**Completed acquisition by Copart, Inc. of Green Parts Specialist Holdings Ltd (Hills Motors)**

***Addendum Provisional Findings Report***

Comments by [COMMENTATOR]

1. After a seven month investigation into the completed acquisition by Copart UK Limited, a wholly owned subsidiary of Copart, Inc. ("Copart"), of the entire issued share capital of Green Parts Specialist Holdings Ltd ("Hills Motors") (the "Merger"), on 5 May 2023, the CMA provisionally concluded that the Merger had resulted or may be expected to result in a substantial lessening of competition ("SLC") in the supply of salvage services in the UK. Less than two months later, in an extraordinary turn of events, those Provisional Findings ("PF") have now fundamentally been reversed. According to the CMA's 23 June 2023 Addendum Provisional Findings ("APF"), this revision was triggered by new evidence on some of the recent tender and benchmarking opportunities, which the CMA appraised as evidence that Copart and Hills Motors (the "Parties") do not, after all, compete with each other to such an extent that the Merger could result in an SLC.
2. While [COMMENTATOR] appreciates the CMA's continued diligence and open mind throughout the investigation of the Merger, [COMMENTATOR] is surprised by the APF's reasoning and weighing of the available evidence.

***Finding of closeness of competition is reversed because two of the four instances that previously served as relevant evidence, appear now in a different light – yet, the APF do not explain why the other evidence is now discarded***

3. In its original PF, the CMA had identified an SLC on the basis of a finding that the Merger had removed a competitive constraint, notably because Copart and Hills Motors had been considered close competitors. To this end, the CMA had looked at four instances of competition between the Parties:

    - a 2020 tender process,
    - a 2022 tender process for insurer X,
    - a 2022 tender process for insurer Y, and

- a 2021 benchmarking exercise.

4. Based on new evidence received in relation to two of these four instances (namely the 2021 benchmarking exercise and the 2022 tender process for insurer X), the CMA has now changed its view of the case. This change of mind cannot be sustained for several reasons.
5. First, even if it was correct to re-interpret the available evidence regarding these two instances, the other two instances on which the CMA previously relied to provisionally find an SLC remain valid and strong evidence for direct and close competition between the Parties. The APF's failure to weigh the new evidence against those other instances of undisputed evidence of close competition between the Parties represents a serious omission that vitiates the APF's suitability to serve as a basis for the CMA's proposed clearance decision in this case.
6. Second, the new evidence provided with regard to the 2021 benchmarking exercise and the 2022 tender process for insurer X, is inconclusive at best and, as such, unsuitable to dismiss an SLC finding.
7. As regards the **2021 benchmarking exercise**, the APF interpret its outcome as proof that the Parties do not compete closely. This interpretation is contradicted by the response to the PF that the insurer in question submitted to the CMA's case file and that documents that the insurer did consider the Parties to directly compete with each other when it invited them to participate in the benchmarking exercise. For example, the insurer submits that it invited Hills Motors to the benchmarking exercise "*on the basis that it is a known significant salvage service provider who partners with other motor insurers*" (APF, at 2.7). The insurer also refers to the "*the benefits of the 'closed loop' parts and salvage management process*" (APF, at 2.8) as relevant factors for appraising Hills Motors' value proposition and confirms that it "*did conduct an assessment comparing the service level agreement (SLA) data for salvage services provided by Hills Motors with the corresponding data provided by Copart and the other participants*" (APF, at 2.9).
8. The APF discard these submissions in light of the outcome of the benchmarking exercise, which resulted in a ***relatively*** weaker positioning of Hills Motors compared to Copart. However, the outcome of the benchmarking exercise cannot render obsolete the relevance of the fact that Hills Motors was included

in the exercise to begin with. Any different view would mean that the winner of a tender process is without close competitors simply because they did not win. If the benchmarking exercise had been a tender, competition would have taken place when the participants were invited to the exercise. Focusing solely on the outcome ignores the fact that the mere presence of another competitor can be expected to have an effect on the bidding behaviour of the other participants.

9. It is undisputed that Hills Motors is one of the smaller competitors amongst what the APF describe as "*a small number of players – Copart, IAA, e2e, Hills Motors, SureTrak – with demonstrable success in winning and servicing large national insurance contracts*" (APF at 3.3). To argue that in this concentrated market Hills Motors is not a close competitor to Copart, means that Copart does not have any close competitors because it is significantly larger than all of the other players. Defining closeness of competition in such a restrictive way rewards Copart's market leadership with a regulatory free pass.
10. Lastly, it should be recalled that the benchmarking exercise was carried out and evaluated by one single insurer. Even if that insurer had meaningfully concluded on how close Copart and Hills Motors compete, there would no reason to treat such conclusion as authoritative or representative for the industry more generally, given that Hills Motors is on record for having recently secured a substantial contract and for having been invited to other insurers' tenders. Those facts should carry more weight in the CMA's assessment.
11. As regards the **2022 tender process for insurer X**, the reversal of the PF is justified with a reference to a clarification from insurer X, that Hills Motors would not be "*a 'direct competitor' of Copart for salvage services*" (APF at 2.13). There is good reason to believe that the concept of 'direct competition' as used by insurer X is different from 'close competition' within the meaning of the CMA's Merger Assessment Guidelines ("MAG"). After all, insurer X is on record for saying that "*all tender participants may, in principle, be capable of providing salvage services*" and "*that it considered Hills Motors as a 'potential viable competitor' to Copart for national salvage services*" (APF at 2.13), a fact corroborated by the insurer's decision to send Hills "*an invitation to tender for salvage management services*" (APF at 2.16). It follows that the clarifications provided by insurer X in relation to the 2022 tender process do not undermine an SLC finding but rather corroborate the reasoning laid out in the PF.

12. It should be irrelevant in this context that Hills Motors ultimately chose to 'pull out' of the tender process "*due to its acquisition by Copart*" (APF at 2.16) because that decision does not say anything about Hills Motors' capability to compete. In fact, quite the opposite: if Hills Motors thought itself incapable of competing with Copart, there would have been no reason to pull out.[1]
13. The existence of a relevant competitive relationship between Copart and Hills Motors is evidenced also by the APF's reference to another tender process where the insurer in question is reported to have engaged with Copart to explore whether or not to "*engage in a more formal [tender] process*" (APF at 2.19). Just because Copart did not want to participate in this process does not mean that it should not be regarded as a potential competitor. Since the APF interpret the closeness of competition chiefly by looking at customers' perceptions, a consistent application of this benchmark should result in defining the Parties as close competitors because that customer apparently viewed them as such.
14. The evidence on which the CMA relies in order to re-asses the benchmarking exercise and the 2022 tender process is contradictory and inconclusive. Considering that this 'new evidence' stems from third party commentators who previously submitted a very different story to the CMA's case file, their latest submissions should be treated with particular caution.

***Focusing on how customers judge closeness of competition misses the critical perspective of competitors***

15. By discarding competitors' submissions (that highlighted the competitive constraints exerted by Hills Motors) as self-serving[2] and by focussing instead exclusively on select customers' submissions, the APF ignore the principle that customers' views are of secondary importance when assessing the closeness of competition between market participants. Indeed, competitors' views are, in

[1] For the avoidance of doubt, [COMMENTATOR] notes that it has no knowledge of when exactly Hills Motors took the decision to retract its bid and whether such decision fell outside the 5 July to 9 August 2022 timeframe between the closing of the transaction and the imposition of the IEO. [COMMENTATOR] cannot, therefore, comment on whether or not Hills Motors' decision to terminate its bid could have raised suspicions about a gun jumping infringement or a breach of the CMA's initial enforcement order – a risk which could have been easily avoided if its bid would have been obviously uncompetitive and doomed anyway.
[2] APF at 3.11.

this respect, much more relevant because it is their perception that influences whether or not they adjust their competitive behaviour in response to another competitor's presence. This reality is reflected in the CMA's MAG, which in several places refer to factors that are relevant to a closeness of competition assessment that customers may not be aware of and that become relevant *before* a (potential) competitor interacts with a customer. For example, according to the MAG (at 5.3) "*potential entrants can be thought of as dynamic competitors, even before they effectively enter and begin supplying customers. A merger may reduce the incentives of dynamic competitors to continue with efforts to enter or expand, or the incentive of incumbent firms to mitigate the threat of future rival entry or expansion*" (emphasis added). Similarly, the MAG at 5.23 note that "*[t]he elimination of a dynamic competitor that is making efforts towards entry or expansion may lead to an SLC even where entry by that entrant is unlikely and may ultimately be unsuccessful. This may be the case if, for example, there is evidence that the competitor's entry or expansion would have a significant impact on other firms' future profits. In such circumstances, the removal of the threat of entry may lead to a significant reduction in innovation or efforts by other firms to protect those future profits*" (emphases added).

16. These references to the MAG are particularly pertinent for the case at hand because the APF note that Copart had been "*monitoring Hills Motors alongside a small number of competitors, had taken action against Hills Motors as an identified competitor and was targeting the same customers*" (APF at 3.13). Hills Motors is not only willing to compete (APF 3.13), it is also capable (with a sub-contracting/network model that customers have validated (APF 3.3)) and it is on record for having secured a significant contract[3] more recently than e2e, who the APF nonetheless consider a closer competitor to Copart. In other words, while Hills Motors may not be the closest competitor to Copart, it certainly has proven to be a dynamic competitor in a concentrated market.
17. What is more, the APF note that "*internal documents submitted by Hills Motors showed that, prior to the Merger, Hills Motors had ambitions to compete for*

[3] [COMMENTATOR] understands that Hills Motors' contract with Ageas has a volume of 25,000 vehicles per year.

*salvage service customers, including Copart's existing customers*" (APF at 3.13). It is difficult to understand why the CMA would be willing to discard this documented threat of emerging competition simply because customers did not corroborate it (because they had no knowledge about these 'ambitions'). The APF's rationale completely misses the negative effects on competition that the Merger is set to have on future competition in the market.

***Closeness of competition is not the only reason why the Merger results in an SLC***

18. The APF drop the previously identified SLC on the basis of a reassessment of the degree to which the Parties compete. By doing so, they ignore that closeness of competition is just one of many factors that are relevant to the substantive assessment. In fact, for the case at hand, another factor is far more relevant and is reason enough to prohibit the Merger.
19. According to the MAG, an SLC can be found first and foremost in a situation where a "*merger involves the market leader and the number of significant competitors is reduced from four to three*" (MAG, at 2.18). Indeed, this example is all the more relevant here, where the Merger is a **4-to-2** transaction: according to the APF, "*the Parties are two of a small number of players – Copart, IAA, e2e, Hills Motors, SureTrak*" (APF, at 3.3), of which SureTrak cannot be considered a 'significant competitor' having recently lost its only material contract (with Tesco). Since Hills Motors is a significant part of e2e, the Merger essentially eliminates both Hills Motors ***and*** e2e as competitors to Copart (especially when applying the APF' rationale according to which smaller players are not a meaningful constraint on Copart).
20. The APF also deviate from the legal test set out in the PF – without explaining why those tests should no longer apply in this case:

    - "*where one merger firm has a strong position in the market, even small increments in market power may give rise to competition concerns*" (PF at 8.6);

    - "*[t]he merger firms need **not** be each other's closest competitors for unilateral effects to arise*." (PF at 8.34; emphasis added);

- "*[t]he smaller the number of significant players, the stronger the prima facie expectation that any of the two firms are close competitors. In such a scenario, the CMA will require persuasive evidence that the merger firms are not close competitors in order to allay any competition concerns*." (PF at 8.35).

***Merger clearance in this case will set a free-for-all precedent***

21. For all of the above reasons, [COMMENTATOR] continues to have grave concerns about the Merger. [COMMENTATOR] urges the CMA to revisit its APF. While a clearance in this case would appear to set a precedent that future transactions by [COMMENTATOR] or other market participants should face no objections from the CMA (unless they involve a merger between Copart and IAA), none of these transactions will allow anyone to catch up with, let alone challenge, Copart's eminent market-leading position.
22. Allowing Copart to acquire Hills Motors will cement Copart's dominant position in the market, as the merged entity is set to capitalize on the feedback loop between salvage vehicles and parts, where increased access to the former strengthens the market position for the latter and *vice versa*. Considering Copart's position as the distant market leader, [COMMENTATOR] and others will be unable to catch up with Copart's head start. While not all customers may yet realize the implications, the SLC that this Merger results in will harm them for years to come.