

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

Notice of possible remedies under Rule 12 of the CMA's rules of procedure for merger, market and special reference groups¹

Introduction

1. On 9 December 2022, the Competition and Markets Authority (**CMA**), in exercise of its duty under section 22(1) of the Enterprise Act 2002 (the Act), referred the completed acquisition by Copart, Inc. of Green Parts Specialist Holdings Ltd (formerly named ILT Project Limited) (**Hills Motors**) (**the Merger**) for further investigation and report by a group of CMA panel members (the **Inquiry Group**).
2. Copart, Inc. (and its subsidiaries other than Hills Motors) (**Copart**) and Hills Motors are together referred to as the **Parties** and for statements referring to the future, the **Merged Entity**.
3. The Merger completed on 5 July 2022. The CMA imposed an Initial Enforcement Order (**IEO**) under section 72(2) of the Act on 9 August 2022 to ensure that no action is taken pending final determination of the reference which might prejudice the reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA's decisions on the reference. In accordance with the IEO, on 20 January 2023, the CMA directed Copart and Hills Motors to appoint a Monitoring Trustee (**MT**). An MT was appointed on 27 January 2023.²
4. In its provisional findings on the reference notified to the Parties on 5 May 2023 (the **Provisional Findings**),³ the Inquiry Group, among other things, provisionally concluded that the Merger has resulted in the creation of a relevant merger situation, and that the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) in the market for the supply of salvage services in the UK due to horizontal unilateral effects.

¹ [CMA Rules of Procedure for Merger, Market and Special reference groups](#), March 2014 (corrected November 2015), CMA17.

² Details of the IEO, MT appointment and any derogations can be found on the [CMA case page](#).

³ Our provisional findings can be found on our case page [here](#).

5. The CMA's analysis provisionally indicates that this SLC may be expected to result in adverse effects, for example in the form of reduced choice, increased price, lower quality and/or reduced innovation compared to what would otherwise have been the case absent the Merger.
6. This notice sets out the possible actions the Inquiry Group might take for the purpose of remedying the SLC and/or any resulting adverse effect provisionally identified in the Provisional Findings.
7. The CMA invites comments on possible remedies by **17:00 BST on 19 May 2023**.

Criteria

8. In deciding on a remedy, the CMA shall in particular have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to remedy the SLC and any adverse effects resulting from it.⁴
9. To this end, the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects and will select the least costly and intrusive remedy that it considers to be effective.
10. The CMA will seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects.⁵

Possible remedies on which views are sought

11. In determining an appropriate remedy, the CMA will consider the extent to which different remedy options would be effective in addressing the SLC or any resulting adverse effects that have been provisionally identified.
12. As set out in published remedies guidance, the CMA prefers structural remedies, such as divestiture, over behavioural remedies because:
 - (a) structural remedies are likely to deal with an SLC and its resulting adverse effects directly and comprehensively at source by restoring the rivalry that would be lost as a result of the merger;
 - (b) behavioural remedies may not have an effective impact on the SLC and its resulting adverse effects, and may create significant costly distortions in market outcomes; and

⁴ Section 35(4) of the Act.

⁵ [Merger Remedies](#): CMA87 (13 December 2018), paragraph 3.4.

- (c) structural remedies do not normally require ongoing monitoring and enforcement once implemented.⁶
13. The CMA's current view is that a behavioural remedy is very unlikely to be an effective remedy to the provisional SLC or any resulting adverse effects that it has provisionally identified. However, the CMA will consider any behavioural remedies put forward as part of this consultation.
14. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution – for example whether any behavioural remedies would be required in a supporting role to safeguard the effectiveness of any structural remedies. The CMA will evaluate the impact of any such combination of measures on the provisional SLC or any resulting adverse effects.
15. The CMA first sets out below the considerations for the design of effective divestiture remedies before setting out the possible structural remedies to address the provisional SLC set out in the Provisional Findings.

Considerations for the design of an effective divestiture remedy

16. In evaluating possible divestitures as a remedy to the provisional SLC it has found, the CMA will consider the likelihood of achieving a successful divestiture and the associated risks. In reaching its view, per its guidance on remedies, the CMA will have regard to the following risks which can impair the effectiveness of divestiture remedies:⁷
- (a) composition risk arises if the scope of the divestiture business is too narrowly constrained or not appropriately configured to attract a suitable purchaser, or does not allow a purchaser to operate as an effective competitor;
 - (b) purchaser risk arises if a divestiture is made to a weak or otherwise inappropriate purchaser or if a suitable purchaser is not available; and
 - (c) asset risk arises if the competitive capability of the divestiture business deteriorates before completion of the divestiture.
17. In identifying a divestiture package, the CMA will take, as its starting point, divestiture of all or part of the acquired business. This is because restoration of the pre-merger situation in the markets subject to an SLC will generally represent a straightforward remedy.⁸ In defining the scope of a divestiture

⁶ [Merger Remedies](#): CMA87, paragraph 3.5.

⁷ [Merger Remedies](#): CMA87, paragraph 5.3.

⁸ [Merger Remedies](#): CMA87, paragraph 5.6.

package that will address any SLC, the CMA will normally seek to identify the smallest viable, stand-alone business that can compete successfully on an ongoing basis and that includes all the relevant operations pertinent to the area of competitive overlap.⁹ This may comprise a subsidiary or a division or the whole of the business acquired.¹⁰

18. The CMA will generally prefer the divestiture of an existing business, which can compete effectively on a stand-alone basis, to the divestiture of part of a business or a collection of assets.¹¹ This is because divestiture of a complete business is less likely to be subject to purchaser and composition risk and can generally be achieved with greater speed.¹²
19. When considering purchaser risk, the CMA will normally wish to be satisfied that a prospective purchaser:
 - (a) is independent of the merger parties;
 - (b) has the necessary capability to compete;
 - (c) is committed to competing in the relevant markets; and
 - (d) will not create further competition concerns.¹³
20. When considering asset risk, the CMA will seek to ensure an effective divestiture process that will protect the competitive potential of any divestiture package before disposal and will enable a suitable purchaser to be secured in an acceptable timescale.¹⁴ The process should also allow prospective purchasers to make an appropriately informed acquisition decision.¹⁵ As such, the CMA will consider what, if any, procedural safeguards may be required to minimise the asset risk associated with divestiture.

Possible divestiture remedy options

21. At this stage, the CMA has identified only one potential effective structural remedy: the divestiture of Hills Motors by Copart (full divestiture).
22. The CMA considers that a full divestiture would be similar to a prohibition of the Merger as it would restore the independent ownership of Hills Motors and Copart and the resulting market structure to that which existed at the time of the Merger. It would thereby restore fully the loss in the competitive constraint

⁹ [Merger Remedies](#): CMA87, paragraph 5.7.

¹⁰ [Merger Remedies](#): CMA87, paragraph 5.7.

¹¹ [Merger Remedies](#): CMA87, paragraph 5.12.

¹² [Merger Remedies](#): CMA87, paragraph 5.12.

¹³ [Merger Remedies](#): CMA87, paragraph 5.20 and 5.21.

¹⁴ [Merger Remedies](#): CMA87, paragraph 5.33.

¹⁵ [Merger Remedies](#): CMA87, paragraph 5.33.

arising from the Merger. The CMA therefore takes the initial view that, subject to implementation considerations, a full divestiture of Hills Motors would represent a comprehensive and effective remedy to all aspects of the SLC it has provisionally found, and consequently any resulting adverse effects.

23. The CMA has not identified any other divestiture package that, at this stage it considers would be effective.
24. Specifically, at this stage, the CMA has not been able to identify another smaller or differently configured divestiture package (eg the sale of only Hills Motors' salvaging operations excluding its recycled parts capabilities) that could form the basis of an effective remedy to address comprehensively the provisional SLC identified in the Provisional Findings. As noted at paragraphs 17 and 18 above, to identify a smaller or differently comprised divestiture package as effective, the CMA would require, in particular, evidence that the smaller or differently configured divestiture package would be attractive to potential buyers and compete effectively on a stand-alone basis or as part of another company such that it included all the relevant operations pertinent to the area of competitive overlap.
25. The CMA is currently of the view that a partial divestiture (eg the sale of Hills Motors' salvaging operations excluding its recycled parts capabilities) is unlikely in principle to be a comprehensive remedy that would effectively address the provisional SLC and/or its adverse effects. As set out in our Provisional Findings, Hills Motors' recycled parts capability is part of its competitive proposition in the supply of salvaging services, which is of interest to customers, including large insurance customers, and may have wider appeal with customers going forward in the context of the growing importance of recycled parts.
26. The CMA is currently of the view, that there are material risks that a partial divestiture would not be effective in this case, due to challenges relating to the practical implementation of such a divestiture and the possibility of composition, purchaser and asset risks. These include:
 - (a) Hills Motors' salvaging operation excluding its recycled parts capabilities is not a standalone business. Rather its salvaging operation is vertically integrated with its recycled parts capabilities.¹⁶ A partial divestiture of Hills Motors' salvaging operations would require the separation of those operations from Hills Motors' broader

¹⁶ For the avoidance of doubt, throughout this notice, Hills Motors' recycled parts capabilities includes 'The Green Parts Specialists' operations.

operations, including its recycled parts capabilities, introducing asset risk;

- (b) a potential purchaser of such a partial divestiture package operating this business as a standalone operation would introduce composition risk through the loss of the benefits of vertical integration. This would risk such a remedy being ineffective in restoring competition to pre-merger conditions as it would undermine the ability of a potential purchaser to replace the competitive constraint provided by Hills Motors; and
- (c) for such a partial divestiture package to be potentially effective in comprehensively remedying the SLC, it would likely be necessary to require that the potential purchaser be already present in the market with recycled parts capabilities, so that it would be able to replace the competitive constraint provided by Hills Motors and restore competition to pre-merger conditions. However, such a requirement would introduce purchaser risk by limiting the number of potential purchasers and may also result in further competition concerns.

27. The CMA will consider full divestiture and any other practicable remedies that the Parties, or any interested third parties, may propose that could be effective in addressing the provisional SLC and/or any resulting adverse effects.

Scope of the divestiture package

28. The CMA's current view is, to be effective in remedying the provisional SLC, any divestiture package would need to be appropriately configured to be attractive to potential purchasers and to enable the purchaser to operate effectively as a competitor independent of Copart. The CMA's current view is that, for the full divestiture of Hills Motors to be effective in remedying the SLC and any resulting adverse effects, a divestiture package would need to include (but may not be limited to) the following:

- (a) freehold site, or (if leasehold) rights to the lease, for all sites relevant to the business to be divested;
- (b) physical facilities related to the operation of the business at the sites, including those related to salvaging operations and recycled parts operations (including 'The Green Parts Specialists' operations). These physical facilities would include office, warehousing, salvaging equipment and parts sorting and storage equipment;
- (c) transfer of existing staff;

- (d) transfer of existing supplier contracts;
 - (e) transfer of existing customer contracts and the rights to fulfil these, including Hills Motors' contract with Ageas;
 - (f) access to relevant historical customer data, including contact details, and transaction histories;
 - (g) transfer of Hills Motors' auction platform technology under development;
 - (h) transfer of intellectual property rights, including all branding;
 - (i) transfer of existing stock/inventory; and
 - (j) rights to receive services and utilities currently being provided at the divested site(s), such as gas, electricity, building access and services etc
29. In addition, it may be necessary for the Parties to provide certain support services on a transitional basis, depending on the requirements of the purchaser.

Consultation on possible remedies

30. The CMA invites views on:

The package of assets to be divested

- (a) whether a full divestiture of Hills Motors by Copart would represent an effective remedy to the SLC and/or any resulting adverse effects that have been provisionally found;
- (b) whether a smaller or differently configured divestiture package could form the basis of an effective remedy to address comprehensively the provisional SLC;
- (c) whether there are risks that the scope of the divestiture package may be too constrained or not appropriately configured to attract a suitable purchaser or may not allow a purchaser to operate as an effective competitor in the market. In particular, is the composition of the divestiture package mentioned in paragraph 28 above sufficiently comprehensive? Should anything be added to or deleted from this list to enable the purchaser to operate the divested business as an effective competitor;
- (d) what transitional arrangements, if any, should be put in place, and what should be the duration of these arrangements; and
- (e) any other elements that may be required.

Identification of a suitable purchaser

- (a) whether there are risks that a suitable purchaser is not available;
- (b) whether there is a risk that Copart will divest to a weak or otherwise inappropriate purchaser;
- (c) whether, if there are requirements for customers to consent to the novation of contracts to a purchaser, this affects the availability of a suitable purchaser; and
- (d) whether there are any specific factors to which the CMA should pay particular regard in assessing purchaser suitability.

Effective divestiture process

31. The CMA will consider what, if any, procedural safeguards may be required to minimise the risks associated with divestiture. The CMA invites views on:
- (a) the appropriate timescale for achieving effective divestiture;¹⁷ and
 - (b) whether there are risks that the competitive capability of a divestiture package will deteriorate before completion of divestiture.
32. As noted at paragraph 3 above, an MT is already in place, and the CMA currently expects this to continue throughout any divestiture process. The CMA invites views on whether any additional risks, such as the loss of key staff and reduced customer confidence in Hills Motors, may arise during the divestiture period and whether the functions of the MT should be amended to oversee the divestiture.
33. The CMA will have the power to mandate an independent divestiture trustee to dispose of the divestiture package if:
- (a) the Parties fail to procure divestiture to a suitable purchaser within the initial divestiture period; or
 - (b) the CMA has reason to expect that the Parties will not procure divestiture to a suitable purchaser within the initial divestiture period.

¹⁷ The initial divestiture period will normally commence once the CMA has accepted final undertakings or made a final order (up to 12 weeks after the final report) in relation to the required remedy in the CMA's final report. The length of this initial divestiture period will depend on the circumstances of the merger, but will normally be a maximum period of six months (see also [Merger Remedies](#): CMA87, paragraph 5.41).

34. In unusual cases, the CMA may require that a divestiture trustee is appointed at the outset of the divestiture process. The CMA invites views on whether the circumstances of this Merger necessitate such an approach.

Cost of remedies and proportionality

35. In order to be reasonable and proportionate, the CMA will seek to select the least costly remedy, or package of remedies, that it considers will be effective. The CMA will also seek to ensure that no remedy is disproportionate in relation to the SLC and its adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. In relation to completed mergers, the CMA will generally attribute less significance to costs or losses that will be incurred by the merger parties as a result of a divestiture remedy.¹⁸
36. When considering relevant costs, the CMA's considerations may include (but are not limited to):¹⁹
- (a) distortions in market outcomes;
 - (b) compliance and monitoring costs incurred by the Parties, third parties, or the CMA; and
 - (c) the loss of any relevant customer benefits that may arise from the merger which are foregone as a result of the remedy (see paragraphs 38 to 41 below).
37. The CMA invites views on what relevant costs are likely to arise in implementing a remedy requiring the full divestiture of Hills Motors.

Relevant customer benefits

38. In deciding the question of remedies, the CMA may have regard to the effects of any remedial action on any relevant customer benefits in relation to the creation of the relevant merger situation.²⁰
39. Relevant customer benefits are limited by the Act to benefits to customers in the form of:²¹
- (a) 'lower prices, higher quality or greater choice of goods or services in any market in the United Kingdom ... or

¹⁸ [Merger remedies guidelines](#), CMA87, paragraph 3.9.

¹⁹ [Merger remedies guidelines](#), CMA87, paragraph 3.10.

²⁰ Section 35(5) of the Act, see also [Merger remedies guidelines](#), CMA87, paragraphs 3.14 to 3.24.

²¹ Section 30(1)(a) of the Act, see also [Merger remedies guidelines](#), CMA87, paragraph 3.17.

(b) greater innovation in relation to such goods or services.’

40. The Act provides that a benefit is only a relevant customer benefit if:²²
- (a) it accrues or may be expected to accrue to relevant customers within the UK within a reasonable period as a result of the creation of that situation; and
 - (b) it was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.
41. The CMA welcome views on the nature of any relevant customer benefits, and on the scale and likelihood of such benefits and the extent (if any) to which these are affected by the full divestiture of Hills Motors.

Next steps

42. Interested parties are requested to provide any views in writing, including any practical alternative remedies they wish the CMA to consider, by **Friday 19 May 2023** (see Note (i)).
43. A copy of this notice will be posted on the CMA website.²³

Kirstin Baker
Chair of Inquiry Group
5 May 2023

Note

- (i) This notice of possible actions to remedy, mitigate or prevent the SLC or any resulting adverse effects is made having regard to the Provisional Findings announced on 5 May 2023. The Parties have until 26 May 2023 to respond to the Provisional Findings. The CMA’s findings may alter in response to comments it receives on its Provisional Findings, in which case the CMA may consider other possible remedies, if appropriate.

Comments should be made by email to copart.hills-motors@cma.gov.uk

²² Section 30(3) of the Act, see also [Merger remedies guidelines](#), CMA87, paragraph 3.19.

²³ A copy of this notice and our provisional findings can be found on our case page [here](#).