

## Completed acquisition by Copart, Inc. of Green Parts Specialist Holdings Ltd

### Decision to impose a penalty on Copart, Inc., CPRT LLP and Copart UK Limited under section 110 of the Enterprise Act 2002

#### Decision

1. Following consideration of all relevant circumstances and having regard to its guidance on administrative penalties,<sup>1</sup> the Competition and Markets Authority (the **CMA**) gives notice to Copart, Inc., CPRT LLP and Copart UK Limited (together **Copart**) that it has decided to impose a penalty on Copart, Inc., CPRT LLP and Copart UK Limited jointly and severally under section 110 of the Enterprise Act 2002 (the **Act**) because it finds that Copart has, without reasonable excuse, failed to comply in full with the requirements imposed on it by the notice issued to Copart under section 109 of the Act on 26 April 2023 (the **Notice**). The penalty is a fixed amount of £25,000.
2. On 11 July 2023, the CMA informed Copart that it was of the preliminary view that Copart had not complied in full with the Notice and that the CMA was considering imposing a penalty under section 110 of the Act. Copart responded by letter of 18 July 2023. Having considered Copart's representations, the CMA decided to issue a provisional penalty notice to Copart on 27 July 2023 (the **Provisional Penalty Notice**).<sup>2</sup> Copart responded by letter of 2 August 2023 (**Copart's Response to Provisional Decision**). Having considered Copart's further representations, the CMA has decided to issue this penalty notice to Copart for the reasons set out below.

#### A. Executive summary

##### ***Failure to comply in full with the Notice***

3. On 9 December 2022, the CMA referred the completed acquisition by Copart UK Limited, a wholly owned subsidiary of Copart, Inc., of the entire issued share capital of Green Parts Specialist Holdings Ltd (**Hills Motors**) (the

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<sup>1</sup> *Administrative penalties: Statement of Policy on the CMA's approach* (**CMA4**).

<sup>2</sup> In accordance with **CMA4**, paragraph 5.2.

**Merger**) for further investigation and report by a group of CMA panel members.<sup>3</sup> The CMA issued its final report on the Merger on 14 July 2023.

4. The CMA decided to issue the Notice for the purpose of its investigation of the Merger and deciding what, if any, action should be taken if, following its review, it decided that the Merger gave rise to a relevant merger situation that had resulted, or may be expected to result, in a substantial lessening of competition (**SLC**) within any market or markets in the UK. It did so in order to obtain information enabling the CMA to ascertain whether, and if so on what terms, Copart was pursuing tenders in the relevant markets with each of [Insurer 1] (**[Insurer 1]**), [Insurer 2] (**[Insurer 2]**) and [Insurer 3] (**[Insurer 3]**) and to assess whether such action was in compliance with the initial enforcement order imposed by the CMA on 9 August 2022 (the **IEO**).<sup>4</sup> The Notice required Copart to provide the CMA with certain documents (including correspondence) with [Insurer 1], [Insurer 2] and [Insurer 3] in relation to Copart's responses to requests for proposals (**RFPs**) issued by these (existing or potential) customers and submitted by Copart shortly prior, or subsequent to, the imposition of the IEO.<sup>5</sup> The IEO was served on Copart, Inc., CPRT LLP, Copart UK Limited and Hills Motors on 9 August 2022.<sup>6</sup>
5. On 4 May 2023, Copart provided a response to the Notice comprising a letter and 27 annexes (the **Notice Response**).
6. On 31 May 2023, having reviewed the Notice Response, the CMA issued notices under section 109 of the Act to each of [Insurer 1], [Insurer 2] and [Insurer 3] requiring them to provide correspondence with Copart in relation to the relevant RFPs. In response to those section 109 notices, [Insurer 1], [Insurer 2] and [Insurer 3] provided a cumulatively significant volume of correspondence with Copart which had not been produced by Copart in its Notice Response, a significant amount of which the CMA, for the reasons set out below, considers to be responsive to the Notice.

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<sup>3</sup> References in this penalty notice to decisions and findings of the CMA include decisions and findings made by the independent group of CMA panel members appointed to investigate the Merger.

<sup>4</sup> The IEO was imposed with the aim of preventing pre-emptive action being action that might prejudice the outcome of the CMA's review of the Merger or impede the taking of any appropriate remedial action (*Interim measures in merger investigations* (**CMA108**), paragraphs 1.3 and 1.4). The CMA's role in regulating merger activity is a matter of public importance and obligations preventing pre-emptive action contained in interim measures such as the IEO are of vital importance to the functioning of the UK's voluntary merger regime (**CMA108**, paragraphs 1.10 and 2.16).

<sup>5</sup> Copart submitted the relevant RFP responses on [REDACTED] 2022 ([Insurer 1]), [REDACTED] 2022 ([Insurer 2]) and [REDACTED] 2022 ([Insurer 3]). Copart's response to the Notice, questions 1(a), 1(b), 2(a), 2(b) and 3(a).

<sup>6</sup> [Initial enforcement order](#) of 9 August 2022.

7. The CMA finds that Copart did not produce all responsive documents required by the Notice and therefore has failed to comply in full with the requirements of the Notice.
8. This failure to produce all documents required to be produced by the Notice was serious and had an adverse impact on the CMA's investigation and on third parties. It impacted the CMA in carrying out its statutory functions, in particular its ability to assess Copart's compliance with the IEO on a timely basis, required the CMA to issue compulsory information notices to third parties and resulted in the CMA and those third parties devoting significant time and resources to enable the CMA to obtain relevant documentation, which should have been provided by Copart in response to the Notice.

### ***Without reasonable excuse***

9. The CMA finds that Copart has no reasonable excuse for its failure to comply in full with the Notice. In particular, the CMA is not aware of any facts beyond the control of Copart, or any significant and genuinely unforeseeable or unusual event,<sup>7</sup> which led to its non-compliance with the Notice.

### ***Decision to impose a penalty***

10. The CMA finds that it is appropriate and proportionate to impose a fixed penalty on Copart because the failure to comply adversely affected the conduct of the CMA's investigation, adversely impacted third parties and is in the interests of deterrence.
11. The CMA finds that a fixed penalty of £25,000 is an appropriate and proportionate penalty.

## **B. Factual background**

### ***Context***

12. On 5 July 2022, Copart completed its acquisition of Hills Motors.
13. On 9 August 2022, the CMA served the IEO under section 72(2) of the Act on Copart, Inc., CPRT LLP, Copart UK Limited and Hills Motors. The IEO contained, *inter alia*, a prohibition that:

Except with the prior written consent of the CMA, each of the Addressees shall not, during the specified period, take any action

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<sup>7</sup> [CMA4](#), paragraph 4.4.

which might prejudice a reference of the transaction under section 22 of the Act or impede the taking of any action under the Act by the CMA which may be justified by the CMA's decisions on such a reference, including any action which might:

(a) lead to the integration of the Hills Motors business with the Copart business;

(b) transfer the ownership or control of the Copart business or the Hills Motors business or any of their subsidiaries; or

(c) otherwise impair the ability of the Hills Motors business or the Copart business to compete independently in any of the markets affected by the transaction.

14. On 3 October 2022, the CMA launched a phase 1 merger investigation, which on 28 November 2022 concluded that there was a realistic prospect of an SLC within a market or markets in the UK. The CMA referred the Merger for an in-depth phase 2 merger investigation on 9 December 2022 under section 22 of the Act.
15. On 5 May 2023, the CMA issued its provisional findings,<sup>8</sup> provisionally concluding that the Merger had resulted or may be expected to result in an SLC in the supply of salvage services in the UK.
16. Following receipt of new evidence, the CMA issued addendum provisional findings<sup>9</sup> on 23 June 2023, provisionally concluding that the Merger had not and may not be expected to result in an SLC. That provisional finding was confirmed on 14 July 2023 when the CMA issued its final report.<sup>10</sup>

### ***The Notice***

17. Under section 109 of the Act, the CMA has the power to issue a notice requiring a person to provide documents and information for the purpose of assisting the CMA in carrying out any functions in connection with a matter that is or has been the subject of a reference under section 22 of the Act.
18. On 26 April 2023, the CMA issued the Notice to Copart. The Notice included, *inter alia*, the following requirements:

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<sup>8</sup> [Provisional findings report dated 5 May 2023.](#)

<sup>9</sup> [Addendum provisional findings report dated 23 June 2023.](#)

<sup>10</sup> [Final report dated 14 July 2023.](#)

1. Annexes 1 and 2 to the P1 Notice 4 Response refer to [Insurer 1]'s 'Request for Proposal (RFP) relating to [X]' issued in [X] 2022. Provide the following: [...]

- c) a copy of the proposal submitted to [Insurer 1];
- d) copies of any revised or subsequent proposals; and,
- e) copies of any correspondence between Copart and [Insurer 1] which relates to the proposal after submission of the proposal.

2. Annexes 1 and 2 to the P1 Notice 4 Response also refer to [Insurer 3]'s Request for Proposal (RFP) relating to [X] issued in [X] 2022). Provide the following: [...]

- c) confirmation that document COP\_0001012 provided in P2 Notice 2 Response is a copy of Copart's proposal submitted to [Insurer 3] or otherwise provide a copy of the proposal submitted to [Insurer 3];
- d) copies of any revised or subsequent proposals; and,
- e) copies of any correspondence between Copart and [Insurer 3] which relates to the proposal after submission of the proposal.

3. The Annex to the P2 Notice 2 Response provides information concerning Copart's response to [Insurer 2]'s Request for Proposal (RFP) relating to [X] which we understand was submitted on [X] 2022. Provide the following: [...]

- b) copies of any revised or subsequent proposals; and,
- c) copies of any correspondence between Copart and [Insurer 2] which relates to the proposal after submission of the proposal.

19. On 4 May 2023, Copart submitted the Notice Response to the CMA.

***The [Insurer 1], [Insurer 2] and [Insurer 3] notices***

20. On 31 May 2023, having reviewed the Notice Response, the CMA issued further notices under section 109 of the Act to [Insurer 1], [Insurer 2] and [Insurer 3] (the **[Insurer 1] Notice**, the **[Insurer 2] Notice** and the **[Insurer 3] Notice**, respectively).

21. The [Insurer 1] Notice included, *inter alia*, the following requirements:

We understand that [Insurer 1] issued a 'Request for Proposal (RFP) relating [X] (the 'RFP') in [X] 2022 to Copart and Hills Motors.

1. Provide the following: [...]

b) copies of any revised or subsequent proposals received by [Insurer 1] from Copart subsequent to Copart's RFP response on [X] 2022;

c) copies of any Documents<sup>11</sup> constituting correspondence between [Insurer 1] and Copart which relates to the RFP; this includes correspondence before and after submission of Copart's RFP response on [X] 2022;

22. The [Insurer 2] Notice included, *inter alia*, the following requirements:

1. We understand that on [X] 2022 Copart submitted a response to [Insurer 2]'s Request for Proposal (RFP) relating to [X] (the 'RFP'). Provide the following: [...]

b) copies of any revised or subsequent proposals by [Insurer 2] from Copart subsequent to Copart's RFP response on [X] 2022; and

c) copies of any Documents<sup>12</sup> constituting correspondence between [Insurer 2] and Copart which relates to the RFP; this

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<sup>11</sup> Documents (unless otherwise specified) includes: documents in any form, including, but not limited to, minutes, presentations, reports, Word documents, pdfs, Excel files, studies, internal analysis, analyst reports, customer surveys, electronic documents, or documents stored on proprietary systems, internal and external emails and all family documents (including email attachments), but excludes information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging application; and which are in the possession of [Insurer 1] (including, for the avoidance of doubt, all entities under common ownership or control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Act).

<sup>12</sup> Documents (unless otherwise specified) includes: documents in any form, including, but not limited to, minutes, presentations, reports, Word documents, pdfs, Excel files, studies, internal analysis, analyst reports, customer surveys, electronic documents, or documents stored on proprietary systems, internal and external emails and all family documents (including email attachments), but excludes information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging application; and which are in the possession of [Insurer 2] (including, for the avoidance of doubt, all entities under common ownership or control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Act).

includes correspondence before and after submission of Copart's RFP response on [REDACTED] 2022.

23. The [Insurer 3] Notice included, *inter alia*, the following requirements:

We understand that [Insurer 3]'s issued a 'Request for Proposal (RFP) relating to the [REDACTED]' issued (the 'RFP') in [REDACTED] 2022 to Copart and Hills Motors.

1. Provide the following: [...]

b) copies of any revised or subsequent proposals received by [Insurer 3] from Copart subsequent to Copart's RFP response on [REDACTED] 2022; and

c) copies of any Documents<sup>13</sup> constituting correspondence between [Insurer 3] and Copart which relates to the RFP; this includes correspondence before and after submission of Copart's RFP response on [REDACTED] 2022.

24. On 6, 8 and 9 June 2023, [Insurer 3], [Insurer 2] and [Insurer 1] provided responses to their respective section 109 notices.

25. Following a review of the responses provided by [Insurer 3], [Insurer 2] and [Insurer 1], and having considered representations made by Copart in response to the CMA's letter of 11 July 2023 informing Copart that the CMA was considering imposing a penalty under section 110 of the Act and to the CMA's Provisional Penalty Notice of 27 July 2023, the CMA concludes that Copart failed to comply in full with the Notice.

26. This failure is evidenced by the cumulatively significant volume of correspondence provided by [Insurer 3], [Insurer 2] and [Insurer 1] which was responsive to questions 1(e), 2(e) and 3(c) of the Notice but not provided by Copart in the Notice Response.

27. The correspondence which the CMA considers that Copart failed to provide in the Notice Response is attached at **Annex 1** to this penalty notice. As is

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<sup>13</sup> Documents (unless otherwise specified) includes: documents in any form, including, but not limited to, minutes, presentations, reports, Word documents, pdfs, Excel files, studies, internal analysis, analyst reports, customer surveys, electronic documents, or documents stored on proprietary systems, internal and external emails and all family documents (including email attachments), but excludes information stored on social media accounts like Twitter or Facebook, chats, instant messages, text messages and messaging application; and which are in the possession of [Insurer 3] (including, for the avoidance of doubt, all entities under common ownership or control, or over which it exerts material influence, or which exert material influence over it within the meaning of section 26 of the Act).

evident from Annex 1, Copart failed to provide the CMA with more than 50 documents that the CMA considers were responsive to the Notice.

28. The correspondence which the CMA considers that Copart failed to provide clearly falls within the scope of the Notice. It includes important correspondence documenting Copart's participation in, and commercial negotiations in relation to, the proposals submitted by Copart in response to the relevant RFPs, which are matters of considerable relevance in assessing Copart's compliance with the IEO (and the potential impact of any non-compliance). For example:

(a) [Insurer 1] provided, as annex A10 to its response to the [Insurer 1] Notice, an email with the subject line 'RFP - Reference [X]' from [X] (Copart) to [X] ([Insurer 1]) dated [X] 2022.<sup>14</sup> The email states:

I have emailed our RFP response over to you, I just wanted to let you know and make sure you have received it ok ?

Also just to mentioned [sic], I believe [X] made you aware that it is a joint RFP response following Copart's acquisition of The Green Parts Specialist business, which will continue to operate as it does today with the same teams and systems in place but with the added benefit of a larger pool of vehicles for Green Parts, delivering a greater opportunity for your green parts requirements.

The email from Copart explains to [Insurer 1] that the RFP response submitted by Copart was a joint submission on behalf of both Copart and Hills Motors. The email relates directly to Copart's RFP proposal and should have been provided to the CMA in response to question 1(e) of the Notice, which required the production of 'copies of any correspondence between Copart and [Insurer 1] which relates to the proposal after submission of the proposal'.

Copart submitted in its representations dated 2 August 2023 that '[Insurer 1] document A10 even pre-dates the date range in the Notice and is therefore out of scope.'<sup>15</sup> The CMA understands this submission to mean that Copart considers it out of scope because it pre-dates the IEO, which commenced on 9 August 2022. This submission is misconceived insofar as it relates to the question of non-compliance with the Notice. The Notice

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<sup>14</sup> While this document was listed as non-responsive in the annex to the CMA's letter of 11 July 2023, the CMA considers – as confirmed in the Provisional Penalty Notice – that this document is in fact responsive to the Notice.

<sup>15</sup> Copart's Response to Provisional Decision, paragraph 18.



is clear that it requires production of correspondence from any time after the submission of the proposal on 11 July 2022.<sup>16</sup>

- (b) [Insurer 3] provided, as annex A27 to its response to the [Insurer 3] Notice, an email chain with the subject line 'RE: [REDACTED] - Confirmation Of Successful Tender' between [REDACTED] and [REDACTED] (Copart) and [REDACTED] ([Insurer 3]) between [REDACTED] and [REDACTED] 2023. The email at the start of the chain dated [REDACTED] 2023 states:

Further to the recent tender exercise for the supply of [REDACTED] to [Insurer 3]. I am delighted to inform you that your submission was successful and we wish for Copart to become the supplier of these services to [Insurer 3] subject to final agreement and signing of contract documentation.

The email at the start of the chain sent by [Insurer 3] on [REDACTED] 2023 confirms that Copart was successful in winning the tender bid. The email relates directly to Copart's RFP proposal in that it confirms the successful outcome of Copart's tender bid. The email should have been provided to the CMA in response to question 2(e) of the Notice, which required the production of 'copies of any correspondence between Copart and [Insurer 3] which relates to the proposal after submission of the proposal'.

Copart in its representations dated 2 August 2023 submitted that this correspondence is not pertinent to the issue of IEO compliance as it confirms the award of the tender.<sup>17</sup> This submission is misconceived insofar as it relates to the question of non-compliance with the Notice. Copart was obligated to provide all correspondence within the scope of the Notice. It is for the CMA to determine whether or not any of the responsive documents constitute evidence of non-compliance with the IEO. It is not for Copart to gloss the requirements of the Notice and self-select the documents which it regards as material to the CMA's investigation.<sup>18</sup>

- (c) [Insurer 2] provided, as annex 1028 to its response to the [Insurer 2] Notice, an email chain with the subject line 'RE: Service Fee Table'

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<sup>16</sup> The submission is also misconceived insofar as it relates to the relevance of this correspondence to assessing Copart's compliance with the IEO, as it is relevant to understanding the full scope of Copart's communications with [Insurer 3] in relation to its RFP (which continued while the IEO was in force).

<sup>17</sup> Copart's Response to Provisional Decision, paragraph 18.

<sup>18</sup> The submission is also misconceived insofar as it relates to the relevance of this correspondence to assessing Copart's compliance with the IEO, as it is relevant to understanding the full scope of Copart's communications with [Insurer 3] in relation to its RFP and the outcome of such communications.

between [REDACTED] (Copart) and [REDACTED] ([Insurer 2]) dated [REDACTED] 2022. The first email (from [REDACTED] at Copart) attaches an Excel spreadsheet called '[Insurer 2] fee's [REDACTED]'. The email states:

Attached is the summary table outlining the current service fees alongside the RFP and revised fees, The table details which services [Insurer 2] currently utilise today plus the a [sic] breakdown of the fees we have agreed to refund as part of the overall proposal.

The first email in the chain dated [REDACTED] 2022 describes an attachment which compares the RFP fees against the current service fees. The email and attachment relate to the RFP proposal and should have been provided to the CMA in response to question 3(c) of the Notice, which required the production of 'copies of any correspondence between Copart and [Insurer 2] which relates to the proposal after submission of the proposal'.

Copart submitted in its representations of 2 August 2023 that 'an ongoing commercial discussion with an existing customer is not evidence of a breach, nor is the discussion around the potential new contract, especially when the commercial terms discussed related purely to the supply of salvage services already offered by Copart.'<sup>19</sup> This submission is misconceived insofar as it relates to the question of non-compliance with the Notice. The email was clearly responsive to the Notice in that it referred to the RFP response.<sup>20</sup>

- (d) [Insurer 2] provided, as annex 0021 to its response to the [Insurer 2] Notice, an email with the subject line 'RE: [Insurer 2] RFP' from [REDACTED] (Copart) to [REDACTED] ([Insurer 2]) dated [REDACTED] 2022. The email discusses, amongst other things, contract term as follows:

As discussed we are in agreement with the contract term proposed, [REDACTED] years with option to extend for [REDACTED]. I can also confirm that we can apply the revised pricing quickly, based on receipt of written confirmation of the agreed pricing we can implement the changes within a matter of a few days.

The email confirms Copart's agreement to contract length and the implementation of pricing arrangements under the RFP proposal. The email clearly relates to the RFP proposal and should have been provided

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<sup>19</sup> Copart's Response to Provisional Decision, paragraph 18.

<sup>20</sup> The submission is also misconceived insofar as it relates to the relevance of this correspondence to assessing Copart's compliance with the IEO, as it is relevant to understanding the full scope of Copart's communications with [Insurer 2] in relation to its RFP.

to the CMA in response to question 3(c) of the Notice, which required the production of ‘copies of any correspondence between Copart and [Insurer 2] which relates to the proposal after submission of the proposal’.

Copart in its representations of 2 August 2023 submitted that ‘this correspondence falls outside the scope of the Notice as it relates to the implementation of the newly awarded contract, a distinction that the CMA itself has made. Second, the CMA had already been informed of the award of such contract by Copart in its response to the Notice and Copart had submitted copies of all the negotiations and subsequent revised proposal’.<sup>21</sup> These submissions are misconceived insofar as they relate to the question of non-compliance with the Notice. The document clearly falls within the scope of the Notice. It pre-dates by several months the award of the tender on [REDACTED] 2023.<sup>22</sup> Further, Copart’s email of [REDACTED] 2022 relating to contract term and pricing was in response to an email from [Insurer 2] dated [REDACTED] 2022 (part of the same email chain) in which [Insurer 2] requested that it would like to give Copart an opportunity to address these topics in the context of [Insurer 2]’s objective of ‘trying to clarify the proposals we have received and making sure we are truly comparing the proposals equally’, ie in the context of [Insurer 2]’s pre-award evaluation of RFP responses.<sup>23</sup>

- (e) [Insurer 2] provided, as annex 2042 to its response to the [Insurer 2] Notice, an email with the subject line ‘FW: RFP questions.pptx’ from [REDACTED] (Copart) to [REDACTED] ([Insurer 2]) dated [REDACTED] 2022 forwarding a PDF document called ‘RFP Questions’. The PDF attachment answers the following questions:

Why do Copart believe there is such a variance in hammer price between them and their competitors?

From a benchmarking position, where do Copart believe [Insurer 2] stands in respect of the first payment (i.e.; from a lowest position when subrogating)?

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<sup>21</sup> Copart’s Response to Provisional Decision, paragraph 18.

<sup>22</sup> [Insurer 2] response to [Insurer 2] Notice, question 1(a). Copart’s response to the Notice listed the tender award date as ‘[REDACTED] 2022’. We understand this to be an error given that this date pre-dates the [Insurer 2]’s RFP.

<sup>23</sup> These submissions are also misconceived insofar as they relate to the relevance of this correspondence to assessing Copart’s compliance with the IEO, as it is relevant to understanding the full scope of Copart’s communications with [Insurer 2] in relation to its RFP and the outcome of such communications. The fact that Copart informed the CMA of the award of the contract in the Notice Response does not mean that the correspondence is not relevant.

What we would also need at this stage, is your fees mapped against [Insurer 2]'s book of business so that we can see average fees across the book.

The email attaches a PDF document which contains responses from Copart to questions from [Insurer 2] about Copart's RFP proposal. The responses from Copart to [Insurer 2]'s questions relate directly to Copart's RFP proposal and should have been provided to the CMA in response to question 3(c) of the Notice, which required production of 'copies of any correspondence between Copart and [Insurer 2] which relates to the proposal after submission of the proposal'.

Copart in its representations dated 2 August 2023 did not deny that this correspondence related to the RFP but submitted that 'none of these responses would ... have assisted the CMA in assessing whether Copart had complied with the IEO'.<sup>24</sup> Again, this submission is misconceived insofar as it relates to the question of non-compliance with the Notice. Whether a document is responsive to the Notice is to be determined by the terms the Notice itself rather than Copart's views on whether or not the document is material to the CMA's assessment of IEO compliance.<sup>25</sup>

29. As well as addressing the above specific examples, in its representations dated 2 August 2023, Copart also submitted that 'many of [the missing] documents are irrelevant and simply additional emails within chains which Copart already disclosed to the CMA'<sup>26</sup> and that some of the emails 'concern the implementation of the RFP, as opposed to the RFP itself', noting Copart's view that '[t]he Notice did not require Copart to provide any communications discussing the actual implementation of the awarded contract.'<sup>27</sup>
30. Addressing the first point, the CMA considers that the documents identified in Annex 1 were responsive to the Notice in that they constituted correspondence which related to the relevant RFP proposals after submission of the proposals. It is a matter for the CMA to assess their relevance to its investigation.

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<sup>24</sup> Copart's Response to Provisional Decision, paragraph 19.

<sup>25</sup> The submission is also misconceived insofar as it relates to the relevance of this correspondence to assessing Copart's compliance with the IEO, as it is relevant to understanding the full scope of Copart's communications with [Insurer 2] in relation to its RFP.

<sup>26</sup> Copart referred to four specific documents as examples of documents which it said fell into this category: [Insurer 1] annex A13 and annex A15 and [Insurer 2] annex 0003 and annex 0023. (Copart's Response to Provisional Decision, paragraph 16).

<sup>27</sup> Copart referred to three specific documents provided by [Insurer 2] as examples of documents which it said fell into this category: [Insurer 2] annex 0011, [Insurer 2] annex 0015 and [Insurer 2] annex 1019. (Copart's Response to Provisional Decision, paragraph 17.)

31. With respect to the second point, the three documents referenced by Copart pre-date the award of the [Insurer 2] contract on [REDACTED] 2023 and are therefore clearly in scope of the Notice. Specifically, a review of the three documents (each of which contains email chains of correspondence between Copart and [Insurer 2]) cited by Copart shows that: the latest email in [Insurer 2] annex 0011 is dated 6 March 2023, the latest email in [Insurer 2] annex 0015 is dated [REDACTED] 2022, and the latest email in [Insurer 2] annex 1019 is dated [REDACTED] 2023, and therefore all three documents pre-date the award of the contract on [REDACTED] 2023 and are in scope of the Notice.<sup>28</sup>
32. Copart also submitted that ‘many [of the documents identified by the CMA] are entirely immaterial, such as emails arranging a telephone call, e.g., [Insurer 2] documents 1025, 1031, 2024, 2030, 2031, 2034 and 2072; and [Insurer 3] documents A12 and A14.’<sup>29</sup> Again, it is a matter for the CMA to assess materiality to its investigation of documents and information responsive to a section 109 notice. The CMA is of the view that such documents are clearly responsive to the Notice and it was incumbent on Copart to provide them. For completeness, the CMA also considers that such materials may be relevant to the CMA’s investigation in that they provide evidence of potentially relevant contacts between the parties, which may have resulted in further enquiries as to the content of such calls.

## **C. Legal assessment**

### ***Relevant legislation***

33. Section 110(1) of the Act provides that where the CMA considers that a person has, without reasonable excuse, failed to comply with any requirement of a notice under section 109 of the Act, it may impose a penalty of such amount as it considers appropriate (in accordance with section 111 of the Act).
34. The CMA concludes that the statutory requirements for imposing a penalty under section 110 of the Act are met, and that the imposition of a penalty in a fixed amount of £25,000 is appropriate and proportionate in this case.

### ***Statutory requirements for imposing a penalty under section 110 of the Act***

#### ***Failure to comply in full with the requirements of the Notice***

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<sup>28</sup> For completeness, the annex to the Provisional Penalty Notice included [Insurer 2] annex 2057. Given that this document is dated after the contract award, it has not been included in Annex 1.

<sup>29</sup> Copart’s Response to Provisional Decision, paragraph 19.

35. The CMA finds that each of Copart, Inc., CPRT LLP and Copart UK Limited has failed to comply in full with requirements of the Notice, as set out below:
- (a) Questions 1(e), 2(e) and 3(c) of the Notice respectively required Copart to provide the CMA with the following in relation to Copart's responses to each of the three RFPs issued by [Insurer 1], [Insurer 2] and [Insurer 3]: 'copies of any correspondence between Copart and [each of [Insurer 1], [Insurer 2] and [Insurer 3]] which relates to the proposal after submission of the proposal.'
  - (b) As evidenced by documents provided to the CMA by [Insurer 1], [Insurer 2] and [Insurer 3] in response to their respective section 109 notices, Copart failed in its Notice Response to provide copies of all correspondence responsive to questions 1(e), 2(e) and 3(c) of the Notice. Such correspondence was within the scope of the Notice in that:
    - (i) it is specified or described in the Notice, or falls within a category of document which is specified in the Notice; and
    - (ii) it emanates from, or was sent to, Copart (and falls within the document retention period set out in Copart's data protection policy, such that the correspondence can be expected to have been within the custody or under the control of Copart at the time the Notice was issued).
36. In devising its methodology to identify correspondence responsive to the Notice, Copart limited the relevant custodians to two senior staff members, [redacted] ([redacted], Copart UK and Ireland) and [redacted] ([redacted], Copart UK), given that '[c]ommunications between Copart and third parties re tenders in the UK during the relevant period always involved [redacted] ([redacted], Copart UK), who takes the lead on coordinating tender responses, and [redacted] ([redacted], Copart UK).'<sup>30</sup>
37. In this context, the CMA notes that it is the responsibility of the recipient of a notice issued under section 109 of the Act to ensure that the methodology it uses to identify responsive documents is robust.<sup>31</sup> Applicable CMA guidance on this point states that:

It is ultimately the parties' responsibility to ensure that relevant material is produced in response to a document request. The CMA may engage with merging parties on whether the proposed approach is sensible and practical (and, in particular, seek to ensure that specific questions

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<sup>30</sup> Notice Response, Annex 2.

<sup>31</sup> [Guidance on requests for internal documents in merger investigations select appropriate custodians \(CMA100\)](#).

do not impose a disproportionate burden on the merging parties). The CMA may, in particular, engage with parties on the number of responsive documents generated by specific search terms in order to ensure that approach envisaged would not result in a disproportionate number of documents being produced. The CMA will not, however, be able to pre-emptively give assurances that no breach of the section 109 notice would occur in the event that relevant material later comes to light which parties could and should have provided.<sup>32</sup>

38. It is clear that questions 1(e), 2(e) and 3(c) of the Notice are drafted to capture all correspondence (following submission of the relevant proposals) between Copart and each of [Insurer 1], [Insurer 2] and [Insurer 3] in relation to the specified RFP responses. For the avoidance of doubt, the CMA did not approve the methodology chosen by Copart, and Copart's submission of the methodology that it used to identify documents responsive to the Notice does not serve to narrow the scope of that request (which remained as set out in the Notice).
39. It is evident from the correspondence provided by [Insurer 1], [Insurer 2] and [Insurer 3] attached at **Annex 1** that Copart's chosen methodology was insufficiently robust to identify all correspondence responsive to questions 1(e), 2(e) and 3(c) of the Notice. In particular, a significant proportion of the correspondence cumulatively provided by [Insurer 1], [Insurer 2] and [Insurer 3] that was responsive to the Notice but not provided by Copart involved Copart custodians other than those identified in Copart's methodology.

#### *Without reasonable excuse*

40. Section 110 of the Act provides that penalties can be imposed if a failure to comply is 'without reasonable excuse'. The Competition Appeal Tribunal (the **CAT**) considered this concept in *Electro Rent* and confirmed that an objective test should be applied as to whether any excuse put forward is reasonable.<sup>33</sup>
41. In this context, CMA4 provides that '[t]he circumstances that constitute a reasonable excuse are not fixed and the CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis. However, the CMA will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond [a

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<sup>32</sup> CMA100, paragraph 28.

<sup>33</sup> *Electro Rent Corporation v CMA* [2019] CAT4 (*Electro Rent*) at paragraph 69.

person's] control has caused the failure and the failure would not otherwise have taken place.<sup>34</sup>

42. The CMA does not consider the fact that the Notice Response set out the methodology used by Copart to constitute a reasonable excuse for Copart's failure to produce all correspondence responsive to questions 1(e), 2(e) and 3(c) of the Notice. This is because:
- (a) it is the responsibility of the recipient of a notice issued under section 109 of the Act to ensure that the methodology it uses to identify responsive documents is sufficiently robust;<sup>35</sup>
  - (b) given Copart's knowledge of its business, Copart was well placed to assess whether its chosen methodology was sufficiently robust; the CMA was not;<sup>36</sup> and
  - (c) in any case, the Notice Response shows that Copart failed to fully implement its stated methodology. The CMA has identified that a significant proportion of the correspondence cumulatively provided by [Insurer 1], [Insurer 2] and [Insurer 3] that was responsive to the Notice but not provided by Copart involved the two senior staff members identified in Copart's methodology as relevant custodians. While the CMA does not consider that the methodology set out in the Notice Response was adequate, it is apparent from Annex 1 that Copart failed to fully implement that methodology. Accordingly, it is clear that Copart not only failed to apply an appropriate methodology for responding to the Notice but also that its execution of its preferred methodology was flawed.
43. The CMA has considered Copart's representations of 2 August 2023 in relation to its methodology. Firstly, Copart submitted that its methodology was a genuine and proportionate attempt to identify responsive documents.<sup>37</sup> However, as noted above, Copart's implementation of its methodology failed to identify all responsive correspondence even when it involved the two chosen custodians. Secondly, Copart submitted that no other employee had the power to negotiate on behalf of Copart.<sup>38</sup> This is beside the point as other

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<sup>34</sup> CMA4, paragraph 4.4.

<sup>35</sup> CMA100, paragraph 28.

<sup>36</sup> The CMA does not, therefore, consider Copart's submission that it was 'able therefore to rely on the absence of challenge [by the CMA] to indicate that its methodology is reasonable' (Copart's Response to Provisional Decision, paragraph 12) to be well founded. Nor does the CMA consider that it is necessarily incumbent on the CMA to 'provide merging parties with an opportunity to remedy a breach' (Copart's Response to Provisional Decision, paragraph 13) of a section 109 notice before proceeding to enforcement action.

<sup>37</sup> Copart's Response to Provisional Decision, paragraph 11.

<sup>38</sup> Copart's Response to Provisional Decision, paragraph 11.



employees of Copart clearly engaged in correspondence relating to the relevant RFPs that was in scope of the Notice. Further, the fact that responsive correspondence was provided by [Insurer 1], [Insurer 2] and [Insurer 3] (within necessarily short but reasonable timeframes) indicates that providing all responsive correspondence was not a disproportionately burdensome or difficult request. Finally, Copart submitted that as ‘none of the allegedly omitted documents provides any material information which was not disclosed to the CMA in Copart’s Notice response, [it] demonstrates that such methodology was proportionate and reasonable.’<sup>39</sup> As to this submission, firstly the Notice required production of all responsive correspondence. It is not for Copart to assess its materiality to the CMA’s investigation. Secondly, as set out above, the CMA considers that the documents which Copart failed to provide included important correspondence documenting Copart’s participation in, and commercial negotiations in relation to, the proposals submitted by Copart in response to the relevant RFPs, which are matters of considerable relevance in assessing Copart’s compliance with the IEO.

44. In light of the above, the CMA is not aware of any facts beyond the control of Copart, or the result of a significant and genuinely unforeseeable or unusual event<sup>40</sup> which led to its non-compliance with the Notice. The CMA finds that Copart has no reasonable excuse for its failure to comply in full with the Notice.

#### **D. Appropriateness of imposing a penalty and the amount of the penalty**

##### ***Appropriateness of imposing a penalty***

45. Having had regard to its statutory duties and CMA4, and having considered all relevant facts, the CMA finds that the imposition of a fixed penalty is appropriate in this case. In reaching this view, the CMA has considered the seriousness of Copart’s failure to comply with the Notice in full, including the adverse impact of the failure on the CMA’s investigation and third parties, as well as having regard to the need to achieve deterrence.
46. Requests for information and documents are a key tool for the CMA to collect the information it needs to carry out its functions in merger control investigations. The failure in this case was significant and serious. In particular, it impacted the CMA’s ability to assess Copart’s compliance with the IEO on a timely basis. As recognised by the CAT in *Electro Rent*, ‘it is of

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<sup>39</sup> Copart’s Response to Provisional Decision, paragraph 11.

<sup>40</sup> CMA4, paragraph 4.4.

the utmost importance that interim orders be scrupulously complied with.<sup>41</sup> This equally applies to IEOs, which ‘serve a particularly important function where, as in this case, the merger was completed before it was examined by the CMA. Their function is to prevent conduct that might prejudice a reference or inhibit action required by the CMA’s final decision or limit the scope of what the CMA might be able to order. The CMA’s role in regulating merger activity, and its ability to do so effectively, is a matter of public importance’.<sup>42</sup> The timely availability and receipt of complete and accurate information is crucial to enable the CMA to make evidence-based decisions in this respect and, more generally, for the quality and effectiveness of its work.

47. Copart’s failure to comply in full with the Notice prevented the CMA from obtaining important information enabling it to carry out its statutory functions effectively. The seriousness of the adverse impact of Copart’s failure is demonstrated by the fact the CMA only received a significant proportion of the information it had requested from Copart by issuing compulsory information notices to third parties. This resulted in the CMA and those third parties devoting significant time and resources to enable the CMA to obtain and review relevant documentation, which should have been provided by Copart in response to the Notice.
48. The CMA considers that it is of utmost importance to the CMA’s ability to conduct effective investigations that parties have due regard to the requirements imposed on them by, among other things, section 109 of the Act. The CMA considers that the imposition of an administrative penalty under section 110 of the Act is critical to achieve deterrence; to impress both on Copart in this specific case, and more widely to those who may be subject to investigatory requirements in future, the seriousness of a failure, without a reasonable excuse, to comply with a notice issued under section 109 of the Act.
49. In its representations dated 2 August 2023, Copart submitted that it is not necessary for a penalty to be imposed as the Merger has already been cleared and therefore there is no need for a penalty to ensure swift compliance.<sup>43</sup> The CMA notes that ensuring swift compliance was not a consideration relied upon in the Provisional Penalty Notice when assessing whether to impose a penalty, nor is it a relevant consideration for that assessment for the purposes of this penalty notice. The CMA does not,

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<sup>41</sup> [Electro Rent](#) at paragraph 206.

<sup>42</sup> [Electro Rent](#) at paragraph 120.

<sup>43</sup> Copart’s Response to Provisional Decision, paragraph 38.

however, consider that the absence of this consideration negates the need to impose a penalty in this case.

50. Copart also submitted that the CMA had not presented evidence of Copart gaining any advantages or benefits from failing to submit documents which were immaterial to the CMA's assessment of the competitive effects of the Merger, the counterfactual and IEO compliance.<sup>44</sup> The CMA notes that this was not something that was alleged in the Provisional Penalty Notice and it is not relied upon now. The CMA does not, however, consider that the absence of this consideration negates the need to impose a penalty in this case.

### ***Appropriateness of the amount of the penalty***

51. As set out in this penalty notice, the CMA considers that Copart's failure to comply in full with the Notice was significant and serious. The CMA considers that Copart did not take compliance with the Notice sufficiently seriously – and, as set out in this penalty notice, this has had adverse consequences for the conduct of the CMA's investigation and for third parties which were required to devote significant time and resources to responding to compulsory information requests. In addition, the CMA has had regard to the need to achieve deterrence when setting the level of penalty.
52. The CMA notes Copart's submissions that the CMA's Provisional Penalty Notice failed to take into account that Copart had not committed any other breaches nor failed to respond to information requests in a timely manner and that the imposition of the maximum penalty would be 'unfair and disproportionate', noting that the CMA had imposed lower fines in past cases in which parties had repeatedly failed to respond to section 109 notices and/or responded weeks, if not months, after deadlines.<sup>45</sup>
53. In this context, the CMA considers that it is necessary to be cautious when drawing comparisons with previous decisions. The CMA's previous decisions do not create binding precedents analogous to case law. Each case turns heavily on its own facts, which the CMA must assess in each case by applying CMA4 and exercising its judgement in relation to the facts of the particular case.
54. In the circumstances of this case, having considered all relevant circumstances and having had regard to Copart's representations in response to the CMA's letter of 11 July 2023 and the Provisional Penalty Notice,

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<sup>44</sup> Copart's Response to Provisional Decision, paragraph 39.

<sup>45</sup> Copart's Response to Provisional Decision, paragraphs 41 – 42.

including its submissions on the proposed level of the penalty, the CMA considers that it is appropriate to impose a fixed penalty of £25,000.

### *Mitigating factors*

55. In its representations on the Provisional Penalty Notice, Copart referred to the fact that the CMA had already extended the statutory timetable three weeks before the issuance of the Notice as evidence that Copart's failure to comply with the Notice could not have had an adverse effect on the CMA's investigation.<sup>46</sup> This submission is misconceived. While an extension of the statutory timetable would constitute an extreme example of an adverse impact on a CMA phase 2 merger inquiry (if an unlikely one in the context of an assessment of IEO compliance), this submission does not address the fact that Copart's failure to comply in full with the Notice resulted in the CMA having to devote significant time and resources to enable it to obtain relevant documentation and that it had an impact on the CMA's ability to assess Copart's compliance with the IEO on a timely basis.
56. Copart also made additional submissions to the effect that its failure to comply in full with the Notice could not have caused any adverse effects on the CMA's investigation:
- (a) Firstly, it submitted that the CMA could not have been aware of any omissions in Copart's Notice Response at the time it issued the section 109 notices to [Insurer 1], [Insurer 2] and [Insurer 3] and that it was only after receiving documents from these third parties that the CMA was in a position to reach such conclusions. As a result, in Copart's submission, any omissions in Copart's Notice Response cannot have been the cause of the CMA issuing the section 109 notices to [Insurer 1], [Insurer 2] and [Insurer 3] and any time and resources expended by customers on responding to those requests. Copart submitted that 'it is entirely circular to assert that the results of those third-party requests were the cause for making those requests.'<sup>47</sup>

These submissions are misconceived. While the CMA did not reach a conclusion on Copart's compliance with the Notice at the time it received Copart's Notice Response, Copart's response was so limited that it raised concerns as to its completeness. As a result, the CMA decided to issue the section 109 notices to [Insurer 1], [Insurer 2] and [Insurer 3] to obtain relevant evidence from these third parties.

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<sup>46</sup> Copart's Response to Provisional Decision, paragraph 25.

<sup>47</sup> Copart's Response to Provisional Decision, paragraph 29.

(b) Secondly, Copart submitted while the Provisional Penalty Notice implied that the purpose of the [Insurer 1] Notice, the [Insurer 2] Notice and the [Insurer 3] Notice was to verify compliance with the IEO, it was unclear why the CMA only requested communications from these three parties. In this context, Copart submitted that '[s]ince the notices were sent to the very same customers which provided the evidence on the extent of competition provided by Hills Motors, and on which the CMA relied in the [addendum provisional findings], it is reasonable to assume this was the purpose of the Notices [sic] (and the third-party notices)'<sup>48</sup> and that 'the s.109 notices were considered necessary, not to verify IEO compliance, but to obtain documentary evidence to support the customers' views on the extent to which Hills Motors competes with Copart.'<sup>49</sup> Copart suggested, therefore, that the CMA's purpose in issuing the Notice and the section 109 notices to [Insurer 1], [Insurer 2] and [Insurer 3] was to obtain evidence relevant to the CMA's substantive assessment of the Merger and not to obtain evidence relevant to assessing Copart's compliance with the IEO.

The CMA understands this submission to mean that Copart considers that the issuance of the section 109 notices to [Insurer 1], [Insurer 2] and [Insurer 3] could not have been a consequence of Copart's failure to comply in full with the Notice. Again, this submission is misconceived. The CMA issued the Notice to Copart because it had concerns regarding Copart's compliance with the IEO in respect of the three RFPs issued by [Insurer 1], [Insurer 2] and [Insurer 3]. Having received Copart's limited response to the Notice, the CMA issued the section 109 notices to [Insurer 1], [Insurer 2] and [Insurer 3]. In the case of [Insurer 1] and [Insurer 3], the section 109 notices requested information relevant to assess Copart's compliance with the IEO and also certain information relevant to the substantive assessment of the Merger. In the case of [Insurer 2], the section 109 notice requested only information relevant to the assessment of Copart's compliance with the IEO. Lastly and contrary to Copart's submission, the CMA did not only request correspondence from 'the very same customers ... on which the CMA relied in the [addendum provisional findings]'<sup>50</sup>: this is evident from the fact that [Insurer 2] is not referred to in the addendum provisional findings.

57. Copart also suggested that the use of the section 109 power was unnecessary as the information could have been obtained by other means

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<sup>48</sup> Copart's Response to Provisional Decision, paragraph 27.

<sup>49</sup> Copart's Response to Provisional Decision, paragraph 28.

<sup>50</sup> Copart's Response to Provisional Decision, paragraph 27.

from these three parties.<sup>51</sup> In this context, the CMA notes that a voluntary request for information would have created a similar burden on these three parties and the CMA.

58. Further, Copart submitted that the Merger was cleared on the basis of third-party evidence which was never in Copart's custody or control.<sup>52</sup> It is unclear how this is relevant to Copart's compliance with the Notice. Further, that is not evidence that Copart's non-compliance did not have an adverse impact on the CMA's investigation. Additionally, Copart submitted that none of the alleged missing documents appear to have been relied upon in the CMA's addendum provisional findings or its final decision on the Merger.<sup>53</sup> Again, this is not relevant to assessing compliance with the Notice, nor does it mean that Copart's non-compliance did not have an adverse impact on the CMA's investigation; however, for completeness the CMA is of the view that a significant proportion of the omitted documents are relevant to the assessment of Copart's compliance with the IEO.
59. Finally, Copart also submitted that it is unclear what documents are in fact in scope in terms of the Notice and that a reference to Copart's failure to provide a 'significant proportion of information' requested from it 'ought to be understood in terms of the contents and value of the documents in question, not sheer numbers of documents.'<sup>54</sup> As regards the first point, Copart did not make any specific submissions on the drafting of the specific section 109 requests or explain in what way they lack clarity. In Copart's Response to Provisional Decision, it only made specific representations on the responsiveness of a small subset of the documents set out in Annex 1, which have been addressed at paragraphs 28 to 32 above. In the CMA's view, the documents in Annex 1 are all responsive to the Notice. As to the second point, as indicated in this penalty decision, it is not for the recipient of a section 109 notice to assess relevance of responsive documents to the CMA's investigation. Further, the CMA's assessment of the seriousness of Copart's failure to comply is not based on the 'sheer numbers of documents' Copart failed to provide. As set out above, while Copart did fail to provide a significant number of documents responsive to the Notice, the relevant correspondence includes important correspondence documenting Copart's participation in, and commercial negotiations in relation to, the proposals submitted by Copart in response to the relevant RFPs, which are matters of considerable relevance in assessing Copart's compliance with the IEO.

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<sup>51</sup> Copart's Response to Provisional Decision, paragraph 28.

<sup>52</sup> Copart's Response to Provisional Decision, paragraph 6.

<sup>53</sup> Copart's Response to Provisional Decision, paragraph 36.

<sup>54</sup> Copart's Response to Provisional Decision, paragraph 32.

60. The CMA does not consider that Copart has made out any mitigating factors. The CMA is not aware of any other potentially mitigating factors relevant to Copart's failure to comply in full with the Notice and therefore concludes that there are no such factors in this case.

#### *Financial resources available to Copart*

61. The CMA has had regard to the financial resources available to Copart.
62. In determining the appropriate level of penalty, the CMA has considered Copart Inc.'s published annual report and accounts. This information shows that:
- (a) The worldwide consolidated revenues of the Copart group of companies in the financial year ended 31 July 2022 were approximately £2,660 million.<sup>55</sup>
  - (b) In the same period, the worldwide net income of the Copart group of companies was approximately £828 million.<sup>56</sup>
63. These indicators show that Copart has significant resources available in respect of the imposition of a fixed penalty of £25,000 for the failure to comply in full with the Notice. In addition, the CMA considers that it is appropriate to impose a penalty at this level, having regard to Copart's size and financial position.

#### ***Conclusion on the imposition of a penalty***

64. Having had regard to its statutory duties and CMA4, and having considered all relevant facts, the CMA has decided that the imposition of a fixed penalty of £25,000 is appropriate on the basis that it: (i) would reflect the seriousness of Copart's failure to comply in full with the Notice and the adverse impact on third parties and the CMA's investigation, including its ability to assess IEO compliance, (ii) would act as a deterrent to Copart and other persons in the future, and (iii) is not disproportionate in this case.

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<sup>55</sup> As per [Form 10-K](#) filed with the United States Securities and Exchange Commission for the financial year ended 31 July 2022 at the average exchange for year ended 31 July 2022 of £1 : US\$1.3163.

<sup>56</sup> As per [Form 10-K](#) filed with the United States Securities and Exchange Commission for the financial year ended 31 July 2022 at the average exchange for year ended 31 July 2022 of £1 : US\$1.3163.

## **E. Next steps**

65. Copart is required to pay the penalty in a single payment, by cheque or bank transfer to an account specified to Copart by the CMA, by close of banking business on the date which is 28 days from the date of service of this penalty notice on Copart.
66. Copart has the following rights in relation to this final penalty:
  - (a) Copart may pay the penalty or different portions of it earlier than the date by which it is required to be paid.
  - (b) Pursuant to section 112(3) of the Act, Copart has the right to apply to the CMA within 14 days of the date on which this notice is served on it for the CMA to specify different dates by which the penalty or different portions of it are to be paid.
  - (c) Pursuant to section 114 of the Act, Copart has the right to apply to the CAT against any decision the CMA reaches in response to an application under section 112(3) of the Act, within the period of 28 days starting with the day on which Copart is notified of the CMA's decision.
  - (d) Pursuant to section 114 of the Act, Copart has the right to apply to the CAT within the period of 28 days starting with the day on which this notice is served on Copart in relation to:
    - (i) the imposition or nature of the penalty;
    - (ii) the amount of the penalty; or
    - (iii) the date by which the penalty is required to be paid or (as the case may be) the different dates by which portions of the penalty are required to be paid.
  - (e) If Copart applies to the CMA pursuant to section 112(3) of the Act for the CMA to specify a different date by which the penalty is to be paid, then the period of 28 days referred to in relation to (d)(iii) above shall start with the day on which Copart is notified of the CMA's decision on the section 112(3) application.
  - (f) Where a penalty, or any portion of such penalty, has not been paid by the date on which it is required to be paid and there is no pending appeal under section 114 of the Act, the CMA may recover any of the penalty and



any interest which has not been paid; in England and Wales such penalty and interest may be recovered as a civil debt due to the CMA.<sup>57</sup>

Signature:

**Kirstin Baker, CMA Inquiry Chair**

Date: 10 August 2023

**Competition and Markets Authority**

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<sup>57</sup> Section 115 of the Act. Section 113 of the Act covers (among other matters) the interest payable if the whole or any portion of a penalty is not paid by the date by which it is required to be paid.