

Case No ME/70010/22

ACQUISITION BY COPART UK LIMITED

OF

HILLS SALVAGE AND RECYCLING LIMITED

RESPONSE TO ADDENDUM PROVISIONAL FINDINGS REPORT

28 June 2023

CONTAINS CONFIDENTIAL BUSINESS INFORMATION



1. Executive Summary

1. This paper contains the Parties' response to the CMA's Addendum Provisional Findings Report dated 23 June 2023 (the "**Addendum**").¹ The Parties support the CMA's revised provisional findings "*that the Merger has not and may not be expected to give rise to an SLC in the supply of salvage services in the UK*".² However, they believe the CMA's final decision should also:
 - a. Place greater weight on the other customer evidence provided to the CMA in these proceedings given this is consistent with the new contemporaneous evidence the CMA has gathered from insurers;
 - b. Better articulate the way in which the contemporaneous evidence, as well as the other customer evidence, comprehensively rebuts any forward-looking concerns about competition in salvaging; and
 - c. Place greater weight on the evidence demonstrating Hills Motors' lack of ability to compete for national insurance tenders in future, given this is also consistent with the new contemporaneous evidence.
2. The Parties look forward to assisting the CMA in reaching its final decision.

2. The Parties welcome the CMA's Addendum

3. The Parties welcome the CMA's revised provisional findings resulting from the new evidence. In particular, the Parties note:
 - a. The new contemporaneous evidence shows "*in practice, Hills Motors was not considered a meaningful alternative to Copart (in particular, given the significant margin between its performance and that of other salvagers participating in the [X] benchmarking exercise and the context in which [X] invited Hills Motors to tender)*"³; and
 - b. That "*there was limited competition or likelihood of competition between Hills Motors and Copart in practice.*"⁴

3. Greater weight on previous customer evidence corroborated by new evidence

4. The CMA's Addendum refers throughout to assessing the new contemporaneous evidence with the previous evidence gathered by the CMA "*in the round*". However, the CMA could expressly refer to the fact that the previous customer evidence is now corroborated by the new contemporaneous evidence. We provide some examples as follows.

¹ The Parties have limited this response to some key points. This does not imply they agree with everything else as expressed in the Addendum.

² Addendum, para 1.5

³ Addendum, para 2.25

⁴ Addendum, para 3.15

5. Even before receiving the new contemporaneous evidence from [X], this insurer had already informed the CMA that it considered Copart and Hills Motors as offering two different services in its benchmarking exercise.⁵ Furthermore, during Phase 1, [X] submitted to the CMA that it did not identify Hills Motors as a salvager capable of meeting its requirements.⁶ Given [X] had no ulterior motive in making these observations, these were, in the Parties' view, sufficient to discount [X] benchmarking as an instance of competitive interaction between Copart and Hills Motors. However, this evidence can now be reconsidered since it has been corroborated by the contemporaneous documents submitted by [X].
6. Similarly, in the case of [X], it is helpful that contemporaneous documents confirm Hills Motors was not seen as a viable salvage service supplier.⁷ However, [X] current view is that it does not consider Hills Motors a "direct competitor" of Copart⁸ and this should be accorded more weight.
7. [X] has helpfully confirmed that there was no competition between Copart and Hills Motors for its salvaging needs, as Copart did not participate in any competitive process.⁹ However, given the *de minimis* nature of this contract, and that it concerns merely a [X] Hills Motors customer, the CMA could disregard the [X] example entirely: it is simply not evidence of competition for a national insurance contract.
8. As regards the [X] tender, the CMA indicates that in its Addendum, as in its Provisional Findings, it places little weight on this tender given its timing.¹⁰ Rather than being agnostic in this way, the CMA could place greater weight on this customer's response to the CMA's questionnaire of 22 December 2022, namely that [X] "*did not identify Hills Motors as a potential salvage supplier that could meet its requirement. It further noted that it views Hills Motors as primarily a recycled parts specialist and Copart a traditional salvager such that the organisations complement each other.*"¹¹ In response to the same questionnaire, [X] identified national coverage as one of the most important factors when selecting a salvager to provide salvage services¹² and that it was not acceptable for national coverage to be provided via subcontracting.¹³ Therefore, all the evidence provided by [X] during the course of the CMA's investigation is consistent with the new contemporaneous evidence gathered by the CMA and should therefore be reconsidered in this light.
9. Finally, aside from focusing on these four instances of alleged competition, the Parties also believe greater weight should be accorded to the views of all other insurance customers which are also consistent with the new evidence. We do not rehearse these views in detail here, but simply recall that: 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 (almost all

⁵ Addendum, para 2.5

⁶ Provisional Findings, para 8.89; Third-party responses to the CMA's Phase 1 customer questionnaire, October 2022, question 6.

⁷ In particular, Addendum, para 2.17

⁸ Addendum, para 2.13

⁹ Addendum, para 2.19

¹⁰ Addendum, para 2.24

¹¹ Provisional Findings, para 8.78(c).

¹² Provisional Findings, paras 7.79; 8.42.

¹³ Provisional Findings, para 8.43.

customers did not consider Copart and Hills Motors as competing at all); and not one customer expressed any concerns about this merger, with 12 of 16 customers explicitly expressing positive views.¹⁴

4. The new evidence clearly addresses any forward-looking competition concerns

10. In the CMA's Provisional Findings, the CMA inferred from the four apparent instances of recent competition between the Parties ([§], [§], [§] and [§])¹⁵ that Hills Motors was likely to be an even greater competitive constraint on Copart in the future. It was as if the CMA were identifying these instances as a launch pad for Hills Motors' likely future trajectory.
11. The Parties believe the CMA can better articulate how the new evidence addresses any forward-looking concerns by way of a two-step approach. First, the new contemporaneous evidence indicates that there was, in fact, no such launch pad for this future trajectory. Second, the CMA should yet again place greater weight on customer views as expressed to the CMA in the present proceedings, because these are forward-looking; they evidence customers' attitudes to Hills Motors not being a viable competitor in future tenders for national salvaging contracts.

5. Greater weight on evidence of Hills Motors' lack of ability to compete with Copart

12. As regards Hills Motors' technical ability to expand, the CMA's "*provisional view remains that, in principle, Hills Motors' model for Ageas is capable of being replicated (in that, at a minimum, it would not have inhibited Hills Motors from responding to RFPs on the basis of its network model).*"¹⁶ However, even if Hills Motors could respond to an RFP in this way, this is scarcely evidence that Hills Motors would actually be a viable competitor for such a tender. In other words, merely responding to an RFP is not even "*at a minimum*" the same as replicating the Ageas network model in practice.
13. The CMA's conclusion on a lack of any SLC would benefit from engaging with the Parties' recent paper on Hills Motors' *Inability to Compete for National Insurance Contracts* dated 26 May 2023. This provides a wealth of evidence that Hills Motors does not have the ability to service other national insurer contracts, including that Hills Motors cannot compete for national contracts in competition with e2e (something which is also corroborated in the CMA's new contemporaneous evidence regarding the [§] benchmarking exercise¹⁷); and that could also not do so without incurring significant upfront investments and debt, entirely at odds with Ian Hill's appetite for risk.
14. The evidence in this paper on Hills Motors' inability to compete for other national insurance contracts then dovetails with the lack of customer expectation that Hills Motors could service a national contract, including in the CMA's new contemporaneous evidence.

6. Conclusion

¹⁴ Please see the Parties' Response to the CMA's Provisional Findings.

¹⁵ Addendum, para 2.1

¹⁶ Addendum, para 3.5

¹⁷ Addendum, paras 2.3 and 2.8(d)(i)

15. In conclusion, the Parties support the CMA's revised provisional findings in its Addendum. However, the CMA could reconsider how the other evidence at its disposal, notably previous customer evidence and the Parties' paper on Hills Motors' inability to compete, is consistent with the new contemporaneous evidence.