

Case No ME/70010/22

COMPLETED ACQUISITION BY COPART UK LIMITED

OF

HILLS SALVAGE AND RECYCLING LIMITED

RESPONSE TO THE PROVISIONAL FINDINGS

26 MAY 2023

1. EXECUTIVE SUMMARY¹

1. This response addresses the CMA's provisional findings issued on 5 May 2023 ("**Provisional Findings**"). The CMA has provisionally concluded that, on the balance of probabilities, the Transaction gives rise to a substantial lessening of competition ("**SLC**") in the supply of salvage services in the UK. The Parties consider that, for the reasons explained in this response, the Transaction is not likely to lead to a reduction of *any* competition.
2. The CMA's position in this case is highly unusual. This is because it accepts the overwhelming evidence from customers that they do not regard the Parties as close competitors and, indeed, that "*Copart's customers did not identify Hills Motors as a salvager capable of meeting their requirements*". In short, the CMA's case is that the very limited closeness of competition between the Parties to date is not necessarily representative of the post-merger situation, on a thesis that Hills Motors could morph into a serious national player capable of challenging Copart (unbeknownst to sophisticated, well-informed insurers as of today). However, the CMA cannot reasonably reach such a conclusion based on the evidence in front of it.
3. **The CMA's conclusions disregard the clear and overwhelming evidence of customers.**
 - Not one Copart customer identified Hills Motors as an alternative salvager which could meet their requirements.
 - Not one customer considered Copart and Hills Motors as close competitors (indeed almost every customer did not consider Copart and Hills Motors to compete *at all*).
 - Not one customer expressed any concerns about this Merger, and 12 of these 16 customers explicitly expressed positive views.
4. The CMA dismisses this overwhelming evidence on the grounds that "*the views of customers today may not be particularly probative as evidence of the degree of closeness of competition between the Parties had the Merger not taken place.*" This is irrational and contrasts with other parts of the Provisional Findings where the CMA relies on a preponderant, or at least material, view held by a handful of customers.
5. **The CMA has no basis or evidence for dismissing customers' knowledge of the market.** The Provisional Findings attach little probative weight to the overwhelming views of customers, on the basis they may not be sufficiently well informed of Hills Motors' competitive potential, without any evidence or justification for doing so. Indeed, it had just months before described, in its *IAA Inc. / SYNETIQ Holdings Limited* decision, these very same customers as "*sophisticated and well-informed*".

¹ Please note that this response does not address every aspect of the CMA's provisional findings. Failure to address specific part of these provisional findings does not mean that the Parties accept the CMA's reasoning. The Parties reserve the right to respond to other aspects of the provisional findings during the remainder of Phase 2 and/or on appeal.

6. For instance, it dismisses the views of half (6 of out 12) of these customers on the basis that they did not tender since 2020, but fails to take into account the views of the other half (6 out of 12) who have tendered since 2020 and who still did not consider Hills Motors to be a credible supplier of national salvaging services.
7. **The limited tender and benchmarking opportunities relied upon by the CMA confirm the absence of competition between the merging Parties.** A clear picture emerges from tender opportunities concerning 21 tender opportunities cited by customers where Copart and Hills Motors did not compete. Instead of relying on this overwhelming picture, the CMA chooses to rely on evidence of apparent limited competitive interaction arising out of only three tender opportunities. Even then, the picture which emerges from these three alleged opportunities cannot fairly bear the weight the CMA attaches:
 - [X] is a small customer located just [X] miles from Hills Motors' headquarters in Skelmersdale with an annual requirement of just [X] vehicles. It never issued a tender and never invited Copart to compete for the contract. It can therefore not be evidence of closeness of competition or Hills Motors' ability to compete for national contracts.
 - Neither [X] nor [X] identified Hills Motors as capable of meeting their requirements in the CMA's own survey. It is clear from any fair reading of the evidence that Hills Motors was realistically only pitching to provide green parts – where the CMA does not find an SLC – and not to service their national salvaging requirements.
8. The CMA attributes disproportionate weight to these three latter tender opportunities where Hills Motors did not even submit a bid let alone win the national contract in competition with Copart, and attributes insufficient weight to the remaining 21 tender opportunities (87.5%) cited by customers where Copart and Hills Motors did not compete.
9. **The CMA has mistakenly applied a presumption in the Merger Assessment Guidelines in this case ("MAGs").** The CMA's analysis in the Provisional Findings relies heavily on the presumption in the MAGs that *"where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between would raise competition concerns, subject to evidence to the contrary"*. This presumption is however misplaced in this case:
 - Hills Motors should not be treated as one of the "few firms" that compete for national salvaging contracts from insurers. There is no evidence that it has ever competed with Copart, let alone won a contract against Copart. Customers have unequivocally not identified Hills Motors as a close competitor (or even a competitor at all) to Copart or capable of meeting their national contract requirements.
 - Contrary to what the Provisional Findings imply, this is not a 4 to 3 merger (where the MAGs' presumption might have more application):
 - It is clear that there are three main competitors for national contracts with shares of 10% and above (i.e., Copart, IAA and e2e), followed by a long tail

of smaller players with shares of 0-5% (i.e., Recycling Lives, Charles Trent, Silverlake, Suretrak, etc.), one of which is Hills Motors;

- Indeed, while not a single customer of Copart identified Hills Motors as capable of meeting their requirements, a quarter identified Charles Trent as a salvager that could (while other customers identified Recycling Lives and SureTrak), and these other players have actually competed against Copart (whereas Hills Motors has not);
 - Similarly, while Copart has [X] acres of storage capacity, IAA [X] acres and e2e [X] acres, Hills Motors has just [X] acres, Charles Trent [X] acres and ASM [X] acres. Hills Motors' limited capacity means that it does not (and cannot) operate on the same playing field as the 3 largest salvagers.
- Given that market context, the presumption in the MAGs is simply not applicable. Accordingly, the CMA must establish, with sufficiently cogent evidence, why the loss of competition from Hills Motors to the extent there is any at all, will result in an SLC. However:
 - There is nothing in its historical performance that suggests its share of new contracts will be materially higher than its market share overall.
 - Hills Motors' recent share of supply increase solely derives from the Ageas contract and not from new insurance contracts.
 - There is nothing unique and distinctive about Hills Motors suggesting that, absent the Merger, it would have become a competitor of Copart: Hills Motors's recycled parts offering is not unique and competes directly with other credible salvager-dismantlers such as IAA, Charles Trent and Silverlake; it has no unique or exceptional technology, IP or assets – its auction technology is not unique, has not yet been launched and pales in comparison to the auction platforms of Copart, IAA and e2e.
 - Mr Ian Hill explicitly explained that he was not prepared to take the risk of taking Hills Motors “to the next level” to compete with Copart, IAA and e2e – we explain below the very considerable risks and obstacles in doing so.

10. **There is compelling evidence that there are prohibitive barriers to Hills Motors competing for large national insurance contracts.** In the absence of the merger, Hills Motors would thus have continued to be one of a number of fringe players imposing at best a *de minimis* constraint on the largest three firms.

11. The Provisional Findings state that the CMA have not received evidence of material barriers to Hills Motors competing for national insurance contracts or adapting its operational model. On the contrary, the Parties have already submitted compelling evidence that there are insurmountable barriers to Hills Motors competing for national insurance contracts in future. Customers themselves indicate that Hills Motor is not capable of meeting their requirements. The lack of capabilities must therefore represent a material barrier. The attached *Paper on Hills Motors' Salvaging Capabilities: Inability to Compete for National Insurance Contracts*, describes that evidence in more detail:

- Hills Motors is not able to compete for national contracts in competition with e2e while remaining a member of e2e. Ageas is an exception given Hills Motors' pre-existing position as lead salvager for Ageas. It cannot realistically be replicated for other national insurance contracts and is therefore the exception that proves the rule.
 - Hills Motors would not be able to outsource salvaging to subcontractors: only 6 out of 13 customers indicated this would be acceptable; e2e members used by Hills Motors to service the Ageas contract would not accept selling salvage vehicles under another contract outside the e2e auction platform (and would have no incentive to do so); and the use of salvage agents would make Hills Motors significantly less competitive.
 - Hills Motors would need to make substantial ex ante investments in order to be in a position to compete for a national contract in addition to the Ageas contract. As set out in more detail in the attached *Paper on Hills Motors capabilities: inability to compete for national insurance contracts*, to collect an additional 10,000-40,000 vehicles annually to supply a national insurance contract, Hills Motors would have to invest upfront, with a lead time of at least two years, around £29-49 million:
 - £[X] in vehicle transporters;
 - £20-40 million in additional site acreage for vehicle storage and dismantling capacity;
 - £[X] in equipment; and
 - £[X] in additional staff.
12. Without sufficient earnings or cash to fund this investment, Hills Motors would need to borrow. It is not, however, realistic to expect Hills Motors to fundamentally alter its business model and risk profile to borrow the equivalent of [X]x Hills Motors' EBIT and increase its overall short- and long-term debt burden (measured by its gearing ratio) from [X]% to [X]%. This is especially the case where Hills Motors has not previously taken on any material long-term debt in its entire history, let alone an amount of this scale, and where the owner has explicitly said that "[X]."
13. **Customer responses not only indicate a lack of concerns about the merger but also underline customer benefits.** This Merger was driven by customers. The vertical integration achieved by the Merger will provide customers with significant benefits, particularly environmental ones:
- The Transaction was driven by customers requiring Copart as a supplier to align itself with the customers' renewed ESG commitments. Environmental benefits and action to combat climate change are clear consumer benefits;
 - An in-house parts recycling operation would offer customers sufficient provenance guarantees for the resulting green parts;
 - An in-house parts recycling operation would eliminate the double marginalisation cost to customers; and

- For the increasing number of customers for whom a combined salvaging and parts recycling provider is considered essential, the merger will enable Copart to provide an effective competitive constraint in tenders, lowering prices compared to the counterfactual.

14. This is evidenced by the extensive positive feedback received from customers.

2. NO EVIDENCE OF THE PARTIES EVER COMPETING IN THE PAST OR THAT HILLS MOTORS WOULD COMPETE AGAINST COPART IN THE FUTURE

2.1. The CMA's distinctly unpromising starting point

15. The CMA has provisionally concluded that, on the balance of probabilities, the Transaction gives rise to an SLC in the supply of salvage services in the UK. It is worth recalling the legal principles that govern this threshold question. In *Meta/GIPHY*, the CAT held that the test is a binary one:²

"(ii) either a substantial lessening of competition has resulted or it has not; or there is an expectation (i.e. a more than 50% chance) that a substantial lessening of competition may be expected to result or not. These are the decisions that must be made by the CMA, and the Tribunal reviews their lawfulness in those terms, not on the basis of whether they are decisions that the CMA could have lawfully reached on the balance of probabilities."
(emphasis added)

16. The CMA's position in this regard starts, on its own provisional findings, from a distinctly unpromising position. It accepts, as it must, that the views of customers in the supply of salvage services in the UK – which is where the locus of competition takes place – do not regard the Parties as close competitors (or indeed competitors *at all*).³ Customers were blunt in their assessment of the reasons for this conclusion: "*Copart's customers did not identify Hills Motors as a salvager capable of meeting their requirements.*"⁴ Unsurprisingly, given this overarching conclusion, not one customer identified an SLC and 12 customers said that the merger would actually increase competition or at least would not cause an SLC, with only a single customer suggesting the merger might lead to a "*marginal*" reduction in competition.⁵ On this basis, the starting point must be that the merger is overwhelmingly unlikely to cause an SLC, since not one customer was willing to agree with this and most openly disagreed.

17. In order to support its provisional conclusion that, on the balance of probabilities, the Transaction gives rise to an SLC in the supply of salvage services in the UK, the CMA considered the following key evidence available to it:

- (a) Customers' views;
- (b) Tender and benchmarking opportunities; and

² *Meta Platforms Inc v CMA*, [2022] CAT 26, paragraph 192(3)(ii).

³ Provisional Findings, paragraphs 23(d) and 8.93.

⁴ Provisional Findings, paragraph 8.93(a).

⁵ Provisional Findings, paragraph 8.93(b).

(c) Hills Motors' use of the network model to supply salvaging services to Ageas.

18. In short, the CMA's case is that the very limited closeness of competition between the Parties to date is not necessarily representative of the post-merger situation, on a thesis that Hills Motors could morph into a serious national player capable of challenging Copart (and customers are somehow not well-informed, or not aware that Hills Motors currently supplies Ageas).
19. There are two fundamental problems with this thesis. The first, as set out further below, is that not only does the evidence not support the CMA's provisional conclusions, but its content is so weak that it ultimately provides support for the Parties' contrary position. In short, the limited evidence the CMA relies upon is diaphanously thin and cannot rationally support the already-difficult starting point the CMA sets out that market stakeholders' views on the state of competition in the market should effectively be disregarded when assessing the post-merger situation. Certainly, it would be irrational in this context to consider that the merger had more than a 50% prospect of leading to an SLC.
20. The second problem is a potentially unique one. Hills Motors is essentially the result of the drive of one individual, Ian Hill. Ian Hill has told the CMA in clear terms that the reason he is (reluctantly) selling is that he does not have a successor for the business. He has also been very clear that, at his stage of life, he does not have the appetite for risk needed for Hills to step up to the next (national) level: "[§]."⁶ (emphasis added). There is, accordingly, a strong and compelling – and potentially unique – reason why the CMA's post-merger thesis makes no sense at all.

2.2. The CMA's own market investigation results show that the Parties do not compete and that Hills Motors is unlikely to compete against Copart in the future

21. The customer evidence gathered by the CMA through its own questionnaire directly undermines the CMA's provisional conclusion that the Transaction would lead to an SLC.⁷
22. Copart's customers (and one of IAA's customers)⁸ were asked to identify all salvagers that could meet their requirements.⁹ Not one customer identified Hills Motors as an alternative salvager which could meet their requirements.

⁶ Oral Hearing transcript, page 4, line 1.

⁷ Despite requests from the Parties, the CMA has refused to disclose the full text of these responses (even into a confidentiality ring). This is procedurally unfair, since it prejudices the Parties' ability to interrogate the responses in terms of the detail they offer. Whilst the bottom line in these responses is clear, and favourable to the Parties, it is wrong of the CMA to withhold such "exculpatory" material, particularly when it overwhelmingly favours the Parties. The Parties reserve their rights in this regard.

⁸ The IAA customer which was asked this question ([§]) identified Copart as an alternative salvager which could meet their requirements however it did not identify Hills Motors.

⁹ Provisional Findings, paragraphs 8.87 – 8.89.

Table 1 - Copart's customers were asked to identify salvagers that could meet their requirements:¹⁰

Salvager	Number of times identified
IAA	12
e2e	8
Charles Trent	3
Recycling Lives	1
SureTrak	1
Hills Motors	0

23. Customers of Copart and Hills Motors (and one customer of IAA) were also asked whether they considered the Parties to compete closely in relation to the provision of salvage services.¹¹ Not one customer considered Copart and Hills Motors as close competitors.

Table 2 - Customers were asked whether Copart and Hills Motors compete closely:¹²

Response	Number of customers
Do not compete closely	9
Compete " <i>weakly</i> " ¹³	2
Compete " <i>moderately</i> " ¹⁴	1
Compete closely	0

24. Finally, customers of Copart and Hills Motors (and one customer of IAA) were asked for their views about the impact of the Merger on competition in the supply of salvage services.¹⁵ Not one customer of the 16 customers expressed any concerns about this Merger.

Table 3 - Customers were asked their views on the impact of the Merger on competition for salvage services:

Response	Number of customers
Merger <i>increases</i> competition ¹⁶	2

¹⁰ Hills Motors' two customers were asked the same question, with both customers identifying both IAA, e2e and Copart as (less suitable) alternatives, with one customer also identifying Suretrak as an alternative. On average, the customers identified IAA as a more suitable alternative to Copart and one customer identified e2e as a more suitable alternative to Copart (Provisional Findings, paragraph 8.90).

¹¹ Provisional Findings, paragraph 8.91.

¹² Of the four customers who did not express an opinion, two customers explicitly noted the Parties' different offerings and one customer made a distinction between Copart's large competitors (IAA, e2e) and the smaller regional operators (Provisional Findings, paragraph 8.91(d)-(e)).

¹³ In responding to this question, the two customers which the CMA have identified as considering the Parties to compete "weakly" ([§] and [§]) noted their different offerings and business models e.g. Hills Motors is a dismantler which purchases salvaged vehicles (Provisional Findings, paragraph 8.91(c)). It is important to note that neither one of two customers is identified as a large insurer by the CMA.

¹⁴ In responding to this question, this customer ([§]) also indicated that the Parties have different offerings (Provisional Findings, paragraph 8.91(c)). It is important to note that this customer is not identified as a large insurer by the CMA.

¹⁵ Provisional Findings, paragraph 8.92.

¹⁶ Two large insurance customers which the CMA state "*did not express a view*" ([§] and [§]) suggested pro-competitive effects of the merger in response to the question, specifically relating to Copart's improved recycled parts offering in light of growing ESG requirements (Provisional Findings, paragraph 8.92(b)).

Response	Number of customers
Merger causes no competition concerns ¹⁷	10
Merger "marginally" lessens competition ¹⁸	1
Merger <i>substantially</i> lessens competition	0

25. Despite this unequivocal evidence, the Provisional Findings conclude that *"this does not mean that the Parties would not be competing closely in particular, as two of a small number of rivals with demonstrable capability in servicing large national insurance contracts – had the Merger not taken place."*¹⁹
26. The Provisional Findings give (less than) *"limited weight"*²⁰ to the only evidence that the CMA gathered directly from customers during its investigation on the basis that *"the views of customers today may not be particularly probative as evidence of the degree of closeness of competition between the Parties had the Merger not taken place."*²¹ This is irrational and contrasts with other parts of the Provisional Findings where the CMA relies on a preponderant, or at least material, view held by a handful customers.²²

2.3. The CMA has no basis or evidence for dismissing customers' knowledge of the market

27. In its recent *IAA Inc. / SYNETIQ Holdings Limited* decision²³ in March 2022, the CMA indicated that it gathered evidence from a range of UK insurance companies in the course of its investigation and noted *"As insurance companies requiring salvage services are sophisticated and well-informed customers, the CMA placed weight on evidence received from these customers regarding competitive alternatives to the Parties"*²⁴ (emphasis added). Yet, not even a year later, the CMA appears to completely disregard the views of these very same customers as they appeared to *"show a lack of perceived closeness of competition between the Parties"*²⁵ and *"the views of customers today may not be particularly probative as evidence of the degree of closeness of competition between the Parties"*²⁶. In other words, the CMA believes that large, well-informed and sophisticated insurers are in fact wrong and poorly informed of their options going forward, when they state that Hills Motors is not capable of meeting their requirements, even though salvaging is part of their daily work and accounts for a critical part of their business.
28. In reaching this conclusion, the CMA has not provided any evidence as to why these customers are, only months later, apparently no longer *"sophisticated and well-informed"* and are instead currently so poorly informed that their present views cannot be taken as a

¹⁷ Two of these respondents ([X] and [X]), including one large insurance customer ([X]), noted the complementarity of the Parties' offerings in response to other questions (Provisional Findings, paragraph 8.92(b)).

¹⁸ The one customer ([X]) which noted a *"marginal"* reduction in competition also suggested that competition would remain between IAA, Copart, e2e as well as the *"other smaller independents operating regionally"* (Provisional Findings, paragraph 8.92(c)).

¹⁹ Provisional Findings, paragraph 8.95.

²⁰ Provisional Findings, paragraph 8.96.

²¹ Provisional Findings, paragraph 8.94(c).

²² See, e.g., Provisional Findings, paragraph 8.46(a).

²³ *IAA Inc. / SYNETIQ Holdings Limited*, ME/6972/21, 2 March 2022.

²⁴ *IAA Inc. / SYNETIQ Holdings Limited*, ME/6972/21, 2 March 2022, paragraph 44.

²⁵ Provisional Findings, paragraph 8.93.

²⁶ Provisional Findings, paragraph 8.94(c).

reliable guide “going forward”. Instead, it dismisses the views of half (6 of out 12) of these customers on the basis that they did not tender since 2020, on the assumption that they may not be aware of Hills Motors’ recent experience with Ageas. Yet, at the time it conducted its market investigation in the *IAA Inc./SYNETIQ Holdings Limited*, Hills Motors had already been servicing Ageas for two years. These customers were already aware of Hills Motors’ capabilities just through the multitude of press releases which Ageas had issued in the leading insurance press and magazines. The fact that Hills Motors supplies Ageas has been extremely well-publicised at the time they won the contract and since, and is thus very well known in the industry. It is disingenuous to suggest that these customers are poorly informed of the choices available to them and do not know that Hills Motors supplies Ageas. See **Response to PFs - Annex 1** for a full overview of the publicity indicating that Hills Motors supplies Ageas.

29. There is no evidence of Hills Motors having changed its business model or having gained additional contracts and/or any recent changes in the competitive landscape in the supply of salvager services which would warrant the CMA to alter so drastically its views of those same customers.
30. Furthermore, the CMA fails to take into account the views of the other half (6 out of 12) who have tendered since 2020 and who still did not consider Hills Motors to be a credible supplier of national salvaging services.²⁷ As demonstrated by the overwhelming number of comments recently submitted by at least 18 customers (including some who have not tendered since 2020²⁸) to the CMA since its Provisional Findings, it is indisputably the case that:
 - They are well aware that Hills Motors currently supplies salvaging services to Ageas;
 - They would still not award their salvaging contract to Hills Motors as they do not consider Hills Motors to be a credible supplier of salvage services;
 - They are fully aware of the choice of salvagers available to them; and
 - They are satisfied that there remain sufficient salvagers to invite to tender and provide effective competition.
31. The CMA has therefore placed little or no weight on the overwhelming and credible customer evidence (21 tenders). Instead, it has relied on just three tender opportunities as a means of inferring customers’ likely views of Hills Motors’ competitive strength, and even then (as discussed in the next section), the evidence in this unrepresentative small sample is seriously distorted by the CMA.
32. The CMA’s approach is flawed. It has received unequivocal evidence that the relevant customers do not regard Hills Motors as a close or credible competitor to Copart (or indeed a competitor at all). The three tenders on which the CMA relies do not point to actual competition having taken place between the Parties. It is important to recall that Hills Motors did not win – or compete for – any of these tenders. Notwithstanding the above,

²⁷ Provisional Findings, paragraphs 8.94-9.95.

²⁸ Copart understands that the following customers submitted supportive comments to the CMA in response to the Provisional Findings (as at 26 May 2023): [X], Somerset Bridge, [X], Magna Accident Services, [X].

even if one were to assume that those three tenders provide limited evidence of some potential competitive interaction between the Parties, this evidence cannot be considered to outweigh the contrary evidence based on the remaining 21 tenders where there was no competitive interaction whatsoever between the Parties as well as the explicit and unequivocal views of customers expressed to the CMA in response to its own survey that they do not regard Hills Motors as a credible or close competitor to Copart. In essence, the CMA is effectively substituting its views for those of a large number of sophisticated and well-informed customers without any objective justification for doing so.

33. Consequently, the CMA does not have sufficient grounds to disregard the clear and unequivocal views of these customers.

2.4. The tender and benchmarking opportunities relied upon by the CMA confirm the absence of competition between the merging Parties

34. Of 24 tender opportunities identified by customers occurring between 2018 and 2022, the CMA cites only three instances where the Parties were apparently identified as participating or being invited to participate in tenders.²⁹ However, none of these instances is in fact evidence of any competition actually taking place between the Parties. When considering carefully these instances, it is clear that (i) no competition has ever taken place between the Parties and that (ii) they are not evidence that Hills Motors would have become a credible competitor in the future (indeed, they provide support for the view that it could not).

(i) [REDACTED]³⁰

35. This is the first time the CMA relies on this alleged tender despite having obtained information from this customer during the Phase 1 investigation.³¹ Such evidence was never relied upon in the CMA's Phase 1 Decision (or in the Issues Letter), nor was it ever cited in its Working s or Annotated Issues Statement during the Phase 2 investigation. The CMA also admits that [REDACTED] is a "small customer."³²

36. Copart has no evidence of ever bidding for this alleged tender or being invited to respond, and does not believe it was ever invited to respond. As far as Copart is concerned, it did not under any circumstances compete for this contract.³³ If the CMA has evidence to the contrary, the Parties request this to be provided into the Confidentiality Ring immediately so that Copart has a fair chance to respond. As far as Hills Motors is concerned, it is not aware of [REDACTED] ever issuing a tender for this particular contract nor is it aware of competing with any other salvager for this contract.

²⁹ Provisional Findings, paragraph 8.76.

³⁰ Third-party response to the CMA's Phase 1 customer questionnaire, October 2022, question 6 and Annex 2 [REDACTED].

³¹ *Ibid.*

³² Provisional Findings, paragraph 8.76(i). The CMA indicates that [REDACTED] has [REDACTED] vehicles compared to, e.g., [REDACTED] for [REDACTED].

³³ Copart has undertaken an internal document search to identify any potential correspondence with [REDACTED] and/or [REDACTED]. **Copart has not found any correspondence.** For further details regarding the searches undertaken and the results.

37. [X] is a newly established credit hire company³⁴ located in [X], close to Hills Motors' headquarters in Skelmersdale (approximately [X] miles apart).
38. In October 2020,³⁵ Mrs [X], Managing Director at [X], approached Hills Motors to discuss the potential supply salvage and green parts services to a company she was in the process of setting up.³⁶ As a local dismantling business, Hills Motors was well known to Mrs [X]. As far as the Parties are aware, Mrs [X] did not issue a tender nor did she consider any other supplier of salvaging services. In fact, Copart is not aware of any approach by or contact with Mrs [X] and/or any [X] representatives.
39. Shortly after receiving a quote from Hills Motors, [X] formally engaged Hills Motors for the supply of vehicle disposal and green parts services.³⁷ Between June 2021 and 24 May 2023, Hills Motors received [X] instructions from [X], out of which Hills Motors collected and processed [X] vehicles (c. [X]%)³⁸. The remainder of the vehicles (i.e., [X]%) are collected and processed by members of the network (i.e., e2e members). Whilst the contract may have been described as a "national contract", the negligible volumes are no evidence of Hills Motors' capabilities to supply a national contract.
40. Furthermore, Hills Motors currently outsources some of the vehicle collection to recovery agents due to: i) distance to travel; ii) availability of additional volume in that area to fill the truck and justify the journey; iii) cost; and iv) SLA commitments (e.g., a 2-hour recovery).
41. The [X] circumstances cannot therefore be used as evidence to suggest the Parties have competed or that the loss of actual or potential competition between them results in an SLC. Copart was simply never involved in this purported tender nor has it ever had any contacts with [X].
- (ii) [X]
42. Throughout its Phase 1 and 2 investigations, the CMA raised a fourth instance where the Parties allegedly competed against each other.³⁹ The Parties addressed the CMA's assertion on multiple occasions⁴⁰ including in their response to the Annotated Issues Statement and Working s⁴¹. However, the CMA has still not given proper weight to those submissions despite [X] confirming, in its response to the CMA questionnaire dated 22 December 2022, that it "[X]"⁴² (emphasis added). The CMA simply cannot therefore rely on this purported tender⁴³ to establish that the Parties competed or that Hills Motors

³⁴ Cogent Hire was established in September 2020 (<https://find-and-update.company-information.service.gov.uk/company/12868934/filing-history>). For further details, see <https://cogenthire.co.uk>.

³⁵ We note that the CMA refers to a tender issued in 2020. This is incorrect as [X] was not established until 2021.

³⁶ See **Annex 2** – Email exchanges between Mrs [X] and Hills Motors dated 19 October 2020.

³⁷ See **Annex 3** – [X] Limited Salvage Contract dated 10 March 2021.

³⁸ See **Annex 4** – [X]'s list of vehicles handled by Hills Motors.

³⁹ Issues Letter dated 1 November 2022, paragraph 33(f); Horizontal Effects Working Paper dated 3 March 2023, paragraph 1.134(c); and Provisional Findings, paragraph 8.77.

⁴⁰ See Parties' response to Issues Letter paragraph 39; See also Parties' response to Phase 1 Decision, paragraph 48.

⁴¹ See Parties' response to the AIS and working s, paragraph 34.

⁴² Provisional Findings, paragraph 8.78 (c).

⁴³ Provisional Findings, paragraph 8.78.

would have become a credible competitor in future. In fact, it is clear evidence to the contrary.

(iii) [X]⁴⁴

43. The Parties do not agree with the CMA's assessment of [X]' informal contact with Hills Motors nor its interpretation of the covering letter to [X]. Hills Motors did not pitch or attempt to compete for the supply of salvage services. The brief contact with [X] was not focused on competing for or supplying a national salvage services contract. Hills Motors was not capable of providing salvage services to [X] (even if it were to use network partners). [X] was not looking to use Hills Motors for salvage services. No evidence has been presented by the CMA to indicate that [X] would ever have been prepared to award Hills Motors a national contract for salvaging. In actual fact, the CMA received evidence to the contrary. [X].⁴⁵ As a result, in the absence of any effective competition, the [X] contract provides no supporting evidence that the Merger would result in an SLC. In fact, it is clear evidence to the contrary.

44. Furthermore, it is clear that [X] was referring to recyclable parts – an area where the CMA accepts no SLC arises. The [X] covering letter on which the CMA relies clearly states: “[X]” (emphasis added). It further states “[X]”⁴⁶ (emphasis added).

45. The content of this letter corroborates what Ian Hill explicitly noted at Hills Motors' Oral Hearing:

“[X].”⁴⁷

46. In addressing the purported “benchmarking exercise”, Hills Motors also made it clear what it was: “[X]”.⁴⁸

“[X].”⁴⁹

47. This regional focus of Hills Motors' contact with Hastings was recognised by the Panel at the Oral Hearing:⁵⁰

[X]

48. For the CMA to reinterpret this context as somehow Hills Motors pitching for a national salvage service would be a distortion of the facts. The [X] circumstances cannot therefore be used as evidence to suggest the Parties are existing competitors or that the loss of actual or potential competition between them results in an SLC.

(iv) [X]⁵¹

⁴⁴ Third-party response to the CMA's Phase 1 customer questionnaire, October 2022, Annex 2; [X] third-party response to the CMA's Phase 2 customer questionnaire (previous respondents), December 2022, question 4. [X].

⁴⁵ Provisional Findings, paragraph 8.89.

⁴⁶ Provisional Findings, FN 572 - Hills Motors's response to Notice 2 to Hills Motors, document '[X]'.

⁴⁷ Oral Hearing transcript, page 15, lines 2-6.

⁴⁸ Oral Hearing transcript, page 38, lines 12-14.

⁴⁹ Oral Hearing transcript, page 39, lines 7-9.

⁵⁰ Oral Hearing transcript, page 38, line 15-18.

⁵¹ Note of a call with a third-party Tesco, February 2023, paragraph 5.

49. As previously submitted to the CMA, Hills Motors' contact with [X] was to maintain its green parts supply and potentially some of the regional salvage volumes that Hills Motors currently collects for [X]. There is no evidence that [X] would have considered using Hills Motors to supply a national salvage services contract (distinct from any green parts supply).
50. Hills Motors did not tender for the [X] contract nor did it prepare a draft response with the objective of competing for the salvage services. This was confirmed explicitly by Ian Hill at the Oral Hearing: "We did not tender for that [X] contract".⁵²
51. Hills Motors' objective with the tender was made explicitly clear at the Oral Hearing: "We wanted to continue to supply them with green parts. We did not want to lose that."⁵³
52. As the CMA is aware, Hills Motors has collected vehicles for [X] on behalf of [X] regionally in the Northwest in recent years and has had a green parts relationship with [X]. Any consideration of a "tender" related to preserving this relationship concerned green parts, and not national salvage services. This was confirmed at the Oral Hearing: "Because we worked with them, we would always look to do something to retain some of that business."⁵⁴
53. Hills Motors also made it explicitly clear that it is not capable of providing [X] with what it was looking for: "We could not offer them the national service"⁵⁵.
54. Furthermore, Copart provided a witness statement outlining [X]'s views that Hills Motors was not a credible national salvager. [X] views Hills Motors as a northwest regional salvager. We understand that those views were also submitted as part of its response to the customer survey and to the CMA recently. Yet, the Provisional Findings are inconsistent with these views.
55. In particular, the CMA relies on a call with the members of staff at [X] responsible for conducting the tender process during which "the insurer in question confirmed that Hills Motors had been considered a credible participant for all elements of the tender and that Hills Motors would not have been invited to tender if this had not been the case"⁵⁶ (emphasis added).
56. Copart is, however, concerned that, during the call, the case team may not have distinguished sufficiently between Hills Motors' activity in green parts and Hills Motors' activity in salvage services. Specifically, for example, when asked if Hills Motors is a credible firm or supplier, [X] may have confirmed this was the case, referring only to Hills Motors' green parts capabilities, not national salvage services. [X] was clear in its verbal communications with Copart that they would never award Hills Motors a national salvage services contract. There is no indication that the CMA has complied with its legal duty to

⁵² Oral Hearing transcript, page 29 line 17.

⁵³ Oral Hearing transcript, page 30-31, lines 24-25, 1.

⁵⁴ Oral Hearing transcript, page 32, paragraph 15-16.

⁵⁵ Oral Hearing transcript, page 39, lines 15-16.

⁵⁶ Provisional Findings, paragraph 8.81(b).

inquire into such a basic, and fundamental, matter. Furthermore, when responding to the CMA's questioning, it appears that [REDACTED].⁵⁷

57. In this context, Hills Motors provided no effective competition. Consequently, [REDACTED] cannot be used as evidence to suggest the Parties were close competitors or that Hills Motors would have become a credible competitor in the future.

(v) *Conclusion*

58. In conclusion, there is no evidence of actual competition ever taking place between the Parties. The CMA attributes disproportionate weight to three tender opportunities where Hills Motors did not, as a matter of fact, even submit a bid for the national contract in competition with Copart, and attributes insufficient weight to the remaining 21 tender opportunities cited by customers where Copart and Hills Motors did not compete for the contract. Indeed, the Parties' tender data provides irrefutable evidence that Copart and Hills Motors never even competed, let alone were close competitors. This is also corroborated by the CMA's own market test finding that "[m]ost customers provided tenders evidence and in no cases did the Parties directly compete in any of the tenders".⁵⁸

3. CMA'S ANALYSIS IS BASED ON UNWARRANTED ASSUMPTIONS AND NOT FACTS OR EMPIRICAL EVIDENCE

3.1. The CMA has mistakenly applied the presumption in the Merger Assessment Guidelines (MAGs) in this case

59. Instead of giving due weight to the clear-cut evidence gathered directly from customers, the Provisional Findings are based on the CMA's interpretation of the "*particular market context*".⁵⁹ The CMA's interpretation of the "*particular market context*" is not a reasonable substitute for the views of these "*sophisticated and well-informed customers*". The CMA is dogmatically applying a structural presumption that is clearly refuted by evidence showing that no adverse effects are likely to occur. In particular, the CMA's decision effectively to ignore unambiguous customer evidence rests on a peculiar assumption that when customers were directly canvassed for their views on the Merger and closeness of competition between the Parties, they, somehow, completely ignored the salient question of the effect of the combination of the Parties on the market going forward. There is no basis for suggesting this; it is nonsensical to imagine customers would effectively overlook the only question that matters and that their views on competition and its closeness were made in a state of ignorance. Overlooking such unambiguous customer evidence is irrational.
60. The Parties are of the view that the CMA has erred in law and fact when it considered whether the Parties are close competitors.

⁵⁷ Provisional Findings, paragraph 8.90.

⁵⁸ See Horizontal Effects WP, para 1.143(b).

⁵⁹ Provisional Findings, paragraph 8.94.

61. In its Provisional Findings, the CMA states that *“where the CMA finds evidence that competition mainly takes place among few firms, any two would normally be sufficiently close competitors such that the elimination of competition between would raise competition concerns, subject to evidence to the contrary”* (emphasis added).⁶⁰ In order for the CMA to apply a presumption of closeness, it must first identify evidence of competition and have no evidence to the contrary.
62. This is not the case here. As demonstrated above, there is no evidence of the Parties ever competing against each other. The mere fact that there are a limited number of suppliers of salvage services is not in itself sufficient to establish closeness of competition, in particular where the CMA has not been able to provide any evidence of actual competition taking place between the Parties. Even if the CMA were to conclude that some limited competitive interaction did indeed take place, it is clear from the facts that Hills Motors only acted as a weak constraint. The CMA itself recognises that *“historically Hills Motors has placed only a weak constraint on Copart”*⁶¹ (even though there is extremely limited evidence pointing to *any* constraint, weak or otherwise). Yet, the CMA fails to give sufficient weight to Hills Motors’ historic market position (in particular the fact that it has never won a single contract against Copart) in its assessment.
63. Contrary to the CMA’s views, Hills Motors is not one of the four largest salvagers. There are only 3 large salvagers with market shares c. 10% and above (i.e., Copart, IAA and e2e) followed by a group of much smaller competitors (i.e., Recycling Lives, Charles Trent, Silverlake, Suretrak, etc.) of which Hills Motors is only one – all of which have between 0-5% market shares. Hills Motors is no more than a fringe player, with a *de minimis* market share. Whether it is more or less competitive than any of these smaller players is irrelevant. It remains a peripheral player which does not compete with the largest ones (and in any event not with Copart).
64. This remains true even when considering these salvagers’ capacity. The CMA asserts that *“to the extent a salvager’s capacity can be taken as indicative of its competitive position, this information is consistent with our share of supply estimates”*⁶². As indicated in the Provisional Findings, Copart has [X] operational acres⁶³, IAA has [X] acres⁶⁴ and e2e has [X] acres⁶⁵ whilst Hills Motors has [X] acres⁶⁶, Charles Trent has [X] acres⁶⁷ and ASM has [X] acres⁶⁸. Whilst the Parties do not agree with the CMA’s assertion that capacity is indicative of a player’s competitive position (in particular when the CMA failed to distinguish between capacity for dismantling, warehouses for green parts storage and salvaging storage, and when there are better and more accurate proxy of measurements (e.g., turnover, assets, etc.)), it is nonetheless clear that Hills Motors’ capacity evidences how it simply does not (and cannot) operate on the same playing field as the 3 largest salvagers.

⁶⁰ Provisional Findings, paragraph 8.35.

⁶¹ Provisional Findings, paragraph 8.117.

⁶² Provisional Findings, paragraph 8.28.

⁶³ Provisional Findings, paragraph 2.5.

⁶⁴ Provisional Findings, paragraph 3.11(a).

⁶⁵ Provisional Findings, paragraph 3.11(b).

⁶⁶ Provisional Findings, paragraph 2.11.

⁶⁷ Provisional Findings, paragraph 3.11(d)(i).

⁶⁸ Provisional Findings, paragraph 3.11(d)(iv).

Hills Motors' capacity is around the size of these smaller players, yet it is vastly inferior to Copart's (i.e., 17 times smaller), IAA (i.e., 10 times smaller) and e2e (i.e., 7 times smaller).

65. The CMA cannot presume that the elimination of competition from one of these smaller players will lead to an SLC without demonstrating, on the balance of probabilities, why it is the case. Further, any legal presumption can only remain valid and applicable as long as there is no preponderance of evidence which disproves or outweighs the presumption.
66. In past cases, the CMA has only been able to establish that the loss of potential competition was significant based on objective factors – supported by evidence not presumption. For example, it was able to establish a significant loss of competition on the basis that the target was developing a new technology⁶⁹, or because the target had an innovative business proposition⁷⁰, or because the target was a “disruptive force” in a highly concentrated market where the acquirer had a 90% share as in *Illumina / PacBio*⁷¹.
67. In the present case, such facts do not exist.

3.1.1. Low share projections based on customers' views and absence of past competition between the Parties

68. Prior to the award of the Ageas contract, Hills Motors' market shares for the supply of salvage services were extremely low at a mere [%] (in 2019) and increased to [%] in 2020 when it was awarded the Ageas contract. Since then, its market shares marginally increased to [%] (i.e., an additional [%]) in 2022 despite at least 13 large insurance customers having issued national tenders during that period.⁷² However, the small increase in the share of supply since 2020 did not derive from new insurance contracts won, but merely additional volumes sourced from Ageas. In any case, the market share remains *de minimis*.

Table 4 – Hills Motors' share of supply for salvage services to insurance customers in the UK, 2019 to 2022 (based on number of vehicles handled)

2020		2021		2022	
Overall	Share of Supply	Overall	Share of Supply	Overall	Share of Supply
[%] [of which [%] Ageas]	[%]%	[%] [of which [%]Ageas]	[%]%	[%] [of which [%] Ageas]	[%]%

69. Yet, the CMA has provisionally concluded that “while historically Hills Motors has placed only a weak constraint on Copart, that the competitive constraint by Hills Motors on Copart was

⁶⁹ *Sabre / Farelogix*, ME/6806/19, CMA Final Report 9 April 2020, para. 11.101-11.102.

⁷⁰ *Experian / Credit Laser Holdings (ClearScore)* ME/6743/18, CMA Provisional Findings Report 4 December 2018, para. 11.66-11.70.

⁷¹ *Illumina / PacBio*, ME/6795/18, CMA Provisional Findings Report 24 October 2019, para. 8.289.

⁷² The Parties are aware of the following tenders: [%]

increasing in recent competitive interactions and, absent the Merger, the competitive constraint from Hills Motors would likely to have increased further”⁷³ (emphasis added).

70. This is not a robust assessment. Hills Motors did not win – or compete for – any of the purported tenders to which the CMA refers, and based on the customers’ explicit feedback, it is highly unlikely that Hills Motors would have been invited to respond to a tender in the foreseeable future, let alone win one. There is absolutely no evidence that the competition between the Parties would intensify and Hills Motors would gain a materially increased market share above its current *de minimis* levels. On the contrary, the customer views and the absence of actual competition taking place between the Parties since 2020 point to low share projections.
71. Furthermore, the shares of supply are not reflective of competition in a market where suppliers bid against each other. The fact that almost all of Hills Motors’ share in the supply of salvage services to insurance customers is attributable to a single customer (that the parties did not compete for) supports this. A proper assessment of competition in an in-depth investigation should assess actual competition taking place, not rely on structural presumptions that are inconsistent with the evidence. The fact the CMA has placed some weight in its assessment on shares of supply (of minimal relevance in a tender market) yet dismissed the overwhelming views of sophisticated and well-informed customers (of significant relevance in this market) is misleading and unreasonable.

3.1.2. There is nothing unique and distinctive about Hills Motors suggesting that, absent the Merger, it would continue to invest to grow

72. In reaching its provisional views on the closeness of competition between the Parties, the CMA asserts that the model Hills Motors used to service the Ageas contract may have had wider appeal with customers, particularly in the context of the growing importance of recycled parts where it has a strong position.⁷⁴

No unique business model and offering

73. Whilst it is undeniable that Ian Hill has, over 30 years, built a successful dismantling business, Hills Motors’ offering as a supplier of salvager services and recycled parts services is far from being exceptional. The majority of the competitors the CMA contacted during its market investigation have the same offering and business model (i.e., vertically integrated salvagers providing recycled parts services). Hills Motors’s recycled parts offering is not unique and competes directly with other credible dismantlers such as IAA, Charles Trent and Silverlake.⁷⁵

No unique or exceptional technology, IP or assets

74. Hills Motors does not have any unique or exceptional technology, IP or assets. Hills Motors’ IT infrastructure is by no means “actively disrupting the status quo”⁷⁶.

⁷³ Provisional Findings, paragraph 8.117.

⁷⁴ Provisional Findings, paragraph 8.82.

⁷⁵ Provisional Findings, paragraphs 11.20 and 11.22.

⁷⁶ MAGs paragraph 4.9.

75. The [§] is simply a green parts inventory system which allows body shops to make parts requests via a portal, rather than having to making a telephone call or to manually check eBay to determine parts availability. The [§] was not the first of its kind⁷⁷, and its utility has been superseded by the widely used Pinnacle platform, which allows users to check vendors' stock without having to send a request as an intermediate step.⁷⁸ Accordingly, [§] is now mainly used by Hills Motors as an internal inventory management tool. As Ian Hill explained in the main party hearing, "[§]".⁷⁹
76. With regard to [§]⁸⁰ - "[§]".⁸¹ There is no evidence contained in the Provisional Findings to suggest that this platform could, in practice, be integrated with another insurer's claims management system without considerable adjustments. Nor is there any evidence of this platform offering unique and unrivalled features which would put Hills Motors at a competitive advantage.
77. In relation to auction technology, the Provisional Findings rely on tenuous evidence extracted from marketing materials to misrepresent Hill Motors' development of a back-up proprietary auction platform. The CMA has correctly acknowledged that there is no evidence to suggest Hills Motors had any "definitive plans" either to launch or license its platform.⁸² Hills Motors' speculative auction platform development is clearly an inferior proposition to the existing auction platforms of other salvagers. For example, Charles Trent has released a "brand new salvage auction platform" featuring the "very latest technology" and "user-friendly functionality".⁸³ Despite this, the Provisional Findings state that Charles Trent's "constraint would not have been as strong as that of Hills Motors given Hills Motors' more developed IT systems".⁸⁴ The CMA has not provided any evidence to show how a non-fully developed auction platform would confer a competitive edge to Hills Motors in comparison to a salvager with a fully launched auction and demonstrable historic results to show auction performance and likely returns, and/or a salvager with no proprietary auction platform.
78. Furthermore, the Provisional Findings conclude that "having proprietary auction capability" is a "weak barrier to entry", and therefore the possibility of any other salvagers developing or advancing their auction platforms ought to be part of the CMA's competitive assessment.⁸⁵

3.1.3. Absent the Transaction, hypothetical organic growth by Hills Motors would have had limited competitive relevance

⁷⁷ For example, DH Systems had a parts platform in addition to its salvage platform (before it was acquired by SYNETIQ).

⁷⁸ "[§]" (Ian Hill, Hills Motors' main party hearing transcript, page 73).

⁷⁹ Hills Motors' main party hearing transcript, page 73.

⁸⁰ The unique nature of the Ageas relationship, which was based on Ageas' pilot green parts agenda and borne out of close and long-standing personal relationships, is detailed in the Parties' Supplementary Submission titled 'Ageas/Hills Motors' (14 March 2023).

⁸¹ Joe March, Hills Motors' main party hearing transcript, page 42.

⁸² Provisional Findings, paragraphs 8.66 and 8.67.

⁸³ <https://www.trents.co.uk/blog/brand-new-salvage-auction-platform>.

⁸⁴ Provisional Findings, paragraph 8.163.

⁸⁵ Provisional Findings, paragraph 12.22.

79. The Parties are not aware of any evidence suggesting the Hills Motors salvaging business was poised for rapid expansion, absent the Merger. The CMA has not provided evidence to suggest otherwise nor has it undertaken any quantitative or qualitative analysis to support such a hypothesis. Instead, the CMA has relied on a single internal document in which Hills Motors stated “*the business will continue to invest heavily to support continued growth*”.⁸⁶
80. First, the CMA places far more weight on this single statement than it can reasonably bear. It is trite that a firm would observe (particularly in a single document) its need to continue to invest to support growth. Indeed, it would be curious to find a firm that was not saying this (or words to similar effect) – what firm does not want to grow?
81. Second, as explained in its response to the CMA’s Phase 2 Notice dated 22 December 2022⁸⁷, Hills Motors’s recent investment related to its green parts services. Hills Motors established a new warehouse and dismantling facility which was opened in 2020. Two years ago, Hills Motors purchased warehousing space next to the dismantling warehouse. The only other ‘material’ investment which Hills Motors undertook in the last 5 years is the development of its own auction platform in 2019. Hills Motors has not made any other material investment in relation to its salvage business.
82. More importantly, the CMA’s own decisional practical has routinely disregarded such general comments as being sufficient; indeed, even where the plans went much further than the single statement by Hills Motors, the CMA did not consider them as material as it does in the present case. Certainly, the fact that a target may have aspirational plans absent the merger to compete more closely is not sufficient for establishing an SLC. In *Cox / AutoTrader*⁸⁸, AutoTrader (the market leader) had well-developed plans to build its own B2B platform that would have directly competed with Cox. In *PayPal / iZettle*⁸⁹, iZettle had plans to expand its online payments offering to compete directly with the leader, PayPal. In *Roche / Spark*⁹⁰, Spark was developing a new gene therapy treatment for Haemophilia A that was expected to compete with Roche’s non-gene therapy treatment in the future.
83. In each of these cases, the CMA concluded that development plans of the merger parties were not sufficient to create an SLC. This is because, even assuming the plans were successful, the potential competition lost from the merger was not significant and significant competitive constraints remained.⁹¹ The same considerations apply here.
84. Furthermore, at Hills Motors’ Oral Hearing, Ian Hill was unequivocal about his inability to grow the business organically beyond its boundaries.
- “[§].”⁹² (emphasis added)

⁸⁶ Provisional Findings, paragraph 8.29.

⁸⁷ Question 9.

⁸⁸ *Cox Automotive / AutoTrader*, ME/6765/18, 21 November 2018, para. 25.

⁸⁹ *PayPal / iZettle*, Final Report, 12 June 2019.

⁹⁰ *Roche / Spark*, ME/6831/19, CMA Phase 1 Decision, 16 December 2019, paragraph 214.

⁹¹ See *Cox Automotive / Auto Trader*, ME/6765/18, 21 November 2018.

⁹² Oral Hearing transcript, page 4, line 1.

"[§]."⁹³ (emphasis added)

85. [§] is reflective of Hills Motors' very small increase of share of supply since 2020.
86. Accordingly, even at the very edges of the CMA's reasonable time horizon for the assessment of potential future competition, Hills Motors is likely to remain an insignificant player as it simply does not have a leadership who is willing to significantly grow the business nor does it have the financial means and capabilities to compete for national insurance contracts.

3.2. There is compelling evidence of material barriers to Hills Motors competing for national insurance contracts

87. The Provisional Findings state: *"In our assessment, we have focussed on Hills Motors' ability to service, and therefore compete for, national insurance contracts... while Hills Motors' model for servicing the Ageas contract has some unique features, the evidence suggests that it is capable of being replicated, with certain adjustments, for other large national contracts".*⁹⁴ The CMA does, however, acknowledge that it has not yet received compelling evidence that *"Hills Motors' operating model and approach to risk, or management capacity, are material barriers to it continuing to compete for national insurance contracts, including large national insurance contracts."*⁹⁵
88. The Parties believe they have already provided compelling evidence to this effect. However, as further explained in the *Paper on Hills Motors' Salvaging Capabilities: Inability to Compete for National Insurance Contracts* (attached at **Response to PFs – Annex 5**), accompanying this response, Hills Motors cannot feasibly supply and compete for a national insurance salvage contract other than Ageas. The model currently used by Hills Motors to service the Ageas contract presents a formidable degree of vulnerability which would inhibit Hills Motors from competing for national insurance contracts.
89. First, when applying the SLC test, the CMA must compare the prospects for competition with the merger against the counterfactual.⁹⁶ In this case, the CMA considered the counterfactual of the pre-Merger conditions of competition is one in which Hills Motors would have continued developing its auction platform and remained on the board of directors and collecting member of e2e.⁹⁷
90. The CMA's conclusions wrongly assume that e2e and/or its members would agree to participate in a similar arrangement (to that of Ageas) to enable Hills Motors to bid for a contract, even though e2e would likely compete for the same contract as a consortium. E2e members would not support Hills Motors in servicing another national insurance contract.
91. Indeed, the CMA failed to take into account the current contractual obligations binding those vendors with e2e. As previously explained to the CMA, [§]. In order to compete with the consortium, [§]. Absent the merger, Hills Motors would have continued to be a member of e2e and would have been bound by the articles of association – this is a question

⁹³ Oral Hearing transcript, page 12, line 5.

⁹⁴ Provisional Findings, paragraph 8.46.

⁹⁵ *Ibid.*

⁹⁶ MAGs, paragraph 3.1.

⁹⁷ Provisional Findings, paragraph 5.13.

of law, not discretion. It would not therefore have been able to compete independently for a national insurance contract, let alone relying on the same individual network members to service that contract. The current arrangement with individual e2e members to service the Ageas contract is exceptional. As these members were already servicing the Ageas contract with the previous incumbent, eSalvage, the e2e consortium exceptionally allowed Hills Motors to put forward a proposal to Ageas based on a similar network.

92. Second, the CMA suggests that the network model used to service Ageas can be replicated for other national insurance contracts. This is not the case. Ageas is fundamentally different to other national insurance contracts. Ageas does not impose the same conditions as other insurers and does not seek the same commercial return (instead prioritising use of green parts). No other insurer would ever take a similar approach (and if the CMA speculates that this would be the case, the parties would welcome the CMA sharing the evidence supporting this so they have a chance to respond to this). For example, the majority of Copart's customer contracts are based on a consignment model whereby the salvager sells the vehicle at auction on behalf of the insurer.⁹⁸ This model guarantees a maximum return on the vehicles sold. If Hills Motors outsourced some part of a contract based on a consignment model to e2e vendors, Hills Motors would not be able to guarantee a minimum return on the vehicles sold at auction as each vendor would sell their vehicles on the e2e platform (as they currently do) and Hills Motors would not have any control. In order to be able to guarantee maximum returns, Hills Motors would have to oblige the vendors to sell the vehicles on its own auction platform, thereby diverting and reducing any volumes away from the e2e auction. Equally, it would not make any commercial sense for any e2e members to agree to such an arrangement. This arrangement would reduce any profit margin any e2e member could generate as it would only be able to receive collection fees and would have to forego any auction fees and profit on the sale of the vehicle. Further, by dispersing the vehicles to be sold across two auction platforms, e2e vendors would risk not getting the maximum returns as both platforms would offer less volumes, thereby attracting less buyers, this in turn would reduce the competitive bidding which naturally drives up the potential returns they (and the insurance company) would get. This is consistent with the CMA's market test, with one competitor noting "*that the more buyers an auction can attract the higher the prices it generally achieves and thus the more attractive it is to salvage service customers*"⁹⁹. They would also face the risks of vehicles not being sold in the first instance which will incur additional storage fees and re-advertising fees. Further details on why outsourcing would not be feasible for Hills Motors can be found in the *Paper on Hills Motors' Salvaging Capabilities: Inability to Compete for National Insurance Contracts*.
93. Third, Hills Motors cannot fulfil a national contract by itself and cannot use subcontractors to supply a national contract. The Provisional Findings confirm that all national insurers (contacted during its investigation) require national coverage and *most* national insurers (7 out of 13) would not accept national coverage to be provided via subcontracting. Only

⁹⁸ See Parties' Response to the Issues Letter dated 4 November 2022, section 2.4; Parties' Initial Submission on Phase 1 Decision dated 5 January 2023, section 5.1.4.

⁹⁹ See Horizontal Effects WP, para 1.60.

[REDACTED] indicated to the CMA the use of a network might be acceptable.¹⁰⁰ Hills Motors is therefore not a viable supplier, either now or “going forward”, for any national insurer other than these. Furthermore, the CMA has not presented any evidence to suggest that subcontractors (whether e2e members) would ever agree to such a model.

94. Finally, and more fundamentally, Hills Motors does not have the infrastructure, capacity and capabilities to fulfil a national insurance contract, [REDACTED]. The new evidence presented in the *Paper on Hills Motors’ Salvaging Capabilities: Inability to Compete for National Insurance Contracts* demonstrates the extensive investment that Hills Motors would have to undertake and fund, the risk, liabilities and costs that Hills would need to take on, and the impact this would have on Hills Motors’ business and competitiveness.
95. In particular, Hills Motors would need to make substantial ex ante investments in order to be in a position to compete for a national contract of 10,000-40,000 vehicles annually. In short, Hills Motors would have to invest upfront approximately £29-49 million. Without sufficient earnings or cash to fund this investment, Hills Motors would need to borrow the equivalent of [REDACTED]x Hills Motors’ EBIT and increase its leverage ratio to [REDACTED] %.
96. It would be completely irrational for the CMA to conclude that the Transaction would lead to an SLC in the supply of salvaging services to insurance companies in the UK on a mere assumption that Hills Motors would borrow such an extraordinarily large sum in order to compete in the future. The evidence presented as part of this response clearly demonstrates that the model used by Hills Motors to service the Ageas contract, [REDACTED] which would inhibit it from competing for national insurance contracts.

4. CUSTOMER RESPONSES NOT ONLY INDICATE A LACK OF CONCERNS ABOUT THE MERGER BUT ALSO UNDERLINE THE RATIONALE OF THE DEAL AND THE CUSTOMER BENEFITS (PARTICULARLY ENVIRONMENTAL BENEFITS)

97. It is important to recall why Copart decided to acquire Hills Motors. The Transaction was prompted and driven by Copart’s customers requesting that it offers a dismantling service to complement its existing salvage service, as well as a greater commitment by the industry to sustainability. 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 strong commitment to demonstrating their ESG credentials.¹⁰¹
98. 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 insurer’s ESG footprint is hidden deep within its supply chain, not as a result of its 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

¹⁰⁰ Provisional Findings, paragraph 8.43.

¹⁰¹ <https://oxbowpartners.com/blog/esg-and-the-insurance-industry/>. See also https://www.allianz.com/en/press/news/commitment/environment/220429_Allianz-reinforces-itscommitment-to-net-zero-strategy.html / <https://www.avivainvestors.com/en-gb/>

supply chain demands, such as compliance with emissions reporting, corporate social responsibility, equality, diversity, inclusion and modern slavery imperatives.

99. As a result, insurance companies are now actively seeking to partner with suppliers which align to their ESG strategy and vision.¹⁰² 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.
100. Copart has the bandwidth to regenerate and invest in future-proofing this sustainable initiative within the vehicle repair sector. Such an end-to-end salvage and dismantling service would greater facilitate customers' increased use of green parts compared to a counterfactual without the merger. This would have environmental and financial benefits to the Parties' customers, as recycled green parts are more sustainable in the race to net zero.
101. Environmental benefits and action to combat climate change are undisputable consumer benefits which the CMA should take into account. The CMA itself has, in recent years, become a promoter of environmental sustainability and making climate change and environmental sustainability a priority¹⁰³. In its annual plan for 2023/24, the CMA set out that supporting the UK's transition to net zero is one of its key aims for the upcoming year and endeavours to continue to take action to accelerate the transition to a net zero economy and promote environmental sustainability.¹⁰⁴ It has published numerous guidelines¹⁰⁵ and advice on how competition laws can help meet the UK's environmental goals¹⁰⁶. It even set up a Sustainability Task Force¹⁰⁷ and issued a 'Green Claims Code'¹⁰⁸. Yet, the CMA has placed very little weight (if any) on the benefits which insurers and ultimately consumers would enjoy from Copart's ability to provide green parts. Copart has scale and scope that Hills Motors does not have. As the insurance companies are leaning towards greater use of green parts as part their repair network, Copart will have the ability to have a greater impact and be far more effective in providing those green parts than Hills Motors will ever be able to do, absent the Merger.
102. Reducing the ESG footprint is, however, not the only benefit customers would enjoy. By acquiring an in-house parts recycling operation Copart would be able to offer customers a combined salvaging and parts recycling service. This would result in an increase in

¹⁰² 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.

¹⁰³ <https://www.gov.uk/government/news/new-guidance-to-help-businesses-co-operate-on-environment>

¹⁰⁴ CMA Annual Plan 2023/24 –paragraphs 5.12 and 6.21.

¹⁰⁵ <https://www.gov.uk/government/publications/environmental-sustainability-agreements-and-competition-law>.

<https://www.gov.uk/government/publications/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government/environmental-sustainability-and-the-uk-competition-and-consumer-regimes-cma-advice-to-the-government>

¹⁰⁷ <https://www.gov.uk/government/publications/competition-and-markets-authority-annual-plan-2021-to-2022/annual-plan-2021-to-2022>.

¹⁰⁸ <https://greenclaims.campaign.gov.uk>.

competition, as there would now be another vertically integrated competitor.¹⁰⁹ At least the following benefits would therefore flow to customers:

- a) An in-house parts recycling operation would offer customers sufficient provenance guarantees for the resulting green parts, given that Copart is already its customers' trusted counterparty for salvaging and related services. In short, risk averse insurers would prefer to deal with one trusted supplier. This in turn would increase customers' standing in terms of proving compliance with their ESG targets;
- b) An in-house parts recycling operation would eliminate the double marginalisation cost to customers. All else being equal, Copart combined with Hills Motors' parts recycling would be able to set a lower price for green parts than if it were to outsource the parts recycling operation to third parties (assuming this were to provide sufficient provenance guarantees, which is not the case); and
- c) For the increasing number of customers for whom a combined salvaging and parts recycling provider is considered essential,¹¹⁰ Copart will simply not be a credible competitor, in the absence of an in-house parts recycling operation. Tenders to other vertically integrated operators such as IAA/SYNETIQ and e2e would not therefore be constrained by Copart and, all else being equal, would result in higher prices or worse terms being received by those customers.

103. The key evidence that there would be these significant benefits for customers comes from customers themselves, as they have actively been demanding an in-house parts recycling operation of Copart.¹¹¹ This is corroborated by Copart's Seller Survey in which the respondents described, in their own words, the extensive benefits they would receive:¹¹²

- *"Hills acquisition will compliment Copart's offering as green parts become more accepted in the future.*
- *Bringing these two businesses together to share best practice and provide the industry with a better offering is what's needed.*
- *provides copart with a more rounded offering*

¹⁰⁹ The Provisional Findings note that, apart from Copart, "all significant rivals – in both the supply of recycled parts to insurance repair networks and the supply of recycled parts to other customers in the UK – are vertically integrated." - Provisional Findings, paragraph 8.148 and ff.

¹¹⁰ See, *inter alia*, the Parties' Initial Submission on the CMA's Phase 1 Decision, section 2.4.

¹¹¹ See, *inter alia*, Response to Issues Letter dated 1 November, section 2.2; Parties' response to the CMA's RFI dated 16 December 2022 (Phase 2 RFI 1), question 1; Parties' response to the AIS and working s, paragraph 27.

¹¹² While the CMA has raised some methodological concerns with the Seller Survey (Provisional Findings, paragraph 8.98), the Seller Survey is, as noted below, consistent with the CMA's own market investigation and the CMA is also welcome to engage further with customers in order to satisfy itself of the customer benefits customers themselves have been expressing.

- *As long as there is choice of suppliers in the market who can work nationwide there will always be competition to supply services, so Copart would have to continue to deliver value to its customers.*
- *Meets requirements and adds additional element to total loss cycle. Support ESG strategy and drive to reduce carbon*
- *We consider that the merger allows Copart to improve its service offering by being able to offer green parts (which it does not do at present) and that, post-merger, Copart will be better placed to deliver and improve the Hills green parts service offering due to Copart's national scale*
- *In comparison the Synetiq, Copart have been weak in green part provision. Embedding Hills will make life easier for us as a customer.*
- *Will allow a greater amount of vehicle to be processed in the green parts area*
- *Similar in the IAA/synetiq acquisition in that it allows Copart to provide a one stop shop so to speak*
- *We see the acquisition as a strengthening of COPARTS overall service offering.*
- *Synetiq were becoming a dominant supplier of a UK wide green parts solution, so Copart's acquisition will bring healthy competition to the green parts supply market, allows ensure and other Copart customers to benefit from the supply of green parts from their own salvaged vehicles.*
- *Happy that competitors have similar set ups"*

104. The Seller Survey is consistent with the CMA's own provisional finding that "*some customers, including large insurance customers, told us that there may be benefits from the Merger due to the complementary natures of Copart's position in salvage services and Hills Motors' position in dismantling and recycled parts provision*"¹¹³. It is also consistent with the CMA's provisional finding that "*Copart's internal documents ... highlight customer demand for a recycled parts solution and that a key driver for the Merger was to respond to competitive threat from IAA.*"¹¹⁴

105. The benefits of this Merger would accrue immediately. Indeed, as previously noted, Copart's customers have already been clamouring for Copart to be able to offer a parts recycling service.

¹¹³ Provisional Findings, paragraph 8.96.

¹¹⁴ Provisional Findings, paragraph 2.16.