

Completed Acquisition by Constellation Developments Limited of ABVR Holdings Limited

Response to CMA's Phase 1 Decision of 29 September 2025 ("Response")

1 EXECUTIVE SUMMARY

1.1 The Parties welcome the opportunity to respond to the CMA's Phase 1 decision to refer the completed acquisition by Constellation Developments Limited ("**Constellation**") of ABVR Holdings Limited ("**Aston Barclay**", together with Constellation, the "**Parties**") (the "**Merger**") for a Phase 2 review, as announced on 29 September 2025 ("**the Decision**").

1.2 Consistent with the submissions made by the Parties during Phase 1, and in particular during the CMA's Issues Meeting and in the written response to the CMA's Issues Letter ("**the Issues Letter Response**"), the Parties do not consider that there is a realistic prospect that the Merger has resulted in, or may expected to result in, a substantial lessening of competition ("**SLC**").

1.3 The CMA determined, consistent with the position set out in the Issues Letter, that there is a realistic prospect of an SLC arising from the Merger. This submission sets out the Parties' key observations in response to the Decision. As well as including new evidence in this Response, the Parties draw specific attention to evidence submitted to the CMA at Phase 1 (including at the Issues Meeting and in the Issues Letter Response), and which has not been referenced (and respectfully, may not have been taken fully into account) in the Decision. This Response follows the order of the Decision. However, the Parties note the following key observations at the outset.

(a) In putting forward a counterfactual that: (a) at least one existing smaller supplier of B2B used vehicle auction services in Great Britain acquires some or all of Aston Barclay's auction assets; and (b) the market position of British Car Auctions ("**BCA**") is comparable to its pre-Merger position, the Decision has not given sufficient weight to the compelling evidence submitted by the Parties that the thresholds for an "exiting firm counterfactual" are met to the Phase 1 standard.

(b) The CMA's counterfactual is based on assumptions that are inconsistent with the real-world legal, financial and commercial constraints faced by Aston Barclay, and its (then) Board of Directors, shareholders or an administrator. Further, in concluding on the counterfactual, the CMA inappropriately discounts evidence relating to Aston Barclay's operations in the period following October 2024, including on the incorrect premise that a deal with Constellation was inevitable prior to Merger completion in April 2025.

(c) In any event, even if the CMA's Phase 1 counterfactual were sustainable, the competitive assessment in the Decision is not undertaken with reference to it. Rather, the competitive assessment of the post-Merger position is undertaken (with the barest of justifications) relative to the pre-Merger status quo.

(d) The evidence shows that BCA and Aston Barclay are not close competitors and are not part of a "big three" of B2B used vehicle auction providers in the UK. Rather, there are a number of alternative and strong auction competitors that can and do compete actively with the Parties (and which major vendor and buyer customers choose to use). Further, there is

significant competitive constraint from a range of alternative remarketing channels, including pure digital providers, proprietary vendor platforms and C2B platforms, all of which continue to disintermediate the Parties' auctions from the used vehicle value chain.

- 1.4 The Parties will continue to put forward robust evidence and analysis throughout the Phase 2 review period to support the conclusion that the Merger does not result in an SLC. The Parties remain committed to supporting the CMA's review, and look forward to expanding on the matters raised in this Response at and following the Initial Substantive Meeting. For the avoidance of doubt, to the extent specific elements of the Decision are not directly addressed in this Response, the Parties' position is expressly reserved.

2 **TRANSACTION BACKGROUND AND RATIONALE**

- 2.1 The Parties do not disagree with the CMA's description of the Parties, the Merger and the rationale in Section 1 of the Decision. However, it is notable that the CMA has not engaged in the Decision on the stark differences in the business models of the Parties that are evidenced in this section (and which form an important part of the Parties' submission that they are not close competitors), nor on the pro-competitive rationale for the Merger. In this regard, the Parties note:

- (a) Constellation is a multi-national business operating across the used vehicle value chain and generating approximately £[§<] billion revenue per year. Constellation owns and operates both consumer facing businesses (such as webuyanycar, Cinch and Marshall Motor Group) as well as a variety of businesses active in the B2B space. UK B2B used vehicle auctions form a relatively small part of the overall group's revenue. In recent years BCA has shifted to a 100% online (24/7) model selling primarily Constellation's own vehicles sourced from webuyanycar and other parts of the Constellation Group.
- (b) By contrast, Aston Barclay is purely a B2B used vehicle auction business with operations only in the UK. It does not have material activities beyond used vehicle auctions, with its [§<] car buying activities being insignificant to the overall group in volume terms. Unlike BCA, Aston Barclay continues to operate live in-person auctions, which take place on a limited weekday-only schedule at five physical auction sites (with the option for buyers to attend online too).

- 2.2 These very different business and operational models are important for the competitive assessment but have not been properly addressed in the Decision.

- 2.3 Moreover, while Constellation's pro-competitive rationale for entering into the Merger (namely improving Constellation's vehicle operations and logistics nationally) is acknowledged by the CMA as being consistent with Constellation's internal documents, the Decision fails to take this into account as part of its overall assessment. Constellation is uniquely well placed to generate efficiencies through the acquisition of the complementarily located and significantly under-utilised Aston Barclay sites by virtue of its proprietary vehicle volumes and broader automotive sector activities (as well as having the financial strength to absorb Aston Barclay's liabilities).

- 2.4 Notably, the CMA's Merger Assessment Guidelines explicitly state that it may be particularly important in the context of an exiting firm scenario for the CMA to understand the "rationale" for the transaction under review (i.e. to consider why the

purchaser is acquiring a firm or its assets in the context of claims that it would have exited from the market).¹

- 2.5 As explained to the CMA during the Issues Meeting, part of Constellation's rationale in proceeding with the Merger was also to ensure that the [X] remained in the industry: Constellation had given serious consideration to simply allowing Aston Barclay [X], but had decided that, on balance, it would be preferable to keep [X] through the Merger. This rationale has not been considered in the Decision as part of its assessment.
- 2.6 It is also notable that Rutland Registrations Limited ("**Rutland**")'s rationale for the sale of Aston Barclay is entirely overlooked in the Decision. Rutland's investment was [X], having acquired Aston Barclay in 2017 for approximately £[X] million cash. Despite investment in sites, technology and people over the term of its investment, Rutland had failed to generate sufficient volume to match this investment and so sustain Aston Barclay as a profit-making business. As explained through Phase 1, and expanded further below, Aston Barclay's [X] to the extent that Rutland had no option but to sell, by which point it could only achieve total consideration of £[X] million. The stark difference between the 2017 acquisition price and the 2024 sale price (representing an [X]% loss in nominal terms) is contemporaneous, objective evidence of Aston Barclay's [X].

3 COUNTERFACTUAL

A. The CMA's Overall Approach

- 3.1 The Parties submitted during Phase 1 that the requirements of the CMA's "exiting firm" counterfactual are met, given:²
- (a) absent the Merger, Aston Barclay would have inevitably exited through financial failure ("**Limb 1**"); and
 - (b) there would not have been an alternative, less anti-competitive purchaser for Aston Barclay or its assets ("**Limb 2**").
- 3.2 The CMA explains at paragraph 53 of the Decision that it had regard to the position of Aston Barclay up to mid-October 2024, being the time at which Constellation allegedly expressed an interest in acquiring Aston Barclay, and up until 31 January 2025, being the time at which Constellation and Rutland, the majority shareholder and lead seller of Aston Barclay, entered into heads of terms relating to the Merger. The CMA then appears to ignore, or at the very least heavily discount the relevance of, the ample evidence of Aston Barclay's [X] during the later periods (including post-October 2024), on the basis that, in the CMA's view, it reflected a situation where Rutland and Aston Barclay were aware that a deal with Constellation was likely. Such reasoning is flawed: there was no certainty of a transaction with Constellation until the Merger was signed and completed on 13 April 2025. Rather, until that point, the Board of Directors of Aston Barclay continued to owe duties to Aston Barclay's [X], and were required to (and did) operate the business independent of Constellation.
- 3.3 This lack of certainty of a deal with Constellation and Aston Barclay's continuing obligation to [X] is reflected in the contemporaneous internal documents and actions of Aston Barclay during that period. Notably, at Aston Barclay's December 2024

¹ CMA Merger Assessment Guidelines, Paragraph 3.24.

² CMA Merger Assessment Guidelines, Paragraphs 3.21 to 3.32. See also, Enquiry Letter Response, Question 18; Follow Up Submission Following 26 June 2025 Call and Issues Letter Response.

Board meeting, the directors acknowledged “[§<]”³ Further, as the CMA is aware, Aston Barclay closed its Leeds site in January 2025, notwithstanding being in full engagement and ongoing discussions with Constellation regarding the Merger. These are not comments and actions that reflect that Aston Barclay was operating on the basis that a transaction with Constellation was a foregone conclusion. The CMA cannot discount clear evidence of Aston Barclay’s [§<], especially when there is clear evidence that Aston Barclay and its directors did not regard a sale to Constellation as a done deal, and were continuing to operate with clear regard [§<].

3.4 Furthermore, Aston Barclay’s trading performance during the period from mid-October to completion of the Merger (and since) has been consistent with the [§<] which was already in evidence prior to this period.

3.5 The Parties also note the following:

(a) It is incorrect to state that mid-October 2024 was the first time at which Constellation “*expressed an interest*” in acquiring Aston Barclay. This was the time Constellation was first contacted by Rutland in relation to any form of transaction. At that point, Constellation confirmed it would be willing to discuss a potential transaction. The first meeting between Constellation and Rutland was not held until 13 November 2024, and Constellation did not receive any material information that would assist it in determining whether it could “express an interest” in acquiring Aston Barclay until later in November 2024.⁴

(b) While Rutland and Constellation entered into Heads of Terms on 31 January 2025, these provided exclusivity in relation to the sale by Rutland of Aston Barclay as a corporate group. As such, while Constellation acknowledges that subsequent to signing the Heads of Terms, Rutland could not have sold Aston Barclay as a whole to another third party (at least until after 7 March 2025, when the exclusivity period expired), this did not preclude the directors of Aston Barclay from selling assets of Aston Barclay during the exclusivity period should they have considered doing so to be consistent with their duties to shareholders and creditors.⁵

3.6 Notwithstanding the compelling evidence submitted in respect of both Limb 1 and Limb 2, the CMA ultimately concluded in the Decision that the requirements of the exiting firm counterfactual at Phase 1 were not met. This conclusion is primarily on the basis that the CMA identified two alternative purchasers for certain of Aston Barclay’s auction sites (while acknowledging that there was no alternative purchaser for Aston Barclay as a whole, at any value).⁶

3.7 The Parties respectfully submit that when taking into account all relevant factors it is clear that both limbs of the exiting firm counterfactual meet the evidentiary standard at both Phase 1 and Phase 2.

B. Insufficient Body of Evidence

3.8 For the purposes of its counterfactual assessment, it appears that the CMA has relied almost entirely on evidence received from (i) Rutland, as the majority shareholder of

³ Aston Barclay Response to section 109 Notice of 3 June 2025, Annex 371.

⁴ For the full Merger timeline from Constellation’s perspective, please refer to Constellation’s Response to the CMA’s section 109 notice of 6 June 2025, Question 16.

⁵ See Issues Letter Response, Paragraph 4.2.

⁶ Decision, Paragraph 81.

Aston Barclay throughout the relevant period and (ii) Aston Barclay's own internal documents, obtained post-Merger and after key senior staff and directors had departed the business.

- 3.9 Two of the key factors in the CMA's analysis of the exiting firm counterfactual are: (i) the financial and solvency state of Aston Barclay during the relevant period (regarding Limb 1); and (ii) the viability of selling individual auction sites or other assets to third parties (regarding Limb 2). These are matters that fall within the sphere of the Board of Directors of Aston Barclay.
- 3.10 During the entire relevant period (i.e., when the potential Merger and other divestment options were being considered), Aston Barclay had a Board of Directors made up of four members, namely:
- (a) Greg MacLeod, the Executive Chairman;
 - (b) Pria Khot, the CFO;
 - (c) David Scarborough; and
 - (d) Oliver Jones.
- 3.11 Of the four directors, only Oliver Jones was appointed by Rutland, as a shareholder. The other three directors were independent of Rutland. Given the [§<], all directors would have been acutely aware of their directors' duties, [§<], throughout the entire process. Indeed, in a paper presented to the Aston Barclay Board in January 2025 (and which appears to have been disclosed to the CMA by Rutland), [§<] (the [§<] of Aston Barclay at the time) noted that "[§<]"
- 3.12 Moreover, during Phase 1, Constellation informed the CMA that [§<] had told Constellation that, absent a sale to Constellation, the only viable option would be [§<]. This is consistent with Rutland's submission to the CMA that "[§<]".⁸ [§<] also noted that other funding options were not available for Aston Barclay.⁹ These comments are not reflected in the CMA's Decision,¹⁰ and nor did the CMA follow up at any point on this information, either with Constellation or with [§<] directly.
- 3.13 The failure of the CMA to obtain evidence from any of the three non-Rutland Board members, particularly after being made aware of comments from [§<] that directly contradict the CMA's preliminary conclusions in the Issues Letter, means that the CMA's Phase 1 conclusions cannot be sustained.
- 3.14 In addition, and as outlined in further detail below, all five Aston Barclay auction sites are leased, with the ultimate control over those leases resting with the landlords who would have to approve any transfer to an alternative purchaser (whether such sale is made by Aston Barclay in a solvent scenario, or by an administration or liquidator in an insolvency process). As set out at paragraph 3.52 below, it should be fully expected that in such a situation the landlords would seek to extract some or all of the proposed lease premium for themselves, including through delay or denial of consent to assign the lease.

⁷ Board Update, [§<], 20 January 2025 (Updated 23 January 2025), Page 3.

⁸ Decision, Paragraph 78.

⁹ Email from BCLP to the CMA, 16 September 2025.

¹⁰ Notably, the CMA references other sections of the same email at paragraph 75, while not referencing the comment regarding inevitable administration.

C. Limb 1: Would Aston Barclay have exited the market?

CMA's Phase 1 Conclusions

- 3.15 In the Decision, the CMA states that it is not necessary to conclude on whether Limb 1 is met on the basis that it does not consider Limb 2 to be met.¹¹ Nevertheless, the CMA also notes that it *"does not consider that there is compelling evidence that, in the absence of the Merger, Aston Barclay would have inevitably exited through financial failure."*¹² The Parties have two initial observations on this preliminary conclusion:
- (a) Limb 1 of the exiting firm counterfactual requires that Aston Barclay would have inevitably exited through financial failure or otherwise.¹³ However, the CMA has simply stated that there is not compelling evidence that Aston Barclay would have exited through financial failure. The CMA has not at all addressed the question of whether Aston Barclay would have exited for other reasons. This is a particularly important oversight in a situation where, as the CMA acknowledges, Rutland would [X].¹⁴ Constellation also understands that Rutland was in the process of [X]. In such a situation, even if Aston Barclay would not have exited through financial failure, it is difficult to conceive of how it could have continued to operate when [X] (and so would have presumably sought to [X]).
 - (b) Although the CMA states there is no compelling evidence that Aston Barclay would have exited, its own counterfactual assumes Aston Barclay would in fact have exited,¹⁵ and that some or all of its assets would be acquired by third-party competitors. So, in fact, the CMA does appear to have accepted that Limb 1 of the exiting firm counterfactual is satisfied.
- 3.16 Notwithstanding the above inconsistencies in the CMA's Phase 1 analysis, the Parties submit that it is clear from the evidence that has been presented through Phase 1, and will be presented through Phase 2, that absent the Merger Aston Barclay would have failed financially such that it would have exited the market.

Phase 1 Evidence

- 3.17 The Parties submitted compelling evidence during Phase 1 that, absent the Merger, Aston Barclay would have failed financially and exited the market. As evidenced throughout the Phase 1 process, Aston Barclay was, prior to engagement with Constellation on the Merger, and throughout, operating on the basis of [X]. That is, Aston Barclay [X]. Aston Barclay had made [X], such that it had [X]. Indeed, it had run out of [X]. The CMA has ignored this compelling evidence in the Decision; absent this [X], Aston Barclay [X].
- 3.18 At the point of completion of the Merger, Aston Barclay also had [X] and lease break costs of [X]. Constellation was therefore required to provide [X] to Aston Barclay upon completion to [X] and to provide some headroom in its management of [X].
- 3.19 The requirement to [X] to continue operating reflects the decreasing volumes that Aston Barclay had faced for a significant period, while also facing a significant fixed

¹¹ Decision, Paragraph 66.

¹² Decision, Paragraph 65.

¹³ CMA Merger Assessment Guidelines, Paragraph 3.21(a).

¹⁴ Decision, Paragraph 64.

¹⁵ Decision, Paragraph 118.

cost base. Indeed, and as submitted to the CMA during Phase 1, Aston Barclay's auction volumes had been decreasing from well before engagement with Constellation began – having dropped from almost [REDACTED] vehicles per month in March 2023, to around [REDACTED] per month in April 2025.¹⁶

3.20 At paragraph 60 of the Decision, the CMA erroneously states that Aston Barclay's internal documents are inconsistent with the submission that Aston Barclay was [REDACTED] prior to the Merger. Respectfully, when the evidence is read correctly and in the context of all other materials available to the CMA, the conclusion drawn by the CMA is incorrect. Taking each point in paragraph 60 in turn:

- (a) The CMA states at paragraph 60(a) that "*Aston Barclay's consolidated group management accounts for its financial year to February 2025 showed that the group had positive net assets*". This statement is misleading, and repeats a [REDACTED] in the management accounting of Aston Barclay, which had been highlighted to the CMA during Phase 1. In particular, the net assets in the management accounts include [REDACTED]. [REDACTED] is not an asset of any value in the context of a company's liquidity, [REDACTED]. Under UK GAAP, this [REDACTED] should have been impaired and written down. Further, the CMA's conclusion that net assets (including [REDACTED]) was evidence that Aston Barclay could meet its liabilities represents a fundamental misreading of its balance sheet by the CMA. Rather, the CMA should have excluded the value of [REDACTED] and examined the working capital and cash position of Aston Barclay, which showed [REDACTED], and an [REDACTED] to the point of the Merger.
- (b) The CMA also notes at paragraph 60(a) that Aston Barclay was [REDACTED] during the financial year. Constellation considers this to be factually incorrect. The management accounts for each of Aston Barclay and The Car Buying Group ("**TCBG**") (which were produced separately) are copied below. These very clearly show [REDACTED]. It appears that the CMA has selectively used an adjusted measure such as EBITDA to assert [REDACTED], which is simply wrong and inconsistent with the CMA's use of the [REDACTED] at paragraph 60(a) of the Decision.

Aston Barclay: Management Accounts, FY2025

[REDACTED]

TCBG: Management Accounts, FY2025

[REDACTED]

- (c) The CMA refers at paragraph 60(b) that Aston Barclay had an "*action plan*" to address cash flow concerns, including [REDACTED]. These are not at all reflective of [REDACTED]. Further, in relation to each element of the plan:
 - (i) As the CMA is aware from the Parties' submissions, [REDACTED], despite engaging with a number of potential counterparties over many months. The fact that no counterparty [REDACTED] is clear evidence of Aston Barclay's [REDACTED].¹⁷ Further, the [REDACTED].

¹⁶ Enquiry Letter Response, Question 18 (Chart 1).

¹⁷ Aston Barclay Response to section 109 notice of 18 June 2025, Question 9; Issues Letter Response, Paragraphs 6.4 to 6.7.

- (ii) While there is a reference to [REDACTED].
 - (iii) While the CMA also refers at paragraph 60(b) of the Decision to [REDACTED].
 - (d) Paragraph 60(b) refers to “*encouraging*” efforts to secure new volumes, and improved metrics at TCBG. Whether or not such efforts were encouraging, it is clear that they never came to fruition, as is evidenced by the continued decline in Aston Barclay’s volumes after November 2024.¹⁸ Indeed, the CMA was provided with compelling evidence that both Aston Barclay and TCBG [REDACTED], with consistent declines in volumes over a number of years. The CMA cannot ignore such unambiguous and factual evidence in favour of subjective commentary.
 - (e) Paragraph 60(c) refers to a January 2025 Board update, stating that “[REDACTED]”. Paragraph 60(d) also states that there were positive cash balances forecast in the latest 13 week cash forecast. However, the CMA is aware that this statement [REDACTED]. The CMA cannot take these isolated comments out of context when it is aware that the broader context renders them untrue.
 - (f) Paragraph 60(d) refers to trading [REDACTED]. As noted, the CMA was presented with compelling evidence that Aston Barclay and TCBG had [REDACTED]. The CMA has though chosen to point to isolated subjective management commentary to suggest that [REDACTED].¹⁹
- 3.21 The CMA also references evidence from Rutland as contradicting Constellation’s submissions that Aston Barclay [REDACTED]. As outlined above, the reliance purely on evidence from Rutland as shareholder (and holder of one of four Board seats) is inherently flawed. In any event, a correct reading of Rutland’s submissions and evidence makes clear that they cannot be used to support [REDACTED]. Indeed, as the CMA acknowledges, Rutland’s informed view was that absent the Merger, Aston Barclay would most likely [REDACTED].²⁰
- 3.22 At paragraph 62, the CMA references “*Investment Summary Reports*” identifying short-term causes for lack of volume, rather than issues specific to Aston Barclay’s operations. It is clear from the fact that Aston Barclay’s volumes had been [REDACTED] decreasing and below budget for a period of over two years prior to the Merger (which the CMA has failed to acknowledge) that there was not a “short term” lack of volume. This makes abundantly clear that such statements were not credible. Likewise, it is not just the lack of volume, but also the very high fixed cost base that exacerbates the impact of lower volumes on profits and generates further losses. As the CMA acknowledges, Aston Barclay was operating five auction sites at around [REDACTED] capacity at the time of the Merger (and six up until early 2025, when the Leeds site was closed). Each site comes with significant fixed costs (including staff and rental costs). Operating such a number of sites at such a low capacity is unsustainable for any business and is clearly not a short-term issue.
- 3.23 The CMA references at paragraph 63 restructuring initiatives being undertaken to reduce costs, including a more detailed review that would have included [REDACTED]. This review was not undertaken prior to the Merger. Given the [REDACTED] under which Aston Barclay was operating pre-Merger (including, as noted, its five – and until early-2025 six – auction sites operating at [REDACTED] capacity overall), any restructuring would have

¹⁸ Response to Enquiry Letter, Question 18; Response to Issues Letter, Chart 1.

¹⁹ See for example Enquiry Letter Response, Question 18 (Chart 1).

²⁰ Decision, Paragraph 78.

needed to have been fundamental if it were to resolve these [redacted] (including, for instance, [redacted]).

- 3.24 Any fundamental restructuring would come at a significant upfront cost to Aston Barclay, for example through [redacted] (as is evidenced by the cost of £[redacted] associated with closing the Leeds auction site in early 2025). Given Aston Barclay was operating on the basis of a [redacted] position, and had [redacted], as acknowledged by the CMA at paragraph 64), it is fundamentally uncertain how any such restructuring programme could possibly have been funded. Even if such a restructuring could have been funded, there is the broader and crucial question of how such a fundamental restructuring could be implemented quickly enough to resolve the concerns, and also how stakeholders (including vendors and buyers) would have reacted to such a comprehensive restructuring of the business. Activities such as [redacted]. [redacted] at the time of the Merger, if these plans were to be considered seriously by the Board of Directors at the time (or indeed by the CMA now) they would need to have been presented at a significant level of detail that addresses these factors.
- 3.25 The CMA also points to Aston Barclay seeking a potential working capital facility in paragraph 64. The summary of the CMA in this paragraph is entirely inconsistent with the clear evidence presented by Aston Barclay throughout Phase 1. It is correct that [redacted] was appointed in April 2024 to explore sources of finance. However, despite approaching a number of potential providers of finance, no agreement had been reached by December 2024, at which point conversations ceased (and were not ongoing, contrary to what the CMA asserts in paragraph 64).²¹
- 3.26 The fact that, despite approaching a significant number of major lenders, the combination of [redacted] and Rutland could not obtain a funding facility in a period of over eight months is compelling evidence that no such facility could be sourced. Indeed, the CMA appears to accept that, at December 2024, the only possible option was [redacted], which the CMA states was still discussing potential financing arrangements in December 2024. However, it is clear from the evidence provided by Aston Barclay that the discussions with [redacted] ceased in December 2024, as [redacted]. Indeed, Aston Barclay's [redacted] emailed its [redacted] and other finance staff on 6 December 2024, stating that [redacted] and went on to note that market conditions were [redacted].²² Aston Barclay also confirmed to the CMA [redacted].²³
- 3.27 The CMA's conclusion that discussions were "*ongoing*" at this time, and that the funding offered was not "*considered commercially attractive*" to Aston Barclay's Board does not flow from the above. The above is compelling evidence that funding discussions had ceased and that no funding could be sourced.
- 3.28 Constellation notes too that *even if* the [redacted] facility that the CMA refers to in paragraph 64 could be obtained, it was [redacted]. Indeed, it was less than [redacted]. As such, notwithstanding the fact that there is compelling evidence the facility could not be obtained, even if it were obtained it would [redacted]. Rather, [redacted], but in exchange for a [redacted] debt facility likely at a high rate of interest and with onerous covenants. Indeed, the Board of Directors would not have entered into any third party financing arrangement unless they could be satisfied that it was for the benefit of the company and could be repaid within its terms.
- 3.29 Accordingly, notwithstanding the CMA's not seeking evidence from key stakeholders such as the non-Rutland directors of Aston Barclay (including its Executive

²¹ Aston Barclay Response to section 109 notice of 18 June 2025, Question 9; Issues Letter Response, Paragraphs 6.4 to 6.7.

²² Aston Barclay Response to Section 109 Notice of 3 June 2025, Annex 386.

²³ Aston Barclay Response to Section 109 Notice of 18 June 2025, Questions 11 and 12.

Chairman), the evidence presented by both Rutland and Aston Barclay throughout Phase 1 leads to the clear conclusion that, absent the Merger, it is inevitable that Aston Barclay would have financially failed and exited the market.

FY2025 Financial Statements

- 3.30 The conclusion that Aston Barclay would have inevitably failed financially absent the Merger [X]. [X].
- 3.31 As the CMA is aware, Aston Barclay's financial year currently runs until the end of February, meaning FY2025 was completed on 28 February 2025 (and in advance of the Merger). In the context of preparing the annual financial statements for Aston Barclay, in preparation for the annual audit, the management accounts, which the CMA has relied on throughout Phase 1, have been reviewed by Aston Barclay's finance staff, under the supervision of the Hold Separate Manager, and a number of adjustments have been made to reflect many of the points outlined above. These adjustments including:
- (a) [X]
 - (b) [X]
 - (c) [X]
 - (d) [X]
- 3.32 The impact of these adjustments is that the consolidated balance sheet at the end of February 2025 shows [X]. [X]. This all reflects the position up to 28 February 2025, in advance of the Merger, and before any alleged impact of the Merger could have been relevant
- 3.33 [X]

D. Limb 2: Whether there would be no alternative, less anti-competitive purchaser to Constellation for the Aston Barclay business and its assets

CMA's Phase 1 Conclusions

- 3.34 The CMA concluded in the Decision that Limb 2 of the exiting firm counterfactual is not met.²⁴ This is on the basis that, through its Phase 1 review, the CMA identified two alternative purchasers (referred to as Purchaser A and Purchaser B²⁵), each of which was interested in purchasing some or all of Aston Barclay's auction assets.²⁶
- 3.35 While the Parties welcome the CMA's apparent conclusion that Constellation was the only potential acquirer for the entirety of Aston Barclay,²⁷ even for only £1, the CMA formed the view that, based on the apparent offers from Purchaser A and Purchaser B, it was not inevitable that no alternative less anti-competitive purchaser than Constellation existed for Aston Barclay's assets. The CMA was of the view that such sales to Purchaser A and Purchaser B could have been made by both Aston Barclay or, in the event Aston Barclay entered administration, by an administrator.

²⁴ Decision, Paragraph 114.

²⁵ The Parties note that the identities or terms of the apparent offers from Purchaser A and Purchaser B have not been disclosed to them by the CMA.

²⁶ Decision, Paragraph 82.

²⁷ See, for example, Decision, Paragraph 77.

- 3.36 The Parties do not deny, and indeed are not surprised, that third parties may have been interested in certain of Aston Barclay's auction sites. Indeed, Constellation has [REDACTED]. However, when considering the combination of: (i) the sales process run by Rutland and Aston Barclay throughout 2024 and into 2025; (ii) the nature of the supposed "assets" held by Aston Barclay; and (iii) the duties and powers of both company directors and administrators, it is clear that it cannot be concluded that it was more likely than not that alternative less anti-competitive purchasers (be they Purchaser A or Purchaser B or otherwise) would have been able to purchase some or all of Aston Barclay's assets in the counterfactual.

The Sales Process

- 3.37 Rutland ran an exhaustive sales process throughout 2024, after which it concluded that Constellation was the only potential purchaser for Aston Barclay in its entirety.²⁸ It appears therefore that the CMA accepts that there was no other viable purchaser than Constellation for the entirety of Aston Barclay, even for £1.
- 3.38 In addition to exploring the sale of Aston Barclay as a whole (and notwithstanding that any decisions on the sale of individual assets would need to be made by the Board of Directors and not by Rutland), Rutland also in parallel explored the sale of individual auction sites to one or more purchasers. This is understandable in a situation where [REDACTED], and where Rutland was in the process of winding up its investment funds. However, the fact that such individual site sales were explored does not mean that they were viable, or that the requirements of making such sales had been fully considered.
- 3.39 Regardless of the level of investigation that had taken place as regards a sale of individual sites, the CMA acknowledges at paragraph 78 of the Decision that as at October 2024, Rutland had "*little confidence*" in the bids received for individual auction sites. At this point, Constellation understands that Rutland had run an exhaustive sales process and contacted all realistic acquirers in the auction space. Indeed, the CMA's decision acknowledges that:²⁹
- (a) Purchaser A had made "*a number of indicative offers*" throughout 2024 and 2025.
 - (b) Purchaser B had communicated an interest in acquiring sites to Rutland but was not invited to make a formal offer.
- 3.40 It is clear from this that Rutland (and presumably the Board of Directors of Aston Barclay) had considered each of Purchaser A and Purchaser B as potential purchasers, but concluded that the sale of individual sites to those purchasers was not viable. This is consistent with the CMA's acknowledgement that Rutland had "little confidence" in the bids received by October 2024, and that absent the Merger [REDACTED]. This also reflects the comments from [REDACTED] that were communicated to the CMA, where he noted that (i) he had little confidence in alternative bids for individual sites and (ii) absent the Merger, the most likely outcome would be [REDACTED].³⁰
- 3.41 At paragraph 79 the CMA notes that, in January 2025, Aston Barclay had identified potential purchasers for each of its auction sites, one of which it did not seem to have approached during the prior sales process. While Constellation does not have visibility as to who this apparent "new" potential purchaser was, unless it was

²⁸ Decision, Paragraph 77.

²⁹ Decision, Paragraph 82.

³⁰ Email from BCLP to the CMA, 18 September 2025. [REDACTED] also noted that no bidders other than BCA had data room access or other material due diligence information.

Purchaser A or Purchaser B as identified by the CMA in paragraph 82, it is entirely irrelevant, as it is clear that that purchaser was not interested in such a site acquisition. Constellation assumes it is highly unlikely that this purchaser was Purchaser A or Purchaser B, given Constellation understands that Rutland approached all significant players in the used vehicle auction space in the UK before approaching Constellation.

- 3.42 The CMA should not have dismissed the unambiguous views of these key stakeholders who were intimately involved in the sale process (i.e. the [X] and the principal shareholder) and concluded that the potential offers from Purchaser A and Purchaser B were in fact viable. Any conclusion that does not take into account these clear views is not credible and cannot be sustained.

The Nature of Aston Barclay's Assets

- 3.43 When considering whether individual auction sites of Aston Barclay can be divested, it is necessary to consider the nature of those sites, and what assets there are in fact available to "sell". In this regard, it is important to note:

- (a) All five of Aston Barclay's auction sites are leased. Aston Barclay does not have any freehold interest in any of its auction sites. As outlined in further detail below, this means that any transfer requires the consent of the landlord, which as well as having a fundamental financial interest in each site, is also contractually and legally entitled to take reasonable steps to protect its position in considering such consent.
- (b) Aston Barclay's customers (both vendors and buyers) contract with Aston Barclay as a legal entity, not with individual auction sites. Their contracts are therefore not "tied" to auction sites, and there is no guarantee that when selling an individual auction site the customers will be willing to continue engaging with the new owner, meaning that there is no guaranteed auction volume tied to each site when acquired.
- (c) The vendor customers who use each site are a matter of public record, and can be viewed on Aston Barclay's website (i.e. through looking at listings for each scheduled auction, which disclose each vendor of each vehicle and every vehicle). The "customer lists" (to which at least Purchaser A appears to have ascribed certain value) are therefore public knowledge. As for the buyer side, given buyers generally "shop around" across auction providers and other remarketing channels, both Purchaser A and Purchaser B will no doubt share a high proportion of the buyers at Aston Barclay in any event. It is therefore surprising that the CMA appears to have formed the view that the "customer lists" are an asset to which any material value can be attributed.
- (d) Aston Barclay holds few other tangible assets, with those assets being limited to a small amount of plant and equipment largely attached to each site, and the vehicles owned by TCBG (which would not form part of any sale of a site). Both Purchaser A and B are existing auction competitors and therefore they would expect to use their own branding, systems, processes and key staff to operate the sites if they acquired them, reflecting the lack of value in any other assets of Aston Barclay. This fact is acknowledged by the CMA in paragraph 92 of the Decision where it effectively concludes that it is only the leases and customer lists that hold any value.

- 3.44 In this regard, it is clear that what is being acquired is essentially nothing more than the lease to an auction site. The CMA appears to accept this. The auction sites are effectively a standard industrial hall, along with parking and storage for vehicles.
- 3.45 There are numerous examples of auction companies opening new sites in recent years. For instance, G3 acquired a new site in Bedfordshire in May 2024, and held its first auction there in January 2025. Similarly, Manheim opened a new site in Gloucester in October 2024. See also the Parties' response to question 4 of the CMA's Joint RFI of 13 October 2025, which sets out details of other site transactions unrelated to the Merger considered by Constellation in recent times.
- 3.46 Constellation also notes that it currently has two unused leased auction sites in Peterborough and Tewkesbury. It has also sold the freehold interests in other auction sites in Scotland in recent years, both to acquirers outside the auction space. Aston Barclay was also unable to sell its Leeds auction site before closing it in early 2025, despite that site operating vehicle auctions for over 70 years.
- 3.47 This all evidences the fact that used vehicle auction sites are not in "high demand", and are not something unique or special. As such, while it is not surprising that there may have been some opportunistic offers for individual sites, the fact that all such offers were deemed not to be viable by Aston Barclay's directors (who, as explained, paid due care to their duties to creditors) reflects (amongst other factors) that the sites are not unique, and therefore that a premium would not be paid (with such premium needed to ensure the consideration paid was sufficient to meet duties to creditors).

The Powers of Aston Barclay's Directors and an Administrator

- 3.48 Even if, notwithstanding the doubts set out above, there was sufficient interest in Aston Barclay's assets for alternative purchasers to acquire some or all of those assets (either pre or post-administration), it is important to consider the respective powers and duties of the landlords of the auction sites, the Board of Directors of Aston Barclay and of an administrator. When appropriately considering these duties and powers, it is clear that such assets would not, contrary to the CMA's conclusion, have been acquired by a less anti-competitive alternative purchaser.
- 3.49 The Parties set out below an analysis of the relevant considerations in this context, and the impact of that legal position on counterfactual.

The Sites are all Leasehold

- 3.50 As the CMA is aware, all five of Aston Barclay's auction sites are leased. There is no freehold asset to be sold by either Aston Barclay or an administrator, and any such transfer must be considered in accordance with the terms of the leases in question, as well as the legal powers of the landlords of those sites.³¹
- 3.51 The key factor associated with the sites being leasehold is that ultimate control lies with the landlords, whether an apparent sale is to be made by Aston Barclay or by an administrator. In particular, each lease contains a covenant restricting the tenant's ability to assign the lease without the consent of the landlord (such consent not to be unreasonably withheld or delayed) and the alienation clauses have a number of additional protections built in to protect the landlord on any intended disposition.

³¹ The leases for all five sites were provided to the CMA along with the Issues Letter Response.

Accordingly, neither Aston Barclay nor an administrator or liquidator could compel the sale of each site without landlord consent.

- 3.52 The CMA notes that it “*received no evidence to suggest that Aston Barclay’s landlords would have been likely to oppose the assignment of Aston Barclay’s site leases to companies already active in the B2B vehicle auction market.*”³² It is notable though that the CMA did not speak to the landlords during Phase 1, and accordingly it did not receive any evidence to suggest that the landlords would consent. Those landlords would consider a number of factors in determining whether or not to grant consent (or in relation to the information they properly require in order to evaluate the application and reach a conclusion), and the CMA cannot conclude that the landlords would be likely to approve such transfers without obtaining evidence from those landlords. Indeed, in a situation where Aston Barclay or an administrator is seeking to sell a lease for a significant lease premium, it should be fully expected that the landlords would seek to find legitimate means to extract some or all of that value for themselves (for example through delaying or refusing consent to assign the lease).
- 3.53 In the absence of any evidence from landlords one way or another, it should be expected that if the landlord can see that a prospective new tenant is willing to pay a premium to occupy their site, then they will do everything in their power to receive that premium themselves. They achieve this not by providing consent to transfer the lease (and so allowing Aston Barclay or its administrator to receive that premium), but by refusing (or delaying) consent to transfer. As such, the best evidence available to the CMA at the time of the Decision was that the landlords would wish to oppose any assignment that includes a lease premium.
- 3.54 The leases set out circumstances in which the landlord can refuse consent (for instance, if there are arrears of rent or other sums due under the lease that are not the subject of a genuine dispute or if, in the landlord’s reasonable opinion, the financial standing of the proposed assignee is insufficient to comply with the tenant’s obligations in the leases). Importantly, the leases also allow the landlords to require an Authorised Guarantee Agreement (“**AGA**”) from the outgoing tenant in the case of an assignment in certain circumstances. In the [3<] leases, the landlords have an absolute right to insist on an AGA and in the [3<] leases the landlords can require an AGA if it is reasonable to do so.
- 3.55 An AGA makes the outgoing tenant (i.e. Aston Barclay or the administrator) liable for any lease defaults of the new tenant. It is clear that, if landlords did require AGAs, Aston Barclay could not have granted one given its precarious financial state and the fact taking on further liabilities (i.e. in the form of an AGA) while disposing of assets would further prejudice the creditors of Aston Barclay. Further, it is highly unlikely that an administrator would be willing to grant an AGA, as doing so would create a personal liability for the administrators, who are obliged to realise the value of the estate for the benefit of creditors. As such, if landlords were to require AGAs in the case of a transfer, it is very difficult to see how an AGA could ever be given (and therefore how such transfers could ever take place).
- 3.56 For these reasons, it is clear that the CMA cannot simply assume that any transfer would be approved by the landlords.
- Sale by Aston Barclay pre-administration or liquidation
- 3.57 The CMA concludes at paragraph 90 that:

³² Decision, Paragraph 94.

"even if Aston Barclay was at risk of insolvency before the Merger ... it is not clear that the sale of assets would necessarily be inconsistent with Rutland's duties to creditors if this strategy maximised the value of its assets for the benefit of creditors. The CMA does not agree that it would not be possible, as a matter of law, for Aston Barclay's management to sell Aston Barclay's assets, rather than Aston Barclay's whole business."

- 3.58 This statement fails to take into account both the internal documents disclosed throughout Phase 1, and the duties of directors [§<]. Indeed, in this excerpt the CMA refers erroneously to the duties of Rutland (as shareholder) and the ability of Aston Barclay's management to make sales of individual assets. Neither Rutland nor Aston Barclay's management have any powers or duties in this scenario: those powers and duties lie solely with the Board of Directors of Aston Barclay.
- 3.59 In support of this position, a full legal assessment of the insolvency law considerations in such a situation was submitted to the CMA along with the Issues Letter Response.³³ Key points noted in that response are as follows:
- (a) In a situation where the [§<] (as was the case with Aston Barclay), [§<].³⁴ Indeed, as set out in at paragraph 3.11, the [§<] was acutely aware of this fact.
 - (b) In the event the company does enter into formal insolvency (be it administration or liquidation), the conduct of the directors pre-insolvency will be scrutinised closely, and directors can face personal liability for any sales in the run up to insolvency. It is therefore extremely unusual for directors to contemplate selling part of a company's assets in such a scenario. This is consistent with the feedback provided by [§<] to Constellation, where he noted that there were no viable buyers for individual sites nor a viable plan to sell some sites and operate the remainder of the business.³⁵
 - (c) A sale of individual sites would have had to have avoided a situation where Aston Barclay's creditors are made worse off. This means, in practice, where the company is in a financially precarious position and there are no purchasers for the business as a whole (as is the case with Aston Barclay in the CMA's counterfactual), any such sale would have had to generate sufficient proceeds to cover Aston Barclay's liabilities which were in the region of [§<] at the time of the Merger. Otherwise, the sale would have [§<] and would likely have led to an insolvency practitioner challenging the sale as undervalue under section 238 of the Insolvency Act 1986.
- 3.60 While the CMA has not disclosed the prices at which Purchaser A and Purchaser B were willing to acquire certain sites, it is clear from the above that well-advised and knowledgeable directors (as the directors of Aston Barclay were) would not have sold individual sites to alternative purchasers unless such sales generated a total of [§<] (or such other estimate of Aston Barclay's liabilities that they may have had). Selling those sites at a price lower than [§<] would have constituted a sale at a value that [§<] and therefore exposed the directors to significant personal liability. As noted at paragraph 2.3 above, Constellation was uniquely well placed to derive efficiencies from the Merger (by optimising its broader logistics network, through the addition of otherwise chronically underutilised sites from Aston Barclay, and by virtue of having

³³ Issues Letter Response, Annex 1, Technical Legal Assessment of CMA Counterfactual.

³⁴ See *West Mercia Safetywear Ltd v Dodd* BCLC 250; *BTI 2014 LLC v Sequana SA* UKSC 25.

³⁵ Email from BCLP to the CMA, 16 September 2025, referenced at Decision, Paragraph 75.

the financial scale to absorb the financial and other liabilities attaching to the business).

- 3.61 Indeed, internal documents of Aston Barclay are consistent with the directors being aware of their obligations to creditors. As outlined at paragraph 3.11, the [X] had stated that "[X]". In the same document, when considering individual site sales, the [X] noted the "[X]".³⁶ The CMA appears to have erroneously construed this statement as a confirmation that site sales would generate sufficient funds.³⁷ With respect, this is a complete mischaracterisation of the [X] comment: he is making very clear that, if the proceeds of individual site sales were to be below the amount of [X] then those site sales could not legally proceed. There is no suggestion in that comment that the sales would in fact generate sufficient proceeds. Indeed, [X] has confirmed to BCLP that this is the correct interpretation of his comments. The Parties respectfully suggest that the CMA may confirm the position through direct interaction with [X].
- 3.62 At paragraphs 101 to 106 of the Decision, the CMA addresses the question of whether the price to be paid by Purchaser A and Purchaser B would be above liquidation value, which the CMA assumes to be £0. While it may be that the offered was indeed "*well above zero*"³⁸ this does not change the fact that the directors could not make such a sale unless it yielded at least [X] in consideration. In footnote 107, the CMA refers to the fact that a purchaser of individual sites could "*actively manage*" the [X]. This appears to assume, therefore, that those liabilities would pass on a site sale. This is, however, not the case; all vendor contracts rest with the relevant contracting Aston Barclay entities, not with individual sites, and all such liabilities are owed by Aston Barclay. Even if certain vendors were willing to transfer their business to the new owner in the event of a sale, that does not change the fact that the existing liabilities would remain with Aston Barclay, and accordingly the consideration paid would need to be sufficient to cover those liabilities.
- 3.63 If the indicated purchase prices of Purchaser A and Purchaser B would have yielded less than [X] consideration for the acquired assets, it is therefore clear that such sales could not, and would not, have proceeded. The CMA's counterfactual cannot be premised on a situation where the directors of Aston Barclay act in breach of their legal duties and expose themselves to significant personal liabilities.

Sale by an Administrator

(i) Is administration the likely outcome?

- 3.64 The CMA also concludes that the sale of Aston Barclay's assets by an administrator would also be a realistic possibility. As an initial point, this assumes that administration (rather than liquidation) would be the most appropriate form of insolvency proceeding for Aston Barclay. It is not at all clear that this is the case. As set out in submissions during Phase 1,³⁹ it is not at all clear that administration would be the most appropriate form of proceeding.
- 3.65 For a company to be placed into administration, one of the three statutory purposes of administration must be achievable, namely:⁴⁰

³⁶ Decision, Paragraph 76(d).

³⁷ Decision, Paragraph 89(b).

³⁸ Decision, Paragraph 105.

³⁹ See Issues Letter Response, Annex 1, Technical Legal Assessment of CMA Counterfactual, Paragraphs 2.2 to 2.4.

⁴⁰ Insolvency Act 1986, Schedule B1, Paragraph 3.

- (a) Rescuing the company as a going concern;
- (b) Achieving a better result for the company's creditors as a whole than would be likely if the company were wound up; or
- (c) Realising property in order to make distributions to one or more secured or preferential creditors.

3.66 If any of these purposes cannot be achieved, the company will instead be placed into liquidation. In the event Aston Barclay entered administration, all auctions of third party vehicles would inevitably cease immediately, given vendors would have concerns about securing payment of sales proceeds from the administrator.⁴¹ This will make it near impossible to achieve the three statutory purposes of administration, given the assets would be unable to generate any income during administration.

3.67 In this scenario, the more likely outcome is liquidation. In the event that a liquidator cannot very quickly realise the Aston Barclay leases (noting that they would seek to sell them, subject to landlord consent, to any interested third party and not to just auction providers), they would seek to disclaim the leases as an onerous asset of the estate, such that the assets would fall back into the hands of the landlord.

(ii) What are the administrator's powers and duties in relation to a sale?

3.68 Given the fact that (as the CMA has accepted) the entirety of Aston Barclay could not be sold as a going concern, in the event an administrator is appointed (or indeed, if a liquidator is appointed as would likely be more appropriate), the relevant insolvency practitioner would look to quickly realise the available assets for the benefit of Aston Barclay's creditors. It is crucial to note that, unless and until they have been able to find an assignee for the leases, they may remain liable to pay rent. As such, if an assignee cannot quickly be found, it is highly likely that the administrators would seek to very quickly surrender the leases and effectively "hand the keys back" to the landlords, who could then deal with any counterparty they chose to (and a liquidator would seek to disclaim the leases). As such, they would be looking to sell the leases quickly, to whichever assignee, which may or may not be in the auction space, wishes to take them. Otherwise, they would seek to surrender the lease.

3.69 An administrator or liquidator is also obliged to realise the best value for all assets, and has the discretion to sell to the purchaser that will realise the best return for creditors. This means that, to the extent they can identify potential purchasers, the administrators will seek to sell to the purchaser willing to pay the highest amount, regardless of who the purchaser is. This means that, for instance:

- (a) The purchaser could be a purchaser from an entirely unrelated industry, such as a property developer. Indeed, as mentioned to the CMA previously, Constellation has [REDACTED]. Such alternative purchasers may, for instance, be willing to pay a higher price than an auction competitor would be. They may also be able to complete the sale much quicker than an auction competitor, as they would not need to carry out full due diligence of the auction aspects of the site (such as financial performance and analysing the vendor base).
- (b) As Constellation previously explained to the CMA, Constellation gave serious consideration to simply allowing Aston Barclay [REDACTED]. [REDACTED]. However, Constellation considered it was preferable to acquire Aston Barclay as a whole to [REDACTED]. However, it is clear that, in the counterfactual, Constellation

⁴¹ This was recognised by the [REDACTED] of Aston Barclay, who noted in a Board presentation in January 2025 that "[REDACTED]"

would have competed strongly to take leases of some or all of the Aston Barclay sites and, given Constellation's size and financial scale, that Constellation would likely have been in a better position to take those leases than its competitors.⁴²

- 3.70 Regardless of the above factors, the administrator is only able to sell whatever right, title or interest Aston Barclay has in the relevant assets. As outlined above, the ultimate control of the leased sites lies with landlords and not with the administrator. While the moratorium that applies in an administration scenario prevents the landlord retaking possession for a period, it does not change the fact that the landlord retains ultimate control of the lease – in particular through the right to require an AGA, which an administrator would be highly unlikely grant. As such, the administrator would be unable to compel the sale of leased sites to third parties if the landlord does not consent.

E. CMA's Conclusions on the Counterfactual

- 3.71 The CMA's counterfactual as set out at paragraph 118 of the Decision is that:
- (a) At least one existing smaller supplier of B2B used vehicle auction services in Great Britain acquires some or all of Aston Barclay's auction assets enabling it to expand its operations and thereby supply a similar range of customers as supplied by Aston Barclay pre-merger; and
 - (b) BCA's market position is comparable to its pre-Merger position.
- 3.72 For the reasons outlined above, the Parties do not consider that, on the balance of probabilities, there was a less anti-competitive acquirer for some or all of Aston Barclay's assets and that would be capable of completing an acquisition.
- 3.73 Nevertheless, even if there were a less anti-competitive acquirer for some of Aston Barclay's assets, the CMA's counterfactual makes two critical assumptions, both of which are not supported by evidence. In particular:
- (a) The CMA assumes that the existing smaller suppliers will, through the acquisition of a sub-set of Aston Barclay's sites, be able to supply a similar range of customers to Aston Barclay pre-merger. This assumption from the CMA is wholly unsubstantiated. The CMA cannot assume without evidence that, by acquiring a sub-set of Aston Barclay sites, an existing smaller competitor (which may itself only have a small number of locations, in different areas to Aston Barclay sites) will be "transformed" into a competitor that can immediately service a greater range of customers (noting the CMA recognises that there is no guarantee that customer relationships would transfer with the site,⁴³ and the site would be operated under the existing competitor's name and branding, not that of Aston Barclay). If in increment of one or two auction sites is all that is needed to become "viable", it would stand to reason that so-called smaller rivals would have already sought to expand as, for instance, G3 has done with the recent opening of a new auction site in Bedfordshire (see also paragraphs 3.44 to 3.47 above).

⁴² The Parties note that Constellation taking leases of auction sites in an insolvency situation would not constitute a relevant merger situation under the Enterprise Act 2002, and accordingly would not fall within the merger control jurisdiction of the CMA. As such, the counterfactual can include a situation where Constellation acquires the leases.

⁴³ The CMA acknowledged that any customer transfer would be at the acquirer's risk. See Decision, Paragraph 100(b).

- (b) The CMA also assumes that, in the counterfactual, BCA's market position is comparable to its pre-Merger position. The counterfactual therefore assumes that any sites that were not acquired by alternative purchasers were not acquired by Constellation. This assumption is inconsistent with the CMA's own guidance and practice on the application of the exiting firm counterfactual. In effect, the CMA's counterfactual is a "partial exiting firm" counterfactual. It is unclear why, if the CMA concludes that in the counterfactual two or more Aston Barclay sites would be acquired and operated by an independent auction competitor, it is necessary to then conclude that the remaining sites would exit the market rather than transfer to Constellation. The CMA's guidance is clear that in a "full" exiting firm scenario, when there is no realistic alternative purchaser for the business or assets in question, they may pass to the acquirer.⁴⁴ Those principles should be applied consistently: if the CMA can conclude that in a full exiting firm counterfactual there is no SLC (notwithstanding the fact that the acquirer's market position is increased through the acquisition of the exiting target), it is not clear why Constellation acquiring any remaining Aston Barclay sites cannot form part of the counterfactual here.⁴⁵

4 THE CMA'S COMPETITIVE ASSESSMENT

A. The CMA's Market Definition is Unduly Narrow

Product Market Definition

- 4.1 The Parties consider the CMA's product market definition (i.e. the supply of B2B used vehicle auction services) is unduly narrow. This definition does not reflect the clear alternatives available to, and choices made by, both vendors and buyers, and therefore the significant and increasing competition that the Parties face from other channels.
- 4.2 As an initial observation, it is important to remember that the Parties operate two-sided platforms, acting as an intermediary to bring together vendors and buyers of used vehicles. Given the two-sided nature of the auctions operated by the Parties, and the different choices available to vendors and buyers, it is erroneous to assume that the scope of the product market must be the same for both vendors and for buyers. As expanded on below, both vendors and buyers have a wide variety of channels to choose from beyond purely B2B used vehicle auctions, which should be reflected in the scope of the relevant market.
- 4.3 The Parties consider the CMA's assessment of each other channel in the following paragraphs.
- Proprietary Platforms
- 4.4 The CMA concluded, based on the feedback from vendors and buyers, that proprietary remarketing platforms do not form part of the same product market as B2B used vehicle auction services.
- 4.5 The Parties appreciate that proprietary platforms may not be a realistic alternative channel for all vendors. That said, it is notable that the CMA states that "*almost half of Vendors ... told the CMA that they do not use alternative sales channels (including proprietary platforms)*". This is an acknowledgement from the CMA then more than

⁴⁴ See CMA Merger Assessment Guidelines, Paragraphs 3.21 to 3.32.

⁴⁵ The Parties note also that the acquisition of site leases by Constellation is in any event unlikely to amount to enterprises ceasing to be distinct for the purposes of the Enterprise Act 2002.

half of vendors who responded to the CMA's market test in fact use alternative channels such as proprietary platforms. Indeed, this is reflected in the experience of the Parties, who have lost significant auction volumes over a number of years, as vendors switch away to alternative channels, including their own proprietary platforms. For instance, corporate vendors like [X] and [X] have significantly reduced the volumes they sell through auction partly in favour of their own platforms, which is reflected in BCA's volumes from [X] and [X] dropping by [X]% and [X]% respectively between 2019 and 2025.

- 4.6 Regardless of whether proprietary platforms are a realistic alternative for all vendors, they are in all circumstances a realistic alternative for buyers. In the Parties' experience, buyers can and do use proprietary platforms as an alternative to auctions. Purchasing through a proprietary platform is, from a buyer's perspective, effectively the same as purchasing through an online auction like those operated by BCA – they are both online platforms on which used vehicles can be bid on. While some buyers may have given the CMA feedback to the effect that they do not make significant use of other channels, this simply reflects the choice available to buyers. The Parties are aware, for example, that many dealers make significant use of proprietary platforms. For instance, dealers that sell vehicles from a particular OEM will often make significant purchases through proprietary platforms to ensure they get the appropriate stock. Indeed, Marshall Motor Group, which is part of Constellation (but operates independently of BCA), does not exclusively use BCA auctions, acquiring only [X]% of its used-vehicle stock from BCA in FY2025, reflecting significant use of alternative channels.

Online C2B Platforms

- 4.7 The CMA has excluded C2B platforms, such as Motorway and Carwow, from its product market definition on the basis of feedback from vendors and buyers. It is not surprising that vendors informed the CMA they do not use C2B platforms – they are not designed for B2B sales. However, as outlined above, it is erroneous to assume that the market definition and competitor set is the same on both the vendor and buyer side.
- 4.8 On the buyer side, the CMA has quoted feedback from a number of buyers that C2B platforms are not an effective alternative, and that they do not use them to a significant extent. These comments are not reflective of the actual market reality, the choices available to, and made by, buyers and the Parties' own monitoring of competition. Indeed, from a buyer perspective, there is very little difference between a C2B platform like Motorway or Carwow, and an online auction like BCA operates – they are both online auctions for used vehicles, albeit with the vehicles sourced differently:
- (a) Motorway and Carwow are both relatively young businesses, having been founded in 2017 and 2009 respectively, and have scaled up to become significant players in the used vehicle value chain in that time period. This is reflective of the confidence that both consumer sellers, and commercial buyers, have in these businesses.
 - (b) James Wilson, COO of Motorway, noted in a recent interview that 75% of the UK's 7,500 dealers are active buyers, and not uncommonly buying 200 or more vehicles a week.⁴⁶ This is not consistent with the CMA's conclusion that these channels are not a good alternative to the Parties' B2B auctions.

⁴⁶ <https://www.am-online.com/features-landing/10-minutes-with-james-wilson>

- (c) The CMA references feedback from one buyer noting that Motorway accounted for *"less than 20% of its used vehicle purchasers"* while *"a mix of auction providers accounted for more than 70% of its used vehicle purchasers"*.⁴⁷ The CMA has suggested that this is evidence that auction providers are required by buyers to get necessary volumes. Respectfully, this is very clear evidence that buyers can and do use a range of both auction providers and other platforms such as Motorway to acquire their volume – that is, they have significant choice, and are able to "shop around" on C2B platforms, auction providers and other channels, reflecting the substitutability of those channels for buyers. Indeed, the percentages quoted by the CMA suggest that Motorway is as strong as the average auction provider for this customer.
- (d) As the CMA acknowledges in the Decision, consistent with them being competitors, Constellation monitors buyer fees for each of Motorway and Carwow when setting its own fees.

Dealer Auction

- 4.9 The CMA has excluded Dealer Auction from the relevant product market. At paragraph 148 of the Decision, the CMA notes that *"some B2B platforms, such as Dealer Auction, do not take physical possession of vehicles and do not act as platform intermediaries between Vendors and Buyers"*. The second part of this statement is demonstrably incorrect. Dealer Auction is a platform intermediary between vendors and buyers – that is its very purpose. It is not clear how the CMA has concluded to the contrary. On its website, Dealer Auction describes itself as *"a digital used vehicle auction platform. We offer stock from multiple sources, including OEMs, fleets, finance companies, dealers, and consumers. We aim to be the go-to for dealers looking for trade stock to fill their forecourts."*⁴⁸ The CMA cannot use a mischaracterisation of Dealer Auction's business model to exclude it from the relevant market.
- 4.10 Leaving aside this mischaracterisation, it is clear that vendors and buyers can and do use Dealer Auction as an alternative to the Parties. This has recently been evidenced in the Business Car Awards 2025, where BCA won the best remarketing award and Dealer Auction was recognised as highly commended.⁴⁹ Indeed, BCA is, like Dealer Auction, one of few online-only B2B used vehicle auction providers in the UK. As outlined in the Issues Letter Response, Dealer Auction sells vehicles owned by large vendors including many franchised dealerships, fleet owners, rental companies and car buying services.⁵⁰ Indeed, Aston Barclay lost volumes from [X] to Dealer Auction in December 2024, reflective of the substitutability of the services of the Parties and Dealer Auction.⁵¹
- 4.11 It is also not clear to the Parties why the fact that Dealer Auction does not take physical possession of vehicles means it should be discounted as a competitor of the Parties. The Parties understand that, to the extent Dealer Auction's vendors or buyers require logistical services, those services may be provided by Manheim (Dealer Auction's JV parent).⁵² Indeed, the fact that Dealer Auction's vendor base includes

⁴⁷ Decision, Paragraph 144(c).

⁴⁸ <https://www.dealerauction.co.uk/about-us/>

⁴⁹ <https://www.businesscar.co.uk/news/business-car-awards-2025-winners-announced/?cf-view>

⁵⁰ Issues Letter Response, Paragraph 7.37.

⁵¹ Issues Letter Response, Table 2.

⁵² It is notable too that BCA does not take physical possession of all vehicles sold through its online auctions: this is purely a matter of customer choice.

many major vendors from different categories⁵³ shows that those vendors do not consider Dealer Auction's business model to be a material issue in dealing with it as a remarketing provider.

- 4.12 The Parties acknowledge that Dealer Auction is a joint venture between Cox Automotive (the parent of Manheim) and Auto Trader. While it may be the case that Manheim's links to Dealer Auction are reflected in Manheim's competitive strength,⁵⁴ this does not change the fact that Dealer Auction operates as a distinct operating model with its own market presence, and with its own vendor and buyer base. The referral opportunities and brand leverage provided by Autotrader is also significant. Indeed, when considering the establishment of the joint venture in 2018, the CMA concluded that there were no competition concerns on the basis that that joint venture would face significant competitive constraint from auction providers (including BCA), other remarketing providers and proprietary platforms.⁵⁵
- 4.13 In the Decision, the CMA also appears to have ignored submissions regarding constraints from other purely online auctions such as Openlane and Epyx.⁵⁶

Salvage Auctions

- 4.14 The CMA has excluded salvage auctions from the product market, partly on the basis that it "*considers that salvage auction providers offer a different service to used vehicle auctions as they auction vehicles which have been involved in collisions or have suffered significant damage.*"⁵⁷ This is a mischaracterisation of the range of vehicles sold through salvage auctions.
- 4.15 Salvage auction providers like Copart and Synetiq sell vehicles in a range of conditions, and the damage does not need to be "significant", nor must there necessarily have been a collision for a vehicle to be sold at a salvage auction. Indeed, salvage auction providers sell vehicles in much better conditions than those described by the CMA. This is also consistent with the CMA's decision in IAA/Synetiq where the CMA found that vehicles that are suitable for repair are typically sold via online auction.⁵⁸ Indeed on Copart's website it lists vehicles in a variety of conditions, including "salvage", "stolen recovered minimal damage", "repairable non-structural", "repairable structural" and "used unrecorded". Many of the "used unrecorded" vehicles are reported as having "minor dents/scratches damage" and others "normal wear damage", indicating that these are used vehicles very similar to, if not the same as, those sold by the parties.⁵⁹ Based on its review of Copart's current listings, Constellation estimates that approximately 15 to 20% of vehicles listed do not meet the CMA's definition of salvage vehicles as they have not been "written off".⁶⁰ Given the volumes of vehicles sold by Copart annually, this proportion of Copart's total sales alone would make it a very material remarketing provider. Further, as the CMA

⁵³ See for example Issues Letter Response, Paragraph 7.37.

⁵⁴ Decision, Paragraph 151.

⁵⁵ ME/6765/18 – Cox/AutoTrader, 21 November 2018, Paragraph 6 and 122.

⁵⁶ See, for example, Question 30 of the Enquiry Letter Response.

⁵⁷ Decision, Paragraph 154.

⁵⁸ ME/6972/21 - IAA/Synetiq, 5 May 2022, Paragraph 32(b)(i).

⁵⁹ <https://www.copart.co.uk/vehicle-search-featured/usedvehicles?displayStr=Used%20Vehicles&from=%2FvehicleFinder&qId=c7acfa3d-292f-4b60-a026-e52e8cdeb20-1760104367906>

⁶⁰ "Vehicles which have been declared a "total loss" by an insurance company", as per the section 109 notice dated 16 October 2025.

acknowledges in the Decision,⁶¹ BCA sold [X] vehicles with an insurance total loss marker (i.e. "write-offs") in FY2025.

- 4.16 The CMA has therefore, in effect, excluded salvage auctions from the scope of the product market on the basis of a mischaracterisation of the scope of their offering. More generally, the vehicles sold through the Parties' auctions have become older over a number of years, as vehicles are held on for a longer period before being trade in or otherwise sold. For instance, in FY2020 the average odometer reading on a vehicle sold through BCA auctions was [X] miles whereas in FY2026 to date that figure is [X] miles. As older vehicles are sold through auctions (with such vehicles inevitably exhibiting more wear and tear than newer vehicles), the competitive constraint from salvage auctions on the Parties has become more and more significant.

Geographic Market

- 4.17 The Parties note the CMA's conclusion that the scope of the geographic market is no wider than Great Britain, and therefore does not include Northern Ireland. The Parties reiterate that they consider vehicles flow freely between Great Britain and Northern Ireland, and that they trade with vendors and buyers in Northern Ireland. The Parties expressly reserve their position in relation to the scope of the geographic market.
- 4.18 The Parties are working closely with expert economists, BRG, and intend to make further submissions on market definition and out of market constraints at the Initial Substantive Meeting and throughout the Phase 2 process.

B. The CMA has not assessed the Merger against its own counterfactual

- 4.19 The Parties have outlined above why the counterfactual identified in the Decision is unsustainable and why the conditions for the exiting firm counterfactual are met. Nevertheless, even if the CMA's counterfactual were sustainable, the CMA has failed to carry out its competition assessment correctly, and has failed to compare the competitive situation in the factual with the competitive situation in the counterfactual. Rather, the CMA has compared the factual against the status-quo. Indeed, this same error was made in the Issues Letter and highlighted by Constellation in the Issues Letter Response.⁶²
- 4.20 Specifically, the CMA's counterfactual as set out at paragraph 118 of the Decision is that:
- (a) At least one existing smaller supplier of B2B used vehicle auction services in Great Britain acquires some or all of Aston Barclay's auction assets enabling it to expand its operations and there by supply a similar range of customers as supplied by Aston Barclay pre-merger; and
 - (b) BCA's market position is comparable to its pre-Merger position.
- 4.21 Notwithstanding the CMA's view of the counterfactual, which acknowledges that there is no purchaser for Aston Barclay as a whole and that Aston Barclay would cease to exist as an independent competitor, the CMA's competitive analysis compares the post-Merger situation against the status quo, with Aston Barclay remaining as an independent competitor. This approach goes against the CMA's own

⁶¹ Decision, Paragraph 153.

⁶² Issues Letter Response, Paragraphs 6.31 to 6.35.

guidance and long established practice.⁶³ The CMA has effectively concluded that there is a realistic prospect of an SLC on the basis of a failure to apply its own counterfactual.

4.22 The CMA notes that *"for the purposes of its competitive assessment, the CMA considers that this counterfactual would lead to conditions of competition similar to pre-Merger conditions (if not more competitive)."*⁶⁴ This appears to be the CMA's justification for effectively comparing the factual to the status quo. However, there are a number of fundamental errors in this approach:

- (a) In the CMA's counterfactual Aston Barclay ceases to exist as an independent competitor. Rather, one or two existing competitors will gain an uncertain number of sites. The Aston Barclay brand and name will exit the market, and there is one fewer competitor in relation to vehicle remarketing in the UK than under the pre-Merger status quo.
- (b) Given Aston Barclay ceases to exist in the CMA's counterfactual, the evidence presented by the CMA in the Decision in relation to closeness of competition between BCA and Aston Barclay and the feedback from third parties on the strength of Aston Barclay as a competitor must not carry any evidential weight. This evidence (including the evidence of combined shares of supply) all relates to Aston Barclay operating as an independent competitive constraint, which, on the CMA's counterfactual, it would cease to be. Customer feedback and competitive analysis relating to the strengths of Aston Barclay as a business, and closeness of competition between BCA and Aston Barclay, cannot carry any evidential weight in relation to a counterfactual where Aston Barclay does not exist.
- (c) Given in the counterfactual there is by definition one fewer competitor in the market (due to the exit of Aston Barclay) it is not at all clear how the counterfactual could potentially be more competitive, as against more concentrated, than the pre-Merger situation as the CMA suggests is possible in paragraph 119.

4.23 In any event, notwithstanding this error in the CMA's competitive assessment, the Parties consider that *even if* the counterfactual were the pre-Merger status quo there is no prospect of an SLC, and address the CMA's analysis in the following sections.

C. Market structure and shares of supply

4.24 At Table 1 of the Decision, the CMA has estimated the combined shares of supply of the Parties in respect of both vendors and buyers for the supply of used vehicle auction services in Great Britain in 2024. Constellation made a number of observations on errors in the CMA's analysis in the Issues Letter Response, which the CMA outlines at paragraph 194 of the Decision. While the Parties consider that those considerations still apply here, they do not seek to repeat all of those points. Nevertheless, the Parties note the following in respect of the CMA's estimated shares of supply and discussion of the market structure:

- (a) As explained above, it is erroneous to assume that the market structure, and therefore the competitor set, is the same in respect of both vendors and buyers. While the Parties acknowledge that on the vendor side not all vendors may consider proprietary platforms to be substitutable with

⁶³ See CMA Merger Assessment Guidelines, Paragraph 3.1.

⁶⁴ Decision, Paragraph 119.

auctions,⁶⁵ that does not mean that the same conclusion follows on the buyer side. Likewise, while C2B providers like Carwow and Motorway may not be competitors on the vendor side, they are competitors on the buyer side (and, indeed, BCA monitors the buyer fees of Motorway and Carwow, as the CMA acknowledges in the Decision⁶⁶).

- (b) Particularly on the buyer side, the combined shares of the Parties are materially overstated and entirely inconsistent with the market reality. For example, Constellation estimates that only around [X]% of used vehicles offered by dealerships in the UK have passed through BCA auctions. This is demonstrative of the wide range of choice available to buyers, including auctions, proprietary platforms, and C2B platforms like Motorway and Carwow. In addition, dealerships can and do source vehicles from other sources, such as part exchanges – indeed, only around [X]% of used vehicles sold by Marshall Motor Group (which is part of Constellation) are sourced through BCA's auctions.
- (c) Constellation does not deny that BCA is likely the largest vehicle remarketing provider in the UK, which is reflective of the quality service provided to its customers (and its effective transition from a traditional auction business to an online remarketing business, the majority of volumes sold through which belong to Constellation). However, the CMA at times appears to point to Constellation's pre-Merger size as indicative of an SLC,⁶⁷ which fails to acknowledge the broader considerations that must be taken into account, most notably the increasing constraint from alternative remarketing channels and the limited and ever-diminishing constraint imposed by Aston Barclay over recent years (in both the factual and counterfactual).
- (d) Related to the previous point, the CMA has "frozen" the market structure in 2024. This fails to take into account material market developments that took place part way through, or after, 2024. Indeed, as set out in the Issues Letter Response, no adjustments have been made to reflect for instance:⁶⁸
 - (i) G3 opening its new Bedfordshire site in January 2025 (effectively doubling its capacity⁶⁹);
 - (ii) Manheim opening its Gloucester site in October 2024; and
 - (iii) The continued decline in Aston Barclay's volumes throughout Q4 2024 and 2025 (including in the period prior to the Merger).⁷⁰

4.25 The CMA goes on to conclude that, due to indirect network effects, the estimated shares of supply in fact understate the market power of the merged entity,⁷¹ and also it is difficult for smaller auction companies to effectively compete.⁷² Amongst

⁶⁵ For a non-exhaustive list of proprietary platforms, see Question 30 of the Enquiry Letter Response.

⁶⁶ Decision, Paragraph 237(c).

⁶⁷ See, for example, Decision, Paragraphs 201, 221(d), 223(d).

⁶⁸ Issues Letter Response, Paragraph 7.16.

⁶⁹ <https://www.g3remarketing.co.uk/g3-bedford/>

⁷⁰ The Parties note too that any suggestion that the Merger has hastened the decline of Aston Barclay is incorrect. If anything, the opposite is true as a result of (i) Constellation's backing of Aston Barclay (including through the IEO-period) ensuring vendors remain confident in Aston Barclay's viability and (ii) the emergency loan provided by Constellation to Aston Barclay on completion.

⁷¹ Decision, Paragraph 206.

⁷² Decision, Paragraph 207.

other comments, the CMA cites one competitor who notes that *"large organisations only want to deal with large businesses."*⁷³ This comment is demonstrably untrue, Constellation provided significant volumes of evidence during Phase 1, including in the Issues Letter Response,⁷⁴ to demonstrate that large vendors can and do transact with allegedly small auction providers. In any event, even if this statement were true, Aston Barclay cannot be called a "large business": its total revenue in FY2025 was in the region of £[>] million, representing a very small fraction of the revenue of businesses like Constellation (£[>] billion revenue in FY2025) and Cox Automotive (USD\$23.5 billion in FY24), the parent of Manheim and JV partner in respect of Dealer Auction.

4.26 At paragraph 211 of the Decision, the CMA references Constellation's submissions in relation to inconsistencies in approach by the CMA in relation to its assessment of BCA's acquisition of SMA in 2015,⁷⁵ and in the Decision. The Parties appreciate that each case is context specific and turns on its own facts, reflecting the conditions of competition at the time. However, there are striking inconsistencies between the CMA's assessment in that case and in the Decision, which the CMA has not addressed nor explained. For instance:

- (a) In BCA/SMA, the CMA recognised the competitive constraint from other channels, such as proprietary platforms.⁷⁶ In the Parties' experience, that competition has increased significantly in the 10 years subsequently, as is evidenced by for example the significant reductions in third party volumes available to the Parties. However, in the Decision the CMA has effectively dismissed all other channels as competitive constraints, without any reasoning as to why the conclusions from BCA/SMA no longer apply.
- (b) As the CMA notes at footnote 226 of the Decision, it concluded in BCA/SMA that SMA was not a national supplier. It is notable that, like Aston Barclay, SMA had five auction sites, which were located in Birmingham, Edinburgh, Kinross, Leeds and Newcastle. If anything, those sites provided SMA with greater national coverage than Aston Barclay's five sites, which are centred around central and southern England. The CMA has not addressed the reasoning behind its inconsistent conclusions on national coverage across these two decisions

4.27 In addition to BCA/SMA, the CMA's decision in relation to the establishment of the Dealer Auction joint venture also recognises the clear competitive constraints that different channels impose on each other.⁷⁷ The CMA has completely discounted these clear and recent conclusions without any reasoning.

D. Closeness of competition

4.28 As outlined above, in a situation where the CMA's counterfactual assumes that Aston Barclay ceases to exist as an independent competitive force, the closeness of competition between BCA and Aston Barclay pre-Merger is irrelevant. As such, the CMA's analysis at section 5.3.3 of the Decision cannot be used to support a conclusion that there is an SLC. Nevertheless, the Parties disagree with the CMA's characterisation of the level of competition between Constellation and Aston Barclay pre-Merger, and address a number of specific errors in the CMA's analysis below.

⁷³ Decision, Paragraph 207(b).

⁷⁴ See, for instance, Issues Letter Response, Section 3.

⁷⁵ ME/6549/15 – BCA/SMA, 17 November 2015.

⁷⁶ ME/6549/15 – BCA/SMA, 17 November 2015, for example at paragraphs 30, 41 to 43, 52 to 54, 92(d).

⁷⁷ ME/6765/18 – Cox/AutoTrader, 21 November 2018, Paragraph 6.

- 4.29 The CMA appears to have based its conclusion that Aston Barclay was a close competitor of BCA on largely anecdotal comments from third parties, as well as the very limited available tender data (reflecting that formal tenders are rare in the used vehicle remarketing space) and selective interpretation of internal documents of the Parties.⁷⁸ On the basis of this information, and notwithstanding its conclusions that few competitors saw Aston Barclay as a strong alternative to BCA,⁷⁹ the CMA appears to effectively concluded that Manheim and Aston Barclay were the only competitors of BCA in relation to “large” vendors (noting that the CMA has not sought to define what a large vendor is), and that other competitors do not impose a material constraint on the merged business.
- 4.30 This has led the CMA to reach the incorrect and unsustainable conclusion that the Merger is a “three to two” for all customers (both vendors and buyers). The facts tell a very different story, and establish clearly that the Merger is at worst a “nine to eight”. The CMA’s conclusion is manifestly inconsistent with the market reality, and the information that was submitted to the CMA during Phase 1 (and in particular in the Issues Letter Response). In particular:
- (a) The CMA fails to take into account the fact that pre-Merger (including from well before engagement with Constellation in respect of the Merger began), Aston Barclay was losing significant vendor volumes, while still facing high fixed costs, such that its business had become [§<]. This poor performance and [§<] weakened Aston Barclay’s ability to compete. Indeed, it is common practice for auction vendors to carry out financial checks on remarketing providers before engaging with them, and [§<]. It is difficult to comprehend how a competitor that has been [§<] can at the same time be deemed a strong competitive constraint. Indeed, this fact is borne out by the data provided in the Issues Letter Response, including that in FY2025 (which ended pre-Merger), Aston Barclay lost contracts with at least [§<] vendors with annual volumes exceeding [§<] vehicles, while not winning new contracts with vendors of equivalent size. This is not demonstrative of a strong and effective competitor.⁸⁰
 - (b) While the Parties do not contest that Manheim is the largest competitor of BCA, Aston Barclay was not of a similar size and scale, but rather formed part of a large pack of effective other providers of more “traditional” auction services including G3, Wilsons, Shoreham, City Auction Group and Motor Auction Group. This is in addition to other channels, such as pure digital providers, C2B and proprietary platforms.

Third party evidence

- 4.31 The Parties do not seek to respond to all comments from third parties. However, there are a number of key factors that must be considered in relation to the evidence of third parties, and which impact the weight that can be given to such evidence:
- (a) The evidence in the Decision from third parties appears to be largely opinion-based, and is effectively rebutted by the data that was submitted with the Issues Letter Response (and discussed in greater detail below). While the Parties acknowledge that the CMA followed its standard approach to third party evidence gathering in Phase 1,⁸¹ this does not change the fact that

⁷⁸ Decision, Paragraph 219.

⁷⁹ Decision, Paragraph 223(a).

⁸⁰ Issues Letter Response, Table 2 and Paragraph 3.13.

⁸¹ Decision, Paragraph 226.

customers who do not use either party's services were not approached for comment. Likewise, the CMA cannot rely on anecdotal commentary in the face of data that clearly contradicts it.

- (b) The CMA also notes that *"despite Constellation's public statements about the financial vulnerabilities of Aston Barclay, third parties only expressed concerns or doubts about Aston Barclay's financial situation infrequently"*⁸² To a large extent, the financial difficulties faced by Aston Barclay were not public knowledge, and therefore may not have been on customers' radars. Aston Barclay was privately-owned and was not obliged to make financial disclosures beyond the publishing of its annual accounts. Currently, the most recently available accounts are those for FY2024, which do not reflect the [§<] through FY2025 ending 28 February 2025 (for which, as explained, the accounts have not yet been published [§<]). Further, referencing Constellation's *"public statements"* about Aston Barclay's financial position is misleading. The public statement referred to was the announcement of completion of the Merger. At that point, Constellation had acquired Aston Barclay and therefore secured its long term future. However, Constellation had uncovered [§<]. If that information were public knowledge, it is difficult to comprehend that vendors would not have [§<] – indeed, as mentioned above, Aston Barclay lost at least [§<] vendors with volumes exceeding [§<] vehicles per annum in FY2025, which is not at all consistent with a situation where there is no concern over Aston Barclay's financial health or business performance more generally.
- (c) The CMA notes at paragraph 228 that it has taken into account that in the counterfactual *"Aston Barclay's assets would be incorporated into the existing operations of a smaller supplier"*. This statement is misleading and is not reflective of the CMA's counterfactual where *some or all* of Aston Barclay's assets would be incorporated into the business of one or more smaller suppliers. This would clearly not be reflective of a situation where Aston Barclay itself continues to operate as it does now, not least because Aston Barclay itself would cease to exist.

Tender data

- 4.32 The Parties welcome the CMA's acknowledgement that, given the relative rarity of formal tenders in the B2B used vehicle auction space, tender data *"reflects only a limited subset of competitive opportunities in the market"*. Therefore, the CMA put limited weight on the Parties' tender data in its analysis.⁸³ This reflects the fact that only a small percentage of large vendors run formal tenders processes. However, it is notable that buyers do not run tender processes at all, which further diminishes the relevance of the tender data when assessing closeness of competition on the buyer side. Nevertheless, the CMA notes that the Parties' tender data shows that they frequently compete for the same opportunities. In this respect, the Parties reiterate that in the counterfactual Aston Barclay ceases to exist and therefore cannot compete for tender opportunities. The CMA cannot simply assume that a smaller competitor, which has acquired a sub-set of Aston Barclay's sites, will replicate Aston Barclay's position in tenders.
- 4.33 It is notable too that the tender data reflects tenders that occurred between June 2021 and June 2025, and at the time submitted only included [§<] tenders that Aston Barclay had participated in in 2025 (one of which was ongoing). It does not fully reflect the [§<]. This further diminishes its relevance and efficacy as an indicator of

⁸² Decision, Paragraph 224.

⁸³ Decision, Paragraph 235.

closeness of competition. For these reasons, the Parties' tender data cannot be relied on as a basis on which to support a conclusion that there is a likely SLC.

- 4.34 The Parties expressly reserve their position and ability to make further submissions on the tender data throughout the Phase 2 process.

Internal documents

- 4.35 The CMA notes that the Parties' internal documents monitor each other "*at least as frequently as any other competitor ... with the exception of Manheim which seems to be monitored more often by BCA.*"⁸⁴ Indeed, the Parties welcome this observation, as it reflects the reality of the B2B used vehicle auction space in the UK:

- (a) The CMA acknowledges here that BCA monitors Manheim more than it does Aston Barclay. This reflects the reality, where Manheim is significantly larger and a much more significant competitive constraint on BCA than Aston Barclay.
- (b) The CMA also acknowledges that the parties monitor other competitors at least as frequently as each other, reflecting the wide competitive set and the fact that there are many competitive constraints.

- 4.36 The CMA outlines a number of references to Constellation's internal documents at paragraph 237. It is notable that, notwithstanding the multiple references that the CMA has cited, there is no reference to Aston Barclay winning business *from* BCA. Rather the references the CMA cites primarily relate to BCA targeting customers of Aston Barclay, or otherwise monitoring Aston Barclay as one of a set of competitors. This reflects the very limited competitive constraint that Aston Barclay was able to exert pre-Merger as one of many smaller competitors, given its small size and deteriorating financial health.

- 4.37 Indeed, in the Issues Letter Response, Constellation submitted that its internal documents highlight that Aston Barclay was a poor quality alternative to BCA. The CMA notes in the Decision that "*these documents generally do not establish a clear link between Aston Barclay losing this volume to BCA [3<].*"⁸⁵ Nevertheless, they still show the very limited competitive constraint that Aston Barclay imposed on BCA – i.e., the examples are almost all instances where Aston Barclay loses volumes to BCA, and not vice versa.

- 4.38 The internal documents of Aston Barclay cited by the CMA also reflect the very limited competitive constraint imposed by Aston Barclay on BCA.⁸⁶ The references cited by the CMA primarily reflect Aston Barclay seeking to win volumes from BCA, rather than Aston Barclay actually winning volumes from BCA. For instance, mentioning that Aston Barclay "*chased for unsold opportunities*" or had a "[3<] probability" of winning a customer from BCA does not reflect Aston Barclay as competing strongly against, and constraining, BCA so much as Aston Barclay being hopeful of winning some business.

E. Alternative constraints

- 4.39 In its analysis of constraints, the CMA appears to have reached the conclusion that Manheim is the only significant competitive constraint on the Parties pre-Merger, with

⁸⁴ Decision, Paragraph 236.

⁸⁵ Decision, Paragraph 240.

⁸⁶ Decision, Paragraph 238.

Aston Barclay being third in size following BCA and Manheim, with the three effectively forming a “big three” of used vehicle auction providers in Great Britain. The CMA has effectively concluded that other competitors, as well as other channels, do not impose a material competitive constraint. As outlined during the Issues Meeting and in the Issues Letter Response, this conclusion is demonstrably incorrect, and inconsistent with the choices made by both vendors and buyers.

- 4.40 The Parties do not seek to repeat all previous arguments made here.⁸⁷ However, in the following paragraph, the Parties identify a number of serious flaws in the CMA’s reasoning, and instances where the CMA has failed to take into account the clear and unambiguous evidence submitted during Phase 1.

CMA’s assessment of Constellation’s submissions

- 4.41 In the Issues Letter Response, Constellation submitted compelling evidence that auction providers do not require wide geographic coverage or significant capacity in order to serve large vendors. At paragraph 254 of the Decision, the CMA dismisses these submissions on a number of bases. In respect of each basis:

- (a) The CMA notes that vendors “*may use different providers of B2B used vehicle auction services as complements (ie to access different sets of Buyers), rather than as substitutes.*” This is precisely the point. Vendors can, and do, use a range of smaller providers (e.g. with one or a small number of sites) in different parts of the country in order to access customers in different parts of the country. Vendors do not only have the option of contracting with a single provider with national-coverage (for example BCA or Manheim). This shows that a provider does not need to have wide geographic coverage with sites across the country in order to compete effectively for major vendors and to impose a material constraint on the Parties.
- (b) The Parties acknowledge that some vendors do indeed allocate a relatively small proportion of their volumes to specific providers as a benchmark exercise. However, the fact that volumes are only allocated to a provider on a benchmarking basis does not mean that that providers is a less viable competitor. Indeed, it shows that those providers are substitutes by definition (as a vendor could not benchmark with a provider that is not a substitute), such that customers would face little to no switching costs to switch to these suppliers.
- (c) It is correct that the Aston Barclay and competitor listing analysis carried out by Constellation was a snapshot on a given day. However, as explained to the CMA during the Issues Meeting, Constellation had also spot-checked other days and the position was largely the same.⁸⁸ The fact that the data was prepared post-Merger also does not diminish its strength, and the fact it is very clear evidence of the fact that large vendors can and do use a much wider range of providers than just BCA, Manheim and Aston Barclay, with the these providers all being much closer in size to Aston Barclay than to BCA and Manheim. Even if the BCA and Aston Barclay data (or any marginal changes in customer relationships at the third party competitors) were stripped out of that data, it is still clear that other auction providers are credible and can and do service large vendors. This is wholly consistent with the Parties’ experience of the competitive landscape.

⁸⁷ See, for example, Question 30 of the Enquiry Letter Response and Issues Letter Response, Paragraph 7.41.

⁸⁸ It is notable that the CMA expressly confirmed after the Issues Meeting that it did not require any further data, including in relation to a listing analysis over a wider time period.

- (d) The CMA notes that evidence indicates that “many vendors” do not use more than one or two suppliers for the majority of their volumes. While this may be the case, that reflects the choice of those vendors, and many vendors *do* use multiple providers for their volumes. These include some of the most significant vendors in the UK, such as Motability, which (in addition to its growing proprietary channel) uses multiple providers, including both the Parties and a number of smaller providers including Shoreham, which operates from a single site. Constellation provided an excerpt from a [§<] in the Issues Letter Response.⁸⁹ Notably, that report showed that in the week in question:
- (i) Motability sold vehicles through Wilsons, Shoreham (referred to as SVA), Aston Barclay, City Auction Group, G3, BCA and Fleet Auction Group (FLAG);
 - (ii) [§<] entered fewer vehicles into Aston Barclay’s auctions than those of any other provider, with [§<] receiving and selling the highest volumes; and
 - (iii) [§<] views BCA, as an online auction provider, as operating in a different segment to physical auction providers including Aston Barclay.
- (e) The CMA also refers to some vendors having exclusive contracts with a single supplier. Again, this is clear evidence of the choices that vendors have when procuring used vehicle auction services. Some may choose, based on their own requirements, to have an exclusive agreement with one provider, whereas for others, such as Motability, commercial drivers mean it is preferable to use a range of providers. The key being that those customers have the choice as to which approach to take.

4.42 The CMA states at paragraph 255 of the Decision that Constellation’s analysis supporting the conclusion that large vendors use only a single site of a multi-site provider is “*subject to alternative interpretations*”. In this respect, the Parties note that:

- (a) The CMA’s summary at paragraph 255(a) is correct. However, this emphasises Constellation’s point in that almost half of volumes at Aston Barclay sell through single sites. The CMA also notes that [40-50]% of vendors using a single site only listed one vehicle. Indeed, this is compelling evidence that a very significant proportion of Aston Barclay’s vendor-base is made of [§<].
- (b) The CMA states that given the data presented in respect of Aston Barclay’s vendors was a snapshot of one “*there may be Vendors that regularly use multiple sites which were not reflected in the data*”. The CMA has notably not sought data for a wider period to verify this statement. Indeed, as discussed during the Issues Meeting, Constellation had spot-checked other days and the position was materially similar. Likewise, [80-90]% of BCA’s vendors used a single site in FY2025.⁹⁰ This is clear evidence that even vendors who use large providers like BCA will often use a single site.

4.43 The CMA goes on to imply that, the fact that Aston Barclay was involved in a sales and restructuring process during 2024 is a likely cause of the significant loss in

⁸⁹ Issues Letter Response, Paragraph 3.9.

⁹⁰ Being a site for the pick-up and drop-off of used vehicles, rather than for attendance at a physical auction.

vendors suffered by Aston Barclay.⁹¹ This conclusion ignores the fact that Aston Barclay had been losing volumes since well before the sales and restructuring process began. Indeed, it was the continuing loss of volumes that meant such a process was needed. In respect of the CMA's other comments:

- (a) Constellation agrees that the volume and buyer base is an important factor in competition between auction providers. The CMA notes that there are few competitors with similar volumes to Aston Barclay. This does not change the fact that Aston Barclay's volumes have consistently been falling over a number of years (and from well before the sales and restructuring processes began), thereby diminishing the attractiveness of its auctions to vendors, and further exacerbating the decline. This is not at all reflective of a strong auction competitor.
- (b) The CMA refers to most of Aston Barclay's volumes being lost to BCA and Manheim. Notably, and reflecting its struggling financial state and reducing overall volumes, Aston Barclay did not win volumes from those providers. Again, this is compelling evidence of the limited and diminishing competitive constraint that Aston Barclay provided pre-Merger.⁹²

4.44 The Parties do not disagree that the evidence of Aston Barclay losing volumes is not directly relevant to the question of whether other third parties constrain BCA.⁹³ Indeed, this is not why this evidence was presented. In effect, in the Issues Letter (and as reflected in the Decision), the CMA appears to have characterised this as a "three to two" transaction, with BCA, Manheim and Aston Barclay being the only three auction providers able to serve large vendors. Rather, this evidence of the competitive constraints exercised on Aston Barclay by third parties (including in respect of large vendors) clearly contradicts the CMA's Phase 1 conclusion that the Merger could be construed as a "three to two" merger. In particular, the evidence demonstrates that:

- (a) Aston Barclay was in a diminishing competitive position for a long period pre-Merger, such that it did not provide a material competitive constraint on BCA pre-Merger. The constraint imposed by other providers on BCA is not relevant in assessing the constraint provided by Aston Barclay on BCA.
- (b) The data is compelling evidence that, far from only competing with BCA and Manheim (plus Dealer Auction) for significant vendors, Aston Barclay competes with a wide number of suppliers. As set out in Table 2 of the Issues Letter Response, in addition to Manheim and BCA, Aston Barclay lost significant vendor volumes during FY2025 to [§<] (as well as to channels outside "traditional" B2B auctions). This is not at all reflective of a situation where Aston Barclay is competing closely only with Manheim and BCA.

Alternative suppliers

4.45 As noted, the CMA effectively reaches the conclusion that this is a "three to two" transaction, with BCA, Manheim and Aston Barclay forming an effective "big three" of auction providers in the UK. The Parties do not deny that BCA is the largest auction provider in the UK, nor that Manheim is its closest and largest competitor. This does

⁹¹ Decision, Paragraph 256.

⁹² Notably, the analysis only considered vendors with annual volumes over [§<] vehicles, from which Aston Barclay lost vendors with estimate total volumes of [§<]. The loss in such volumes naturally makes Aston Barclay's auctions less attractive to buyers, and in turn less attractive to other vendors, further diminishing its competitive strength.

⁹³ Decision, Paragraph 257.

not change as a result of the Merger. It is however incorrect to state that Aston Barclay was at the same level as BCA and Manheim.

- 4.46 Constellation presented compelling evidence at the Issues Meeting and in the Issues Letter Response to demonstrate that large vendors can and do use a range of providers. For instance, Table 1 of the Issues Letter Response (replicated below) listed the number of “large” vendors using specific auction providers. This was based on the number of vendors listed on the AM50, AM100, AM200 (which list dealers groups by UK turnover) and FN50 (which ranks UK leasing companies by fleet size) as well as vendors who are OEMs and rental companies and are therefore uncontroversially large vendors. Likewise, Motability, which is the UK’s largest fleet owner, uses at least eight auction providers (and, as outlined for example at paragraph 4.41(d), [3<]).

Table 1: Number of “large vendors” listing vehicles through B2B auction providers

Business Name ⁹⁴	AM50 ⁹⁵	AM100	AM200	FN50 ⁹⁶	OEMs	Large rental companies	Motability
BCA (Constellation)	23	37	42	23	15	13	Y
Aston Barclay	1	5	7	8	2	0	Y
Manheim	12	28	39	16	11	1	Y
Dealer Auction	4	13	22	4	7	1	N
Wilsons	4	4	8	2	0	2	Y
City Auction Group	0	1	1	5 (8) ⁹⁷	5	1	Y
G3	1	2	2	3	0	2	Y
Fleet Auction Group	0	0	0	3	0	1	Y
Shoreham Vehicle Auctions	0	2	1	5	0	2	Y
Motor Auction Group	2	3	3	8	0	0	N

- 4.47 The actual choices made by vendors are therefore clearly inconsistent with the CMA’s conclusion that only BCA, Manheim and Aston Barclay can serve large vendors. The data, which the CMA failed to engage qualitatively with, also shows that, far from being part of a “big three” with BCA and Manheim, Aston Barclay sits in a (diminishing) position amongst a large group of similarly credible competitors.
- 4.48 The Parties do not seek to respond in detail to the CMA’s analysis of each auction competitor. However, the Parties make a number of observations as follows:

⁹⁴ Volumes in AM50, AM100 and AM200 are cumulative (therefore, AM50 volume is included in AM100 and AM200 volumes, and AM100 volume is also included in AM200 volume).

⁹⁵ The AM50/100 lists are maintained by am-online.com, and list the UK’s largest franchised dealer groups. The AM200 list was historically published by am-online.com, but has now been discontinued. However, Constellation continues to maintain the list internally in light of various business acquisitions and exists, meaning it no longer extends to 200 businesses.

⁹⁶ The FN50 list is maintained by fleetnews.co.uk, and lists the UK’s largest fleet operators.

⁹⁷ Including Novuna (fleet size 93,000, FN ranking 6th), Leasys (fleet size 52,000, FN ranking 9th) and Drivalia (fleet size 5,500, FN ranking 28th).

- (a) The CMA recognises at paragraph 260(a) of the Decision that only one vendor described Aston Barclay as a national supplier, while a number of vendors recognised BCA and Manheim as national suppliers. This is consistent with the fact that Aston Barclay does not form part of a “big three” with BCA and Manheim, but rather that Aston Barclay is part of a long tail of smaller competitors that can and do serve a diverse pool of vendors (including large vendors) around the country.
- (b) At paragraph 273 of the Decision, the CMA notes that the Parties’ internal documents do not suggest that City Auction Group (“**City**”) is routinely monitored by the Parties. The CMA then goes on to note that Constellation [§<] monitored City’s hybrid auction site. The CMA also acknowledges that Constellation had monitored various of City’s vendors as opportunities. This is not at all consistent with City being a minor and insignificant competitor to BCA.
- (c) Regarding G3, the CMA has failed to note that, reflective of its growth, G3 invested in and opened a new auction centre in Bedford in January 2025. The CMA also references a buyer noting that G3 only conducting auctions “1 to 2 times a week”,⁹⁸ which is demonstrably incorrect – in the week of 27 October 2025, G3 has nine separate auctions scheduled across five days, and both of its auction sites.⁹⁹ This is in comparison to Aston Barclay (which continues to operate on the basis of its limited pre-Merger auction schedule), which is holding 12 auctions across five sites per week.
- (d) The CMA has also failed to engage substantively on the importance of providers like G3 having national networks of drop off locations, thereby giving them much broader geographic coverage than their more limited auction site portfolio may suggest on its face.

4.49 The CMA has also notably failed to engage on the existence of many other competitors active across the UK. As outlined in the Issues Letter Response, the National Association of Motor Auctions (“**NAMA**”) has 27 members.¹⁰⁰ These providers all provide used vehicle auction services in the UK and their presence must form part of the CMA’s competitive assessment; they cannot simply be dismissed without any consideration whatsoever.

4.50 Notably, some of the smaller providers who are members of NAMA cater specifically to a sub-set of vendors and buyers who may still wish to attend physical auctions in their local areas. Notwithstanding the growth of the online segment, such vendors and buyers still form an important customer-base. As is made clear in Constellation’s submissions during Phase 1, when considering such competition on a purely local basis, there is clearly no prospect of an SLC in respect of the range of providers available in the areas around any of Aston Barclay sites.¹⁰¹

Other constraints

4.51 The Parties have noted above the flaws in the CMA’s approach to market definition, including that it has defined the market unduly narrowly. Even if the CMA were to maintain a conclusion that the correct market definition is limited to B2B used vehicle

⁹⁸ Decision, Paragraph 277(b).

⁹⁹ See <https://www.g3remarketing.co.uk/sales>, accessed 20 October 2025.

¹⁰⁰ Issues Letter Response, Paragraph 7.11.

¹⁰¹ See Enquiry Letter Response, Annex 1.

auction services, it is clear that alternative channels such as proprietary and C2B platforms impose a material constraint on the Parties.

- 4.52 When considering the importance of out of market constraints, Constellation reiterates the significant decline in its third party vendor volumes between 2014 and 2024, which the CMA acknowledges but does not address in the Decision.¹⁰² Between 2014 and 2024, BCA's volumes from third party vendors decreased by more than half from [X] to [X] (and have been supplemented by internal volumes, largely from webuyanycar as a direct response to the declining volumes driven by constraints from alternative channels).¹⁰³ The significant reduction in the availability of third party-owned vehicles to BCA is indicative of the expansion of alternative channels, and the constraint they impose.
- 4.53 The CMA correctly notes at paragraph 289 of the Decision that the significant reduction in third party volumes sold through BCA has been supplemented by a significant increase in vehicles acquired through webuyanycar "*suggesting that ... self-supply has [X] Vendor supply*". This is indeed correct, but this is reflective of the overall market dynamics (specifically, the disintermediation of volumes outside of traditional auction channels) and not of an isolated change in commercial strategy. As explained to the CMA,¹⁰⁴ Constellation has had to supplement third party BCA volumes with volumes from webuyanycar to [X]. BCA has not simply chosen to reduce third party volumes in favour of webuyanycar and its other vehicle purchasing sources; it has done so as a response to the significant reduction in such volumes (while Aston Barclay has failed to do so through TCBG,¹⁰⁵ which is reflected in its constantly declining volumes).
- 4.54 The Parties also note that in its assessment of BCA's acquisition of SMA in 2015, the CMA acknowledge the constraint imposed by alternative channels at a number of points in its decision.¹⁰⁶ Indeed, the CMA appeared to acknowledge the growing constraint from alternative channels as supporting its conclusion that there was no realistic prospect of an SLC on a national basis. This growth of alternative channels has only become more pronounced in the years since, as evidenced by the significant drop in third party volumes experienced by both Parties. Likewise, when considering the establishment of the Dealer Auction joint venture in 2018, the CMA acknowledged the constraint that BCA and other auction providers would impose on the Dealer Auction joint venture, and also noted that "*it was the JV's intention to win as many customers from physical auctions as possible*".¹⁰⁷
- 4.55 While the Parties acknowledge that previous CMA decisions are not binding, the CMA is effectively contradicting two of its previous decisions without addressing why the conclusions in those decisions no longer hold. The CMA cannot simply dismiss its clear conclusions from previous decisions without pointing to significant subsequent directional shifts in market dynamics (which the Parties submit have not occurred; rather the digitisation, disintermediation and associated emerging competitive constraints identified in those decisions have since accelerated as a result of Covid, economic pressures and technological advances).
- 4.56 For the reasons outlined above in respect of the product market definition, it is clear that alternative providers and channels, including proprietary platforms, Dealer

¹⁰² Decision, Paragraph 285.

¹⁰³ Issues Letter Response, Paragraph 7.41(a).

¹⁰⁴ See, for example, slides from CMA Teach-in, 21 May 2025.

¹⁰⁵ TCBG is in any event failing due to its flawed business, as the CMA has acknowledged.

¹⁰⁶ ME/6549/15 – BCA/SMA, 17 November 2015, for example at paragraphs 30, 41 to 43, 52 to 54, 92(d).

¹⁰⁷ ME/6765/18 – Cox/AutoTrader, 21 November 2018, Paragraph 112.

Auction and other material digital-only auction offerings such as Epyx and Openlane, C2B platforms and salvage auction providers all provide a meaningful competitive constraint on B2B used vehicle auction providers. The Parties do not seek to repeat the same arguments here. However, there are some key aspects in relation to proprietary platforms and C2B platforms in particular that underline the constraint they impose on the Parties' businesses.

4.57 In the case of proprietary platforms, the CMA's conclusion that they do not impose a material competitive constraint fails to take into account the network effects in the used vehicle auction space, which the CMA has relied on in other parts of the Decision in support of its SLC conclusion. More specifically:

- (a) While not all vendors would necessarily be able to establish their own proprietary platform, the vendors that can and do use proprietary platforms tend to be some of the largest and most attractive vendors to buyers (e.g. a number of OEMs, and fleet owners like Motability). If any of these vendors were to reduce auction volumes to use their own platforms more, this would reduce the volumes at the Parties' auctions, which would likely make them less attractive to buyers, and in turn less attractive to other vendors. As such, the Parties are clearly incentivised (both pre and post-Merger) to provide good service and a good price to these vendors, as losing even some of their volumes can have a significant impact on their auction business.
- (b) Similarly, the Parties are incentivised to continue providing good price and service to other vendors who may not be able to set up or use their own platforms. These vendors have clear alternatives (both in terms of other auction providers, and alternative sales channels), and could easily switch away from the Parties' auctions in the face of a price increase and/or reduction in service quality. This, in turn, would make the auctions less attractive to buyers, and risk losing larger vendors who may be able to use their own platforms.

4.58 In the case of C2B platforms such as Motorway and Carwow, and notwithstanding the CMA's apparently definitive conclusion to the contrary,¹⁰⁸ not only are these providers a material constraint on the Parties, they are a threat to the Parties' business model. While the Parties' auction businesses do not compete directly with C2B platforms for vendors, the Parties' car buying businesses (i.e. webuyanycar and TCBG) do compete directly with these platforms for the sale of vehicles by consumers. As explained, given the significant reductions in available third party volumes, the Parties are reliant on internal volumes from these car buying businesses to sustain their auction businesses. The growth of C2B platforms has meant the Parties risk losing internal volumes to sell through their own auctions, while also disintermediating specialist auction providers from the picture. This imposes a very real constraint on the Parties; the Parties must ensure that their car buying and auction businesses operate efficiently and effectively in such a way that consumers are not incentivised away from using the Parties' car buying services and use C2B providers instead.

F. Entry and expansion

4.59 The CMA concludes that entry and expansion would not be sufficiently timely or likely to prevent an SLC.¹⁰⁹ The Parties submit that this conclusion is unsustainable for a number of reasons.

¹⁰⁸ Decision, Paragraph 147.

¹⁰⁹ Decision, Paragraph 313.

- 4.60 As an initial point, the CMA's conclusion on entry and expansion relates to entry and expansion of B2B used vehicle auction providers like the Parties. This assumes, for instance, that entry and expansion would require physical auction sites and associated infrastructure. For the reasons outlined in the rest of this submission, "traditional" auction providers like the Parties face competition from a multitude of alternative channels. As such, the CMA cannot conclude that entry and expansion would not be sufficiently likely or timely without assessing the conditions of entry for all relevant channels.
- 4.61 It is notable in particular that, both in the auction segment, but also other channels (especially proprietary and C2B platforms) the service is provided purely online and without the requirement for physical sites to store and process vehicles. This significantly reduces the costs of new entry and expansion, as is reflected in the significant expansion of proprietary platforms and the fact that Motorway and Carwow have both achieved significant scale following their entry (see further at paragraph 4.8 above).

G. Merger efficiencies and Relevant Customer Benefits

- 4.62 It is notable that the CMA has not engaged in the Decision with the efficiencies generated by the Merger, despite the Parties making submissions on these matters during Phase 1 (including in describing the rationale).¹¹⁰ The network optimisation opportunities and addition of capacity identified by Constellation in its Merger rationale has the clear potential to give rise to rivalry-enhancing efficiencies enabling BCA to better compete with the new and existing forms of competition to the advantage of its customers. Material costs will be saved and quality of service enhanced relative to the Aston Barclays offering. While the Parties do not seek to engage on this aspect of the CMA's Decision in detail in this response, they expressly reserve their right to do so in due course.

H. Conclusion

- 4.63 For the reasons set out in this Response, the Parties consider that the Decision does not provide a more than fanciful basis on which it could be found that the Merger has resulted or may be expected to result in an SLC. Further, the Parties respectfully submit that the CMA cannot find that this would be the case to the requisite evidentiary standard of a Phase 2 inquiry.
- 4.64 The Parties look forward to continuing to engage constructively with the CMA during Phase 2.

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28 October 2025

¹¹⁰ See for example Enquiry Letter Response, Question 34.