer matching parts, within rules agreed with Allianz. The green parts approach has now been implemented across Allianz's whole repairer network.
19. It is with these new ESG targets and commitments in mind that upstream customers have actively sought Copart to provide, as a matter of relative urgency, dismantling and green parts services.<sup>15</sup>
20. As it can be noted from these requests, whilst a couple of insurance companies piloted a green part programme around 2019, similar attempts to launch such programme prior to 2019 was found to be unsuccessful. It is the pandemic which has predominantly led to a surge in demand for green parts.
21. There was therefore no reason for Copart to consider such services until it was prompted by its customers and found that it was either not being invited to participate

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<sup>14</sup> For further information about the adoption of green parts by Allianz's repairer network and end-customers, please see: *How Allianz is supporting the adoption of green parts*, ATF Professional, January 2022.

<https://atfpro.co.uk/how-allianz-is-supporting-the-adoption-of-green-parts/>

<sup>15</sup> Copies of these requests provided at FMN Annex 2.

in tenders or was losing, or being downweighted, in tenders as a result of not having these capabilities. Copart's global core business is and has always been as an upstream 'agent', salvaging, processing and marketing the vehicles. The decision to provide dismantling and green parts services is unique to the UK in direct response to upstream customer feedback and concerns, as well competition from IAA-SYNETIQ, which has begun to market itself as *"the one truly integrated supplier of green parts on a national scale,... [handling] the complete process of salvage from start to finish"*.<sup>16</sup> Copart Inc., and its subsidiaries across the globe do not provide and have no intention of providing such services.<sup>17</sup> Copart UK has been operating for over 15 years in the UK and never contemplated extending its services to dismantling or supplying green parts until these requirements began to impact Copart's ability to compete effectively.

22. Recognising the fast-changing industry wide trend, it became clear to Copart, within a short space of time, that it had to act quickly to respond to those demands before the change had a substantial impact on its competitive position. The acquisition of a dismantler was the only viable solution to remaining competitive in the UK salvaging market. Building its own dismantling function would have taken too long and have risked potentially considerable loss of upstream customers in the short term.<sup>18</sup>

#### **2.4. Copart expected substantial business risks going forward**

23. The lack of in-house dismantling and green parts capabilities has progressively led to Copart not being invited to participate in certain tenders (e.g., [§] did not invite Copart to participate in its tender as it did not have any dismantling capabilities) or losing tenders due to its lack of in-house dismantling facility (e.g., minutes of meeting with [§] and [§]<sup>19</sup> as well as the [§] feedback).<sup>20</sup> Copart cannot effectively compete in the fleet management arena as it cannot provide a green parts solution.
24. Furthermore, such capability has also been increasingly formally sought by potential customers in tenders, for example see those by [§]<sup>21</sup>, [§]<sup>22</sup>, [§]<sup>23</sup>, [§]<sup>24</sup>, [§]<sup>25</sup>, [§]<sup>26</sup>, [§]<sup>27</sup> and [§]<sup>28</sup>.
25. The importance of having a dismantling and green parts function in order to remain competitive is also apparent from Copart's internal documents. A recent internal

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<sup>16</sup> Direct quote from Tom Rumboll, SYNETIQ's CEO, May 2021. See:

<https://www.insurancebusinessmag.com/uk/news/auto-motor/allianz-tieup-to-automate-green-car-parts-sourcing-255642.aspx>

<sup>17</sup> For example, in the US, green parts dismantling is mainly provided by LKQ.

<sup>18</sup> See Parties' response to CMA request for information of 15 August 2022 ("RFI1 Response").

<sup>19</sup> FMN Annex 9.

<sup>20</sup> See **P2 - Initial Submission - Annex 1**.

<sup>21</sup> See FMN Annex 3, pages 16 and 18.

<sup>22</sup> See FMN Annex 4, question 7.

<sup>23</sup> See FMN Annex 5.

<sup>24</sup> See FMN Annex 6, question 12.

<sup>25</sup> See FMN Annex 7, pages 8-9.

<sup>26</sup> See FMN Annex 8.

<sup>27</sup> See **P2 - Initial Submission - Annex 2**.

<sup>28</sup> See **P2 - Initial Submission - Annex 3**.

business review noted, “[X]”<sup>29</sup> The challenge for the [X] was noted in the same vein.<sup>30</sup> Another business review noted, [X].<sup>31</sup> Yet another referred starkly to [X].<sup>32</sup>

26. Supporting this further, in seeking Board approval to acquire Hills, Copart UK states that:<sup>33</sup>

“[X]”

“[X]”

27. Copart remains the only salvager which does not offer end-to-end salvage and dismantling and green parts services. Without such capabilities, Copart believes its current upstream customer contracts are at very significant risk, and it will not be able to compete effectively for new customers. This Transaction is the only way that Copart can continue to compete for salvage services contracts.

### **2.5. Pro-competitive transaction with clear benefits for upstream customers**

28. This Transaction, responding to demand from insurers, will therefore offer to upstream customers additional choice amongst vertically integrated salvagers with dismantling/green parts services. As insurers are increasingly expressing a preference to source the bundle of salvage and dismantling services together, bringing together these complementary businesses will benefit them. Not approving this Transaction will lead to a considerable loss of competition in the supply of salvage services, leaving upstream customers with less choice.

## **3. Theory of Harm 1: Horizontal unilateral effects in salvage services**

29. Hills Motors was not a competitive constraint on Copart before the Transaction. As the Parties go on to outline below, there is no evidence to support any direct head-to-head competition having taken place between them. This Transaction will therefore not lead to a substantial lessening of competition. On the contrary, this is a complementary and customer-driven acquisition which will better allow Copart to compete against other vertically integrated players, in particular IAA/SYNETIQ and e2e (and its individual members), to retain and attract contracts in the upstream market.

### **3.1. The Transaction will not lead to significant concentration in the salvaging market**

#### **3.1.1. The increment from Hills is hugely overstated and misrepresented**

30. The CMA’s Phase 1 Decision states that the Transaction will combine the largest and fourth largest salvagers in the UK.<sup>34</sup> However, the implication that this will lead to significant concentration in the salvaging market is highly misleading for a number of reasons.

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<sup>29</sup> Notice 2 (Copart) - Annex 18 - [X], slide 2; see also Notice 2 (Copart) - Annex 21 - [X], slide 15.

<sup>30</sup> Notice 2 (Copart) - Annex 18 - [X], slide 17.

<sup>31</sup> Notice 2 (Copart) - Annex 19 - [X], slide 2.

<sup>32</sup> Notice 2 (Copart) - Annex 21 - [X], slide 27.

<sup>33</sup> FMN Annex 18 - [X], June 2022.

<sup>34</sup> Phase 1 Decision, paragraph 6.



31. First, it is not evident that Hills Motors is the fourth largest salvager. The CMA concedes in the Phase 1 Decision that there is some uncertainty as to the relative position of Hills Motors and Charles Trent.<sup>35</sup> The Parties submitted data from the 2021-22 APB UK Body Repair Industry Yearbook indicating Charles Trent's share at 6.5%, higher than Hills Motors at 5% and significantly higher than Hills Motors' share of 3.2% once outsourced vehicles and vehicles allocated to Hills Motors by e2e are rightly excluded.<sup>36</sup>
32. Second, even if Hills Motors were technically the fourth largest, there is a considerable disparity in size between the three largest salvagers (Copart, IAA/SYNETIQ and e2e) and the tail of salvagers below, including Hills Motors. Hills Motors is on a par with smaller salvagers such as Charles Trent, SureTrak, Recycling Lives, Overton, Redcorn Silverlake and ASM. Indeed, the CMA has over-estimated Hills Motors' share at 5-10%.<sup>37</sup> The CMA has provided no evidence to support a finding that Hills Motors' share has increased from the [0-5]% share the CMA itself estimated in its IAA/SYNETIQ decision, given as recently as 2 March 2022.<sup>38</sup> In discussing shares in that decision the CMA referred to "a number of smaller suppliers, including Hills".<sup>39</sup> Since that decision, [§<].
33. Third, the CMA has over-estimated Hills Motors' market presence by attributing Hills Motors' e2e volumes to Hills Motors. It has done so because the fact "that Hills Motors will no longer be a member of e2e going forward is a direct result of the Merger. A reduction in Hills Motors' share of supply due to e2e business lost as a result of the Merger is therefore not relevant to the CMA's assessment". This approach is inconsistent with the CMA's own IAA/SYNETIQ decision and wrong in itself. In that recent decision, the CMA did not attribute e2e volumes to Hills Motors.<sup>40</sup> Nor, as far as it appears, did the CMA attribute to the target business in that case, i.e., SYNETIQ, its former e2e volumes.
34. The CMA should not now attribute e2e volumes to Hills Motors in the present proceedings. Even beyond consistency, there is a clear logic to this. Market shares are, at best, a proxy measure of market power or competitive constraint. The purpose of measuring Hills Motors' market power is to estimate the level of competitive constraint, if any, removed from the market as a result of the Transaction. The volumes of vehicles previously allocated from e2e to Hills Motors represent volumes attributable to e2e – volumes competed for by e2e and hence a proxy for e2e's competitive constraint on the Merged Entity. These volumes and any corresponding constraint will remain with e2e both before and after the Transaction and are no proxy for Hills Motors' competitive position on the market. Indeed, it is notable that these volumes have already been reallocated to other e2e members, further underscoring that they are e2e's volumes. There is therefore no reason to attribute these volumes, and hence shares, to Hills Motors and/or the Merged Entity when assessing the competitive impact of the Transaction.

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<sup>35</sup> Phase 1 Decision, footnote 56.

<sup>36</sup> FMN, paragraph 95, table 1.1.

<sup>37</sup> Phase 1 Decision, paragraph 40, table 1.

<sup>38</sup> Case ME/6972/21 – IAA Inc./SYNETIQ, paragraph 40, table 1.

<sup>39</sup> Case ME/6972/21 – IAA Inc./SYNETIQ, paragraph 41.

<sup>40</sup> Case ME/6972/21 – IAA Inc./SYNETIQ, footnote 33.

35. The CMA also cites Hills Motors' apparent growth trajectory between 2016 and 2021 as evidence that its market share may understate its future growth.<sup>41</sup> However, this is an inappropriate inference. First, the level of outsourcing undertaken by Hills Motors indicates it is not capable of servicing national contracts by itself, but is rather dependent on outsourcing to third parties. As the CMA is aware, [§]. In addition, Hills Motors' volumes grew following SYNETIQ's exit from the e2e consortium, as Hills Motors was allocated approximately [§]% of SYNETIQ's e2e volumes due to the fact that Hills Motors had more capacity and that it was geographically close to two of SYNETIQ's former constituent businesses (Car Transplants in Cheshire and Motorhog in Doncaster). Prior to the reallocation of SYNETIQ's e2e volumes, Hills Motors was one of the smaller e2e members. Such artificial growth was only temporary, lasting less than 12 months. This allocation is not indicative of Hills Motors' competitive strength and position. Volumes within e2e are indicative only of the competitive strength of e2e. The ease with which volume is reallocated between network members shows this is the case (as occurred following SYNETIQ's withdrawal and is occurring following Hills' withdrawal). For example, when SYNETIQ, one of e2e's largest members by volume, left the network, the volume that was previously salvaged by SYNETIQ was reallocated to other members. Overton and Charles Trent took on most of the volumes.
36. Fourth, [§]. The Ageas contract overstates Hills Motors' market presence, given that [§]% of the volumes were outsourced to others in 2021. Similarly, Hills Motors outsources [§]. Moreover, even if all the Ageas volumes, including those outsourced, were attributed to Hills Motors, [§]. It is therefore a clear-cut example of where an apparent increment in market share does not represent a reduction in competition. Moreover, this is not a minor technical point: the Ageas contract accounts for [§] of Hills Motors' volumes, i.e., [§] vehicles in 2021 ([§]% of Hills' total volumes).
37. Supporting this, Hills has very limited activity upstream. [§].

**Figure 1: Hills Motors' very limited salvaging activity**  
**Net revenue by direct upstream customer, 2021<sup>42</sup>**

[§]

### **3.1.2. Copart share is also overstated and not reflective of the relevant market**

38. Fifth, there are also faults in the CMA's estimate of Copart's, and not merely Hills Motors', market share. As Copart explained at the Issues Meeting, its share should be lower than the share estimated in the CMA's recent *IAA/SYNETIQ* decision which focused on insurance sector sourced vehicles, because:
- (a) The CMA has accepted in these current proceedings a frame of reference wider than merely insurance sourced vehicles. Consequently, the Parties' respective shares of supply would have naturally decreased (comparatively to those indicated in the CMA's recent *IAA/SYNETIQ* decision). The Parties provided the CMA with their respective shares for the supply of salvage services to all

<sup>41</sup> Phase 1 Decision, paragraph 43(a).

<sup>42</sup> [§].

upstream customers in the UK<sup>43</sup> (i.e., [X]% and [X]% respectively – with a combined share of supply of [X]%). These estimates were based on a total market size of 768,000 – extracted from the APB Yearbook 2020-2021 report. This was a report which the CMA relied on when asserting Hills Motors’ position in the market.<sup>44</sup> Whilst they cannot confirm with certainty that the APB total market size is the most accurate data, the Parties believe that it is a good proxy and, in any event, would overstate the Parties’ market position given that there were 1,116,380 destroyed vehicle notifications in the UK in 2021;

- (b) Notwithstanding the above, the Parties also note that the shares of supply for salvage services to insurance only customers is in any event inaccurate. Copart has subsequently [X]. It appears that the increase in IAA’s current share of supply was not taken into account in the CMA’s estimates; and
- (c) Table 1 of the CMA’s Phase 1 Decision estimating shares of UK salvaging only includes Category A, B, N and S vehicles handled, whereas, as explained at the Issues Meeting, the informal Cat. U and X vehicles also form part of the pool of salvage vehicles.

39. Finally, the incorrect and inconsistent approach to the shares of supply is all the more concerning in light of the fact that the CMA’s Phase 1 Decision puts excessive weight on market shares. Consistent with previous CMA’s decisions<sup>45</sup>, the CMA acknowledges that *“the nature of demand in salvage services (in which contracts are usually tendered around every 3 years) may mean that shares of supply at a point in time may not be particularly probative of a supplier’s competitive strength”*.<sup>46</sup> The CMA also concedes that *“shares of supply do not fully capture competitive dynamics”*.<sup>47</sup> Yet the CMA contradictorily goes on to state that its share estimates *“are indicative of the strength of the Parties and structure of the market post-Merger”*.<sup>48</sup> In addition to the above observations above on the Ageas contract, market shares are misleading as to the market position of salvagers, given the lumpy nature of tenders which mean gaining or losing a contract drastically impacts the volumes of a salvager. Copart’s recent [X] is a perfect illustration how [X].

### **3.2. The Parties do not compete head-to-head at all upstream**

40. It is not the case, as the CMA asserts, that Copart and Hills Motors are *“two of a few close competitors in the supply of salvage services in the UK”*.<sup>49</sup> On a close examination of the footnotes to the CMA’s Phase 1 Decision, the evidence cited in support of this conclusion is markedly weak. Yet the concrete evidence to the contrary is markedly strong.

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<sup>43</sup> FMN, paragraph 95.

<sup>44</sup> Issues Letter, footnote 48.

<sup>45</sup> Case ME/6972/21 – IAA Inc./SYNETIQ, paragraph 42. See also, Case ME/6996/22 – GXO Logistics, Inc./Clipper Logistics plc, paragraph 60 and Case ME/6919/20 – Hoyer Petrolog UK Ltd / DHL Supply Chain Limited, paragraph 40.

<sup>46</sup> Phase 1 Decision, paragraph 40.

<sup>47</sup> Phase 1 Decision, paragraph 43.

<sup>48</sup> *Ibid.*

<sup>49</sup> Phase 1 Decision, paragraph 53.

41. First, the CMA makes a good deal of the supposed notion that Copart and Hills Motors are “two of a few salvagers that compete for national contracts”<sup>50</sup>. This proposition is footnoted<sup>51</sup> by a cross-reference to paragraph 40 of the decision. However, paragraph 40 of the decision does not contain or refer to any compelling evidence about competition for national contracts. It merely contains a conceptual discussion about the importance of market shares and closeness of competition.
42. The CMA also cites in support a quotation of Ian Hills in a trade publication that Hills Motors is “one of the largest and most sophisticated salvage and recycling operations in the UK, maintaining contracts and supporting clients nationally.” However, this is obviously a promotional statement on behalf of his business rather than hard evidence on which the CMA can rely. Moreover, members of the e2e network promote themselves as part of a national network, notwithstanding that individually they operate as regional businesses. The CMA also relies on being told that Hills Motors is a national competitor by the “majority of competitor respondents to the CMA’s investigation”<sup>52</sup>. This is also unreliable evidence, given competitors have a vested interest in opposing the Transaction and are fully aware, through their sub-contracting arrangements with Hills Motors, that it cannot service national contracts on its own (see examples below).
43. When it comes to concrete evidence, Hills Motors is not able to handle national contracts independently. In a footnote to its Phase 1 Decision, the CMA notes, “while Hills Motors has historically been a smaller player in the supply of salvage services with a more regional focus, Hills Motors currently competes for, and has won two UK-wide contracts (although it subcontracts parts of the Ageas contract to salvagers in certain parts of the UK)”<sup>53</sup>. Hills Motors has, on a proper examination, not changed from this historic position: it remains a smaller player.
44. Indeed, even in the context of the Ageas contract, this regional focus is further evidenced by the fact Hills outsources over [X]% of the volumes under the Ageas contract (i.e., Hills is not capable of supplying the contract independently and is reliant on e2e network members), given the areas where it does not have geographic coverage.<sup>54</sup> Hills also outsources [X] volumes. As the CMA is also aware, Hills Motors has experienced [X]. On this basis, Hills Motors cannot be considered a close competitor of Copart, e2e, IAA/SYNETIQ, who are independently able to compete for and service national contracts.
45. On the other hand, if the CMA is inclined to treat Hills Motors as a national competitor (which it is not), notwithstanding its need to outsource significant parts of such contracts, then logical consistency dictates that the CMA should also treat other similarly placed salvagers as national competitors. In its recent IAA/SYNETIQ decision, the CMA’s market test indicated competition from Recycling Lives, European Metal Recycling, SureTrak and Jonathan Lloyd<sup>55</sup> and that these three “are

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<sup>50</sup> Phase 1 Decision, paragraph 6.

<sup>51</sup> Phase 1 Decision, footnote 79.

<sup>52</sup> Phase 1 Decision, paragraph 47(b).

<sup>53</sup> Phase 1 Decision, footnote 38.

<sup>54</sup> Hills’ Ageas volumes:

2021: [X] vehicles, of which [X] ([X]%) handled in-house i.e., [X]% outsourced.

2020: [X] vehicles, of which [X] ([X]%) handled in-house i.e., [X]% outsourced.

<sup>55</sup> Phase 1 Decision, paragraph 52-3.

also capable of providing salvage services with a nationwide coverage”<sup>56</sup>. Yet in the Phase 1 Decision in the present proceedings the CMA concludes with a negative inference, “There is an absence of evidence that these smaller rivals have the ability to compete for, and win, national contracts”.<sup>57</sup> This is not even internally consistent with the observation elsewhere in the same Phase 1 Decision that “Salvage service customers that responded to the CMA’s investigation submitted that they had national (UK-wide) contracts with their existing salvagers and identified the Parties, IAA, e2e, Recycling Lives and SureTrak as capable of meeting their requirements”.<sup>58</sup> It is also not consistent with the fact that, as the CMA is well aware, Charles Trent, Recycling Lives and SureTrak were recently invited to tender for Aviva’s national contract alongside Copart and IAA/SYNETIQ.

46. In other supposed evidence of closeness of competition, the CMA cites the fact that the majority of vehicles handled by Hills Motors and the majority of its revenues are derived from auction sales.<sup>59</sup> However, the vast majority, if not all, salvagers make extensive use of auctions for selling vehicles. This is hardly a mark of closeness of competition between Copart and Hills. The CMA also states, “In its public announcement, Copart described the Merger as benefitting Copart through the addition of Hills Motors’ strength in salvage services (in terms of volume and capability) as well as its green parts supply capabilities, as a result of which the Merged Entity can offer an ‘unrivalled’ nationwide service”.<sup>60</sup> However, this CMA paraphrase is a misleading reinterpretation of the original announcement. The original text stated, “When you combine the strength of our salvage solutions, both in the volume and capability sense, with Hills’ world class green parts service and progressive inventory platform, we really can offer an unrivalled nationwide service.” The reference to “our” is unambiguously to Copart’s, and not Hills Motors’, salvage solutions, as this is what is to be “combined ... with” the green parts service of Hills Motors. It is patently clear from reading the quote that it refers to the benefits from *vertical integration* and says nothing about closeness of competition in salvaging services.
47. In terms of other concrete evidence, the lack of closeness of competition between Copart and Hills is corroborated by both the tender data and the internal documents provided to the CMA in the FMN.
48. According to the CMA’s Issues Letter, “the Parties competed against each other for five opportunities between 2018 and August 2022”.<sup>61</sup> By the time of the CMA’s Phase 1 Decision this was downgraded to the observation that “the Parties have been invited to compete against each other directly on three recent occasions [emphasis added]”.<sup>62</sup> Apart from the fact that these are merely three instances out of the [X] tender opportunities identified by the Parties for the period 2018 to August 2022, even these three instances are not genuine examples of competition between the Parties (let alone close competition):
- a) [X]: Hills did not tender for this contract; the contract was an e2e tender. As with all e2e tenders, Hills has no visibility of the tenders e2e is participating in

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<sup>56</sup> Phase 1 Decision, paragraph 52.

<sup>57</sup> Phase 1 Decision, footnote 82.

<sup>58</sup> Phase 1 Decision, footnote 38.

<sup>59</sup> Phase 1 Decision, paragraph 48(a).

<sup>60</sup> Phase 1 Decision, paragraph 48(b).

<sup>61</sup> Phase 1 Decision, paragraph 33(f).

<sup>62</sup> Phase 1 Decision, paragraph 52.

and no impact on the competitive strength of e2e in any given tender (as there is no contractual obligation for Hills or any other dismantler to be allocated volumes in the e2e network; e2e fulfils the contract irrespective of the network allocation). Supporting this, Hills only provides *regional* salvage services as part of this contract (see map below of Hills collections under the contract – this applies to all Hills activity within e2e). Further, the tender requested details of the proposed supplier’s green-parts offering, which Copart was not able to offer;

- b) [X]: Hills Motors did not compete for this tender. As regards Copart, while it did participate, it is notable that one of the tender’s “*key areas for consideration*” was a “*proposal for green parts*”;<sup>63</sup> and
- c) [X]: Hills Motors could not realistically compete for this contract due to its lack of an auction facility required by the tender, as well as the requirement for full UK and Ireland collection coverage.<sup>64</sup> The tender also specified resale of green parts to [X], which Copart could not provide. [X].<sup>64</sup>

49. 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). Hills Motors’ strong preference [X] occasionally upstream customers may approach members directly, e.g., due to a personal relationship between an insurer member of staff and a dismantler. In these cases, members may look to replicate the e2e network proposition, as they cannot fulfil the contract on their own. Hills Motors recalls that [X].

50. As regards evidence from internal documents, the Phase 1 Decision claims that “*the Parties’ internal documents, in particular from Hills Motors, showed instances of monitoring each other’s contracts*”.<sup>65</sup> On closer examination of the CMA’s decision, it appears the bold reference to “*in particular from Hills Motors*” is based on merely two Hills Motors documents:<sup>66</sup>

- a) One document is entitled ‘[X]’<sup>67</sup>. The CMA claims this document shows Hills Motors [X]. However, it is clear from the document that it concerns [X]. Slide 4 states, [X]. Slide 5 contains [X]. Since Copart supplies salvage services to many insurers, [X]. It is clear that Hills Motors’ focus is on [X].
- b) The CMA also cites a Hills Motors business update, dated March 2022<sup>68</sup>, which purportedly “*shows [X]*”<sup>69</sup>. This is not the case. In fact, the vast majority of the document does not concern Copart at all. There is one small part which concerns [X]. This, like the other document mentioned above, addresses how Hills Motors [X]. The first bullet point in the section refers to [X]. The final bullet is also clearly about [X]. It is acknowledged that this includes a

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<sup>63</sup> Phase 1 Notice 4 (Copart), Annex 2.

<sup>64</sup> Phase 1 Notice 4 (Copart), Annex 2.

<sup>65</sup> Phase 1 Decision, paragraph 6.

<sup>66</sup> Phase 1 Decision, paragraph 49(b).

<sup>67</sup> Hills Motors’ response to the CMA’s notice under section 109 of the Act dated 12 September, document titled ‘[X]’.

<sup>68</sup> Hills Motors’ response to the CMA’s notice under section 109 of the Act dated 12 September, document titled ‘[X]’.

<sup>69</sup> Phase 1 Decision, paragraph 49(b).

reference to “[X]”. However, this is clearly not evidence of any effective competition from Hills Motors for salvaging business from these insurers, since the CMA’s market test confirmed that “the vast majority of salvage service customers are insurance customers, who typically have national salvage service requirements”<sup>70</sup> (emphasis added).

51. These two documents demonstrate Hills Motors competing for the supply of green parts to insurers rather than salvaging. Since the CMA has concluded that salvaging and the supply of green parts are separate markets, and given Copart is not present in the supply of green parts, these documents are not evidence of Hills Motors competing with Copart. In short, the CMA has balanced a lot of evidential weight on merely two Hills Motors documents which, on closer examination, do not support the proposition that Hills Motors is a close competitor of Copart. Indeed, it is factually incorrect to suggest that Hills Motors is targeting Copart customers when Hills Motors has in fact [X], nor has it competed directly head-to-head against Copart.

52. As regards Copart’s internal documents, the CMA concludes that “Copart’s internal documents indicate that, despite Hills Motors being smaller than Copart, Copart considered Hills Motors to be a [X] competitor”.<sup>71</sup> However, the evidence it cites in support does not in fact support this proposition. First, the CMA itself concedes that “Copart’s internal documents typically refer to a small number of competitors (most frequently [X])”. It also concedes that “Hills Motors is identified less frequently than [X]” and merely “appear[s] as a competitor in some internal documents”.<sup>72</sup> In relying on these “some internal documents”, the CMA clearly cherry-picked the evidence in order to support a preconceived conclusion. There were 17 internal documents provided by Copart to the CMA which made direct references to competitors and/or the competitive landscape. Only three of these documents characterise Hills as a competitor, and in each case, Hills is listed alongside a much wider set of competitors including [X]. In contrast, the other 14 documents which considered Copart’s closest competitors only identified [X] – not Hills Motors. The CMA’s Phase 1 Decision also cites a Copart internal document monitoring Hills Motors’ Ageas contract as evidence of closeness of competition.<sup>73</sup> However, as previously explained, [X]. The relevant slide in the document indicates next to the Ageas entry, [X].<sup>74</sup> The slide also refers to contracts with other smaller salvagers such as [X] and [X], and primarily tracks contracts with [X]. Rather than evidence pointing to closeness of competition between Copart and Hills Motors, the document in fact highlights the opposite, namely that [X] (and so is not competing with Hills Motors).

53. The CMA also asserts that when competition is only amongst a small number of firms, then there is a presumption that any of these competitors are close competitors. The CMA bases this on a reference to markets in general in its Merger Assessment Guidelines.<sup>75</sup> The CMA accepts that this is “subject to evidence to the contrary”<sup>76</sup>. In this case there is plenty of evidence to the contrary, as outlined throughout this and previous submissions. In particular, it is not true that the UK salvaging market is only

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<sup>70</sup> Phase 1 Decision, paragraph 34(a).

<sup>71</sup> Phase 1 Decision, paragraph 49.

<sup>72</sup> Phase 1 Decision, paragraph 49(a).

<sup>73</sup> *Ibid.*

<sup>74</sup> Phase 1, Notice 2 (Copart) Annex 22, slide 19.

<sup>75</sup> CMA Merger Assessment Guidelines, paragraph 4.10.

<sup>76</sup> Phase 1 Merger Decision, paragraph 45.

characterised by a small number of competitors (on which see the next section below). It is also not correct, as the Parties' tender data demonstrates, that the Parties are competing head-to-head. In fact, there is no evidence of any direct head-to-head competition. The CMA cannot simply rely on an *a priori* presumption in its guidelines and ignore the weight of evidence to the contrary.

54. In terms of third-party evidence, the CMA later cites “[a] competitor” (i.e., merely one competitor) identifying Copart and Hills as competing.<sup>77</sup> Customer evidence is more likely to be reliable than competitor evidence. However, the customer evidence cited by the CMA is that customers perceived Copart competing with e2e while Hills Motors was a member of e2e.<sup>78</sup> However, the Transaction is not a merger of Copart and e2e and therefore this evidence is not probative of Copart competing closely with Hills Motors. The e2e network will remain a strong competitor without Hills Motors.
55. The fact that Hills Motors had previously decided to develop its own proprietary auction platform in no way suggests that it was, or would be, a close competitor to Copart, as the CMA suggests.<sup>79</sup> As explained in the FMN<sup>80</sup> and by Ian Hill at the issues meeting, Hills Motors made this decision on a defensive basis in case it could no longer rely on a third-party platform to retail its vehicles, notably e2e's use of SYNETIQ's auction platform. Hills Motors never envisaged its own platform as a potential competitor to Copart's platform, as Copart's platform is not generally for use by third parties, and Hills Motors would never have the volumes of vehicles to make its own standalone platform a flourishing marketplace. Rather, it was simply developed as a back-up solution to mitigate third party reliance. This is consistent with the communication from Hills Motors to the CMA in its IAA/SYNETIQ market test when Hills Motors responded to the CMA's follow-up questions regarding the development of its own auction platform and indicated: [redacted].<sup>81</sup>
56. As explained in FMN,<sup>82</sup> although *prima facie* both parties are active in the supply of salvaging services and vehicles downstream, the offerings of Copart and Hills Motors are clearly distinguishable. For all the reasons above, the Parties are not close competitors and in fact do not compete directly head-to-head at all.

### **3.3. The merged entity will be sufficiently constrained by competitors**

57. The following competitors represent a strong and growing competitive constraint on the Parties.

#### **3.3.1. IAA/SYNETIQ**

58. The IAA/SYNETIQ transaction brought together two powerful suppliers of salvage services, providing a vertically integrated solution to upstream customers. This, in part, prompted Copart to acquire Hills as the “green parts threat”<sup>83</sup> became increasingly clear. As noted in the FMN, the CMA approved the IAA/SYNETIQ merger based, in

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<sup>77</sup> Phase 1 Decision, footnote 119.

<sup>78</sup> Phase 1 Decision, footnote 120.

<sup>79</sup> Phase 1 Decision, paragraph 50.

<sup>80</sup> Issues Letter, paragraphs 61-63.

<sup>81</sup> Email from [redacted] dated 31 January 2022 at 17:35

<sup>82</sup> Issues Letter, paragraphs 70-75.

<sup>83</sup> Notice 2 (Copart) - Annex 21 - [redacted], slide 27.



part, on the fact that Copart would continue to provide a material competitive constraint on the merged entity.<sup>84</sup> Copart is of the view that this is (and will continue) not to be the case in the absence of this Transaction. Copart has already [§<]. For the same reason Copart has also been [§<].

### 3.3.2.e2e

59. Second, e2e remains a very strong competitor to Copart notwithstanding Hills' exit from the consortium. The CMA is wrong to assert that e2e has been weakened following Hills Motors' departure.<sup>85</sup> Moreover, the evidence cited by the CMA is markedly weak:

(a) The CMA states that a "large proportion" of e2e services were carried on by Hills Motors, citing merely "one third party".<sup>86</sup> However, Hills Motors has provided concrete evidence that this is factually incorrect. Hills Motors was merely one regional operator in the e2e consortium. Moreover, the consortium is based on the commitment that it [§<]. E2e readily and easily reallocated SYNETIQ volumes following its departure. Currently, e2e has 28 members, with 12 of these being active collecting members. Even within its existing membership, and even limited to the active members, there is sufficient spare capacity to take over Hills Motors' volumes, as evidenced by the ease and speed at which Hills Motors' volumes have already been absorbed by [§<] and [§<], shortly after the announcement of the Transaction. This network of large domestic dismantlers, other members of which have only become stronger since absorbing Hills Motors' volumes, will continue to compete strongly against both IAA/SYNETIQ and the Merged Entity. The CMA itself concedes that other e2e members have the capacity to salvage Hills Motors' volumes, but states Hills' departure means there will be "fewer salvagers" in e2e.<sup>87</sup> However, this is nothing more than a truism: one departure inherently means "fewer" remain; what matters is that e2e has plenty of active and inactive members who can (and have) stepped in to cover Hills Motors' volumes;

(b) The CMA cites "a customer noting they were concerned about e2e's offering".<sup>88</sup> The CMA does not specify whether this is a significant customer in terms of volumes. It does not specify what the customer's concerns are or what evidence was provided to substantiate this claim (such as contractual provisions this customer sought from e2e that Hills provide certain volumes, e.g., due to a shortage of salvage or dismantling capacity in the north-west; these do not exist as they would never be required or sought and there is no shortage of alternatives in the north-west). Presumably if there had been other customers expressing concerns, then the CMA would have referred to these here. The obvious inference is that all but one customer responding to the CMA's questionnaire did not have any concerns about e2e as a result of Hills Motors' departure from the consortium;

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<sup>84</sup> Case ME/6972/21 - IAA Inc./SYNETIQ, paragraphs 48-54.

<sup>85</sup> Phase 1 Decision, paragraph 58.

<sup>86</sup> *Ibid.*

<sup>87</sup> Phase 1 Decision, paragraph 58(b).

<sup>88</sup> Phase 1 Decision, paragraph 58(a).

- (c) The CMA states that “*the majority of competitors responding to the CMA stated that e2e will be weaker without Hills Motors*”<sup>89</sup>. Surely the CMA cannot put greater weight on this observation from self-serving competitors compared to the views of customers not expressing concerns about e2e (with merely the one exception mentioned above). In fact, the e2e network services some of the largest motor insurers (e.g., Direct Line, AA, etc.) which clearly view e2e a valid and strong operator in this field; and
- (d) It is curiously inconsistent that the CMA doesn’t refer to the evidence cited by the Parties of e2e itself proclaiming its ongoing strength without Hills Motors, even though, as noted above, the CMA is happy to cite a comment by Ian Hills about the strength of Hills Motors as evidence of Hills Motors’ competitive position.
60. The overwhelmingly positive response to the acquisition by customers, as evidenced in the correspondence provided to the CMA (see FMN Annex 25), demonstrates that it was always a customer-driven transaction and that they are clearly not concerned that it would result in a loss of competition. According to the CMA, “[c]ustomers that responded to the CMA’s questionnaire were less concerned about the Merger” and only “[o]ne customer told the CMA that the Merger would marginally reduce competition”.<sup>90</sup> This highlights that it is only self-serving competitors who have expressed concerns regarding the impact of the Merger in the supply of salvage services, not customers as they are fully aware that should Copart not be permitted to acquire dismantling capabilities, it will simply not be able to compete for any future salvage services tenders.
61. At paragraph 59 of the Phase 1 Decision, the CMA simply dismisses the competitive constraint imposed by smaller competitors. However, as explained in the FMN, there are plenty of competitors which will constrain the Merged Entity in addition to IAA/SYNETIQ and e2e.<sup>91</sup>
62. The CMA itself established that Recycling Lives, SureTrak and Jonathan Lloyd were notable competitors in its IAA/SYNETIQ decision.<sup>92</sup> According to the CMA’s Issues Letter in the current proceedings, “*salvage service customers that responded to the CMA’s investigation submitted that they had national (UK-wide) contracts with their existing salvagers and identified the Parties, IAA, e2e, Recycling Lives and SureTrak as capable of meeting their requirements*”.<sup>93</sup> This is the CMA’s own evidence it gathered a few months before.
63. Although the CMA has accepted a wider frame of reference than merely salvaging for insurers in assessing market definition,<sup>94</sup> it has focused its substantive assessment of competitors on those targeting insurers and neglected those targeting other segments. Given that all these salvaged vehicles ultimately compete for sale downstream at auction, the CMA cannot neglect a full assessment of these competitors. Further details

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<sup>89</sup> Phase 1 Decision, paragraph 58(a).

<sup>90</sup> Issues Letter, paragraph 40(b).

<sup>91</sup> Issues Letter, paragraphs 126-136.

<sup>92</sup> Issues Letter, paragraphs 52-3.

<sup>93</sup> Issues Letter, footnote 60.

<sup>94</sup> Phase 1 Decision, paragraph 32.

are provided as follows to ensure the CMA properly captures their market shares and market presence in Phase 2.

### **3.3.3. Recycling Lives**

64. Recycling Lives<sup>95</sup> is a national charity and social enterprise, which collects, processes and recycles a wide range of waste products nationally, including scrap cars and parts, as well as providing online auctions via its Raw 2K Vehicle Auctions brand.
65. ABP ranked it third amongst UK salvage companies by turnover in its 2023 yearbook. In 2022, Recycling Lives generated a turnover (including Raw2K) of £63.7 million – 50% more turnover than Hills Motors<sup>96</sup> and forecast to reach £300 million through its recent acquisition of Glasgow-based recycler John R. Adam and Sons Ltd on 12 July 2022.<sup>97</sup> Copart recently [§<]. The evidence therefore suggests that Recycling Lives is a stronger competitor to Copart than Hills.

### **3.3.4. Charles Trent**

66. Charles Trent<sup>98</sup> provides vehicle dismantling and recycling services, as well as online auction services from 2 large sites in Poole, Dorset and Rugby Warwickshire. ABP ranked it 5th in the UK having generated a turnover of £38.7 million, making it the same size as Hills and has experienced sales growth of close to 50% year-on-year.<sup>99</sup> Charles Trent recently built a new factory<sup>100</sup> as well as a distribution centre in Holton Heath. The company's five-year growth plan forecasts a turnover of £250 million by 2026 while staff numbers will grow five-fold from 200 to 1,000.<sup>101</sup> Charles Trent's salvage activity through e2e accounted for a slightly higher proportion as Hills' (approximately [§<]%).

### **3.3.5. Jonathan Lloyd**

67. Jonathan Lloyd Commercial Salvage<sup>102</sup> is one of the UK's largest commercial vehicle salvage dealers operating from two significant sites in the West Midlands. It works alongside some of the biggest insurance companies to salvage agricultural, plant machinery and commercial vehicles all over the UK.

### **3.3.6. SureTrak**

68. SureTrak is a UK based InsureTech, offering technology solutions and end-to-end salvage management to the insurance industry. Similarly to e2e, SureTrak relies upon a network of salvagers to collect vehicles on behalf of the insurers who are contracted to SureTrak (e.g., [§<]).

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<sup>95</sup> Further information can be found at <https://www.recyclinglives.com>

<sup>96</sup> See APB Yearbook 2021-2022, page 41.

<sup>97</sup> <https://atfpro.co.uk/recycling-lives-completes-acquisition-of-glasgow-based-recycler-john-r-adam-and-sons-ltd/>

<sup>98</sup> For further information, see <https://www.trents.co.uk>

<sup>99</sup> See APB Yearbook 2021-2022, page 41.

<sup>100</sup> <https://www.trents.co.uk/blog/7-5-million-pound-project-to-revolutionise-the-vehicle-recycling-industry-gets-the-go-ahead>

<sup>101</sup> <https://www.dorsetbiznews.co.uk/new-4m-distribution-centre-opens-as-part-of-five-year-plan-to-drive-growth-at-family-firm/>

<sup>102</sup> Further information can be found at <https://jlloyd.com>

### **3.3.7. Silverlake**

69. Silverlake<sup>103</sup> is one of the UK's leading vehicle recycling and scrap yards. It provides vehicle recovery, salvage services, dismantling and recycling services as well as online salvage auction services. Silverlake recently completed the building of additional warehousing for reclaimed parts adding capacity for a further 650 engines and 7,000 panels to its storage facilities.
70. ABP ranked it 7<sup>th</sup> in the UK in its 2021-2022 yearbook.<sup>104</sup> Silverlake have a significant walk-in retail operation in Southampton. Silverlake provide a relatively high proportion of e2e's salvaging allocation at [38] %.

### **3.3.8. ASM**

71. ASM Auto Recycling<sup>105</sup> provides multi-site vehicle dismantling and recycling services, as well as online auction services. ASM was ranked 8<sup>th</sup> in the UK by the APB.<sup>106</sup> ASM is a member of e2e. ASM Auto Recycling is based in multiple locations throughout the UK. ASM provide a relatively high proportion of e2e's salvaging allocation at [38] %.

### **3.3.9. Reclamet**

72. Reclamet Ltd<sup>107</sup> is a salvager specialised in recycling and dismantling as well as scrap. Reclamet holds both Waste Management and Waste Carriers Licences and is an ATF for the treatment and recycling of end-of-life vehicles, with direct links to the DVLA. Reclamet has its own proprietary salvage auction platform<sup>108</sup> and is a member of e2e.

### **3.3.10. Overton**

73. Overton Garage Ltd<sup>109</sup> operates from three sites, in Aberdeen, Essex and Lincoln (a new site to take on former SYNETIQ e2e volumes), and delivers a national service for vehicle dismantling and scrap cars. Overton Garage is a member of e2e and, following the exit of SYNETIQ from e2e, is one of the largest network members by volume salvaged. Overton has been expanding considerably and is estimated to have taken on the bulk (around two-thirds) of the salvaged volumes that were previously salvaged by SYNETIQ.

### **3.3.11. BCA**

74. BCA<sup>110</sup> offers, amongst other services, end-to-end vehicle remarketing and auctions damaged vehicles. BCA is part of the Constellation Automotive Group which also

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<sup>103</sup> For further information, see <https://www.silverlake.co.uk>

<sup>104</sup> See APB Yearbook 2021-2022, page 41.

<sup>105</sup> For further information, see <https://www.asm-autos.co.uk>

<sup>106</sup> See APB Yearbook 2021-2022, page 41.

<sup>107</sup> For further information, see <https://www.reclamet.co.uk>

<sup>108</sup> <https://www.reclamet.co.uk/salvage-auctions>

<sup>109</sup> For further information, see <http://overton.bluesock.co/>

<sup>110</sup> For further information, see <https://www.bca.co.uk>

owns WeBuyAnyCar and Cinch.<sup>111</sup> They are by far the biggest national operator with 24 sites located throughout the UK. They consider themselves the 'backbone of the UK's Automotive supply chain' and they have many exclusive relationships with contract hire and leasing companies. They also have a large de-fleet and refurbishment operation including Smart repairs.

### 3.3.12. Cox Automotive

75. Cox Automotive<sup>112</sup> is another market player considered to be a threat by Copart. Cox Automotive is part of a larger group which owns Cox Auto Parts, Inc, Manheim and AutoTrader. Cox Automotive provides salvage vehicle services, including dismantling, recycling and online auction. They have 15 auction centres with remarketing operations throughout the UK providing national coverage, including de-fleet and refurbishment centres.
76. In sum, Copart believes that there a wider range of competitors from larger established operators to those focused on part of Copart's business to those with new and innovative business models. These will all continue to constrain the merged entity and provide alternative options for upstream and downstream customers after the Transaction.
77. However, the CMA can leave open precisely which set of competitors will continue to constrain the Merged Entity after the acquisition. This is because, without the ability to provide an immediate green parts solution through the acquisition of Hills, Copart is not able to compete against its vertically integrated competitors. This Transaction therefore increases by one the number of competitors which can viably compete for salvage services tenders into the future. Copart's commercially sophisticated upstream customers would not have called upon Copart to pursue this acquisition had they believed it would reduce, rather than increase, the options for them in competitive tenders.

### 3.4. The Merged Entity will be sufficiently constrained by its customers

78. In its Phase 1 Decision, the CMA dismissed any consideration of countervailing buyer power on the basis that "a customer's buyer power depends on the availability of good alternatives they can switch to" and "the CMA's findings that there will be insufficient alternatives to constrain the Merged Entity".<sup>113</sup> The CMA itself noted in its recent *IAA/SYNETIQ* decision, that there are plenty of alternatives (large and small) for the supply of salvages services to upstream customers<sup>114</sup> as well as for the supply of salvage vehicles to downstream customers<sup>115</sup>. Given the shortcomings outlined above of the CMA's analysis of alternatives, the CMA cannot simply set aside the compelling evidence of buyer power.
79. Countervailing buyer power clearly exists in the market which would limit the Parties' ability to increase prices or worsen their terms. There are plenty of examples of

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<sup>111</sup> For further information, see <https://www.constellationautomotive.com>

<sup>112</sup> For further information, see <https://www.coxautoinc.eu>

<sup>113</sup> Phase 1 Decision, paragraph 90.

<sup>114</sup> Case ME/6972/21 – IAA Inc / SYNETIQ, paragraphs 52-3.

<sup>115</sup> *Ibid.*, paragraphs 56-8.

switching which contradict the CMA's assertion of lack of alternatives. For instance, both [X] and [Y] switched their salvage and dismantling supply contract from [X]. [Y] also moved its supply arrangements [Y]. The Parties understand that since then, [Y] moved all of its volumes to [Y]. In May 2020, [Y] moved from [Y] to [Y].<sup>116</sup> The Parties also understand that AGL moved from (possibly) SureTrak to SYNETIQ whilst the Post Office moved from Trent to another provider (possibly a local provider) and British Gas moved from SYNETIQ to another provider (possibly a local provider). The police forces are also understood to switch on a regular basis.<sup>117</sup> For example, Copart recently [X].

80. Large customers such as insurance companies are sophisticated and have strong bargaining power. As noted by the CMA<sup>118</sup>, the gain or loss of a single tender can have a considerable impact on any salvager's business and market position, including large salvagers such as Copart, IAA/SYNETIQ or e2e. Customers' buyer power is also corroborated by the penalties in Copart's customer contracts should it fail to realise sufficient value out of the customers' vehicles on its auctions (see further the section on the third theory of harm below). The fact that insurance customers have been prompting Copart to acquire a dismantling operation like Hills Motors - i.e., this very Transaction - is itself indicative of these customers' buyer power and the control they have over the supply chain. It is also reflected in increasing demands by insurers for Copart to provide other services such as vehicle inspections, claims handling services and vehicle finance clearance. Furthermore, the presence of alternative suppliers will also continue to enable smaller customers to exercise buyer power. Hills Motors has been particularly [X].<sup>119</sup>
81. Furthermore, the CMA's characterisation of buyer power only as the availability of alternatives ignores the possibility of sponsored entry. To the extent the CMA considers Hills Motors active as a national supplier of salvage services (which, as outlined above, the parties do not believe is the case), this would have to be considered as sponsored entry by Ageas, Hills Motors' only national contract customer. Under the CMA's reasoning, given Ageas can sponsor Hills Motors to become a nationally active competitor, then other insurers could sponsor other regional players to provide national salvage through a network of suppliers.
82. At the downstream level, prices are set at auction by pure market forces and not by Copart. Given that buyers at auction can readily switch to another auction platform, there is no prospect of Copart significantly increasing its fees for buying a car on its platform or downgrading the quality of or range of vehicles on its platform any more than there was before the Transaction. In addition, given the two-sided nature of Copart's platform, any such detriment to its auctions in the eyes of downstream customers would in turn affect the quality of its offering in the eyes of its upstream customers, causing them to switch to alternative salvagers.

#### **4. Theory of Harm 2: Horizontal unilateral effects in supply of vehicles**

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<sup>116</sup> For further details, please see RFI1 Annex 4.

<sup>117</sup> Please see the Parties' responses to RFI1 dated 26 August 2022, submitted on 5 September 2022, paragraph 37.

<sup>118</sup> *Ibid.*, paragraph 42.

<sup>119</sup> [X], 24 June 2022, slide 17 at Annex 16.

83. As explained at the Issues Meeting, Copart and other salvagers operate in a two-sided market. Copart is a conduit for upstream customers supplying their vehicles to downstream customers. Since the Merged Entity will be constrained by its upstream customers and competitors for all the reasons set out above, this will apply equally at the downstream level. The second theory of harm therefore falls away with the first theory of harm.
84. As noted above, although the CMA has accepted a wider frame of reference than merely salvaging for insurers in assessing market definition,<sup>120</sup> it has focused its substantive assessment of competitors on those targeting insurers and neglected those targeting other segments. In assessing the second theory of harm, it is all the more important that the CMA takes into account salvagers focused on other upstream segments, whose vehicles compete on auctions downstream alongside those sourced from insurers. BCA and Cos, to take just one example, are pre-eminent in salvaging vehicles from contract hire and leasing companies as well as dealers due to their exclusive arrangements. Its volumes competing at the downstream level must properly be taken into account by the CMA.
85. It is also important for the CMA's assessment to take into account the fact that Copart's business model is predominantly based on the revenue share model. This means that the vehicles are owned by the upstream customer and Copart's role is essentially that of a remarketing service to downstream customers. In other words, Copart could not act in any manner anti-competitive or otherwise detrimental to the downstream customers without jeopardising its customer relationships at the upstream level. The second theory of harm is not therefore credible.

### **5. Theory of Harm 3: Foreclosure of rival dismantlers from supply of vehicles for green parts**

86. The Phase 1 Decision presents a theory of harm completely removed from the reality of the market and the rationale for the Transaction. The Merged Entity would neither have the ability nor the incentives to fully or partially foreclose rival suppliers of green parts in any way. Even if the Merged Entity were, in spite of this, to pursue such a strategy it would not have an anti-competitive effect on the supply of green parts.
87. More importantly, the Phase 1 Decision presents a theory of harm which is fundamentally flawed and based on an incomplete quantitative assessment. Notably, not all vehicles supplied downstream at auction are fit for dismantling and the CMA neglected to consider this fact despite the Parties explaining to the CMA during the Issues Meeting that these volumes are very small.<sup>121</sup> It further neglected to identify the actual number of dismantlers purchasing vehicles from Copart for green parts (and not for crushing). The CMA also failed to identify the number of dismantlers which Copart does not supply and who obtain their vehicles for dismantling from a variety of other sources. By its own admission, the CMA was not able to obtain any material evidence on the size of green parts sales or of Hills Motors' presence within it. As a result, the CMA was unable to quantify the actual number of dismantlers which would be foreclosed (if any). Nonetheless, the Parties address below the CMA's key foreclosure arguments and why such theory of harm is unrealistic.

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<sup>120</sup> Phase 1 Decision, paragraph 32.

<sup>121</sup> Response to Issues Letter - Annex 2 - [3<], Slide 3.

## 5.1. The Merged Entity does not and would not have the ability to foreclose rivals

### 5.1.1. The Merged Entity does not have market power in the supply of salvage vehicles suitable for dismantling

88. Despite noting that not all salvage vehicles supplied to dismantlers will be used to supply green parts, the CMA still considers that the Parties' respective shares for the supply of all salvage vehicles are indicative of the Merged Entity's strong position in the supply of salvage vehicles used by dismantlers to supply green parts.
89. The Phase 1 Decision indicates that the Parties have a combined share of 60-70% of vehicles suitable for dismantling, and approximately 80-90% of category A, B, N and S vehicles available to third-party dismantlers.<sup>122</sup> This assessment is factually incorrect and flawed.
90. As noted above, the Phase 1 Decision presents shares of supply of vehicles sourced from insurance customers alone, even though it accepted that the appropriate frame of reference is the supply of salvage services to all upstream customers. Consequently, the CMA failed to take into account the large volumes sourced by the Parties and their competitors (such as BCA and Manheim) from other non-insurance customers.
91. The fact that Copart only supplies approximately [§<] ATFs via its auctions and there are over 1,600 registered ATFs dismantling vehicles in the UK is also indicative of a large volume of salvage vehicles unaccounted for: the remaining [§<] of these ATFs are evidently acquiring vehicles for dismantling entirely from other local sources. Taking these volumes into account will inevitably lead to a decrease in the Merged Entity's shares.
92. Whilst the Phase 1 Decision notes the Parties' submission that there are many dismantlers which Copart does not supply, it has not verified, as part of an adequate market test, whether the relatively large number of dismantlers that are not supplied by Copart are active in the supply of green parts or whether they operate a model focussed on retrieving scrap. By its own admission, the CMA has not in its possession any evidence on the size of the sale of green parts or Hills Motors' presence within it.<sup>123</sup>
93. It is also not correct to exclude vehicles supplied to in-house dismantlers from consideration in the CMA's competitive assessment. The vehicles dismantled, in particular, by IAA/SYNETIQ and e2e form an important part of the flourishing green parts sector in the UK. With SYNETIQ's and Hills Motors' exits from e2e, the other dismantling members of e2e have in fact more vehicles for dismantling. IAA/SYNETIQ's and e2e's green parts offerings make them relatively more attractive to upstream customers over Copart in tenders for salvage services. It is therefore unclear why the CMA has distinguished the supply of vehicles to third-party dismantlers as though – and without any justification – this were a distinct market from the supply of green parts to salvagers' in-house dismantling operations. Indeed, SYNETIQ's Car Transplants and FAB Recycling subsidiaries have been at the forefront

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<sup>122</sup> Phase 1 Decision, paragraph 71 and footnote 147.

<sup>123</sup> Phase 1 Decision, footnote 150.



of green parts development and demand growth. As noted below, these vertically integrated firms also preclude any impact on competition.

94. Further, the CMA, by its own admission, also failed to take into account all vehicles which do not fall within category A, B, S and N (i.e., category U and X).<sup>124</sup> The volumes of such vehicles are considerable and very likely to impact the Merged Entity's share of supply. For example, in 2021, Copart sourced [§<] category U (Uncategorised) and X (Stolen/Recovered) vehicles from upstream customers, representing [§<]% of the overall volumes of vehicles it sourced from upstream customers that year.<sup>125</sup>
95. Instead, the CMA's simply concludes, based on no evidence or proper assessment, that the Merger Entity's share of supply of salvage vehicles in the UK is likely to closely correspond to the Merged Entity's share of supply of salvage services and merely cites the submission of one third party and evidence from one other third party.<sup>126</sup> Without further reasoning, the CMA infers that the Merged Entity would therefore have "market power" in the supply of vehicles suitable for dismantling.
96. In conclusion, absent market power in the supply of vehicles suitable for dismantling (which has not been properly assessed and established by the CMA), there would be no ability for the Merged Entity to engage in the CMA's theoretical foreclosure strategy.

### **5.1.2. Copart's Business Model**

*Copart is and will remain a vehicle remarketing and online auction provider*

97. Copart's core business is to provide vehicle remarketing services and online auctions. As part of those services, Copart remarkets vehicles on behalf of its upstream customers (e.g., insurance companies, finance companies, fleet operators, dealers and rental companies). For the majority of upstream customers in the UK, Copart acts as an agent and derives revenue primarily from auction and auction related sales transaction fees charged for vehicle remarketing services as well as fees for services pre and subsequent to the auction (e.g., collection, delivery and storage). Whilst Copart does, in some cases, operate on a principal basis and purchase salvage vehicles outright, reselling those vehicles on its own account, the volumes are trivial.
98. Most vehicles which Copart handles are therefore sold on behalf of the upstream customers predominantly to vehicle repairers, rebuilders, used vehicle dealers, crushers and licensed vehicle dismantlers (also known as ATFs). Typically, the damaged vehicle is towed to a storage facility or a vehicle repair facility for temporary storage pending insurance company examination. The vehicle is inspected by the insurance company's adjuster, or a fleet manager (or Copart if the upstream customer requires it), who estimates the costs of repairing the vehicle (including the costs of vehicle rental whilst the vehicle is being repaired) and gathers information regarding the damaged vehicle's mileage, options and condition in order to estimate its PAV. The adjuster determines whether to pay for repairs or to classify the vehicle as a total loss based upon the adjuster's estimate of repair costs, salvage value and the PAV, as

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<sup>124</sup> *Ibid.*

<sup>125</sup> Annex 2 – Notice 3 (Copart).

<sup>126</sup> *Ibid.*

well as customer service considerations. If the cost of repair is greater than the PAV less the estimated salvage value, the insurance company generally will classify the vehicle as a total loss. The insurance company will thereafter assign the vehicle to a vehicle auction and remarketing services company (e.g., Copart, IAA/SYNETIQ, e2e, BCA, Manheim), settle with the insured and receive title to the vehicle.

99. Generally, upon receipt of the pickup order (also known as “the assignment”), Copart will arrange for the collection and transport of a vehicle to its nearest storage facility. As a service to the upstream customer (also referred as the “vehicle seller”), Copart will customarily pay advance charges (reimbursable charges paid on behalf of the upstream customer) to obtain the vehicle’s release from a towing company, vehicle repair facility or impoundment facility. Advance charges paid on behalf of the vehicle seller are either recovered upon sale of the vehicle, invoiced separately to the seller or deducted from the net proceeds due to the seller. The salvage vehicle then remains in storage at one of the facilities until ownership documents are transferred from the insured vehicle owner and the title to the vehicle is cleared through the DVLA. Upon receipt of the appropriate documents from the DVLA, the vehicle is sold either on behalf of the upstream customer or for Copart’s own account, depending on the terms of the contract. In the UK, upon release of interest by the vehicle owner, the insurance company notifies Copart that the vehicle is available for sale.<sup>127</sup>

100. Since its inception, Copart has always been a remarketing service provider and online auctioneer. Copart’s business model focuses solely on its auction platform and its participants. It never had any plans to branch out into dismantling or supplying green parts. Over the years and still today, Copart’s operating and growth strategy is focused on expanding its service offering and providing value-added services to vehicles sellers (upstream customers) and auction members (downstream customers). Copart operates in 11 countries (the US, Canada, the U.K., Brazil, the Republic of Ireland, Germany, Finland, the UAE, Oman, Bahrain and Spain) and has no short or long-term plans to acquire or provide any dismantling and green parts services except in the UK. The demand for such services is specific to the UK and was requested by upstream customers to be offered as part Copart’s remarketing services.

101. While Copart’s customers requested that Copart offers dismantling and green parts services, there is no expectation on Copart and nor does it have any intentions of dismantling the vehicles sourced by the upstream customers and remitting the green parts of those same vehicles back to them. Upstream customers wish Copart to have the ability to provide green parts (from any vehicles, not just theirs) to upstream customers as and when required. Upstream customers merely want Copart to provide green parts whose origin can be traced (e.g., not stolen and coming from a certified and authorised dismantler) and whose quality can be checked and certified. Copart will still be required to parts to upstream customers even when these do not originate from the upstream customers’ vehicles.

### **5.1.3. Copart’s Customer Partnership**

102. Copart’s customer partnership is longstanding and a cornerstone of its business model. It is therefore not unusual for Copart to respond to its customers’ demands. For example, Copart now offers claims management services, engineering services and

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<sup>127</sup> *Ibid.*

vehicle grading services, vehicle finance clearance, private plate transfers, flood-damage restoration, forensic and fraud investigations and vehicle data clearance and replacement keys – all of which were initiated by its customers in order to make their processes easier and more efficient. The rationale of this Transaction is no different. Absent this request from upstream customers, Copart would have no interest in acquiring a dismantler (and no interest in specifically acquiring Hills).

103. As part of this partnership, Copart always looks at how it can make vehicle remarketing more efficient, cost effective and more profitable for its customers.<sup>128</sup> Copart offers upstream customers a full range of services that help expedite each stage of the vehicle sales process, minimize administrative and processing costs, and maximize the ultimate sales price through the online auction process.

104. Key factors that upstream customers consider when selecting an auction and vehicle remarketing services company include:

- (a) the anticipated percentage return on salvage (i.e., gross salvage proceeds, minus vehicle handling and selling expenses, divided by the PAV);
- (b) the services provided by the company and the degree to which such services reduce their administrative costs and expenses;
- (c) the price the company charges for its services;
- (d) geographic coverage;
- (e) the ability to respond to natural disasters;
- (f) the ability to provide analytical data to the seller; and
- (g) in the UK, the actual amount paid for the vehicle.

105. Upstream customers consider Copart's offering attractive for the following reasons:<sup>129</sup>

- (a) It provides coverage that facilitates seller access to buyers, reducing towing and third-party storage expenses, offering a local presence for vehicle inspection stations, and providing prompt response to catastrophes and natural disasters by specially trained teams;
- (b) It provides a comprehensive range of services that includes not only merchandising, efficient title processing, timely pick-up and delivery of vehicles, and internet sales but also claims management services, engineering services vehicle grading services, vehicle finance clearance, private plate transfers, flood-damage restoration, forensic and fraud investigations and vehicle data clearance and replacement keys;
- (c) It increases the number of bidders that can participate at each sale through the ease and convenience of an online open auction thereby guaranteeing maximum returns on any sale;
- (d) It applies technology to enhance operating efficiency through internet bidding, web-based order processing, salvage value quotes, electronic communication with members and sellers, and vehicle imaging; and

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<sup>128</sup> Copart Inc., Annual Report 2021.

<sup>129</sup> In the U.K., upstream customers such as insurance companies tender periodic contracts for the purchase of salvaged vehicles. Under these circumstances, insurance companies will generally award the contract to the company that is willing to pay the highest price for the vehicles. See Copart Inc., Annual Report 2021.

- (e) It provides a venue for insurance customers through its Virtual Insured Exchange (“VIX”) product to sell a vehicle through its auction process to assess true market value, equipping them with market data in its negotiations with owners who wish to retain their damaged vehicles; and
- (f) It offers complete transparency at every stage of the process from assigning vehicles to the returns they make at auction, enabling customers to track the returns delivered by Copart down to an individual vehicle asset level. Customers are able to access this live real time and benchmarking data through their VIX seller portal and reporting suite.

#### **5.1.4. Profit Share<sup>130</sup>**

106. Another important longstanding key feature of its business model and customer partnership (and one of the main reasons for Copart’s success) is its profit share model, which consists of returns delivered on vehicles based on the returns the upstream customers receive on Copart’s online auction. Through an online open auction, Copart is able to guarantee its upstream customers the best returns on their vehicles in a completely transparent manner.
107. In order to ensure that Copart obtains the maximum returns on vehicles sold on behalf of its upstream customers, Copart needs to safeguard and encourage competitive bidding. The success of any auction platform is based on attracting a sufficiently large volume of sellers (upstream customers) and buyers (downstream customers). Both sellers and buyers are equally important to the success of its auction and its overall business. Without these buyers (Copart’s members), Copart would not be able to sell any vehicles, let alone guarantee its upstream customers the highest returns on their vehicles, which in turn would impact the volume of vehicles sold on the auction as the sellers would simply switch to another auction offering greater returns.
108. This combination of contractual focus on maximising returns at auction and transparency of overall and individual vehicle asset performance ensures Copart must deliver proof of maximum returns for its customers’ vehicles.
109. In the Phase 1 Decision, the CMA asserts that the Merger Entity would have the ability to restrict access to salvage vehicles to rival suppliers of green parts.<sup>131</sup>
110. Fundamentally, the Phase 1 Decision suggests a theory of harm which is unrealistic and which will not (and cannot) materialise given i) Copart’s core business and operating model, ii) the customer partnership, iii) the nature of the customers’ demands with regards to green parts and iv) Hills Motors’ limited dismantling capabilities.
111. As explained above, Copart is foremost a remarketing service provider and auctioneer. Copart has no intention of expanding its service offering beyond what is necessary to compete for salvage service contracts. There is no evidence in the Phase 1 Decision, or in any of Copart’s internal documents that the rationale includes a

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<sup>130</sup> Also known as the ‘Consignment model’. FMN paragraph 49.

<sup>131</sup> Phase 1 Decision, paragraph 9.

change to its core business or its operating model. The success of Copart's auction platform is critical to the viability and future growth of its overall business.

112. With the exception of a few cases in the UK, Copart acts as an agent on behalf of its upstream customers. Copart does not own, at any relevant times, the salvage vehicles it sources from upstream customers. It does not control the flow or the sales channel of these vehicles.
113. In order to restrict access to salvage vehicles from rival dismantlers, Copart would need to have the ability to decide the sales channel in order divert these vehicles away from the auction platform. Copart does not have this ability. Its USP is the auction platform.
114. Copart's customer partnership model and its auction open access therefore provides customers with both the means to detect and challenge any attempted foreclosure strategy. Upstream customers are closely involved in and drive forward every step of the process. This ensures they have both the means and incentive to scrutinise Copart's behaviour and detect any hypothetical conduct that does not maximise their returns. Any attempt to foreclose would simply be impossible as customers would be aware and prevent a foreclosure strategy by simply switching to other suppliers of salvager services and green parts suppliers – which as demonstrated above at section 3, they are easily able to do. The same logic applies to downstream customers. Without its members, Copart cannot run a successful auction. Should they detect that Copart has decreased the volumes of vehicles sold on its auction platform or no longer sells the "best quality cars", they will simply switch auction platform providers such as IAA, e2e, Recycling Lives, BCA or Manheim.
115. It is therefore crucial for Copart to maintain strong relationships with its customers as part of its customer partnership. Copart is and has always been limited to implementing its customers' requests. These have been key to Copart's success.
116. The Phase 1 Decision seeks to downplay the role of Copart's upstream and downstream customers by stating that "*over time contracts may be renegotiated and the underlying terms may change*".<sup>132</sup> It further concludes that "*customers would be supportive of the Merged Entity adapting its business model to meet this demand*".<sup>133</sup> Such conclusion is completely remote from any business acumen and logic. No open auction can successfully function without a sufficiently large volume of sellers and buyers. In order to attract such a customer base, any auctioneer must value and consider, at all times, the interest of both groups and cannot favour one over the other as an auction cannot operate without one or the other.
117. Contrary to precedent decisions<sup>134</sup>, the CMA did not take into account Copart's active interest to preserve a good relationship with its customers and any evidence that customers could retaliate by switching, as well as the significance of the cost of such retaliation. The starting point for any assessment of ability and incentives has to be Copart's commitment to its open and transparent business model and the deep and

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<sup>132</sup> Phase 1 Decision, paragraph 73.

<sup>133</sup> *Ibid.*

<sup>134</sup> Case ME/6925/21 - IHS Markit Ltd's MarkitSERV Business and CME Global Inc.'s Optimization Business, paragraphs 147-149.

critical involvement of both upstream customers (sellers) and downstream customers (members) customers. This alone means that any deviation from this business model would be transparent to the market and prompt greater reputational damage than any other salvager whose business model is different and who does not have the same history. It would irretrievably damage Copart's own future growth prospects. As explained above at section 5.1.2, Copart UK is a small contributor to Copart Inc., global business and would not be permitted to substantially deviate from the global business model.

118. Instead of conducting such a proper analysis, the CMA simply cites its Merger Assessment Guidelines<sup>135</sup>, which state: "**Business Strategy**. *The purpose of the incentives analysis is to predict the merged entity's behaviour, and it may be possible to understand this directly from its past conduct, business strategy and deal rationale. For example, if the merger firms' internal documents show that it would be strategically beneficial to stop supplying rivals, it may not be necessary to try to infer their behaviour from their financial incentives*"<sup>136</sup>. Yet, the CMA did not consider any of Copart's past conduct, business strategy or the deal rationale. There is no evidence in the Phase 1 Decision or in any of Copart's internal documents, annual reports or the public domain to suggest the rationale includes a change to Copart's long-standing operating model. The CMA has received no evidence from its upstream customers that they would be supportive of the Merged Entity adapting its business model to meet this demand. It is fanciful to suggest Copart would change its entire business model, switch the majority of its contracts based on a revenue share model to a purchase model, jeopardise the viability of its business and damage its customer and shareholder reputation, all in order to provide a few green parts on an ad hoc basis – and not least that its upstream customers would approve of such strategy when they themselves would be purchasing those green parts.

#### **5.1.5.Hills Motors will remain capacity constrained in dismantling**

119. Copart's rationale for the Transaction was never to expand, unprompted, into dismantling. Rather, it is merely a bolt-on service to enable Copart to compete for salvage services contracts which now require a green parts dismantling service.

120. Even if Copart did decide to limit the supply of vehicles suitable for dismantling downstream, Hills Motors would not have the ability to dismantle such large volumes as it would remain capacity constrained in dismantling after the Transaction and any volumes siphoned off by Copart would be minimal.

121. Copart estimated that approximately [X] vehicles per year would be dismantled by Hills Motors – which represents a mere [X]% of the Merged Entity's total number of vehicles salvaged during 2021 (excluding Hills' volumes received from e2e and the volumes of cars outsourced to third parties). Therefore, [X]% of the remaining vehicles would still be sold at auction.

122. Copart is acquiring only a single site from Hills that is used for salvaging and dismantling.<sup>137</sup> The single site has a capacity of only 7,000 vehicles, on which Hills

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<sup>135</sup> Phase 1 Decision, footnote 157.

<sup>136</sup> CMA Merger Assessment Guidelines, paragraph 7.19a.

<sup>137</sup> It has also bought a low volume site in Scotland that is not suitable for salvaging or dismantling use (and is used primarily for green parts distribution). Two further 'storage' sites will be leased from Hills for a short period but will not transfer as part of the Transaction (and in any event cannot be used for dismantling).

would have to salvage c.20-30k vehicles annually, dismantle c.9-10k vehicles annually, store vehicles during the dismantling process, store stock awaiting dismantling, store vehicles waiting to be cleared for breaking, and store green parts for off-the-shelf use. Hills considers its current facilities close to capacity constrained.

123. The CMA asserts that it has received evidence that Copart “*intends to expand this capacity in order to meet upstream customers’ request for a green parts supply service*”.<sup>138</sup> To support this assertion, it relies on two press releases and feedback from two third parties which were either outdated as Hills Motors already built its warehouse in 2020 or factually incorrect.<sup>139</sup>

124. There is nothing in Copart’s press release which indicates that Copart intends to expand Hills Motors’ capacity. Once again, the CMA has distorted a clear message to suit its weak argument. As for the press release of Hills Motors<sup>140</sup>, this press release is dated 19 October 2020 – two years before the acquisition by Copart. At that time, Hills Motors had indeed increased its capacity to serve its own clients, notably Ageas. However, this is certainly not indicative of an ability to expand further.

125. Further, it would not make any commercial sense for the Merged Entity to significantly increase Hills Motors’ dismantling capacity. First, it is not part of Copart’s business strategy to become a dismantler and it is for this reason that Copart always intended to keep the two businesses separate. Second, as Ian Hill (Hills Motors) explained at the Issues Meeting, it is not economical for any dismantler to stockpile large volumes of green parts for the same vehicles. A dismantler will be incentivised to offer a variety of parts and limit the number of similar parts in order better to be able to satisfy onward demand. The life span and hence value of a green part is very short. This depreciation is rapid, because the corresponding vehicles are continuously replaced with new models which require different spare parts. Significantly ramping up Hills Motors’ capacity in order to stockpile green parts, rather than supplying them via auction to other dismantlers, and risking the entire viability and success of the auction platform, would be economically illiterate.

126. The CMA also states that “*it received evidence that 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*” and that “*several salvagers and other third-parties active in the supply of green parts raised concerns that the Merged Entity would be able to retain ‘high value’ salvage vehicle in-house*”.<sup>141</sup>

127. The notion that the Merged Entity could restrict the supply of “*higher quality salvage vehicles*” to rival dismantlers is incoherent and flawed.

128. This proposition rests on a misconceived premise that there are objectively “*higher quality salvage vehicles*”. Yet, the CMA has not be able to explain what a “*higher quality salvage vehicle*” is.

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<sup>138</sup> Phase 1 Decision, paragraph 72(b).

<sup>139</sup> Issues Letter, paragraph 52(c)(ii).

<sup>140</sup> Phase 1 Decision, footnote 151.

<sup>141</sup> Phase 1 Decision, paragraph 72(a).

129. In Hills Motors' experience as a dismantler, the value of parts depends on constantly shifting demand for particular vehicle parts. Vehicle parts which are particularly valuable for one dismantler at one particular point in time may not be so for another dismantler, as this will entirely depend on their respective onward customers' demand. It is therefore impossible for the Merged Entity to identify and withhold from a rival dismantler, the particular vehicles preferred by that dismantler at any given moment in time nor would it be possible to predict which make, parts, an upstream customer may require in the future.
130. It is not realistic to conclude that Copart would be able to partially foreclose rival dismantlers by selecting high value salvage vehicles. Even if the Parties were to conceive that there is some standard "higher quality salvage vehicle", Copart would not have the ability nor the incentive to siphon those cars for the reasons set out above. Copart's customers would seek to get the maximum returns on their most "valuable" vehicles and would be able to detect if Copart diverted these vehicles from auction. The same logic would apply to Copart who would get some of the proceeds of such sale as part of its profit-sharing partnership. Finally, if Copart were to siphon its "best quality" vehicles for itself, this would lead to fewer quality volumes submitted to auction, which would in turn impact the number of buyers participating in those auctions. Both upstream and downstream customers would be financially impacted by such foreclosure and would retaliate by switching to other providers of salvage services and/or green parts suppliers.

## **5.2. The Merged Entity would not have the incentives to foreclose rival dismantlers from supplying green parts**

### **5.2.1. Introductory remarks**

131. An assessment of incentives typically involves a combination of quantitative and qualitative evidence (business strategy, gain in downstream sales, loss of upstream sales, relative profit margins, etc.)<sup>142</sup> It is not sufficient for the CMA to base its findings on a mere theoretical possibility and to conclude that that, due to the rationale of the Transaction, Copart has strong incentives to foreclose rival suppliers of green parts in the UK.
132. In order to support this theoretical possibility, the CMA asserts that it does not consider it necessary to infer the Merged Entity's behaviour from a detailed assessment of Copart's financial incentives as it has allegedly considered other factors such as business strategy.<sup>143</sup>
133. Yet, the CMA failed to consider the actual rationale of the Transaction, Copart's history, its long-standing core business and its customer partnership. There is no evidence in the Phase 1 Decision or in any of Copart's internal documents, in its annual reports or in the public domain to suggest the rationale includes a change of Copart's long-standing operating model of open online auction and customer partnership to foreclose rival dismantlers.<sup>144</sup> The CMA also failed to consider the reputational damage as well as the retaliation by both upstream and downstream customers. The

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<sup>142</sup> Merger Assessment Guidelines, paragraphs 7.16-7.19.

<sup>143</sup> Phase 1 Decision, paragraph 76(b).

<sup>144</sup> Phase 1 Decision, paragraph 76(b) and (c).



CMA also omitted a key consideration, namely that the green parts are an input purchased by upstream customers, meaning upstream customers have a direct visibility of and interest in how they are treated as downstream customers.

134. Although the Parties submitted evidence to demonstrate that any short or long-term foreclosure would not be economically rational, the CMA concluded that it was unnecessary to assess any downstream gains and upstream losses in the short term as the results would not reflect the Merged Entity's purported longer-term incentive, and in any event, it would not place any weight on the analysis. The Parties disagree. A proper and considered assessment of financial incentives upstream and downstream should be considered, in particular in light of the fact that upstream customers also purchase green parts in their capacity as downstream customers.

#### **5.2.2. The Merged Entity would not have the financial incentives to foreclose rival dismantlers either fully or partially from supplying green parts**

135. The Phase 1 Decision asserts that "*Copart likely has the scale and financial backing to withstand any short-term losses from restricting the sale of (in particular, higher quality) salvage vehicles to third parties in pursuit of gains in the medium to long term through developing its green parts supply offering.*"<sup>145</sup> However, this is not the correct trade-off the Merged Entity would face in pursuing the CMA's theoretical foreclosure strategy. Rather, the Merged Entity would be trading off the loss of profits from its core salvaging services to upstream customers if it were to restrict sales of vehicles for dismantling from its auction in favour of Hills Motors. Even if Hills Motors' capacity could be significantly expanded, any increased sales of green parts by Hills Motors would be entirely outweighed not just by the loss of sales of vehicles suitable for dismantling to rival dismantlers but also all the lost salvaging profits from aggrieved upstream customers who would switch to rival salvagers.

136. The focus on withstanding short-term losses fails to understand how salvaging and dismantling work in practice. Hills has a single dismantling facility in the North West. Copart collects vehicles for salvaging nationwide. Copart sells those vehicles its salvages within a relatively narrow geographic area and, for those vehicles dismantled, dismantling will take place within a similarly narrow geographic area. It would be financially disastrous and make no sense for Copart to transport its nationally salvaged vehicles to Hills dismantling facility (as it would for any dismantler). If it did so, this putative foreclosure strategy would result in very significant losses, which, given Copart's activity upstream, could never be offset by potential gains downstream (even if these could be realised).

137. As for the notion that the Merged Entity would have the incentive to foreclose rival salvagers from the supposed "higher quality" vehicles for dismantling, this has also been addressed above. In short, the notion of identifying and withholding supposed "higher quality" vehicles does not make sense in practice. It is notable that the CMA cites particularly weak evidence in support of this concern, namely that "*one dismantler which purchases salvage vehicles from Copart told the CMA that they have already seen a reduction in the quality of salvage vehicles on Copart's auction platform since the Merger.*"<sup>146</sup> Given that Hills Motors is being held separate from Copart pursuant to the CMA's

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<sup>145</sup> Phase 1 Decision, paragraph 76(b).

<sup>146</sup> Issues Letter, paragraph 55(c).

initial enforcement order, Copart has done nothing to change the availability of salvage vehicles on its auction platforms in order to favour Hills Motors. The concerns which have allegedly been raised by this “one dismantler” do not therefore provide any credible basis for the CMA’s theory of harm.

### **5.3. The alleged foreclosure strategy, even if pursued, would have no anti-competitive effect**

138. The Phase 1 Decision notes 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”.<sup>147</sup> The CMA therefore appears to concede that IAA and e2e will be unaffected even if the Merged Entity were to engage in the theoretical foreclosure strategy. Yet, the CMA relies on concerns raised by the e2e members. As the CMA is aware most of the e2e members have now received additional salvage vehicles as a result of the redistribution of Hills Motors’ volumes under the Direct Line contract. Some are even now refusing additional vehicles offered by Hills Motors under the Ageas contract. They clearly have a plentiful flow of vehicles for dismantling.

139. The CMA refers to Copart supplying [X] different dismantlers, but these individually source only small numbers of vehicles from Copart. [X], which sources by far the most, and is [X], purchased only [X] in 2021, with the next highest being [X] (a scrap yard, not a dismantler) at [X] and [X] at [X]. All those below Copart’s top 10 purchasers sourced fewer than [X] vehicles and c. [X]% sourced fewer than [X] vehicles. Given these small numbers, these dismantlers are hardly dependant on Copart and could readily source vehicles for dismantling from another source such as local authorities, police, councils, public drop ins and roadside recovery companies. Moreover, the CMA concedes in a footnote that “not all [X] dismantlers will be supplying green parts”.<sup>148</sup> Even if Copart were to cease supplying vehicles to these dismantlers entirely, and even if Copart were the only supplier of vehicles to these dismantlers, it would have little effect on the supply of green parts in the UK.

140. In conclusion, the CMA’s third theory of harm bears no relationship to the reality of Copart’s long-standing business model, which underpins its profitability and its customer and shareholder relationships. The Merged Entity would have neither the ability nor the incentive to jeopardise this business model and any attempt to do so would have no effect on the supply of green parts in the UK. Moreover, the CMA has not provided any cogent evidence to support its theory of harm and it has superficially dismissed the Parties’ compelling evidence contrary to the theory of harm. This cannot be permitted to stand in Phase 2, particularly given the even higher burden of proof on the CMA.

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<sup>147</sup> Phase 1 Decision, paragraph 78.

<sup>148</sup> Phase 1 Decision, footnote 165.