

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

Decision to impose a penalty on Copart, Inc., CPRT LLP and Copart UK Limited under section 94A of the Enterprise Act 2002

Decision to impose a penalty

1. The Competition and Markets Authority (the **CMA**) hereby gives notice to Copart, Inc., CPRT LLP, Copart UK Limited (together **Copart**) that it has decided to impose a penalty on Copart, Inc., CPRT LLP, Copart UK Limited jointly and severally under section 94A of the Enterprise Act 2002 (the **Act**)¹ because it considers that Copart has, without reasonable excuse, failed to comply in certain respects with the requirements imposed on it by the initial enforcement order issued by the CMA under section 72 of the Act on 9 August 2022 to Copart (the **IEO**).²
2. The cumulative amount of the penalties in respect of all the breaches identified in this penalty notice is £2.5 million, comprising the following:
 - a) £650,000 for the Insurer 1 Breach;
 - b) £650,000 for the Insurer 2 Breach; and
 - c) £1.2 million for the Insurer 3 Breach.

The CMA's provisional penalty notice

3. On 11 July 2023, the CMA sent a letter to Copart outlining its initial concerns in relation to the suspected failures to comply with the terms of the IEO (the **IEO Preliminary Letter**). The CMA stated that it was considering imposing a

¹ Notice is given pursuant to section 112 of the Act and in accordance with Chapter 5 of [Administrative penalties: Statement of Policy on the CMA's Approach](#) (CMA4).

² The IEO [Tab 1, Annex 1] defines 'specified period' as 'the period beginning on the commencement date and terminating in accordance with section 72(6) of the Act'. The IEO commencement date was 9 August 2022. The IEO ceased to be in force when the reference was finally determined on issuance of the CMA's [final report](#) on 14 July 2023 (the **Final Report**) [Tab 133, Annex 2] in accordance with sections 72(6) and 79(1)(c) of the Act. The CMA issues this penalty notice in respect of breaches of the IEO within the specified period.

penalty on Copart. Copart provided written representations in response to the IEO Preliminary Letter by letter dated 18 July 2023 (the **IEO Preliminary Response**).

4. On 18 September 2023, the CMA issued to Copart a provisional notice to impose a penalty under section 94A of the Act (the **IEO Provisional Penalty Notice**). Copart provided written representations on the IEO Provisional Penalty Notice on 9 October 2023 (the **IEO Provisional Penalty Response**) in which it disputed that its conduct amounted to breaches of the IEO and objected to the imposition, and the level, of the penalty proposed in the IEO Provisional Penalty Notice. The CMA has considered the IEO Provisional Penalty Response. Copart's representations in the IEO Provisional Penalty Response are addressed in sections D and E below.³

Structure of this document

5. This penalty notice is structured as follows:
 - a) **Section A** sets out an executive summary.
 - b) **Section B** sets out the legal framework.
 - c) **Section C** sets out the factual background.
 - d) **Section D** sets out the failures to comply without reasonable excuse.
 - e) **Section E** sets out the CMA's reasons for finding that penalties cumulatively amounting to £2.5 million are appropriate and proportionate.
 - f) **Section F** sets out next steps, including Copart's right to appeal the CMA's decision to impose a penalty.

A. Executive Summary

Failure to comply with the IEO

6. On 5 July 2022, Copart UK Limited, a wholly owned subsidiary of Copart, Inc., acquired the entire issued share capital of Green Parts Specialist Holdings Ltd (**Hills Motors** and together with Copart, the **Parties**) (the **Merger**). On Friday, 5 August 2022, the CMA notified Copart of its intention to impose an initial

³ We have, where relevant, also taken account of representations made in the IEO Preliminary Response.

enforcement order and requested certain corporate details.⁴ On Tuesday, 9 August 2022, the CMA imposed the IEO.

7. The IEO required, among other things, that during the specified period,⁵ except with the prior written consent of the CMA, Copart:
 - a) refrain from taking any action which might have prejudiced a reference of the Merger under section 22 of the Act or might have impeded the taking of any action under the Act by the CMA which may have been justified by the CMA's decisions on such a reference, including any action which might have led to the integration of the Hills Motors business⁶ and the Copart business⁷ (paragraph 4);
 - b) take all necessary steps to ensure that (i) the Copart and Hills Motors businesses were carried on separately and that the Hills Motors business's separate sales identity was maintained (paragraph 5(a)) and (ii) any negotiations with any existing or potential customers in relation to the Hills Motors business were carried out by the Hills Motors business alone, and Copart did not enter into any joint agreements with the Hills Motors business (paragraph 5(g)); and
 - c) provide to the CMA periodic compliance statements to verify compliance with the IEO (paragraph 7) and, at all times, actively keep the CMA informed of any material developments relating to the two businesses (paragraph 8).
8. 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 a substantial lessening of competition (**SLC**) within, among others, the market for the supply of salvage services⁸ in the UK. The CMA referred the Merger for further investigation and report by a group of CMA panel members on 9

⁴ The CMA indicated that it anticipated that the IEO would take the form of the CMA's standard template, a link to which was provided. The IEO imposed on 9 August 2022 was in the [standard template form](#).

⁵ As outlined in footnote 2 above, in accordance with paragraph 13 of the IEO, 'specified period' in this context means the period from 9 August 2022 until 14 July 2023.

⁶ Paragraph 13 of the IEO defines the 'Hills Motors business' as meaning 'the business of Hill Motors and its subsidiaries, including Green Parts Salvage & Recycling Ltd, carried on as at the commencement date'.

⁷ Paragraph 13 of the IEO defines the 'Copart business' as meaning 'the business of Copart and its subsidiaries (including Copart UK Topco and Copart UK), but excluding Hills Motors business, carried on as at the commencement date'.

⁸ At the most basic level, for salvage services customers, salvagers offer collection, storage and remarketing services (ie presenting at auction) among other services. These will typically include services to deal with accident/incident damaged vehicles that are not roadworthy, ie cannot be returned to the road without repair (or, in some cases, not at all). For customers such as insurance companies they may provide more specialist services, including services to cater to the claims process. See the CMA's Final Report, paragraph 3.9. [Tab 133, Annex 2]

December 2022.⁹ The CMA issued its Final Report, which resulted in the Merger being cleared unconditionally, on 14 July 2023.

9. The CMA finds that Copart has, without reasonable excuse, failed to comply with the IEO during the specified period by reason of its conduct in relation to three requests for proposals (**RFPs**) for the supply of salvage and related¹⁰ services issued by each of X, [X] (X) and [X] (X), referred to respectively in this notice as Insurer 1, Insurer 2 and Insurer 3.
10. The evidence available to the CMA indicates that, in response to each of these RFPs, Copart submitted and continued to negotiate (in particular by continuing negotiations during the specified period with the respective prospective customers) proposals that combined elements of the Hills Motors business with the Copart business. Specifically, each proposal was submitted as a single proposal, in Copart's name, and was negotiated on this basis. Each proposal included the offer of an in-house **recycled parts**¹¹ service, which could only be provided by the Hills Motors business (and not by Copart's own pre-Merger operations), pursuant to a single contract (with Copart) for the provision of salvage and recycled parts services. While the Insurer 1 and Insurer 2 proposals were submitted before the IEO was imposed, Copart continued to negotiate these proposals after the IEO came into force. The Insurer 3 proposal was both submitted and negotiated after the imposition of the IEO.
11. The CMA has decided that Copart failed during the specified period to comply with the IEO in the following respects (together the **Breaches**):
 - a) **Insurer 1 Breach:** Copart submitted the Insurer 1 Combined Proposal (as defined in paragraph 87) several weeks before the IEO came into force. As the submission of the Insurer 1 Combined Proposal was made before the IEO came into effect, this action did not constitute a breach of the IEO. However, Copart then continued to negotiate the Insurer 1 Combined Proposal during the specified period for almost 11 months without seeking the CMA's prior written consent to do so. In taking further steps in pursuit of this proposal, the CMA has found that Copart took action during the specified period, without the CMA's prior written consent, which might have led to the integration of elements of the Hills Motors business with the

⁹ References in this penalty notice to decisions and findings of the CMA in the Final Report include decisions and findings made by the independent group of CMA panel members appointed to investigate the Merger.

¹⁰ Salvagers' offerings are differentiated in the sense that the exact offering differs between salvagers and can also differ based on the contract with the salvage service customer. Some ways in which their offerings can differ include whether the salvager offers an in-house dismantling and recycled original equipment manufacturer (OEM) parts (**recycled parts**) service. In this context, a recycled parts service involves agreeing to supply such parts to a salvage services customer or its repair network as part of an overall salvage contract. See Final Report, paragraph 3.10. [Tab 133, Annex 2]

¹¹ This penalty notice uses the term 'recycled parts'. In the vehicle salvage and recycling industry, they may also be referred to as 'reclaimed parts' or 'green parts'.

Copart business, or might otherwise have impaired the ability of the Hills Motors business and the Copart business to compete independently, contrary to paragraph 4 of the IEO; and failed to take all necessary steps to ensure that (i) the Hills Motors business was carried on separately from the Copart business, and the Hills Motors business's separate sales identity was maintained, contrary to paragraph 5(a) of the IEO; and (ii) any negotiations with existing and potential customers in relation to the Hills Motors business were carried out by the Hills Motors business alone, contrary to paragraph 5(g) of the IEO. Copart also failed, contrary to paragraph 8 of the IEO, to actively keep the CMA informed of a material development, being the award of the contract by Insurer 1 on 3 November 2022, which was subsequently signed on 8 July 2023 (the **Insurer 1 Contract**).

- b) **Insurer 2 Breach:** Copart submitted the Insurer 2 Combined Proposal (as defined in paragraph 109) shortly before the IEO came into force (after Copart had been notified of the CMA's intention to impose an IEO, the intended form of that IEO, and its intended commencement date). As the submission of the Insurer 2 Combined Proposal was made before the IEO came into effect, this action did not constitute a breach of the IEO. However, Copart then continued to negotiate the Insurer 2 Combined Proposal during the specified period for over 9 months without seeking the CMA's prior written consent to do so. In taking further steps in pursuit of this proposal, the CMA has found that Copart took action during the specified period, without the CMA's prior written consent, which might have led to the integration of elements of the Hills Motors business with the Copart business, or might otherwise have impaired the ability of the Hills Motors business and the Copart business to compete independently, contrary to paragraph 4 of the IEO; and failed to take all necessary steps to ensure that (i) the Hills Motors business was carried on separately from the Copart business, and the Hills Motors business's separate sales identity was maintained, contrary to paragraph 5(a) of the IEO; and (ii) any negotiations with existing and potential customers in relation to the Hills Motors business were carried out by the Hills Motors business alone, contrary to paragraph 5(g) of the IEO. Copart also failed, contrary to paragraph 8 of the IEO, to actively keep the CMA informed of a material development, being the award of the contract by Insurer 2 on 14 April 2023 (the **Insurer 2 Contract**).
- c) **Insurer 3 Breach:** Copart submitted the Insurer 3 Combined Proposal (as defined in paragraph 136) after the IEO had come into force (and therefore during the specified period) and continued to negotiate the Insurer 3 Combined Proposal during the specified period for almost 9 months without

seeking the CMA's prior written consent to do so. In respect of both the submission and negotiation of the Insurer 3 Combined Proposal, the CMA has found that Copart took action during the specified period, without the CMA's prior written consent, which might have led to the integration of elements of the Hills Motors business with the Copart business, or might otherwise have impaired the ability of the Hills Motors business and the Copart business to compete independently, contrary to paragraph 4 of the IEO; and failed to take all necessary steps to ensure that (i) the Hills Motors business was carried on separately from the Copart business, and the Hills Motors business's separate sales identity was maintained, contrary to paragraph 5(a) of the IEO; and (ii) any negotiations with existing and potential customers in relation to the Hills Motors business were carried out by the Hills Motors business alone, contrary to paragraph 5(g) of the IEO. Copart also failed, contrary to paragraph 8 of the IEO, to actively keep the CMA informed of a material development, being the award of the contract by Insurer 3 on 7 January 2023 (the **Insurer 3 Contract**).

12. The CMA considers the Insurer 3 Breach to be the most egregious manifestation of Copart's failure to fully comply with its obligations under the IEO, as both the submission of the proposal for the provision of combined services of the Hills Motors and Copart businesses, and the subsequent negotiation of this proposal, took place after the IEO was in force.

Pre-emptive action

13. Interim measures are of vital importance to the functioning of the UK's voluntary merger control regime. They play a critical role in preventing pre-emptive action, which might prejudice the outcome of a reference or impede the taking of any appropriate remedial action. This includes action which might impact the pre-merger competitive structure of the market during the period of the CMA's investigation.
14. In accordance with their precautionary purpose, initial enforcement orders seek to protect against the *possibility or risk* of prejudice to the reference or potential remedies. It was incumbent on the Parties to comply with all of their obligations under the IEO. When assessing whether there has been a failure to comply with interim measures, the CMA does not need to demonstrate that the conduct of a merging party has impacted the competitive structure of the market, or that such conduct has caused actual prejudice to the outcome of a reference or impeded the taking of any appropriate remedial action. A failure to comply with the obligations set out in an initial enforcement order is sufficient to engage the penalty provisions under section 94A of the Act. In this case, the fact that the

Merger was ultimately cleared by the CMA does not detract from the importance of full compliance with the IEO, or the seriousness of the Breaches.

No reasonable excuse

15. Having considered the evidence available to the CMA and Copart's representations in the IEO Provisional Penalty Response,¹² the CMA has found that Copart has no reasonable excuse for its failures to comply with the IEO.
16. The CMA considers that the Breaches were not caused by a significant and genuinely unforeseeable or unusual event, nor were they caused by any event(s) beyond the control of Copart.¹³

Decision to impose a penalty

17. The CMA has decided, having had regard to its statutory duties and the guidance set out in [Administrative penalties: Statement of Policy on the CMA's Approach](#) (CMA4) (referred to as **CMA4** in this penalty notice), and to all the relevant circumstances of this case, that it is appropriate to impose a penalty in connection with each of the Breaches in the amounts particularised at paragraph 2 above in consideration of the following factors:
 - a) These failures had an adverse impact on the CMA's investigation, as they might have prejudiced the reference or impeded the taking of any necessary remedial action.
 - b) These failures to comply were significant (whether committed intentionally or negligently).
 - c) The evidence available to the CMA shows that the Breaches took place with the knowledge and/or involvement of Copart senior management.
 - d) With respect to the Insurer 1 Breach and the Insurer 2 Breach, Copart continued to negotiate these proposals (which combined elements of the Hills Motors business with the Copart business) for an extended period after the IEO came into force, thereby seeking to obtain an advantage or derive benefit from these breaches in the context of these tenders.
 - e) With respect to the Insurer 3 Breach, Copart submitted the proposal (which combined elements of the Hills Motors business with the Copart business) almost 5 weeks *after* the IEO came into force and continued to negotiate

¹² As noted above in footnote 3, where relevant we have also taken account of representations made in the IEO Preliminary Response.

¹³ CMA4, paragraph 4.4.

this proposal for an extended period, thereby seeking to obtain an advantage or derive benefit from this breach in the context of this tender.

- f) It is appropriate to impose a penalty in connection with the Insurer 3 Breach that is larger than the penalties for the Insurer 1 and Insurer 2 Breaches, as Copart's conduct in relation to the Insurer 3 Breach was more egregious than for the Insurer 1 and Insurer 2 Breaches. Taken together, the Breaches reveal a pattern of disregard for compliance with the IEO.
- g) It is appropriate and proportionate in the round to achieve the CMA's policy objectives of incentivising compliance with interim measures and deterring future failures to comply by Copart, and other persons who may consider future non-compliance with interim measures, to impose the penalty as specified for each of the Breaches.
- h) In view of Copart's size and financial position, the seriousness of the Breaches, the aggravating factors, and the absence of mitigating factors, the CMA considers that penalties cumulatively totalling £2.5 million (which individually and cumulatively are substantially below the statutory maximum of 5% of the total value of the global turnover of the enterprises owned or controlled by Copart) constitute appropriate and proportionate penalties for Copart's failures to comply with the IEO.

B. Legal Framework

Relevant legislation

- 18. Section 72 of the Act is the basis for the IEO. Section 72(2) provides that the CMA may, by order, for the purpose of preventing pre-emptive action, impose certain restrictions and obligations.
- 19. Section 72(8) of the Act defines 'pre-emptive action' as 'action which might prejudice the reference concerned or impede the taking of any action...which may be justified by the CMA's decisions on the reference'.
- 20. Section 72(3C) of the Act provides that a person may, with the consent of the CMA, take action that would otherwise constitute a contravention of an order made under section 72. Pursuant to this provision, the CMA may (on application by the merging parties) grant a derogation, giving consent to the merging parties to undertake certain actions that would otherwise be prohibited by an initial enforcement order.
- 21. Section 86(6) of the Act provides that an order made pursuant to section 72 of the Act is an enforcement order. Sections 94(1) and 94(2) of the Act provide

that any person to whom an enforcement order relates has a duty to comply with it. A company is a person within the meaning of section 94(2) of the Act: Schedule 1 of the Interpretation Act 1978.

22. Section 94A(1) of the Act provides that '[w]here the appropriate authority considers that a person has, without reasonable excuse, failed to comply with an interim measure, it may impose a penalty of such fixed amount as it considers appropriate'.
23. Section 94A(2) of the Act provides that '[a] penalty imposed under subsection (1) shall not exceed 5% of the total value of the turnover (both in and outside the United Kingdom) of the enterprises owned or controlled by the person on whom it is imposed'.¹⁴
24. Section 94A(8) of the Act defines 'interim measure' as including an order made pursuant to section 72 of the Act.
25. There is no statutory time limit within which the CMA must impose a penalty under section 94A(1) of the Act.
26. Section 94B(1) and (2) of the Act requires the CMA to prepare and publish a statement of policy on how it uses its powers to impose a financial penalty under section 94A of the Act and how it will determine the level of the penalty imposed.¹⁵
27. Section 114 of the Act provides an appeal mechanism for a person on whom a penalty is imposed. By reason of section 94A(7), section 114 applies in relation to a penalty imposed under subsection 94A(1), as it applies in relation to a penalty of a fixed amount imposed under section 110(1).

Relevant guidance

28. In December 2021, the CMA published guidance for merging parties and legal advisers advising on a transaction where interim measures may be relevant: *Interim measures in merger investigations*,¹⁶ referred to as **CMA108** in this penalty notice.

¹⁴ The Enterprise Act 2002 (Mergers) (Interim Measures: Financial Penalties) (Determination of Control and Turnover) Order 2014 (**Interim Measures Order**) makes provision for when an enterprise is to be treated as controlled by a person and the turnover of an enterprise.

¹⁵ On 10 January 2014, the CMA published its statement of policy regarding its powers under section 94A of the Act amongst other provisions (being CMA4).

¹⁶ Interim measures in merger investigations dated December 2021, CMA108, available at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1042670/CMA108_interim_measures_in_merger_cases.pdf.

29. Paragraph 1.3 of CMA108 explains that:

When the CMA is investigating a merger, the [Act] enables it to take steps to prevent or unwind pre-emptive action. Pre-emptive action is action which might prejudice the outcome of a reference or impede the taking of any appropriate remedial action. Pre-emptive action is a broad concept. It concerns conduct which might prejudice the reference or which might impede action justified by the CMA's ultimate decision. The word 'might' means that it is the possibility of prejudice to the reference or an impediment to justified action which is prohibited.

30. Paragraphs 1.6 to 1.7 of CMA108 note that:

If the CMA decides that a merger does require scrutiny, it is essential to the functioning of the UK's voluntary, non-suspensory merger regime that Interim Measures to preserve the pre-merger competitive structure of markets should be effective. The CMA's ability to impose Interim Measures on merging parties, and to impose penalties where these have not been complied with, are the necessary corollary of having a voluntary regime.

31. If the CMA has decided to investigate a merger, it is critical that any business which has been acquired continues, during the CMA's investigation, to compete independently with the acquiring business and is maintained as a going concern. Chapter 3 of CMA108 sets out the procedure that should be followed for derogation requests. Paragraph 3.20 of CMA108 states that:

If the merging parties enter into an obligation or take a decision before the Interim Measures take effect, but the obligation will be performed or the decision implemented, or continue to be implemented, after the Interim Measures have come into force, then the merging parties should make full disclosure of the situation to the CMA and seek a derogation if any further or continuing action might breach the Interim Measures.¹⁷

32. Paragraph 5.2 of CMA108 explains that pre-emptive action can extend beyond the integration of business functions and systems and can include action such as 'the merging parties entering into arrangements or agreements in anticipation of the merger; closer collaboration between the merging parties; or actions that might undermine the independent competitive capabilities of either business.'¹⁸

¹⁷ CMA108, paragraph 3.20.

¹⁸ CMA108, paragraph 5.2.

33. Chapter 7 of CMA108 explains the importance of periodic compliance statements for businesses subject to interim measures and the administrative rationale for requiring such statements:

The provision of periodic compliance statements is an important obligation in the Interim Measures to ensure that businesses take seriously their compliance obligations and put in place appropriate mechanisms to monitor and report on their compliance to the CMA. This transparency also ensures the CMA becomes aware of and understands any material developments within businesses subject to Interim Measures, and can then investigate in the event of potential failures to comply, decide whether it is appropriate to impose a penalty for any instance of non-compliance, and take action swiftly to address and seek to resolve any concerns it may identify as regards pre-emptive action.

34. Paragraphs 1.10 to 1.11 of CMA108 warn that:

The CMA's role in regulating merger activity, and its ability to do so effectively, is a matter of public importance and the CMA takes merging parties' compliance with their obligations under Interim Measures very seriously. Where the CMA considers that a person has, without reasonable excuse, failed to comply with Interim Measures, it may impose a penalty of such fixed amount as it considers appropriate, which shall not exceed 5% of the total value of the turnover (both in and outside the UK) of the enterprises owned or controlled by the person on whom the penalty is imposed. The CMA will make full use of this power to deter activity which undermines the effectiveness of Interim Measures.

It is therefore of the utmost importance that merging parties take steps to understand fully their compliance obligations (including seeking legal advice as needed) and consider carefully the consequences of any action which may be in breach of Interim Measures.

35. As explained in CMA4, the CMA considers that penalties imposed for breaches should achieve the policy objectives of incentivising compliance with its interim measures powers and deterring future failures to comply, while not being disproportionate or excessive in all the circumstances of the case.¹⁹ CMA4 states that the CMA will consider whether to impose a penalty on a case-by-case basis, taking into account all relevant circumstances. It identifies a number of factors the presence of which may make it more likely that a penalty will be imposed.²⁰ These include (i) whether the failure to comply is significant and/or

¹⁹ CMA4, paragraph 4.1.

²⁰ CMA4, paragraph 4.2.

flagrant (whether committed intentionally or negligently)²¹ and (ii) whether a party sought to obtain an advantage or derive benefit from the failure. The CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis. As part of this, it will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond the company's control, has caused the failure to comply (and the failure would not otherwise have taken place).²²

36. As regards the level of penalty imposed, paragraph 4.11 of CMA4 provides that the CMA will assess all the relevant circumstances in the round in order to determine a penalty that is reasonable, appropriate and thus proportionate in the circumstances. It states that the CMA is likely to set penalties towards the upper end of the relevant statutory maxima for the most serious failures to comply and/or where it is necessary to do so having regard to the relevant person's size and financial position. Paragraph 4.11 explains that the assessment may include the factors influencing the decision to impose a penalty (including those noted above). The assessment may also consider various non-exhaustive factors on a case-by-case basis, including:
- a) any prejudice failure to comply with the interim measures might cause to the CMA's ability to take remedial action if that would be deemed necessary following the merger investigation;
 - b) the nature and gravity of the failure, including: whether the failure was intentional, the extent of any negligence involved in the failure, whether there was any attempt to conceal the failure from the CMA and the extent, if any, to which the relevant party complied with other aspects of the interim measures;
 - c) the reasons given by the relevant party for the failure to comply with interim measures;
 - d) whether the relevant party derived any advantage from its failure or might reasonably be expected to do so;
 - e) any steps taken in mitigation by the relevant party to avoid the failure and/or ensure that failures do not occur in the future, or to discipline responsible individuals;

²¹ Footnote 36 of CMA4 explains that: 'For the purposes of this guidance, a failure is 'intentional' if [the relevant party] must have been aware, or could not have been unaware, that its conduct was of such a nature as to lead to a failure to comply and a failure is 'negligent' if [the relevant party] ought to have known that its conduct would result in a failure to comply with [an interim measure].'

²² CMA4, paragraph 4.4.

- f) continuation or cessation of the failure after the relevant party became aware of the contravention or failure, or of the CMA's concern that there might have been a contravention or failure;
- g) whether the involvement of senior management or officers contributed to any failure, including whether such individuals made arrangements for suitable resources to be made available to comply with the interim measures;
- h) the size of, and administrative and financial resources available to, the relevant party; and
- i) whether the relevant party has ever failed to comply with an investigatory requirement, interim measure or CMA decision, either in the current investigation or previously (that is, whether there is an element of 'recidivism'). The seriousness of any past failure(s), the time that has elapsed since the failure(s) occurred, and any other relevant factors may be taken into account.

37. Paragraph 7.8 of CMA108 warns that:

To date the penalties imposed have been significantly less than the 5% cap. However, given the importance of Interim Measures to the functioning of the regime, the CMA will not hesitate to make full use of its fining powers. The CMA will therefore impose proportionately larger penalties in future cases should this prove necessary in the interests of deterrence.

Relevant case law

Meaning of 'pre-emptive action'

38. In *Stericycle*,²³ the Competition Appeal Tribunal (the **CAT**) considered the meaning of pre-emptive action in section 80(10) of the Act,²⁴ and held that 'the word 'might'... implies a relatively low threshold of expectation that the outcome of a reference might be impeded'.²⁵

39. In *ICE/Trayport*,²⁶ the CAT observed that 'pre-emptive action' is a broad concept, which concerns conduct which might prejudice the reference or

²³ *Stericycle International LLC v Competition Commission* [2006] CAT 21 (**Stericycle**).

²⁴ Section 72 of the Act relates to initial enforcement orders made during a Phase 1 merger investigation. Interim orders made during a Phase 2 merger investigation are made under section 81 of the Act. 'Pre-emptive action' for the purposes of section 81 of the Act is defined in section 80(10) of the Act and in identical terms to the definition in section 72(8) of the Act.

²⁵ *Stericycle*, paragraph 129.

²⁶ *Intercontinental Exchange v CMA* [2017] CAT 6 (**ICE/Trayport**).

which might impede action justified by the CMA's ultimate decision. It held that '[t]he word "might" means that it is the possibility of prejudice to the reference or an impediment to justified action which is prohibited. The IEO catches more than just actual prejudice or impediments, which is why the onus is on the addressee of the IEO to seek consent from the CMA if their conduct creates the possibility of prejudice or an impediment'.²⁷ The CAT also held that:

We recognise that it must obviously be the case that not every agreement between merging parties will in all cases require the CMA's prior consent. However, where an IEO has been issued, **it is incumbent on parties to take a carefully considered view as to whether their conduct might arouse the reasonable concern of the CMA** that the agreements that they reach are significant enough that they might prejudice the reference or impede justified action if the agreement is non-arm's length. Where the merging parties have a long-standing prior commercial relationship (which is more likely to be the case with vertical mergers, as opposed to horizontal mergers), **full and frank discussions with the CMA as to the implications of the IEO for any adjustments to the terms of that relationship** that are required in the ordinary course of business would be the obvious way in which to reconcile the requirements of business continuity and protection of the merger process [emphasis added].²⁸

40. In *Facebook v CMA*, the CAT (subsequently upheld by the Court of Appeal) confirmed that pre-emptive action includes 'action that has the potential to affect the competitive structure of the market during the CMA's investigation'.²⁹ The CAT held that 'the CMA is not required to have formed a view that it is likely that prejudice to the Phase 2 reference (such as harm to the competitive structure of the market) will materialise or that there will in fact be an impediment to the CMA's remedial options. A risk or a possibility is enough'.³⁰
41. The breadth of the CMA's statutory powers to prevent pre-emptive action was emphasised by the Court of Appeal in *Facebook v CMA (CoA)*. The Court of Appeal confirmed that those powers include the ability to regulate any activity which the merging parties might take in connection with or as a result of the merger that has the potential to affect the competitive structure of the market in question during the merger investigation.³¹

²⁷ *ICE/Trayport*, paragraph 220.

²⁸ *ICE/Trayport*, paragraph 223.

²⁹ *Facebook v CMA* [2020] CAT 23 (***Facebook v CMA***), paragraph 124; see also paragraph 21. The CAT's judgment was upheld by the Court of Appeal (*Facebook v CMA (CoA)* [2021] EWCA Civ 701 (***Facebook v CMA (CoA)***), paragraph 56.

³⁰ *Facebook v CMA*, paragraph 126.

³¹ *Facebook v CMA (CoA)*, paragraph 56.

42. More generally, in *Electro Rent*,³² the CAT noted that '[the] CMA's role in regulating merger activity, and its ability to do so effectively, is a matter of public importance' and agreed with the CMA's submission that interim orders serve a particularly important function where, as in the case in question, the merger has been completed before it was examined by the CMA.³³

The purpose of an initial enforcement order

43. The Supreme Court has held that '[t]he purpose of merger control is to regulate in advance the impact of concentrations on the competitive structure of markets.'³⁴ It is of central importance to the UK's voluntary, non-suspensory merger regime that interim measures should be effective, particularly where, as in this case, the merger was completed before it was examined by the CMA.
44. The purpose of an initial enforcement order is to prevent any action which might prejudice the merger investigation or impede the taking of any action which may be justified by the CMA's decision on the reference.³⁵ The broad nature of pre-emptive action is reflected in the similarly broad wording of an initial enforcement order, which the CAT held in *ICE/Trayport* 'should be interpreted to give full effect to its legitimate precautionary purpose'.³⁶ Given the statute's precautionary purpose, the CAT in *Facebook v CMA* confirmed that the CMA has a wide margin of appreciation in imposing an initial enforcement order under section 72 of the Act. The CAT further confirmed in that case that the role of interim measures also includes preventing anti-competitive harm from the merger impacting the position of other undertakings on any affected markets, which may be irretrievably detrimental.³⁷
45. Where a merger has been completed, it is critical that the acquired business continues to compete independently from the purchaser's business and is maintained as a going concern. The integration of the acquired business, or any other failure to preserve its viability pending the outcome of the merger investigation risks impeding any action the CMA might need to take should it find the merger had resulted in an adverse effect on competition.
46. An initial enforcement order contains positive obligations on its addressees to do certain things as well as obligations to refrain from taking certain actions. The CAT in *Facebook v CMA* noted that 'it is of the utmost importance that interim measures are scrupulously complied with when the CMA is considering

³² *Electro Rent Corporation v CMA* [2019] CAT 4 (**Electro Rent**).

³³ *Electro Rent*, paragraph 120.

³⁴ *Société Coopérative de Production SeaFrance SA (Respondent) v The Competition and Markets Authority and another (Appellants)* [2015] UKSC 75, paragraph 4; see also paragraph 35.

³⁵ Section 72(8) of the Act.

³⁶ *ICE/Trayport*, paragraph 220.

³⁷ *Facebook v CMA*, paragraph 21, upheld in *Facebook v CMA (CoA)*, paragraph 59.

a derogation request and merging parties should not themselves form judgements or reach decisions that are properly for the CMA'.³⁸ The onus is on the addressees to seek the CMA's consent if their conduct creates the possibility of prejudice or impediment,³⁹ and engage with the CMA by submitting a derogation request which is 'fully specified, reasoned and supported by relevant evidence'.⁴⁰

47. Within that context, the provision of periodic compliance statements is an important obligation in an initial enforcement order to ensure that businesses take seriously their compliance obligations and put in place appropriate mechanisms to monitor and report on their compliance with the initial enforcement order to the CMA.
48. The importance of compliance statements is reflected in the requirement set out at paragraph 7 of the template initial enforcement order that a senior individual of the business, eg the Chief Executive Officer (CEO), or other persons as agreed with the CMA, must sign the statements to confirm compliance. The requirement of seniority reflects the need for an individual with sufficient knowledge of a business's operations, and sufficient authority to take steps to prevent breaches of the initial enforcement order, to take responsibility for monitoring and reporting on compliance with the initial enforcement order.⁴¹
49. This transparency also ensures the CMA becomes aware of and understands any material developments within businesses subject to an initial enforcement order on a timely basis. This, in turn, enables the CMA to ensure that interim measures are fully complied with, to investigate in the event of potential failures to comply, to decide whether it is appropriate to impose a penalty for any instance of non-compliance, and to take action swiftly to address and seek to resolve any concerns it may identify as regards pre-emptive action.⁴²

Relevant provisions of the Initial Enforcement Order

50. The IEO is at Annex 1 to this penalty notice.
51. On 9 August 2022, the CMA imposed the IEO on Copart and Hills Motors to prevent pre-emptive action, following correspondence with Copart's legal

³⁸ *Facebook v CMA*, paragraph 158; see also *Electro Rent*, paragraph 206.

³⁹ *ICE/Trayport*, paragraph 220.

⁴⁰ *Facebook v CMA*, paragraph 156.

⁴¹ This is addressed in Chapter 7 of CMA108.

⁴² See paragraphs 79 to 81 of Notice of penalty addressed to Electro Rent Corporation dated 12 February 2019, [Penalty Notice \(publishing.service.gov.uk\)](#) and paragraphs 115 to 116 of Notice of penalty addressed to PayPal Holdings, Inc. dated 18 September 2019, [Penalty notice \(publishing.service.gov.uk\)](#).

representatives. The IEO contains the following provisions (*inter alia*) [emphasis added]:

3. Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige any of the Addressees to reverse any act or omission, in each case to the extent that it occurred or was completed **prior to the commencement date**.

4. **Except with the prior written consent of the CMA**, each of the Addressees shall not, during the specified period, take any action 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; [...]**

(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.

5. Further and without prejudice to the generality of paragraph 4 and subject to paragraph 3, each of the Addressees shall at all times during the specified period **take all necessary steps to ensure that, except with the prior written consent of the CMA:**

(a) **the Hills Motors business is carried on separately from the Copart business and the Hills Motors business's separate sales or brand identity is maintained; [...]**

(g) the customer and supplier lists of the two businesses shall be operated and updated separately and **any negotiations with any existing or potential customers and suppliers in relation to the Hills Motors business will be carried out by the Hills Motors business alone and for the avoidance of doubt the Copart business will not negotiate on behalf of the Hills Motors business (and vice versa)** or enter into any joint agreements with the Hills Motors business (and vice versa); [...]

7. Each of the Addressees shall provide to the CMA such information or statement of compliance as it may from time to time require for the purposes of monitoring compliance by each of the Addressees and their subsidiaries with this Order. In particular, on 23 August 2022 and subsequently every two weeks (or, where this does not fall on a working day, the first working day thereafter)

the Chief Executive Officer of each of the Addressees or other persons of each of the Addressees as agreed with the CMA shall, on behalf of each of the respective Addressees provide a **statement to the CMA in the form set out in the Annex to this Order confirming compliance with this Order.**

8. At all times, each of the Addressees shall actively keep the CMA informed of **any material developments** relating to the Hills Motors business or the Copart business, which includes but is not limited to: [...]

(c) **all substantial customer volumes won** or lost or substantial changes to the customer contracts for Hills Motors or Copart business including any substantial changes in customers' demand; and [...]

52. The definitions in the IEO applicable to the provisions set out above are:

- a) '**commencement date**' means 9 August 2022.
- b) '**Copart**' means Copart, Inc., registered at 14185 Dallas Parkway, Suite 300, Dallas, TX 75254, USA, with company number 000-23255.
- c) '**Hills Motors**' means Green Parts Specialist Holdings Ltd (formerly named ILT Project Limited), registered at Acrey Fields Woburn Road, Wootton, Bedfordshire, England, MK43 9EJ, with company number 14108238.
- d) '**the Copart business**' means the business of Copart and its subsidiaries (including CPRT LLP and Copart UK Limited), but excluding the Hills Motors business, carried on as at the commencement date.
- e) '**the Hills Motors business**' means the business of Hills Motors and its subsidiaries, including Green Parts Salvage & Recycling Ltd, carried on as at the commencement date.
- f) '**the two businesses**' means the Copart business and the Hills Motors business.

C. Factual Background

The Merger

53. The Merger completed on 5 July 2022 without prior notification to the CMA.

54. Copart is a global provider of online vehicle auctions and vehicle remarketing services.⁴³ It was founded in 1982 and is headquartered in the United States.⁴⁴ In the United Kingdom, Copart supplies services including collection, storage and remarketing for sale via its online auction technology, to sellers looking to dispose of and commercialise damaged and other used vehicles.⁴⁵ Copart does not dismantle vehicles.⁴⁶
55. Hills Motors is a UK-based provider of vehicle recycling and remarketing services and was founded in 1978.⁴⁷ Like Copart, Hills Motors supplies collection, storage and remarketing services to customers looking to dispose of and commercialise damaged and other used vehicles, via its online auction.⁴⁸ Unlike Copart, Hills Motors also dismantles vehicles and extracts their original parts (being recycled parts) for resale and reuse in vehicles repairs.⁴⁹ A focus of the Hills Motors business is its 'The Green Parts Specialists platform', which is a portal for repairers to make requests for recycled parts.⁵⁰
56. Copart submitted that the rationale for the Merger was for Copart to provide customers with an end-to-end salvage and in-house dismantling service, including the supply of recycled parts.⁵¹ In particular, Copart submitted that the Merger was in response to customer demands for such a service and competition from vertically integrated competitors in the supply of salvage services and in-house dismantling to supply recycled parts.⁵² Copart submitted that such customer demands led to Copart not being able to participate in or not being invited to numerous tenders which required such services and/or losing contracts altogether.⁵³ Copart submitted that, consequently, it considered that a large portion of its business was at material risk⁵⁴ and that, in order to respond to its customers' demands and to maintain its ability to compete, it had to act quickly and a swift acquisition of a dismantler was the only viable solution.⁵⁵ Copart further submitted that the Merger was the only way that Copart could continue to compete for salvage service contracts.⁵⁶

⁴³ Final Report, paragraph 2.1 [Tab 133, Annex 2].

⁴⁴ Final Report, paragraph 2.1 [Tab 133, Annex 2].

⁴⁵ Final Report, paragraph 2.6 [Tab 133, Annex 2].

⁴⁶ Final Report, paragraph 2.6 [Tab 133, Annex 2].

⁴⁷ Final Report, paragraph 2.7 [Tab 133, Annex 2].

⁴⁸ Final Report, paragraph 2.9 [Tab 133, Annex 2].

⁴⁹ Final Report, paragraph 2.10 [Tab 133, Annex 2].

⁵⁰ Final Report, paragraph 2.10 [Tab 133, Annex 2].

⁵¹ Final merger notice submitted by Copart UK Limited Hills Salvage and Recycling Limited to the CMA on 30 September 2022 (**Final Merger Notice**), paragraph 10 [Tab 121, Annex 2] and [Parties' initial response dated 5 January 2023 to the CMA's Phase 1 Decision dated 28 November 2022 \(Parties' response to the Phase 1 Decision\)](#), paragraph 7 [Tab 124, Annex 2].

⁵² Parties' response to the CMA's RFI dated 16 December 2022 (**Phase 2 RFI 1**), question 1 [Tab 123, Annex 2].

⁵³ Final Merger Notice, paragraph 41 [Tab 121, Annex 2].

⁵⁴ [Parties' response to the Issues Statement](#), paragraph 45 [Tab 128, Annex 2].

⁵⁵ Parties' response to Phase 2 RFI 1, paragraph 12 [Tab 123, Annex 2].

⁵⁶ Parties' response to the annotated issues statement and working papers, paragraph 27 [Tab 129, Annex 2].

The IEO

57. On 3 August 2022, Copart’s legal advisers submitted a case team allocation request in respect of the Merger. On 5 August 2022, the CMA notified Copart, by email to its legal advisers, of its intention to impose an IEO on 8 August 2022 with immediate effect.⁵⁷ The CMA indicated in this email that it anticipated that the IEO would take the form of the CMA’s standard template, a link to which was provided. The CMA also requested certain corporate details relating to Copart and Hills Motors for the purposes of the proposed IEO. The same day (5 August 2022), Copart’s legal representatives, Euclid Law, confirmed receipt of the CMA’s email⁵⁸ and, on 7 August 2022, Euclid Law provided the requested corporate details for Copart.
58. On 9 August 2022,⁵⁹ the CMA issued the IEO (based on the CMA’s standard template)⁶⁰ addressed to both Copart and Hills Motors in accordance with section 72(2) of the Act to prevent pre-emptive action.⁶¹ The CMA also attached, in accordance with its standard procedures, its initial questionnaire (the **Integration Questionnaire**) requesting details, among other matters, of any integration (both actual and planned) of Copart and Hills Motors, and any changes to staff and business operations (both actual and planned).
59. The IEO required, among other things, that during the specified period, except with the prior written consent of the CMA, Copart would comply with the terms of the IEO, as outlined at paragraphs 7 and 51 above.
60. On 10 August 2022, the Parties submitted a joint response to the Integration Questionnaire.⁶² The response included the following statements:
- a) In response to Question 1, which asked about how decisions were at that point in time being taken by Hills Motors, the Parties stated: ‘[X] continues to manage and make all of the key business decisions **independently of**

⁵⁷ Email dated 5 August 2022 from CMA to Euclid Law titled “Copart / Hills Motors - ME/70010/22 - IEO and integration questionnaire”. [Tab 1, Annex 2]

⁵⁸ Email dated 5 August 2022 from Euclid Law to CMA titled “Re: Copart / Hills Motor ME/70010/22 - IEO - Request for information by 10am Monday 8 August” [Tab 2, Annex 2].

⁵⁹ Email dated 9 August 2022 from CMA to Euclid Law titled “Copart / Hills Motors - ME/70010/22 - IEO and integration questionnaire”, with attachments [Tab 3, Annex 2].

⁶⁰ The IEO template is used by the CMA as the basis for interim measures made by it under the Act in relation to completed mergers. The IEO template is available at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1042682/Template_Initial_enforcement_order.pdf

⁶¹ As outlined above, the IEO ceased to be in force when the reference was finally determined on issuance of the CMA’s Final Report on 14 July 2023 in accordance with sections 72(6) and 79(1)(c) of the Act. The CMA issues this penalty notice in respect of breaches of the IEO within the specified period.

⁶² Email dated 10 August 2022 at 21:35 from Euclid Law to CMA titled “RE: Copart/Hills Motors – ME/70010/22 – IEO and integration questionnaire”, with attachment [Tab 4, Annex 2].

Copart UK – which are then disseminated through his senior management team’ [emphasis added].

- b) In response to Question 12, which asked about whether the customers, supplier lists and other contracts of Hills Motors continued to be serviced by Hills Motors, fully independently of Copart, the Parties stated: ‘Hills Motors continues to service its customers **independently of Copart**’ [emphasis added].
- c) In response to Question 13, which asked about whether the Parties were aware of any factors that may have prevented Copart from competing independently against Hills Motors business, the Parties stated:

Whilst the CMA review takes place, there are none. However, **Copart purchased Hills Motors to offer their clients a green parts service**. Without the ability to provide such a service, Copart will be at a disadvantage during any upcoming tender processes as more and more customers require salvagers to re-sell and provide recycling/dismantling capabilities [emphasis added].

- d) In response to Question 14, which asked whether the Parties considered that any derogations from the IEO would be necessary, having regard to how Hills Motors was operating at that point in time, the Parties stated: ‘Yes. Please see the Parties’ derogation request dated 10 August 2022 – submitted together with the responses to this questionnaire’. The CMA notes that this derogation request did not relate to any of the RFPs issued by Insurer 1, Insurer 2 and Insurer 3.

- 61. On 18 January 2023, the CMA issued directions under paragraph 10 of the IEO for the Parties to appoint a monitoring trustee (the **Monitoring Trustee**) for the purpose of monitoring compliance with the IEO.⁶³ The Monitoring Trustee was appointed on 26 January 2023.⁶⁴

The Merger inquiry

- 62. On 3 October 2022, the CMA launched a phase 1 merger investigation, which resulted in a decision on 28 November 2022 that there was a realistic prospect of an SLC in the supply of each of salvage services, salvage vehicles and recycled parts in the UK.

⁶³ [Directions to appoint a Monitoring Trustee](#) [Tab 126, Annex 2].

⁶⁴ Monitoring Trustee Mandate dated 26 January 2023 [Tab 127, Annex 2].

63. The Merger was referred to an in-depth phase 2 investigation on 9 December 2022,⁶⁵ and the CMA appointed an inquiry group comprised of Kirstin Baker (Chair), Roland Green, Juliet Lazarus and Paul Muysert (the **Group**). The Group was required to investigate and produce a report, initially by 25 May 2023, on whether a relevant merger situation had been created and if so, whether the creation of that situation had resulted or may be expected to result in an SLC within any market or markets in the UK for goods or services.
64. The CMA published an issues statement on 13 January 2023, to which the Parties responded on 1 February 2023.⁶⁶
65. On 6 April 2023, the Group took a decision to extend the statutory timetable for a period of 8 weeks under section 39(3) of the Act, which meant the revised reference period was due to expire on 20 July 2023.⁶⁷
66. On 5 May 2023, the CMA published its provisional findings (the **Provisional Findings**).⁶⁸ The CMA provisionally found that the Merger had resulted or may be expected to result in an SLC in the supply of salvage services in the UK.
67. On 23 June 2023, the CMA published the addendum provisional findings,⁶⁹ which took account of new evidence that the CMA had received after the publication of its Provisional Findings. Having regard to that new evidence, considered in the round with the other evidence obtained during the phase 2 inquiry, the CMA provisionally found that the Merger had not and may not be expected to result in an SLC in the supply of salvage services in the UK.
68. On 14 July 2023, the CMA published its Final Report.⁷⁰ The CMA found that the Merger had not and may not be expected to give rise to an SLC within any markets in the UK. The IEO ceased to be in force on this date in accordance with section 72(6)(a)(ii) of the Act.

The Copart Notice

69. The CMA issued a notice to Copart under section 109 of the Act on 26 April 2023 (the **Copart 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 an SLC within any market or markets in the UK. It did so to obtain information in relation to whether, and if so on what terms, Copart was negotiating tenders in the relevant markets with each of Insurer 1,

⁶⁵ [Decision to refer dated 9 December 2022](#) [Tab 122, Annex 2].

⁶⁶ [Issues statement dated 13 January 2023](#) [Tab 125, Annex 2].

⁶⁷ [Decision to extend statutory timetable dated 6 April 2023](#) [Tab 130, Annex 2].

⁶⁸ [Provisional Findings report dated 5 May 2023](#) [Tab 131, Annex 2].

⁶⁹ [Addendum Provisional Findings report dated 23 June 2023](#) [Tab 132, Annex 2].

⁷⁰ [Final Report dated 14 July 2023](#) [Tab 133, Annex 2].

Insurer 2 and Insurer 3 and to assess whether such action was in compliance with the IEO.

70. The Copart Notice required Copart to provide the CMA with, among other things, documents and information concerning Copart's responses to the RFPs issued by Insurer 1, Insurer 2, and Insurer 3 including: (i) timelines of key meetings; (ii) copies of the proposals submitted and subsequent revisions; and (iii) copies of any correspondence relating to each proposal after its submission.
71. On 4 May 2023, Copart provided a response to the Copart Notice, which included the emails and attachments that Copart considered to be responsive to the Notice.
72. In light of the materials provided, the CMA sent Copart a letter, on 11 July 2023, which outlined the CMA's preliminary view that Copart had not complied in full with the Copart Notice. On 18 July 2023 Copart provided a response to that letter (the **S109 Preliminary Response**).
73. On 26 July 2023, the CMA sent Copart a provisional penalty notice, indicating that the CMA had provisionally decided to impose a penalty on Copart for failing to comply with the Copart Notice in full. On 2 August 2023 Copart provided a response to that provisional penalty notice (the **S109 Provisional Penalty Response**).
74. On 10 August 2023, the CMA issued a penalty notice in the amount of £25,000 to Copart under section 110 of the Act. The CMA found that Copart, without reasonable excuse, failed to comply in full with the requirements imposed on it by the Copart Notice.

The Insurer 1, Insurer 2 and Insurer 3 Notices

75. On 31 May 2023 the CMA sent Insurer 1 a notice under section 109 of the Act (the **Insurer 1 Notice**). The Insurer 1 Notice required, among other things, Insurer 1:

To provide 'copies of any Documents constituting correspondence between [Insurer 1] and Copart which relates to the RFP'.⁷¹

To provide 'copies of any Documents constituting correspondence between [Insurer 1] and Hills Motors which relates to the RFP'.⁷²

⁷¹ Insurer 1 Notice, Question 1(c) [Tab 13, Annex 2].

⁷² Insurer 1 Notice, Question 2(b) [Tab 13, Annex 2].

76. On 9 June 2023, Insurer 1 disclosed a bundle of documents to the CMA in response to the Insurer 1 Notice.

77. On 31 May 2023, the CMA sent Insurer 2 a notice under section 109 of the Act (the **Insurer 2 Notice**). The Insurer 2 Notice required, among other things, Insurer 2:

1(c) To provide 'copies of any Documents constituting correspondence between [Insurer 2] and Copart which relates to the RFP'.⁷³

2. Confirm whether Copart's RFP response and any revised or subsequent [sic] were submitted independently by Copart or whether they also involved a third party providing a recycled parts supply offering.⁷⁴

3. If Copart's RFP response or any such proposals involved a third party, to provide the identity and contact details of the third party involved.⁷⁵

78. On 8 June 2023, Insurer 2 disclosed a bundle of documents to the CMA in response to the Insurer 2 Notice, which included the following response to the second and third questions in the notice (as set out in paragraph 7777 above):⁷⁶

The RFP response and all revised/subsequent submissions were submitted independently by Copart.

79. On 31 May 2023, the CMA sent Insurer 3 a notice under section 109 of the Act (the **Insurer 3 Notice**). The Insurer 3 Notice required, among other things, Insurer 3:

1(c) To provide 'copies of any Documents constituting correspondence between [Insurer 3] and Copart which relates to the RFP [...]'.⁷⁷

2. Confirm whether Copart's RFP response and any revised or subsequent proposals referenced above were submitted independently by Copart or whether they also involved a third party providing a recycled parts supply offering.⁷⁸

3. If Copart's RFP response or any such proposals involved a third party, to provide the identity and contact details of the third party involved.⁷⁹

⁷³ Insurer 2 Notice, Question 1(c) [Tab 14, Annex 2].

⁷⁴ Insurer 2 Notice, Question 2 [Tab 14, Annex 2].

⁷⁵ Insurer 2 Notice, Question 3 [Tab 14, Annex 2].

⁷⁶ Insurer 2 response to Q2 and Q3 of the Insure 2 Notice dated 8 June 2023, page 2 [Tab 18, Annex 2].

⁷⁷ Insurer 3 Notice, Question 1(c) [Tab 15, Annex 2].

⁷⁸ Insurer 3 Notice, Question 2 [Tab 15, Annex 2].

⁷⁹ Insurer 3 Notice, Question 3 [Tab 15, Annex 2].

5(b) To provide ‘copies of any Documents constituting correspondence between [Insurer 3] and Hills Motors which relates to the RFP[...].’⁸⁰

80. On 6 June 2023, Insurer 3 disclosed a bundle of documents to the CMA and responded to the questions in the Insurer 3 Notice, which included the following responses to the second and third questions in the notice (as set out in paragraph 7979 above).⁸¹

Copart’s proposal was submitted independently by Copart.

And:

N/A.

Response to Insurer 1 RFP and subsequent negotiations

81. On 1 June 2022, Insurer 1 invited Copart to tender for the ‘provision of Salvage management services’ and sent a suite of RFP documents,⁸² which stated, under the heading ‘1.2 Requirements’, that the responses were required to include ‘[a] proposal for **green parts including recycled parts** salvaged from [Insurer 1] vehicles’. The documents further stated, in ‘Annex 1 - Detailed Requirements’, that [Insurer 1] expects the successful vendor to offer a solution for the use of **recycled/green parts** [...]’ [emphasis added].⁸³
82. On 6 June 2022, Copart confirmed its intention to submit a proposal in response to Insurer 1’s RFP, and invited Insurer 1 to a site visit as part of the RFP process.⁸⁴
83. On 20 June 2022, Copart sent Insurer 1 certain questions on the RFP.⁸⁵ By separate email, on the same day, Insurer 1 declined Copart’s offer of a site visit.⁸⁶

⁸⁰ Insurer 3 Notice, Question 5(b) [Tab 15, Annex 2].

⁸¹ Insurer 3 Response to the Insurer 3 Notice dated 6 June 2023, Question 2 and 3 respectively [Tab 17, Annex 2].

⁸² Copart “Annex 2”: Email dated 1 June 2022 from [redacted] (Insurer 1) to [redacted] (Copart), with [redacted] (Copart) and [redacted] (Insurer 1) in CC, titled “[Insurer 1] RFP 010522 - Salvage” with attachments [Tab 20, Annex 2].

⁸³ Copart “Annex 2”: attachment titled “[Insurer 1] Request for Proposal (RFP) relating to the provision of Salvage Management Services” Annex 1, page 16 [Tab 20, Annex 2].

⁸⁴ Copart “Annex 3”: Email dated 6 June 2022 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled “[Insurer 1] RFP 010522 - Salvage” [Tab 21, Annex 2].

⁸⁵ Copart response to the Copart Notice dated 4 May 2023, page 3 [Tab 12, Annex 2] and Insurer 1 “Doc A6”: Email dated 20 June 2022 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled “[Insurer 1] RFP 010522 - Salvage (Copart - Questions)” [Tab 48, Annex 2].

⁸⁶ Copart response to Copart Notice dated 4 May 2023, page 3 [Tab 12, Annex 2] and Insurer 1 “Doc A5”: Email dated 20 June 2022 from [redacted] (Insurer 1) to [redacted] (Copart) titled “Insurer 1 RFP 010522 - Salvage (Copart - Questions)” [Tab 47, Annex 2].

84. On 28 June 2022, Insurer 1 sent Copart a document containing Insurer 1's responses to the various questions it had received from all the suppliers that had taken part in the tender process.⁸⁷

85. On 11 July 2022, Hills Motors emailed Insurer 1.⁸⁸ The email stated:

Good morning. Not sure if you have heard the exciting new [sic] yet but last week I sold our business to Copart.

This means we won't be tendering direct for the [Insurer 1] Salvage contract today but will be included within Copart's submission. This means not only do you get the opportunity of there [sic] unrivalled auction platform and logistics capabilities but now alongside there [sic] offering a World Class supply of Green Parts to supply back to your repair network [emphasis added].

86. Later the same day (11 July 2022), Insurer 1 replied to Hills Motors to confirm, 'I look forward to receiving the **joined [sic] submission from Copart**' [emphasis added].⁸⁹

87. On 11 July 2022, Copart submitted an RFP proposal to Insurer 1.⁹⁰ The response was a single proposal submitted by Copart combining elements of the offerings of the Copart business (ie salvage services) with those of the Hills Motors business (ie the recycled parts services) to be provided as part of a single contract for the provision of salvage and recycled parts services (the **Insurer 1 Combined Proposal**). The Insurer 1 Combined Proposal contained Copart's logo and branding and stated:

The RFP has come at a time where we have recently acquired a green parts solution, namely The Green Parts Specialists (Hills), which means that we can offer a completely flexible onboarding experience as the system used is very similar to what [Insurer 1] use today. Providing [Insurer 1] with a seamless transition from day one.⁹¹

[...]

⁸⁷ Copart response to Copart Notice dated 4 May 2023, page 3 [Tab 12, Annex 2] and Insurer 1 "Doc A7": Email dated 28 June 2022 from [redacted] (Insurer 1) to [redacted] (Copart) titled "Salvage RFP Q&A" with attachments [Tab 47, Annex 2].

⁸⁸ Insurer 1 "Doc E8": Email dated 11 July 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled "RE: Salvage RFP Q&A" [Tab 51, Annex 2].

⁸⁹ Insurer 1 "Doc E8": Email dated 11 July 2022 from [redacted] (Insurer 1) to [redacted] (Hills Motors) with [redacted] (Insurer 1) in CC, titled "RE: Salvage RFP Q&A" [Tab 51, Annex 2].

⁹⁰ Copart "Annex 5": Email dated 11 July 2022 from [redacted] (Copart) to [redacted] (Insurer 1), titled "RFP Reference 010522 - Copart" with attachments [Tab 22, Annex 2].

⁹¹ Copart "Annex 5": Attachment titled "RFP Reference 010522 – Copart.pdf", Slide 3 [Tab 22, Annex 2].

Access to an effective and established ‘Green Parts’ solution – delivering part provenance and significant savings.⁹²

[...]

We believe the full scope of the request is to provide unmatched services for [Insurer 1] and its customers across every element of the handling and management of your total loss vehicles from total loss v repair decisioning **and green parts solutions** through to auction/disposal and fast payment.⁹³

[...]

We are delighted to have recently acquired a very well-established green parts business, The Green Parts Specialists (Hills). This acquisition complements Copart’s recycling arm of our business.⁹⁴

[...]

We would be happy to continue with the current processes and systems that you have in place today, as we believe **Hills (who are now part of Copart UK)** operate the same system that you use today, this would be a seamless transition day one.⁹⁵

[...]

Appendix 5 – Green Parts Solution details Copart’s ‘Green Parts User Journey’, along with an image stating ‘Copart Recycling’, and states:⁹⁶

Hills operates 300,000 square feet of warehousing. Why is this important? Well, 80 % of our parts supplied are derived from the shelf, not from the vehicle stored in the yard. This allows for greater processing efficiencies, expedites parts delivery, and ensures continuous growth of the parts inventory.⁹⁷

⁹² Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 4 [Tab 22, Annex 2].

⁹³ Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 5 [Tab 22, Annex 2].

⁹⁴ Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 41 [Tab 22, Annex 2].

⁹⁵ Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 45 [Tab 22, Annex 2].

⁹⁶ Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 82 [Tab 22, Annex 2].

⁹⁷ Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 86 [Tab 22, Annex 2].

To date [Insurer 1] have saved 70.9T Co2 (3287 parts) since adopting Green Parts with GPS [The Green Parts Specialists], we forecast this to increase to 215.35T (9984 parts) with a full supply of salvage to increase fulfilment.⁹⁸

[emphasis added]

88. On 11 July 2022, Copart sent an email with the subject line RFP – Reference 010522 from [X] (Copart) to [X] (Insurer 1),⁹⁹ which 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] [Managing Director of Hills Motors] 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 [emphasis added].

89. On 8 August 2022 [X] (Insurer 1) sent an email to [X] (Copart) asking to check her ‘understanding of the commercials’ submitted in the RFP.¹⁰⁰
90. The IEO was imposed on 9 August 2022.
91. Also on 9 August 2022, [X] (Copart) provided a response to the query. Subsequently, on 19 August 2022 Copart sent an email to Insurer 1 asking whether Insurer 1 had ‘everything you need’ in relation to the Insurer 1 Combined Proposal. In the subsequent email chain, Copart engaged in correspondence with Insurer 1 regarding the progress of Insurer 1’s evaluation of the Insurer 1 Combined Proposal.¹⁰¹
92. In an email chain ending on 25 October 2022 at 18:09¹⁰² Copart engaged in correspondence with Insurer 1 which related to clarifications concerning commercial aspects of the Insurer 1 Combined Proposal.

⁹⁸ Copart “Annex 5”: Attachment titled “RFP Reference 010522 – Copart.pdf”, Slide 90 [Tab 22, Annex 2].

⁹⁹ Insurer 1 “Doc A10”: Email dated 11 July 2022 from [X] (Copart) to [X] (Insurer 1), with [X] (Insurer 1) in CC, titled “RFP - Reference 010522” [Tab 50, Annex 2].

¹⁰⁰ Copart “Annex 9”: Email chain ending on 21 August 2022 at 15:56 between [X] (Copart) and [X] (Insurer 1) titled “RE: Commercial clarifications”. [Tab 25, Annex 2].

¹⁰¹ Copart “Annex 9”: Email chain ending on 21 August 2022 at 15:56 between [X] (Copart) and [X] (Insurer 1) titled “RE: Commercial clarifications”. [Tab 25, Annex 2].

¹⁰² Insurer 1 “Doc A15”: Email chain ending on 25 October 2022 at 18:09 between [X] (Copart) and [X] (Insurer 1) titled “RE: Commercial clarifications” [Tab 52, Annex 2].

93. On 3 November 2022, Insurer 1 notified Copart by email that it had been awarded the Insurer 1 Contract on the basis of the Insurer 1 Combined Proposal.¹⁰³ As far as the CMA is aware, no separate notification was sent by Insurer 1 to Hills Motors.
94. On 1 December 2022, Copart received an email from Insurer 1 congratulating Copart on its 'successful proposal' and attaching the first draft of the Services Agreement from Insurer 1 (the **draft Insurer 1 Contract**).¹⁰⁴ Paragraph 1.1 of the draft agreement defined 'Services' as meaning 'the services supplied to [Insurer 1] by the Supplier [defined as Copart UK Limited] as set out in Schedule 1'. Schedule 1 (Services) was not completed but Insurer 1 noted in the cover email that it would draft the services section 'based on [Copart's] RFP submission', which included the provision of recycled parts services. On 2 December 2022,¹⁰⁵ Copart responded to Insurer 1's email regarding the draft Insurer 1 Contract saying that it would check diaries in order to arrange a call between the parties' respective legal teams.
95. On 19 January 2023, Copart sent an email to Insurer 1 attaching a copy of Copart's sustainability presentation dated January 2022 which references Copart's 'purchase of Hills (Green Parts)' in 2022 on slide 18.¹⁰⁶
96. On 24 February 2023, Insurer 1 sent an email to Copart¹⁰⁷ stating:

Thank you for providing the draft services schedule. I could not quite work out how to amend it to match it more closely and clearly with the RFP requirements, so I have now drafted a revised version of the schedule based on [Insurer 1] RFP requirements and **your proposal** [emphasis added].

97. On 6 March 2023, Copart received an email from Insurer 1¹⁰⁸ indicating it had:

[...] been contacted by the Competition and Markets Authority asking us a few questions about the recent salvage tender and your [Copart's] response with relation to the Hills acquisition [...]. We have not made the

¹⁰³ Copart "Annex 11": Email dated 3 November 2022 from [redacted] (Insurer 1) to [redacted] (Copart) titled "FW: Copart - offer of the contract for Salvage services" [Tab 30, Annex 2].

¹⁰⁴ Copart "Annex 12": Email dated 1 December 2022 from [redacted] (Insurer 1) to [redacted] (Copart), with [redacted] (Copart) in CC, titled "Salvage contract" with attachment [Tab 31, Annex 2].

¹⁰⁵ Copart "Annex 8": Email chain ending on 2 December 2022 at 23:52 between [redacted] (Copart) and [redacted] (Insurer 1) titled "RE: Salvage contract" [Tab 34, Annex 2].

¹⁰⁶ Insurer 1 "Doc C4": Sustainability presentation titled "Copart ESG Leading With Sustainable Growth" of January 2023. [Tab 54, Annex 2].

¹⁰⁷ Insurer 1 "Doc B11" Email dated 24 February 2023 from [redacted] (Insurer 1) and [redacted] (Copart) titled "RE: Insurer 1- Copart agreement" [Tab 55, Annex 2].

¹⁰⁸ Insurer 1 "Doc B16": Email dated 8 March 2023 from [redacted] (Insurer 1) to [redacted] (Copart) titled "CMA request" [Tab 57, Annex 2].

outcome of the RFP public at this stage and we will not disclose to CMA that you have been successful until our agreement is in place.

98. In that email, Insurer 1 asked whether Copart had an objection to Insurer 1 disclosing the Insurer 1 Combined Proposal to the CMA, subject to certain confidentiality restrictions. Following a call on 8 March 2023 with Insurer 1,¹⁰⁹ Copart responded on 8 March 2023 to confirm that it had no objections.¹¹⁰
99. On 8 March 2023, Copart received an email from Insurer 1 attaching a draft of the services schedule¹¹¹ (Schedule 1 referred to in paragraph 94 above). Insurer 1 confirmed that the services schedule is 'based on our RFP requirements and your proposal.'¹¹² The services schedule includes:

Green parts

The Supplier shall manage a green (recycled) parts fulfilment solution, managing the orders and requests, dismantling, quality checks, storage and delivery logistics. The Supplier shall provide to [Insurer 1] detailed MI including details of sold parts, parts costs and savings and CO2 savings achieved [emphasis added].¹¹³

100. Between early March to mid-May 2023, Copart engaged in further correspondence with Insurer 1, and held further calls with Insurer 1, in which Copart continued to discuss the terms of the draft Insurer 1 Contract.¹¹⁴

¹⁰⁹ Referred to in Insurer 1 "Doc B15" - Email dated 8 March 2023 from [redacted] (Insurer 1) to [redacted] (Copart) titled "RE: CMA request" [Tab 56, Annex 2].

¹¹⁰ Insurer 1 "Doc B16": Email dated 8 March 2023 from [redacted] (Copart) to [redacted] (Insurer 1) titled "RE: CMA request" [Tab 57, Annex 2].

¹¹¹ Insurer 1 "Doc B17": Email dated 8 March 2023 from [redacted] (Insurer 1) to [redacted] (Copart) titled "Insurer 1 agreement - services schedule", with attachment [Tab 58, Annex 2].

¹¹² Insurer 1 followed up on its email on 23 March 2023 and Copart responded the same day advising that its solicitor was still working on some changes, with the updated document being provided on 26 March 2023. The email correspondence also referred to a meeting between Insurer 1 and Copart. The CMA has not been provided with details of this meeting.

¹¹³ Page 3 of Draft Salvage Agreement attached to Insurer 1 "Doc B17": Email dated 8 March 2023 from [redacted] (Insurer 1) to [redacted] (Copart) titled "Insurer 1 agreement - services schedule" [Tab 58, Annex 2].

¹¹⁴ Insurer 1 "Doc B18": Email chain ending on 10 March 2023 at 20:55 between [redacted] (Insurer 1), [redacted] (Copart) and [redacted] (Copart) titled "RE: V4_0 Draft salvage agreement - Insurer 1 - CP 07032023", with attachment [Tab 59, Annex 2]; Insurer 1 "Doc B21": Email chain ending on 27 March 2023 at 21:41 between [redacted] (Insurer 1), [redacted] (Copart) and [redacted] (Copart) titled "RE: Services schedule", with attachment [Tab 61, Annex 2]; Insurer 1 "Doc B22": Email dated 3 April 2023 from [redacted] (Insurer 1) to [redacted] (Copart) and [redacted] (Copart) titled "Next call" [Tab 62, Annex 2]; Insurer 1 "Doc B23": Email dated 3 April 2023 from [redacted] (Insurer 1) to [redacted] (Copart) and [redacted] (Copart) titled "Services schedule - Insurer 1 comment", with attachment [Tab 63, Annex 2]; Insurer 1 "Doc B24": Email dated 5 April 2023 from [redacted] (Insurer 1) to [redacted] (Copart) and [redacted] (Copart) titled "RE: Services schedule - [Insurer 1] comments" [Tab 64, Annex 2]; Insurer 1 "Doc B25": Email dated 17 April 2023 from [redacted] (Insurer 1) to [redacted] (Copart) and [redacted] (Copart) titled "RE: Services schedule - [Insurer 1] comments", with attachment [Tab 65, Annex 2]; Insurer 1 "Doc B26": Email dated 4 May 2023 from [redacted] (Insurer 1) to [redacted] (Copart) and [redacted] (Copart) titled "RE: Services schedule - [Insurer 1] comments" [Tab 66, Annex 2]; Insurer 1 "Doc B27": Email dated 4 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1) and [redacted] (Copart), with [redacted] (Insurer 1) and [redacted] (Copart) in CC, titled "RE: Services schedule - [Insurer 1] comments", with attachment [Tab 67, Annex 2]; Insurer 1 "Doc B28": Email dated 4 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1) and [redacted] (Copart), with [redacted] (Insurer 1) and [redacted] (Copart) in CC,

101. On 23 March 2023, Copart’s lawyer sent an email to Insurer 1¹¹⁵ stating:

I have updated the schedule as promised and, because I have inserted all our available services, I’ve provided a tracked changes version and a clean copy (the latter for ease of reading). As requested, I have also provided technical SLAs.

The email attached ‘clean’ and ‘tracked’ copies of the draft services schedule¹¹⁶, both of which contain the text referred to in paragraph 99 above.

102. In an email dated 11 May 2023 from Insurer 1 to Copart,¹¹⁷ Insurer 1 indicated that it had been made aware of the CMA’s Provisional Findings and stated that it:

[...] wanted to check with you, if and how, the findings and the potential actions on the back of this impact our contractual position.

Please could you confirm if the disruption to Copart’s merger with Hills would impact your ability to deliver a green part solution as described in the RFP response? Would you need to issue a new proposal or would the offering not change, with Hills included in the contract as your subcontractor? Would you be using another provider?

We would also like to understand if there would be a potential impact on our customers and any changes to the agreed commercials?

103. On 19 May 2023, Copart responded to the above email,¹¹⁸ but did not mention the fact of, nor terms of the IEO. Copart stated:

The recent publication is somewhat disappointing; however, we remain confident that we will be able to provide the CMA with sufficient information to help them make the right decision. The statutory deadline that is set for the 20th July 2023.

titled “RE: Services schedule – [Insurer 1] comments”, with attachment [Tab 68, Annex 2]; Insurer 1 “Doc B29”: Email dated 5 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1) titled “RE: Copart - Partnership plan request for information”, with attachments [Tab 69, Annex 2]; Insurer 1 “Doc B30”: Email dated 12 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1), [redacted] (Copart) and [redacted] (Copart), with [redacted] (Insurer 1) in CC, titled “RE: Services schedule – [Insurer 1] comments”, with attachment [Tab 71, Annex 2].

¹¹⁵ Insurer 1 “Doc B20” email dated 23 March 2023 from [redacted] (Copart) to [redacted] (Insurer 1) titled “RE: Services schedule”, with attachments [Tab 60, Annex 2].

¹¹⁶ Insurer 1 “Doc B20” attachments titled “V1_0 Copart Services schedule – CP 26032023 – tracked.docx docx File” and “V1_0 Copart Services schedule – CP 26032023 – clean.docx docx File”, [Tab 60, Annex 2].

¹¹⁷ Insurer 1 “Doc B31”: Email dated 19 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Copart) and [redacted] (Copart) titled “CMA findings” [Tab 70, Annex 2].

¹¹⁸ Insurer 1 “Doc B31”: Email dated 19 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Copart) and [redacted] (Copart) in CC, titled “CMA findings” [Tab 70, Annex 2].

As things stand there is one point left that is still under review, the CMA's provisional findings is a concern around the salvage not the green parts, Hills core business is dismantling/green parts, the CMA seem to believe that they are competitors in the market for salvage contracts, which is not the case. Hills do not have the capacity or specific services required by our Insurance customers for nationwide coverage on salvage contracts, therefore they are not invited to tender to salvage contracts generally.

In relation to your questions **we do not see the offering changing, you will still have availability to Green Parts via Hills as outlined.**

I can confirm that there will be **no change to the commercial terms originally proposed, Hills can still provide you with a green parts solution whether that be through Copart following CMA approval or through Copart subcontracting to Hills or through Hills directly.**

I can reassure you that we will provide the services that we have proposed in the RFP [emphasis added].¹¹⁹

104. Copart continued to correspond with Insurer 1 regarding finalising the terms of the draft Insurer 1 Contract.¹²⁰
105. On 8 July 2023, [X] (Copart UK Limited's CEO), signed a final services agreement with Insurer 1 (the Insurer 1 Contract referred to in paragraph 11.a) above).¹²¹ The Insurer 1 Contract includes the following section on recycled parts:

12. Green parts

The Supplier shall manage a green (recycled) parts fulfilment solution, managing the orders and requests, dismantling, quality checks, storage and delivery logistics. The Supplier shall provide [Insurer 1] Underwriting on a monthly basis with detailed management information, including details of sold parts, parts costs and savings and CO2 savings achieved.

¹¹⁹ As outlined in paragraph 87, the Insurer 1 Combined Proposal submitted by Copart combined elements of the offerings of the Copart business (i.e. salvage services) with those of the Hills Motors business (i.e. the in-house recycled parts services) to be provided as part of a single contract for the provision of salvage and recycled parts services.

¹²⁰ Insurer 1 "Doc B32": Email chain ending on 25 May 2023 at 16:20 between [X] (Copart), [X] (Insurer 1) with [X] (Copart) in CC titled "FW: Copart eng report", with attachment [Tab 72, Annex 2], Insurer 1 "Doc B33": Email chain ending 26 May 2023 at 11:01 between [X] (Copart) and [X] titled "Re: quick catch up" [Tab 73, Annex 2], Insurer 1 "Doc B34": Email dated 31 May 2023 from [X] (Insurer 1) to [X] (Copart) titled "Engineer reports – [Insurer 1] costs" [Tab 74, Annex 2], and Insurer 1 "Doc B35": Email chain ending on 6 June 2023 at 09:01 between [X] (Copart) and [X] (Insurer 1) titled "FW: Engineering services" [Tab 75, Annex 2].

¹²¹ IEO Provisional Penalty Response, Annex 1. [Tab 9, Annex 2, page 246]

Response to Insurer 2 RFP and subsequent negotiations

106. On 3 May 2022, Copart attended a meeting with Insurer 2 regarding ‘pre RFP’.¹²²
107. On 25 July 2022, Insurer 2 issued the RFP for the provision of vehicle salvage handling, remarketing and disposal services to interested parties, which specified a response deadline of 8 August 2022.¹²³
108. On 27 July 2022, Copart sent Insurer 2 certain questions on the RFP.¹²⁴
109. On 8 August 2022, the day before the IEO was imposed, and (as explained above) while being on notice that the CMA intended to impose the IEO in short order, Copart submitted an RFP proposal to Insurer 2,¹²⁵ of which Insurer 2 confirmed receipt.¹²⁶ The response was a single proposal submitted by Copart combining elements of the offerings of the Copart business (ie salvage services) with those of the Hills Motors business (ie the recycled parts services) to be provided as part of a single contract for the provision of salvage and recycled parts services (the **Insurer 2 Combined Proposal**). At this time, Copart would have been aware of the impending imposition of the IEO and its terms, given that it had been informed that the IEO would be based on the CMA’s standard template, following the CMA’s email on 5 August 2022 notifying Copart of the CMA’s intention to impose the IEO. Copart submitted the following documents:

- a) An email which stated:¹²⁷

Please find attached our RFP submission.

[...]

2. Supporting Information (PDF which includes supporting information/detail about our overall service provision)

¹²² Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹²³ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹²⁴ Copart “Annex 21”: Email dated 27 July 2022 from [redacted] (Copart) to [redacted] (Third Party 1, as defined in paragraph 110 below) and [redacted] (Insurer 2) titled “[Insurer 2] Total Loss RFP QA Document”, with attachment [Tab 23, Annex 2].

¹²⁵ Copart “Annex 23”: Email dated 8 August 2022 from [redacted] (Copart) to [redacted] (Third Party 1) and [redacted] (Insurer 2) titled “Copart – [Insurer 2] RFP 2022 (Private & Confidential)”, with attachments [Tab 24, Annex 2].

¹²⁶ Insurer 2 “Doc 1042”: Email dated 8 August 2022 from [redacted] (Insurer 2) to [redacted] (Copart) titled “Re:Copart – [Insurer 2] RFP 2022 (Private & Confidential)” [Tab 76, Annex 2].

¹²⁷ Copart “Annex 23”: Email dated 8 August 2022 from [redacted] (Copart) to [redacted] (Third Party 1 as defined in paragraph 110) and Sam MacDonald (Insurer 2) titled “Copart – [Insurer 2] RFP 2022 (Private & Confidential)”, with attachments [Tab 24, Annex 2].

3. Green Parts Provision (PDF file – GPS [Green Parts Services] service for [Insurer 2]) [emphasis added].

b) A PDF presentation with Copart's branding and logo and which stated:¹²⁸

In our industry size and scale matters, we are fortunate to have a global buyer base, alongside the largest pool of vehicles in the market, which drives the highest bidding and buying activity for all your vehicles. **We also now have the largest green parts solution through our recent acquisition of Hills 'The Green Parts Specialists', meaning that they have access to the largest pool of green parts.** From a profitable and sustainable perspective, we deliver the highest possible returns [emphasis added].

c) Copart's RFP response which stated:¹²⁹

Copart have made a statement of intent to lead the way in the provision of Green Parts with a significant investment through the acquisition of Hills Salvage and the Green Parts Specialists brand. The combining of knowledge, infrastructure and investment, will ensure the service will quickly expand. [...] **Our next phase of growth will simply supercharge this progress, much to the benefit of [Insurer 2], who will have access to the largest inventory of quality assured Green Parts in the UK.**

We have strong working relationships with all nationwide network repairers and **we will further enhance this through our recent aquisition [sic] of The Green Parts Specialist (GPS/Hills)** [emphasis added].

d) A PDF presentation containing **Hills Motors** branding and logo which provided a detailed description of 'the national platform for sourcing genuine recycled OEM parts'.¹³⁰

110. The IEO was imposed on 9 August 2022. On 10 August 2022, Copart sent an email to [X] (a third party engaged by Insurer 2 to facilitate the tender process and referred to as Third Party 1 in this notice)¹³¹ which stated:

¹²⁸ Copart "Annex 23": Attachment titled "Supporting Information – RFP.pdf", slide 4 [Tab 24, Annex 2].

¹²⁹ Copart "Annex 23": Attachment titled "Copart – Insurer 2 Total Loss and Salvage RFP – Final.xlsx", sheet 2 "Capability Questionnaire" [Tab 24, Annex 2].

¹³⁰ Copart "Annex 23": Attachment titled "GPS services for Insurer 2" [Tab 24, Annex 2].

¹³¹ Insurer 2 "Doc 0057" email dated 10 August 2022 from [X] (Copart) to [X] (Third Party 1) titled "RE: Questions" [Tab 77, Annex 2].

We are investing £320m across our business in our Technology, Infrastructure, **Green Parts** and our People. Our strategy is to continually re-invest to grow our service provision. [Insurer 2] will naturally benefit from this investment [emphasis added].

111. On 22 August 2022, Copart submitted amendments to the Insurer 2 Combined Proposal to Third Party 1.¹³² The amendments are confined to the matrix tables 1 (Proportion of Salvage by Category) and 3 (Proposed Salvage Matrix Percentages – Initial Payment to Insurer 2’s Claims System) in Tab 4. Third Party 1 provided a copy of this amendment to Insurer 2 on 23 August 2022.¹³³
112. On 31 August 2022, Copart sent an email to Third Party 1 requesting an extension for submitting further supporting information in relation to the RFP,¹³⁴ which was declined.¹³⁵
113. On 5 September 2022, Copart participated in a Teams call in which it presented its ‘tender response’ to Insurer 2.¹³⁶
114. On 21 October 2022, Copart resent a copy of its RFP proposal to Insurer 2. The email attached documents called ‘Supporting Information – RFP’ and ‘GPS Services for [Insurer 2]’.¹³⁷

a) The Supporting Information – RFP document stated:

We also now have the largest green parts solution through our recent acquisition of Hills ‘The Green Parts Specialists’, meaning that they have access to the largest pool of green parts. From a profitable and sustainable perspective, we deliver the highest possible returns. [...] Our continued investment enables us to support [Insurer 2] always, **we have recently acquired The Green Parts Specialist, a green parts solution, this was following discussions with [Insurer 2] advising us that they needed a green parts solution, we listened, and we acted upon it** [emphasis added].¹³⁸ Slides 49 to 52 of the document go on to discuss the provision of recycled parts services to Insurer 2.

¹³² Insurer 2 “Doc 0055”: Email dated 22 August 2022 from [redacted] (Copart) to [redacted] (Third Party 1) titled “Clarification” [Tab 78, Annex 2].

¹³³ Insurer 2 “Doc 0055”: Email dated 23 August 2022 from [redacted] (Third Party 1) to [redacted] (Insurer 2) and [redacted] (Insurer 2) titled “FW: Clarification”, with attachment [Tab 78, Annex 2].

¹³⁴ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹³⁵ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹³⁶ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹³⁷ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2], and Insurer 2 “Doc 0023”: Email dated 21 October 2022 from [redacted] (Copart) to [redacted] (Insurer 2) titled “FW: Copart – [Insurer 2] RFP 2022 (Private & Confidential)”, with attachments [Tab 79, Annex 2].

¹³⁸ Insurer 2 “Doc 0023”: Attachment titled “Supporting Information – RFP.pdf”, slide 4 [Tab 79, Annex 2].

- b) The GPS Services for Insurer 2 document¹³⁹ contained the **Hills Motors and Green Parts Specialists** branding and logos, and stated:

The Green parts Specialist can receive digital parts requests from the [Insurer 2] Solution Centre network through two routes, our desk top portal or our mobile app.¹⁴⁰

This M.I empowers the GPS [The Green Parts Specialists] platform to proactively purchase and hold these parts in stock for [Insurer 2] repairs, further reducing repairers cycle times, saving potential total loss vehicles and reducing vehicle hire.¹⁴¹

The GPS team will work with [Insurer 2] to develop, evolve and grow this commitment to an acceptable level over the course of the contract, particularly in the first year.¹⁴²

115. On 3 November 2022, Copart sent an email to Insurer 2 attaching a PDF titled 'RFP questions'.¹⁴³ While the PDF attachment related to auction fees relevant to salvage services, the PDF attachment also referred to recycled parts services where it stated 'Green Parts Opportunity' whereby Copart can 'handle c.400k vehicles'.¹⁴⁴
116. On 7 November 2022, Copart sent an email to Insurer 2 stating 'I just wanted to make sure you have seen the attached deck we did for Dan'.¹⁴⁵ The email attached a copy of the PDF titled 'RFP questions' referenced in paragraph 110 above.
117. Also on 7 November 2022, Copart participated in a Teams call with Insurer 2 to discuss the 'Copart Proposal Review'.¹⁴⁶
118. On 23 November 2022, [redacted] (Copart UK Limited's CEO) participated in a call with [redacted] (Insurer 2) to 'arrange [redacted] feedback session'.¹⁴⁷

¹³⁹ Insurer 2 "Doc 0023": Attachment titled "GPS services for [Insurer 2].pdf" [Tab 79, Annex 2].

¹⁴⁰ Insurer 2 "Doc 0023": Attachment titled "GPS services for [Insurer 2].pdf", page 2 [Tab 79, Annex 2].

¹⁴¹ Insurer 2 "Doc 0023": Attachment titled "GPS services for [Insurer 2].pdf", page 3 [Tab 79, Annex 2].

¹⁴² Insurer 2 "Doc 0023": Attachment titled "GPS services for [Insurer 2].pdf", page 5 [Tab 79, Annex 2].

¹⁴³ Insurer 2 "Doc 2042": Email dated 3 November 2022 from [redacted] (Copart) to [redacted] (Insurer 2) titled "FW: RFP questions.pptx", with attachment [Tab 80, Annex 2].

¹⁴⁴ Attachment to Insurer 2 "Doc 2042": Presentation titled "[Insurer 2]'s RFP questions", slide 12. [Tab 80, Annex 2].

¹⁴⁵ Insurer 2 "Doc 2039" email dated 7 November 2022 from [redacted] (Copart) to [redacted] (Insurer 2) titled "FW: RFP questions.pptx", with attachment [Tab 81, Annex 2].

¹⁴⁶ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹⁴⁷ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

119. On 30 November 2022, Copart participated in a Teams call with Insurer 2, the purpose of which was '[Insurer 2] RFP Feedback Session with Copart'.¹⁴⁸
120. On 1 December 2022, Copart sent Insurer 2 a summary of its contract proposal, which provided details of the calculation it applied to obtain the retrospective payment value in the Insurer 2 Combined Proposal.¹⁴⁹ Copart confirmed in its response to Question 3(b) of the Copart Notice that this submission was a revised or subsequent proposal related to the Insurer 2 Combined Proposal.
121. On 13 December 2022, Copart sent an email to Insurer 2 attaching a PDF document comparing its RFP response offer with a competing offer submitted by [redacted] (referred to in this notice as Competitor 1).¹⁵⁰ While the PDF attachment related to fees relevant to salvage services, it refers to the recycled parts services and stated the 'Green Parts opportunity' whereby Copart can 'handle c. 400k vehicles'.¹⁵¹
122. Later on 13 December 2022, Copart agreed to use a data set from December 2021 to November 2022 for the purposes of modelling.¹⁵²
123. On 23 February 2023, Copart exchanged a number of emails with Insurer 2 regarding the timing of VAT advice.¹⁵³
124. On 6 March 2023, Copart forwarded to Insurer 2 a chain of emails between Copart and an accounting firm, [redacted], regarding the assessment of the proposed contract from a VAT perspective.¹⁵⁴
125. On 7 March 2023 and 5 April 2023, Copart held Teams calls with Insurer 2 to discuss an 'update on commercial model discussions'.¹⁵⁵
126. On 27 March 2023, Copart sent a confirmation of pricing proposal to Insurer 2, which Copart confirmed in its response to Question 3(b) of the Copart Notice

¹⁴⁸ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2].

¹⁴⁹ Copart "Annex 24": Email dated 1 December 2022 from [redacted] (Copart) to [redacted] (Insurer 2), with [redacted] (Copart) in CC, titled "Summary of proposal" [Tab 33, Annex 2].

¹⁵⁰ Insurer 2 "Doc 0014": Email dated 13 December 2022 from [redacted] (Copart) to [redacted] (Insurer 2) with no subject line, with attachments [Tab 82, Annex 2].

¹⁵¹ Insurer 2 "Doc 0014": Attachment titled "Comparisons", slide 2 [Tab 82, Annex 2].

¹⁵² Insurer 2 "Doc 0015": Email dated 13 December 2022 from [redacted] (Copart) to [redacted] (Insurer 2) titled "RE: modelling" [Tab 83, Annex 2].

¹⁵³ Insurer 2 "Doc 1019": Chain of emails dated 23 February 2023 between [redacted] (Insurer 2), [redacted] (Insurer 2), [redacted] (Insurer 2), [redacted] (Insurer 2), [redacted] (Insurer 2), [redacted] (Insurer 2), [redacted] (Insurer 2), [redacted] (Copart), and [redacted] (Copart) titled "RE: Copart – VAT", with attachments [Tab 84, Annex 2].

¹⁵⁴ Insurer 2 "Doc 0011": Email dated 6 March 2023 from [redacted] (Copart) to [redacted] (Insurer 2) titled "FW: VAT Advice" [Tab 85, Annex 2].

¹⁵⁵ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 2 [Tab 18, Annex 2].

was a revised or subsequent proposal related to the Insurer 2 Combined Proposal.¹⁵⁶

127. On 11 April 2023, Copart sent Insurer 2 a revised proposal and Insurer 2 replied to confirm receipt. Copart confirmed in its response to Question 3(b) of the Copart Notice that this submission was a revised or subsequent proposal related to the Insurer 2 Combined Proposal.¹⁵⁷
128. On 14 April 2023, Insurer 2 notified Copart verbally that it had been awarded the Insurer 2 Contract for vehicle salvage handling, remarketing and disposal services on the basis of the Insurer 2 Combined Proposal.¹⁵⁸ Copart entered into negotiations with Insurer 2 concerning the services agreement which were ongoing until at least 8 June 2023.¹⁵⁹
129. On 26 May 2023, [redacted] (Insurer 2) and [redacted] (Copart) held a call regarding 'chasing update on draft contract'.¹⁶⁰
130. Various drafts of the services agreement were exchanged between Copart and Insurer 2, including the 'most recent'¹⁶¹ version.¹⁶²

Response to Insurer 3 RFP and subsequent negotiations

131. On 15 August 2022, Insurer 3 invited Copart to tender for the supply of 'vehicle services and the provision of Green Parts'.¹⁶³ Copart confirmed its 'intention is to submit a proposal for all the business areas listed within the RFP', by email on 16 August 2022.¹⁶⁴
132. On 22 August 2022, Copart sent Insurer 3 certain clarification questions on its RFP.¹⁶⁵

¹⁵⁶ Copart "Annex 27": Email dated 27 March 2023 from [redacted] (Copart) to [redacted] (Insurer 2) titled "Confirmation of Proposal" [Tab 36, Annex 2].

¹⁵⁷ Copart "Annex 25": Email chain ending on 12 April 2023 at 8:51AM between [redacted] (Insurer 2) and [redacted] (Copart) titled "RE: Salvage proposal" [Tab 37, Annex 2].

¹⁵⁸ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 2 [Tab 18, Annex 2].

¹⁵⁹ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 2 [Tab 18, Annex 2].

¹⁶⁰ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 2 [Tab 18, Annex 2].

¹⁶¹ IEO Provisional Penalty Response, paragraph 39(d). [Tab 9, Annex 2].

¹⁶² IEO Provisional Penalty Response, Annex 3 (incorrectly referred to as Annex 2 in the IEO Provisional Penalty Response). [Tab 9, Annex 2].

¹⁶³ Insurer 3 "Doc B1": Email dated 15 August 2022 from [redacted] (Insurer 3) to [redacted] (Copart) and [redacted] (Copart) titled "[Insurer 3] ITT – Request For Proposal Salvage & Green Parts" [Tab 88, Annex 2].

¹⁶⁴ Insurer 3 "Doc B1": Email dated 16 August 2022 from [redacted] (Copart) to [redacted] (Insurer 3), with [redacted] (Copart) in copy, titled "RE: [Insurer 3] ITT – Request For Proposal Salvage & Green Parts" [Tab 88, Annex 2].

¹⁶⁵ Copart "Annex 15": Email dated 22 August 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled "RFP Questions" [Tab 26, Annex 2].

133. On 24 August 2022, Insurer 3 provided answers to Copart’s questions dated 22 August 2022.¹⁶⁶
134. On 25 August 2022, Insurer 3 provided Copart with clarification on salvage mix data, of which Copart confirmed receipt.¹⁶⁷
135. On 26 August 2022, Insurer 3 informed Copart¹⁶⁸ of an extension to the deadline for submitting a response to the RFP.
136. On 12 September 2022 (and therefore approximately five weeks after the IEO was imposed on 9 August 2022), Copart submitted an RFP response to Insurer 3.¹⁶⁹ The response was a single proposal submitted by Copart combining elements of the offerings of the Copart business (ie salvage services) with those of the Hills Motors business (ie the recycled parts services) to be provided as part of a single contract for the provision of salvage and recycled parts services (the **Insurer 3 Combined Proposal**). The Insurer 3 Combined Proposal included the following:

a) It was branded with Copart’s logo and is titled ‘Provision of Services for [Insurer 3] – Vehicle Salvage Handling, Associated Services & **Green Parts**’ [emphasis added].¹⁷⁰

b) The Executive Summary states:

We also now have the largest green parts solution through our recent acquisition of Hills ‘The Green Parts Specialists’, meaning that they have access to the largest pool of green parts [emphasis added].¹⁷¹

Our continued investment enables us to support [Insurer 3] always, **we have recently acquired The Green Parts Specialist, a green parts solution**, this was following our customers feedback advising us that they needed a green parts solution, we listened, and we acted upon it [emphasis added].¹⁷²

¹⁶⁶ Insurer 3 “Doc A3”: Email dated 24 August 2022 from [redacted] (Insurer 3) to [redacted] (Copart) and [redacted] (Copart) titled “[Insurer 3] Group RFP Salvage And Green Parts Submitted Questions and Answers”, with attachment [Tab 89, Annex 2].

¹⁶⁷ Insurer 3 “Doc B3”: Email dated 25 August 2022 from [redacted] (Copart) to [redacted] (Insurer 3) and [redacted] (Copart) titled “[Insurer 3] ITT Salvage Mix Data” [Tab 90, Annex 2].

¹⁶⁸ Insurer 3 “Doc B4”: Email dated 26 August 2022 from [redacted] (Insurer 3) to [redacted] (Copart) and [redacted] (Copart) titled “Extension to Salvage RFP Return Date – 12th September 2022 – 17.00pm” [Tab 91, Annex 2].

¹⁶⁹ Copart “Annex 16”: Email dated 12 September 2022 from [redacted] (Copart) to [redacted] ([Insurer 3]) titled “Copart RFP – Sept 2022 – Private & Confidential”, with attachments [Tab 27, Annex 2].

¹⁷⁰ Copart “Annex 16”: Attachment titled “[Insurer 3] Group RFP – Copart Sept 2022”, Slide 1 [Tab 27, Annex 2].

¹⁷¹ Copart “Annex 16”: Attachment titled “[Insurer 3] Group RFP – Copart Sept 2022”, Slide 3 [Tab 27, Annex 2].

¹⁷² Copart “Annex 16”: Attachment titled “[Insurer 3] Group RFP – Copart Sept 2022”, Slide 3 [Tab 27, Annex 2].

- c) A slide titled ‘What does a partnership with Copart mean for [Insurer 3]?’ lists the benefits of partnering with Copart, including: ‘**Access to an effective and established ‘Green Parts’ solution** with access to the largest pool of salvage vehicles – delivering parts provenance and significant savings’ [emphasis added].¹⁷³
- d) The description of the scope and specification states: ‘Copart has the capability and capacity to provide a robust and quality service in relation to vehicle salvage remarketing, recycling and disposal **and the provision of Green Parts** for [redacted],¹⁷⁴ [redacted], [redacted] and [redacted] across the UK and Ireland’. [emphasis added]¹⁷⁵
- e) Slide 54 sets out detail of the acquisition:

We are delighted to have recently acquired a very well-established green parts business, The Green Parts Specialists (Hills). This acquisition complements Copart’s recycling arm of our business.

[...]

We now have the largest green parts solution with 9 recycling sites across the UK and our recent acquisition of Hills ‘The Green Parts Specialists’ (GPS), meaning you have access to the largest pool of green parts.

[...]

We would be happy to discuss your green parts requirements in more detail to deliver a bespoke service to [Insurer 3]’ [emphasis added].

- f) Further, the second attachment describes the nature of the business as: ‘**Copart UK Ltd specialise in the remarketing, recycling (green parts), disposal of motor vehicles’** [emphasis added].¹⁷⁶

137. Also on 12 September 2022, Hills Motors sent an email in response to the RFP to Insurer 3,¹⁷⁷ which references a separate proposal from Hills Motors. The proposal was sent under cover of a separate email via a One Drive Link. The cover email stated as follows:

¹⁷³ Copart “Annex 16”: Attachment titled “[Insurer 3] Group RFP – Copart Sept 2022”, Slide 4 [Tab 27, Annex 2].

¹⁷⁴ Insurer 3 provides accident management and repair services through a number of businesses, including [redacted] and [redacted] and [redacted] (see [redacted]).

¹⁷⁵ Copart “Annex 16”: Attachment titled “[Insurer 3] Group RFP – Copart Sept 2022”, Slide 5. [Tab 27, Annex 2]

¹⁷⁶ Copart “Annex 16”: Attachment titled “[Insurer 3] Health, Safety & Environment Pre-Qualification Questionnaire”, page 1 [Tab 27, Annex 2].

¹⁷⁷ Insurer 3 “Doc D12”: Email dated 12 September 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 3), with [redacted] (Hills Motors) in CC, titled “RFP Hills Salvage & Recycling” [Tab 92, Annex 2].

[redacted], from our perspective, we are pleased you asked us to tender for the provisions of your total loss and green parts supply. I have added a covering letter in the RFP, which details our current position since the acquisition of the business by Copart.

What I did want to highlight, is that the business is still operating as normal whilst under the provision of a CMA review, which means I can not [sic] provide you with any details around the long term initiatives, investments and developments that the acquisition may bring. That said, should we be successful, this review would not hamper our ability to service the contract and we believe the review will reach conclusion before you implement a change of service provider.

As the UK's largest supplier of Green Parts, I do believe we could offer [Insurer 3] [sic] an exceptional service, which will make a huge difference, both commercially and towards your ESG strategy.

138. The CMA has been provided with what it understands to be a copy of the final or close to final proposal from Hills Motors to Insurer 3 responding to the Insurer 3 RFP.¹⁷⁸ The document states:

The future for Hills salvage is a very exciting one and should [Insurer 3] choose us as a preferred supplier, will very quickly begin to realise the benefits. As you may be aware the business was acquired by Copart several weeks ago. At present we are under an embargo with the CMA, which restricts our ability to discuss the amalgamation of the two organisations, but rest assured as a business, we continue to operate as normal.

One statement I can make is that Copart are recognised as the UK's largest supplier of salvage services and auction of damaged vehicles, processing more category B vehicles than any other company whilst Hills are the UK's largest independent UK dismantler, supplying the largest inventory of parts to the UK repair industry.

139. On 13 September 2022, Insurer 3 acknowledged receipt of the Insurer 3 Combined Proposal¹⁷⁹ and the proposal submitted by Hills Motors.¹⁸⁰

¹⁷⁸ Hills Motors document titled "RFP for [Insurer 3] Aug 2022 V3-1" provided to the CMA in the Hills Motors Phase 1 Notice 2 Response [Tab 45, Annex 2].

¹⁶⁵ Insurer 3 "Doc A7": Email dated 13 September 2022 from [redacted] (Insurer 3) to [redacted] (Copart), with [redacted] (Copart) and [redacted] (Copart), in CC titled "RE: Copart RFP - Sept 2022 - Private & Confidential" [Tab 93, Annex 2].

¹⁸⁰ Insurer 3 "Doc C7": Email dated 13 September 2022 from [redacted] (Insurer 3) to [redacted] (Hills Motors), with [redacted] (Hills Motors) in CC, titled "RE:RFP Hills Salvage & Recycling" [Tab 94, Annex 2]

140. On 30 September 2022, Insurer 3 sent an email to Copart updating on its review of the Insurer 3 Combined Proposal.¹⁸¹ Insurer 3 indicated it was working towards making a decision by the end of October.
141. On 6 October 2022, Insurer 3 sent an email to Copart requesting clarifications on the Insurer 3 Combined Proposal.¹⁸²
142. On 7 October 2022, Copart provided a commercial proposal in PowerPoint format to Insurer 3 which outlined the [REDACTED] and [REDACTED] commercial models.¹⁸³
143. On 12 October 2022, Insurer 3 sent an email to Copart requesting an update on the acquisition of Hills Motors and the CMA review of the Merger.¹⁸⁴ The email states: 'I have some questions concerning your acquisition of Hills and the current situation with the CMA review that I would like to discuss with you when you return from holiday, please feel free to give me a call when your [sic] back – thanks'.
144. Also, on 12 October 2022, Insurer 3 sent an email to Copart confirming forecasted salvage volumes.¹⁸⁵
145. On 13 October 2022, Insurer 3 sent a Teams meeting request to Copart to discuss the acquisition of Hills Motors and the CMA review of the Merger.¹⁸⁶
146. On 18 October 2022, Copart sent Insurer 3 an updated RFP submission comprising a revised commercial model and the slide deck titled 'Provision of Services for Insurer 3, Vehicle Salvage Handling, Associated Services & **Green Parts**, September 2022'.¹⁸⁷ following verbal discussions on pricing [emphasis added].¹⁸⁸ The statements relating to Copart's 'Green Parts' capabilities in the Insurer 3 Combined Proposal were retained in this revised proposal. Copart confirmed in its response to Question 2(d) of the Copart Notice that this

¹⁸¹ Insurer 3 "Doc B8": Email dated 30 September 2022 from [REDACTED] (Insurer 3) to [REDACTED] (Copart), with [REDACTED] (Copart) and [REDACTED] (Copart) in CC, titled "RE: Copart RFP – Sept 2022 – Private & Confidential" [Tab 95, Annex 2].

¹⁸² Insurer 3 "Doc A9": Email dated 6 October 2022 from [REDACTED] (Insurer 3) to [REDACTED] (Copart) titled "RE: Copart RFP – Sept 2022 – Private & Confidential" [Tab 96, Annex 2].

¹⁸³ Insurer 3 "Doc B9": Email dated 7 October 2022 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) titled "Commercial Proposal – Sep 2022.pptx", with attachment [Tab 97, Annex 2].

¹⁸⁴ Insurer 3 "Doc A10": Email dated 12 October 2022 from [REDACTED] (Insurer 3) to [REDACTED] (Copart) titled "RE: Commercial Proposal – Sep 2022.pptx" [Tab 98, Annex 2].

¹⁸⁵ Insurer 3 "Doc A11": Email dated 12 October 2022 from [REDACTED] (Insurer 3) to [REDACTED] (Copart) titled "RE: Commercial Proposal – Sep 2022.pptx" [Tab 99, Annex 2].

¹⁸⁶ Insurer 3 "Doc A13": Teams request dated 13 October 2022 from [REDACTED] (Insurer 3) to [REDACTED] (Copart) titled "Salvage RFP Questions Hills Acquisition & Forecasted Figures For NVH" [Tab 100, Annex 2].

¹⁸⁷ Insurer 3 "Doc B12": Email dated 18 October 2022 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) titled "Updates as discussed...", with attachments [Tab 101, Annex 2].

¹⁸⁸ Copart response to the Copart Notice dated 4 May 2023, page 4 [Tab 12, Annex 2] and Insurer 3 "Doc B12": Email dated 18 October 2022 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) titled "Updates as discussed...", with attachments [Tab 101, Annex 2].

submission was a revised or subsequent proposal related to the Insurer 3 Combined Proposal.

147. On 20 October 2022, Copart sent an email to Insurer 3 replying to its query.¹⁸⁹

With reference to Green Parts and our acquisition of Hills.

We put this acquisition forward voluntarily to the CMA and as part of good practice and we have been advised that they will have concluded their findings by the end of November.

We are not expecting any issues or concerns, as there is still a wide range of competition in the market place. The CMA are currently reaching out to customer [sic] and the market for their comments and all positive feedback from our customers perspective.

148. On 24 October 2022, Insurer 3 sent Copart additional questions on the Insurer 3 Combined Proposal.¹⁹⁰
149. On 26 October 2022, Copart sent Insurer 3 responses to its follow-up questions incorporated into Copart's commercial proposal slide deck.¹⁹¹ Copart confirmed in its response to Question 2(d) of the Copart Notice that this submission was a revised or subsequent proposal related to the Insurer 3 Combined Proposal. On the same day, Insurer 3 acknowledged receipt of the updated proposal from Copart.¹⁹²
150. On 7 November 2022, Copart sent an email to Insurer 3 attaching a revised commercial proposal containing revised pricing for the Insurer 3 Combined Proposal.¹⁹³
151. On 9 November 2022, Insurer 3 acknowledged receipt of the updated proposal from Copart referred to above in paragraph 150150.¹⁹⁴

¹⁸⁹ Copart "Annex 18": Email dated 20 October 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled "RE: Updates as discussed..." [Tab 28, Annex 2].

¹⁹⁰ Insurer 3 "Doc A15": Email dated 24 October 2022 from [redacted] (Insurer 3) to [redacted] (Copart) titled "Salvage ITT Questions" [Tab 102, Annex 2].

¹⁹¹ Copart "Annex 17": Email dated 26 October 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled "Commercial Proposal – Questions for clarification.pptx", with attachment [Tab 29, Annex 2].

¹⁹² Insurer 3 "Doc A18": Email dated 26 October 2022 from [redacted] (Insurer 3) to [redacted] (Copart) titled "RE: Commercial Proposal – Questions for clarification.pptx" [Tab 103, Annex 2].

¹⁹³ Insurer 3 "Doc B16": Email dated 7 November 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled "Revised Proposal", with attachment [Tab 104, Annex 2].

¹⁹⁴ Insurer 3 "Doc A19": Email dated 9 November 2022 from [redacted] (Insurer 3) to [redacted] (Copart) titled "RE: Revised Proposal" [Tab 105, Annex 2].

152. On 28 November 2022, Insurer 3 sent an email to Copart providing an update on the review of the Insurer 3 Combined Proposal.¹⁹⁵
153. On 13 December 2022, Copart sent Insurer 3 a revised pricing proposal¹⁹⁶ following verbal discussions on pricing.¹⁹⁷ Copart confirmed in its response to Question 2(d) of the Copart Notice that this submission was a revised or subsequent proposal related to the Insurer 3 Combined Proposal.
154. On 15 December 2022, Copart sent an email to Insurer 3 confirming agreement to the contract duration, should Copart be successful in the tender, of which Insurer 3 acknowledged receipt.¹⁹⁸
155. On 21 December 2022, Insurer 3 sent Copart an email following up on the status of review of the financial proposal connected with the Insurer 3 Combined Proposal.¹⁹⁹
156. On 21 December 2022, Copart submitted a commercial proposal to Insurer 3, revising the Insurer 3 Combined Proposal.²⁰⁰
157. On 3 January 2023, Copart sent an email to Insurer 3 attaching a commercial proposal revising the Insurer 3 Combined Proposal.²⁰¹
158. On 7 January 2023, Insurer 3 notified Copart that it had been awarded the Insurer 3 Contract for the supply of vehicle salvage services, associated services and recycled parts on the basis of the Insurer 3 Combined Proposal. The email states:²⁰²

Further to the recent tender exercise for the supply of Vehicle Salvage Services, Associated Services **And Green Parts** 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.

¹⁹⁵ Insurer 3 “Doc A20”: Email dated 28 November 2022 from [redacted] (Insurer 3) to [redacted] (Copart) titled “RE: Revised Proposal” [Tab 106, Annex 2].

¹⁹⁶ Copart “Annex 19”: Email dated 13 December 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled “Revised Proposal” with attachment [Tab 35, Annex 2].

¹⁹⁷ Copart response to the Copart Notice dated 4 May 2023, page 4 [Tab 12, Annex 2].

¹⁹⁸ Insurer 3 “Doc A21”: Email dated 15 December 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled “FW: Revised Proposal” [Tab 107, Annex 2].

¹⁹⁹ Insurer 3 “Doc A23”: Email dated 21 December 2022 from [redacted] (Insurer 3) to [redacted] (Copart), with [redacted] (Copart) in CC, titled “RE: Revised Proposal” [Tab 108, Annex 2].

²⁰⁰ Insurer 3 “Doc B22”: Email dated 21 December 2022 from [redacted] (Copart) to [redacted] (Insurer 3), with [redacted] (Copart) in CC, titled “Updated Proposal – Private and Confidential” with attachment [Tab 109, Annex 2].

²⁰¹ Insurer 3 “Doc B23”: Email dated 3 January 2023 from [redacted] (Copart) to [redacted] (Insurer 3) titled “Power Point Document”, with attachment [Tab 110, Annex 2].

²⁰² Insurer 3 “Doc A26”: Email dated 7 January 2023 from [redacted] (Insurer 3) to [redacted] (Copart) titled “[Insurer 3] Salvage And Green Parts ITT – Confirmation Of Successful Tender” with attachment [Tab 111, Annex 2].

[...]

The commercial terms you have proposed within your proposal and the service you have specified must meet the requirements stated within the tender and I would like to thank you for your time in completing the exercise [emphasis added].

159. Copart then entered into negotiations with Insurer 3 concerning the final services agreement.
160. On 13 January 2023, Copart sent an email to Insurer 3 acknowledging the email confirming successful award of the Insurer 3 Contract.²⁰³
161. On 19 and 31 January 2023, Copart sent emails to Insurer 3 regarding the progress of the draft contract.²⁰⁴
162. On 31 January 2023, Copart sent a draft 'Agreement for the collection, storage, remarketing and disposal of salvage vehicles' to Insurer 3, which was based on the terms of the Insurer 3 Combined Proposal.²⁰⁵
163. On 15 February 2023, Insurer 3 sent an email to Copart requesting a definition of 'prestige vehicles' for [REDACTED]²⁰⁶ for the draft contract.²⁰⁷ Copart sent two emails the same day, responding to the request.²⁰⁸
164. On 7 March 2023, Insurer 3 sent an email to Hills Motors, providing the outcome of the RFP process and informing Hills Motors that it had not been awarded the contract for the supply of vehicle salvage services, associated services and green parts.²⁰⁹ The email states:

Further to the recent tender exercise for the supply of Vehicle Salvage Services, Associated Services And Green Parts to [Insurer 3], I regret to

²⁰³ Insurer 3 "Doc B24" Email dated 13 January 2023 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) titled "RE: [Insurer 3] Salvage And Green Parts ITT – Confirmation Of Successful Tender" [Tab 112, Annex 2].

²⁰⁴ Insurer 3 "Doc B25": Email dated 19 January 2023 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) titled "Update" [Tab 113, Annex 2] and Insurer 3 "Doc B26": Email dated 31 January 2023 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) titled "RE: [Insurer 3] Salvage And Green Parts ITT – Confirmation Of Successful Tender" [Tab 114, Annex 2].

²⁰⁵ Insurer 3 "Doc B27": Email dated 31 January 2023 from [REDACTED] (Copart) to [REDACTED] (Insurer 3), with [REDACTED] (Copart) in copy, titled "Draft Agreement", with attachments [Tab 115, Annex 2].

²⁰⁶ Insurer 3 provides accident management and repair services through a number of businesses, including [REDACTED] and [REDACTED] and [REDACTED] (see [REDACTED]).

²⁰⁷ Insurer 3 "Doc B28": Email dated 15 February 2023 from [REDACTED] (Insurer 3) to [REDACTED] (Copart) and [REDACTED] (Copart) titled "Definition of Prestige Vehicles for [REDACTED] Required" [Tab 116, Annex 2].

²⁰⁸ Insurer 3 "Doc B28": Email dated 15 February 2023 from [REDACTED] (Insurer 3) to [REDACTED] (Copart) and [REDACTED] (Copart), titled "Definition of Prestige Vehicles for [REDACTED] Required" [Tab 116, Annex 2] and Insurer 3 "Doc B29": Email dated 15 February 2023 from [REDACTED] (Copart) to [REDACTED] (Insurer 3) and [REDACTED] (Copart), with [REDACTED] (Copart) in CC, titled "RE: Definition of Prestige Vehicles for [REDACTED] Required" [Tab 117, Annex 2].

²⁰⁹ Insurer 3 "Doc C11": Email dated 7 March 2023 from [REDACTED] (Insurer 3) to [REDACTED] (Hills Motors) titled "[Insurer 3] Salvage And Green Parts ITT – Outcome Of Tender", with attachment [Tab 118, Annex 2].

advise you that your submission was unsuccessful on this occasion in relation to the provision of Salvage Services to [Insurer 3].

However, concerning the provision of Green Parts, as you are already an Approved Supplier to the Group, we would like to continue with the current agreement we hold with for the provision of Green Parts.

165. On 9 March 2023, Insurer 3 sent an email to Copart indicating the 'go live' date would be 10 March 2023, in advance of the formal contract being signed, to which Copart responded on the same day to confirm the go live date would be 10 March 2023 and details on the commercial terms.²¹⁰
166. On 10 March 2023, Insurer 3 sent an email to Copart noting the go live date as agreed would be 10 March 2023 and indicating it would provide an updated agreement later that day for Copart's review.²¹¹
167. Negotiations with Insurer 3 concerning the services agreement remained ongoing until at least 6 June 2023.²¹² Various drafts of the services agreement were shared between Copart and Insurer 3, including the 'most recent'²¹³ version.²¹⁴

Compliance statements and engagement with the Monitoring Trustee

168. Paragraph 7 of the IEO required Copart, Inc., CPRT LLP and Copart UK Limited (as well as Hills Motors) to provide periodic compliance statements, starting on 23 August 2022 and thereafter every two weeks. In each case, the compliance statement was required to be provided by the Chief Executive Officer or other persons as agreed with the CMA on behalf of each entity, confirming compliance with the IEO.
169. Copart submitted 28 compliance statements between 22 August 2022 and 13 June 2023²¹⁵ to the CMA pursuant to paragraph 7 of the IEO. The content of each of the compliance statements followed the form set out in the IEO. The compliance statements were signed variously by members of Copart's senior management – [redacted] (former Chief Legal Officer and Corporate Secretary) and [redacted] (Chief Legal Officer and Corporate Secretary) on behalf of Copart, Inc. and

²¹⁰ Insurer 3 "Doc B31": Email dated 9 March 2023 from [redacted] (Copart) to [redacted] (Insurer 3) and [redacted] (Copart) titled "RE: Salvage Services – Go Live With [Insurer 3] ASAP" [Tab 119, Annex 2].

²¹¹ Insurer 3 "Doc A34": Email dated 10 March 2023 from [redacted] (Insurer 3) to [redacted] (Copart) and [redacted] (Copart) titled "RE: Salvage Services – Go Live With [Insurer 3] ASAP" [Tab 120, Annex 2].

²¹² Insurer 3 response to Insurer 3 Notice dated 6 June 2023, question 4 which states '...The Agreement has not been signed yet as it is in final review with both legal teams...'.

²¹³ IEO Provisional Penalty Response, paragraph 51(d). [Tab 9, Annex 2].

²¹⁴ IEO Provisional Penalty Response, Annex 2 (incorrectly referred to as Annex 3 in the IEO Provisional Penalty Response). [Tab 9, Annex 2].

²¹⁵ As listed from tabs 134 to 161 in Annex 2.

CPRT LLP, and [X] (Copart UK Limited's CEO) on behalf of Copart UK Limited – and confirmed that for each relevant period Copart, Inc., CPRT LLP and Copart UK Limited had complied with the IEO. Specifically, these compliance statements confirmed that, subject to paragraph 3 of the IEO, and except with the prior written consent of the CMA:

No action has been taken by Copart [...] which might (i) lead to the integration of the Hills Motors business with the Copart business.²¹⁶

The Hills Motors business has been carried on separately from the Copart business and the Hills Motors business sale and brand identity has been maintained.²¹⁷

Subject to integration which had occurred prior to the commencement date, the customer and supplier lists of the two businesses have been operated and updated separately and any negotiations with any existing or potential customers and supplies in relation to the Hill Motors business have been carried out by the Hills Motors business alone and, for the avoidance of doubt, the Copart business has not negotiated on behalf of the Hills Motors business (and vice versa) or entered into any joint agreements with the Hills Motors business (and vice versa).²¹⁸

Except as listed in paragraph (o) below, there have been no: [...] (iii) substantial customer volumes won or lost or substantial changes to the customer contracts for the Hills Motors business or the Copart business.²¹⁹

170. At no point did any of the compliance statements refer to the events relating to the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals or Contracts. Further, Copart did not seek any derogations from the CMA in respect of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals or Contracts.
171. Copart engaged with the Monitoring Trustee following the latter's appointment on 26 January 2023. Copart did not notify the Monitoring Trustee that it was awarded any of the Insurer 1, Insurer 2 or Insurer 3 Contracts.

²¹⁶ Paragraph 2(a)(i) of the compliance statements [Tabs 134-161, Annex 2].

²¹⁷ Paragraph 2(b) of the compliance statements [Tabs 134-161, Annex 2].

²¹⁸ Paragraph 2(h) of the compliance statements [Tabs 134-161, Annex 2].

²¹⁹ Paragraph 2(n) of the compliance statements [Tabs 134-161, Annex 2].

D. Failures to comply with the IEO, without reasonable excuse

Assessment

172. On the basis of the available evidence, and following careful assessment of the IEO Provisional Penalty Response, the CMA has decided that Copart has failed to comply with the IEO, without reasonable excuse, for the reasons set out below.

Insurer 1 Breach

173. As Copart submitted the Insurer 1 Combined Proposal to Insurer 1 on 11 July 2022, which was before the IEO commenced on 9 August 2022, the CMA considers that its initial submission did not constitute a breach of the IEO.²²⁰

174. After the IEO was imposed, it was incumbent on Copart (i) to assess whether any action it proposed to take, or continue to take, in relation to the Insurer 1 Combined Proposal was likely to contravene any of the terms of the IEO, and, (ii) if necessary, to seek derogations from the CMA to carry on any conduct that would otherwise be a breach of the IEO. Whilst the IEO did not require Copart to reverse or unwind any action taken before the IEO was imposed, it prevented Copart from taking any further steps in relation to the Insurer 1 Combined Proposal which might constitute pre-emptive action.

175. As noted in section B above, paragraph 3.20 of CMA108 warns that:

If the merging parties enter into an obligation or take a decision before the Interim Measures take effect, but the obligation will be performed or the decision implemented, or continue to be implemented, after the Interim Measures have come into force, then the merging parties should make full disclosure of the situation to the CMA and seek a derogation if any further or continuing action might breach the Interim Measures.

²²⁰ In accordance with paragraph 3 of the IEO.

Breach of paragraph 4 of the IEO

176. Under paragraph 4 of the IEO, Copart was prohibited (except with the prior written consent of the CMA) from taking any pre-emptive action, including any action which might (i) lead to the integration of the Hills Motors business with the Copart business; or (ii) otherwise impair the ability of the Hills Motors business or the Copart business to compete independently in any of the markets affected by the Merger.²²¹
177. After the imposition of the IEO, Copart continued to pursue the Insurer 1 RFP on the basis of the Insurer 1 Combined Proposal, which combined elements of both the Copart business and the Hills Motors business. As detailed below, Copart's actions during the specified period of the IEO included providing commercial clarifications in relation to the Insurer 1 Combined Proposal, negotiating the terms of the draft Insurer 1 Contract, and subsequently entering into the Insurer 1 Contract on the basis of this combined proposal. At no point prior to taking these actions did Copart inform the CMA or seek any derogations from the relevant IEO provisions.
178. The Insurer 1 Combined Proposal included elements of Hills Motors business, being the Hills Motors recycled parts services:
- a) The Insurer 1 Combined Proposal included a statement that it would include '[a]ccess to an effective and established **'Green Parts' solution** – delivering part provenance and significant savings' [emphasis added].²²² Appendix 5 starting on slide 82 of the PDF presentation titled 'RFP Reference 010522 – Copart.pdf' attached to Copart's email dated 11 July 2022 submitting the Insurer 1 Combined Proposal,²²³ contained a detailed description of Copart's 'Green Parts User Journey', along with an image stating 'Copart Recycling', indicating that Copart would provide recycled parts services in the Insurer 1 Combined Proposal.
 - b) Copart explicitly informed Insurer 1 that the Insurer 1 Combined Proposal **'is a joint RFP response following Copart's acquisition of The Green Parts Specialist business**, which will continue to operate as it does today...' by email dated 11 July 2022 [emphasis added].²²⁴ Hills Motors also informed Insurer 1 on 11 July 2022 that Hills was sold to Copart and their

²²¹ See paragraph 51 for the relevant text of paragraph 4 of the IEO.

²²² Copart "Annex 5": Attachment titled "RFP Reference 010522 – Copart.pdf", Slide 4 (Attached to email of the same name) [Tab 22, Annex 2].

²²³ Copart "Annex 5": Attachment titled "RFP Reference 010522 – Copart.pdf", Slide 82 [Tab 22, Annex 2].

²²⁴ Insurer 1 "Doc A10": Email dated 11 July 2022 from [§<] (Copart) to [§<] (Insurer 1), with [§<] (Insurer 1), titled "RFP – Reference 010522" [Tab 50, Annex 2].

services **‘will be included within Copart’s submission [ie the Insurer 1 Combined Proposal]’** [emphasis added].²²⁵

179. On this basis, the CMA finds that the Insurer 1 Combined Proposal was a single proposal submitted by Copart in response to Insurer 1’s RFP, which combined elements of both the Copart business (the salvage services)²²⁶ and the Hills Motors business (the recycled parts services),²²⁷ to be provided as part of a single contract for the provision of salvage and recycled parts services.
180. As set out above (in paragraphs 91 to 105), there is extensive evidence showing that Copart took active steps to pursue the Insurer 1 RFP on the basis of the Insurer 1 Combined Proposal in its communications with Insurer 1 after 9 August 2022 (when the IEO came into force), including:
- a) An email from Copart to Insurer 1 on 19 August 2022 in which Copart asked Insurer 1 whether it had ‘everything you need’²²⁸ in relation to the Insurer 1 Combined Proposal. In the subsequent email chain, ending on 25 October 2022 at 18:09, Copart responded to an update from Insurer 1 on the Insurer 1 Combined Proposal stating, ‘[...] please do let me know if I can help with any questions from stakeholders’.²²⁹
 - b) An email from Insurer 1 to Copart dated 1 December 2022, congratulating Copart on its ‘successful proposal’ and attaching the draft Insurer 1 Contract.²³⁰ Schedule 1 (Services) was not completed but Insurer 1 noted in the cover email that it would draft the services section ‘based on [Copart’s] RFP submission’, which included the provision of recycled parts services. Copart responded on 2 December 2022 saying that it would check diaries to arrange a call between the parties’ respective legal teams.²³¹
 - c) An email from Insurer 1 to Copart dated 8 March 2023 states:

Thank you so much for your time earlier today. As discussed, I’ve attached the draft services schedule based on our RFP requirements

²²⁵ Insurer 1’s response to Insurer 1 Notice dated 9 June 2023, page 1, [Tab 19, Annex 2] and Insurer 1 “Doc E8: Email dated 11 July 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled “Fwd: Salvage RFP Q&A” [Tab 51, Annex 2].

²²⁶ Salvage services include the collection, storage and remarketing for sale of damaged or other unused vehicles.

²²⁷ Recycled parts services involve the process of dismantling vehicles to supply recycled original equipment manufacturer vehicle parts.

²²⁸ Insurer 1 “Doc A15”: Email dated 19 August 2022 from [redacted] (Copart) to [redacted] (Insurer 1) titled “RE: Commercial clarifications” [Tab 52, Annex 2].

²²⁹ Insurer 1 “Doc A15”: Email dated 25 October 2022 at 18:09 between [redacted] (Copart) and [redacted] (Insurer 1) titled “RE: Commercial clarifications” [Tab 52, Annex 2].

²³⁰ Copart “Annex 13”: Email dated 1 December 2022 from [redacted] (Insurer 1) to [redacted] (Copart), with [redacted] (Copart) in CC, titled “Salvage contract” with attachment [Tab 32, Annex 2].

²³¹ Copart “Annex 8”: Email chain ending on 2 December 2022 at 23:52 between [redacted] (Copart) and [redacted] (Insurer 1) titled “RE: Salvage contract” [Tab 34, Annex 2].

and your proposal. We need to add more detailed processes and descriptions where appropriate, and **I would appreciate your help with this. I have marked a few of the areas where further details are needed, such as the correct definitions of the terms. I appreciate your help with this and please let me know if we need to discuss anything before our catch up next week** [emphasis added].

The draft services schedule attached to the email refers to the recycled parts services and indicated, 'The Supplier shall manage a **green (recycled) parts** fulfilment solution...' [emphasis added].²³² Insurer 1 followed up on its email on 23 March 2023 and Copart responded the same day advising that its solicitor was still working on some changes, with the updated document being provided on 26 March 2023. The email correspondence also referred to a meeting between Insurer 1 and Copart.²³³ The CMA has not been provided with details of this meeting.

181. At no time during the specified period did Copart inform the CMA or seek any derogations with respect to any of these actions taken after imposition of the IEO in relation to the Insurer 1 Combined Proposal. There is no indication from the documents provided by Copart, Hills Motors or Insurer 1, and Copart has not made any submissions, that Copart informed Insurer 1, after imposition of the IEO, that Copart required the CMA's prior written consent under the IEO to offer combined services that included those of the Hills Motors business.
182. As set out in paragraph 174 above, after the IEO was imposed, it was incumbent on Copart (i) to assess whether any action it proposed to take, or to continue to take, in relation to the Insurer 1 Combined Proposal was likely to contravene any of the terms of the IEO, and, (ii) if necessary, to seek derogations from the CMA to carry on any conduct that would otherwise be a breach of the IEO. Whilst the IEO did not require Copart to reverse or unwind any action taken before the IEO was imposed, it did prevent Copart from taking any further steps in relation to the Insurer 1 Combined Proposal which might constitute pre-emptive action.
183. The CMA considers that the steps taken by Copart to negotiate the Insurer 1 Combined Proposal after 9 August 2022 (when the IEO came into force), and then enter into the Insurer 1 Contract on 8 July 2023, constituted pre-emptive action in breach of paragraph 4 of the IEO. In particular, these negotiations and the entering into of the Insurer 1 Contract, amounted to action which might:

²³² Insurer 1 "Doc B17": Email dated 8 March 2023 from [redacted] (Insurer 1) to [redacted] (Copart) titled "[Insurer 1] agreement – services schedule" with attachment [Tab 58, Annex 2].

²³³ Insurer 1 "Doc B20" Email chain ending on 26 March 2023 at 22:29 between [redacted] (Insurer 1), [redacted] (Copart) and [redacted] (Copart) titled "RE: Services Schedule" [Tab 60, Annex 2].

- a) lead to the integration of the Hills Motors business with the Copart business, including the sales functions of both businesses. By continuing negotiations in relation to the Insurer 1 Combined Proposal and entering into the Insurer 1 Contract on the basis of this combined proposal, Copart was offering services to Insurer 1 on an integrated basis. This had the potential to impact the conduct or outcome of the Insurer 1 RFP, thereby potentially affecting the competitive structure of the market during the CMA's investigation; and
- b) otherwise impair the ability of the Hills Motors business or the Copart business to compete independently in any of the markets affected by the Merger. As noted in Copart's own submissions,²³⁴ the ability to offer an in-house recycled parts supply service is an important competitive parameter in the supply of salvage services. Copart did not have this capability prior to the Merger. However, following its purchase of Hills Motors, Copart represented to Insurer 1 that it would be able to offer an in-house dismantling capability (via Hills Motors as part of the Copart group) to service the contract. This risked impairing Copart's and Hills Motors' ability to compete independently in the supply of salvage services, as by continuing negotiations in relation to Insurer 1 Combined Proposal and entering into the Insurer 1 Contract on the basis of this combined proposal, Copart was representing to Insurer 1 that Hills Motors was no longer an independent player in the market.

Breaches of paragraphs 5(a) and 5(g) of the IEO

- 184. Under paragraph 5(a) of the IEO, Copart was required to take all necessary steps to ensure that, except with the prior written consent of the CMA, the Hills Motors business was carried on separately from the Copart business and the Hills Motors business's separate sales identity was maintained.
- 185. Under paragraph 5(g) of the IEO, Copart was required to take all necessary steps to ensure that, except with the prior written consent of the CMA, any negotiations with any existing or potential customers in relation to the Hills Motors business were carried out by the Hills Motors business alone.
- 186. The CMA considers that the steps taken by Copart to negotiate the Insurer 1 Combined Proposal after 9 August 2022 (when the IEO came into force), and then enter into the Insurer 1 Contract on 8 July 2023, also breached paragraphs 5(a) and 5(g) of the IEO. In particular:

²³⁴ Final Merger Notice, paragraph 10 [Tab 121, Annex 2] and Parties' response to the Phase 1 Decision, paragraph 7 [Tab 124, Annex 2].

- a) In relation to paragraph 5(a), by negotiating the Insurer 1 Combined Proposal, which contained a joint offering of elements of the Copart and Hills Motors' businesses, and by subsequently entering into the Insurer 1 Contract, Copart failed to ensure that the Hills Motors business was carried on separately from the Copart business and that the Hills Motors business' separate sales identity was maintained.
- b) In relation to paragraph 5(g), Copart carried on negotiations with Insurer 1 (a potential customer) on the basis of a proposal that included elements of the Hills Motors business for almost a year after the IEO came into force, before entering into the Insurer 1 Contract on 8 July 2023.²³⁵

187. At no time during the specified period did Copart obtain the prior written consent of the CMA for any of these actions.

Breach of paragraph 8 of the IEO

188. Under paragraph 8 of the IEO, Copart was required at all times to actively keep the CMA informed of any material developments relating to the Hills Motors business or the Copart business, including but not limited to all substantial customer volumes won or lost or substantial changes to the customer contracts for the Hills Motors or Copart business.

189. The CMA considers that Copart failed to keep the CMA informed of all material developments between 9 August 2022 (when the IEO came into force) and 14 July 2023 (when the IEO ceased to have effect), in breach of paragraph 8 of the IEO. In particular:

- a) Copart was awarded the Insurer 1 Contract on 3 November 2022 (on the basis of the Insurer 1 Combined Proposal), but it was only after the CMA issued the Copart Notice on 26 April 2023 that Copart disclosed this fact to the CMA in its response dated 4 May 2023.²³⁶
- b) Copart submitted multiple compliance statements, signed by Copart UK Limited's CEO and Copart, Inc.'s and CPRT LLP's Chief Legal Officers, to the CMA, but they failed to disclose that Copart had been awarded the Insurer 1 Contract (including on 15 November, 29 November, 13 December 2022, and 10 January, 24 January, 7 February, 30 May, and 13 June 2023).

²³⁵ IEO Provisional Penalty Response, Annex 1. [Tab 9, Annex 2]

²³⁶ While Copart provided copies of Copart's Insurer 2 and Insurer 3 RFPs to the CMA on 1 March 2023 in its response to a notice sent under section 109 of the Act dated 23 February 2023 (**Copart Phase 2 Notice 2 Response**) [Tab 10, Annex 2], Copart did not actively notify the CMA of the award of the Insurer 1, Insurer 2 and Insurer 3 Contracts until 4 May 2023, in response to the Copart Notice [Tab 11, Annex 2].

- c) Copart UK Limited's CEO was notified that Copart had been awarded the Insurer 1 Contract on 3 November 2022.²³⁷ Copart also told the CMA that communications with third parties regarding tender submissions and any subsequent negotiations 'always involved' Copart UK Limited's CEO (as well as [redacted], Account Director, Copart UK),²³⁸ and that '[n]o other employee at Copart has the power to make binding commercial decisions or negotiate on behalf of Copart'.²³⁹ This indicates that Copart UK Limited's CEO had direct knowledge of the fact that Copart had been awarded the Insurer 1 Contract, but Copart failed to disclose this in the relevant compliance statements that the CEO signed on behalf of Copart UK Limited and submitted to the CMA. In any case, the CMA considers that Copart should have had systems in place to ensure that material developments, which would clearly include substantial contract awards, were disclosed to the CMA.
- d) Copart only informed the CMA on 9 October 2023, in its IEO Provisional Penalty Response, that it had entered into the Insurer 1 Contract on 8 July 2023, despite Copart being obliged to inform the CMA of all material developments during the specified period of the IEO.

Insurer 2 Breach

190. Copart submitted the Insurer 2 Combined Proposal to Insurer 2 on 8 August 2022, the day before the IEO came into effect, but in the knowledge that imposition of the IEO was imminent, and the terms on which the IEO would be based.²⁴⁰ As the Insurer 2 Combined Proposal was submitted before the IEO commenced, the CMA considers that its initial submission does not constitute a breach of the IEO.²⁴¹
191. After the IEO was imposed, it was incumbent on Copart (i) to assess whether any action it proposed to take, or to continue to take, in relation to the Insurer 2 Combined Proposal was likely to contravene any of the terms of the IEO, and, (ii) if necessary, to seek derogations from the CMA to carry on any conduct that would otherwise breach of the IEO. Whilst the IEO did not require Copart to reverse or unwind any action taken before the IEO was imposed, it prevented

²³⁷ Copart "Annex 11": Email dated 3 November 2022 from [redacted] (Insurer 1) to [redacted] (Copart) titled "FW: Copart – offer of the contract for Salvage services" [Tab 30, Annex 2].

²³⁸ S109 Provisional Penalty Response, paragraph 11 [Tab 8, Annex 2].

²³⁹ The Copart Response to S109 Provisional Penalty, paragraph 11 [Tab 8, Annex 2].

²⁴⁰ By email dated 5 August 2022, the CMA informed Copart that it intended to impose an IEO on Copart on 8 August 2022. The CMA noted in that email that the IEO would take immediate effect and that it anticipated the IEO would take the form of the CMA's standard form template. On 5 August 2022, Copart's legal representatives, Euclid Law, acknowledged receipt of the CMA's email above on behalf of Copart. The CMA imposed the IEO on Copart in the CMA's standard form on 9 August 2022.

²⁴¹ In accordance with paragraph 3 of the IEO.

Copart from taking any further steps in relation to the Insurer 2 Combined Proposal which might constitute pre-emptive action.

192. As noted in section B above, paragraph 3.20 of CMA108 warns that:

If the merging parties enter into an obligation or take a decision before the Interim Measures take effect, but the obligation will be performed or the decision implemented, or continue to be implemented after the Interim Measures have come into force, then the merging parties should make full disclosure of the situation to the CMA and seek a derogation if any further or continuing action might breach the Interim Measures.

Breach of paragraph 4 of the IEO

193. After the imposition of the IEO, Copart continued to pursue the Insurer 2 RFP on the basis of the Insurer 2 Combined Proposal, which combined elements of both the Copart business and the Hills Motors business. As detailed below, Copart's actions during the specified period of the IEO included providing commercial clarifications in relation to the Insurer 2 Combined Proposal and negotiating the terms of the draft Insurer 2 Contract. At no point prior to taking these actions did Copart inform the CMA or seek any derogations from the relevant IEO provisions.

194. The Insurer 2 Combined Proposal included a PDF document outlining Copart's '**Green Parts Provision**'²⁴², which contained Copart's branding and logo, and stated that 'we also now have the **largest green parts solution through our recent acquisition of Hills 'The Green Parts Specialists'**'. The Insurer 2 Combined Proposal also included confirmation that 'Copart have made a statement of intent **to lead the way in the provision of Green Parts** with a significant investment through the acquisition of Hills Salvage and the Green Parts Specialists brand'²⁴³. The Insurer 2 Combined Proposal also attached a PDF presentation which contained Hills Motors' branding and logo which provided a detailed description of 'the national platform for sourcing genuine recycled OEM parts'.²⁴⁴

195. On this basis, the CMA finds that the Insurer 2 Combined Proposal was a single proposal submitted by Copart in response to the Insurer 2 RFP, which combined elements of both the Copart business (the salvage services) and the

²⁴² Copart "Annex 23": Attachment titled "Supporting Information – RFP.pdf", slide 4 [Tab 24, Annex 2].

²⁴³ Copart "Annex 23": Attachment titled "Copart – [Insurer 2] Total Loss and Salvage RFP – Final.xlsx", sheet 2 "Capability Questionnaire" [Tab 24, Annex 2].

²⁴⁴ Copart "Annex 23": Attachment titled "GPS services for [Insurer 2]" [Tab 24, Annex 2].

Hills Motors business (the recycled parts services), to be provided as part of a single contract for the provision of salvage and recycled parts services.

196. As set out above (in paragraphs 110 to 128), there is extensive evidence showing that Copart took active steps to pursue the Insurer 2 RFP on the basis of the Insurer 2 Combined Proposal in its communications with Insurer 2 after 9 August 2022 (when the IEO came into force), including:
- a) The revised elements of the Insurer 2 Combined Proposal that were submitted by Copart to Insurer 2 via Third Party 1 on 22 August 2022.²⁴⁵ The amendments were confined to the matrix tables 1 and 3 in Tab 4 (which related to pay bandings) but did not seek to amend the scope of services in the Insurer 2 Combined Proposal.
 - b) On 21 October 2022, Copart resent a copy of the Insurer 2 Combined Proposal to Insurer 2.²⁴⁶ Copart did not seek to amend the scope of services in the Insurer 2 Combined Proposal. Those documents were unamended and contained the statements set out above in paragraph 109.
 - c) Copart's response to Insurer 2's RFP questions provided on 3 November 2022, which included a statement that, 'Copart handle c. 400k vehicles. Meaning we have a significantly larger pool of vehicles to service **green part requirements**' in connection with a description of Copart's '**Green Parts Opportunity**' [emphasis added].²⁴⁷ An identical statement was included in the attachment provided by Copart to Insurer 2 by email dated 13 December 2022.²⁴⁸ There is no indication that the scope of services included in the Insurer 2 Combined Proposal changed as a result of Copart's response to Insurer 2 and therefore the emails gave the impression that the Insurer 2 Combined Proposal remained a joint offering including elements of the Hills Motors businesses.
 - d) Copart confirmed in its response to Question 3(b) of the Copart Notice that its submissions dated 1 December 2022 (see paragraph 120 above), 27 March 2023 (see paragraph 126 above) and 11 April 2023 (see paragraph 127) were each a revised or subsequent proposal related to the Insurer 2 Combined Proposal.

²⁴⁵ Insurer 2 "Doc 0055": Email dated 23 August 2022 from [redacted] (Third Party 1) to [redacted] (Insurer 2) and [redacted] (Insurer 2) titled "FW: Clarification", with attachment [Tab 78, Annex 2].

²⁴⁶ Insurer 2 response to Q1(a) of the Insurer 2 Notice dated 8 June 2023, page 1 [Tab 18, Annex 2], and Insurer 2 "Doc 0023": Email dated 21 October 2022 from [redacted] (Copart) to [redacted] (Insurer 2) titled "FW: Copart – [Insurer 2] RFP 2022 (Private & Confidential)", with attachments [Tab 79, Annex 2].

²⁴⁷ Insurer 2 "Doc 2042": Attachment titled "[Insurer 2's] RFP questions", slide 12 [Tab 80, Annex 2].

²⁴⁸ Insurer 2 "Doc 0014": Email dated 13 December 2022 from [redacted] (Copart) to [redacted] (Insurer 2) with no subject line, with attachments. The statement is contained in the attachment titled 'Comparisons.pdf' on slide 2 [Tab 82, Annex 2].

197. At no time during the specified period did Copart inform the CMA or seek any derogations with respect to any of these actions taken after imposition of the IEO in relation to the Insurer 2 Combined Proposal. There is no indication from the documents provided by Copart, Hills Motors or Insurer 2, and Copart has not made any submissions, that Copart informed Insurer 2, after imposition of the IEO, that Copart required the CMA's prior written consent under the IEO to offer combined services that included those of the Hills Motors business.
198. As set out in paragraph 191 above, after the IEO was imposed, it was incumbent on Copart (i) to assess whether any action it proposed to take, or to continue to take, in relation to the Insurer 2 Combined Proposal was likely to contravene any of the terms of the IEO, and, (ii) if necessary, to seek derogations from the CMA to carry on any conduct that would otherwise breach the IEO. Whilst the IEO did not require Copart to reverse or unwind any action taken before the IEO was imposed, it did prevent Copart from taking any further steps in relation to the Insurer 2 Combined Proposal which might constitute pre-emptive action.
199. The CMA considers that the steps taken by Copart to negotiate the Insurer 2 Combined Proposal after 9 August 2022 (when the IEO came into force) constituted pre-emptive action in breach of paragraph 4 of the IEO. In particular, these negotiations amounted to action which might:
- a) lead to the integration of the Hills Motors business with the Copart business, including the sales functions of both businesses. By continuing negotiations in relation to the Insurer 2 Combined Proposal on the basis of this combined proposal, Copart was offering services to Insurer 2 on an integrated basis. This had the potential to impact the conduct or outcome of the Insurer 2 RFP, thereby potentially affecting the competitive structure of the market during the CMA's investigation; and
 - b) otherwise impair the ability of the Hills Motors business or the Copart business to compete independently in any of the markets affected by the Merger. As noted in Copart's own submissions,²⁴⁹ the ability to offer an in-house recycled parts supply service is an important competitive parameter in the supply of salvage services. Copart did not have this capability prior to the Merger. However, following its purchase of Hills Motors, Copart represented to Insurer 2 that it would be able to offer an in-house dismantling capability (via Hills Motors as part of the Copart Group) to service the contract. This risked impairing Copart's and Hills Motors' ability to compete independently in the supply of salvage services, as by

²⁴⁹ Final Merger Notice, paragraph 10 [Tab 121, Annex 2] and Parties' response to the Phase 1 Decision, paragraph 7 [Tab 124, Annex 2].

continuing negotiations in relation to Insurer 2 Combined Proposal, Copart was representing to Insurer 2 that Hills Motors was no longer an independent player in the market.

Breaches of paragraphs 5(a) and 5(g) of the IEO

200. The CMA considers that the steps taken by Copart to negotiate the Insurer 2 Combined Proposal after 9 August 2022 (when the IEO came into force) also breached paragraphs 5(a) and 5(g) of the IEO. In particular:

- a) In relation to paragraph 5(a), by negotiating the Insurer 2 Combined Proposal, which contained a joint offering of elements of the Copart and Hills Motors' businesses, Copart failed to ensure that the Hills Motors business was carried on separately from the Copart business and that the Hills Motors business' separate sales identity was maintained.
- b) In relation to paragraph 5(g), Copart carried on negotiations with Insurer 2 (a potential customer) on the basis of a proposal that included elements of the Hills Motors business after the IEO came into force. Copart was ultimately awarded the Insurer 2 Contract on 14 April 2023, approximately 8 months after the IEO came into force. As of 8 June 2023, when Insurer 2 responded to the Insurer 2 Notice, Copart remained in negotiations with Insurer 2 to agree a final services agreement in which Copart was to provide services in accordance with the Insurer 2 Combined Proposal. The CMA notes Copart's submission in its IEO Preliminary Response that a telephone conference call took place on 16 August 2022²⁵⁰ between Copart and Insurer 2 during which Copart is said to have informed Insurer 2 that 'its acquisition of Hills Motors was subject to CMA approval'.²⁵¹ However, neither the fact nor the content of such a phone call has been corroborated by any written contemporaneous evidence. Even if such a call did take place, this does not alter the position that Copart was not permitted to negotiate in respect of the Hills Motors business during the specified period without the prior written consent from the CMA.

201. At no time during the specified period did Copart obtain the prior written consent of the CMA for any of these actions.

²⁵⁰ The date provided in paragraph 21 of the IEO Preliminary Response appears to contain a typographical error as it refers to the call occurring on 16 August 2023; however the CMA understands Copart's position to be that the call took place on 16 August 2022.

²⁵¹ IEO Preliminary Response, paragraph 21 [Tab 7, Annex 2].

Breach of paragraph 8 of the IEO

202. The CMA considers that Copart failed to keep the CMA informed of all material developments between 9 August 2022 (when the IEO came into force) and 14 July 2023 (when the IEO ceased to have effect), in breach of paragraph 8 of the IEO. In particular:

- a) Copart was awarded the Insurer 2 Contract on 14 April 2023 (on the basis of the Insurer 2 Combined Proposal), but it was only after the CMA issued the Copart Notice on 26 April 2023 that Copart disclosed the award of the Insurer 2 Contract to the CMA in its response dated 4 May 2023.
- b) Copart submitted compliance statements, which were signed by Copart UK Limited's CEO and Copart, Inc.'s and CPRT LLP's Chief Legal Officers, to the CMA, in which it failed to disclose that Copart was awarded the Insurer 2 Contract (including on 30 May and 13 June 2023).
- c) Copart UK Limited's CEO was copied into at least some of the correspondence concerning the Insurer 2 Combined Proposal.²⁵² Copart also told the CMA that communications with third parties regarding tender submissions and any subsequent negotiations 'always involved' Copart UK Limited's CEO (as well as [redacted], Account Director, Copart UK)²⁵³ and that '[n]o other employee at Copart has the power to make binding commercial decisions or negotiate on behalf of Copart'.²⁵⁴ Copart UK Limited's CEO therefore had direct knowledge of the fact that Copart had been awarded the Insurer 2 Contract, but Copart failed to disclose this in the compliance statements that the CEO signed on behalf of Copart UK Limited and submitted to the CMA on two occasions. In any case, the CMA considers that Copart should have had systems in place to ensure that material developments, which would clearly include substantial contract awards, were disclosed to the CMA.

²⁵² Insurer 2 "Doc 1017": Email dated 20 March 2023 from [redacted] and [redacted] (Insurer 2) and [redacted], [redacted] and [redacted] (Copart), with [redacted] and [redacted] in CC titled "RE: Pricing Summary – Copart" [Tab 86, Annex 2], in which Insurer 2 states 'As per our conversation on Friday can you please confirm back by return that Copart are able to honour their original proposal for the back dated payment so that we can proceed with the tender award' and Insurer 2 "Doc 1016": Email dated 21 March 2023 from [redacted] (Insurer 2) to [redacted] and [redacted] (Copart) with and [redacted] (Insurer 2) in CC titled "FW: Revised Pricing Summary" [Tab 87, Annex 2] in which Insurer 2 stated '[redacted]and myself can jump onto a Teams call discuss if that would help, we are keen to award the contract to Copart based on what was agreed and documented.'

²⁵³ The Copart Response to S109 Provisional Penalty, paragraph 11 [Tab 8, Annex 2].

²⁵⁴ The Copart Response to S109 Provisional Penalty, paragraph 11 [Tab 8, Annex 2].

Insurer 3 Breach

Breach of paragraph 4 of the IEO

203. Copart submitted the Insurer 3 Combined Proposal to Insurer 3 on 12 September 2022, 5 weeks after the IEO was imposed on 9 August 2022.²⁵⁵ The Insurer 3 Combined Proposal included elements of both the Copart business and the Hills Motors business, namely the in-house recycled parts services. It specified that '[w]e also now have the largest green parts solution through our recent acquisition of Hills **'The Green Parts Specialists'**, meaning that they have access to the largest pool of green parts'²⁵⁶ and that 'our recent acquisition of Hills **'The Green Parts Specialists'** (GPS), [means] you have access to the largest pool of green parts' [emphasis added].²⁵⁷
204. Although Hills Motors submitted a separate RFP response to Insurer 3 (also on 12 September 2022),²⁵⁸ this does not negate Copart's submission of the Insurer 3 Combined Proposal. This Penalty Notice is concerned with the conduct of Copart and, regardless of any separate RFP response by Hills Motors, Copart's RFP response consisted of a single proposal combining elements of both the Copart business (the salvage services) and the Hills Motors business (the recycled parts services), to be provided as part of a single contract for the provision of salvage and recycled parts services.
205. As set out above (in paragraphs 131 to 167), there is extensive evidence showing that Copart took active steps to negotiate the Insurer 3 Combined Proposal following its submission to Insurer 3, including:
- a) Copart's updated RFP and slide deck, which it provided to Insurer 3 on 18 October 2022 (see paragraph 146 above). The RFP retained the statements regarding the 'Green Parts solution' in the Insurer 3 Combined Proposal, being 'Provision of Services for [Insurer 3], Vehicle Salvage Handling, Associated Services & **Green Parts**, September 2022' [emphasis added].²⁵⁹ Copart confirmed in its response to Question 2(d) of the Copart Notice that

²⁵⁵ Email dated 9 August 2022 from CMA to Euclid Law, with CMA and Euclid Law in CC, titled "Copart / Hills Motor ME/70010/22 – IEO and integration questionnaire", with attachments [Tab 3, Annex 2], and https://assets.publishing.service.gov.uk/media/62f36a028fa8f50288010a35/Copart_Hills_-_Final_IEO_-_imposed_on_9_August_2022.pdf

²⁵⁶ Copart "Annex 16": Attachment titled "[Insurer 3] Group RFP – Copart Sept 2022.pdf", slide 3 [Tab 27, Annex 2].

²⁵⁷ Copart "Annex 16": Attachment titled "[Insurer 3] Group RFP – Copart Sept 2022.pdf" [Tab 27, Annex 2].

²⁵⁸ Insurer 3 "Doc D12" - Email dated 12 September 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 3), with [redacted] (Hills Motors) titled "RFP Hills Salvage & Recycling" [Tab 92, Annex 2].

²⁵⁹ Insurer 3 "Doc B12": page 4 of attachment entitled "[Insurer 3] Group RFP – Copart Sept 2022 V2.pdf" to email dated 18 October 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled "Updates as discussed..." [Tab 101, Annex 2].

this submission was a revised or subsequent proposal related to the Insurer 3 Combined Proposal.

- b) Copart's email response dated 26 October 2022 to Insurer 3's request for clarification on the commercial proposal (see paragraph 149 above).²⁶⁰ Copart's clarification was incorporated into the commercial proposal and related to issues enquired about by Insurer 3.²⁶¹ Copart confirmed in its response to Question 2(d) of the Copart Notice that this submission was a revised or subsequent proposal related to the Insurer 3 Combined Proposal.
- c) The revised pricing proposed by Copart to Insurer 3 via email on 13 December 2022 (see paragraph 153 above).²⁶² Compared to the initial version, the commercial proposal from December 2022 includes revised pricing for [X].²⁶³ Copart confirmed in its response to Question 2(d) of the Copart Notice that this submission was a revised or subsequent proposal related to the Insurer 3 Combined Proposal.
- d) The further revised commercial proposal submitted by Copart to Insurer 3 by email on 21 December 2022, providing for further changes to pricing (see paragraph 156 above).²⁶⁴ The revised commercial proposal was sent by Copart to Insurer 3 again on 3 January 2023 (see paragraph 157 above).²⁶⁵

206. The CMA's investigation is referenced in an email from Copart to Insurer 3 dated 20 October 2022.²⁶⁶

With reference to Green Parts and our acquisition of Hills.

We put this acquisition forward voluntarily to the CMA and as part of good practice and we have been advised that they will have concluded their findings by the end of November.

We are not expecting any issues or concerns, as there is still a wide range of competition in the market place. The CMA are currently

²⁶⁰ Copart "Annex 17": Email dated 26 October 2022 from [X] (Copart) to [X] (Insurer 3) titled "Commercial Proposal – Questions for clarification.pptx", with attachment. [Tab 29, Annex 2]

²⁶¹ The issues enquired about by Insurer 3 related to (i) how Category A and B vehicles were to be managed and at what cost, and (ii) what the rationale behind the different 5-year share for [X] and Insurer 3 and [X] was.

²⁶² Copart "Annex 19": Email dated 13 December 2022 from [X] (Copart) to [X] (Insurer 3) titled "Revised Proposal" with attachment [Tab 35, Annex 2].

²⁶³ [X] and [X] are part of Insurer 3.

²⁶⁴ Insurer 3 "Doc B22: Email dated 21 December 2022 from [X] (Copart) to [X] (Insurer 3), with [X] (Copart) in CC, titled "Updated Proposal – Private and Confidential" with attachment [Tab 109, Annex 2].

²⁶⁵ Insurer 3 "Doc B23: Email dated 3 January 2023 from [X] (Copart) to [X] (Insurer 3) titled "Power Point Document" with attachment [Tab 110, Annex 2].

²⁶⁶ Copart "Annex 18": Email dated 20 October 2022 from [X] (Copart) to [X] (Insurer 3) titled "RE: Updates as discussed..." [Tab 28, Annex 2].

reaching out to customer [sic] and the market for their comments and all positive feedback from our customers perspective.

207. This email indicates that Insurer 3 was aware of the CMA's investigation of the Merger. However, this did not obviate the need for Copart to obtain the CMA's prior written consent for Copart's submission of the Insurer 3 Combined Proposal and further active steps taken in pursuit of the Insurer 3 RFP on the basis of the combined services of Copart and Hills Motors.
208. At no time during the specified period did Copart inform the CMA or seek any derogations with respect to any of these actions taken after imposition of the IEO in relation to the Insurer 3 Combined Proposal. There is no indication from the documents provided by Copart, Hills Motors or Insurer 3, and Copart has not made any submissions, that Copart informed Insurer 3, after imposition of the IEO, that Copart required the CMA's prior written consent under the IEO to offer combined services that included those of the Hills Motors business.
209. As set out in paragraph 191 above, after the IEO was imposed, it was incumbent on Copart (i) to assess whether any action it proposed to take in relation to the Insurer 3 RFP was likely to contravene any of the terms of the IEO, and, (ii) if necessary, to seek derogations from the CMA to carry on any conduct that would otherwise breach of the IEO.
210. The CMA considers that the submission of the Insurer 3 Combined Proposal and ensuing negotiations by Copart with Insurer 3 in furtherance of the Insurer 3 Combined Proposal and Insurer 3 Contract constituted pre-emptive action in breach of paragraph 4 of the IEO. In particular, these steps amounted to action which might:
- a) lead to the integration of the Hills Motors business with the Copart business, including the sales functions of both businesses. By submitting the Insurer 3 Combined Proposal and continuing to negotiate with Insurer 3 on the basis of this combined proposal, Copart was offering services to Insurer 3 on an integrated basis. This had the potential to impact the conduct or outcome of the Insurer 3 RFP, thereby potentially affecting the competitive structure of the market during the CMA's investigation; and
 - b) otherwise impair the ability of the Hills Motors business or the Copart business to compete independently in any of the markets affected by the Merger. As noted in Copart's own submissions,²⁶⁷ the ability to offer an in-house recycled parts supply service is an important competitive parameter

²⁶⁷ Final Merger Notice, paragraph 10 [Tab 121, Annex 2] and Parties' response to the Phase 1 Decision, paragraph 7 [Tab 124, Annex 2].

in the supply of salvage services. Copart did not have this capability prior to the Merger. However, following its purchase of Hills Motors, Copart represented to Insurer 3 that it would be able to offer an in-house dismantling capability (via Hills Motors as part of the Copart group) to service the contract. This risked impairing Copart's and Hills Motors' ability to compete independently in the supply of salvage services, as by continuing negotiations in relation to the Insurer 3 Combined Proposal, Copart was representing to Insurer 3 that Hills Motors was no longer an independent player in the market.

Breaches of paragraphs 5(a) and 5(g) of the IEO

211. The CMA considers that the steps taken by Copart in submitting the Insurer 3 Combined Proposal on 12 September 2022, five weeks after the imposition of the IEO, and then continuing to negotiate the Insurer 3 Combined Proposal (see paragraphs 131 to 167 above), also breached paragraphs 5(a) and 5(g) of the IEO. In particular:
- a) In relation to paragraph 5(a), by submitting and negotiating the Insurer 3 Combined Proposal while the IEO was in force, which contained a joint offering of elements of the Copart and Hills Motors' businesses, Copart failed to ensure that the Hills Motors business was carried on separately from the Copart business and that the Hills Motors business' separate sales identity was maintained. Further, after Copart was awarded the Insurer 3 Contract, Copart took steps to implement the contract, which included services to be provided by both the Copart business and the Hills Motors business. In doing so, Copart further failed to ensure that the Hills Motors business was carried on separately from the Copart business and that the Hills Motors business' separate sales identity was maintained.
 - b) In relation to paragraph 5(g), Copart carried on negotiations with Insurer 3 (a potential customer) on the basis of a proposal that included elements of the Hills Motors business while the IEO was in force. After being awarded the Insurer 3 Contract on 7 January 2023, Copart continued to carry on negotiations with Insurer 3 to agree a final services agreement on the basis of the Insurer 3 Combined Proposal.
212. At no time during the specified period did Copart obtain the prior written consent of the CMA for any of these actions.

Breach of paragraph 8 of the IEO

213. The CMA considers that Copart failed to keep the CMA informed of all material developments between 9 August 2022 (when the IEO came into force) and 14 July 2023 (when the IEO ceased to have effect), in breach of paragraph 8 of the IEO. In particular:

- a) Copart was awarded the Insurer 3 Contract on 7 January 2023 (on the basis of the Insurer 3 Combined Proposal), but it was only after the CMA issued the Copart Notice on 26 April 2023 that Copart disclosed the award of the Insurer 3 Contract to the CMA in its response dated 4 May 2023.
- b) Copart submitted multiple compliance statements, which were signed by Copart UK Limited's CEO and Copart, Inc.'s and CPRT LLP's Chief Legal Officers, to the CMA, in which it failed to disclose the fact that Copart was awarded the Insurer 3 Contract, including on 10 January, 24 January, 7 February, 30 May and 13 June 2023.
- c) Copart told the CMA that [redacted] (Copart UK Limited's CEO) discussed the acquisition of Hills Motors and the CMA's approval with Insurer 3 Chairman [redacted] on 4 October 2022.²⁶⁸ Although Copart has not provided the CMA with any contemporaneous evidence of this call. The CMA considers that it is plausible that the Insurer 3 Combined Proposal also would have been discussed. Further, Copart told the CMA that communications with third parties regarding tender submissions and any subsequent negotiations 'always involved' Copart UK Limited's CEO (as well as [redacted], Account Director, Copart UK)²⁶⁹ and that '[n]o other employee at Copart has the power to make binding commercial decisions or negotiate on behalf of Copart'.²⁷⁰ This evidence therefore indicates that Copart UK Limited's CEO would likely have had direct knowledge of the Insurer 3 Combined Proposal and of the fact that Copart was awarded the Insurer 3 Contract (or at least she ought to have been aware), but Copart repeatedly failed to disclose this in the compliance statements that the CEO signed on behalf of Copart UK Limited and submitted to the CMA. In any case, the CMA considers that Copart should have had systems in place to ensure that material developments, which would clearly include substantial contract awards, were disclosed to the CMA.

²⁶⁸ IEO Preliminary Response, paragraph 30 [Tab 7, Annex 2]. The date provided in paragraph 30 of the IEO Preliminary Response appears to contain a typographical error as it refers to the discussion occurring on 4 October 2023; however the CMA understands Copart's position to be that the discussion took place on 4 October 2022.

²⁶⁹ The Copart Response to S109 Provisional Penalty, paragraph 11 [Tab 8, Annex 2].

²⁷⁰ The Copart Response to S109 Provisional Penalty, paragraph 11 [Tab 8, Annex 2].

Assessment of Copart's representations on the Breaches

214. The CMA has had careful regard to Copart's representations in the IEO Provisional Penalty Response. In particular, Copart contended (i) that its conduct did not amount to breaches of the IEO; and (ii) the level of the CMA's provisional penalty is disproportionate and unfair. In the IEO Provisional Penalty Response, Copart made several overlapping submissions in relation to each Breach. The CMA's assessment of these submissions, by reference to the available evidence, is set out below. Copart's submissions have been grouped as follows (and are addressed in turn):

- a) Each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals only included a reference to Hills Motors and standalone marketing material and that was not an indication that Copart was able to 'consummate the acquisition' prior to CMA clearance.²⁷¹
- b) There was no integration – the Hills Motors business operated separately to the Copart business, and the separation of the businesses was rigorously policed by an independent monitoring trustee.²⁷²
- c) All negotiations with Insurer 1, Insurer 2 and Insurer 3 were conducted 'unilaterally' by Copart.²⁷³
- d) As paragraph 3 of the IEO makes clear, Copart was not under any obligation to reverse any action it had legitimately undertaken pre-IEO.²⁷⁴
- e) The negotiations related exclusively to the salvage elements of the proposals and Copart did not negotiate the commercial terms of the green parts offer during the lifetime of the IEO.²⁷⁵
- f) Hills Motors was ultimately found not to be a credible competitor; therefore, any action taken could not be said to have had the effect of impairing the Parties' ability to compete or the competitive structure of the market.²⁷⁶ Copart also submitted that the Breaches did not in any way affect the CMA's ability to take effective remedial action.²⁷⁷ However, it made this submission in relation to the appropriateness of imposing a penalty at the level proposed in the Provisional Penalty Notice, and therefore the CMA has addressed this submission in paragraph 331.b).

²⁷¹ IEO Provisional Penalty Response, paragraphs 6(a), 39(a) and 51(a). [Tab 9, Annex 2].

²⁷² IEO Provisional Penalty Response, paragraphs 6(f), 9, 10, 18, 41, 43, 51(b), 53 and 56. [Tab 9, Annex 2].

²⁷³ IEO Provisional Penalty Response, paragraphs 10, 26, 42, 46, and 59. [Tab 9, Annex 2].

²⁷⁴ IEO Provisional Penalty Response, paragraphs 6(b), 33, 34, 39(b) and 47. [Tab 9, Annex 2].

²⁷⁵ IEO Provisional Penalty Response, paragraphs 2, 6(d), 27, 39(c), 46, 51(c), 51(d), and 60. [Tab 9, Annex 2].

²⁷⁶ IEO Provisional Penalty Response, paragraphs 3, 6(e), 13, 39(f), 42, 51(f), and 54. [Tab 9, Annex 2].

²⁷⁷ IEO Provisional Penalty Response, paragraphs 73 and 28. [Tab 9, Annex 2].

- g) Customers were well aware that Copart's acquisition of Hills Motors was subject to CMA clearance, and hence that – if the Merger was prohibited – Hills Motors would continue in the marketplace as before.²⁷⁸
- h) The CMA misrepresents Copart's arguments regarding paragraphs 5(b) and 5(e)(i) of the IEO – Copart was obliged to maintain the Copart business and by communicating alternative options for green parts in the event the Merger was prohibited, Copart was complying with these paragraphs of the IEO.²⁷⁹
- i) Insofar as there are breaches of paragraph 8(c) of the IEO, they are 'minor'.²⁸⁰
- j) The CMA received Copart's responses to the Insurer 2 and Insurer 3 tenders in March 2023, but failed to raise concerns until 5 months later.²⁸¹

Each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals only included a reference to Hills Motors and standalone marketing material and that was not an indication that Copart was able to consummate the acquisition prior to CMA clearance

215. As discussed at paragraphs 87, 109 and 136 above, the evidence available to the CMA shows that each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals included elements of the Hills Motors business – namely the Hill Motors recycled parts services.

Insurer 1

216. Copart submitted that the 'materials only bear the logo of Hills Motors and not Copart'.²⁸² This is incorrect. The Insurer 1 Combined Proposal bears Copart's logo (and not that of Hills Motors). The Insurer 1 Combined Proposal stated that it would include '[a]ccess to an effective and established '**Green Parts**' solution – delivering part provenance and significant savings' [emphasis added].²⁸³ Copart explicitly informed Insurer 1 that the Insurer 1 Combined Proposal 'is a **joint RFP response** following Copart's acquisition of The Green Parts Specialist business' [emphasis added].²⁸⁴ Hills Motors informed Insurer 1

²⁷⁸ IEO Provisional Penalty Response, paragraphs 23, 44 and 57. [Tab 9, Annex 2].

²⁷⁹ IEO Provisional Penalty Response, paragraph 37. [Tab 9, Annex 2].

²⁸⁰ IEO Provisional Penalty Response, paragraphs 36, 49, and 61. [Tab 9, Annex 2].

²⁸¹ IEO Provisional Penalty Response, paragraph 4. [Tab 9, Annex 2].

²⁸² IEO Provisional Penalty Response, footnote 4. [Tab 9, Annex 2].

²⁸³ Copart "Annex 5": Attachment titled "RFP Reference 010522 – Copart.pdf", Slide 4. [Tab 22, Annex 2]

²⁸⁴ Insurer 1 "Doc A10": Email dated 11 July 2022 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled "RFP – Reference 010522". [Tab 50, Annex 2]

on 11 July 2022 that 'Hills was sold to Copart and **their services will be included in Copart's RFP response**' [emphasis added].²⁸⁵

Insurer 2

217. Copart submitted that the Insurer 2 Combined Proposal included 'a reference' to Hills Motors and standalone marketing materials 'bearing only Hills Motors' logo'.²⁸⁶ In fact, the Insurer 2 Combined Proposal, which was submitted by Copart, included multiple references to Hills Motors' recycled parts offering: specifically, (i) the slide deck attached to the Insurer 2 Combined Proposal was titled 'Part 2 – **Green Parts**' [emphasis added] and contained Hills Motors branding, 'The Green Parts Specialists' logo and described Hills Motors recycled parts services²⁸⁷ and (ii) the Insurer 2 Combined Proposal stated that 'Copart have made a statement of intent to lead the way in the provision of **Green Parts** with a significant investment through the acquisition of **Hills Salvage and Green Parts Specialists brand**' [emphasis added] and that 'our next phase of growth will simply supercharge this process, much to the benefit of [Insurer 2], who will have access to the **largest inventory of quality assured Green Parts in the UK** [emphasis added].²⁸⁸
218. The above pre-IEO communications do not constitute a breach of the IEO (and the CMA accepts that the submission of the Insurer 1 and Insurer 2 Combined Proposals did not amount to breaches of the IEO). However, they do make clear that the Insurer 1 and Insurer 2 Combined Proposals both combined elements of the Hills Motors business and the Copart business – and, significantly, Copart continued to negotiate these proposals after the IEO took effect.

Insurer 3

219. The Insurer 3 Combined Proposal (which was submitted 5 weeks after the IEO came into force) contained express references to the recycled parts services of Hills Motors. It specified that '[w]e also now have the largest green parts solution through our recent acquisition of Hills **The Green Parts Specialists**', meaning that they have access to the largest pool of green parts'²⁸⁹ [emphasis added] and that 'our recent acquisition of Hills **The Green Parts Specialists**' (GPS), [means] you have access to the largest pool of green parts' [emphasis

²⁸⁵ Insurer 1's response to Insurer 1 Notice dated 9 June 2023, page 1 [Tab 19, Annex 2] and Insurer 1 "Doc E8: Email dated 11 July 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled "RE: Salvage RFP Q&A" [Tab 51, Annex 2]

²⁸⁶ IEO Provisional Penalty Response, paragraph 39(a). [Tab 9, Annex 2].

²⁸⁷ Copart "Annex 23": Email dated 8 August 2022 from [redacted] (Copart) to [redacted] (Third Party 1) and [redacted] (Insurer 2) titled "Copart – sure RFP 2022 (Private & Confidential)", with attachments [Tab 24, Annex 2].

²⁸⁸ Copart "Annex 23": Attachment titled "Copart – [Insurer 2] Total Loss and Salvage RFP – Final.xlsx", sheet 2 "Capability Questionnaire" [Tab 24, Annex 2].

²⁸⁹ Copart "Annex 16": Attachment titled "[Insurer 3] Group RFP – Copart Sept 2022.pdf", slide 3 [Tab 27, Annex 2].

added].²⁹⁰ Those references make clear that the Insurer 3 Combined Proposal included elements of the Hills Motors business.

220. Each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals was a single proposal combining elements of the offerings of the Copart business (the salvage services) and elements of the Hills Motors business (the recycled parts services), to be provided as part of a respective single contract for the provision of salvage and recycled parts services. Those combined offerings included recycled parts services, which Copart could not provide through its pre-Merger operations.
221. Further, Copart submitted that the fact that each RFP response only included a reference to Hills Motors and standalone marketing materials was not an indication that Copart was ‘entitled to consummate its acquisition of Hills Motors prior to CMA clearance’.²⁹¹ The submission is misconceived. The Merger was completed on 5 July 2022. During the specified period of the IEO (ie from 9 August 2022 to 14 July 2023), Copart was required to ensure compliance with the IEO. In breach of the IEO’s terms, Copart continued to negotiate each of the Insurer 1 and Insurer 2 Combined Proposals, and submitted and negotiated the Insurer 3 Combined Proposal, during the specified period. None of the communications in respect of these proposals between Copart and Insurers 1, 2 and 3 after the IEO took effect were caveated in any way to suggest that Copart’s offer to provide green parts services was dependent on the Merger being cleared by the CMA (or the IEO otherwise ceasing to have effect). On the contrary, these services were included as a core part of the combined proposals, each of which consisted of a combined offering of the Parties’ businesses.

There was no integration – the Hills Motors business operated separately to the Copart business, and the separation of the businesses was rigorously policed by an independent monitoring trustee

Integration and independent competition

222. Copart submitted that it has not breached paragraph 4 of the IEO because none of the contacts and correspondence cited in the IEO Provisional Penalty Notice between Copart and each of Insurer 1, Insurer 2 and Insurer 3 in relation to each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals is ‘evidence that the actions of Copart might “lead to the integration of the Hills Motors business with the Copart business”’,²⁹² or ‘undermine the independent

²⁹⁰Copart “Annex 16”: Attachment titled “[Insurer 3] Group RFP – Copart Sept 2022.pdf” [Tab 27, Annex 2].

²⁹¹ IEO Provisional Penalty Response, paragraphs 6(a), 39(a) and 51(a). [Tab 9, Annex 2].

²⁹² IEO Provisional Penalty Response, paragraphs 9, 41 and 53. [Tab 9, Annex 2].

capabilities of either business'.²⁹³ Further, it submitted that the Copart business and Hills Motors business 'continued to be maintained separately at all times'.²⁹⁴ In support of this, Copart submitted that:²⁹⁵

- a) There was no physical or intellectual integration of the two businesses.
- b) Copart did not exercise any influence over the Hills Motors business.
- c) The Parties did not exchange any confidential information (other than what was necessary and permitted as part of the acquisition process).

223. This submission is unsustainable for the following reasons. First, paragraph 4 of the IEO reflects the wording of section 72(8) of the Act, which defines pre-emptive action as 'action which might prejudice the reference concerned or impede the taking of any action [...] which may be justified by the CMA's decisions on the reference'. In *Facebook v CMA*,²⁹⁶ the CAT held that 'might' includes action that 'has the **potential to affect** the competitive structure of the market during the CMA's investigation' [emphasis added], and further observed that:

The use of "might" in the definition implies a relatively **low threshold** of expectation because the CMA is at a stage of its investigation where it necessarily cannot be sure whether any action being taken or proposed to be taken by the merging parties will ultimately impede any action being taken by the CMA [...] [emphasis added].

224. Second, as to the meaning of integration, Copart refers to the CMA's previous decisions in *ION/Broadway*, *Nichols (Fuel Oils)/DCC Energy* and *Ausurus Group/Metal & Waste Recycling*, in support of its submission that Copart did not integrate with Hills Motors because it did not engage in any action 'of the kind described in these cases'.²⁹⁷ However, as Chapter 5 of CMA108 explains, pre-emptive action can extend beyond the physical integration of businesses to include, inter alia, entering into arrangements or agreements in anticipation of the merger, or taking action that might undermine the independent competitive capabilities of either business (see paragraph 32 above).

225. Copart stated in its own submissions that the ability to offer an in-house recycled parts supply service is an important competitive parameter in the

²⁹³ IEO Provisional Penalty Response, paragraph 11. See also paragraphs 41 and 53. [Tab 9, Annex 2].

²⁹⁴ IEO Provisional Penalty Response, paragraph 10. [Tab 9, Annex 2].

²⁹⁵ IEO Provisional Penalty Response, paragraph 10. [Tab 9, Annex 2].

²⁹⁶ *Facebook v CMA*, paragraph 124.

²⁹⁷ IEO Provisional Penalty Response, paragraph 21. [Tab 9, Annex 2].

supply of salvage services.²⁹⁸ Copart did not have this capability prior to the Merger. Following its purchase of Hills Motors, Copart represented to Insurer 1, Insurer 2 and Insurer 3 during the specified period of the IEO that it would be able to offer an in-house dismantling capability (via Hills Motors as part of the Copart group). Through the submission and continued negotiation of the Insurer 3 Combined Proposal, and the continued negotiation of the Insurer 1 and Insurer 2 Combined Proposals, Copart represented to customers that Hills Motors was no longer an independent player in the market. This might have led to the integration of elements of the Hills Motors business with the Copart business or otherwise impaired the ability of the Hills Motors business to compete independently. This also had the potential to impact the conduct or outcome of the Insurer 1, Insurer 2 and Insurer 3 RFPs, thereby potentially affecting the competitive structure of the market during the CMA's investigation.

226. At no time during the specified period of the IEO did Copart obtain the prior written consent of the CMA to take any of these steps.

Hills Motors RFP submission

227. In its IEO Provisional Penalty Response, Copart further submitted²⁹⁹ that Hills Motors submitted its own RFP response to Insurer 3 on 12 September 2022,³⁰⁰ and that Hills Motors was awarded the contract for the provision of recycled parts by Insurer 3.³⁰¹ Copart submitted that this demonstrates that Hills Motors was maintained separately. However, as discussed at paragraph 204 above, the CMA finds that the submission by Hills Motors of a separate RFP response to Insurer 3 on 12 September 2022³⁰² does not negate Copart's submission of the Insurer 3 Combined Proposal, which also took place on 12 September 2022. The Insurer 3 Combined Proposal was a single proposal submitted by Copart in response to Insurer 3's RFP, which combined elements of the offerings of the Copart business (the salvage services) and elements of the Hills Motors business (the recycled parts services), to be provided as part of a single contract for the provision of salvage and recycled parts services.

228. Further, the CMA does not accept that the available evidence supports Copart's submission that Hills Motors was awarded the provision of the recycled parts services, not Copart. On 7 January 2023, Insurer 3 notified Copart that it had been awarded the Insurer 3 Contract for the supply of vehicle salvage services,

²⁹⁸ Final Merger Notice, paragraph 10 [Tab 121, Annex 2] and Parties' response to the Phase 1 Decision, paragraph 7 [Tab 124, Annex 2].

²⁹⁹ IEO Provisional Penalty Response, paragraphs 51(b)(i), 55 and 56. [Tab 9, Annex 2].

³⁰⁰ Insurer 3 "Doc D12" - Email dated 12 September 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 3), with [redacted] (Hills Motors) titled "RFP Hills Salvage & Recycling" [Tab 92, Annex 2].

³⁰¹ IEO Provisional Penalty Response, paragraph 51(b)(ii). [Tab 9, Annex 2].

³⁰² Insurer 3 "Doc D12" - Email dated 12 September 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 3), with [redacted] (Hills Motors) titled "RFP Hills Salvage & Recycling" [Tab 92, Annex 2].

associated services and recycled parts on the basis of the Insurer 3 Combined Proposal. The email states:³⁰³

Further to the recent tender exercise for the supply of Vehicle Salvage Services, Associated Services **And Green Parts** to [Insurer 3]. I am delighted to inform you [Copart] 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 [emphasis added].

229. Insurer 3 informed the CMA in its response to the Insurer 3 Notice that ‘Copart were successful in their bid’,³⁰⁴ which included the provision of recycled parts services. Copart’s submission is therefore not supported by the evidence obtained by the CMA and Copart has not provided any further evidence to support its submission that the recycled parts element of the Insurer 3 Contract was awarded to Hills Motors. The available evidence shows that Insurer 3 awarded the Insurer 3 Contract to Copart, not Hills Motors.³⁰⁵
230. Copart’s submission in this respect is further undermined by its submission in paragraph 51(e) of the IEO Provisional Penalty Response, which asserts that ‘even now, some two months after the IEO fell away, Copart has yet to start discussions and negotiations of the prices and other terms of **its green parts offer**’ [emphasis added].

Monitoring Trustee

231. The Monitoring Trustee's role is to assist the CMA to monitor compliance with the IEO. This includes assessing the Parties’ arrangements to comply with the IEO and what changes to those arrangements, if any, are required; supervising the arrangements made by the Parties to ensure compliance with the IEO; and ascertaining the current level of compliance with the IEO. The Monitoring Trustee’s role is dependent on the provision of timely and accurate information by the Parties. In this case, Copart did not disclose that it was pursuing the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals after the IEO came into force. In any case, appointment of the Monitoring Trustee did not remove the need for Copart to seek the consent of the CMA where its conduct would

³⁰³ Insurer 3 “Doc A26”: Email dated 7 January 2023 from [redacted] (Insurer 3) to [redacted] (Copart) titled “[Insurer 3] Salvage And Green Parts ITT – Confirmation Of Successful Tender” [Tab 111, Annex 2] and Insurer 3 “Doc B26”: Email dated 31 January 2023 from [redacted] (Copart) to [redacted] (Insurer 3) titled “[Insurer 3] Salvage And Green Parts ITT – Confirmation Of Successful Tender” [Tab 114, Annex 2].

³⁰⁴ Insurer 3 response to Question 4 of the Insurer 3 Notice [Page 570, Tab 17, Annex 2]

³⁰⁵ Insurer 3 stated in the email that ‘However, concerning the provision of Green Parts, **as you are already an Approved Supplier to the Group**, we would like to **continue with the current agreement** we hold with [sic] for the provision of Green Parts’. The statement appears to reference a pre-existing agreement with Hills Motors, not the tender which was awarded to Copart.

otherwise have breached the IEO - see *Electro Rent*, at paragraphs 164 and 182.

All negotiations were conducted 'unilaterally' by Copart

232. Copart submitted that all negotiations with Insurers 1, 2 and 3 were conducted by Copart 'unilaterally', without any input from or joint agreement with Hills Motors, and without authority from Hills Motors to negotiate on its behalf.³⁰⁶ This submission is misconceived.
233. Paragraph 5(g) required Copart to take all necessary steps to ensure that, except with the prior written consent of the CMA, 'any negotiations with any existing or potential customers [...] in relation to the Hills Motors business will be carried out by the Hills Motors business alone **and for the avoidance of doubt** the Copart business will not negotiate on behalf of the Hills Motors business (and vice versa)' [emphasis added]. This wording makes clear that negotiation 'on behalf of Hills Motors' is prohibited, but the provision is broader than this and prohibits Copart from carrying on any negotiations in relation to the Hills Motors business. It is therefore not necessary for Copart to have been negotiating on behalf of Hills Motors, or for Copart to have had Hills Motors' authority to do so, in order for there to be a breach of paragraph 5(g) of the IEO.
234. As discussed at paragraphs 186.b), 200.b) and 211.b) above, the CMA finds that the available evidence shows that Copart negotiated a combined proposal, incorporating elements of both Parties' businesses, with Insurers 1, 2 and 3 during the specified period. In doing so, Copart breached paragraph 5(g) of the IEO, which required any negotiations in relation to the Hills Motors business to be carried out by Hills Motors alone.
235. Further, and in any case, Copart's submission that it negotiated 'unilaterally' with each of Insurer 1, Insurer 2 and Insurer 3 is contradicted by the evidence available to the CMA as outlined below.

Insurer 1

236. By email dated 11 July 2022, Copart explicitly informed Insurer 1 that the Insurer 1 Combined Proposal was 'a **joint RFP** response' [emphasis added].³⁰⁷ While this email predates the imposition of the IEO and therefore does not constitute a breach of the IEO, the email supports the view that Copart was negotiating on behalf of Hills Motors. This is further supported by the email

³⁰⁶ IEO Provisional Penalty Response, paragraphs 10, 26, 42, 46, and 59. [Tab 9, Annex 2].

³⁰⁷ Insurer 1 "Doc A10": Email dated 11 July 2022 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Insurer 1), titled "RFP – Reference 010522" [Tab 50, Annex 2].

dated 11 July 2022 in which Hills Motors also informed Insurer 1 that its offering would **'be included within Copart's submission'** [emphasis added].³⁰⁸

237. Copart also submitted that the only correspondence and documents shared between Copart and Insurer 1 relating to Hills Motors and recycled parts 'simply reiterated the initial proposal to include green parts in high-level terms'³⁰⁹ and that Insurer 1, not Copart, inserted wording in the draft Insurer 1 Contract which refers to 'Green Parts' but not Hills Motors. However, the CMA considers that this shows that Insurer 1 understood that the Insurer 1 RFP was for the provision of salvage and recycled parts services and that Insurer 1, having received the Insurer 1 Combined Proposal from Copart, which included Hills Motors' recycled parts service, expected Copart to provide such services. Following the imposition of the IEO, Copart continued to negotiate the Insurer 1 Combined Proposal which included Hills Motors' recycled parts service, contrary to the IEO. The CMA does not accept that the contract references to recycled parts and Hills Motors supports Copart's submission that the contract is 'consistent with alternative options [for the provision of recycled parts services] depending on the outcome of the CMA's merger review'.³¹⁰ Neither the Insurer 1 Combined Proposal nor correspondence post-dating the IEO (see paragraphs 276 to 277 below for the CMA's assessment of the correspondence cited by Copart in support of its submission that Insurer 1 was aware of the Merger) show that Copart presented different options based on the outcome of the review of the Merger. The fact that Copart ultimately signed a contract with Insurer 1 that included the provision of a recycled parts service (which according to the Insurer 1 Combined Proposal was to be provided by Hills Motors) further supports this view.

Insurer 2

238. Copart was ultimately awarded the Insurer 2 Contract on 14 April 2023, approximately 8 months after the IEO came into force, and Copart engaged in negotiations with Insurer 2 following imposition of the IEO to agree a final services agreement relating to the Insurer 2 Combined Proposal, which included elements of the Hills Motors business.
239. While the pre-IEO communications do not constitute a breach of the IEO, the CMA finds that they make clear that the Insurer 2 Combined Proposal (which

³⁰⁸ Insurer 1's response to Insurer 1 Notice dated 9 June 2023, page 1 [Tab 19, Annex 2], and Insurer 1 "Doc E8: Email dated 11 July 2022 from [redacted] (Hills Motors) to [redacted] (Insurer 1), with [redacted] (Insurer 1) in CC, titled "RE: Salvage RFP Q&A" [Tab 51, Annex 2].

³⁰⁹ IEO Provisional Penalty Response, paragraph 28. [Tab 9, Annex 2].

³¹⁰ IEO Provisional Penalty Response, paragraph 30. [Tab 9, Annex 2].

continued to be negotiated by Copart after the IEO took effect) included elements of the Hills Motors business.

240. In addition, the CMA notes Copart's submission in its IEO Preliminary Response that a telephone conference call took place on 16 August 2022³¹¹ between Copart and Insurer 2 during which it is said that Copart informed Insurer 2 that 'its acquisition of Hills Motors was subject to CMA approval'.³¹² Copart further submitted in its IEO Provisional Penalty Response that if there is any doubt about whether the call took place, then it is for the CMA 'to contact Insurer 2 and verify the position'.³¹³ However, paragraph 5(g) of the IEO specifically requires that any negotiations in relation to the Hills Motors business be carried out by the Hills Motors business alone (absent the CMA's prior written consent) and it was therefore incumbent on Copart to ensure it did not engage in negotiations on behalf of Hills Motors during the specified period. Copart has not provided any contemporaneous evidence to corroborate the fact and the content of such a phone call. Even if such a call did take place, as submitted in the IEO Preliminary Response, this does not alter the position that Copart was not permitted during the specified period to negotiate in respect of the Hills Motors business, without the prior written consent of the CMA.

Insurer 3

241. As with Insurer 1 and Insurer 2, Copart submitted that all negotiations with Insurer 3 were conducted unilaterally by Copart.³¹⁴ However, the CMA finds that Copart submitted the Insurer 3 Combined Proposal to Insurer 3 on 12 September 2022, and continued to negotiate the Insurer 3 Combined Proposal in communications between Copart and Insurer 3. Copart was ultimately awarded the Insurer 3 Contract on 7 January 2023, almost 5 months after the IEO commenced. As of 6 June 2023, when Insurer 3 responded to the Insurer 3 Notice, Copart remained in negotiations with Insurer 3 to agree a final services agreement, on the basis of the Insurer 3 Combined Proposal, which included elements of the Hills Motors business.

Reference to *Ernst & Young P/S v Konkurrencerådet*

242. In support of its submission that unilateral action should not amount to a breach of the IEO, Copart cited the CJEU judgment in *Ernst & Young P/S v Konkurrencerådet*.³¹⁵ However, this case does not provide any assistance to

³¹¹ The date provided in paragraph 21 of the IEO Preliminary Response appears to contain a typographical error as it refers to the call occurring on 16 August 2023; however the CMA understands Copart's position to be that the call took place on 16 August 2022.

³¹² IEO Preliminary Response, paragraph 21. [Tab 7, Annex 2].

³¹³ IEO Provisional Penalty Response, paragraph 44. [Tab 9, Annex 2].

³¹⁴ IEO Provisional Penalty Response, paragraph 59. [Tab 9, Annex 2].

³¹⁵ Case C-633/16, EU:C:2018:371.

Copart. The case concerns the application of the EU Merger Regulation, which does not apply in the UK and is in any case not analogous (as it concerns the operation of a standstill obligation under a mandatory, suspensory regime). Section 72 of the Act does not exclude ‘unilateral’ action from constituting pre-emptive action as defined in that section.

Paragraph 3 of the IEO does not require Copart to reverse any action it had legitimately undertaken pre-IEO

243. Copart submitted that Copart was not under any obligation, as paragraph 3 of the IEO makes clear, to reverse any action it had legitimately undertaken pre-IEO.³¹⁶ The submission is misconceived.
244. As set out in paragraphs 174 and 191 above, the CMA does not suggest that Copart was required to reverse any actions taken before the IEO came into effect. Indeed, the CMA has found that the submission of the Insurer 1 Combined Proposal and Insurer 2 Combined Proposal did not amount to breaches of the IEO, as these proposals were submitted before the IEO came into force. It is the steps taken by Copart in relation to the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals *after* the imposition of the IEO with which this Penalty Notice is concerned.
245. The fact that Copart may have taken certain (non-infringing) actions prior to the imposition of the IEO did not absolve it of its obligation to seek a derogation for any action it proposed to take while the IEO is in force which would otherwise breach its provisions. Paragraph 3.20 of CMA108 specifically warns that:

If the merging parties enter into an obligation or take a decision before the Interim Measures take effect, but the obligation will be performed or the decision implemented, or continue to be implemented, after the Interim Measures have come into force, then the merging parties should inform the CMA and seek a derogation if any further or continuing action might breach the Interim Measures.

246. In submitting that ‘its actions [after the commencement of the IEO] in relation to each of Insurer 1 and Insurer 2 amounted to no more than maintaining its existing proposal’,³¹⁷ Copart appears to concede that it took post-IEO actions in furtherance of the Insurer 1 and Insurer 2 Combined Proposals at a point in time at which the IEO was in force. The CMA considers that such actions do not fall within the scope of paragraph 3 of the IEO.

³¹⁶ IEO Provisional Penalty Response, paragraphs 6(b), 33, 34, 39(b) and 47. [Tab 9, Annex 2].

³¹⁷ IEO Provisional Penalty Response, paragraph 80. [Tab 9, Annex 2].

247. Paragraph 3 of the IEO provides that: 'Notwithstanding any other provision of this Order, no act or omission shall constitute a breach of this Order, and nothing in this Order shall oblige any of the Addressees to reverse any act or omission, in each case **to the extent that it occurred or was completed prior to the commencement date**' [emphasis added]. This makes clear that acts or omissions *prior* to the IEO commencement date will not contravene the IEO and need not be reversed. However, paragraph 3 does not exempt any steps taken *after* the IEO commencement date, including steps taken in furtherance of actions taken prior to that date. As detailed above, Copart took various actions in furtherance of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals after the imposition of the IEO, which constituted breaches of the IEO.

The negotiations related exclusively to the salvage elements of the proposals and Copart did not negotiate the commercial terms of the green parts offer during the lifetime of the IEO

248. Copart submits that it did not negotiate the supply of 'green parts' with each of Insurer 1, Insurer 2 and Insurer 3 during the lifetime of the IEO,³¹⁸ and '[e]ven now, some two months after the IEO fell away, Copart has yet to start discussions and negotiations of the prices and other commercial terms of its green parts offer'.³¹⁹

249. However, the evidence available to the CMA shows that during the period when the IEO was in effect, Copart negotiated combined proposals with each of Insurer 1, Insurer 2 and Insurer 3, and was subsequently awarded the Insurer 1, Insurer 2 and Insurer 3 Contracts, which included the provision of recycled parts services to be provided by Hills Motors.

Insurer 1

250. Copart submitted that the negotiations cited in the Provisional Penalty Notice and drafts of the Insurer 1 Contract³²⁰ relate 'exclusively to the salvage services elements of the proposals' (not recycled parts), and that the Provisional Penalty Notice 'does not point to a single item of correspondence or documentation which seeks to negotiate any elements of the green parts aspects'.³²¹ However, these submissions do not withstand scrutiny.

³¹⁸ IEO Provisional Penalty Response, paragraph 2. [Tab 9, Annex 2].

³¹⁹ IEO Provisional Penalty Response, paragraph 6(d). Copart makes similar submissions in paragraphs 27, 39(c), 39(e), 46, and 51(c) to 51(e). [Tab 9, Annex 2].

³²⁰ IEO Provisional Penalty Response, paragraph 6(c). [Tab 9, Annex 2].

³²¹ IEO Provisional Penalty Response, paragraph 27. [Tab 9, Annex 2].

251. In support of these submissions, Copart referred to the insertion of wording in the draft Insurer 1 Contract.³²² In particular, it submitted as follows:

The only correspondence or documentation exchanged between Copart and Insurer 1 relating to Hills Motors and green parts simply reiterated the initial proposal to include green parts in high-level terms. More particularly, on 13 March 2023, Insurer 1 (not Copart) inserted the following high-level wording into the draft agreement, which does not make a reference to Hills Motors and simply reflects what had been in the RFP response.

Green parts

The Supplier shall manage a green (recycled) parts fulfilment solution, managing the orders and requests, dismantling, quality checks, storage and delivery logistics. The Supplier shall provide to [Insurer 1] detailed MI including details of sold parts, parts costs and savings and CO2 savings achieved.³²³

252. Copart further submitted that:

[Insurer 1] (again, not Copart) subsequently made the following minor amendments [insertion of the following words in bold 'The Supplier shall provide [Insurer 1] **on a monthly basis** with detailed **management information...**'] on 23 June 2023, but the wording was not further negotiated or amended including in the final version.³²⁴

253. The evidence indicates that on 25 October 2022 Copart engaged in correspondence with Insurer 1 which related to clarifications concerning commercial aspects of the Insurer 1 Combined Proposal (see paragraph 92 above). The evidence also indicates that between 1 December 2022 and 8 July 2023, after the award of the Insurer 1 Contract, Copart engaged in correspondence with Insurer 1 to finalise the Insurer 1 Contract, which includes terms relating to recycled parts.
254. The evidence in paragraphs 85 to 105 above shows that Copart negotiated with Insurer 1 in relation to the Hills Motors business during the specified period of the IEO. Regardless of whether Copart negotiated specific pricing and other commercial terms relating to its recycled parts offer,³²⁵ Copart negotiated with Insurer 1 to provide services that include a recycled parts service to be provided

³²² IEO Provisional Penalty Response, paragraphs 6(c) and 28-30. [Tab 9, Annex 2].

³²³ IEO Provisional Penalty Response, paragraph 28. [Tab 9, Annex 2].

³²⁴ IEO Provisional Penalty Response, paragraph 29. [Tab 9, Annex 2].

³²⁵ IEO Provisional Penalty Response, paragraph 6(d). [Tab 9, Annex 2].

by Hills Motors, in accordance with the Insurer 1 Combined Proposal. On the strength of this combined proposal, Copart was awarded the Insurer 1 Contract. Copart then further negotiated and entered into the Insurer 1 Contract, which included terms relating to the green parts offering, during the specified period of the IEO and in breach of its terms. These negotiations did not relate exclusively to salvage services, as contended by Copart.

Insurer 2

255. In relation to Insurer 2, Copart submitted that ‘there was no negotiation of green parts with Insurer 2 during the lifetime of the IEO’³²⁶ and that the negotiations cited in the Provisional Penalty Notice relate ‘exclusively to the salvage services elements of the proposals’ (not recycled parts).³²⁷ However, these submissions do not withstand scrutiny.
256. The evidence indicates that between 22 August 2022 and 11 April 2023 Copart engaged with Insurer 2 concerning the Insurer 2 Combined Proposal, including by sharing documents specifically referring to recycled parts to be provided by Hills Motors (see paragraphs 111 to 127 above). The evidence also indicates that between 14 April 2023 and at least 8 June 2023, after the award of the Insurer 2 Contract, Copart engaged with Insurer 2 to finalise a services agreement on the basis of the Insurer 2 Combined Proposal, which included a recycled parts offering (see paragraphs 128 and 130 above).
257. Contrary to Copart’s submission that the email dated 27 March 2023³²⁸ and the email chain ending on 12 April 2023³²⁹ do not contain any reference to green parts, the CMA finds that this correspondence, and the other correspondence with Insurer 2 referred to at paragraphs 111 to 127 above, amount to negotiations in relation to the Hills Motors business, during the specified period of the IEO and in breach of its terms. These negotiations did not relate exclusively to salvage services, as contended by Copart.

Insurer 3

258. Copart submitted that the drafts of the salvage services contract exchanged between Copart and Insurer 3 do not contain references to recycled parts,³³⁰ and that ‘[f]or similar reasons to those set out above in relation to Insurer 1 and

³²⁶ IEO Provisional Penalty Response, paragraph 39(c). [Tab 9, Annex 2].

³²⁷ IEO Provisional Penalty Response, paragraph 46. [Tab 9, Annex 2].

³²⁸ IEO Provisional Penalty Response, paragraph 39(d). [Tab 9, Annex 2].

³²⁹ IEO Provisional Penalty Response, paragraph 39(d). [Tab 9, Annex 2].

³³⁰ IEO Provisional Penalty Response, paragraph 51(d). [Tab 9, Annex 2].

Insurer 2, the CMA has not established a breach of paragraph 5(g) in relation to Insurer 3'.³³¹ However, these submissions do not withstand scrutiny.

259. The evidence indicates that between 12 September 2022 and 3 January 2023 Copart engaged with Insurer 3 concerning the Insurer 3 Combined Proposal, including by sharing documents specifically referring to recycled parts to be provided by Hills Motors (see paragraphs 136 to 157 above). The evidence also indicates that between 7 January 2023 and until at least 6 June 2023, after the award of the Insurer 3 Contract, Copart engaged with Insurer 3 to finalise a services agreement on the basis of the Insurer 3 Combined Proposal, which included a recycled parts offering (see paragraphs 158 to 167 above).
260. This correspondence with Insurer 3 in furtherance of the Insurer 3 Combined Proposal and subsequently concerning the terms of a services agreement, amounted to negotiations in relation to the Hills Motors business, during the specified period of the IEO and in breach of its terms. These negotiations did not relate exclusively to salvage services, as contended by Copart.

No pre-emptive action - any action taken could not be said to have had the effect of impairing the parties' ability to compete or the competitive structure of the market

261. Copart submitted (i) that '[s]ince the CMA ultimately found that Hills Motors exercised no meaningful competitive constraint on Copart, the alleged conduct by Copart, even if it occurred, did not have the potential to affect the competitive structure of the market, and hence cannot be characterised as pre-emptive action'³³² and (ii) 'Hills Motors' ability to compete independently if the merger had not been approved (and Hills Motors was divested) was in no way affected'.³³³
262. Both submissions are misconceived.

Risk of pre-emptive action

263. As the CAT noted in *Facebook v CMA*, '[t]he statutory purpose of s[ection] 72 [of the Act] within the merger regime in the UK is [...] to confer a wide power on the CMA so as to make it easier for it to immediately suspend the integration of merging companies during Phase 1 of an investigation by imposing interim measures, from which it can subsequently consider granting derogations.'³³⁴

³³¹ IEO Provisional Penalty Response, paragraph 60. [Tab 9, Annex 2].

³³² IEO Provisional Penalty Response, paragraph 3. [Tab 9, Annex 2].

³³³ IEO Provisional Penalty Response, paragraph 3. [Tab 9, Annex 2].

³³⁴ *Facebook v CMA*, paragraph 121. See also *Facebook v CMA (CoA)*, paragraph 46: 'The process provided for in section 72 [...] is intended to hold the ring whilst the CMA obtains the information that it inevitably lacks. This process breaks down if those against whom Initial Enforcement Orders are made refuse to cooperate as happened in this case.'

264. In this case, as is standard practice in completed merger investigations, the CMA imposed the IEO at the start of the phase 1 investigation. The stated purpose of the IEO was ‘preventing pre-emptive action in accordance with section 72(2) of the Act’ given that ‘the CMA wishe[d] to ensure that no action is taken pending final determination of any reference under section 22 of the Act which might prejudice that reference or impede the taking of any action by the CMA under Part 3 of the Act which might be justified by the CMA’s decisions on the reference’.³³⁵ There was clearly a risk of pre-emptive action in circumstances where the Parties have overlapping activities. Following its phase 1 review, the CMA concluded that there was a realistic prospect of an SLC in the supply of each of salvage services, salvage vehicles and recycled parts in the UK. The Merger was referred to an in-depth phase 2 investigation during which the CMA investigated the impact of the Merger on competition. As is frequently the case, the IEO continued in force during the phase 2 investigation. It continued to protect against the risk of pre-emptive action for the duration of that phase 2 investigation.
265. The fact that the CMA ultimately cleared the Merger following its in-depth phase 2 investigation – which concluded that Hills Motors was unlikely to have exercised a meaningful constraint on Copart absent the Merger – does not mean that there was no risk of pre-emptive action or otherwise call into question the appropriateness of the IEO. The fact that the Merger was ultimately cleared following an in-depth phase 2 investigation cannot serve to retrospectively absolve a merger party of its non-compliance with an initial enforcement order while that order was in force. Any conclusion to the contrary would run directly counter to the precautionary nature of interim measures and undermine the functioning of the regime.

Possibility of prejudice

266. In accordance with its statutory purpose, the IEO catches more than just actual prejudice or impediments. Pre-emptive action is defined in section 72(8) as ‘action which **might** prejudice the reference concerned or impede the taking of any action [...] which may be justified by the CMA’s decisions on the reference’ [emphasis added]. As noted at paragraph 39 above, in *ICE/Trayport* the CAT held that:

The word “might” means that it is the possibility of prejudice to the reference or an impediment to justified action which is prohibited. The IEO catches more than just actual prejudice or impediments, which is why the onus is on

³³⁵ IEO, page 1.

the addressee of the IEO to seek consent from the CMA if their conduct creates the possibility of prejudice or an impediment.

267. The precautionary nature of initial enforcement orders in CMA merger investigations was summarised by the CAT as follows:

As the **statutory purpose of an IEO is precautionary**, the CMA has a considerable margin of appreciation: *Stericycle* at [130]. Accordingly, in order to impose an IEO (or to maintain the imposition of an IEO), the **CMA is not required to have formed a view that it is likely that prejudice to the Phase 2 reference (such as harm to the competitive structure of the market) will materialise or that there will in fact be an impediment to the CMA's remedial options. A risk or a possibility is enough** [emphasis added].³³⁶

268. As discussed at paragraph 46 above, the CAT further noted in *Facebook v CMA* that 'it is of the utmost importance that interim measures are scrupulously complied with [...] and merging parties should not themselves form judgements or reach decisions that are properly for the CMA'. The onus was therefore on Copart, as an addressee of the IEO, to seek consent from the CMA if its conduct created the possibility of prejudice to the phase 2 reference or an impediment to the CMA's remedial options.
269. Copart did not seek or obtain a derogation from the CMA as required under paragraphs 4 and 5 of the IEO to enable it to take action which might constitute pre-emptive action in relation to each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals, which included elements of the Hills Motors offering. Accordingly, the CMA finds that Copart breached paragraphs 4 and 5 of the IEO, for the reasons outlined above.

Customers were well aware that Copart's acquisition of Hills Motors was subject to CMA clearance

270. Copart submitted that there is clear evidence that each of Insurer 1, Insurer 2 and Insurer 3 were 'well aware' that the Merger was subject to the CMA's review and that Hills Motors would continue in the marketplace, as before, if the Merger were prohibited.³³⁷
271. However, awareness of third parties that the Merger was subject to review would not absolve Copart of its obligation to comply with the IEO.

³³⁶ *Facebook v CMA*, paragraph 126.

³³⁷ IEO Provisional Penalty Response, paragraphs 23, 44, 57. [Tab 9, Annex 2].

272. Under paragraph 5(g) of the IEO, Copart was prohibited during the specified period from negotiating in relation to the Hills Motors business without prior written consent from the CMA. The fact that Insurer 1, Insurer 2 and Insurer 3 may have been aware of the CMA's investigation does not mean that Copart acted in compliance with the IEO.
273. In any event, the submission is not supported by a plain reading of all the communications between Copart and each of Insurer 1, Insurer 2 and Insurer 3. After the imposition of the IEO, none of Copart's communications in relation to the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals were caveated in any way to suggest that there was a possibility that Copart would only be able to provide certain recycled parts in future, in the event that the Merger were to be cleared by the CMA. These services were, at all times, a core component of each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals, which each consisted of a combined offering of the Parties' businesses.
274. Additionally, in relation to paragraph 5(g) of the IEO, even if customers were aware of the CMA's investigation, this does not mean that Hills Motors' separate sales identity was maintained. Copart was negotiating in relation to the Hills Motors business, which gave rise to the risk that customers would consider that Hills Motors was no longer an independent business and that its sales and brand identity were joined with those of Copart, whether or not the acquisition required CMA clearance.

Insurer 1

275. Copart also submitted that the email dated 11 May 2023 from Insurer 1 checking with Copart what the implications would be for the CMA's review of the Merger demonstrates Insurer 1's awareness³³⁸ and that Copart's email dated 19 May 2023, in which Copart told Insurer 1 that 'Hills can still provide you [Insurer 1] with a green parts solution whether that be through Copart following CMA approval or through Copart subcontracting to Hills or through Hills directly'³³⁹ is evidence that Copart was not negotiating with Insurer 1 on the basis of assumed clearance by the CMA.
276. The CMA does not agree that this email chain supports the position that Copart was complying with paragraph 5(g) of the IEO:
- a) The emails are dated 11 and 19 May 2023, which is over nine months after the IEO came into force and therefore underlines that Insurer 1 had been under the impression, at least until that point, that Copart would provide the

³³⁸ IEO Provisional Penalty Response, paragraph 23. [Tab 9, Annex 2].

³³⁹ Insurer 1 "Doc B31": Email dated 19 May 2023 from [redacted] (Copart) to [redacted] (Insurer 1), with [redacted] (Copart) and [redacted] (Copart) in CC, titled "CMA findings" [Tab 70, Annex 2].

elements of the Hills Motors business set out in the Insurer 1 Combined Proposal (as highlighted by the fact that Insurer 1 queried to Copart whether the CMA's Provisional Findings might 'impact **your ability** to deliver a green part solution as described in the RFP response?' [emphasis added]).

b) In any event, the email chain is itself clear evidence of Copart continuing to negotiate in relation to elements of the Hills Motors business: Copart is telling Insurer 1 that Hills Motors will provide a service to Insurer 1 whether or not the Merger is cleared (whereas while the IEO was in force Hills Motors alone should have decided whether and on what terms to engage with Insurer 1). None of the communications between Copart and Insurer 1 are framed in hypothetical terms. Absent a derogation being granted by the CMA, Copart was not permitted to negotiate with Insurer 1 on these terms.

277. Copart also submitted that its consent to Insurer 1 disclosing the Insurer 1 Combined Proposal to the CMA further demonstrates Insurer 1's awareness. However, as above, this correspondence is not caveated to explain that there was a possibility that Copart would only be able to provide certain recycled parts in future, in the event that the Merger were to be cleared by the CMA.

278. The fact that Insurer 1 was engaging with the CMA in relation to the CMA's Merger investigation,³⁴⁰ did not obviate the need for Copart to comply with the IEO and obtain the CMA's prior written consent to engage in negotiations with Insurer 1 regarding the Insurer 1 Combined Proposal, which included elements of the Hills Motors business. The fact that the IEO was published and was the subject of media coverage,³⁴¹ is also not evidence that Copart took all necessary steps required by paragraph 5(g) of the IEO. At no time did Copart seek the CMA's consent to negotiate with Insurer 1 in relation to elements of the Hills Motors business included in the Insurer 1 Combined Proposal.

Insurer 2

279. Copart submitted that Insurer 2 was aware of the need for CMA regulatory clearance because during a telephone conference call on 16 August 2022 with [X] (Chief Claims Officer at Insurer 2), it informed Insurer 2 that its acquisition of Hills Motors was subject to CMA regulatory clearance, and that it 'continued to keep Insurer 2 abreast of Copart's acquisition of Hills Motors'.³⁴² Copart also submitted that '[c]opies of communications between Copart and [Insurer 2] regarding the CMA's provisional findings were provided to the CMA on 6 June 2023' and that those documents alone show that Insurer 2 was not under the

³⁴⁰ IEO Provisional Penalty Response, paragraph 23. [Tab 9, Annex 2].

³⁴¹ IEO Provisional Penalty Response, paragraph 23. [Tab 9, Annex 2].

³⁴² IEO Preliminary Response, paragraph 21 [Tab 7, Annex 2] and IEO Provisional Penalty Response, paragraph 44. [Tab 9, Annex 2].

impression or made to believe that the Copart business and the Hills Motors business were merged and formed a single entity.³⁴³

280. However, it appears from the evidence set out above, which post-dates the 16 August 2022 call, that Copart was conducting itself on the basis that the Insurer 2 Combined Proposal was a combined proposal. Copart did not seek a CMA derogation for any proposed steps after the IEO came into force that contravened the terms of the IEO. The evidence available to the CMA shows that Copart continued to take steps in relation the Insurer 2 Combined Proposal, which included recycled parts services (which could only be provided by Hills Motors), after the IEO commenced on 9 August 2022.
281. Further, the letter dated 6 June 2023 from Copart to the CMA³⁴⁴ referred to two undated phone calls between Copart and Insurer 2 that Copart says took place around the time that the CMA issued its Provisional Findings, being 5 May 2023. Copart submitted, in relation to the first call, that it was a telephone conversation between [X] (Account Director at Copart) and [X] (Chief Claims Officer at Insurer 2) and that '[X] advised that he had seen the CMA's findings. [X] stated that he had been asked to write to the CMA. [X] shared her understanding of the points that the CMA had come to. [X] said that he would be writing to the CMA to clarify their position.' In relation to the second call, Copart submitted it was a telephone conversation between [X] and [X] (Head of Claims Supplier Management at Insurer 2), but no further details were provided.
282. The CMA considers that there is no evidence that those calls indicated that Insurer 2 was made aware that the IEO prevented Copart from offering the recycled parts services until after the Merger was cleared or the IEO concluded, absent consent from the CMA. These phone calls appear to have taken place approximately nine months after the IEO was imposed and when negotiations had already taken place throughout that period in breach of the IEO. The CMA is not aware of any other evidence to suggest that Copart otherwise sought to make Insurer 2 aware that its offering of elements of the Hills Motors business was 'hypothetical' (and subject to CMA clearance of the Merger) in any way.
283. Copart noted that Insurer 2 had been contacted by the CMA on at least two occasions during the Merger investigation and submitted that it cannot be suggested that Insurer 2 was unaware that the acquisition was subject to CMA clearance and that the businesses were being held separate.³⁴⁵ The fact that

³⁴³ IEO Preliminary Response, paragraph 21. [Tab 7, Annex 2].

³⁴⁴ Letter dated 6 June 2023 from Copart to the CMA titled "Response to Section 109 Notice 4 (Copart)", paragraph 6, page 3. [Tab 16, Annex 2].

³⁴⁵ IEO Preliminary Response, paragraph 22. [Tab 7, Annex 2].

Insurer 2 was engaging with the CMA in relation to the CMA's Merger investigation did not obviate the need for Copart to obtain the CMA's prior written consent to engage in negotiations with Insurer 2 regarding the Insurer 2 Combined Proposal, which included elements of the Hills Motors business. At no time did Copart seek the CMA's consent to negotiate with Insurer 2 in relation to elements of the Hills Motors business included in the Insurer 2 Combined Proposal.

Insurer 3

284. The fact that Hills Motors submitted a response to the Insurer 3 RFP in August 2022³⁴⁶ does not establish that Insurer 3 was made aware that Copart was not negotiating on behalf of Hills Motors,³⁴⁷ nor can it be considered, more broadly, to demonstrate that Hills Motors carried out its business separately as contended by Copart.³⁴⁸
285. First, Copart's submission appears to misunderstand the obligations imposed by the IEO. The fact that Hills Motors submitted its own proposal does not exclude that Copart breached the IEO when it submitted (and then negotiated) the Insurer 3 Combined Proposal, which included recycled parts services to be provided by Hills Motors.
286. Second, Copart's submission in this respect is undermined by the text set out at paragraph 136.b), in its covering email submitting its response to the Insurer 3 RFP stating that 'we also now have the largest green parts solution through our recent acquisition of Hills 'The Green Parts Specialists.'³⁴⁹ This is a clear representation by Copart that it is making a combined offering of services provided by both the Copart and the Hills Motors businesses. The fact that Hills Motors submitted its own bid does not negate the fact that Copart submitted and continued to negotiate the Insurer 3 Combined Proposal, which included the in-house recycled parts services to be provided by Hills Motors.
287. Further, the CMA has considered Copart's submission that 'Insurer 3 was clearly aware that [the Insurer 3 Combined Proposal] was subject to CMA clearance'.³⁵⁰ The CMA does not accept that submission, which is not supported by a plain reading of all the communications between Copart and

³⁴⁶ This appears to be an error in the representations as the Insurer 3 Combined Proposal was submitted on 12 September 2022.

³⁴⁷ IEO Preliminary Response, paragraph 29 [Tab 7, Annex 2] and IEO Provisional Penalty Response, paragraph 55. [Tab 9, Annex 2].

³⁴⁸ IEO Preliminary Response, paragraph 29. [Tab 7, Annex 2].

³⁴⁹ Copart "Annex 16": Attachment titled "[Insurer 3] Group RFP – Copart Sept 2022.pdf", slide 3. [Tab 27, Annex 2].

³⁵⁰ IEO Provisional Penalty Response, paragraph 57 and, footnote 43. [Tab 9, Annex 2].

Insurer 3. The cover email dated 12 September 2022,³⁵¹ does not indicate in any way that the proposal was 'subject to CMA clearance', nor does the email contain any similar qualification. Rather, the attachment to the cover email states '[w]e also now have the largest green parts solution through our recent acquisition of Hill 'The Green Parts Specialists...'³⁵²

288. Copart also submitted that the email dated 20 October 2022 is evidence of Insurer 3's awareness that Hills Motors business was operating as normal pending CMA review.³⁵³ While this email shows that Insurer 3 was aware of the CMA's investigation of the Merger, it did not obviate the need for Copart to obtain the CMA's prior written consent to negotiate with Insurer 3 in relation to elements of the Hills Motors business included in the Insurer 3 Combined Proposal and the Insurer 3 Contract.

Paragraph 5(b) and 5(e)(i) of the IEO require Copart to maintain the Copart business

289. In its submissions, Copart referred to paragraphs 5(b) and 5(e)(i) of the IEO³⁵⁴:
- a) Paragraph 5(b) requires Copart to take all necessary steps to ensure that the Hills Motors business and the Copart business are maintained as a going concern and sufficient resources are made available for the development of those businesses, on the basis of their respective pre-merger business plans.
 - b) Paragraph 5(e)(i) requires Copart to take all necessary steps to ensure that all of the assets of the Hills Motors business and the Copart business are maintained and preserved, including facilities and good will.
290. Copart submitted that these provisions required 'Copart to maintain Copart as a going concern and to preserve all of its assets, including goodwill'.³⁵⁵ It stated that this in turn meant that Copart had to reassure its customers 'that Copart would be able to address their needs, including the provision of green parts – one way or another, whether with Hills Motors or by means of another solution should CMA clearance not be forthcoming'.³⁵⁶ It says the relevant provisions giving rise to the Breaches (ie paragraph 4, 5 and 8) need to be interpreted 'consistently with the obligations under paragraph 5(b) and 5(e)(i)' of the IEO,³⁵⁷

³⁵¹ Copart "Annex 16": Email dated 12 September 2022 from [redacted] (Copart) to [redacted] (Insurer 3) titled "Copart RFP – Sept 2022 – Private & Confidential", with attachments. [Tab 27, Annex 2].

³⁵² Copart "Annex 16": Attachment titled "[Insurer 3] Group RFP – Copart Sept 2022.pdf", slide 3. [Tab 27, Annex 2].

³⁵³ IEO Provisional Penalty Response, paragraph 57, footnote 44. [Tab 9, Annex 2].

³⁵⁴ IEO Provisional Penalty Response, paragraph 37. [Tab 9, Annex 2].

³⁵⁵ IEO Provisional Penalty Response, paragraph 37. [Tab 9, Annex 2].

³⁵⁶ IEO Provisional Penalty Response, paragraph 37. [Tab 9, Annex 2].

³⁵⁷ IEO Provisional Penalty Response, paragraph 37. [Tab 9, Annex 2].

and that this means Copart was permitted to act 'unilaterally' to promote its future green parts offering.³⁵⁸

291. Paragraphs 5(b) and 5(e)(i) of the IEO do not assist Copart:

- a) There is no basis to suggest that these provisions obviate the need for Copart to comply with paragraphs 4, 5(a) and 5(g) of the IEO. Copart's apparent suggestion that paragraphs 5(b) and 5(e)(i) of the IEO *required* it to engage in conduct that, on a plain reading, results in breaches of paragraphs 4, 5(a), and 5(g) of the IEO is unsustainable. Nor is it sustainable to argue that paragraphs 4, 5(a) and 5(g) of the IEO need to be interpreted in a way which permits Copart to 'unilaterally' offer the recycled parts services of Hills Motors in RFP responses to safeguard Copart as a going concern. The Final Report recognised the increasing importance of recycled parts services to certain customers,³⁵⁹ but there is no evidence to suggest that it was necessary for Copart to negotiate with Insurers 1, 2 and 3 in relation to the Hills Motors business, in order to maintain Copart as a going concern or to ensure that Copart's existing assets, including facilities and goodwill, could be maintained.
- b) If Copart was uncertain as to the interpretation or application of the provisions in the IEO, it should have consulted the CMA. Copart was legally advised and yet it did not seek to consult the CMA on its proposed (erroneous) interpretation of paragraph 5(b) and 5(e)(i) during the specified period.

Insofar as there are breaches of paragraph 8(c) of the IEO, they are minor

292. Firstly, Copart submitted that the Insurer 1 Breach, insofar as there was a breach of paragraph 8(c), was minor and similar breaches have not in themselves attracted such a significant penalty and should not attract one here either.³⁶⁰

293. The CMA disagrees with Copart's submission that the breach is minor. The Insurer 1 Breach relates to the award and signing of a substantial customer contract. Copart's conduct constitutes a failure to actively keep the CMA informed of all material developments relating to the Hills Motors business and the Copart business in breach of paragraph 8. The failure is particularly serious given that the failure to inform the CMA relates to the award and signing of the

³⁵⁸ IEO Provisional Penalty Response, paragraph 37. [Tab 9, Annex 2].

³⁵⁹ Final Report, paragraph 8.30(a). [Tab 133, Annex 2].

³⁶⁰ IEO Provisional Penalty Response, paragraph 36. [Tab 9, Annex 2].

Insurer 1 Contract, which included recycled parts services to be provided by Hills Motors and breached other provisions of the IEO (as discussed above).

294. Copart also submitted that Copart gave Insurer 1 the 'green light' to inform the CMA of the tender outcome and that the breach of paragraph 8(c) did not, therefore, deprive the CMA of necessary information it was not able otherwise to obtain.³⁶¹
295. The CMA disagrees with Copart's submission. Paragraph 8 of the IEO requires Copart to, at all times, actively keep the CMA informed of any material developments relating to the Hills Motors business or the Copart business. Copart was awarded the Insurer 1 Contract on 3 November 2022. Under the IEO it was Copart's duty to actively inform the CMA of the contract award at that time. The CMA was only informed of the Insurer 1 Combined Proposal, by Insurer 1 (not Copart), on 8 March 2023, some 4 months after the award of the contract. The CMA was deprived of relevant information during that period. Indeed, Copart did not inform the CMA of the fact that it had signed the Insurer 1 Contract on 8 July 2023 until Copart submitted its IEO Provisional Penalty Response to the CMA on 9 October 2023. At no time between at least 8 July 2023, when it signed that contract, and 14 July 2023, when the IEO ceased to be in force, did Copart inform the CMA that it had signed the Insurer 1 Contract.
296. Further, Insurer 1 was under an obligation to respond to the Insurer 1 Notice, a notice issued under section 109 of the Act. It is irrelevant that Copart gave permission for the disclosure of information.
297. Secondly, Copart submitted that since Insurer 2 and Insurer 3 were already customers of Copart, the award of these contracts was simply a continuation of the status quo and, as a result, paragraph 8(c) is not engaged. Insofar as there was a breach of paragraph 8(c), it is minor.³⁶²
298. Copart's submission is not sustainable. Paragraph 8 of the IEO makes clear that Copart was required to actively keep the CMA informed of all substantial customer volumes won or lost or substantial changes to the customer contracts for the Hills Motors or Copart business.
299. The award of a substantial contract, whether from a new or existing customer, is a material development of which Copart was required to actively inform the CMA under paragraph 8 of the IEO. This is particularly so given that the contracts involved the provision of new services, namely recycled parts, to be provided by Hills Motors.

³⁶¹ IEO Provisional Penalty Response, paragraph 36. [Tab 9, Annex 2].

³⁶² IEO Provisional Penalty Response, paragraphs 49 and 61. [Tab 9, Annex 2].

The CMA did not raise any concerns about compliance throughout the investigation

300. Copart submitted that the CMA did not raise any concerns about compliance until 5 months after it received copies of the Insurer 2 and Insurer 3 Combined Proposals³⁶³ in March 2023³⁶⁴ and that if it had alerted Copart earlier, Copart could have altered its behaviour and thereby prevented further adverse effects. The CMA considers that this submission is without merit.
301. Copart was issued with the IEO in August 2022. It was already incumbent upon Copart, pursuant to section 94(2) of the Act, as an addressee of the IEO, to comply with it. Further, in accordance with the CAT's judgment in *ICE/Trayport* (cited in *Electro Rent*), Copart was required 'to take a carefully considered view as to whether [its] conduct might arouse the reasonable concern of the CMA that the agreements that [it has reached] are significant enough that [it] might prejudice the reference or impede justified action if the agreement is non-arm's length.'³⁶⁵ CMA108 also makes clear that Copart was required to 'take steps to understand fully their compliance obligations (including seeking legal advice as needed) and consider carefully the consequences of any action which may be in breach of Interim Measures'.³⁶⁶
302. In addition, Copart understood that, pursuant to the IEO, it was required to seek prior CMA consent for certain actions. This is demonstrated by Copart's derogation request of 10 August 2022 that Hills Motors be permitted to access Copart's online auction platform, and its derogation request of 16 February 2023 seeking the exclusion of the non-UK business from the scope of the IEO. At no stage did Copart seek any derogations in relation to the Insurer 1, Insurer 2 or Insurer 3 Combined Proposals. Indeed, each of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals were only submitted to the CMA after the CMA had required Copart to disclose them by way of section 109 notices issued to Copart during phase 2 of the investigation on 23 February 2023³⁶⁷ and the Copart Notice.³⁶⁸
303. Further, the CMA first received the Insurer 2 and Insurer 3 Combined Proposals on 1 March 2023,³⁶⁹ at which time it was investigating the impact on competition of the Merger. Section 39 of the Act requires the CMA to prepare and publish a report on a reference under section 22 of the Act within a strict statutory

³⁶³ This submission excludes the Insurer 1 Combined Proposal, which was not disclosed to the CMA for a further two months (it was not received until 4 May 2023).

³⁶⁴ IEO Provisional Penalty Response, paragraph 4. [Tab 9, Annex 2].

³⁶⁵ *ICE/Trayport*, paragraph 223.

³⁶⁶ CMA108, paragraph 1.11.

³⁶⁷ The Insurer 2 and Insurer 3 Combined Proposals.

³⁶⁸ The Insurer 1 Combined Proposal.

³⁶⁹ Upon receipt of the Insurer 2 and Insurer 3 Combined Proposals provided to the CMA in Copart Phase 2 Notice 2 Response.

timescale, namely 24 weeks.³⁷⁰ Accordingly, CMA resources were allocated to progressing its investigation of the impact on competition of the Merger, which resulted in the Final Report being issued on 14 July 2023.

304. Following receipt of the Insurer 2 and Insurer 3 Combined Proposals, the CMA investigated a breach of the Copart Notice, which resulted in a penalty notice being issued to Copart on 10 August 2023. Investigations into breaches of notices issued under section 109 of the Act are also subject to strict statutory timescales.³⁷¹ Accordingly, the CMA also focussed its resources on investigating the breach of the Copart Notice.
305. While the CMA has sought to progress the investigation of the Breaches expeditiously, there are no statutory timescales within which the CMA is required to issue a penalty notice for a breach of an IEO under section 94A of the Act. The CMA was also not under a duty to update addressees such as Copart about the progress of investigations or emerging evidence of breaches. This is particularly so, given the CMA was investigating the Breaches which had already occurred. The CMA was therefore investigating the Merger and the breach of the Copart Notice at the same time that it was investigating whether Copart's conduct amounted to breaches of the IEO.

Decision on failure to comply

306. On the basis of the evidence set out in the preceding sections of this Penalty Notice, the CMA finds that Copart has, during the specified period, failed to comply with paragraphs 4, 5(a), 5(g) and 8 of the IEO. In particular, Copart:
- a) continued to negotiate, after the IEO commenced, the Insurer 1 Combined Proposal and the Insurer 1 Contract, which included elements of the Hills Motors business, being recycled parts services;
 - b) continued to negotiate, after the IEO commenced, the Insurer 2 Combined Proposal and the Insurer 2 Contract, which included elements of the Hills Motors business, being recycled parts services; and
 - c) submitted and then continued to negotiate the Insurer 3 Combined Proposal and the Insurer 3 Contract, which included elements of the Hills Motors business, being recycled parts services.

³⁷⁰ The CMA extended the statutory deadline for it to publish a final report by 8 weeks in this matter.

³⁷¹ Section 110A(1) of the Act – No penalty shall be imposed by virtue of section 110(1) or (3) if more than 4 weeks have passed since the day which is the relevant day in the case in question. In this case, the relevant day was when the reference was finally determined, ie on 14 July 2023, being the date that the Final Report was issued.

307. By doing so, Copart took action, without the CMA's prior written consent, that might have led to the integration of elements of the Hills Motors business with the Copart business or which might have otherwise impaired the ability of the Hills Motors business or the Copart business to compete independently contrary to paragraph 4 of the IEO.
308. By the same conduct, Copart also failed to take all necessary steps to ensure, without the CMA's prior written consent, that:
- a) The Hills Motors business was carried on separately from the Copart business and that the Hills Motors business's sales identity was maintained, contrary to paragraph 5(a) of the IEO.
 - b) Any negotiations in relation to the Hills Motors business were carried out by the Hills Motors business alone, contrary to paragraph 5(g) of the IEO.
309. Further, contrary to paragraph 8 of the IEO, Copart failed to actively keep the CMA informed of the fact that it had been awarded the Insurer 1, Insurer 2 and Insurer 3 Contracts until 4 May 2023 (and even then this information was only provided when Copart was required to comply with the Copart Notice issued by the CMA on 26 April 2023), and failed to actively keep the CMA informed that it had signed the Insurer 1 Contract while the IEO was in place.

Without reasonable excuse

310. Section 94A(1) of the Act provides that penalties can be imposed if a failure to comply is 'without reasonable excuse'.
311. Once a breach of an initial enforcement order is established, the person who has committed the breach bears the evidential burden of setting out a prima facie case for reasonable excuse. Any excuse must be objectively reasonable.³⁷²
312. CMA4 states that the CMA will consider whether any reasons for failure to comply amount to a reasonable excuse on a case-by-case basis; and that the CMA will consider whether a significant and genuinely unforeseeable or unusual event and/or an event beyond the company's control, has caused the failure to comply (and the failure would not otherwise have taken place).³⁷³ The CMA accepts that it may be possible to establish other objectively reasonable excuses for breaching an initial enforcement order.

³⁷² *Electro Rent*, paragraphs 69 and 112.

³⁷³ CMA4, paragraph 4.4.

313. Based on the evidence available to the CMA, there is nothing to suggest that any such event has occurred in this case. Further, Copart has not provided any other reasonable excuse for failing to comply with the IEO.
314. The CMA therefore concludes that Copart had no reasonable excuse for the failures to comply with the requirements of the IEO which have been identified above. The statutory requirements for imposing a penalty under section 94A of the Act are met.

E. Appropriateness of imposing a penalty at the level at which it is imposed

Appropriateness of imposing a penalty

315. Having regard to its statutory duties, CMA4 and all the relevant circumstances, the CMA considers that the imposition of a penalty is appropriate, having regard to (i) the need to achieve general deterrence, (ii) the seriousness of the Breaches; (iii) other relevant factors (as set out below).

General deterrence

316. The CMA considers that it is of utmost importance to the UK's voluntary, non-suspensory merger control regime that interim measures should be effective, particularly in the small number of completed mergers which the CMA identifies as warranting review. Interim measures (including initial enforcement orders) serve a particularly important function where, as in this case, the merger has been completed. Their function is to prevent conduct that might prejudice a reference or impede action justified by the CMA's final decision. The purpose of an initial enforcement order, as noted by the CAT, is precautionary, guarding against the possibility of pre-emptive action.³⁷⁴
317. It is important that parties take such obligations seriously and recognise the importance of conducting their business within the parameters of any initial enforcement order, to ensure they do not engage in a breach, whether inadvertently or otherwise.

Seriousness of the breaches

318. The failures to comply were significant and serious. The IEO provisions in relation to which the CMA has identified breaches sought to ensure that:
- a) no action was taken that might have led to the integration of elements of the Hills Motors business with the Copart business, or otherwise impaired

³⁷⁴ ICE/Trayport, paragraph 220.

- the ability of the Hills Motors business or the Copart business to compete independently in any of the markets affected by the Merger (paragraph 4);
- b) the Hills Motors business was carried on separately from the Copart business and that the Hills Motors business' separate sales identity was maintained (paragraph 5(a));
 - c) any negotiations with existing and potential customers in relation to the Hills Motors business were carried out by the Hills Motors business alone (paragraph 5(g));
 - d) at all times, Copart should actively keep the CMA informed of any material developments relating to the Hills Motors business or the Copart business (paragraph 8).
319. As a result of the breaches of the IEO which the CMA has identified, the CMA's ability to take remedial action could have been affected significantly in the event it had found an SLC, as it might have been more difficult to implement an effective remedy when the Parties were engaged to provide services under the same contracts in accordance with the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals. Copart's RFP responses, on the basis of a combined offering, and its negotiation of the combined offerings (which the CMA considers constitutes breaches of the IEO) also created a material risk of prejudice to the outcome of the reference: Hills Motors might have been impeded from competing independently as a result of Copart representing to Insurers 1, 2 and 3 that Hills Motors was no longer an independent player in the market. This also had the potential to affect the competitive structure of the market during the CMA's investigation. The fact that the CMA subsequently decided to clear the Merger does not detract from the seriousness of these infringements, which took place while the CMA was actively reviewing the Merger and considering whether it should be allowed to proceed (as demonstrated by the provisional SLC decision in its original Provisional Findings).
320. Further, Copart should have been aware that, in order to comply with the IEO, there needed to be full independence between the Copart business and the Hills Motors business in relation to (among other matters) customers. The available evidence shows that Copart UK Limited's CEO was directly involved in communications relating to the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals and was aware that Copart had been awarded the Insurer 1 Contract and Insurer 2 Contract, and was likely to have been aware of the award of the Insurer 3 Contract, while also signing the compliance statements submitted to

the CMA during the specified period, which omitted any reference to the award of the Insurer 1, Insurer 2 and Insurer 3 Contracts.

321. For these reasons, the CMA considers that these failures to comply with the IEO are particularly serious.

Pre-emptive action

322. Copart submits that the CMA erred in law by considering that its breaches of paragraphs 4, 5(a) and 5(g) constituted pre-emptive action.³⁷⁵ This is fundamentally misconceived:

- a) The CMA is not required to demonstrate that conduct constitutes pre-emptive action in order for it to find a breach of the IEO. It is sufficient to establish a breach of one of the specific prohibitions or obligations in the IEO.
- b) In any event, while Hills Motors was not ultimately found by the CMA to exercise a meaningful competitive constraint on Copart, Copart's conduct amounted to pre-emptive action that **might** have prejudiced the outcome of the reference and the CMA's ability to take remedial action within the meaning of section 72(8) of the Act. The Act clearly states that pre-emptive action encompasses action that 'might' prejudice the outcome of a reference or impede remedial action and footnote 1 of CMA108 provides a non-exhaustive list of the kinds of conduct that may amount to pre-emptive action. In *Facebook v CMA*³⁷⁶, the CAT held the concept of pre-emptive action includes activity which the merging parties might take in connection with, or as a result of, the merger that had the 'potential to affect the competitive structure of the market during the CMA's investigation.'³⁷⁷ The risk of pre-emptive action in this case was clear.
- c) The fact that the CMA ultimately found that Hills Motors was not a credible competitor does not undermine the CMA's position with respect to the importance of compliance with the IEO.³⁷⁸ The CMA was actively reviewing the Merger at the time that the Breaches occurred. The competitive status of Hills Motors remained unclear at the relevant time and, in any event, Copart was under an obligation to comply with the IEO during the specified period, as outlined above.

³⁷⁵ IEO Provisional Penalty Response, paragraphs 66-76. [Tab 9, Annex 2].

³⁷⁶ *Facebook v CMA*, paragraph 24.

³⁷⁷ The Court of Appeal in *Facebook v CMA (CoA)* upheld the CAT's decision, paragraph 56.

³⁷⁸ IEO Provisional Penalty Response, paragraphs 69-71. [Tab 9, Annex 2].

The CMA's analysis of the evidence

323. Copart submitted that the CMA, in determining the penalty amount, has (i) failed to adduce evidence of Copart having negotiated on behalf of Hills Motors; and (ii) ignored 'exculpatory evidence'.³⁷⁹ These submissions are without merit:

- a) First, the CMA has adduced contemporaneous evidence that supports its findings. For Copart to submit that there is 'simply no evidence whatsoever' of such activity³⁸⁰ is entirely unsustainable. The CMA is not required to itemise the evidence it has relied upon in determining the amount of the penalty: the amount has been determined by reference to the CMA's findings, which are based on the totality of the evidence as presented in this Penalty Notice, and the relevant factors set out in CMA4.
- b) Second, any 'exculpatory evidence' that Copart seeks to rely upon has been considered in the analysis supporting the CMA's findings. This includes the evidence in relation to Copart's submission that Hills Motors was awarded the recycled parts services contract by Insurer 3, which in Copart's submission (it is presumed) demonstrates that Hills Motors was undertaking independent negotiations. This evidence has been considered by the CMA (see paragraph 228 and 229 above) – it does not undermine the findings relating to the relevant breach.

Other considerations relevant to the Breaches

324. Based on the evidence set out above, the CMA has decided that the Breaches are significant and were committed either intentionally or negligently. Specifically:

- a) In respect of Insurer 1 Breach, the CMA has decided that Copart acted intentionally or negligently in the manner in which it continued to negotiate with Insurer 1 in furtherance of the Insurer 1 Combined Proposal and the Insurer 1 Contract (which was signed on 8 July 2023) after the IEO had been imposed.
- b) In respect of Insurer 2 Breach, the CMA has decided that Copart acted intentionally or negligently in the manner in which it continued negotiations with Insurer 2 in furtherance of the Insurer 2 Combined Proposal and the Insurer 2 Contract after the IEO had been imposed.

³⁷⁹ IEO Provisional Penalty Response, paragraph 64. [Tab 9, Annex 2].

³⁸⁰ IEO Provisional Penalty Response, paragraph 64. [Tab 9, Annex 2].

c) In respect of Insurer 3 Breach, the CMA has decided that Copart acted intentionally or negligently in the manner in which it submitted the Insurer 3 Combined Proposal and conducted subsequent negotiations with Insurer 3 in furtherance of the Insurer 3 Combined Proposal and the Insurer 3 Contract, all of which occurred after the IEO had been imposed.

325. While each breach is, by itself, serious, the Breaches together form part of a pattern of behaviour of non-compliance with the IEO. As reflected in the chronologies set out above, repeated events that give rise to each of the Breaches occurred over a period of many months following the imposition of the IEO.

326. Moreover, within the context of the assurances it had given to the CMA in its compliance statements, the CMA considers that Copart failed (with that failure persisting over a prolonged period) to actively keep the CMA informed of material developments as required under paragraph 8 of the IEO, being the award of the Insurer 1, Insurer 2 and Insurer 3 Contracts.

Appropriateness of the amount of the penalty imposed

327. Any penalty needs to be sufficiently high to deter Copart from breaching any CMA interim measures in future investigations. It is also necessary to impose a sufficiently high penalty to deter others – a penalty should not be perceived as a mere ‘cost of doing business’. This is particularly important in a case such as this one, since Copart was awarded the three contracts in question (namely the Insurer 1, Insurer 2 and Insurer 3 Contracts) and has subsequently entered into the Insurer 1 Contract. The CMA considers that it is important to send a strong message that the CMA will not tolerate an opportunistic approach to compliance with initial enforcement orders.

328. Consistent with its statutory duties and CMA4,³⁸¹ the CMA has assessed all relevant circumstances to determine an appropriate level of penalty. It has also taken account of the following aggravating and mitigating factors in line with CMA4.

Aggravating factors

329. The following factors, listed in paragraph 4.11 of CMA4, are relevant to the level of the penalty to be imposed, and suggest that a substantial penalty is warranted:

³⁸¹ CMA4, paragraph 4.11.

- a) *Advantage to Copart.* Copart negotiated and was successful in being awarded the Insurer 1, Insurer 2 and Insurer 3 Contracts, each of which included elements of the Hills Motors business, being the recycled parts services, in breach of the IEO. Copart, therefore, sought and potentially derived a material benefit from its failures to comply with the IEO.
- b) *The involvement of senior management or officers.* The evidence available to the CMA indicates that [§<] (Copart UK Limited's CEO), was aware of (i) the pursuit of the Insurer 1 Combined Proposal, as she was copied into relevant correspondence and/or directly corresponded concerning the Insurer 1 Combined Proposal; the award of the Insurer 1 Contract, as she was informed of this; and the signing of the Insurer 1 Contract, as she signed the document on 8 July 2023; (ii) the pursuit of the Insurer 2 Combined Proposal, as she was copied into relevant correspondence; and (iii) the pursuit of the Insurer 3 Combined Proposal, as she had a discussion with the Insurer 3 Chairman on 4 October 2022 concerning the Insurer 3 Combined Proposal.³⁸² On the basis of the evidence, it is therefore clear that the Breaches took place with the knowledge and/or involvement of senior management at Copart. Additionally, [§<] was the signatory for Copart UK Ltd's compliance statements to the CMA, which omitted to mention (i) the Insurer 1 Combined Proposal on 15 November, 29 November, 13 December 2022, and 10 January, 24 January, 7 February, 30 May and 13 June 2023; (ii) the Insurer 2 Combined Proposal on 30 May and 13 June 2023; and (iii) the Insurer 3 Combined Proposal on 10 January, 24 January, 7 February, 30 May and 13 June 2023; as such, Copart UK Limited's CEO knew (or ought to have known) that there were material developments that should have been reported to the CMA but were not reported, in breach of the IEO.
- c) *The prejudice that failure to comply with the Copart IEO might have caused to the CMA's ability to take remedial action and/or to the outcome of the reference.* Copart's conduct during the specified period in relation to the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals and the Insurer 1, Insurer 2 and Insurer 3 Contracts might have affected the CMA's ability to take remedial action, should that ultimately have been necessary, as it might have been more difficult to implement an effective remedy when Copart had been awarded contracts for the provision of combined services of the two businesses. In addition, in relation to the Insurer 1 Combined Proposal and the Insurer 2 Combined Proposal, Copart's continued negotiation of a combined offering (which constituted a breach of the IEO) also created a material risk of prejudice to the outcome of the reference, as it risked

³⁸² See paragraph 213.c).

impeding Hills Motors from competing by providing a fully independent offering for these contracts.³⁸³ In relation to the Insurer 3 Combined Proposal, Copart's submission and continued negotiation of a combined offering (which constituted a breach of the IEO), also created a material risk of prejudice to the outcome of the reference for the same reason (as, even where Hills Motors submitted its own proposal, customers were given the impression that the Hills Motors offering would be provided as part of the Copart offering). The award of these contracts and the fact Copart used the Hills Motors' offering to win them pre-emptively had the potential to affect the competitive structure of the market during the CMA's investigation. The CMA considers that the fact that the CMA subsequently decided to clear the Merger does not detract from the seriousness of these infringements, which took place while the CMA was actively reviewing the Merger and considering whether it should be allowed to proceed (as demonstrated by the provisional SLC decision in its original Provisional Findings).

- d) *Nature and gravity of the Breaches.* As noted above, the CMA considers these Breaches to significant and serious, and were committed either intentionally or negligently. The evidence available to the CMA indicates that during the specified period Copart engaged in multiple contacts with Insurer 1, Insurer 2 and Insurer 3 over a prolonged period, in which it negotiated its commercial proposals (including elements of the Hills Motors offering). In this regard, Copart had multiple opportunities to assess whether any action it proposed to take, or to continue to take, in relation to the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals was likely to contravene any of the terms of the IEO, and, if necessary, to seek derogations from the CMA to carry on any conduct that would otherwise be a breach of the IEO. At no time during the specified period did Copart seek the prior written consent of the CMA, as required by the IEO, for any of the steps which breached its terms. The CMA considers that the Insurer 3 Breach was particularly serious. In contrast to the Insurer 1 Breach and Insurer 2 Breach, where the combined proposals had been submitted prior to the IEO coming into effect, Copart submitted the Insurer 3 Combined Proposal to Insurer 3 on 12 September 2022, more than a month after the IEO commenced on 9 August 2022. Therefore, in relation to Insurer 3, the entire attempt to establish a new business relationship with this customer, on the basis of a combined offering of the two businesses, took place after the IEO came into force.

³⁸³ Copart's conduct in negotiating the Insurer 1 Combined Proposal, the Insurer 2 Combined Proposal, and the Insurer 3 Combined Proposal and winning the Insurer 1 Contract, the Insurer 2 Contract and the Insurer 3 Contract amounted to 'action that has the potential to affect the competitive structure of the market during the CMA's investigation' – *Facebook v CMA*, paragraph 124; see also paragraph 21.

Mitigating factors

330. Copart submitted that there are several mitigating factors present in this case. These are listed below. None are sustainable.

- a) *The Breaches did not impede the CMA's ability to implement effective remedial action.*³⁸⁴ This is misconceived. The fact that the Breaches did not in fact impede the CMA's ability to implement effective remedial action is immaterial: the interim measures regime, as set out in section 72 of the Act and explained in case law and guidance, targets actions that '**might**' impede remedial action [emphasis added], and the actions of Copart in this case plainly exceeded that 'low threshold of expectation' (see paragraph 223 above).
- b) *The breaches of paragraphs 5(g) and 8(c) of the IEO were minor and technical.*³⁸⁵ These breaches were neither minor nor technical. First, Copart cannot construe its protracted negotiations with Insurer 1, Insurer 2 and Insurer 3 as 'a minor technical breach' of paragraph 5(g) of the IEO simply because they did not relate '**specifically** to green parts' [emphasis added].³⁸⁶ As Copart admits, those negotiations 'related to the overall proposal, **and the overall proposal included green parts**' [emphasis added].³⁸⁷ Second, Copart's failure to actively keep the CMA informed about material developments relating to the two businesses in accordance with paragraph 8 of the IEO was liable to deprive the CMA of vital information, thereby potentially significantly impeding its investigation and undermining the efficacy of the IEO.
- c) *Copart was not obliged to reverse the proposals by reason of paragraph 3 of the IEO.*³⁸⁸ While paragraph 3 does not oblige Copart to reverse actions taken prior to the commencement of the IEO, this only applies 'in each case **to the extent that it occurred or was completed prior to the commencement date**' [emphasis added]. Plainly, Copart is not absolved of its obligation to seek a derogation if further relevant action is taken after the IEO takes effect, as it was in relation to the Insurer 1 and Insurer 2 Breaches. CMA108³⁸⁹ states:

If the merging parties enter into an obligation or take a decision before the Interim Measures take effect, but the obligation will be performed or the decision implemented, **or continue to be implemented**, after the

³⁸⁴ IEO Provisional Penalty Response, paragraphs 73 and 78. [Tab 9, Annex 2].

³⁸⁵ IEO Provisional Penalty Response, paragraph 79. [Tab 9, Annex 2].

³⁸⁶ IEO Provisional Penalty Response, paragraph 79. [Tab 9, Annex 2].

³⁸⁷ IEO Provisional Penalty Response, paragraph 79. [Tab 9, Annex 2].

³⁸⁸ IEO Provisional Penalty Response, paragraph 80. [Tab 9, Annex 2].

³⁸⁹ CMA108, paragraph 3.20.

Interim Measures have come into force, then the merging parties should make full disclosure of the situation to the CMA and seek a derogation if any further or continuing action might breach the Interim Measures [emphasis added].

- d) In submitting that ‘its actions [after commencement of the IEO] in relation to each of Insurer 1 and Insurer 2 amounted to no more than maintaining its existing proposal’,³⁹⁰ Copart appears to admit that it took post-IEO actions in furtherance of the Insurer 1 and Insurer 2 Combined Proposals at a point in time at which the IEO was in force. The CMA considers that such actions do not fall within the scope of paragraph 3 of the IEO.

Proportionality and fairness of the penalty amount

331. Copart submitted that the penalty amount that the CMA proposed to impose is disproportionate and unfair having regard to (i) previous CMA penalty notices;³⁹¹ (ii) the absence of any significant harm;³⁹² and (iii) the fact that the CMA did not raise concerns throughout its investigation despite receiving copies of Copart’s response to the Insurer 2 and Insurer 3 RFPs in March 2023.³⁹³ These submissions are without merit.

- a) *Previous CMA penalty notices.* Section 94A(2) of the Act empowers the CMA to impose a penalty amount up to but not exceeding 5% of total value of turnover. The CMA assesses all the relevant circumstances of each case in the round in order to determine a penalty that is reasonable, appropriate and thus proportionate in the circumstances.³⁹⁴ Relevantly, CMA108 states that the CMA will ‘make full use of this power to deter activity which undermines the effectiveness of Interim Measures’,³⁹⁵ and henceforth ‘impose proportionately larger penalties in future cases should this prove necessary in the interests of deterrence’.³⁹⁶ CMA108 was first published on 28 June 2019 and updated on 21 December 2021. The version of CMA108 applicable from 28 June 2019 included an identical statement as noted above. One of the decisions cited by Copart in support of its submission predates the first publication of CMA108 on 28 June 2019,³⁹⁷ and the other decisions cited by Copart in support of its submission predate the

³⁹⁰ IEO Provisional Penalty Response, paragraph 80. [Tab 9, Annex 2].

³⁹¹ IEO Provisional Penalty Response, paragraphs 83-87. [Tab 9, Annex 2].

³⁹² IEO Provisional Penalty Response, paragraph 88. [Tab 9, Annex 2].

³⁹³ IEO Provisional Penalty Response, paragraph 89. [Tab 9, Annex 2].

³⁹⁴ CMA4, paragraph 4.11.

³⁹⁵ CMA108, paragraph 1.10.

³⁹⁶ CMA108, paragraph 7.8.

³⁹⁷ [Decision to impose a penalty on Ausurus Group Ltd and European Metal Recycling Ltd under section 94A of the Enterprise Act 2002, 20 December 2018.](#)

publication of CMA108 on 21 December 2021.³⁹⁸ The penalty is not ‘staggeringly inconsistent’ with previous decisions, but rather properly reflects the relevant provisions of the CMA’s guidance (including in CMA108 and CMA4) and all the relevant circumstances in the case. In any event, the CMA is not bound by previous penalty decisions, and none of the decisions cited by Copart provide precedent for a restriction of the CMA’s wide margin of discretion to determine the appropriate amount of a penalty. This is particularly so with regards interim measures, which are essential to the functioning of the UK merger control regime and in relation to which CMA108 states that ‘the CMA will not hesitate to make full use of its fining powers’.³⁹⁹ For the reasons set out in this Penalty Notice, the CMA considers the cumulative penalty imposed on Copart – which equates to approximately 0.09% of Copart’s global turnover and so falls substantially below the statutory maximum of 5% that the CMA may impose under section 94A of the Act – to constitute a proportionate penalty taking account of all relevant factors.

- b) *The absence of any significant harm.* The only harm envisioned by Copart are the consequences to a divestment remedy in the event the Merger was prohibited.⁴⁰⁰ This overlooks the other harms that may have arisen, including the general frustration of the CMA’s mergers regime and the prejudice that failure to comply might have caused to the CMA’s ability to take remedial action and/or to the outcome of the reference (see paragraph 329.c)). In support of its position, Copart incorrectly contends that, even if a breach of the IEO was committed, it did not ‘actually or potentially’ prejudice the CMA’s ability to take remedial actions or affect the competitive structure of the market during the period of investigation.⁴⁰¹ However, this misconstrues the operation of the CMA’s interim measures regime and the terms of the IEO: plainly, the Breaches had the potential to prejudice remedial action and/or the outcome of the reference, and had the potential to affect the competitive structure of the market during the CMA’s investigation, regardless of whether those consequences actually materialised (see paragraph 267 above).
- c) *The CMA did not raise any concerns throughout its investigation despite receiving copies of Copart’s response to the Insurer 2 and Insurer 3 RFPs*

³⁹⁸ [Decision to impose a penalty on Nicholls \(Fuel Oils\) Limited under section 94A of the Enterprise Act 2002, 28 June 2019](#); [Decision to impose a penalty on PayPal Holdings, Inc., PayPal \(Europe\) Sarl et Cie SCA and PayPal SE \(jointly and severally PayPal\) under section 94A of the Enterprise 2002, 18 September 2019](#); and [Decision to impose a penalty on ION Investment Group Limited and ION Trading Technologies Limited under section 94A of the Enterprise Act 2002, 7 August 2021](#).

³⁹⁹ CMA108, paragraph 7.8.

⁴⁰⁰ IEO Provisional Penalty Response, paragraph 88. [Tab 9, Annex 2].

⁴⁰¹ IEO Provisional Penalty Response, paragraph 88. [Tab 9, Annex 2].

*in March 2023.*⁴⁰² The CMA does not consider this to be a relevant mitigating factor:

- (i) First, Copart was issued with the IEO in August 2022. It was already incumbent upon Copart, in accordance with the CAT's judgment in *ICE/Trayport* (cited in *Electro Rent*), 'to take a carefully considered view as to whether [its] conduct might arouse the reasonable concern of the CMA that the agreements that [it has reached] are significant enough that [it] might prejudice the reference or impede justified action if the agreement is non-arm's length.' In addition, Copart should have understood, in accordance with the IEO, that it was required to seek prior CMA consent for certain actions. At no stage did Copart seek any derogation for the actions that gave rise to the Breaches.
- (ii) Second, the CMA issued the Copart Notice on 26 April 2023, by which stage Copart was fully aware that a merger investigation was ongoing and was thereby in a position to 'alter its behaviour', including by seeking a derogation for its ongoing negotiation of the Insurer 1, Insurer 2 and Insurer 3 Combined Proposals. The nature of the information required by the Copart Notice, described above at paragraphs 69 to 70 should have alerted Copart that the CMA may have had concerns regarding compliance with the terms of the IEO.
- (iii) Third, under section 94A of the Act, the CMA has the power to issue a penalty to addressees for a breach or breaches of an initial enforcement order. Upon receipt of copies of Copart's response to the Insurer 2 and Insurer 3 Combined Proposals, the CMA carried out an investigation of whether Copart's conduct amounted to (i) breaches of the Copart Notice which led to a penalty being issued to Copart on 10 August 2023 and (ii) breaches of the IEO which led to the issuing of this Penalty Notice. The CMA is not under a duty to update addressees such as Copart about the progress of investigations or emerging evidence of breaches, whether as a means of enabling addressees to mitigate penalty amounts or at all.

Financial resources available to Copart

332. Copart is part of a global and well-resourced corporate group. It had the administrative and financial resources available to enable it to fully comply with the IEO.

⁴⁰² IEO Provisional Penalty Response, paragraph 4. [Tab 9, Annex 2].

333. In determining the appropriate level of penalty,⁴⁰³ the CMA has considered the published consolidated financial statements for Copart, Inc. for the year ended 31 July 2022.⁴⁰⁴ According to these statements, the worldwide turnover for the Copart group in the year ended 31 July 2022 was approximately £2,660 million.⁴⁰⁵ In the same period, the profit after tax (net income) for the Copart group was approximately £828 million.⁴⁰⁶ The CMA has also considered the purchase price paid for Hills Motors in line with the judgment in *Electro Rent*.⁴⁰⁷ Copart paid a purchase price of £[><].
334. It is apparent that Copart has sufficient financial resources available to it in respect of a cumulative penalty of £2.5 million imposed for its failures to comply with the IEO. The CMA considers that it is appropriate to impose a cumulative penalty at this level, having regard to Copart's size and financial position.

Conclusion on the imposition of a penalty

335. Although the CMA has the power to impose a penalty of up to 5% of global turnover (which in this case would amount to approximately £133 million), the CMA does not consider that the Breaches in this case warrant a penalty at that level.
336. In view of the relevant factors set out in this section, including (i) the adverse impact on the CMA's investigation, as the Breaches might have prejudiced the reference or impeded the taking of any necessary remedial action; (ii) the seriousness of the breaches (whether committed intentionally or negligently); (iii) the knowledge and/or involvement of Copart senior management; (iv) the fact that Copart sought and potentially obtained an advantage or derived benefit from the Breaches; (v) taken together, the Breaches reveal a pattern of disregard for compliance with the IEO; (vi) the absence of any mitigating factors; (vii) the need to deter future failures to comply by Copart and other persons who may consider future non-compliance with interim measures; and (viii) Copart's size and financial position, the CMA considers that the imposition

⁴⁰³ The CMA has considered Copart's turnover for the year ended 31 July 2022, being the latest accounts filed with the United States Securities and Exchange Commission, in accordance with Article 3 of the Interim Measures Order.

⁴⁰⁴ Further, for the purposes of imposing a penalty, section 94A(2) of the Act provides that turnover is the turnover both in and outside the UK of the enterprises owned or controlled by the person on whom it is imposed. In this case, the relevant turnover for the purpose of imposing a penalty is the turnover of Copart, Inc.

⁴⁰⁵ As per latest Form 10-K for financial year ended 31 July 2022 at average exchange rate for the year ended 31 July 2022 (£1: US\$1.3163).

⁴⁰⁶ As per latest Form 10-K for financial year ended 31 July 2022 at average exchange rate for the year ended 31 July 2022 (£1: US\$1.3163).

⁴⁰⁷ In assessing proportionality, the CAT noted in *Electro Rent* that 'the penalty was not anomalous in the context of the size of the acquisition of Microlease by Electro Rent or of the fees and other costs that would, undoubtedly, have been incurred in a transaction of this size'.

of penalties cumulatively totalling £2.5 million is appropriate and proportionate, comprising:

- a) £650,000 for the Insurer 1 Breach;
- b) £650,000 for the Insurer 2 Breach; and
- c) £1.2 million for the Insurer 3 Breach.

337. These penalties individually and cumulatively fall substantially below the statutory maximum of 5% of Copart's global turnover (at approximately 0.09% of turnover and 0.3% of profits after tax⁴⁰⁸). Neither the individual penalties nor the cumulative amount is disproportionate in this case.

F. Copart's rights and next steps

338. Copart is required to pay the cumulative 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 notice on Copart.

339. Copart has the following rights in relation to the final penalty which the CMA has imposed:

- 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,⁴⁰⁹ the right to apply to the CMA within 14 days of the date on which the final notice is served on Copart 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 as described in the preceding paragraph, 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, the right to apply to the CAT within the period of 28 days starting with the day on which the final notice is served on Copart in relation to:

- (i) the imposition or nature of the penalty;

⁴⁰⁸ An exchange rate of (£1: US\$1.3163) has been used for these calculations.

⁴⁰⁹ Section 94A(7) of the Act provides that sections 112-115 of the Act apply in this situation.

- (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 they are 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.⁴¹⁰

Richard Romney

Senior Legal Director – Mergers, Markets and Sector Regulation

14 December 2023

Competition and Markets Authority

Annexes:

Annex 1: Initial Enforcement Order.

Annex 2: Bundle of non-public documents relied upon in evidence.

⁴¹⁰ 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.