

**Open Letter to Copart, Inc.**

From: Kirstin Baker  
*CMA Inquiry Chair*

14 July 2023

### **Copart/Hills Motors: ‘Customer outreach’ during the CMA’s merger investigation**

Any CMA merger investigation involves an in-depth analysis of the expected effects of the merger on competition, markets and, ultimately, UK consumers and businesses. A significant amount of evidence is gathered from a variety of sources, including from customers of the merging businesses, who typically hold significant insight into how competition works in practice in the markets that fall within the scope of the investigation. It is therefore of key importance to our merger investigations that the evidence obtained from these third parties is reliable – that is, that views expressed are accurate (ie reflecting those customers’ own experience of the market), independently-formed and free from external bias. This helps ensure that the CMA can reach appropriate decisions on the right basis.

Where merging parties seek to unduly influence input from third parties, this not only risks decisions being taken on an inaccurate basis, but can also result in unnecessary delays and costs as additional work is carried to test the reliability of information provided by third parties.

During the course of this inquiry, it became clear to the Inquiry Group that Copart engaged in a significant customer outreach exercise following the publication of our provisional findings report. In particular, we found evidence that Copart provided customers with detailed bulleted ‘key points’ which it encouraged them to submit to the CMA in response to our provisional findings report. On some occasions, Copart also drafted (or offered to draft) favourable consultation responses on behalf of customers. These contacts appear to have been supported by (and at times directly involved) Copart’s UK & Ireland senior management.

We have seen that some customers expressed discomfort about this approach, with two in particular asking Copart to refrain from making further contact with them in

relation to the CMA's ongoing investigation. We are, however, concerned that other customers may not have felt able to push back in the same way.

In this case, the detailed and directive nature of Copart's customer outreach has led us to place considerably less weight on the customer views expressed to us in response to our Provisional Findings than we otherwise would have done. We took additional steps to gather internal documents from customers, which pre-dated the inquiry and can therefore be presumed to be free from influence by Copart, and have placed greater reliance on these in reaching our final decision. This has, however, taken some time (resulting in a delay to completing our investigation) and has brought with it additional costs, both for the CMA and for the third-party businesses that have found themselves subject to additional information requests.

We recognise that businesses will wish to engage with their customers in relation to transactions that they enter into and to explain their position in relation to any merger control investigations that those transactions give rise to. We also broadly welcome these businesses encouraging their customers to engage with the CMA's investigations. We do not consider, however, that it is appropriate for merging businesses to seek to influence the content of third-party submissions, particularly in the highly directive way that Copart has sought to.

Our assessment of the weight that we gave to customer views in this case and our approach to additional evidence-gathering in light of Copart's efforts to influence customer submissions are both described in detail in our Final Report. But, in light of the nature and extent of Copart's customer outreach in this case, we are publishing this letter on our website, both to ensure that third parties involved in this investigation are fully aware of the approach that we have taken and, more broadly, to ensure that businesses involved in CMA investigations in future are conscious of our position in this regard.

Yours faithfully

Kirstin Baker  
*CMA Inquiry Chair*