

# Euro Car Parts and Andrew Page

A report on the completed acquisition by Euro  
Car Parts of the assets of the Andrew Page  
business

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*Website:* [www.gov.uk/cma](http://www.gov.uk/cma)

**Members of the Competition and Markets Authority  
who conducted this inquiry**

Alasdair Smith (*Chair of the Group*)

Lesley Ainsworth

Rosalind Hedley-Miller

**Chief Executive of the Competition and Markets Authority**

Andrea Coscelli

The Competition and Markets Authority has excluded from this published version of the report information which the Inquiry Group considers should be excluded having regard to the three considerations set out in section 244 of the Enterprise Act 2002 (specified information: considerations relevant to disclosure). The omissions are indicated by [✂]. Some numbers have been replaced by a range. These are shown in square brackets. Non-sensitive wording is also indicated in square brackets.

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## Glossary

## **Summary**

### **Background**

1. On 22 May 2017, the Competition and Markets Authority (CMA), in accordance with section 22 of the Enterprise Act 2002 (the Act), referred the completed acquisition by Euro Car Parts Limited (ECP) of certain assets of Andrew Page Limited, Solid Auto (U.K.) Limited and Colton Parts Company Limited (collectively AP) to a group of CMA panel members (the Inquiry Group) in order to investigate and report on the following questions:
  - (a) whether a 'relevant merger situation' has been created; and
  - (b) if so, whether the creation of that situation has resulted, or may be expected to result, in a substantial lessening of competition (SLC) within any market or markets in the United Kingdom for goods or services.
2. Throughout this document, where appropriate, we refer to ECP and AP collectively as the Parties.

### **The Parties and the Merger**

3. ECP is a wholly owned subsidiary of LKQ Euro Limited, whose ultimate parent is LKQ Corporation, a public company incorporated in Delaware. ECP's UK annual turnover for its financial year (FY) ended 31 December 2016 was approximately £988 million.
4. AP was founded in 1917 and was run as a family business until 2010 when Phoenix Equity Partners invested in the company, followed by Endless LLP in 2014. AP went into administration in October 2016. For the financial year ended 30 September 2016, AP's total revenue was approximately £172 million.
5. On 4 October 2016, following an accelerated sale process, ECP acquired certain assets of AP out of administration. These assets included licences to occupy and an option to purchase the leaseholds of 101 AP local depots, AP's national distribution centre in Markham Vale and its Leeds head office. ECP also acquired AP's stock, its brands and certain customer and supply contracts. Most of AP's employees were also transferred to ECP.
6. ECP and AP overlap in the supply of car parts both to the independent motor trade (IMT) and to retail customers. They also supply garage equipment to the IMT and market car parts under a number of private label brands.

## Industry Background

7. The Parties' principal business is the distribution of independent aftermarket (IAM) car parts and components to IMT customers. IAM car parts are replacement car parts that are not specific to one individual car marque and are not approved by the car manufacturer and therefore not branded as original equipment manufacturer (OEM) car parts. OEM car parts are primarily supplied by the car manufacturers and their dealer networks, which generally only supply OEM car parts for their own makes of car and not IAM car parts or other car manufacturers' parts.
8. IAM and OEM car parts are used when a vehicle owner takes his or her vehicle to be repaired or serviced at an independent or franchised garage, work/repair shop, car dealer or fast-fit centre. Competition in the IMT is primarily on a local basis and the IMT is highly fragmented. Most IMT customers are active in one or a small number of local areas although there are a number of larger IMT customers, such as Halfords Autocentres, Kwik-Fit, the emergency services and the RAC, which operate on a multi-regional or national basis.
9. IAM car part suppliers, such as ECP and AP, aim to supply as wide a range of IAM car parts for as many car marques as possible and are known as 'general motor factors'. They usually stock several different specifications of a particular car part at different price points. In addition to suppliers of OEM car parts and general motor factors such as the Parties, there are a number of specialist IAM car part suppliers. These suppliers generally specialise in a particular type of car part, such as exhausts, brakes or clutches, rather than supplying the full range of car parts.
10. IMT customers choose suppliers taking account of several parameters, particularly price, product availability, speed of delivery and quality of service. Product delivery time is particularly important, with customers usually requiring parts to be delivered within approximately an hour of an order being placed.
11. In addition to the Parties, other larger general motor factors include Parts Alliance (PA), Alliance Automotive (AAG) and Motor Parts Direct (MPD). The market is, however, highly fragmented and there are a significant number of independent local suppliers of IAM car parts. Some of these smaller general motor factors form buying or trading groups. These buying/trading groups enable smaller general motor factors to negotiate better prices with suppliers and provide a better service to a broader range of customers. PA, which also has a network of owned depots, is one of the largest of these buying/trading groups. It uses its associate members to supply larger IMT customers in areas where it does not have its own depots as well as to negotiate greater



volume discounts for its members. Neither ECP nor AP is a member of a buying/trading group.

### **Relevant merger situation**

12. We concluded that the Merger has resulted in a 'relevant merger situation' within the meaning of the Act.

### **Market Definition**

13. We found that the relevant product market is the supply of IAM car parts by general motor factors for cars and light vehicles to the IMT. The Parties submitted that the market is wider including OEM and specialist parts suppliers. The evidence available to us indicated, however, that OEM and specialist parts suppliers appear to be alternative suppliers to general motor factors in a limited range of circumstances and exert only a limited competitive constraint on general motor factors such as the Parties. We have therefore found that they are not part of the relevant market.
14. As described above, IMT customers can be segmented broadly into locally based IMT customers (primarily independent garages and workshops operating from one or a small number of closely located sites) and larger (in sales) customers who generally require delivery to multiple sites across a wider geographic area (Key Accounts), who in some cases are nationally or multi-regionally based customers. We found that the Merger was likely to have different impacts on local IMT customers and Key Accounts. Unlike local IMT customers, Key Accounts generally require a primary supplier supplying the majority of their requirements across a broad geographic area and therefore have different requirements when selecting a supplier than a local IMT customer operating from a single site or a small number of closely located sites.
15. For local IMT customers, we concluded that the relevant markets are local to each depot. Our analysis of each of the Parties' depots' catchment areas showed that, while there is some variation between depots, both the ECP and AP depots serve customers in a relatively narrow geographic area. For Key Accounts, we found that the market is national because Key Accounts normally require a small number of suppliers with broad geographic coverage to supply most of their sites.

### **Counterfactual**

16. Before analysing the competitive effects of the Merger, we considered what would have happened to AP and its assets in the absence of the Merger (the

counterfactual). Identifying the counterfactual provides a benchmark against which to assess the competitive effects of the Merger.

17. We found that, absent the Merger, AP would have been likely to exit the market as a result of financial failure.
18. We then considered whether there would have been an alternative purchaser to ECP for AP or any its assets. We found that, absent the Merger, it is more likely than not that PA and MPD would have acquired up to the 52 AP depots for which they bid (and intended to continue to operate) in the AP sale process leading to the Merger, and therefore the acquisition of these AP depots should be the relevant counterfactual for our competitive assessment.
19. There were no alternative bids for 49 depots, the national distribution centre or head office. Absent a sale, these assets would have been likely to have been closed by AP's administrators. We therefore concluded that the appropriate counterfactual for our competitive assessment for local IMT customers in relation to these 49 depots is exit of AP from the relevant local market and therefore the loss of a competitor.
20. With respect to our competitive assessment for Key Accounts, we concluded that the appropriate counterfactual is the exit of AP and the purchase, by a combination of PA and MPD, of up to the 52 depots for which they bid and would have continued to operate. The remaining depots, distribution centre and head office would have closed.

### **Competitive assessment of the effects of the Merger on local IMT customers**

21. We first identified those local areas in which an AP depot does not overlap with an ECP depot to any material extent and therefore where, in our view, the Merger does not have the potential to create competition concerns. We identified three such local areas (Scarborough, Gatwick and Isle of Wight). In the absence of any actual overlap between the ECP and AP depots in these areas, we concluded that, in the three relevant local markets where these three depots are located, the Merger may not be expected to give rise to a SLC.
22. We therefore focused our competitive assessment on the 98 AP depots which overlap with one or more ECP depots and where the Parties may compete to a material extent. We undertook a different assessment for the purposes of analysing the effects of the Merger depending on whether the appropriate counterfactual for the area concerned is exit of the AP depot from the relevant local market or acquisition by an alternative purchaser.

***Assessment where the counterfactual is closure of the AP depot***

23. There was no alternative purchaser for 48 of the 98 AP depots which overlap with at least one ECP depot and these depots would have closed under the counterfactual. For the purposes of assessing whether the Merger could give rise to a SLC relative to a counterfactual involving the closure of the AP depot, we considered whether, and in what circumstances, a change in the distribution of sales or in the number of depots operated by ECP in an area could lead to a SLC, given that the total number of competitors in the area is the same following the Merger and in the counterfactual.
24. For the purposes of assessing whether a merger could lead to a SLC relative to a counterfactual of exit of the target firm/assets, we take into account the differences between the merger and the counterfactual. In respect of the Merger these differences included:
  - (a) the distribution of sales: as a result of the Merger, ECP will at least initially take over all the sales of the AP depot whereas the distribution of the AP depot's sales may have been different under the exit counterfactual; and
  - (b) The number and location of depots operated by ECP: as a result of the Merger, ECP will at least initially operate an AP depot in addition to its existing depot which it would not otherwise have operated.
25. We identified several market characteristics which led us to consider that, where the counterfactual is the exit of the AP depot, the Merger will not affect ECP's or third party suppliers' ability to compete in a local area. In particular, local customers usually shop around before placing orders and tend to have trading accounts with several suppliers. Customers also typically place orders when the parts are required and expect delivery to their site(s) at short notice. These characteristics suggest that the level of competition will depend primarily on the number of available suppliers and their respective ability to deliver car parts to customers in the relevant local area.
26. Therefore, we considered that the competitive constraints on ECP would be substantially the same following the Merger and in the counterfactual. We did not receive submissions or see evidence suggesting that the ability of existing suppliers to compete in a local area would be materially affected by whether an AP depot was acquired by ECP or closed. The redistribution of a portion of AP's sales to competing suppliers under the counterfactual (rather than ECP taking over (at least initially) all AP's sales following the Merger) would not materially affect other suppliers' operational costs nor would it materially affect their ability to deliver car parts from their current location.

27. Similarly, we did not see evidence suggesting that ECP's operational costs would be materially different as a result of a different distribution of AP's sales or an increase in the number of depots it operates in an area.
28. On the evidence available, we therefore considered it unlikely that the exit of an AP depot from the relevant local market would lead to a more competitive outcome than if the AP depot continued to operate under ECP's ownership. We therefore concluded that the acquisition of the 48 AP depots which overlap with at least one ECP depot for which the counterfactual was closure of the AP depot may not be expected to give rise to a SLC.

### ***Assessment where the counterfactual is an alternative purchaser***

29. The remaining 50 AP depots which overlap with at least one ECP depot, had an alternative purchaser under the counterfactual. In such cases, we sought to identify the local areas in which the overlapping depots were located where the Merger would cause a SLC as a result of a reduction in the number of suppliers in the local area. Given the number of local areas to consider, our overall approach was to identify mechanistic rules which could filter out unproblematic areas and then to carry out more detailed local area assessments in the remaining areas.
30. This involved first identifying for the filter, using the available evidence, a list of suppliers across the UK in relation to which we had sufficient evidence to conclude that the supplier imposes a significant constraint on at least one ECP or AP depot (Effective Competitors). This was a particular challenge in this case for a number of reasons including the highly fragmented nature of the sector and the difficulty in confirming whether a supplier offers an equivalent service to the Parties, for example in respect of delivery and/or range of parts, such that they are a significant constraint on the Parties. We then, for each ECP and AP depot, identified from the list of Effective Competitors those suppliers which are present in the relevant local area and may therefore compete with the Parties in that area (Actual Competitors).

### ***Filtering to identify depots of potential concern***

31. Having identified the Actual Competitors in an area, we then applied a filter to identify depots in areas that were unlikely to raise competition concerns. We identified 79 ECP depots whose catchment area significantly overlapped with the remaining 50 AP depots. We therefore applied our filter to these 129 depots (79 ECP depots and 50 AP depots). The filter used a combination of three criteria to identify depots of potential concern, namely a measure of the extent of overlap between the Parties' depots, a fascia count and a store count. We adopted a conservative approach to this initial filtering process in relation to the overlapping ECP and AP depots so that we were confident that

it would identify those depots potentially of concern. This process identified 35 AP and ECP depots (15 AP depots and 20 ECP depots) as unlikely to be a concern out of an initial 129 AP and overlapping ECP depots to which the filter was applied.

32. We reviewed a number of areas where the filtering exercise did not identify that either the AP or ECP depot should be subject to a detailed analysis. We were satisfied on the basis of these reviews that those depots identified as not a concern by the filters did not require further review. In areas where one of the Party's depots was identified as requiring further analysis but the other Party's depot in the same area was not, we conducted a further analysis of the area where both of the depots are located. This identified five additional AP depots for further consideration.
33. As a result of this filtering exercise, we concluded that the acquisition by ECP of 10 AP depots may not be expected to give rise to a SLC.

#### ***Local assessments of depots identified by the filter***

34. In order to conduct our more detailed local assessments of the remaining 99 AP and ECP overlapping depots, we grouped these depots into 60 distinct local areas. We considered all of the evidence available to us in each local area, allowing us to assess the strength of competition from each supplier and the closeness of competition between ECP and AP.
35. The information we used included the number, identity and location of any overlapping ECP and AP depots and of Actual Competitors to each ECP and AP depot in the area, together with the location of the customers of the Parties' depot. We also considered a range of additional evidence to inform our view of the strength of suppliers in the local area. This included the prevalence of such suppliers in ECP's price matching data, responses to our survey of local IMT customers in the relevant area and evidence of other suppliers which may provide a constraint on the Parties, such as suppliers which our methodology did not identify as Actual Competitors but where we have other evidence which suggests that they do compete with the Parties. We also considered the geographical closeness of Parties' depots and competing suppliers for the Parties' customers. Finally, we considered submissions from the Parties on the competitive conditions in these local areas and additional analysis on margins which the Parties argued showed that local markets in which there are only three competitors (based on the CMA's competitor count) post-Merger will not lead to a SLC.
36. We also considered the identity of the alternative purchaser(s) under the appropriate counterfactual and whether it/they is/are present in the overlap areas.

37. The level of detail required in each area for our assessment of competition depended on the specific characteristics of the area. In some cases, it was easy to reach the conclusion that the Merger did not raise competition concerns in an area, for example because there is a limited overlap in the customers served by the ECP and AP depots in that area and/or because there are a number of other suppliers able to compete with the Parties in the area. In other areas, a more detailed assessment was required to enable us to exercise our judgement as to whether we considered the Merger may be expected to give rise to a SLC.
38. We found 51 areas where we considered that the acquisition by the relevant alternative purchaser would not be substantially more competitive than the Merger and therefore the Merger does not give rise to a SLC in the relevant local area.
39. We found nine areas where, based on our assessment of the closeness and the relative strength of the Parties' and third parties' depots in the area, we considered that the loss of AP as a competitor, compared with the counterfactual where the AP depot is operated by an alternative purchaser, would give rise to a SLC in the relevant local area.

### ***Competitive effects***

40. We considered the likely effects of the Merger against the relevant counterfactual in each of the nine local areas where we found that the Merger may be expected to be substantially less competitive than acquisition by the alternative purchaser. In view of the limited competitive constraints on ECP in those local areas following the Merger relative to the counterfactual, we concluded that ECP will have an incentive to increase prices and/or reduce the quality of service to local IMT customers in those local areas.
41. We have not identified any countervailing factors that are likely to offset the effects of the Merger in these nine local areas. We therefore concluded that the Merger may be expected to result in a SLC in the supply of IAM car parts by general motor factors to local IMT customers in the nine local areas set out below and that this may be expected to lead to adverse effects for local IMT customers in terms of an increase in prices and/or a reduction in the quality of service.
- (i) Blackpool
  - (ii) Brighton
  - (iii) Gloucester
  - (iv) Liphook

- (v) Scunthorpe
- (vi) Sunderland
- (vii) Wakefield
- (viii) Worthing
- (ix) York

42. These are the same areas where we had provisionally found that the Merger may be expected to result in a SLC, with the exception of Swindon where we no longer found a SLC.

### **Competitive assessment of the effects of the Merger on Key Accounts**

43. For a SLC to be found in relation to Key Accounts, there would need to be evidence that competition for Key Accounts would have been significantly stronger in the counterfactual, in which at least 49 depots would have closed and where PA and MPD would between them have acquired up to the 52 depots for which one or both of them had bid.
44. We considered that:
- (a) the closure of 49 AP depots, and redistribution of their sales among existing suppliers, would not have been likely to have enabled these (or any other) suppliers to compete more strongly for Key Accounts;
  - (b) PA's acquisition of any or all the 39 depots it bid for would not have been likely to result in a material increase in its ability to compete for Key Accounts. Before the Merger, PA already represented a competitive constraint on ECP. This constraint might have increased to some extent had PA acquired up to the 39 AP depots for which it bid, through cost and other efficiencies arising from replacing supply partners with PA-owned depots. However, we have not received evidence which suggests that these efficiencies would have been sufficiently large or sufficiently likely to be passed through to customers such that, in the counterfactual, PA would have exerted a significantly stronger constraint on ECP than it did before the Merger.
  - (c) MPD's acquisition of any or all of the 21 depots for which it bid and would have continued to operate would not have been likely to result in a material increase in competition for Key Accounts. MPD's geographic coverage would not have been sufficiently increased to allow it to pose more than the marginal competitive constraint it currently exerts and would not have significantly increased MPD's buyer power.



45. We therefore concluded that the Merger may not be expected to result in a SLC in the supply of IAM car parts by general motor factors to Key Accounts in the UK.

## **Remedies**

46. We considered whether action should be taken for the purpose of remedying, mitigating or preventing the SLCs in each of the nine local areas or the adverse effects which may be expected to result from such SLCs, having regard to the effects of any relevant customer benefits (RCBs) in relation to the Merger.
47. In our notice of possible remedies (Remedies Notice), we invited views on potential remedies involving prohibition of the Merger, divestiture of one or more depots in each of the local areas identified in our provisional findings published on 14 September 2017 (Provisional Findings) as giving rise to SLCs and/or behavioural remedies.
48. The Parties and third parties we contacted submitted that divestiture to a suitable purchaser of one depot in each of the local areas provisionally identified would be an effective remedy. We did not receive any submissions to suggest that behavioural remedies would be effective.
49. We considered that divestiture of a depot to a suitable purchaser in each of the nine local areas would be an effective remedy because it would remove the SLC in each of the areas at source and would present very few risks in terms of effectiveness. We also considered that prohibition of the Merger would be an effective remedy but that, given the relatively small number of areas where a SLC was found, we considered that divestiture to a suitable purchaser of a depot in each relevant area would be a more proportionate remedy.
50. We did not consider that behavioural remedies would be effective. We also did not consider that there were any RCBs which we should take into account in our assessment.
51. We considered that divestiture of either the AP or ECP depot in each area to a suitable purchaser within agreed timescales would be effective and proportionate. The Parties would have a choice as to which depot to divest in each area and whether to sell a package of depots or sell depots individually to different purchasers. The composition of the divestiture package in each area will need to be configured in order to ensure that it is attractive to potential purchasers and will enable a suitable purchaser to operate effectively as an independent competitor to the Parties post-divestiture. A purchaser will also need to meet the CMA's suitability criteria to be approved by the CMA.



52. In order to ensure that the divestitures will achieve their intended effects, we have decided that interim measures will be required pending the divestitures to preserve and ensure the marketability of the relevant depots (ie nine ECP depots and nine AP depots). We will require a monitoring trustee to monitor and report on compliance with the interim measures. We did not consider that a divestiture trustee would be required but reserved the right to appoint one if the Parties fail to divest to a suitable purchaser(s) within agreed timescales.

## Findings

### 1. The reference

- 1.1 On 22 May 2017, the CMA, in accordance with section 22 of the Act, referred the acquisition by ECP of assets of the AP business for further investigation and report by the Inquiry Group.
- 1.2 In exercise of its duty under section 35(1) of the Act, the CMA must decide whether:
  - (a) the acquisition by ECP of assets of the AP business has resulted in the creation of a relevant merger situation; and
  - (b) the creation of that situation has resulted, or may be expected to result, in a SLC within any market or markets for goods and services in the United Kingdom.
- 1.3 The Inquiry Group's terms of reference are in Appendix 1.1 together with details of the investigation to date.
- 1.4 This document, together with its appendices, constitutes the Inquiry Group's findings. Further information relevant to this inquiry, including non-confidential versions of the submissions received can be found on the CMA's website.<sup>1</sup>
- 1.5 Throughout this document, ECP and AP are referred to collectively as 'the Parties'.

### 2. The Parties

#### *Euro Car Parts*

- 2.1 ECP was founded in 1978 by Sukhpal Singh Ahluwalia when it traded under the name of Highway Autos. ECP currently employs around 9,000 staff and operates over 200 depots across the UK, in addition to 16 regional distribution centres and four national distribution centres.
- 2.2 ECP's ultimate parent company is LKQ Corporation (LKQ), a US public company incorporated in Delaware and listed on the NASDAQ Stock Exchange. LKQ first entered the UK market with its acquisition of ECP in

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<sup>1</sup> <https://www.gov.uk/cma-cases/euro-car-parts-andrew-page-merger-inquiry>.

October 2011.<sup>2</sup> All of LKQ's UK operations are carried out through its wholly-owned subsidiary, LKQ Euro Ltd

- 2.3 LKQ is a global distributor of aftermarket car parts, including replacement parts, components and systems used in the repair and maintenance of passenger and commercial vehicles, as well as speciality vehicle products and accessories. LKQ's annual revenue for FY16 was around £6.4 billion, of which around £1 billion was generated by ECP in the UK.<sup>3</sup>
- 2.4 In the UK, ECP operates the following business units (each with its own management team, field structure, financial reporting and planning, strategic planning and targets):
- (a) IMT: supplying car parts but also garage equipment to IMT customers with trade accounts from its network of over 200 local depots and regional and national distribution centres across the UK;
  - (b) Key Accounts: supplying IAM car parts and garage equipment to national or multi-regional IMT customers. Such accounts, in particular the larger national and public body accounts, are often tendered and will be managed by an ECP account manager. They may have individually negotiated volume and service agreements with ECP;
  - (c) Retail: supplying IAM car parts and hand tools to 'walk-in' customers without trade accounts, who purchase in one of ECP's stores located at the front of its local depots;
  - (d) E-commerce: supplying IAM car parts and hand tools online (principally via [www.eurocarparts.com](http://www.eurocarparts.com), [www.carparts4less.co.uk](http://www.carparts4less.co.uk) and also via ECP's eBay Store). Customers can either have products delivered to an address or collect in person from an ECP local depot. Over [X] per cent of ECP's total retail sales were made online; and
  - (e) Collisions & Coatings: supplying bodyshop customers with collision parts such as body panels, bumpers, paint/coatings and consumables.
- 2.5 ECP also markets approximately [X] private label brands of car parts, eg brake pads and air conditioning system parts. ECP does not have in-house manufacturing capabilities and outsources production of its private label car parts to third-party manufacturers, specifying the designs and branding the car parts as its own.

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<sup>2</sup> Parties' submission 'Response to Phase 1 Decision' (9 June 2017), paragraph 2.2.

<sup>3</sup> [LKQ FY16 10k filing](#).

2.6 In FY16, ECP generated total revenues of around £988 million in the UK, of which the supply of IAM car parts (wholesale IAM business) accounted for £ [X] million (or around [X] per cent of total revenue). Table 2.1 below sets out a breakdown of ECP's revenue in the UK over the last three financial years.

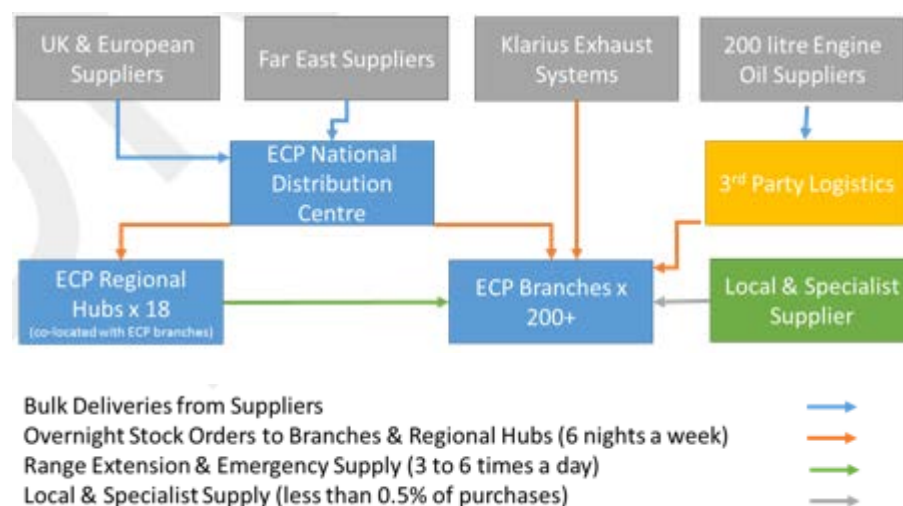
**Table 2.1: ECP revenue breakdown (FY14 to FY16)**

<i>FYE 31 December</i>	<i>FY14</i>	<i>FY15</i>	<i>£'000s FY16</i>
<b>Revenues</b>			
Wholesale IAM business	[X]	[X]	[X]
Retail IAM business	[X]	[X]	[X]
GE business	[X]	[X]	[X]
National Accounts	[X]	[X]	[X]
Collision & Coatings	[X]	[X]	[X]
Export business	[X]	[X]	[X]
Other business	[X]	[X]	[X]
	<b>801,789</b>	<b>904,050</b>	<b>987,554</b>

Source: ECP.

2.7 ECP purchases car parts from a significant number of aftermarket car part manufacturers, eg Bosch and Schaeffler, located primarily in the UK and continental Europe. ECP sources its supplies and enters into contracts with suppliers independently from LKQ. ECP's supply chain is set out in Figure 2.1 below. ECP is not part of any buying group.

**Figure 2.1: ECP supply chain**



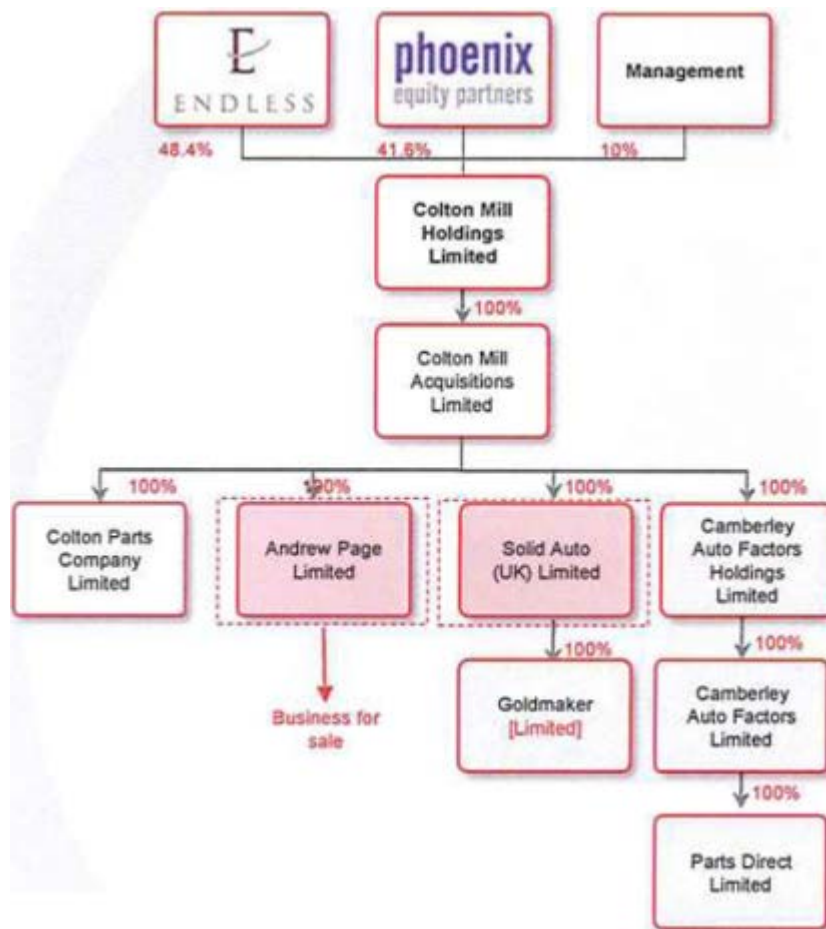
Source: ECP.

## Andrew Page

2.8 AP was founded in 1917 and was wholly owned by the Page family until 2010. In 2010 it partnered with Phoenix Equity Partners (Phoenix) and in 2014, Endless LLP (Endless) co-invested in the business. Prior to the

Merger, Phoenix and Endless together held 90 per cent of AP's equity, with the remaining 10 per cent held by AP management. Figure 2.2 below sets out AP's group structure at the time of the Merger.

**Figure 2.2: AP Group structure (pre-Merger)**



Source: AP. Note: Goldmaker Limited should be Goldmake Limited.

2.9 AP's primary business was the supply of IAM car parts to the IMT. It had grown from being a regional distributor with its roots in Yorkshire and Lancashire. Headquartered in Leeds, at the time of the Merger, AP operated 109 depots across Great Britain with a focus on the north east of England, Lincolnshire and East Anglia and parts of the south east of England. It also had a national distribution centre in Markham Vale and employed around 1,900 employees (FTE), of whom around 130 were located at AP's Leeds head office and the remainder at AP's local depots and the national distribution centre.

2.10 In addition to the sale of IAM car parts to the IMT, AP had more recently also started selling IAM car parts directly to retail customers from its depots and online via its website. Like ECP, AP also supplied garage equipment to the IMT but this was a relatively small part of its business. AP also supplied a limited range of parts for heavy commercial vehicles from one specialist

commercial vehicles branch ('CV Spares' near Heathrow which covered car-derived vans, light commercial vehicles as well as heavy commercial vehicles).

- 2.11 AP also markets one private label brand, 'Fohrenbuhl', which was used for a range of starter motors and alternators (generically known as 'rotating electrical' products). Similarly to ECP, AP outsourced production of its private label brand and did not have any in-house manufacturing capabilities.
- 2.12 In FY16, AP generated total revenue of around £172 million, of which the supply of IAM car parts to the IMT (wholesale IAM) accounted for around [X] million (or around [X] per cent of total revenues). Table 2.2 below sets out a breakdown of AP's revenues over the last three financial years.

**Table 2.2: AP revenue breakdown (FY14 to FY16)**

<i>FYE September</i>	<i>FY14</i>	<i>FY15</i>	<i>£'000s FY16</i>
<b>Revenues</b>			
Wholesale IAM	[X]	[X]	[X]
Retail IAM	[X]	[X]	[X]
Garage equipment	[X]	[X]	[X]
Private Label	[X]	[X]	[X]
Other	[X]	[X]	[X]
	<b>171,769</b>	<b>192,004</b>	<b>171,959</b>

Source: AP.

- 2.13 AP operated a similar supply chain model as ECP, with AP's network consisting of local depots, regional hubs, and a national distribution centre in Markham Vale. Products were procured centrally, and could be delivered either directly to the depot or via the national distribution centre.
- 2.14 In July 2014, AP purchased out of administration Unipart's 18 depots and three distribution hubs for [X]million. It also acquired in March 2016 for [X] Solid Auto (UK) Ltd, a wholesale distributor of IAM car parts with a specific focus on car parts for Asian marques of vehicle and a presence in the Midlands.
- 2.15 Between 1999 and 2008 and then between July 2014 and November 2015, AP was a member of the PA buying and trading group. This enabled AP to benefit from greater volume discounts from suppliers and increased its ability to supply larger Key Accounts. When PA acquired GSF Motor Factors in September 2015, it terminated AP's participation in the PA buying and trading group.

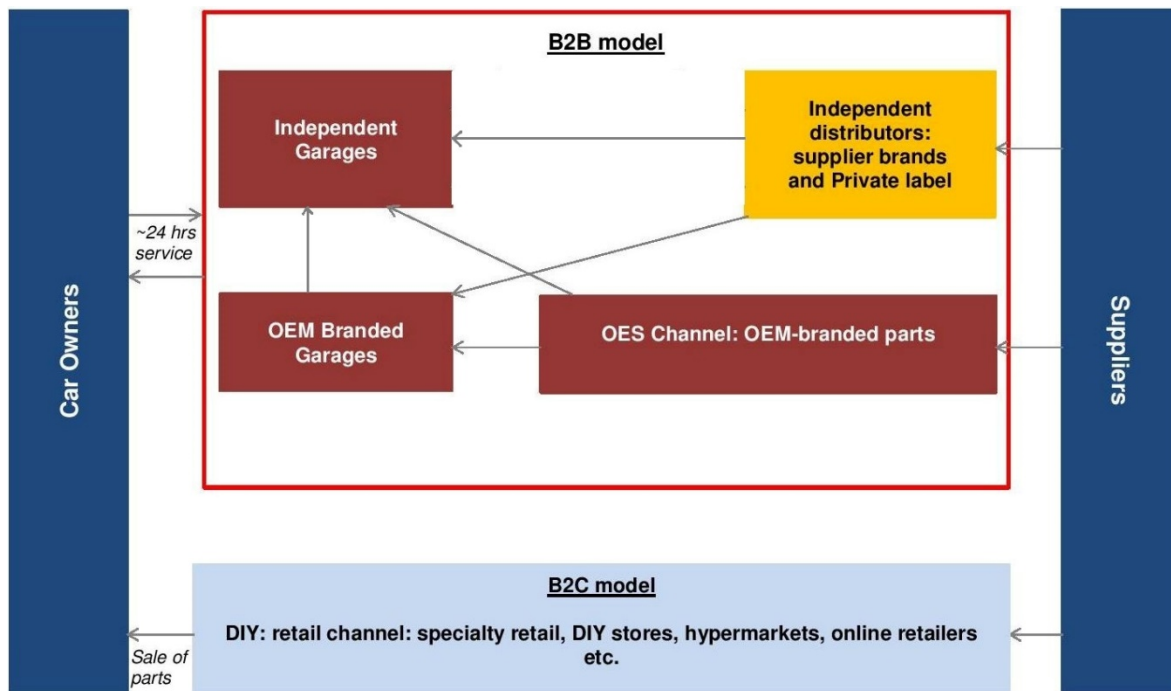
### **3. Industry background**

- 3.1 As described above, ECP's and AP's principal business is the supply of a wide range of IAM car parts primarily to the IMT. In addition to the IMT, the Parties' supply IAM car parts to retail customers and to other motor factors. The Parties also supply garage equipment to the IMT and supply their own private label car parts.
- 3.2 In this section, we provide an overview of the supply of IAM car parts to the IMT in the UK. We then explain why we have not investigated other areas of overlap in the Parties' activities.

#### ***Supply of IAM car parts to the IMT***

- 3.3 IAM car parts are replacement car parts that are not specific to one individual car marque. They are not approved by vehicle manufacturers and therefore are not branded as OEM parts. They are used when garages or workshops (whether independent of or franchisees of a vehicle manufacturer), car dealers or fast-fit centres repair and service vehicles. A supplier of IAM car parts to the IMT is generally known as a motor factor.
- 3.4 OEM car parts are primarily supplied to the IMT by the car manufacturers and their dealer networks. Such OEM parts suppliers generally only supply OEM car parts for their own marques of car, and not IAM car parts or other manufacturers' parts.
- 3.5 Figure 3.1 below illustrates the distribution chain for IAM and OEM car parts and identifies the different market players at each level. The Parties are identified as independent distributors (the yellow square).

**Figure 3.1: Distribution chain of car parts**



Source: Parties

- 3.6 The supply of IAM car parts is highly fragmented at the supplier and customer level. Customers for IAM car parts can broadly be distinguished between a) local customers whose choice is primarily driven by the supply options in their local areas and b) larger customers which select suppliers centrally and their choice is based on a range of requirements not limited to a particular locality.

#### *Independent garages, workshops and fast fit centres*

- 3.7 Unlike OEM owned and franchised dealers,<sup>4</sup> independent garages generally source most of their parts requirements from motor factors, unless a customer specifies that an OEM product be fitted or if an IAM car part is not available.
- 3.8 Some independent garages specialise in repairing and maintaining particular vehicle marques but most serve most car marques. Older cars are more likely to be serviced and/or repaired by independent garages and workshops. Because independent garages generally service and repair the full range of car marques, motor factors, such as ECP and AP, generally aim to supply as wide a range of parts for as many car marques as possible. They often stock several specifications at different price points of a particular part. Depending on its size and whether it is also a hub supplying smaller

<sup>4</sup> See further paragraphs 3.12 to 3.13 below.



outlets, a depot typically holds stock with a value of between [£]. Unlike other suppliers, both AP and ECP have a centralised distribution system whereby local depots are stocked overnight from a central distribution hub. Stock rotation varies significantly between different types of parts.

- 3.9 Sales teams are usually located at each depot to service local IMT customers. Pricing is generally set locally with depot managers having some discretion to determine final prices to individual customers.<sup>5</sup>

#### *National or multi-regional customers*

- 3.10 Whilst most independent garages are locally based requiring delivery to one or a small number of sites in a local area, some customers are national chains such as Halfords Autocentres (Halfords), ATS Euromaster and Kwik-Fit, with hundreds of sites across the UK. There are also larger customers which require deliveries across several sites within or across different regions of the UK. These include vehicle fleets associated with County Councils or the police, fire, ambulance services or specialist and commercial vehicle fleets. They also include roadside assistance and recovery companies such as the RAC. These larger national or multi-regional customers are known as Key Accounts.
- 3.11 Whilst independent customers normally have trade accounts with several motor factors, Key Accounts often tender for or directly negotiate with a primary supplier who can supply them across a wide geographic area and, on occasion, a secondary supplier. Key Accounts typically require suppliers to have broad geographic coverage in order to be able to deliver car parts quickly to all their sites, usually requiring central administration with a single price across all areas.

#### *OEM owned and franchised dealers*

- 3.12 OEM owned or franchised dealers generally repair and maintain cars for a specific car marque, eg Ford, BMW or Audi, and these dealers are usually appointed as part of an exclusive or selective distribution network. The Parties told us that increasingly dealers are owned by the vehicle manufacturer in order to give the manufacturer control over pricing for servicing and repairs.
- 3.13 While not compelled to use OEM parts, which are generally more expensive than the equivalent IAM part, franchised dealers are contractually

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<sup>5</sup> We consider in further detail the Parties' pricing in Appendix 5.1.

incentivised to purchase OEM parts from the vehicle manufacturer. Franchised dealers may still purchase significant volumes of IAM parts from motor factors such as ECP and AP because they are in competition with independent garages for repair and maintenance, particularly for older cars, and some dealers will service and repair cars of other marques.

### *Customer preferences*

- 3.14 Our Survey evidence shows that IMT customers choose suppliers based on several parameters, particularly price, product availability, speed of delivery and quality of service.<sup>6</sup> Suppliers deliver parts by van or motorbike. Product delivery time is particularly important<sup>7</sup> with customers usually requiring car parts to be delivered within approximately an hour of an order being placed. This includes the time taken to process an order as well as the delivery time.
- 3.15 The Survey results indicate that IMT customers tend to order as they need the parts and may place orders several times in a day.<sup>8</sup> Customers often contact several suppliers to identify part availability, delivery time and to agree price. The Parties told us that some customers will place an order for the same part with more than one supplier and return the part that is delivered second, or the higher priced part if both arrive in time. Return rates are also relatively high because customers pre-emptively order parts (eg for a service) which are then not required (eg because a service is a no show) or the vehicle owner has a different preference (eg for an OEM part rather than an IAM part).

### *Motor factors*

- 3.16 Apart from the Parties, other larger general motor factors include PA, AAG and MPD. The sector is, however, highly fragmented with a significant number of independent motor factors, some with only one depot or a small number of depots within a local area. As mentioned above, as with AP until September 2015, some of these smaller motor factors are members of buying groups.
- 3.17 Both ECP and AP are general motor factors supplying a broad range of IAM parts. There are also a number of motor factors, often locally based and with limited distribution networks, which specialise in a particular set of parts such as exhausts, brakes or clutches. These specialist parts suppliers do not

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<sup>6</sup> Figure 13: Most important characteristics when choosing a car parts supplier

<sup>7</sup> Figure 14: Important characteristics in selecting a car parts supplier, [Customer research survey: CMA commissioned research](#).

<sup>8</sup> Figure 8: How parts are ordered, [Customer research survey: CMA commissioned research](#).

supply the full range of car parts that general motor factors such as the Parties supply.

- 3.18 In addition to motor factors, as described above, customers can also source replacement car parts from OEM owned and franchised dealers. Whilst many of these dealers are small and supplying OEM parts is not their primary business, several have national or multi-regional networks which supply OEM car parts to the IMT on a more regular basis. These include Volkswagen's Trade Parts Specialists (TPS), Ford's TrustFirstParts, Vauxhall Trade Club, Nissan Trade Club and Renault Motrio.<sup>9</sup> However, unlike motor factors, such suppliers generally only supply OEM parts and will only supply such parts for a particular marque of car. They may also not deliver with the same frequency as general motor factors.<sup>10</sup>

*Background information on large general motor factors other than ECP and AP*

- *Parts Alliance*

- 3.19 PA is a general motor factor with 160 wholly owned depots throughout the UK. In the last few years it has expanded its network of owned depots. In 2015, it acquired GSF Car Parts, which added 75 owned branches to the PA network.
- 3.20 PA was owned by HgCapital until June 2017, when it was acquired by Uni-Select, a large Canadian operator. In the press release announcing the transaction, Uni-Select noted that PA has 'a market leadership position and national scale, a proven growth platform and an experienced management team that has demonstrated its ability to drive profitable growth both organically and through acquisitions'.<sup>11</sup>
- 3.21 PA is also a large buying and trading group, with a network of over 200 depots including depots owned by four affiliate members.<sup>12</sup> It has also formed a strategic alliance with Independent Motor Trade Factors Associated Ltd (IFA) to serve national Key Accounts.<sup>13</sup>
- 3.22 In September 2016, as part of the sale process leading to the Merger, PA submitted a bid for 39 AP depots.

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<sup>9</sup> For more details, see Parties' submissions set out in paragraph 5.5.

<sup>10</sup> Further information on OEM parts suppliers is contained in section 5.

<sup>11</sup> Parties' submission 'Response to Phase 1 Decision' (9 June 2017), paragraph 4.21.

<sup>12</sup> BBC, BMS, Dingbro and Qualvecom.

<sup>13</sup> See paragraph 3.26 below.

- *Alliance Automotive Group*

- 3.23 AAG is a general motor factor active in the UK, France and, more recently, in Germany, with FY15 revenue of around €1.5 billion. It is owned by Blackstone Group.
- 3.24 In the UK, AAG operates under the brands 'Groupauto UK' and 'United Aftermarket Network'. It owns over 80 depots but also acts on behalf of approximately 360 independent motor factors with approximately 1,100 depots. The operations of AAG in the UK had revenue of around €350 million in the 12 months to 31 March 2016.
- 3.25 In August 2016, AAG entered into a £120 million agreement to acquire the Car Parts Division of Lookers plc, including FPS Distribution. Press reports indicated that the Lookers Car Parts Division had revenue of around £219 million in FY15. On 31 October 2016, the acquisition was approved by the European Commission.
- 3.26 In September 2017, AAG was purchased by Genuine Parts Company. Genuine Parts Company is an American service organisation active in the distribution of automotive replacement parts, industrial replacement parts, office products and electrical/electronic materials.

- *Independent Motor Trade Factors Associated (IFA)*

- 3.27 IFA is a motor factor buying group supplying IAM parts to the IMT and to the general public. IFA has 31 members and together they have over 200 depots nationally. The Parties estimated that the aggregate annual sales of IFA's UK members are around £200 million. As described above, it has a strategic alliance with PA to supply national Key Accounts.

- *Motor Parts Direct*

- 3.28 MPD is a general motor factor operating over 90 depots in the south and the south east of England. It also sells parts online directly to consumers. In FY15, the company's revenue was £70 million.
- 3.29 MPD submitted an offer for 23 AP depots as part of the sale process leading to the Merger.

## **Garage Equipment (GE)**

- 3.30 ECP and AP are both active in the supply of GE, which covers a broad range of products used by garages in the repair and maintenance of customers' vehicles.
- 3.31 In our statement of issues<sup>14</sup>, we explained that we did not propose to investigate the competitive effects of the acquisition on the supply of garage equipment to local IMT customers. This was on the basis that:
- (a) AP's activities in this area were limited;
  - (b) there are a large number of suppliers, including manufacturers of garage equipment which are able to supply both Key Accounts and local IMT customers directly; and
  - (c) the supply of garage equipment is generally less time critical than the supply of IAM car parts, potentially providing a broader competitor set.
- 3.32 We invited comments on our intention not to investigate the supply of GE further but did not receive any submissions on this area in response. We therefore did not investigate the supply of GE further.

## ***Supply to retail customers and supply of private label car parts***

- 3.33 ECP and AP are both active in the supply of car parts to retail customers and the supply of private label car parts. As noted in the Issues Statement, AP's activities in both areas are minimal. On that basis, the CMA decided not to investigate these overlaps.

## **4. The transaction and relevant merger situation**

### ***Events leading up to the transaction***

- 4.1 The Parties told us that AP's historic 'aggressive expansion strategy' meant that it 'faced considerable financing challenges', and that in late 2015 and early 2016, several events took place which had the effect of weakening the company further.<sup>15</sup> By March 2016, a number of alternative options were being considered by the AP Board and its investors, including: (a) additional funding to allow trading on a low-capital basis; (b) a funded expansion; and (c) an exit plan via sale to a third party. By early September 2016, it was

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<sup>14</sup> [Issues statement](#).

<sup>15</sup> Parties' response to the Issues Statement (29 June 2017), paragraphs 2.3 and 2.5.

decided that additional funding would not be available and that planned insolvency or an accelerated sales process were the only realistic options.<sup>16</sup>

- 4.2 The accelerated sale process began on 12 September 2016, managed by PwC. PwC sought interest from over 40 firms located in the UK and elsewhere, and with a number of private equity houses. In September 2016, ECP made an offer for essentially the whole of AP (ie 101 depots, the national distribution centre in Markham Vale and the Leeds head office), whilst PA and MPD made partial bids for a number of depots.<sup>17</sup>
- 4.3 Further details on the events leading up to the Merger are contained in section 6 where we consider the appropriate counterfactual.

### ***Structure of the transaction***

- 4.4 On 4 October 2016 ECP acquired certain assets of AP out of administration (the Assets):
- (a) AP's entire inventory (including the stock at AP's depots which were not acquired by ECP as part of the Merger);
  - (b) temporary licences to occupy, and an option for the assignment of the leaseholds for: 101 AP local depots (out of the 114 depots comprising the AP business prior to entering in administration); and (ii) AP's national distribution centre in Markham Vale and its head office in Leeds;<sup>18</sup>
  - (c) AP's business name and rights, goodwill, intellectual property, chattels (for example plant, machinery, computers, fittings and fixtures), transferred records, software; and
  - (d) certain customer and supply contracts.
- 4.5 As part of the transaction, most of AP's employees also transferred to ECP. The acquired business revenue of AP was around [X] million (or around [X] per cent of AP's total FY16 revenue of £172 million).
- 4.6 ECP paid a total consideration of around [X] (subject to post-completion stock adjustments), broken down into: inventory/stock ([X]); plant ([X]);

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<sup>16</sup> Parties' response to the Issues Statement (29 June 2017), paragraph 2.6.

<sup>17</sup> Parties' response to the Issues Statement (29 June 2017), paragraph 2.11.

<sup>18</sup> On 4 July 2017, the Administrators granted ECP Newco an extension of the property licences to [X], which committed it (before the property licences expired) to either: (a) enter into an assignment, a new lease or a tenancy at will with the landlord in respect of each of the AP properties; or (b) subject to CMA approval, surrender the lease and vacate the property.

AP's property at Warrington ([REDACTED]); goodwill ([REDACTED]); and other assets ([REDACTED]), ie business name, rights, contracts, intellectual property, records and software.

### ***Rationale for the transaction***

- 4.7 ECP told us that it had pursued a programme of expansion in the UK, and explained that the Merger enabled it to 'expand its business more quickly and cheaply than would otherwise be possible', and bring on board experienced staff into its own business.
- 4.8 ECP also told us that it had looked at acquiring AP in 2015. At that time, it had carried out a synergies analysis, which concluded that there were 'a number of significant synergies', primarily in the form of procurement and back-office savings. ECP assumed that a proportion of synergies would be competed away, and 'therefore passed back to consumers', but AP could still be run more profitably under ECP's ownership. ECP told us that it did not carry out any further synergies analysis during the September 2016 accelerated sale process due to the time constraints imposed by that process. It proceeded on the basis that these synergies would still be attainable.
- 4.9 ECP told us that during the accelerated sale process it determined that a small number of depots were trading so badly as to be 'uneconomical', based on that depot's revenues and EBITDA performance, as well as the status of its existing facility, eg size, condition and layout. [REDACTED].
- 4.10 The Parties also told us that since ECP acquired 101 depots at the same time, it had to acquire the Markham Vale national distribution centre because its own national distribution centre at Tamworth was still under development, and was not available to take on the supply functions for an additional 101 depots. They also told us that ECP acquired AP's head office in Leeds because the head office performed various back-office functions on behalf of AP's depots, and they could not be replicated in ECP's own head office in the short term.

### ***Jurisdiction***

- 4.11 Under section 35 of the Act, and pursuant to our terms of reference (see Appendix 1.1), we are required to investigate and report on certain statutory questions, the first being whether a relevant merger situation has been created. Section 23 of the Act provides that a relevant merger situation has been created if two or more enterprises have ceased to be distinct within the statutory period for reference and either the turnover test or the share of supply test (or both) specified in the Act is satisfied.

## ***Enterprises ceasing to be distinct***

### *Concept of enterprise*

- 4.12 The Act defines an ‘enterprise’ as ‘the activities or part of the activities of a business’. A ‘business’ is defined as ‘including a professional practice and includes any other undertaking which is carried on for gain or reward or which is an undertaking in the course of which goods or services are supplied otherwise than free of charge.’<sup>19</sup>
- 4.13 The Parties have submitted that the Assets met the definition of an ‘enterprise’ within the meaning of the Act because ECP has in principle acquired through the Assets most of the activities of the AP business which allow ECP (with suitable support and investment) to carry out the activities that AP used to carry out before it went into administration.
- 4.14 As set out above in paragraphs 4.4 to 4.6, the Assets constitute a very substantial part of the AP business (ie around [X]% of AP business’ depots both in volume and revenue terms).
- 4.15 In line with the Interim Enforcement Order, only limited steps have been taken to integrate the Assets into the ECP business. The special purpose vehicle created by ECP to acquire the Assets, Andrew Page 1917 Limited, is operating essentially as a stand-alone business. In this context, the Assets (including chattels, employees and customer contracts) that were acquired by ECP and put into Andrew Page 1917 Limited are sufficient to continue the AP’s activities as a going concern.
- 4.16 On that basis, we are satisfied that both ECP and the Assets satisfy the definition of an enterprise for the purposes of the Act as, in accordance with section 129 of the Act, they carry out the activities of a business for gain or reward and operate as a going concern with the necessary assets, employees and customer contracts.<sup>20</sup>

### *Ceasing to be distinct*

- 4.17 Section 26 of the Act provides that two enterprises cease to be distinct once they are brought under common ownership or common control. As a result of the Transaction, the Assets have come under the legal ownership of ECP.
- 4.18 We are therefore satisfied that two enterprises have ceased to be distinct.

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<sup>19</sup> Section 129(1) and (3) of the Act.

<sup>20</sup> CMA2, Mergers: Guidance on the CMA’s jurisdiction and procedure, January 2014, paragraph 4.6.



## ***Turnover test***

- 4.19 The turnover test is satisfied where the value of the turnover in the UK of the enterprise acquired exceeds £70 million.<sup>21</sup> The turnover for the activities attached to the Assets<sup>22</sup> during AP's latest financial year (ended 30 September 2016) was £ [X] million in the UK, well in excess of the statutory threshold. We are therefore satisfied that the turnover test is met.
- 4.20 Given the above, we are not required to consider whether the share of supply test is met.

## ***Conclusion on jurisdiction***

- 4.21 We concluded that the Merger constitutes a relevant merger situation within the meaning of section 23 of the Act. As a result, we must consider whether the creation of that relevant merger situation may be expected to result in a SLC within any market or markets in the UK for goods or services.<sup>23</sup>

## **5. Market Definition**

### ***Introduction***

- 5.1 The purpose of market definition is to provide a framework for the CMA's analysis of the competitive effects of a merger. The relevant market (or markets) is the market in which the merger may give rise to a SLC and contains the products and/or services that are the most significant competitive alternatives available to the customers of the merged companies. Market definition is a useful analytical tool but is not an end in itself and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CMA's analysis of the competitive effects of a merger in a mechanistic way. The CMA may, for example, also take into account constraints outside the relevant market (or markets).<sup>24</sup>
- 5.2 As described in sections 2 and 3 above, the Parties' activities primarily overlap in the supply of IAM car parts for cars and light vehicles to the IMT. For the reasons set out in section 3<sup>25</sup>, in assessing the Merger we have not

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<sup>21</sup> Section 23(1)(b) of the Act.

<sup>22</sup> Pursuant to section 28 of the Act, for the purposes of section 23, the value of the turnover in the UK associated with the Assets has been determined by taking the total value of the turnover in the UK of AP's business and deducting the turnover in the UK associated with the activities associated with the assets that have not been taken over by ECP.

<sup>23</sup> Section 36 of the Act.

<sup>24</sup> Merger Assessment Guidelines, paragraphs 5.2.1 and 5.2.2.

<sup>25</sup> See paragraphs 3.30 to 3.33.

considered the Parties activities in respect of garage equipment, the retail supply of car parts or private label car parts.

- 5.3 We examine in this section two dimensions of market definition: the product dimension and the geographic dimension. We also examine whether there are separate customer groups on which the Merger may impact in different ways.

### ***Product markets***

- 5.4 We have not found evidence, and the Parties have not submitted, that the product market should be narrower than the supply of IAM car parts for cars and light vehicles to the IMT. We have considered however whether it should be broader, specifically whether it should include the sale of OEM car parts for cars and light vehicles and whether it should include specialist suppliers.

### ***Evidence from the Parties***

- 5.5 The Parties stated that the market has traditionally been divided into vehicle manufacturers and their dealers (VM dealers) selling OEM car parts on the one hand and motor factors selling IAM car parts on the other. However, the Parties argued that this distinction is no longer appropriate, and that the relevant product market should be the supply of car parts to the IMT, including both OEM car parts and IAM car parts. In support of this, ECP submitted that:
- (a) VM dealers are in fierce competition with the IMT for customers. Both the CMA's and the Parties' survey data show that the IMT obtain about a quarter of its supplies from OEM parts suppliers and between 40-50% of IMT customers which do not currently use OEM parts suppliers could switch at least half their requirements to an OEM parts supplier;<sup>26</sup>
  - (b) OEM parts suppliers have perceived quality advantages in supplying 'genuine' parts and in identifying correctly the right part and delivering it first time. The Parties submitted that the quality of parts was the number one factor in Survey respondents' choice of supplier, ahead of both speed of delivery and price. The Parties' submitted that this was reflected in the ICDP Repairer Survey 2017 (the ICDP report), the results of which showed that quality perceptions as well as vehicle owner requests for OEM parts accounted for [X] of instances in which a

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<sup>26</sup> Parties' response to Provisional Findings (5 October 2017), paragraph 3.7.

workshop chooses OEM parts. Further, the Parties argued that the ability of an OEM supplier to identify the correct part first time was a key factor in customers' choice of supplier and was a counterweight to any potential disadvantage from having timed or less frequent deliveries<sup>27</sup>;

- (c) some VM dealers use IAM parts and the IMT sometimes uses OEM parts;
- (d) ECP depots' price match against OEM suppliers and the recommended retail price of an OEM branded and IAM car part can be the same;
- (e) OEM branded and IAM car parts can be physically the same and indeed manufactured by the same companies;
- (f) OEM suppliers specifically target the IMT and compete directly with general motor factors. In particular, the Parties cited the following OEM parts suppliers:
  - (i) Volkswagen's Trade Parts Specialist (TPS) - launched in 2006 TPS supplies OEM branded parts from a network of over 70 depots for its Audi, Seat, Skoda and Volkswagen marques. It also markets an 'all makes' FourPlus range and a Quantum range, a 'value' alternative to 'genuine' parts, to the IMT.
  - (ii) TrustFirstParts - Ford Retail operates TrustFirstParts and TrustFord with over 60 depots selling Ford branded parts and supplies a specific aftermarket parts brand called Motorcraft directly to the IMT.
  - (iii) PSA, part of the Peugeot Citroen Group, offers delivery of parts for Peugeot group car marques through a newly established network of approximately 30 dealers. The Parties also referred to PSA's Eurorepar scheme of garages and workshops who offer repairs for all vehicle marques.
  - (iv) Vauxhall Trade Club, which supplies genuine Vauxhall parts from over 70 centres.
  - (v) Nissan Trade Club, which supplies genuine Nissan parts from over 70 centres.

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<sup>27</sup> The Parties submitted that the Vauxhall Trade Club parts return rates, which they understood to be approximately 8% by value (compared to the Parties' return rates of [X]), supported their argument that OEM parts suppliers have an advantage over the Parties in the correct identification of parts. Parties' response to Provisional Findings (5 October 2017), paragraph 3.5.

- (vi) Renault Motrio, which is Renault's garage network and offers Renault Motrio branded parts.
- (g) A large number of car dealerships also sell OEM car parts to the IMT. Several of these dealerships have extensive distribution networks, that are larger than those of the bigger general motor factors, and have a level of sales of car parts to the IMT comparable to that of AP prior to the Merger.
- 5.6 Whilst the Parties submitted that independent garages would not generally deal with a supplier which only sold a single car part type, they also said that the ICDP report showed that OEM suppliers accounted for [X] of the purchases made by respondents to that survey.
- 5.7 The Parties submitted analyses by CRA on the relationship between ECP's discounting and margins and the number of competitors (based on the analysis set out in the CMA's decision to refer the Merger) in an area (together referred to as CRA's cross-sectional analyses).<sup>28</sup> These analyses also compared ECP's discounting and margins in areas where ECP overlaps with AP with its discounting and margins in areas where it does not overlap with AP. Overall, CRA's cross-sectional analyses did not find a clear and significant relationship between the number of competitors in an area and ECP's level of discounting or margins. The Parties said that this illustrated that the catchment areas and/or the number of competitors being considered in each area were not measured accurately. The Parties submitted that this was consistent with ECP facing constraints from many competitors, including specialist and OEM parts suppliers.
- 5.8 The Parties also submitted that specialist suppliers are viable competitors to the Parties. Specialist suppliers focus on the supply of a particular type of part, eg clutches, and do not supply the full range of car parts that general motor factors such as the Parties supply. The Parties acknowledged that most specialist suppliers do not have extensive distribution networks and may be unable to deliver to the majority of IMT customers within a one-hour timeframe. They also stated that independent garages would not generally deal with a supplier which only sold a single car part type. The Parties therefore accepted that the competitive constraints from specialist suppliers are not as strong as from general motor factors such as the Parties.
- 5.9 In response to our Provisional Findings, the Parties reiterated their view that OEM and specialist car parts suppliers should be viewed as part of the same

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<sup>28</sup> Appendix 5.1 contains fuller details on CRA's cross-sectional analyses.

market as general motor factors. The Parties submitted that, because car parts are ordered as and when they are required, customers make a choice on each order regarding the supplier. It is therefore not material to the customer whether a supplier supplies a full range of parts as long as the supplier is able to provide the specific part required for that specific order. An OEM parts supplier, for example TPS (Volkswagen OEM parts), will be an alternative supplier to ECP whenever a customer requires a part for a Volkswagen car and the customer will not be interested in whether TPS can or cannot supply parts for any other marque at the time of placing its order for the Volkswagen part.<sup>29</sup>

- 5.10 The Parties also provided, following our Provisional Findings, additional margin analysis by CRA demonstrating, the Parties submitted, that there is no difference between margins in areas with three or fewer competitors compared with areas with four or more competitors. The Parties argued that this suggests that there are other constraints on the Parties other than general motor factors, including the constraints from OEM parts suppliers and specialist suppliers, which in aggregate are a significant constraint on the Parties.<sup>30</sup>

*Evidence from the Parties' internal documents.*

- 5.11 The Parties' internal documents provide limited support for the Parties' submission that both OEM and specialist parts suppliers are effective competitors to general motor factors.<sup>31</sup> OEM and specialist parts suppliers are mentioned infrequently in comparison with general motor factors. In particular, while a number of general motor factors are referred to by name in internal documents, this is rarely the case for OEM and specialist parts suppliers.<sup>32</sup>

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<sup>29</sup> Parties' response to Provisional Findings (5 October 2017), paragraph 3.4.

<sup>30</sup> Parties response to Provisional Findings (5 October 2017), paragraph 5.2 (d).

<sup>31</sup> There are only a few references to competition from OEM and specialist parts suppliers. For example, in its 2015 annual report, LKQ states that for its European segment specifically (ECP in the United Kingdom and Sator in the Netherlands) all suppliers of replacement repair products are viewed as competitors, including other alternative parts suppliers and OEMs and their dealer networks. In several business plan presentations, ECP notes that manufacturer dealer trade clubs are becoming more competitive. In one of its budget presentations LKQ stated that it regarded OEM parts suppliers as a strong competitive constraint which were implementing competitive pricing strategies.

<sup>32</sup> For example, OEM and specialist parts suppliers are rarely mentioned in the Parties internal documents assessing potential new depot sites and only [X] suppliers listed in ECP's 2015 promotion database are OEM or specialist parts suppliers (in the case of the one OEM parts supplier listed, this supplier was used by the customer alongside AP). ECP's 2015 promotion database relates to a promotion run by ECP in June 2015 where each branch manager was asked to identify [X] customers and their suppliers who would be targeted for promotions.

### *Evidence from ECP's price matching data*

- 5.12 Our analysis of ECP's Instant Price Matching (IPM) data can be found in Appendix 5.1. As noted there, OEM and specialist parts suppliers appear very infrequently (on average) in the IPM data. This suggests that OEM and specialist parts suppliers do not exert a significant competitive constraint on the Parties or other general motor factors, certainly in relation to price. However, to the extent that these categories of supplier compete more strongly on non-price parameters (and so might be less likely to appear in ECP's IPM data), we recognise that the evidence from ECP's IPM data will understate the constraint they exert on the Parties.

### *Third party supplier views*

- 5.13 We received responses to our questionnaire from four OEM parts suppliers<sup>33</sup> out of the six OEM parts suppliers we contacted before publishing our Provisional Findings. Three out of the four OEM parts suppliers said that they competed with general motor factors such as AP and ECP to supply the IMT only in relation to a subset of the products which general motor factors supply. However, Bluegrasscoms<sup>34</sup> told us that it competed strongly with the Parties across all the products general motor factors supply. This may reflect the wider range of car marques on behalf of which Bluegrasscoms supplies car parts.
- 5.14 We sought additional information from an OEM parts supplier which confirmed that it supplied from [X] depots OEM car parts to the IMT for a number of car marques<sup>35</sup>. This OEM parts supplier said that it, and other OEM parts suppliers like it, have a fundamentally different offering from that of general motor factors such as ECP and that consequently any competition to supply the IMT between it and general motor factors was limited. It said that it primarily supplies to the IMT parts that are not available from general motor factors such as ECP. These are parts which are not available in the aftermarket at all, parts which, for whatever reason, general motor factors do not supply, and parts which a vehicle owner may require to be sourced as OEM parts and not IAM parts. These differences were reflected not only in the different prices of OEM and IAM parts but also in the nature of the offering – in order to make sales, the OEM parts supplier did not need to

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<sup>33</sup> TPS, Quickco (part of Pendragon Group supplying OEM parts for a number of VMs including Ford, Vauxhall, Renault and Nissan), Renault UK (Motrio Programme) and Bluegrasscoms (Vauxhall, Ford, Renault and Volkswagen).

<sup>34</sup>Bluegrasscoms is a telesales and marketing consultancy that manages these services for a number of VM trade clubs including Vauxhall, Ford, Renault and Volkswagen.

<sup>35</sup> [X].

offer within-the-hour local delivery<sup>36</sup> as a customer would not generally be able to source the part from a motor factor such as ECP.

- 5.15 The evidence from OEM parts suppliers confirmed that OEM parts suppliers predominately supply parts only for specific car marques (albeit in the case of Bluegrasscoms and Quickco for a wider range of car marques). OEM parts suppliers also noted that ECP's and AP's strategy and focus are different from theirs since OEM parts suppliers focus on the supply of car parts for particular car marques whereas general motor factors focus on medium to fast moving parts generally, supplying multiple grades of the same parts across most car marques.<sup>37</sup>
- 5.16 TPS' and Renault Motrio's responses also illustrated that their supply of 'all makes' parts was limited. TPS noted that [over 90%] of its revenue was derived from the supply of parts for its own car marques. TPS described its Quantum 'all makes' range as limited to the supply of general consumables (eg oil and coolant) and stated that sales of these products account for [less than 10% of overall turnover (approximately [%])]. Likewise, Renault Motrio noted that it sells a limited volume of 'all makes' parts, consumables and paint which are not specific to their car marques with a total revenue of only approximately [%] pa.
- 5.17 In addition, OEM parts suppliers are less likely to deliver on demand or as frequently as the Parties and other general motor factors and are therefore less likely to compete on delivery times. For example, Bluegrasscoms said that it delivers between two to three times per day and TPS's delivery frequency to local IMT customers varies by depot, by part and customer location but is generally between two to four times per day. As noted above in paragraph 5.14, one OEM supplier explained that as a result of its fundamentally different offering compared to general motor factors, it did not need to deliver as frequently as general motor factors and generally delivered either next day or, depending on the location of the customer to its five depots, twice daily.
- 5.18 Three general motor factors (AAG, PDP and PA) provided us with views on the extent of competition between general motor factors and OEM parts suppliers. AAG and PDP told us that they compete with other general motor factors as well as OEM and specialist parts suppliers. AAG said that certain

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<sup>37</sup> For example, TPS and Renault Motrio.

OEM parts suppliers, such as Vauxhall Trade Club and TPS have strong trade programmes and AAG competes against those suppliers.

- 5.19 PA told us that it competes with other general motor factors and specialist suppliers but only to a limited extent with OEM parts suppliers. PA said that it competes with specialist suppliers only in relation to certain products, so the competitive element depends on the availability of a specific part, with price and service being a secondary consideration. PA also told us that OEM parts suppliers focus on supplying parts for vehicles in the first years of registration (3-4 years) as well as offering products to which the aftermarket has limited access or in which it has limited interest in supplying. Whilst PA sources OEM products from OEM parts suppliers on behalf of garage customers to offer a complete service, it did not view OEM parts suppliers as direct competitors.
- 5.20 We received 16 responses from the approximately 500 smaller independent car parts suppliers we contacted and which were identified as general motor factors by the Parties. Given the limited number of responses we received from these smaller suppliers we have exercised caution when interpreting the evidence we received from these Parties.
- 5.21 We asked whether these suppliers considered that they competed with general motor factors, specialist motor factors and/or OEM parts suppliers. As Table 5.1 shows, most general motor factors responded that they compete with other general motor factors but were less likely to say that this was the case for specialist and/or OEM parts suppliers.<sup>38</sup>

**Table 5.1: Number of respondents that responded that they compete with other suppliers**

<i>Number of general motor factors that compete with:</i>	<i>Other general motor factors</i>	<i>Specialist motor factors</i>	<i>OEM suppliers*</i>
Yes	14	8	10
No	1	5	3
No response	1	3	3

Source: CMA.

\* Nine general motor factors submitted additional comments. In one case these comments indicated that, even though the respondent said that they competed with an OEM or specialist parts supplier, general motor factors are their main competitors and they compete with OEM and specialist parts suppliers only to a limited extent.

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<sup>38</sup> A few OEM parts suppliers were mentioned by name in the responses, the most common was Volkswagen/TPS mentioned 4 times.



## *Customer views*

### *Key Accounts*

- 5.22 We received 14 responses from the 19 Key Accounts we contacted.<sup>39</sup> We asked these customers whether they would consider using an OEM parts supplier, or a number of OEM parts suppliers, as an alternative to a general motor factor.
- 5.23 Four customers replied that they would not use an OEM parts supplier. The main reason given for not considering an OEM parts supplier was that prices of OEM parts are too high. Some customers also mentioned that the service is poor, that it would require them to use multiple dealers to supply their entire network and that OEM parts suppliers try to direct all retail business through their own workshops.
- 5.24 Three customers responded that they use an OEM parts supplier as one of their suppliers. These customers said that they use a combination of OEM and IAM car parts suppliers, depending on their requirements. The other four customers said that they would only use OEM car parts if this was specifically requested by their customer, if they needed a specific OEM part not available as an IAM part or if an OEM part is required by the manufacturer's warranty.

### *Survey responses*

- 5.25 Survey respondents were asked a number of questions about the characteristics which were important to them, the suppliers they had used in the last three months and the extent to which they could use alternative suppliers. The Survey results indicated that:
- (a) quality of parts and speed of delivery were the criteria which were most frequently mentioned by respondents. Price was also an important factor with consistently cheap prices being mentioned by a quarter of respondents and competitive prices by a fifth of respondents. Stock availability was mentioned by approximately a fifth of respondents.<sup>40</sup>
  - (b) half of respondents said that speedy delivery was required for more than 75% of their orders. Only around one in three respondents said that

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<sup>39</sup> We have not used three of the responses received as the customers told us they did not purchase mechanical car parts. Two (British Car Auctions and Nationwide Accident Repair) only purchased body shop parts while the other (McLaren) only purchased consumables.

<sup>40</sup> See Figure 13 of [Customer research survey: CMA commissioned research](#).

delivery in less than an hour is not required for the majority of their orders.<sup>41</sup>

- (c) 65% of the suppliers which had been used in the last three months were described by respondents as general suppliers.<sup>42</sup>
- (d) Survey respondents were also asked which were their top three suppliers. 74% described their main suppliers as a general supplier.<sup>43</sup> 72% described their second supplier as a general supplier<sup>44</sup> and 62% described their third supplier as a general supplier.<sup>45</sup>
- (e) a third of respondents said that they did not know how much business they could switch to OEM or specialist parts suppliers. Of those who said that they did know, approximately 70% said that they could switch half or less of their business to specialist suppliers and 75% said that they could switch half or less of their business to OEM parts suppliers. Only approximately 20% of respondents believed that they could switch all of their business to specialist and/or OEM parts suppliers.

#### *Our assessment of the evidence*

- 5.26 Overall the evidence from the Parties' internal documents and from third party suppliers does not support the Parties' submissions that OEM and specialist parts suppliers are a significant competitive constraint on the Parties and other general motor factors. The Parties highlighted in their response to our Provisional Findings that OEM suppliers which responded to our questionnaire said that they compete with general motor factors. However, we note that the OEM suppliers generally responded that this was only in relation to a subset of products which general motor factors supply. We also note that we would have expected OEM parts suppliers and specialist parts suppliers to appear more regularly in internal documents and in ECP's IPM data as well as in Survey responses if they are an effective constraint on the Parties. We consider further below at paragraph 5.38 the nature of the largest OEMs' aftermarket businesses and the extent to which these are a constraint on the Parties.

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<sup>41</sup> [Customer research survey: CMA commissioned research](#).

<sup>42</sup> Responses to S01 and Q15. The percentage increases to 77% once obvious misclassifications of suppliers are corrected (e.g. ECP not identified as a generalist).

<sup>43</sup> Responses to Q15 and Q16. The percentage increases to 89% once obvious misclassifications of suppliers are corrected (e.g. ECP not identified as a generalist).

<sup>44</sup> Response to Q15 and Q17. The percentage increases to 86% once obvious misclassifications of suppliers are corrected (e.g. ECP not identified as a generalist).

<sup>45</sup> Response to Q15 and Q18. The percentage increases to 71% once obvious misclassifications of suppliers are corrected (e.g. ECP not identified as a generalist).

- 5.27 The Parties also noted in response to our Provisional Findings<sup>46</sup>, that AAG had confirmed that it competes against OEM parts suppliers' trade programmes and that the response of PA should be given less weight because PA has an interest in the outcome of the CMA's process. The Parties also noted that 10 of the 16 smaller motor factors which responded to our questionnaire said that they competed with OEM suppliers and 8 that they competed with specialist suppliers.
- 5.28 We refer to paragraph 5.38 below and the nature of the largest OEM parts suppliers trade programmes. We disagree that PA's response should be given less weight. It was provided in response to a CMA request for information and PA is fully aware of its obligations under Section 117 of the Act in providing information to the CMA. PA's response is also consistent with the broader body of evidence discussed in this section. Furthermore, as described at paragraphs 5.20 and 5.21 above, given the limited number of responses from smaller motor factors we have exercised caution when interpreting this evidence. We note, however, that as Table 5.1 above shows, most general motor factors responded that they compete with other general motor factors but were less likely to say that this was the case for specialist and/or OEM parts suppliers.
- 5.29 In addition, the importance of price and stock availability to customers, both to Key Accounts and to local IMT customers, suggests that there is a limit to the competitive constraint OEM and specialist parts suppliers can provide on general motor factors. OEM and specialist parts suppliers tend to have a limited product range (whether limited to particular marques of cars or particular types of part). We were told that such suppliers typically do not price as competitively as general motor factors and typically do not offer multiple types of parts at different price points.
- 5.30 The Survey results also indicate that speed of delivery is important to customers, with over 90% of respondents saying that they 'order parts as and when I need them during the day' and half of respondents saying that they need delivery within an hour for more than 75% of orders.<sup>47</sup> The responses to our questionnaires indicate that OEM parts suppliers generally deliver less frequently than general motor factors. Specialist suppliers generally also do not appear to offer fast delivery. In contrast, ECP and AP generally offer customers delivery as and when required. This suggests that OEM parts suppliers and specialist suppliers do not offer an equivalent

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<sup>46</sup> Parties' response to Provisional Findings (5 October 2017), paragraph 3.8.

<sup>47</sup> For example, half of respondents said that they needed delivery within an hour for more than 75% of orders.

service to that offered by general motor factors and are only able to compete with general motor factors in a limited number of circumstances.

- 5.31 The Parties highlighted that, as quality of parts was the number one factor in Survey respondents' choice of supplier ahead of speed of delivery and price, this supported the Parties' argument that OEM parts suppliers have an advantage over the Parties and are therefore an effective constraint. Whilst OEM parts may be perceived as 'genuine' parts and therefore regarded as high quality parts, we saw no evidence that IAM car parts generally were regarded by IMT customers as low quality parts. The Parties, as is the case for many other motor factors, supply parts which are manufactured by the same manufacturer as OEM parts as well as different brands of the same parts at different price points to meet different quality requirements of IMT customers. Given the importance of quality to IMT customers, we would expect that, if such customers viewed the quality of OEM car parts to be materially higher than that of IAM car parts, that OEM parts suppliers would feature more frequently in Survey responses. We also note the evidence from Key Accounts set out in paragraphs 5.22 to 5.24 above.
- 5.32 The Parties also argued that the ability of OEM parts suppliers to more easily identify the right part also showed that OEM parts suppliers were an 'effective constraint' on the Parties. The Parties provided limited evidence in support of this argument other than the lower returns rate of one OEM parts supplier, Vauxhall Trade Club. We note that the Parties cited a number of reasons for the relatively high rate of parts returns to the Parties, including multiple orders being placed for the same parts by customers and orders for parts for 'no shows' or changing requirements as the car repair progresses. We also note that a significant proportion of orders to OEM parts suppliers are for parts that cannot be obtained from general motor factors or where the vehicle owner specifies a requirement for OEM parts. In these situations, the risk of return seems lower due to the more limited scope for multiple orders being placed or for a change of requirement. We therefore did not consider that the limited evidence of different levels of return rates supports the Parties' argument that OEM parts suppliers are viewed by IMT customers as having a sufficient advantage over the Parties in identifying parts such that they significantly constrain the Parties.
- 5.33 The Parties submitted<sup>48</sup> that the Survey supported their submission that OEM suppliers are a 'strong constraint'. In particular, they noted that 20% of

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<sup>48</sup> The Parties reiterated their previous submissions on the Survey and ICDP survey in response to Provisional Findings (5 October 2017), paragraph 3.7.

suppliers used by customers in the last 3 months were described by respondents as OEM parts suppliers. In response, we note that:

- (a) The above figures are based on the categorisation given to the supplier by each Survey respondent. However, it is clear that there were some inconsistencies in how Survey respondents described suppliers. For example, only 78% of respondents described ECP as a general supplier. Once a number of such obvious misclassifications are corrected, 77% of the suppliers used in the last three months were general suppliers whilst only 14% were OEM parts suppliers.
- (b) It is unclear whether responses to this question identified suppliers which were substitutable for or complementary to one another. For example, in some cases parts can only be sourced from an OEM parts supplier so such suppliers may be used to fulfil requirements which general motor factors cannot satisfy. Respondents were also asked a question directly about who else could have met their requirements for their last order from ECP or AP. For the unprompted response to this question, 78% of suppliers mentioned by respondents were described as general suppliers whilst only 13% were described as OEM parts suppliers.<sup>49,50</sup>

5.34 The Parties also noted that '[b]etween 70 and 78% of those customers who had not been using an OEM supplier could switch at least some of their business to an OEM supplier'. In addition, the Parties, in response to our Provisional Findings, said that if, as described in paragraph 5.24(e) above, approximately 20% of Survey respondents believed that they could switch all of their business to specialist and/or OEM parts suppliers, as a matter of economic logic, this must imply that OEM parts suppliers and specialist suppliers are a significant constraint on the Parties.<sup>51</sup> In response, we note that this needs to be considered in light of the evidence that a significant number of respondents categorised suppliers incorrectly.<sup>52</sup> Furthermore, as noted at paragraph 5.23 above, most respondents said that they could only switch a limited proportion of their purchases to OEM or specialist parts suppliers and 25% of respondents which answered this question said that

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<sup>49</sup> Responses to Q27, Q15 and Q28. Again, these percentages change once obvious misclassifications of suppliers are corrected (e.g. ECP not identified as a generalist). It appears that 88% of suppliers mentioned in response to this question were generalists whilst only 7% were OEM suppliers.

<sup>50</sup> This is also reflected in the low frequency with which individual OEM parts suppliers were mentioned in response to this unprompted question. For example, only 4% of respondents in areas where the Parties' listed TPS as a competitor mentioned TPS without being prompted (CMA analysis of responses to Q27).

<sup>51</sup> Parties' response to Provisional Findings (5 October 2017), paragraph 3.7.

<sup>52</sup> For example, only 78% of respondents described ECP as a general supplier.

they could not switch any of their purchases at all.<sup>53</sup> This is consistent with the view expressed by OEM suppliers that they compete only in relation to a subset of the products supplied by general motor factors (see paragraph 5.13).

- 5.35 Regarding the ICDP report submitted by the Parties, we note that the sample size for this survey is relatively small (900 responses) and is not confined to the UK. Moreover, the Parties have provided limited information about the methodology used. Therefore, we have treated the results of this survey with caution. However, in the context of the Parties' submissions, we note that the survey also suggests that OEM suppliers only compete with general motor factors in relation to certain purchases. This suggests a limit to the competitive constraint such suppliers provide. Specifically, the ICDP report stated that, in [X] of cases in which OEM branded parts were used, it was because the required parts were 'not available at all through any independent parts distributor'. Consequently, the ICDP report also noted that 'OEM-branded parts [compete] with IAM products in [X] of total orders'.
- 5.36 Contrary to the Parties' submissions, CRA's cross-sectional analyses do not provide any evidence related specifically to OEM and specialist parts suppliers. We discuss CRA's cross-sectional analyses in more detail at Appendix 5.1.<sup>54</sup> We consider that relatively little weight can be placed on CRA's cross-sectional analyses because of the limited quality of the available data and the methodology used. However, even setting those reservations aside and taking the results at face value, we consider that the inferences which could be drawn would be more limited than those submitted by the Parties. In particular, these analyses do not provide any specific evidence of the source of any additional competitive constraints on ECP. Therefore, these analyses do not provide evidence that any such constraints would be attributable to OEM or specialist parts suppliers rather than other general motor factors.<sup>55</sup>
- 5.37 Following our Provisional Findings, the Parties submitted an additional CRA margin analysis which, they argued, demonstrated that the CMA had failed to account for the competitive constraints from other suppliers including from

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<sup>53</sup> In response to our Provisional Findings, the Parties also submitted that of the 14 responses to the CMA's Key Accounts questionnaire, only four said they would not use an OEM supplier, with 10 customers already using such a supplier or willing to do so. As described in paragraphs 5.45 and 5.46 below, the evidence suggests that Key Accounts prefer to use a single supplier for the majority of their requirements. An OEM supplier would therefore generally not be in a position to compete against the Parties to be a primary supplier for most Key Accounts but only as a secondary supplier.

<sup>54</sup> We also discuss CRA's AP closure analysis in Appendix 5.1 and our assessment of the Parties' submission that it showed that whenever ECP lost AP as a constraint in the past, ECP was not able to materially increase its margins which, the Parties submitted confirmed the presence of sufficient competitive constraints on ECP.

<sup>55</sup> The same is true of CRA's AP closure analysis.

OEM parts suppliers and specialist suppliers. However, as described in Appendix 5.1, this analysis was based on a very small number of ECP depots – only 3 depots for areas with fewer than 4 suppliers in one case and only 5 depots in the other cases. Given the very small number of observations used in this analysis and its inability to account adequately for any of the other factors which may lead to variations in margins across branches, we did not consider that this additional margin analysis is sufficiently robust to support the Parties' submissions that OEM parts suppliers and specialist parts suppliers are an effective constraint on the Parties.

5.38 Finally, we note the following regarding the specific OEM parts suppliers cited by the Parties and included in paragraph 5.5(f) above:

- (a) The focus of each of these suppliers is on the supply of car parts for their particular vehicle marques. This contrasts with general motor factors which focus on supplying as wide a range of parts for as many vehicles as possible. Additionally, third party responses and the Parties' ICDP survey report indicate that a significant focus of OEM parts suppliers is on the supply of car marque specific parts which are less likely to be supplied by general motor factors. This indicates that the competitive constraint any individual OEM parts supplier exerts on a general motor factor is limited because OEM parts suppliers and general motor factors are only alternatives for a limited number of customers in a limited range of circumstances.
- (b) Some OEM parts suppliers also provide 'all makes' ranges. However, the evidence indicates that these 'all makes' ranges are limited in both the range of products supplied and the value of sales made. TPS has said that its Quantum range is limited to general consumables such as oil and coolant and the value of these sales is less than [X]. Renault Motrio also described its sales of 'all makes' parts as 'limited' and its sales of these parts and consumables accounted for less than [X].
- (c) The Survey responses suggested that purchases from OEM parts suppliers were generally complementary to, rather than substitutable for, purchases from general motor factors (ie OEM parts suppliers were often used to purchase parts which are unlikely to be available from general motor factors). For example, only 14% of the Survey respondents which had used TPS (the most commonly mentioned OEM parts supplier) in the last 3 months said that TPS was an alternative to the Parties unprompted. Similarly, the evidence from Key Accounts was that OEM and specialist parts suppliers, if used, were complementary suppliers to the Key Accounts primary general motor factor supplier.

### *Conclusion on the relevant product market*

- 5.39 Based on the evidence we have received, we concluded that the product market is the supply of IAM car parts by general motor factors for cars and light vehicles to the IMT. OEM and specialist parts suppliers appear to be alternative suppliers to general motor factors for a limited number of customers and/or in a limited range of circumstances and exert only a limited competitive constraint on general motor factors such as the Parties. As a result, we have not considered OEM and specialist parts suppliers as part of the relevant product market.

### ***Customer segmentation***

- 5.40 Our Merger Assessment Guidelines provide that relevant markets can be defined for separate groups of customers if the effects of a merger on competition to supply a specific group of customers may differ from its effects on the other groups of customers and require separate analysis.<sup>56</sup> In this case we have considered the possibility of separate customer groups for local IMT customers and Key Accounts.
- 5.41 As described in section 3, IAM car parts are supplied primarily to smaller IMT customers, mostly garages and workshops that operate locally from one site (local IMT customers). Respondents to the customer Survey were generally small businesses: 75% of respondents had five employees or fewer, and a majority had an annual turnover of £250,000 or less (excluding those who did not know/refused to say).
- 5.42 IAM car parts are also supplied to a range of larger IMT customers with multiple sites across a region or across the UK, so-called Key Accounts.
- 5.43 The Parties set out a number of criteria which distinguish Key Accounts from other IMT customers (although they noted that some Key Accounts do not meet all of these criteria):
- (a) Key Accounts are usually large, generally making purchases in excess of [£] per year;
  - (b) Key Accounts often require consistent pricing across all of their sites;
  - (c) Some Key Accounts have specific requirements for the product range that can be purchased by their sites; and

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<sup>56</sup> Merger Assessment Guidelines, paragraph 5.2.28.



(d) Key Accounts generally require centralised management, invoicing and back-office support.

5.44 Key Accounts vary significantly in size and geographic coverage. Some Key Accounts are truly national, with hundreds of sites across the UK and annual purchases in the millions or tens of millions of pounds, whereas others have a few sites within a region and much smaller purchase levels. There is no clear segmentation between different types/size of Key Accounts but rather a continuum of sizes. Some Key Accounts are unlikely to differ from local IMT customers in their requirements (for example customers which operate a small number of sites in a small geographic area) whereas national Key Accounts have different requirements.

5.45 Most Key Accounts told us that they would consider using (or already do use) suppliers which can supply only some of their sites. However, Key Accounts appear to prefer to use a single supplier for the majority of their requirements. With the exception of Kwik Fit, every Key Account which provided data on its purchases used one supplier for over [X] of its purchases and, of these, all apart from [X], used one supplier for over [X] of its purchases. This is consistent with what several Key Accounts told us about their purchasing strategies, for example:

- (a) BT Fleet told us that it has a primary supplier and in addition tends to have backup suppliers;
- (b) Micheldever told us it aims to give 80% of its business to a primary supplier, up to 20% of its business to a secondary supplier and up to 5% to other suppliers including local motor factors, in order to maintain a good delivery service and to be able to 'always say yes' to its own customers;
- (c) RAC told us that it selects a 'core' provider but also purchase from other suppliers;
- (d) Axle Group told us that it commits to purchasing 90% of its volumes through a contract with a first line supplier but uses second line suppliers for the remainder, and that this is the best split to ensure the best price and service possible; and
- (e) ATS Euromaster told us it has two 'First Choice Suppliers' (one for batteries and oil and one for all other parts) and then also some alternative suppliers which can only be used when the 'First Choice Supplier' would not be able to deliver the ordered part within the required delivery time.

- 5.46 Therefore, it appears that, while most larger Key Accounts may be willing to use a wide range of suppliers for a proportion of their requirements, the majority of Key Accounts orders go to suppliers which are able to deliver to a significant majority of a customer's sites. Therefore, a sufficiently broad geographic coverage is necessary for suppliers competing to be a Key Account's primary supplier.
- 5.47 Whilst recognising the continuum between Key Accounts and local IMT customers, we therefore concluded that the impact of the Merger on local IMT customers and the impact on Key Accounts in particular larger national/multi-regional Key Accounts is likely to differ and we therefore consider them separately.

### ***Geographic market***

#### ***Local IMT customers***

- 5.48 The Parties submitted that the relevant geographic market for the supply of IAM car parts to local IMT customers is local. This is because local IMT customers require motor factors to supply parts within a specified amount of time. In the Parties view, an appropriate catchment area for a depot is about five miles (because of the need to deliver products to such customers within an hour of an order being placed). The Parties made no additional submissions on the relevant geographic market for local IMT customers following our Provisional Findings.
- 5.49 We agreed that the relevant geographic market for the supply of IAM car parts to local IMT customers is local. As set out in our analysis of ECP's pricing and price matching data at Appendix 5.1, prices vary on a local basis. This is in response to competitive conditions which vary locally depending on the number of competing independent motor factors, speed of delivery and product range.
- 5.50 Our Merger Assessment Guidelines state that, when assessing a merger in markets involving a large number of locally based suppliers and customers, we may examine the geographic catchment area within which the great majority of an individual outlet's custom is located. Catchment areas are a pragmatic approximation for a candidate geographic market to which the hypothetical monopolist test can be applied.<sup>57</sup>

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<sup>57</sup> Merger Assessment Guidelines, paragraph 5.2.25.

- 5.51 We therefore undertook an analysis of catchment areas to inform our geographic market definition for local IMT customers. Both AP and ECP provided us with customer sales data for 2016 for a selection of depots. This data included the identity and location of most of the customers of each depot. We used this data to calculate catchment areas for each depot. Appendix 5.2 contains further details of the data and the methodology used in this analysis.
- 5.52 The analysis shows that each ECP and AP depot serves customers in a relatively narrow geographic area. Whilst the catchment areas for AP depots are slightly larger on average than for ECP depots, for both Parties, the average catchment areas are relatively small (less than a six mile radius on average for 70% catchment areas). The average catchment areas also increase gradually as the revenue thresholds increase. The 90% catchment areas are, on average, about twice the radius of the 60% catchment areas.
- 5.53 Our analysis also shows that there is a degree of variation in catchment areas across depots. For both Parties, using any revenue threshold, there is a wide variation in the size of catchment areas. For example, taking catchment areas for AP depots calculated on the basis of an 80% revenue threshold, while almost 20% of depots have a catchment area with a radius of less than [REDACTED] miles, more than 20% of depots have a catchment area with a radius of [REDACTED] or more miles.
- 5.54 Average catchment areas are only intended as a starting point for our competitive assessment. In our local competitive assessments, we assessed in each local area identified as an area of potential concern (see section 7) the features, including the actual locations of customers, which affect the extent of competition between suppliers in that local area. In general, customer catchment areas may be narrower than the geographic market identified using a hypothetical monopolist test and we recognise that our catchment area analysis is based on data from ECP and AP only and not from other suppliers. We have taken this into account in our approach to filtering and importantly, where relevant, we also consider in our local competitive assessments, the constraints posed by suppliers located further away.

### *Key Accounts*

- 5.55 The Parties told us that the supply of car parts to Key Accounts is national because Key Accounts have sites across different regions of the UK and would not consider a supplier that did not have depots across the UK/several regions. The Parties made no additional submissions on the relevant geographic market for Key Accounts following our Provisional Findings.

- 5.56 As described above, Key Accounts are customers which have multiple sites; some are truly national whereas others purchase across several sites within a region. Since Key Accounts tend to prefer to use a small number of suppliers across most or all of their sites, those Key Accounts with a larger number of sites have a more limited set of suppliers available to them. A supplier will therefore require a broad geographic coverage to supply larger Key Accounts as a primary supplier.
- 5.57 To provide an insight into how large the required geographic coverage is for the Parties' Key Accounts, we examined the number of ECP depots each Key Account customer purchased from and the total value of revenue ECP received from these customers in 2016.<sup>58</sup> The distribution of the number of depots that ECP's Key Account customers bought from is shown in Figure 5.1 and the distribution of their sales in 5.2.

**Figure 5.1: Distribution of ECP Key Account customers on number of depots bought from in 2016**

[X]

Source: ECP Key Accounts sales data.

**Figure 5.2: Distribution of sales from ECP Key Account customers by number of depots bought from in 2016**

[X]

Source: ECP Key Accounts sales data.

- 5.58 As shown in Figure 5.1, the majority ([X]) of ECP's Key Accounts ([X] customers) bought products from 10 or fewer ECP depots in 2016. These customers are likely to be smaller regional customers. Only [X] of customers ([X] customers) bought from more than 50% of ECP's depots (105 depots), while [X] of customers ([X] customers) bought from more than [X] of ECP's depots in 2016. These customers are likely to be national Key Accounts.
- 5.59 As shown in Figure 5, national customers make up the highest proportion of revenues for ECP. The [X] of customers who buy from more than 105 ECP depots made up [X] (c. [X] million) of the total revenue ECP earned from Key Accounts in 2016 ([X] million in total), while the [X] of customers purchasing from 10 or fewer depots accounted for only [X] of ECP's revenue from Key Accounts (c. [X] million).

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<sup>58</sup> Equivalent data was not available for AP.

### *Conclusion on the geographic market*

- 5.60 We concluded that the relevant geographic market is local to each depot for the supply of IAM car parts by general motor factors to local IMT accounts. For Key Accounts, we concluded that the geographic market is national.

### **Conclusions on the relevant market**

- 5.61 We found that the relevant product market is the supply of IAM car parts by general motor factors for cars and light vehicles to the IMT. IMT customers can be segmented broadly between locally based IMT customers (primarily independent garages and workshops) and larger (in sales) nationally or multi-regionally based Key Accounts respectively although we recognise the spectrum in terms of required geographic coverage for Key Accounts.
- 5.62 The available evidence suggests that OEM and specialist suppliers of car parts are not part of the relevant product market as these suppliers are not generally seen by the IMT as substitutable for general motor factors and therefore only exert a limited constraint on the Parties and other general motor factors.
- 5.63 We found that the geographic market for local IMT customers is local to each depot. For Key Accounts, we concluded that the geographic market is national. We considered as part of our competitive assessment differences in the competitive strength of different suppliers in supplying Key Accounts, in particular differences in their geographic coverage.

## **6. Counterfactual**

- 6.1 To assess the effects of the Merger on competition we need to consider what would have been the competitive situation without the Merger. This is called the 'counterfactual'.<sup>59</sup>
- 6.2 The CMA's approach to the counterfactual is set out in our Merger Assessment Guidelines.<sup>60</sup> The counterfactual is an analytical tool to provide a benchmark against which to assess whether the Merger has or may be expected to result in a SLC.<sup>61</sup> It does this by providing the basis for a

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<sup>59</sup> [Merger Assessment Guidelines](#), paragraph 4.3.1.

<sup>60</sup> [Merger Assessment Guidelines](#), Section 4.3.

<sup>61</sup> [Merger Assessment Guidelines](#), paragraph 4.3.1.

comparison of the competitive situation with the Merger against the likely future competitive situation absent the Merger.<sup>62</sup>

- 6.3 The counterfactual takes into account events and circumstances, and their consequences, which are foreseeable.<sup>63</sup> In this section we set out our assessment of, and conclusions on the appropriate counterfactual in relation to each relevant market.
- 6.4 One situation where the CMA may consider a counterfactual that is different from the prevailing conditions of competition (the pre-merger situation) is the 'exiting firm scenario'.<sup>64</sup> The Parties have submitted that AP was a 'failing firm' and that the appropriate counterfactual against which to assess the Merger is one in which AP had exited the market. As an alternative, the Parties submitted that a less realistic counterfactual in their view was the exit of AP from the market as a separate business but with a limited number of local depots being purchased by PA and/or MPD.<sup>65</sup> This view was reiterated in response to our Provisional Findings. In particular, the Parties consider it likely that PA and/or MPD, at least for some of the depots they may have acquired, would have exercised following acquisition the lease option on the site and then closed the business within the standard six month option period.<sup>66</sup>
- 6.5 Our Merger Assessment Guidelines state that we will consider the following three limbs in forming a view on an 'exiting firm scenario'.<sup>67</sup>
- (a) whether the firm would have exited (through failure or otherwise); and if so,
  - (b) whether there would have been an alternative purchaser for the firm or its assets to the acquirer under consideration; and, if not,
  - (c) what would have happened to the sales of the firm in the event of its exit.

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<sup>62</sup> [Merger Assessment Guidelines](#), paragraphs 4.3.1 & 4.3.6

<sup>63</sup> Paragraphs 4.3.1 and 4.3.2 of the Merger Assessment Guidelines.

<sup>64</sup> Other situations referred to in the Merger Assessment Guidelines are the loss of a potential entrant scenario and where there are competing and parallel transactions. None of these is applicable in the present case.

<sup>65</sup> For example, Parties' response to the Issues Statement (29 June 2017).

<sup>66</sup> This is due to the large investment that the AP depots required at the time. Parties' response to Provisional Findings (5 October 2017), paragraph 2.2.

<sup>67</sup> Paragraphs 4.3.8 and 4.3.11 of the Merger Assessment Guidelines.

- 6.6 The first two of these are discussed below. The final limb is considered as part of our assessment of the effects of the Merger on competition.<sup>68</sup>
- 6.7 In this case, the counterfactual selected in each local area has important implications for the circumstances in which a SLC might arise in any local area. Therefore, we have sought to determine the appropriate counterfactual for each of the 101 depots acquired by ECP as well as the AP head office and national distribution centre. The identification of a counterfactual for each depot in this case is consistent with past decisional practice, where an exiting firm scenario was tested on a location-by-location basis.<sup>69</sup> Appendix 6.3 sets out the relevant counterfactual we have identified for each of the AP depots acquired by ECP.

***Would AP have exited the market (through failure or otherwise) absent the Merger?***

- 6.8 Our Merger Assessment Guidelines state that, in the context of a firm exiting for reasons of financial failure, consideration is given both to whether the firm is unable to meet its financial obligations in the short term, and to whether it is unable to restructure itself successfully.<sup>70</sup>
- 6.9 We therefore considered AP's historical financial performance, the availability to AP of additional funding and the actions taken by AP management to improve AP's financial position.
- 6.10 In addition to evidence from the Parties, as part of our assessment, we examined AP's financial information over the last five years (ie FY12 to FY16) and its internal documents, and spoke to AP's former shareholders, Phoenix and Endless, AP's former CEO,<sup>71</sup> and PwC (acting as the administrators of the seller).
- 6.11 The Parties stated that, at the time of the Merger, AP could not pay its debts as they fell due and it was in administration. The Parties added that successive attempts by AP's management to turn the business around including through additional funding and restructuring had been unsuccessful.
- 6.12 AP's financial information is set out in further detail in Appendix 6.1. This confirms that AP experienced a sharp decline of around [£]million in annual

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<sup>68</sup> Paragraph 4.3.11 of the Merger Assessment Guidelines. See section 7 for our assessment of the effects of the Merger on local IMT customers and section 8 for our assessment of the effects of the Merger on Key Accounts.

<sup>69</sup> See for instance *Anticipated acquisition by Tesco of five Kwik Save stores* (ME/3387/07).

<sup>70</sup> Paragraph 4.3.14 of the Merger Assessment Guidelines.

<sup>71</sup> Mark Saunders joined AP in February 2014 as an interim Chief Operating Officer when Endless co-invested in AP, before being appointed AP's permanent CEO in February 2015.

revenues in the financial year ended October 2015 (FY15). In addition, AP's FY16 EBITDA performance showed a significant and sharp decline compared with historical levels, with EBITDA declining from [£] million in FY15 to [£]million in FY16.

- 6.13 Based on AP's cashflow analysis produced in [£], which forecast AP's cashflows from August to November 2016, AP would have required a cash injection of at least [£] by early October 2016 and a further [£] by early November 2016 to maintain its commercial activities as a going concern. Moreover, in the period leading up to October 2016, AP's borrowings continued to rise, with AP's total net debt increasing from around [£] million as at September 2014 to around [£] million as at July 2016.<sup>72</sup>
- 6.14 The Parties told us that in August 2016, AP management had approached AP's shareholders, Phoenix and Endless, to secure an additional [£]million of funding to enable a solvent solution to be explored.<sup>73</sup> As described in Appendix 6.1, while Phoenix and Endless had supported AP in the past and had provided financial support as recently as June 2016, by August/September 2016, they were keen to exit from AP to avoid further losses.
- 6.15 In August 2016, AP's management had also explored with a commercial lender – PNC – the possibility of an additional [£] facility. However, on [£]. PNC indicated that it would not provide any 'over-lending' on AP's debt facility, but would support AP during the accelerated sale process. PNC therefore no longer had any appetite to continue funding AP and, like Phoenix and Endless, sought an exit as soon as possible.
- 6.16 In parallel to the above, AP's management attempted to raise additional equity or debt from third parties and undertook various cost-cutting exercises, details of which are set out in Appendix 6.1. However, the evidence confirms that, by the time AP went into administration in October 2016, despite AP management's efforts, AP had exhausted all credible options.

#### *Our view on exit*

- 6.17 Based on the evidence set out above and in Appendix 6.1, we consider that AP would have failed financially and exited through failure at the latest by

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<sup>72</sup> As at July 2016, total net debt [£]

<sup>73</sup> See further Appendix 6.1.



October 2016 without a sale of the business. This is because at the time of the Merger:

- (a) With further cash injections required in early October and early November 2016, and with little prospect of further funding either from AP's equity and debt investors or third parties, the option to keep AP trading, either in whole or in part, was likely no longer to be viable.
- (b) AP would have been unable to meet its financial obligations or restructure itself successfully in the near future and it was necessary for AP to go into administration.
- (c) The only viable option remaining for AP was a sale of the business. Given AP's circumstances and the exhaustion of alternative options, an accelerated sale was required and was regarded to be in the best interests of AP's creditors.
- (d) PwC, the administrator of the AP business, told us that, without a sale of the business, AP would have become insolvent on around the 5 October 2016 and would have ceased trading.

***Would there have been an alternative purchaser(s) of AP or its assets?***

- 6.18 An alternative purchaser might produce a better outcome for competition than the merger under consideration. When considering the prospects for an alternative purchaser, we look at the available evidence supporting any claims that the merger was the only possible outcome (ie that there was genuinely only one possible purchaser for the firm or its assets).<sup>74</sup> If we consider that there was an alternative purchaser(s), we try to identify who the alternative purchaser(s) might have been and take this into account when determining the counterfactual.<sup>75</sup> However, even if there was more than one viable alternative purchaser, it may not be necessary to carry out a detailed investigation to identify which alternative purchaser was the most likely purchaser, where the substantive assessment does not depend on us doing so.<sup>76</sup>
- 6.19 The accelerated sale process was run by PwC. PA and MPD were the only bidders other than ECP to submit initial and final round bids during the accelerated sale process. Further details of the accelerated sale process, of

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<sup>74</sup> Paragraph 4.3.17 of the Merger Assessment Guidelines.

<sup>75</sup> Paragraph 4.3.11 of the Merger Assessment Guidelines.

<sup>76</sup> Paragraph 4.3.6 of the Guidelines.

the bids made, including the depots for which they bid and the terms of the bids are contained in Appendix 6.2.

6.20 The Parties told us that:

- (a) the sale process in September 2016 was ‘only the very final stage in what had been over 12 months of marketing effort by three different financial advisers’ and all ‘realistic prospective buyers in the market should have known’ that AP was ‘up for sale’, and both financial and trade buyers had been approached;
- (b) there was no evidence to suggest that any additional offers (other than those from ECP, PA and MPD) would have been forthcoming even if the administration process had not required there to be an expedited deadline for the sale. According to the Parties, ‘AP was failing and did not have the luxury of waiting for further bids to materialise’ and there was no possibility that ‘with more time, another buyer or buyers could perhaps have been found or that the other bids were in some respects preferable to that made by ECP’;
- (c) only ECP made an offer for nearly all of AP’s physical assets (ECP bid for 101 depots,<sup>77</sup> AP’s national distribution centre and its Leeds head office). PA and MPD each made partial bids of a number of APs depots.<sup>78</sup> Consequently, the ‘only possible alternative to the Merger’, the Parties argued, would have been the closure of the majority of the AP network, including its head office and national distribution centre, and the acquisition by PA and MPD of a limited number of depots each; and
- (d) the alternative bids were ‘not realistic given the actual financial situation in which AP found itself’, and the AP business was in ‘far worse shape than ECP thought when it bought the business’. The Parties told us that since completion, ECP had had to invest a further [£] million to cover ‘significant additional costs that were not identified at the time of the accelerated sale process and had only come to light post-completion’. The Parties argued that had these ‘costs been identified during the accelerated sale process’, PA and MPD would not have decided to make the offers that they did make and/or PA and MPD would have proceeded to close at least some of the AP depots they had acquired.<sup>79</sup>

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<sup>77</sup> The remaining eight depots were closed by the administrators.

<sup>78</sup> Parties’ response to the Issues Statement (29 June 2017), paragraph 2.11.

<sup>79</sup> Parties’ response to the Issues Statement (29 June 2017), paragraph 2.15 and Parties response to Provisional Findings (5 October 2017), paragraph 2.2.

- 6.21 As part of our assessment, we therefore considered:
- (a) the availability of likely alternative purchasers and the likely scope of their bids, in terms of both the number and location of depots (bid footprint); and
  - (b) the likely response of each alternative purchaser upon discovering (post completion) the post-transaction issues highlighted by ECP in relation to the AP business, and the subsequent investment required to resolve them.

*Availability of likely alternative purchasers*

- 6.22 We agree with the Parties that all realistic alternative purchasers would have had sufficient opportunity to come forward and participate fully in the various sale processes. There had been extensive efforts made to market and sell AP in the past, with the earliest attempt going back to late 2014, as described in Appendix 6.2.
- 6.23 Based on our review of the evidence,<sup>80</sup> we established a shortlist of possible alternative purchaser candidates:<sup>81</sup> PA; MPD; AAG; Halfords; and Marubeni.
- 6.24 The evidence available in relation to each of these additional alternative purchaser candidates is set out in Appendix 6.2. Neither AAG, Halfords nor Marubeni were involved in the accelerated sales process. PwC told us that, whilst there was no statutory deadline dictated by the administration process within which to find a purchaser, the target date for completion of 5 October 2016 arose as a result of the serious nature of AP's financial position.
- 6.25 We therefore agree with the Parties that while AAG, Halfords and Marubeni had shown interest in acquiring AP and had all been approached by PwC to take part in the accelerated sale process they had declined to do so and would not have been likely alternative purchasers within the timeframe for that process.
- 6.26 However, in relation to PA and MPD, which both participated in the accelerated sale process, the evidence set out in Appendix 6.2 shows that:
- (a) There was a very willing seller, PwC (acting as administrators of the seller), who told us that:

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<sup>80</sup> Parties' submissions, AP's Board meeting minutes and calls with Phoenix, Endless, the former AP CEO, PwC and a selection of third parties who had engaged in the previous AP sales processes (either in whole or in part).

<sup>81</sup> This shortlist was based on their level of past engagement in one or more of AP's sale processes since late 2014, as well as their involvement in the accelerated sale process that ultimately led to the Merger.

- (i) absent the Merger, the likely preferred route would have been to complete a transaction with PA and MPD and, if possible, negotiate to increase their respective bid footprints;
  - (ii) it was in the best interests of creditors to sell as many depots as possible on a going concern basis, to realise more from the sale, and reduce the crystallisation of claims at the depots which could not be sold (both preferential creditor claims arising from staff redundancies and landlord claims); and
  - (iii) as described above, the target date for the completion of the transaction was 5 October 2016, therefore limiting PwC's ability to seek other potential purchasers, or consider alternative options (noting that AP management had already exhausted other options by that time).<sup>82</sup>
- (b) Both PA and MPD would have been willing buyers:
- (i) both submitted final round offer letters, after completing their respective due diligence and investigation into the AP depots;
  - (ii) PwC told us that both PA and MPD had the necessary funds to complete a transaction; in the case of MPD, PwC confirmed that it had received proof of funding from MPD to complete its proposed transaction; PA and MPD told us that they had more than enough funds in place to fund both the acquisition and any potential post-completion investment;
  - (iii) MPD and PA were respectively incumbent regional and national general motor factors, and considered the acquisitions of their respective bid footprints as a strategically attractive opportunity. In MPD's case, the depots it had bid for could each be served by its existing regional hub network. For PA, the depots would have expanded the geographic coverage of PA's own branch network;<sup>83</sup>
  - (iv) both had experience of acquisitions in this sector, and both had stated to PwC that a transaction could be completed by the target completion date. Both had instructed professional advisers to assist them in this respect and whilst 5 October 2016 was the target date

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<sup>82</sup> See further Appendix 6.2. In particular, PwC told us that those AP depots unable to be sold through these transactions would likely have been required to be sold out of administration on a 'break-up' basis, as opposed to a business within a depot. PwC also told us that during a 'break-up' sale, this did not preclude the possibility of a depot being sold on a going concern basis

<sup>83</sup> See Figure 8.2 in section 8.

for completion, this did not preclude the possibility of a depot being sold as a going concern after this date; and

- (v) both expressed their willingness to PwC to amend their bids to get the deal done and both bidders subsequently confirmed to the CMA that they would potentially have been willing to expand their respective bid footprints to complete the transaction (although, as noted below, they did not specify how they would have done so).

6.27 Neither PA nor MPD bid for AP's national distribution centre or Leeds head office and both told us that they would not have sought to acquire either. We therefore consider that PA and MPD were likely to have been alternative purchasers for a number of local AP depots only.

6.28 PA and MPD told us that they might have been willing to bid for more depots than were specified in their final round offer letters. PwC also told us that it would have tried to negotiate with PA and MPD to increase their respective bid footprints (ie to maximise the potential sale proceeds to make distributions to AP's creditors, and to reduce claims from preferential creditors). However:

- (a) Both MPD and PA had already taken the opportunity to improve on their respective initial indicative offers when they submitted their final round offers (see Table 1 in Appendix 6.2). MPD informed PwC after submitting its final offer that it wanted to acquire only two more depots (on top of the 21 depots it had bid for in its final round offer letter, although MPD also told us that it planned to close these two depots if it had been successful in its bid.<sup>84</sup>), and PA was unable to identify to us (when asked) which, if any, additional depots it might have bid for.
- (b) The strategic rationale for their respective bids suggested that there were specific reasons for each depot forming part of each bidder's bid footprint: (i) to expand its own depot footprint (PA); or (b) to bid for depots that could be supplied by its current regional hub network (MPD).
- (c) There was an extremely short timeframe for any negotiation to take place (see paragraph 6.24 above), given that their final offers were submitted on 28 (MPD) and 29 (PA) September 2016, and the target completion date was 5 October 2016.

6.29 In view of the above, we consider that it would be too speculative to determine how many, or which, additional depots for which each of PA and

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<sup>84</sup> [REDACTED]

MPD might have been willing to bid as part of any negotiation with PwC, other than those depots specified in their final bid offers.

### *Post-transaction issues*

- 6.30 The Parties argued that the post-transaction issues and investment requirements in relation to the PA depots which ECP encountered post-acquisition would have made it likely that PA and/or MPD would not have completed the transaction or would have closed the depots they had acquired rather than make the necessary investment. The evidence the Parties provided in support of this is set out in Appendix 6.2.
- 6.31 Given that ECP only discovered the issues post-completion, we have assumed the same for our assessment, ie that these issues would have been discovered post-completion by PA and MPD. The evidence set out in Appendix 6.2 does not support the Parties' contention that PA or MPD would have been likely to close any acquired depots post-acquisition. Each of PA and MPD had clear strategic rationales for acquiring the depots for which they bid; their offers reflected the financial state of the AP business; and the potential transaction provided an opportunity to acquire the relevant depots at a deep discount compared with the cost of organic entry. Moreover, there were different options available to them other than closure of a depot (see further Appendix 6.2) and finally both PA and MPD have told us that they budgeted for, and had available financing to support, significant financial investment post-acquisition.

### *Our conclusion on the most likely alternative purchaser and their bid footprint*

- 6.32 Based on the above and the evidence set out in Appendix 6.2, we concluded that PA and MPD were likely alternative purchasers and that there were no other likely alternative purchasers. We also found that the scope of their combined bid footprints would most likely have been limited to those depots for which they made a final bid.
- 6.33 As noted above MPD told us that it planned to close two depots for which it had made a bid.<sup>85</sup> We consider that this would effectively have amounted to an exit of the two AP depots concerned. Therefore, we have proceeded for the purposes of identifying the appropriate counterfactual that MPD would have bid for only 21 depots (ie excluding [REDACTED]).

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<sup>85</sup> [REDACTED]

- 6.34 Therefore, we found that it is more likely than not that 52 depots would have been purchased by either PA or MPD, absent the Merger (ie 39 depots bid for by PA plus 21 bid for by MPD which it would continue to operate less eight overlapping bid depots). These are set out in Appendix 6.3.

***Conclusion on the appropriate counterfactual***

- 6.35 We concluded that AP would have been likely to have exited the market as a result of financial failure absent the Merger.
- 6.36 We also concluded that PA and MDP would have been likely to be alternative purchasers for the depots for which they bid in the accelerated sale process. The appropriate counterfactual against which to assess the effects of the Merger for these 52 AP depots which were acquired by ECP is therefore acquisition by either PA or MPD.
- 6.37 Eight of those 52 depots were bid for by both PA and MPD. For those eight depots, it was not necessary to carry out a detailed assessment for the purposes of choosing the most likely alternative purchaser where the intensity of competition would have remained broadly the same in the relevant market regardless of the identity of the alternative purchaser. In local areas where neither of the alternative purchasers is present, we did not consider that the identity of the alternative purchaser (whether PA or MDP) materially affected our competitive assessment. In local areas, where only one of the alternative purchasers is present, we adopted the alternative purchaser which is not present in the area as the appropriate counterfactual. This is on the basis that an alternative purchaser which is present in the area concerned may be more likely to give rise to competition concerns.<sup>86</sup> In those areas where both alternative purchasers are present, we considered as part of the local assessment whether the precise identity of the alternative purchaser would affect our assessment (see further section 7).
- 6.38 In relation to the remaining 49 depots, AP's head office and national distribution centre in respect of which there was no alternative bids, the appropriate counterfactual for our competitive assessment is exit of the relevant AP assets.
- 6.39 Appendix 6.3 sets out, for each overlapping AP depot acquired by ECP, whether the counterfactual is either acquisition by PA or MPD or exit.

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<sup>86</sup> [Merger Assessment Guidelines](#), paragraph 4.3.23.

- 7. Assessment of the competitive effects of the Merger on local IMT customers**
- 7.1 This section considers whether the Merger is likely to lead to a substantial lessening of competition in the supply of IAM car parts to local IMT customers relative to the counterfactual in each local area.
- 7.2 In section 3, we described how the most important factors in local IMT customer's choice of suppliers are price, product availability, speed of delivery and quality of service.<sup>87</sup> The Survey results indicate that local IMT customers order parts as and when required, and place several orders a day.<sup>88</sup> Customers often contact several suppliers to identify part availability, delivery time and to agree a price. The importance of being able to deliver the required parts to customers at short notice means that competition is local in nature and a supplier's location is an important aspect of its ability to compete to supply customers in any local area.
- 7.3 In section 5, we set out our conclusions on the relevant markets for the purpose of this assessment. The catchment area analysis we undertook (described in Appendix 5.2) explains how we identified local areas where the Parties' depots may compete to supply the same customers and, therefore, areas in which competition concerns may arise.
- 7.4 In section 6, we set out our methodology for identifying the relevant counterfactual in each local area in which ECP acquired an AP depot. In respect of 49 depots, we identified that the appropriate counterfactual against which to assess the effects of the Merger is exit by AP. In respect of 52 depots, we identified that the appropriate counterfactual against which to assess the Merger is acquisition by an alternative purchaser, whether PA or MPD.
- 7.5 As part of our assessment, we first identified those local areas in which an AP depot does not overlap with any ECP depot to any material extent and therefore where, in our view, the Merger does not have the potential to create competition concerns. Our catchment area analysis set out in Appendix 5.2, identified three such local areas: Scarborough; Gatwick; and the Isle of Wight.<sup>89</sup>

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<sup>87</sup> Survey Figure 13: Most Important characteristics when choosing a car parts supplier.

<sup>88</sup> Survey Figure 8: How parts are ordered.

<sup>89</sup> As set out in Appendix 5.2, only one of the depots (AP Scarborough) acquired by ECP has a catchment area that does not overlap with the catchment area of any ECP depot's catchment area. However, AP Gatwick only serves Gatwick Airport and ECP does not compete to supply that customer. We therefore consider that there is no overlap in respect of AP Gatwick. In addition, whilst AP Isle of Wight's catchment area technically overlaps



- 7.6 In the absence of any material overlap between the ECP and AP depots in these three areas, we concluded that, in these three relevant local markets, the Merger may not be expected to give rise to a SLC. We therefore focused our competitive assessment on the remaining 98 AP depots acquired by ECP which overlap with ECP depots and where, in the relevant areas where both the depots are located, the Parties may compete to a material extent.
- 7.7 We have undertaken a different assessment for the purposes of analysing the effects of the Merger depending on whether the appropriate counterfactual in the relevant local area is exit of the AP depot from the local market or acquisition by an alternative bidder. In this section, we first assess those areas where the counterfactual is exit of the AP depot from the local market and then consider those areas where the counterfactual is the acquisition of the AP depot by an alternative purchaser.

*Methodology for assessing local areas where the counterfactual is closure of the AP depot*

- 7.8 When assessing the potential for a merger to lead to horizontal unilateral effects, concerns usually arise from the fact that a merger will lead to a reduction in the number of competitors relative to the counterfactual. However, when the counterfactual is the exit of the target undertaking from the relevant market, the number of competitors is the same following the merger and in the counterfactual.
- 7.9 The Merger Assessment Guidelines suggest that there may be circumstances in which a merger could reduce competition from a counterfactual of exit. This could arise, for example, if a merger strengthened the local market position of the merged firm relative to its competitors in an area where it already had a strong market position, to an extent which is materially different compared to what would have happened in the counterfactual.
- 7.10 For the purposes of assessing whether a merger could give rise to a SLC relative to a counterfactual involving exit of the target undertaking, the CMA takes into account the differences between the merger and the counterfactual. With respect to the Merger, these might include:
- (a) The distribution of sales – as a result of the Merger, ECP may have, at least initially, been able to take over all of the sales made by the AP

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with those of a number of ECP depots on the mainland, given the sea separation, we have concluded that there is no actual overlap.

depot, whilst the distribution of sales might be different under the counterfactual scenario; and

- (b) The number and location of depots operated by the Parties and their competitors in a local area – as a result of the Merger, ECP will, at least initially, operate an AP depot which it would not otherwise have operated to serve customers in that local area.

7.11 We identified several market characteristics<sup>90</sup> which led us to consider that, where the counterfactual is the exit of the AP depot, the Merger will not affect ECP's or third party suppliers' ability to compete in a local area. In particular, local customers usually shop around before placing orders and tend to have trading accounts with several suppliers. Customers also typically expect products to be delivered to their sites at short notice. These characteristics suggest that the level of competition will depend primarily on the number of available suppliers, and their respective ability to deliver car parts in time to customers across the relevant local area.

7.12 Therefore, we considered that the competitive constraints on ECP would be substantially the same following the Merger and in the counterfactual. We did not receive submissions or see evidence suggesting that the ability of existing suppliers to compete in a local area would be materially affected by whether an AP depot was acquired by ECP or closed. The redistribution of a portion of AP's sales to competing suppliers under the counterfactual (rather than the redistribution of all AP's sales, at least initially, to ECP following the Merger) would not materially affect other suppliers' operational costs (eg through economies of scale)<sup>91</sup>, nor would it materially affect their ability to deliver car parts from their current location.

7.13 Similarly, we did not see evidence<sup>92</sup> suggesting that ECP's operational costs would be materially different as a result of a different distribution of AP's

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<sup>90</sup> See section 3.

<sup>91</sup> We reviewed ECP's synergy model prepared during the William-Blair-run sale process (which ran from September 2015 to mid-2016). The only economies of scale benefits identified by ECP related to purchasing. ECP estimated that AP's cost of sales would fall by [X] percent if its depot network increased by 180 per cent and ECP's cost of sales would fall by [X] per cent if its network increased by 55 per cent. [X] This suggests that an increase in sales at a supplier's depot following exit of the AP depot would lead to negligible procurement savings. See further details in section 8.

<sup>92</sup> MPD suggested that ECP's acquisition of the AP depot in each local area would enable ECP post-Merger to drive out any remaining competitors. MPD argued that smaller competitors would not be able to compete with the prices ECP and AP would be able to offer following its acquisition of the AP depots and in the long run these smaller suppliers would be forced to exit the market. Summary of response hearing with MPD on 27 September 2017, paragraph 1. For the reasons set out in paragraphs 7.11 to 7.15, we did not consider that acquisition by ECP of the AP depot as opposed to redistribution of AP's sales to suppliers would materially increase ECP's ability to lower prices to below cost. To the extent to which it enables ECP to reduce prices more generally this would enhance competition and benefit customers.

sales (eg through economies of scale) or an increase in the number of depots it operates in an area.

- 7.14 In an area where there is a significant distance between the ECP and AP depots, and where, before the Merger, ECP had been unable to provide satisfactory service to customers more conveniently located to the AP depot, the acquisition of the AP depot would strengthen ECP's overall customer offer. This means that ECP may have been able to take over (at least initially) AP's pre-Merger market share which, absent the Merger, would have otherwise been redistributed (primarily) to third parties that are more conveniently located to serve AP's customers than the ECP depot. However, because the strengthening of ECP's position in this local market would have arisen from an improvement in its ability to serve customers, the overall effect would be to enhance competition compared with the counterfactual.
- 7.15 On the evidence available, we therefore considered it unlikely overall that the exit of an AP depot from the relevant local market would lead to a more competitive outcome than if the AP depot continued to operate under ECP's ownership.
- 7.16 On this basis, we concluded that the acquisition of the 49 AP depots for which the counterfactual is closure of the AP depot may not be expected to give rise to a SLC.

***Methodology for assessing local areas where the counterfactual is an alternative purchaser***

- 7.17 Section 3 of the CMA's Retail mergers commentary<sup>93</sup> describes the framework typically used in cases involving a large number of local areas and which we have applied in this case. Under this framework, the CMA first seeks to identify the suppliers which are present in each local area and compete with the merging parties and then uses a filter to inform the analysis. The purpose of a filter is to use a simple rule to screen out areas where competition concerns are unlikely, thus allowing the CMA to focus further analysis on the remaining overlap areas.
- 7.18 The first step in this process, identifying the competitors to the merging parties, can be done using a variety of evidence, such as the Parties' internal documents, evidence on supplier characteristics and survey evidence. In some cases, the identity of the merging parties' competitors

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<sup>93</sup> The CMA's [Retail Mergers Commentary \(CMA62\)](#) describes the CMA's general approach to filtering in more detail. For an example of its application, see [Celesio/Sainsbury](#).

may be relatively easy to verify. This might be, for instance, because previous merger cases provide a ready source of information regarding the competitors in an industry or because there are a relatively small number of competitors.<sup>94</sup>

- 7.19 In this case, the pre-existing information, for example from the Parties' internal documents, about the competitors in any local area was very limited.<sup>95</sup> Furthermore, as described in section 3, this sector is highly fragmented with a significant number of small motor factors, some with only one depot or a small number of depots within a local area, competing with larger regional and national motor factors such as the Parties.
- 7.20 There are also a large number of suppliers, such as retail suppliers, which supply car parts but which do not offer an equivalent service to that provided by the Parties, for example in terms of delivery and/or range of parts and are thus not an effective competitive constraint on the Parties. However, the focus of a specific supplier's business is often not immediately clear. For example, a supplier's name does not usually reveal whether the supplier is a general motor factor offering prompt delivery to local IMT customers or whether the supplier's focus is, for example, on retail trade.
- 7.21 Consequently, a particular challenge in this case has been to gather and to analyse additional evidence within the constraints of the Phase 2 inquiry timetable which allowed us to identify the suppliers which are present in each area, and the ability of each of those suppliers to compete effectively with the Parties in each local area.
- 7.22 With the above in mind, we used the following four steps to assess the effects of the Merger on competition in local areas where the counterfactual is the acquisition of the AP depot by an alternative purchaser:
- (a) Step 1: we used the available evidence for all ECP and AP depots<sup>96</sup> to identify those suppliers across the UK for which we have sufficient evidence, for the purposes of filtering, to conclude that they are capable of competing with the Parties. We refer to these suppliers as Effective Competitors and the long list of such Effective Competitors as the 'Set of Effective Competitors';

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<sup>94</sup> For example, in supermarket mergers there are a relatively small number of major suppliers whose identities are readily known.

<sup>95</sup> The Parties' competitor list submissions are discussed in Appendix 7.1.

<sup>96</sup> This stage of the analysis was based on an analysis of the evidence concerning all of the AP depots and ECP depots for which evidence was available and not only, for example, for the overlap depots or those depots for which there was an alternative bidder. This allowed us to maximise the evidence available with which to make our assessments.

- (b) Step 2: we identified which of the Effective Competitors are actually present in the area local to those depots and may therefore compete with the Parties ('Actual Competitors').
- (c) Step 3: we applied initial filters to filter out depots in relation to which the Merger was unlikely to give rise to competition concerns. The purpose of this approach is to focus our more detailed local analysis on areas where competition concerns may arise; and
- (d) Step 4: we then used the outcome of our filters to inform our further analysis of each depot. For depots which were not identified by our filter as potentially problematic, we undertook an initial review to assess the accuracy of our filters (see paragraph 56 of Appendix 7.1) and to confirm that the Merger did not raise competition concerns in these areas. For the depots which were identified by our filters as potentially problematic, we conducted a detailed competitive assessment. These assessments used all of the evidence available in relation to the focal depot and the evidence in relation to any other depots located nearby.

7.23 At Step 1 we identified Effective Competitors using all of the information available for all ECP and AP depots based on ECP's price matching data, Survey responses<sup>97</sup> and ECP's 2015 promotion. Paragraphs 9 to 33 of Appendix 7.1 describe the criteria we used at this stage of our analysis, and the rationale for each of these criteria. Our general approach at this stage was to focus on the evidence which most clearly indicated that alternative suppliers compete with ECP and AP across a significant range of products or for a significant number of customers and to give more weight to unprompted Survey responses.

7.24 At Step 2, we identified Actual Competitors using the same evidence as we used at Step 1 (to ensure consistency with the approach used to identify Effective Competitors) but specific to each ECP and AP depot. We also used information on suppliers' locations to identify whether any other Effective Competitors might be located sufficiently closely to the Parties depots so that these suppliers might also compete with the Parties. This additional step addressed the limitations of the available evidence and, in particular, the fact that the Survey is the only source of evidence at a local level for each AP depot.

7.25 At Step 3, we applied our initial filters to identify the areas where competition concerns may arise and where further analysis might be required. These

filters were based on a combination of three criteria: i) the extent of the sales overlap between the Parties' depots (see paragraphs 42 to 43 of Appendix 7.1); ii) a fascia count (see paragraphs 44 to 46 of Appendix 7.1) and iii) a store count (see paragraphs 47 to 49 of Appendix 7.1).

- 7.26 We combined these three criteria into two filters: i) a fascia count filter (based on the sales overlap and the fascia count) and ii) a store count filter (based on the sales overlap and the store count). In each case, we took into account that, the greater the extent to which the Parties compete to supply the same customers in a particular area (as measured by the sales overlap), the greater the loss of competition in that area which is likely to arise as a result of the Merger. In applying the two filters, we considered that in areas where the sales overlap was greater more competition was required from third party suppliers (measured by the store or the fascia count) to conclude that the Merger does not give rise to competition concerns in that area.
- 7.27 For example, a small sales overlap (below 10%) indicates that the Parties compete to supply customers located in the same area to a very limited extent. As a result, the loss of competition following the Merger is likely to be limited and our fascia count filter would only identify the area for further analysis if there are no other Actual Competitors in the local area. In contrast, a large sales overlap (over 60%) indicates that the Parties are likely to compete to supply customers located in the same area to a very significant extent. As a result, the loss of competition following the Merger could be significant and our fascia count filter would identify the area for further analysis unless there is evidence of a significant number of Actual Competitors (5 or more) in that local area.
- 7.28 We adopted a conservative approach to the initial filtering process so that we were confident we would identify all the depots which potentially might be of concern. However, in view of our conservative initial approach, a significant number of depots identified by the filter were likely to be unproblematic after more detailed scrutiny. In this case therefore, we have not used the filter as the basis for concluding that a SLC arises in any individual local area. Rather, where we have concluded that a SLC arises, this is based on a detailed assessment of the available evidence concerning the local area.
- 7.29 Appendix 7.1 sets out in more detail Steps 1-4 of our methodology, including our assessment of the Parties' representations on our approach, together with the results of the filtering exercise.

### ***Results of the filtering process***

- 7.30 52 AP depots were identified where the counterfactual is an alternative bidder, two of which (Scarborough and the Isle of Wight) do not overlap with an ECP depot.<sup>98</sup> Our catchment area analysis identified 79 ECP depots whose 80% catchment areas overlap with the remaining 50 AP depots. We therefore applied the filters to these 129 depots (79 ECP plus 50 AP).
- 7.31 The filtering exercise undertaken at Step 3 identified 35 AP and ECP depots which appeared unlikely to raise competition concerns, and 94 AP and ECP depots where a more detailed local analysis was required. We reviewed a number of the areas where neither the AP nor the ECP depot were identified by our filters as requiring a detailed analysis and concluded, based on these reviews, that the evidence was sufficient to conclude that competition concerns did not arise in these areas.
- 7.32 In areas where one of the Party's depots was identified as requiring further analysis but the other Party's depot in the same area was not, we conducted a further analysis of both of the depots to ensure that all of the evidence concerning the area was considered. This resulted in five additional depots which had been identified by the filter as unlikely to give rise to competition concerns being the subject of further analysis.
- 7.33 We therefore found that the acquisition of the 30 AP depots identified by our filter process as unlikely to give rise to competition concerns may not be expected to result in a SLC.

### ***Local assessments***

- 7.34 In order to conduct the more detailed local assessments of the remaining 99 depots, we grouped the depots into areas and considered all of the evidence available to us in each local area. We identified 60 such local areas.<sup>99</sup> This allowed us to assess the strength of the competitive constraints on the Parties and the closeness of competition between ECP and AP using as much of the evidence as possible.
- 7.35 The information we used included the number, identity and location of the overlapping ECP and AP depots and of Actual Competitors to each ECP and AP depot together with the locations of the customers of the focal depot. We

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<sup>98</sup> See footnote 89 above. The third depot without an overlap, Gatwick, did not receive an alternative bid.

<sup>99</sup> In some of the local areas we considered there is just one AP or ECP depot. The reason for this is apparent from our detailed local competitive assessments which are presented in Appendix 7.2

also considered a range of additional evidence to inform our view of the strength of suppliers in the local area. This included evidence relating to:

- (a) The prevalence of different suppliers in ECP's price matching data.
- (b) Survey responses from customers in the relevant area.
- (c) Evidence of other suppliers which may provide a constraint on the Parties and which our filtering methodology did not identify as Actual Competitors but where we have other relevant evidence.
- (d) Submissions from the Parties on the competitive conditions in these local areas.
- (e) The identity of the alternative purchaser under the appropriate counterfactual<sup>100</sup> and whether it is present in the overlap areas.

7.36 The detailed local area assessments are set out in Appendix 7.2. The level of detail required in each area assessment depended on the specific characteristics of the area. In some cases it was easy to reach a conclusion that a local area was not of concern, for example because there is a limited overlap in the customers served by the ECP and AP depots and there are a number of other suppliers able to compete effectively with the Parties in the area. In other areas a more detailed assessment was required to enable us to exercise our judgement as to whether we considered the Merger may give rise to a competition problem taking into account all of the available evidence.

7.37 In response to our Provisional Findings, CRA submitted on behalf of the Parties that the CMA had applied a 'cut-off point of 4 to 3' on the number of competitors required in undertaking its local assessments and that this approach did not take into account all the constraints on the Parties.

7.38 In undertaking our detailed local area assessments, we did not apply a 'cut-off of point of 4 to 3' on the number of competitors required in a local area. As described in paragraphs 7.22 to 7.29 above and in Appendix 7.1, we looked at all the available evidence to assess the nature of competition in each of the local areas compared with the position under the relevant counterfactual. To do this we considered, in line with our Retail mergers commentary, the market characteristics including the level of customer engagement, the evidence supporting the finding that customers value having a range of suppliers from whom to choose and the ability of suppliers

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<sup>100</sup> See section 6 for our approach for those depots where PA and MPD both bid.



to deliver car parts in time to the Parties' customers in each local area. In light of these characteristics, we considered that in areas where we identified three competitors that would constrain the Parties post-Merger, it was unlikely that there would be a significant lessening of competition as a result of the Merger. In areas where we identified only two or less such competitors, we considered it likely that competition issues would arise. However, for the purpose of reaching our decision in all areas, in addition to the number of competitors, we also considered for example how closely the Parties competed and the extent of the competitive constraints from other suppliers in the area.

- 7.39 We also assessed further evidence provided by the Parties in response to our Provisional Findings. This included additional evidence on suppliers which the Parties submitted we should have considered as competitors in specific local areas. This evidence comprised (i) a telephone survey conducted by ICDP of suppliers in each of the 10 areas provisionally identified as giving rise to competition concerns, (ii) a small number of customer invoices provided by ECP customers of the relevant depots showing that the customer had made purchases from other suppliers and (iii) photographic evidence.<sup>101</sup>
- 7.40 It also included additional analysis by CRA on margins which the Parties argued showed that local markets in which there were only three competitors post-Merger would not lead to a SLC as a result of the Merger. The Parties argued that the lack of a significant difference in average margins between areas with three or fewer competitors and those with four or more competitors showed that the CMA's assessment did not take into account the additional competitive constraints on the parties from OEM parts suppliers, specialist suppliers and other smaller suppliers.<sup>102</sup> In addition, the Parties submitted that the CMA should have explored the relationship between ECP's discounts and margins and the number of competitors using the competitor information collected during the investigation.
- 7.41 The ICDP supplier survey evidence submitted by the Parties provided useful additional evidence on individual suppliers in each of the local areas which the Parties considered were 'effective constraints' and which our Provisional Findings had not identified. The CMA considered that this evidence was,

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<sup>101</sup> The Parties submitted similar evidence including website evidence in respect of a number of local areas at the end of August. We were unable to place much weight on such evidence prior to Provisional Findings without supporting evidence, for example from the Survey and ECP IPM data.

<sup>102</sup> We consider CRA's analysis on discounts and margins in support of their arguments that OEM parts suppliers and specialist suppliers are part of the relevant market in section 5. In Appendix 5.1 we discuss in detail the analyses submitted by CRA during the course of the investigation.

limited in scope. Nevertheless, this additional evidence is reflected in our local assessments set out in Appendix 7.2. We also followed up this evidence with further calls with individual suppliers<sup>103</sup> which we identified as relevant to our assessment of competition, so as to consolidate our understanding of the strength of these suppliers in the relevant local markets.

- 7.42 We were, however, unable to place weight on the customer invoices the Parties submitted. These were sourced from a small number of customers and generally from a single customer in a local area, selected on the basis of that customer's good relationship with ECP. No context was provided by the Parties surrounding each customer and the relevant invoice. The invoice evidence merely showed that at some point a customer or a few customers in an area had placed an order with another supplier. It did not therefore provide evidence that that supplier is a significant constraint on the Parties in the local area. Similarly, we were not able to place weight on the additional photographic evidence provided by the Parties without supporting evidence, for example from the ICDP supplier survey, our Survey and/or ECP IPM data, that these suppliers were in fact significant competitors to the Parties in the relevant area.
- 7.43 We discuss in detail in Appendix 5.1 the analyses that CRA submitted. In respect of the additional margin analysis submitted following our Provisional Findings, we consider that little weight can be placed on this analysis. As described above at paragraph 7.38, we reviewed all the available evidence in the round in undertaking our local assessments in each area and therefore considered that an analysis of this type in the present case would have added little value.
- 7.44 Moreover, the comparisons submitted by the Parties were based on a very small number of ECP depots.<sup>104</sup> The small number of observations involved mean that it is not possible to account for any other factors which may lead to variations in margins between depots. In particular, such an analysis would have required the CMA to undertake detailed local assessments in all areas where ECP has a depot, including areas with no overlap with AP, to identify so far as possible the number of competitors. Without correctly identifying the number of competitors in all areas and, as noted above, accounting for other factors which may affect margins at a local level, any such analysis would be of limited evidential value.

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<sup>103</sup> One of those suppliers, Autolec, also provided sales data.

<sup>104</sup> The groups with fewer than 4 suppliers contain only 3 depots in one case and only 5 depots in the other case.

- 7.45 We therefore considered that any such analysis would have been disproportionately onerous compared with the possible gains which might be achieved. This is due to a number of factors which we have assessed in the round, namely the limited additional value of such evidence to the CMA's assessment (for the reasons set out above), the difficulties of carrying such comprehensive analysis, the limited number of areas where this analysis would have been used, the statutory timetable of the investigation and the need to prioritise use of its resources for other purposes.
- 7.46 Following our Provisional Findings, the Parties also submitted additional arguments in support of OEM parts suppliers and specialist parts suppliers<sup>105</sup> being part of the relevant market. These arguments are addressed in paragraphs 5.26 to 5.38 above. Even if individual OEM and specialist parts suppliers are not regarded as 'effective competitors', the Parties argued that the CMA should consider the cumulative competitive constraint posed by such suppliers which would operate de facto as an additional competitor at local level. Our review of the evidence in each local area did not lead us to identify any local areas where this was the case.
- 7.47 The Parties were also of the view that the low barriers to entry would result in any SLC being offset by entry and expansion in the short to medium term. This is considered at paragraphs 7.106 to 7.107 below
- 7.48 In our Provisional Findings, we identified 50 local areas where we considered that the Merger does not give rise to a SLC and 10 local areas where we considered that the Merger may be expected to be substantially less competitive than acquisition by the alternative purchaser.
- 7.49 In one local area, Swindon, we were unaware at the time of our Provisional Findings that [X] opened a new depot in Swindon in July 2017. We considered that [X] would be a significant constraint on ECP post-Merger in Swindon following the opening of this new depot. Specifically, we considered that [X]. We, therefore, concluded that there is no material difference in the competitive outcome between the Merger and the counterfactual.
- 7.50 As a result, we have therefore identified 51 local areas where we considered that the Merger does not give rise to a SLC. However, we continue to find that, in the remaining nine local areas, the Parties are sufficiently close competitors and the competitive constraints provided by other suppliers in each area are such that we have concluded that the Merger may be expected to be substantially less competitive than acquisition by the

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<sup>105</sup> Fuller details of these arguments are set out in section 5.

alternative purchaser. These local areas are set out below together with a summary of the main features of each local area.

### *Blackpool*

- 7.51 AP Lytham and ECP Blackpool were identified by both the fascia count filter and the store count filter as potentially raising competition concerns. AP Lytham and ECP Blackpool are close to each other and serve substantially the same customers. [X] was the alternative bidder for AP Lytham and our analysis indicated that [X] is not present in the area.
- 7.52 Our analysis indicated that the Parties will face competition from only two competitors post-Merger, compared with three under the counterfactual. EK Motor Factors and Andrew Currans both appear to be effective competitors to the Parties in Blackpool, but we found no evidence that other competitors are likely to exert a significant constraint on the Parties in this area. TPS was mentioned by some Survey respondents but its range is limited to predominantly Volkswagen parts, and many of the other suppliers listed by the Parties as being among their top 10 competitors for AP Lytham and ECP Blackpool were not used by any of the Survey respondents who also, when prompted, consistently stated that they would not use these suppliers. These suppliers also did not feature in the ECP IPM data to a significant extent or ECP's 2015 promotion data.
- 7.53 In response to our Provisional Findings, the Parties submitted that we should consider Motocare Manchester and Talbot Trade Supplies as 'effective competitors' in this area. To support this, they referred in particular to the ICDP supplier survey and to customer invoices.
- 7.54 In our view, the evidence did not indicate that Motocare Manchester or Talbot Trade Suppliers are a significant competitive constraint on the Parties in this area. Specifically:
- (a) Motocare Manchester was only listed as a top 10 competitor in the area by ECP.<sup>106</sup> None of the 14 ECP Survey respondents viewed Motocare Manchester as an alternative to ECP for their last purchase (even when prompted) and none of these respondents had used this supplier in the last 3 months, although one AP Survey respondent did refer to them. This supplier also did not feature in the ECP IPM data or the ECP 2015 promotion data for this area. In addition, this supplier indicated to ICDP

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<sup>106</sup> Notably AP listed Halfords as a competitor ahead of Motocare Manchester.

that it did not serve the Lytham area, where a substantial proportion of the Parties' customers are located.

- (b) Talbot Trade Supplies was only listed as a top 10 competitor in the area by AP. It was not referred to by any Survey respondents (either at the AP or the ECP depot). In addition, this supplier also did not feature in the ECP IPM data or the ECP 2015 promotion data for this area.

7.55 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Blackpool because:

- (a) The Parties' depots compete closely to supply customers in the local area;
- (b) After the Merger, ECP will only be constrained by two competitors; and
- (c) The alternative purchaser in the counterfactual, [X], does not currently compete with the Parties. The acquisition of the AP depot by [X] would maintain a significant source of competitive constraint on ECP, which will otherwise be lost as a result of the Merger.

### *Brighton*

7.56 AP Hove and ECP Brighton were identified by both the fascia count filter and the store count filter as potentially raising competition concerns. AP Hove and ECP Brighton are close to each other and serve substantially the same customers. [X] we have assessed the effects of the Merger relative to the counterfactual of [X] acquiring AP Hove.

7.57 Our analysis indicated that the Parties will face competition from only two competitors post-Merger, compared with three under the counterfactual. CPA and Jayar appear to be effective competitors to the Parties in Brighton, but we found limited evidence that other competitors are likely to exert a significant constraint on the Parties in this area:

- (a) Frenches Autos was little used by respondents of the Survey for AP Hove, who had often not heard of it, and was not listed as a top 10 competitor to ECP Brighton and so was not included in the Survey for ECP Brighton. It did not feature in the ECP Brighton IPM data or the ECP 2015 promotion data for this area. Frenches Autos is also located in Worthing at some distance from the Parties' depots, and the Parties' customers.
- (b) TPS only competes with the Parties in relation to a limited range of the parts they supply as TPS predominantly supplies Volkswagen parts.

- (c) Although a number of ECP Brighton Survey respondents said they could use Autolec Motor Factors, it is located 11 miles away from the Parties' depots, and the Parties' sales are largely concentrated around their depots in Brighton itself. This indicated that Autolec Motor Factors' ability to compete with the Parties in this area is limited.
- (d) Other suppliers which the Parties submitted were competitors in Brighton were either not viewed by Survey respondents as alternatives to the Parties or were OEM parts suppliers, which only exert a limited competitive constraint on general motor factors such as the Parties, as discussed in Section 5.

7.58 In response to our Provisional Findings, the Parties submitted that we should consider Autolec Motor Factors, EBC Motor Factors and TPS to be 'effective competitors' to the Parties in this area. In our view the evidence does not indicate that these suppliers are a significant competitive constraint on the Parties in this area. In particular:

- (a) EBC Motor Factors was not listed as a top 10 competitor by either Party and was subsequently only referred to by 2 of 21 Survey respondents in the area. In addition, this supplier does not feature in the ECP IPM or the ECP 2015 promotion data for this area. EBC's response to the ICDP supplier survey also indicated that it did not supply customers in Hove. Consequently, we did not consider that EBC is an effective competitor to the Parties in this area.
- (b) The Parties did not submit additional evidence specific to the Brighton area in support of their arguments that TPS is an effective competitor. We refer to section 5 above for why we believe that the competitive constraint from OEM parts suppliers such as TPS is limited.
- (c) In response to the Parties' submission, we sought additional evidence from Autolec on the areas served from its Newhaven depot. Autolec informed us that its position in Newhaven means that it is only able to serve customers located on the eastern side of Brighton and is unable to serve customers located in the centre and to the west of Brighton effectively. This was supported by the sales data provided by Autolec. Consistent with this, we noted that the Survey respondents who referred to Autolec were located to the east of Brighton. We also noted that a significant proportion of the Parties' sales are made in areas which Autolec does not serve and that the geographic area served by the Parties and Autolec is limited. Consequently, we did not consider that Autolec is a sufficient constraint on the Parties in the Brighton area to alter the view we reached in our Provisional Findings.

- 7.59 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Brighton because:
- (a) The Parties' depots compete closely to supply customers in the local area;
  - (b) After the Merger, ECP will only be constrained by two competitors; and
  - (c) The alternative purchaser, [X], does not currently compete with the Parties. The acquisition of the AP depot by [X] would maintain a significant source of competitive constraint on ECP, which will otherwise be lost as a result of the Merger.

### *Gloucester*

- 7.60 Both AP Gloucester and ECP Gloucester were identified by both the fascia count filter and the store count filter as potentially raising competition concerns. AP Gloucester and ECP Gloucester are close to each other and serve substantially the same customers. [X] was the alternative bidder for AP Gloucester and our analysis indicated that [X] is not present in the area.
- 7.61 The Parties appear to compete closely in Gloucester: AP accounted for just under [X] of ECP Gloucester's price matching after the acquisition,<sup>107</sup> and [X].
- 7.62 Furthermore, our analysis indicated that the Parties will face competition from only two competitors post-Merger. PA (as GMF and GSF) and Autoparts & Diagnostic appear to compete effectively with the Parties in Gloucester. We found limited evidence that other suppliers are likely to exert a significant constraint on the Parties in this area:
- (a) TPS only competes with the Parties in relation to a limited range of the parts they supply as TPS predominantly supplies Volkswagen parts.
  - (b) In Gloucester, neither Party listed Jaystock as one of its top 10 competitors and so Survey respondents were not specifically asked about it, although no Survey respondents referred to it in this area. Jaystock is included in the set of Effective Competitors in our filtering process because it is included in ECP's price matching and 2015 promotion data in a small number of areas, but it does not appear to be

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<sup>107</sup> This figure is based on ECP's IPM data covering the period from September 2016 to December 2016. If we used data covering the period from October 2016 to December 2016 as the Parties have suggested (as discussed in footnote 3 of Appendix 7.1), AP would still have accounted for over [X] of ECP Gloucester's price matching.

an effective competitor in other areas. The Parties listed Jaystock as one of their top 10 competitors at 14 depots, and so across the entire Survey 139 customers were asked about Jaystock. Only two (1%) said they had used it in the past three months, only one (1%) mentioned it unprompted as an alternative supplier they could have used had the focal AP/ECP depot been closed and, when prompted about whether they could have used Jaystock, only 39 customers (28%) said yes while 58 (42%) said no. Jaystock also did not feature in the ECP IPM or the ECP 2015 promotion data in this area. In addition, Jaystock [X].

- (c) Five Survey respondents had also used J. E. Clarke Motor Factors in the last three months (although no respondents said that this supplier was an alternative for their last purchase from ECP or AP). However, J. E. Clarke Motor Factors is located in Stroud and so we believe that its ability to compete with the Parties to supply the majority of the Parties' customers, who are located in Gloucester itself, is limited. Consistent with this we note that all five Survey respondents who had used J. E. Clarke Motor Factors are located in or to the south of Stroud, which is not where the majority of the Parties' customers are located. This supplier also did not feature in the ECP IPM or the ECP 2015 promotion data in this area.
- (d) Other suppliers in the surrounding areas (Cotswold Motaquip, Leamoco and HM Motor Factors) are at too great a distance to be able to compete effectively for the Parties' customers in Gloucester. Consistent with this these suppliers were not referred to by Survey respondents in this area and did not feature in the ECP IPM or the ECP 2015 promotion data.
- (e) Other suppliers which the Parties submitted were competitors in Gloucester were not viewed by Survey respondents as alternatives to the Parties. These suppliers also did not feature in the ECP IPM or the ECP 2015 promotion data.

7.63 In response to our Provisional Findings, the Parties submitted that:

- (a) GMF and GSF should be treated as separate competitors, even though both are owned by PA, since they compete with each other in this area. The Parties said that 11 of 20 Survey respondents used both suppliers which supported this submission.
- (b) MGM Motor Components should also be considered as an 'effective competitor' to the Parties in this area.

7.64 We did not consider that the Parties have provided additional evidence to support their arguments. In particular:



- (a) GMF and GSF are both owned by PA and it is standard to view different brands with a common owner as a single competitor. This reflects the fact that one would not expect a brand owner to allow its different brands to compete with each other and to cannibalise each other's sales in the same way as would two competing suppliers. The evidence that Survey respondents used both suppliers is not informative as to whether GMF and GSF compete with each other.
- (b) The Parties noted that the ICDP supplier survey found that MGM Motor Components is able to serve customers located in the Stroud area.<sup>108</sup> However, as we noted above when discussing J. E. Clarke Motor Factors, the majority of the Parties' customers, are located in Gloucester itself. Therefore, in our view the ability of this supplier to compete with the Parties' in the Gloucester area is limited. Consistent with this, we noted that MGM Motor Components was listed as a top 10 competitor by ECP Gloucester and was only referred to by 4 of 20 Survey respondents. In addition, this supplier does not feature in the ECP IPM data or the ECP 2015 promotion data for this area.

7.65 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Gloucester because:

- (a) The Parties' depots compete closely to supply customers in the local area;
- (b) After the Merger, ECP will only be constrained by two competitors; and
- (c) The alternative purchaser in the counterfactual, [X], does not currently compete with the Parties. The acquisition of the AP depot by [X] would maintain a significant source of competitive constraint on ECP, which will otherwise be lost as a result of the Merger.

### *Liphook*

7.66 AP Liphook was identified by the fascia count filter as potentially raising competition concerns, while ECP Haslemere was identified by the store count filter as potentially raising competition concerns. AP Liphook and ECP Haslemere are close to each other and serve substantially the same customers. [X].

7.67 Our analysis indicated that the Parties will face competition to supply the majority of their customers from only one competitor post-Merger, compared

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<sup>108</sup> MGM also confirmed this to us.

with two under the counterfactual in which the AP depot had been acquired by [REDACTED]. CPA appears to compete effectively with the Parties in Liphook, but our analysis indicated that the Parties are each other's closest competitors and face limited competition from other suppliers in the area:

- (a) For both AP Liphook and ECP Haslemere, more Survey respondents mentioned the other Party as an alternative supplier they could use than any other supplier, and AP accounted for over [REDACTED] of price matches by ECP Haslemere after the acquisition.<sup>109</sup>
- (b) Dorset Auto Spares and MPD were used by some Survey respondents, but are not near to the Parties' primary customer groups. We also spoke to Dorset Auto Spares and MPD, [REDACTED].<sup>110</sup> We note that these suppliers also do not appear in the ECP IPM data or the ECP 2015 promotion data for this area.
- (c) Pages Motor Accessories features in the IPM data for ECP Haslemere but is also located at some distance from the Parties' customers. Additionally, only 2 of 23 Survey respondents said they had used Pages Motor Accessories in the last three months and only one Survey respondent mentioned this supplier unprompted as an alternative to ECP or AP.
- (d) Other suppliers which the Parties submitted were competitors in Liphook were not viewed by Survey respondents as alternatives to the Parties.

7.68 In response to our Provisional Findings, the Parties submitted that we should consider Whoopee Motor Factors, Autocare Motor Factors and Dorset Auto Spares as 'effective competitors' to the Parties in this area. The Parties also submitted that [REDACTED].

7.69 We did not consider that the Parties had provided additional evidence to support their arguments. Specifically:

- (a) Whoopee Motor Factors was only listed by AP as a competitor in this area and was not referred to by any Survey respondents. Furthermore, this supplier did not feature in the ECP IPM or the ECP 2015 promotion data for this area. We also note that Whoopee Motor Factors is located more distantly than both MPD and Dorset Auto Spares which said that

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<sup>109</sup> This figure is based on ECP's IPM data covering the period from September 2016 to December 2016. If we used data covering the period from October 2016 to December 2016 as the Parties have suggested (as discussed in footnote 3 of Appendix 7.1), AP would still have accounted for around [REDACTED] of ECP Haslemere's price matching.

<sup>110</sup> This was also reflected in these suppliers' responses to the ICDP supplier survey.

they were unable to supply a substantial proportion of the Parties' customers in this area.

- (b) Autocare Motor Factors is based in Bordon but had only been used by 3 of 21 Survey respondents in the last 3 months, only 1 Survey respondent stated that the supplier was an alternative to the Parties unprompted and only 4 said that the supplier was an alternative to the Parties when prompted. In addition, this supplier also does not feature in the ECP IPM or the ECP 2015 promotion data for this area. Consequently, we considered that Autocare Motor Factors is not a significant competitive constraint on the Parties in this area.<sup>111</sup>
- (c) We had considered evidence about the ability of Dorset Auto Spares to compete with the Parties in this area prior to our Provisional Findings and this evidence is discussed above. We do not believe that the Parties have submitted additional evidence which affects the view we reached in our Provisional Findings regarding the competitive constraint from Dorset Auto Spares in this area.<sup>112</sup>
- (d) We had also considered the evidence about the ability of [X] to compete with the Parties in this area prior to our Provisional Findings and this evidence is discussed above. We believe that this evidence shows that, prior to the Merger, [X] was a significantly weaker competitive constraint on ECP than AP. Consequently, the acquisition of the AP depot by [X] would maintain a significant source of competitive constraint on ECP which will otherwise be lost as a result of the Merger.

7.70 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Liphook because:

- (a) The Parties' depots compete closely to supply customers in the local area;
- (b) After the Merger, ECP will only be constrained by one competitor when supplying the majority of the Parties' customers in this area; and
- (c) The alternative purchaser in the counterfactual, [X], is currently a weak competitor to the Parties. The acquisition of the AP depot by [X] would

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<sup>111</sup> Consistent with this we also understand that Autocare Motor Factors has recently entered liquidation because it was not able to compete in this area.

<sup>112</sup> In fact we note that the ICDP supplier survey also found that Dorset Auto Spares rarely if ever delivered to Liphook and Haslemere which was consistent with our findings.

maintain a significant source of competitive constraint on ECP which will otherwise be lost as a result of the Merger.

### *Scunthorpe*

- 7.71 AP Scunthorpe and ECP Scunthorpe were identified by both the fascia count and store count filter as potentially raising competition concerns. AP Scunthorpe and ECP Scunthorpe are close to each other and serve substantially the same customers. [REDACTED] was the alternative bidder for AP Scunthorpe and our analysis indicated that [REDACTED] is not present in the area.
- 7.72 The Parties appear to compete closely in Scunthorpe: AP accounted for just over [REDACTED] of ECP Scunthorpe's price matching after the acquisition,<sup>113</sup> and [REDACTED].
- 7.73 Furthermore, our analysis indicated that the Parties will face competition from only two competitors post-Merger, compared with three under the counterfactual in which the AP depot would have been purchased by [REDACTED]. Parkers and FMS Autoparts both appear to be effective competitors to the Parties, but we found no evidence that any other suppliers are likely to exert a significant constraint on the Parties in this area.
- (a) Wilco Motor Spares was listed by the Parties as a competitor in this area. However, this supplier appears to be a retailer rather than a motor factor. Moreover, it did not feature in the ECP IPM or ECP's 2015 promotion data, none of the 18 Survey respondents in the area said they had used it in the past 3 months or mentioned it unprompted, and only 3 of 18 respondents said, when prompted, that Wilco Motor Spares would have met their requirements if AP's or ECP's depot had been closed.
- (b) The Parties also listed A K Motor Spares as a competitor in this area. However, this supplier did not feature in the ECP IPM data or ECP's 2015 promotion data, none of the 18 Survey respondents said they had used this supplier in the last 3 months and only 1 respondent said that they could have used it as an alternative without prompting. Only 2 of 17 Survey respondents said that they could have used this supplier when prompted and 8 respondents said that they did not know about this supplier.

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<sup>113</sup> This figure is based on ECP's IPM data covering the period from September 2016 to December 2016. If we used data covering the period from October 2016 to December 2016 as the Parties have suggested (as discussed in footnote 3 of Appendix 7.1), AP would still have accounted for over [REDACTED] of ECP Scunthorpe's price matching.

- (c) TPS only competes with the Parties in relation to a limited range of the parts they supply as TPS predominantly supplies Volkswagen parts.
- (d) Other suppliers which the Parties submitted were competitors in Scunthorpe were either not viewed by Survey respondents as alternatives to the Parties or were OEM parts suppliers, which only exert a limited competitive constraint on general motor factors such as the Parties, as discussed in Section 5. These suppliers also only appeared to a very limited extent (if at all) in the ECP IPM data and did not feature in the ECP 2015 promotion data for this area.

7.74 In response to our Provisional Findings, the Parties submitted that we should consider AK Motor Spares and TPS as ‘effective competitors’ to the Parties in this area. We refer to paragraph 7.73 above and, for the reasons set out there, did not consider that the Parties have submitted additional evidence which indicated that these suppliers are in fact a significant competitive constraint on the Parties in this area.

7.75 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Scunthorpe because:

- (a) The Parties’ depots compete closely to supply customers in the local area;
- (b) After the Merger, ECP will only be constrained by two competitors; and
- (c) The alternative purchaser in the counterfactual, [X], does not currently compete with the Parties. The acquisition of the AP depot by [X] would maintain a significant source of competitive constraint on ECP, which will otherwise be lost as a result of the Merger.

### *Sunderland*

7.76 AP Sunderland and ECP Sunderland were identified by both the fascia count filter and the store count filter as potentially raising competition concerns. AP Sunderland and ECP Sunderland are close to each other and serve substantially the same customers. [X] was the alternative bidder for AP Sunderland and our analysis indicated that [X] is not present in the area.

7.77 Our analysis indicated that the Parties will face competition from only two competitors post-Merger, compared with three under the counterfactual in which the AP depot would have been purchased by [X]. Carparts Trade Supplies and NPA Motor Factors both appear to be effective competitors to the Parties in Sunderland, but we found limited evidence that other suppliers are likely to exert a significant constraint on the Parties in this area.

- 7.78 TPS, Quickco and Bristol Street Motors were mentioned by some Survey respondents but these are OEM parts suppliers and their ranges are limited to specific car marques.<sup>114</sup> Many of the other suppliers listed by the Parties among their top 10 competitor lists were not used by any of the Survey respondents who also, when prompted, consistently stated that they would not use these suppliers. These additional suppliers also do not feature in the ECP IPM data or the ECP 2015 promotion data
- 7.79 In response to our Provisional Findings, the Parties submitted that we should consider Quickco and TPS as ‘effective competitors’ to the Parties in this area. In relation to Quickco, the Parties submitted additional evidence from the ICDP supplier survey in which Quickco had said that it supplied OEM car parts for 8 marques and that it also offered several deliveries per day in the Sunderland area.<sup>115</sup> In relation to TPS, the Parties submitted evidence from the ICPD supplier survey saying that TPS delivered Volkswagen brands in the Sunderland area to IMT customers and that it offered same day or next day delivery.
- 7.80 We contacted Quickco following our Provisional Findings. Quickco said that it supplies OEM parts for the Renault and Nissan marques and a small amount of OEM parts for the Ford Citroen and Land Rover marques from its depot in Sunderland. However, Quickco said that competition between itself and general motor factors, such as ECP and AP, was limited. This limited competitive interaction is reflected in the absence of Quickco from the ECP IPM data in this area and that only a small number of Survey respondents referred to Quickco without prompting.
- 7.81 For the reasons set out at section 5 and in paragraphs 7.40 and 7.79, we did not consider that the additional evidence submitted by the Parties in respect of TPS is sufficient to show that in Sunderland, TPS or TPS together with other OEM parts suppliers is a significant constraint on the Parties.
- 7.82 Therefore, we concluded that the Merger may be expected to give rise to an SLC in Sunderland because:
- (a) The Parties’ depots compete closely to supply customers in the local area;
  - (b) After the Merger, ECP will only be constrained by two competitors; and

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<sup>114</sup> We also note that Bristol Street Motors only appears to a very limited extent in the ECP price matching data for this area.

<sup>115</sup> The Parties also submitted four invoices from ECP customers showing that these customers had been supplied by Quickco in Sunderland. We refer to paragraph 7.43 above for our view on the invoice evidence submitted by the Parties.

- (c) The alternative purchaser in the counterfactual, [REDACTED], does not currently compete with the Parties. The acquisition of the AP depot by [REDACTED] would maintain a significant source of competitive constraint on ECP, which will otherwise be lost as a result of the Merger.

### *Wakefield*

- 7.83 Both AP Wakefield and ECP Wakefield were identified by the store count filter as potentially raising competition concerns. AP Wakefield and ECP Wakefield are close to each other and serve substantially the same customers. [REDACTED] was the alternative bidder for AP Wakefield and our analysis indicated that prior to the Merger [REDACTED] was a weaker constraint on ECP than AP.<sup>116</sup>
- 7.84 Our analysis indicated that the Parties were the closest competitors to each other and will face limited competition from other suppliers post-Merger:
- (a) The Parties appear to compete closely: 10 of 11 ECP Wakefield Survey respondents and 7 of 10 AP Wakefield Survey respondents mentioned the other Party unprompted as the alternative they would have used had the focal AP/ECP depot been closed, AP accounts for over [REDACTED] of ECP Wakefield's price matching,<sup>117</sup> and [REDACTED].
- (b) A-Z Motor Spares has a site in Wakefield and additional sites in the area, but very few Survey respondents said they had used it and it only received [REDACTED] of ECP Wakefield's price matches.<sup>118</sup>
- (c) Wood Auto Factors in Wakefield was included in both the AP and the ECP survey but, while 7 of 21 respondents said they could have used it as an alternative when prompted, only 1 respondent mentioned it unprompted and 8 said they could not have used it as an alternative, with some respondents stating they had never heard of Wood Auto Factors and others that it did not stock the parts they needed or that its prices were not competitive. In addition, this supplier had only been used by 2 of 21 Survey respondents in the last 3 months. We also noted that

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<sup>116</sup> [REDACTED] are located more distantly in [REDACTED]. These depots appeared in the ECP IPM data to a very limited extent. Only the [REDACTED] depot was listed as a top 10 competitor by ECP Wakefield and only a small number of Survey respondents referred to this supplier's depots (for example [REDACTED] Survey respondents who were prompted about this supplier's [REDACTED] depot said that they could not have used them).

<sup>117</sup> This figure is based on ECP's IPM data covering the period from September 2016 to December 2016. If we used data covering the period from October 2016 to December 2016 as the Parties have suggested (as discussed in footnote 3 of Appendix 7.1), AP would still have accounted for over [REDACTED] of ECP Wakefield's price matching.

<sup>118</sup> This figure is based on ECP's IPM data covering the period from September 2016 to December 2016. If we used data covering the period from October 2016 to December 2016 as the Parties have suggested (as discussed in footnote 3 of Appendix 7.1), A-Z Motor Spares would still have accounted for only [REDACTED] of ECP Wakefield's price matching.

Wood Auto Factors does not appear in the ECP IPM or the ECP 2015 promotion data for this area.

- (d) Trust Ford Wakefield, which a number of ECP customers said they could have used as an alternative when prompted, is an OEM parts supplier whose focus is on the supply of parts for Ford vehicles and so only competes with the Parties in respect of a limited part of their range.
- (e) Few Survey respondents had used any of the other suppliers listed by the Parties as competitors in the area and, in each case, when prompted more respondents had said they would not be able to use them as an alternative to the AP/ECP focal depot than said they would be able to use them.

7.85 In their response to our Provisional Findings, the Parties submitted that we should have considered GSF's branches in Leeds, M1 Motorparts and Wood Auto Factors as 'effective competitors' to the Parties in Wakefield. In our view, the evidence does not indicate that these suppliers are a significant competitive constraint on the Parties in this area. In particular:

- (a) GSF's depots are located in Leeds and Huddersfield which are at a significant distance from the Parties' depots and the Parties' customers in Wakefield. GSF said that the focus of these GSF depots is on competing for customers in the Leeds and Huddersfield areas rather than competing for customers in the Wakefield area, where the majority of the Parties' customers are located. This is consistent with the available evidence. Although 3 of 21 Survey respondents referred to this supplier, neither of the Parties listed GSF as a top 10 competitor in the Survey. GSF also accounts for a very small proportion of the price matches at ECP Wakefield. Therefore, we did not consider that GSF is a significant competitive constraint on the Parties in Wakefield.
- (b) M1 Motorparts was only listed as a competitor by the ECP depot in this area. No Survey respondents had used this supplier and only 1 of 11 Survey respondents said that they could have used them when prompted. This supplier does not appear in the ECP IPM or the ECP 2015 promotion data for this area either. Furthermore, M1 Motorparts is located in Leeds, at a distance from the Parties and their customers in Wakefield. It was included in the Survey for a number of AP and ECP depots in Leeds. However, only 1 of 30 Survey respondents in Leeds said unprompted that it could have used this supplier instead of AP or ECP. Only 10 additional respondents in Leeds said that they could have used this supplier when prompted. Consequently, we did not consider



that M1 Motorparts is a significant competitive constraint on the Parties in Wakefield.

- (c) We have considered the evidence of Wood Auto Factors' ability to compete effectively with the Parties in Wakefield, which is summarised above. Given its limited use by Survey respondents and since it does not appear in ECP's IPM or 2015 promotion data for this area, we considered that Wood Auto Factors exerts a limited competitive constraint on the Parties in this area.

7.86 The Parties also noted that SDL Minorfern has recently opened a depot in Castleford. We considered that suppliers located in Castleford are located too distantly to compete with the Parties effectively to supply the Parties' customers located in the Wakefield area. This is supported by the Survey results for SAS Autoparts (who are also located in Castleford). [REDACTED]

7.87 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Wakefield because:

- (a) The Parties' depots compete closely to supply customers in the local area;
- (b) After the merger, ECP will face only limited constraints from other competitors in the area; and
- (c) The alternative purchaser in the counterfactual, [REDACTED], is currently a weak competitor to the Parties. The acquisition of the AP depot by [REDACTED] would lead to ECP facing a significantly stronger constraint than will otherwise be the case as a result of the Merger.

### *Worthing*

7.88 Both AP Worthing and ECP Worthing were identified by both the fascia count filter and the store count filter as potentially raising competition concerns. AP Worthing and ECP Worthing are close to each other and serve substantially the same set of customers. [REDACTED] was the alternative bidder for AP Worthing and our analysis indicated that [REDACTED] is not present in the area.

7.89 Our analysis indicated that the Parties will face competition from only two competitors post-Merger, compared with three under the counterfactual in which the AP depot would have been purchased by [REDACTED]. CPA and Frenches Autos both appear to be effective competitors to the Parties in Worthing, but we found limited evidence that other suppliers are likely to exert a significant constraint on the Parties in this area:

- (a) TPS only competes with the Parties in relation to a limited range of the parts they supply as TPS predominantly supplies Volkswagen parts.
- (b) Few Survey respondents had used any of the other suppliers listed by the Parties as competitors in the area and, in each case, when prompted more respondents said they would not be able to use them as an alternative to AP and ECP than said they would be able to use them. These suppliers also did not appear to a material extent in the ECP IPM data and did not feature in the ECP 2015 promotion data.

7.90 In response to our Provisional Findings, the Parties submitted that we should consider BTR Brakes and TPS as ‘effective competitors’ to the Parties in this area. In our view the evidence does not indicate that these suppliers are a significant competitive constraint on the Parties in this area. In particular:

- (a) BTR Brakes’ website indicated that its focus is on truck components. This is reflected in the findings of the ICDP supplier survey which describes this supplier as ‘*more commercial*’. This suggests that any competitive constraint on the Parties from BTR Brakes is likely to be limited. This is consistent with the available evidence. BTR Brakes does not appear in the ECP IPM or the ECP 2015 promotion data for this area. Additionally, only AP listed BTR Brakes as a competitor in this area. Only 1 of the 10 AP Survey respondents said that they had used this supplier in the last 3 months. No respondents mentioned this supplier as an alternative to the Parties unprompted and only 3 of 10 said that this supplier was an alternative when prompted. Therefore, we did not consider that BTR Brakes is an effective competitor to the Parties in this area.
- (b) The Parties did not submit additional evidence on TPS and we refer to section 5 for the reasons why we consider that the competitive constraint from OEM parts suppliers such as TPS is limited.

7.91 Therefore, we concluded that the Merger may be expected to give rise to a SLC in Worthing because:

- (a) The Parties’ depots compete closely to supply customers in the local area;
- (b) After the Merger, ECP will only be constrained by two competitors; and
- (c) The alternative purchaser in the counterfactual, [X], does not currently compete with the Parties. The acquisition of the AP depot by [X] would maintain a significant source of competitive constraint on ECP, which will otherwise be lost as a result of the Merger.

## York

- 7.92 AP York was identified by both the fascia count filter and the store count filter as potentially raising competition concerns, while ECP York was identified by the store count filter as potentially raising competition concerns. AP York and ECP York are close to each other and serve substantially the same customers. [X] was the alternative bidder for AP York and our analysis indicated that prior to the Merger [X] was a weaker constraint on ECP than AP.<sup>119</sup>
- 7.93 The Parties appear to compete closely in York: AP accounted for over [X] of ECP York's price matching after the acquisition,<sup>120</sup> was mentioned unprompted as an alternative to ECP by six of thirteen Survey respondents, [X].
- 7.94 Our analysis indicated that the Parties will face competition from only one competitor post-Merger, compared to two under the counterfactual in which the AP depot would have been purchased by [X]. York Motor Factors appears to compete effectively with the Parties in York, but we did not consider that other suppliers in the area are likely to impose a significant constraint on the Parties:
- (a) As discussed at paragraph 7.72 above in relation to the Scunthorpe area, Wilco Motor Spares is a retailer rather than a motor factor so does not compete with the Parties in the supply of IAM car parts to local IMT customers. Wilco Motor Spares was not listed by the Parties as one of the top 10 competitors to either ECP York or AP York and it did not feature in the IPM data for ECP York.
  - (b) No respondents to the AP York Survey said they could use Millgate Motor Factors 1999 as an alternative to AP (unprompted or prompted), and it did not feature in the price matching for ECP York. [X].
  - (c) In York, neither Party listed Fleet Factors as one of its top 10 competitors and so Survey respondents were not asked about it. However, although Fleet Factors is included in the set of Effective Competitors in our filtering process because it reaches the Survey score threshold for AP Newcastle, it does not appear to be a strong competitor

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<sup>119</sup> [X] has a depot located in [X] which is located at a distance from the Parties and from their customers. Furthermore, this depot does not appear in the ECP IPM data, was not listed as a top 10 competitor to the Parties in this area and was not referred to by any Survey respondents.

<sup>120</sup> This figure is based on ECP's IPM data covering the period from September 2016 to December 2016. If we instead used data covering the period from October 2016 to December 2016 as the Parties have suggested (as discussed in footnote 3 of Appendix 7.1), AP would still have accounted for over [X] of ECP York's price matching.

in other areas. The Parties listed Fleet Factors as one of their top 10 competitors at 13 depots, and so across the entire Survey 126 customers were asked about Fleet Factors. However only 5 Survey respondents (4%) said they had used it in the past three months, only 3 (2%) mentioned it unprompted as an alternative supplier they could have used had the focal AP/ECP depot been closed and, when prompted about whether they could have used Fleet Factors, only 21 customers (17%) said yes while 63 (50%) said no.

- (d) Other suppliers listed by the Parties as competitors in York are either OEM parts suppliers and so only able to exert a limited constraint on the Parties because of their limited range, or were not viewed by Survey respondents as viable alternative to the Parties.

7.95 The Parties did not provide any submissions which were specific to York in their response to our Provisional Findings.

7.96 Therefore, we concluded that the Merger may be expected to give rise to a SLC in York because:

- (a) The Parties' depots compete closely to supply customers in the local area;
- (b) After the Merger, ECP will only be constrained by one competitor; and
- (c) The alternative purchaser in the counterfactual, [X], is currently a weak competitor to the Parties. The acquisition of the AP depot by [X] would lead to ECP facing a significantly stronger constraint than will otherwise be the case as a result of the Merger.

### ***Effects of the Merger***

7.97 In respect of the nine areas, we have identified that the Merger may be expected to be substantially less competitive than acquisition by PA and/or MPD. In those local areas, the AP and ECP depots will no longer compete with one another and there are insufficient competitive constraints on ECP from both within and outside the relevant market post-Merger.

7.98 Given our conclusions as to lack of sufficient competitive constraints in each of those local markets, our assessment of the available evidence is that ECP may have an incentive to increase prices and/or reduce the quality of service available to local IMT customers in those nine local areas.

## ***Countervailing factors***

- 7.99 The Merger Assessment Guidelines indicate that, in considering whether a merger may be expected to result in a SLC, the CMA will consider factors that may mitigate the initial effect of a merger on competition ('countervailing factors'), which in some cases may mean that there is no SLC. These factors include:
- (a) the responses of others in the market (rivals, customers, potential new entrants) to the merger, for instance the entry into the relevant market of new providers or expansion by existing providers;
  - (b) the ability of customers to exercise buyer power; and
  - (c) the effect of any rivalry-enhancing efficiencies arising as a result of the Merger.
- 7.100 However, we have not seen evidence of the existence of any countervailing factors that could have been relevant to our assessment of competition in the nine local areas identified.
- 7.101 We considered whether entry and expansion by effective competitors could be expected to be timely, likely and sufficient to prevent the SLC that might otherwise arise in each of the local areas identified. All three of these criteria (timeliness, likelihood and sufficiency) would have to be met for a SLC to be prevented. Appendix 7.4 sets out the evidence on barriers to entry. The evidence provided by the Parties and third parties, the evidence on past expansion and the presence of a large number of small independent motor factors suggests that barriers to entry and expansion in local markets are not particularly high.
- 7.102 In response to Provisional Findings, ECP highlighted the recent acquisition by UniSelect of PA (as well as further PA consolidation) and of AAG by Genuine Parts Company in support of their view that any reduction in competition in a particular area is likely to be countered by entry or expansion in the short to medium term.<sup>121</sup> We note that these acquisitions were of existing suppliers in the market and not new entry. Moreover, and importantly in the context of our finding of the lack of competitive constraints on ECP post-Merger in the nine local areas described at paragraphs 7.52 to 7.101 above, we have not received any evidence of potential entry or

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<sup>121</sup> Response to Provisional Findings (5 October 2017), paragraph 5.3(b).

expansion in any of these local areas within the next two years which would mitigate the effects of the Merger in those areas.

7.103 The Parties have not submitted any arguments and, given the characteristics of local IMT customers, we have not seen evidence to suggest that local IMT customers have buyer power sufficient to protect them from the effects of the Merger identified in each of the nine local areas.

7.104 The Parties have identified a number of efficiencies from the acquisition. As described in section 4, these are mainly procurement and back office synergies, some of which the Parties expect would be passed on to their customers because of competitive pressures. We concluded, on the basis of the limited evidence provided by the Parties that such efficiencies are unlikely to be specific, timely, likely and sufficient to prevent a SLC arising in each of the nine local areas identified in paragraphs 7.52 to 7.101 above.

7.105 We therefore concluded that the Merger has resulted, or may be expected to result, in a SLC in the supply of IAM car parts by general motor factors to local IMT customers in the local areas set out below and that this may be expected to lead to adverse effects for local IMT customers in terms of an increase in prices and/or a reduction in the quality of service in those nine local areas (the SLC areas).

- (i) Blackpool
- (ii) Brighton
- (iii) Gloucester
- (iv) Liphook
- (v) Scunthorpe
- (vi) Sunderland
- (vii) Wakefield
- (viii) Worthing
- (ix) York

## **8. Assessment of the competitive effects of the Merger on Key Accounts**

8.1 In this section, we consider whether the Merger may be expected to give rise to a SLC in the supply of IAM car parts by general motor factors to Key Accounts. We describe how Key Accounts differ from other customers in

section 5 and why we consider that the effects of the Merger are likely to differ between local IMT customers and Key Accounts.

- 8.2 We first set out the framework for the assessment of the effects of the Merger on competition for Key Accounts, in particular with regard to how this assessment is affected by the counterfactual. In that context, we look at AP's and other suppliers' ability to compete for Key Accounts pre-Merger. Finally, we examine the evidence regarding whether competition from PA and/or MPD would have increased significantly in the counterfactual and set out our conclusions.

### ***Framework for our assessment***

- 8.3 As set out in section 6, we have concluded that the most likely counterfactual is that 52 of the 101 AP depots acquired by ECP would have been acquired by a combination of PA and MPD, and that the remaining 49 depots would have closed. Therefore, in our competitive assessment, we considered whether the acquisition of almost all of AP's depots by ECP results in a significantly less competitive outcome than the counterfactual in which some combination of PA and MPD acquired the depots up to which they bid and where the remaining AP depots are closed.
- 8.4 For the reasons described below, this assessment requires that we answer the following three questions:<sup>122</sup>
- (a) Would the closure of 49 depots have increased competition compared to the Merger?
  - (b) Would acquiring up to 39 additional depots have significantly increased PA's ability to compete to supply Key Accounts?
  - (c) Would acquiring up to 21<sup>123</sup> additional depots have allowed MPD to become an effective competitor to supply Key Accounts?

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<sup>122</sup> We do not believe that the acquisition of the AP depots will materially affect ECP's ability to compete to supply Key Accounts relative to the pre-Merger situation. This is because, as we discuss later, the geographic coverage of a supplier is a significant factor in a supplier's ability to compete to supply Key Accounts. ECP is already able to supply Key Accounts from its existing network of depots and the acquisition of the AP depots will not materially affect ECP's geographic coverage and therefore its ability to supply Key Accounts. In only three areas did we identify no overlap between ECP's existing depots and the acquired AP depots.

<sup>123</sup> As described in section 6 above, MPD bid for 23 depots but intended to close two depots. This would effectively mean that the two depots would have exited the relevant local area. As for local IMT customers, we have therefore proceeded on the basis that MPD would bid for up to 21 depots for the purposes of our competitive assessment of the effects of the Merger on Key Accounts.

***Would the closure of 49 depots have increased competition compared to the Merger?***

- 8.5 In principle, the closure of the remaining 49 depots could have resulted in increased competition relative to the outcome in which these depots were acquired by ECP, depending on how the sales to Key Accounts from these depots were redistributed amongst competitors and if this redistribution would have led to a more competitive outcome. However:
- (a) It is likely that a substantial majority of these sales would have been redistributed to ECP in any event, as ECP is by far the largest supplier to Key Accounts<sup>124</sup>; and
  - (b) We have not seen evidence suggesting that any other suppliers gaining sales as a result of the closure of the AP depots would consequently be able to compete more strongly for Key Accounts. Given the relatively small size of AP's Key Accounts business, this would not represent a significant increase in scale for such suppliers. Additionally, as is explained below, one of the main factors in competing to supply Key Account customers is having sufficient geographic coverage to supply these customers. This would not be affected by the closure of the AP depots.
- 8.6 We therefore did not consider this element of the counterfactual further.
- 8.7 Prior to turning to the remaining two questions set out in paragraph 8.4 above (ie whether competition from PA and/or MPD would have increased significantly in the counterfactual relative to the Merger), we consider first the evidence on the following:
- (a) AP's ability to compete for Key Accounts pre-Merger; and
  - (b) Other competitors for Key Accounts.

***AP's ability to compete for Key Accounts***

- 8.8 While AP would not have continued to compete independently for Key Accounts in the counterfactual (as it would not have continued to operate independently<sup>125</sup>), it is nevertheless informative to consider the extent to which AP was able to compete for Key Accounts prior to its acquisition, for two reasons:

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<sup>124</sup> As explained further below.

<sup>125</sup> See section 6 on the counterfactual.



- (a) much of the available evidence relates to the pre-Merger period in which AP was competing to supply Key Accounts, at least to some extent. Therefore, understanding precisely how AP competed pre-Merger helps inform our view of the competitive effects of the Merger relative to the counterfactual; and
- (b) understanding the extent to which AP competed may inform our assessment of whether MPD would have been a viable competitor for Key Accounts had it acquired the AP depots for which it bid. MPD would have had 112 depots had it acquired all of the AP depots for which it bid, which is a similar size to AP's pre-Merger 107 depots.<sup>126</sup>

8.9 In assessing AP's ability to compete for Key Accounts, we particularly consider whether AP remained a viable competitor following its exit from PA in late 2015, and whether this was true for larger as well as smaller Key Accounts.

#### *Parties' views*

8.10 The Parties said that AP did not represent a strong competitor to ECP for Key Accounts, particularly after leaving PA in November 2015. They submitted that AP was significantly weakened by leaving PA, because:

- (a) it had benefited from the PA branch network (in that, by being part of PA, it could offer customers a wider coverage than it would have been able to alone);
- (b) it had benefited from being able to bid for tenders without active competition from PA;
- (c) it had benefited from access to the buying, product management and cataloguing functions that had been performed by PA; and therefore
- (d) as a result of leaving PA, [REDACTED].<sup>127</sup>

8.11 The Parties submitted that consequently, prior to the Merger, AP should be considered to have been a distant third competitor alongside a number of other smaller competitors. In response to Provisional Findings, the Parties further submitted that the acquisition of the AP depots will not have a material impact on ECP's ability to compete for Key Accounts because ECP

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<sup>126</sup> Although we recognise that the geographic distribution of a supplier's depots is more important in competing for Key Accounts.

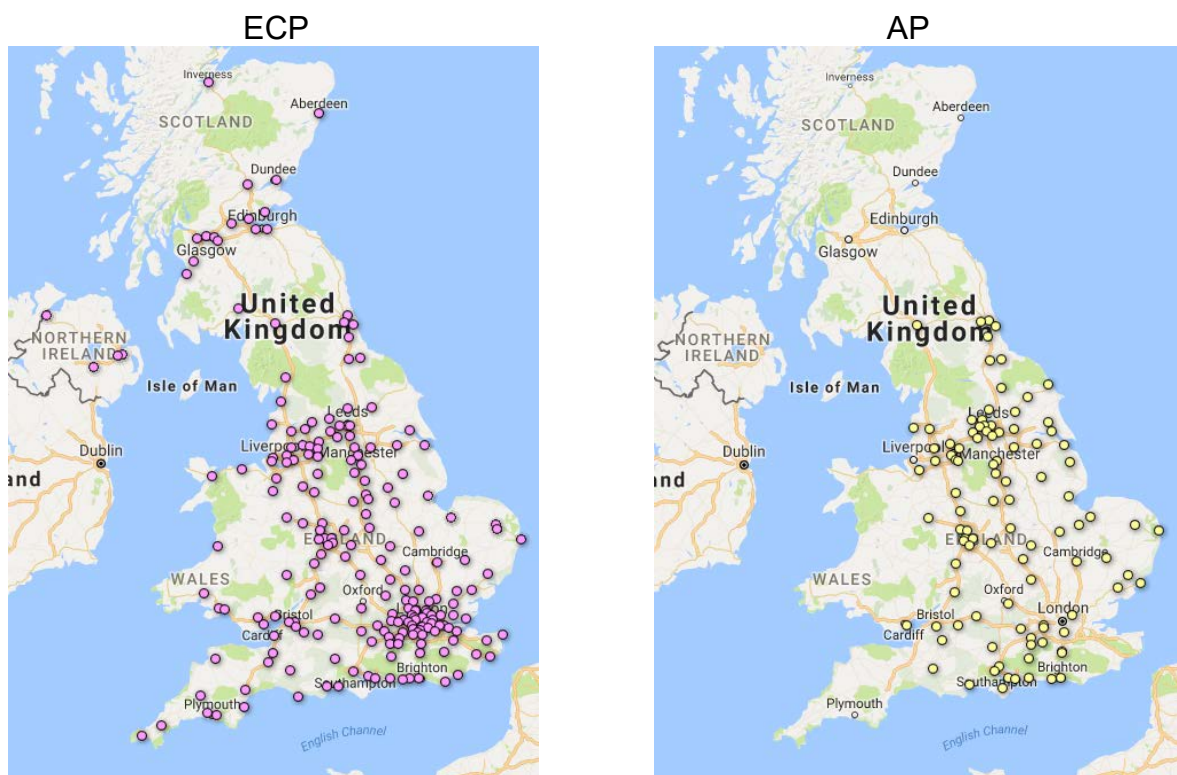
<sup>127</sup> Parties response to Issues Statement, p 4.9-4.10.

was prior to the Merger able to compete for such customers and the Merger will not materially increase ECP's geographic coverage. They argued that the Merger could not therefore result in any significant lessening of competition irrespective of the position under the counterfactual.<sup>128</sup>

#### *Evidence regarding AP's ability to compete for Key Accounts prior to the Merger*

- 8.12 To assess AP's ability to compete for Key Accounts prior to the Merger, we have considered the geographic coverage of ECP and AP, tender and sales data provided by the Parties, the Parties' internal documents and third party views.
- 8.13 The preference<sup>129</sup> of Key Accounts to use a single supplier for at least the majority of their requirements across their network is likely to make geographic coverage an important element of competition for Key Accounts, particularly for national customers. The maps below show the locations of each of the Parties' depots in the UK.

**Figure 8.1: Parties' geographic coverage**



Source: Parties and CMA.

- 8.14 ECP's geographic coverage is clearly significantly greater than that of AP, as a) there are regions including Scotland, Wales, Northern Ireland and the

<sup>128</sup> Parties' response to Provisional Findings (5 October 2017), paragraphs 4.2 and 4.5.

<sup>129</sup> See section 5 at paragraph 5.37.

south west of England where ECP has a number of depots and AP has very few or none and b) in regions where ECP and AP are both present, ECP often has a denser network, e.g. in and around London.

- 8.15 However, AP's depots do cover a significant proportion of the UK, even if it does not have a full national coverage. AP's regional coverage suggests it could compete strongly to supply Key Accounts in some regions, in particular in the north of England.
- 8.16 The Parties provided bidding data detailing the tenders or negotiations in which ECP and AP have taken part over the period 2014-2016.<sup>130</sup> Appendix 8.1 sets out our analysis of this data together with additional evidence on other suppliers to Key Accounts. Our analysis suggests that ECP tendered for more larger Key Accounts than AP<sup>131</sup> and that ECP exerted a stronger constraint on AP than the constraint exerted by AP on ECP.<sup>132</sup>
- 8.17 We compared AP's tender win rates while being part of the PA buying and trading group with the rates after it left the PA buying and trading group in order to assess the impact of AP leaving the PA group on its ability to compete for Key Accounts.<sup>133</sup> This analysis shows that after leaving PA, AP slightly increased the frequency with which it participated in tenders and that the proportion of tenders that it won fell slightly.<sup>134</sup> Most customers for which AP won tenders after leaving PA were regional rather than national customers, making their purchases from a relatively small number of AP depots, and with fairly low bid values.<sup>135</sup>
- 8.18 We also compared the customers of the tenders that ECP won in that same period.<sup>136</sup> This indicated that ECP was significantly more focused on larger national customers, which is consistent with other evidence we considered.
- 8.19 There are a significant number of tenders which neither of the Parties won – either tenders in which the Parties both competed and both lost, or tenders in which one of the Parties did not compete and the other Party lost anyway. Our analysis of the tenders won by neither of the Parties suggests that the

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<sup>130</sup> Some Key Account customers issue formal tenders when selecting a supplier, while others negotiate supply more informally. For simplicity, we refer to both types of negotiation as 'tenders'. [X] per cent of ECP's tenders were formal agreements, while [X] per cent was informal. Of the [X] AP tenders for which extent of formality is known, [X] per cent were formal agreements, whereas [X] per cent were informal.

<sup>131</sup> See in particular Tables 2 and 4 of Appendix 8.1.

<sup>132</sup> See in particular Tables 5 and 6 of Appendix 8.1.

<sup>133</sup> See Appendix 8.1, paragraphs 14 to 17.

<sup>134</sup> See Table 11 of Appendix 8.1.

<sup>135</sup> See Table 12 of Appendix 8.1. The exception is [X], which is a national customer with a bid value in the millions of pounds. However, this tender was described as being for 'open supply', which may indicate that the actual value of the tender to AP could be significantly lower than [X] – and indeed, as discussed below, AP's sales to [X] in 2016 were significantly below [X].

<sup>136</sup> See Table 12 of Appendix 8.1.

Parties face more competition for local/regional Key Accounts, and may face competition from specialist suppliers when customers tender for narrow product categories. However, as we explain below, the evidence indicated that for larger national customers tendering for a wider range of car parts, only PA appears to compete with the Parties.

- 8.20 The Parties indicated that AP's total sales for Key Accounts decreased significantly after AP left PA. We assessed this using AP's sales data for Key Accounts, comparing 2015 with 2016 figures, as AP was part of PA for most of 2015 (until November) while it was not part of any buying group in 2016. As shown in Table 8.1 below, its total Key Accounts revenues decreased by [REDACTED] from 2015 to 2016:

**Table 8.1: AP customer and sales figures, 2015 and 2016**

<i>Year</i>	<i>Sales in £</i>
2015	[REDACTED]
2016	[REDACTED]

Source: Parties and CMA.

- 8.21 Moreover, the absolute total value of AP's sales in 2016 is low in the context of individual Key Accounts (with sales of over [REDACTED]).
- 8.22 To assess whether this decline was experienced uniformly across AP's Key Accounts or whether different customers reacted differently, we looked at the revenue figures for AP's top 10 customers in 2015 and 2016. AP's revenues decreased for all of AP's top 10 customers between 2015 and 2016, with decreases ranging between [REDACTED] and [REDACTED]. This indicated that leaving PA had a negative effect on AP's sales to all of its largest customers, although it is notable that one customer accounted for nearly half of AP's overall revenue decline.
- 8.23 The number of depots purchased from by a Key Account shows to what extent AP's top 10 customers appear to have used AP on a national basis following its exit from PA. Only [REDACTED] customers purchased car parts from more than [REDACTED] of AP's depots in 2016, suggesting that the other customers used AP only on a regional (or even local) basis where we might expect the implications of leaving PA to be less significant. This is also consistent with the identity of the customers with which AP won tenders after leaving PA. These customers made purchases from a relatively small number of AP depots and the value of the tenders was low.

#### *Internal documents*

- 8.24 AP repeatedly mentions in its internal documents that it experienced a significant reduction in national account sales after leaving the PA buying

group in November 2015. According to AP's information memorandum, 'withdrawal from the Parts Alliance in November 2015 resulted in the Group working with a smaller number of national accounts. Whilst this reduced turnover, it also resulted in improved margins as retained national accounts were dealt with directly. Following this change the business was restructured to reduce branch costs, including vans, reduced employee numbers and closure of underperforming branches.'

- 8.25 Internal documents from soon after AP left PA were initially positive: in a market report by AP from December 2015, it was noted that national accounts were panning out broadly as anticipated. Halfords was stated as increasing in market share, and Formula One, National Tyres and Micheldever were said to be doing well. The only issue customer account highlighted as of concern was Kwik Fit which was described as seeing fledgling recovery.
- 8.26 However, in AP's CEO Report of January 2016, it was reported that revenues in national accounts had decreased. Apparently, this was entirely because of the decrease in the Kwik Fit account as the revenues in the accounts of Halfords grew strongly and the account revenues of National Tyres, Micheldever and Formula 1 modestly increased. The reduction of turnover in national accounts was also regularly noted in other AP board documents.
- 8.27 The former AP CEO told us that while AP continued to participate in national account tenders, the 'reality' was that AP did not have the national coverage required to be awarded 'primary supplier' status – at best it would be awarded 'secondary supplier' status. Phoenix also told us that AP's role in Key Accounts was mostly one of 'local supply fulfilment' for a national contract held by PA or another supplier.

#### *Third party views*

- 8.28 Overall, the evidence from third party responses on the strength of AP as a competitor for Key Accounts is mixed. Whilst some agreed with the Parties' contention that, after leaving PA, AP was no longer an effective competitor, some others, including national customers, appeared still to view AP as a viable alternative.
- 8.29 When asked to score various competitors, Key Accounts generally agreed that AP was not as strong a competitor as either ECP or PA. However, no customer scored any other competitor (apart from ECP and PA) higher than AP.

- 8.30 Customer views on the effects of AP leaving PA were varied. A number of Key Accounts agreed that AP's competitive offering was weakened as a result of leaving PA, noting in particular that AP was no longer able to offer national coverage as a result.<sup>137</sup> However, other customers did not find that AP's ability to compete was weakened as a result of leaving PA.<sup>138</sup> This was not limited to smaller customers – two of the largest Key Accounts, [REDACTED] and [REDACTED], were among those which said that AP's ability to compete to supply them was unaffected by leaving PA.
- 8.31 However, AP accounted for only [REDACTED] of [REDACTED] purchases and [REDACTED] of [REDACTED] purchases in 2016. Moreover, as shown above both customers reduced their purchases from AP in 2016, [REDACTED]. It may be the case that AP's ability to act as a secondary supplier to large Key Accounts was not significantly affected by its departure from PA, but its ability to be the primary supplier at least for national Key Accounts was. This is consistent with the fact that all but one of the Key Accounts who provided data on their purchases used AP for less than [REDACTED] of their overall purchases.<sup>139</sup>

#### *Our assessment of AP's ability to compete for Key Accounts*

- 8.32 Leaving the PA buying group appears to have significantly weakened AP's ability to compete for Key Accounts. However, taken in the round, the evidence suggests that AP was still able to compete to supply regional customers and act (at least) as a secondary supplier for larger national Key Accounts. The fact that AP won a new tender for at least one large Key Account after leaving the PA buying group indicated that it was still capable of competing for national Key Accounts, despite its more limited geographic coverage.

#### *Other competitors for Key Accounts*

- 8.33 The Parties argued that ECP faces a number of other competitors for Key Accounts in particular PA, MPD, AAG, IFA and TPS. The evidence we have obtained in relation to each of these suppliers is set out in Appendix 8.2. This evidence supports the Parties' contention that PA<sup>140</sup> is an effective competitor for all Key Accounts. MPD,<sup>141</sup> however, is currently only a marginal constraint on ECP when competing for Key Accounts, and is not

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<sup>137</sup> Responses of [REDACTED]. All stated that AP was less competitive in some way after leaving PA, although [REDACTED] response referred to issues with stock levels and invoicing rather than reduced coverage.

<sup>138</sup> Responses [REDACTED].

<sup>139</sup> The exception was [REDACTED], which purchased [REDACTED] of its requirements from AP.

<sup>140</sup> See paragraphs 2 to 3 of Appendix 8.2.

<sup>141</sup> See paragraphs 4 to 5 of Appendix 8.2.

able to compete to be the primary supplier for even the smaller Key Accounts. Similarly, it is unlikely that IFA<sup>142</sup> exerts more than a marginal constraint on ECP for Key Accounts outside its participation in PA contracts. We did not consider that AAG<sup>143</sup> exerts any competitive constraint on ECP in competing for Key Accounts, at least at present.

- 8.34 For the reasons set out in section 5 above, we have concluded that OEM parts suppliers are not part of the relevant market. Whilst Key Accounts may use Vauxhall Trade Group or TPS to fulfil customer requirements for OEM parts, the evidence does not suggest that they would consider them as potential primary suppliers.<sup>144</sup>

*Our assessment of current competitors' ability to compete for Key Accounts*

- 8.35 We considered that PA is the only supplier which competes with ECP to a significant extent, with smaller general motor factors, such as MPD, exerting only a limited constraint to supply Key Accounts with more limited geographic coverage requirements.

***Would competition from PA and/or MPD have increased significantly in the counterfactual?***

- 8.36 As discussed above in paragraph 8.4, in order to assess whether the Merger may be expected to give rise to a SLC in respect of competition for Key Accounts, we need to consider whether competition would have been increased significantly in the relevant counterfactual in which PA and MPD had acquired the depots up to which they bid.

*Parts Alliance*

- 8.37 PA bid for 39 of the AP depots, which would have increased its total number of owned depots to 195. Associate members of PA increase this footprint further to 229.

*Parties' Views*

- 8.38 The Parties argue that the acquisition of the AP depots by PA would not add to the constraints already placed by PA on ECP pre-Merger, because it was already the primary constraint on ECP for Key Accounts and was already

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<sup>142</sup> See paragraphs 9 to 11 of Appendix 8.2.

<sup>143</sup> See paragraphs 6 to 8 of Appendix 8.2.

<sup>144</sup> See paragraphs 12 to 17 of Appendix 8.2.

present in the local areas for each of the depots for which it bid, through its own branches in 26 areas and through its associate members in the remaining 13.<sup>145</sup>

### *PA's Views*

- 8.39 PA agreed that acquiring the AP depots for which it bid would not improve its coverage from a customer's perspective, as it already offers national coverage to customers. This is because, where PA is not present, it uses supply partners to fulfil contracts.
- 8.40 Instead, PA told us that [REDACTED].

### *Our assessment regarding PA*

- 8.41 As noted above, the available evidence indicated that ECP is a stronger competitor to supply Key Accounts than PA. In particular, PA is smaller than ECP in terms of sales to Key Accounts.<sup>146</sup> Additionally, Key Accounts tended to rate ECP more highly than PA. Of eleven customers responding to questionnaires, five viewed ECP as a stronger competitor than PA, while only two viewed PA as a stronger competitor than ECP.
- 8.42 Therefore, it is possible that acquiring the AP depots would allow PA to compete for Key Accounts more effectively, in which case the acquisition of the AP depots by PA would lead to a more competitive outcome overall. The most obvious way in which acquiring these depots would improve PA's competitiveness is through expanding its geographic coverage.
- 8.43 To assess the extent to which PA's geographic coverage would be improved, the figure below shows the locations of PA's existing member branches (in green for PA owned members and in turquoise for PA associate members) and the locations of the 39 AP depots for which it bid (in yellow where PA was the only bidder and in brown where MPD also bid).

**Figure 8.2: PA's geographic coverage with AP depots<sup>147</sup>**

[REDACTED]

Source: PA and CMA.

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<sup>145</sup> Parties' response to Issues Statement, paragraph 4.16 and response to Provisional Findings (5 October 2017), paragraph 4.5.

<sup>146</sup> This is the case even if we only include ECP's sales to customers spending over £ [REDACTED] per year, PA's threshold to consider a customer to be a Key Account.

<sup>147</sup> The AP depots depicted on this map include all of the AP depots bid for by PA, including those also bid for by MPD.



- 8.44 As shown above, many of the AP branches that PA bid for are located in areas in which it already owns a large number of depots. However, the acquisition of these depots would also expand PA's coverage into some regions where its coverage is currently limited, in particular [REDACTED] of England.
- 8.45 The figure above does not include the branches of PA's supply partners. As explained above, these suppliers are used by PA to supply customers where there are gaps in its own network. To the extent that the AP branches bid for by PA overlap with these supply partners, the improvement in PA's coverage in the counterfactual is reduced since PA is already able to supply customers in these areas.
- 8.46 In addition, as described in section 2 and 6, in November 2015 PA stopped using AP as a supply partner for its Key Accounts. This indicates that PA was able to supply Key Accounts without using any of AP's depots, and suggests that its bid for the AP depots was not primarily motivated by a wish to expand its geographic coverage to supply Key Accounts.
- 8.47 It is possible that replacing supply partner depots with owned depots could make PA a more effective competitor. Indeed, this is what PA did when it stopped using AP as a supply partner in 2015 following its acquisition of GSF. As noted above, PA finds it more costly to use these supply partners, and so reducing reliance on such suppliers could result in efficiencies which might allow PA to compete more aggressively when bidding for Key Accounts.
- 8.48 Some of the Key Accounts which rated PA as a less effective competitor than ECP gave inconsistency in PA's service and quality across different regions as a reason for this.<sup>148</sup> This could be, at least in part, because of PA's use of supply partners over which it asserts less control to supply Key Accounts. However, we have seen no evidence to support a conclusion that these cost benefits to PA of acquiring the AP depots would have been likely to have significantly increased the competitive constraints it imposes on ECP.
- 8.49 Finally, we have considered the evidence on whether a wider network would have significantly increased PA's buyer power which might have made PA a more effective competitor to supply Key Accounts. In particular, we reviewed ECP's synergies model, which analysed the potential synergies arising from a potential acquisition of the whole of AP by ECP during the William Blair-run sale process (which ran from around September 2015 to mid-2016).

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<sup>148</sup> [REDACTED]

- 8.50 Based on ECP's synergies model, and taking the number of depots as a proxy for scale or output levels, ECP estimated that: (a) AP's 'cost of sales' would fall by [X] per cent if its depot network increased from around [X] to around [X] (an increase of around 180 per cent); and (b) ECP's 'cost of sales' would fall by [X] per cent if its depot network increased from around [X] to around [X] (an increase of around 55 per cent).
- 8.51 This suggests that the acquisition of a smaller number of additional depots' sales would not have a significant impact on a firm's overall procurement costs. In the case of PA's acquisition of up to 39 depots, this would represent an increase of around 25 per cent (from 156 to 195 depots).<sup>149</sup> On the basis outlined above, we consider that increased sales resulting from a moderate increase in the number of depots would not have a significant impact on procurement costs, and, if any, this would be offset to some extent by the additional 'depot overheads' associated with any additional depot.
- 8.52 We therefore did not consider that PA would become a more effective competitor for Key Accounts as a result of increased geographical coverage, replacement of supply partners with owned depots<sup>150</sup>, or increased buyer power following the acquisition of some or all of the AP depots for which it bid.

#### *Motor Parts Direct*

- 8.53 MPD bid for 21 of the AP depots, which would have increased its total number of owned depots to 112. Eight of these depots were also bid for by PA.

#### *Parties' views*

- 8.54 The Parties argued that the constraint exerted by MPD would not be significantly increased had it acquired these depots. This is because:
- (a) MPD is already able to compete for regional Key Accounts, and adding the AP branches it bid for would not significantly alter the competitive landscape for these customers; and

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<sup>149</sup> This only includes PA's owned depots. Including PA's associate members, the acquisition of up to 39 AP depots would increase PA's total number of depots from 190 to 225, an increase of around 21%.

<sup>150</sup> While the replacement of supply partners with owned depots could have led to efficiencies, we have not received evidence which suggests that these efficiencies would have been sufficiently large or sufficiently likely to be passed through to customers, such that PA in the counterfactual would have exerted a significantly stronger constraint on ECP than it did before the Merger.

(b) To the extent that MPD cannot currently attract larger Key Accounts, the addition of 13 to 21 branches, of which 7 are in areas MPD is already present, would not be sufficient to attract these customers.<sup>151</sup>

8.55 In response to Provisional Findings, the Parties reiterated their view that MPD's geographical coverage would not have been sufficiently increased to allow MPD to pose more than a marginal constraint on ECP.<sup>152</sup>

#### *Motor Parts Direct's views*

8.56 MPD told us that it currently lacked the coverage to supply national Key Accounts, and that this would not be changed as a result of acquiring up to the 21 AP depots for which it bid.

8.57 However, MPD said that acquiring these depots would have improved its ability to compete for smaller regional Key Accounts. This is because acquiring these depots would have improved its coverage and increased its buyer power, which would allow it to make a higher margin – whereas presently it considers that it cannot compete with the prices offered by ECP/AP.

#### *Our Assessment regarding MPD*

8.58 As noted above, we did not consider that MPD currently exerts a significant constraint on ECP in competing for Key Accounts. Therefore, if acquiring the AP depots it bid for and would continue to operate would be sufficient to allow MPD to begin to exert a significant competitive constraint on ECP, that would be a more competitive outcome than the Merger.

8.59 The potential improvement to MPD's geographic reach from acquiring the AP depots can be seen in the map below. The map shows the location of all of MPD's depots (in red) and the locations of the AP depots it bid for (in yellow where MPD was the only bidder and in brown where PA also bid).

**Figure 8.3: MPD geographic coverage with AP depots**

[X]

Source: MPD and CMA.

Note: The AP depots depicted on this map include all of the AP depots bid for by MPD, including those also bid for by PA.

8.60 While it does appear that acquiring the AP depots would expand MPD's network into new areas, it is also apparent that MPD's coverage would still

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<sup>151</sup> Parties' response to the CMA's decision to refer the Merger, p 4.22.

<sup>152</sup> Parties' response to Provisional Findings (5 October 2017), paragraph 4.5.

be limited compared to ECP, PA and pre-Merger AP. MPD would not be able to offer national coverage, nor even the near-national coverage that AP had been able to offer prior to the Merger, due to its lack of depots in the north of England and limited presence in the Midlands.

- 8.61 The Parties' argument that acquiring the AP depots would be insufficient to allow MPD to serve the larger Key Accounts it cannot currently compete for therefore appears to be correct. There is a possibility that MPD would find it easier to compete for some multi-regional customers in the south of England, but it is not clear that this would be a significant difference. Moreover, given that a significant majority of ECP's sales to Key Accounts come from large national customers, increased competition from MPD for smaller customers would be unlikely to constrain ECP post-Merger significantly.
- 8.62 Finally, the acquisition of up to 21 AP depots would increase MPD's total number of depots from 91 to 112, an increase of around 23%. For the reasons mentioned in paragraphs 8.49 to 8.51 above, we consider that increased sales resulting from a moderate increase in the number of depots would not have a significant impact on procurement costs, and, if any, this would be offset to some extent by the additional 'depot overheads' associated with any additional depot.
- 8.63 We therefore did not consider that MPD would become a more effective competitor for Key Accounts as a result of increased geographic coverage or increased buyer power following the acquisition of some or all of the AP depots for which it bid and would continue to operate.

### ***Conclusion on the effects of the Merger on Key Accounts***

- 8.64 We consider that, in order for a SLC to be found in relation to Key Accounts, this would need to be based on evidence that competition for Key Accounts would have been significantly stronger in the counterfactual where at least 49 depots would have closed and where PA and MPD would between them have acquired up to the 52 depots for which one or both of them had bid.
- 8.65 For the reasons set out in this section, we considered that:
- (a) the closure of 49 AP depots, and redistribution of their sales among existing suppliers, would not have been likely to have enabled other suppliers to compete more strongly for Key Accounts;
  - (b) PA's acquisition of any or all the 39 depots it bid for would not have been likely to result in a material increase in its ability to compete for Key Accounts. Before the Merger PA already represented a competitive

constraint on ECP. This constraint might have increased had PA acquired up to the 39 AP depots it bid for through cost and other efficiencies arising from replacing supply partners with PA-owned depots. However, we did not receive evidence which suggests that these efficiencies would have been sufficiently large or sufficiently likely to be passed through to customers, such that PA in the counterfactual would have exerted a significantly stronger constraint on ECP than it did before the Merger; and

- (c) MPD's acquisition of any or all the 21 depots it bid for would not have been likely to result in a material increase in its ability to compete for Key Accounts. MPD's geographic coverage would not have been sufficiently increased to allow it to pose more than the marginal competitive constraint it currently exerts and would not have significantly increased MPD's buyer power.

8.66 We therefore concluded that the Merger may not be expected to lead to competition concerns in the supply of IAM car parts to Key Accounts in the UK.

## **9. Overall conclusions**

9.1 As a result of our assessment we have concluded that:

- (a) the Merger has resulted in the creation of a relevant merger situation; and
- (b) the Merger has resulted, or may be expected to result, in a SLC in the supply of IAM car parts by general motor factors to local IMT customers in the local areas set out below and that this may be expected to lead to adverse effects for local IMT customers in terms of an increase in prices and/or a reduction in the quality of service in those nine local areas.

- (i) Blackpool
- (ii) Brighton
- (iii) Gloucester
- (iv) Liphook
- (v) Scunthorpe
- (vi) Sunderland
- (vii) Wakefield

(viii) Worthing

(ix) York

## 10. Remedies

- 10.1 Having concluded that the Merger may be expected to result in a SLC in each of the nine SLC areas, the CMA is required, pursuant to section 35(3) of the Act, to decide on three questions concerning remedial action:
- (a) whether action should be taken by it under section 41(2) of the Act for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC;
  - (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the SLC concerned or any adverse effect which may be expected to result from the SLC; and
  - (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
- 10.2 The Act requires that the CMA, when considering possible remedial actions, shall 'in particular, have regard to the need to achieve as comprehensive a solution as is reasonable and practicable to the [SLC] and any adverse effects resulting from it'.<sup>153</sup> To fulfil this requirement, as set out in the CMA's guidance on remedies for merger inquiries (the Merger Remedies Guidance),<sup>154</sup> the CMA will seek remedies that are effective in addressing the SLC and its resulting adverse effects. Between two remedies that the CMA considers equally effective, it will choose that which imposes the least cost or restriction. The CMA will also seek to ensure that no remedy is disproportionate to the SLC and its adverse effects.<sup>155</sup> In this consideration, the CMA may also have regard, in accordance with the Act,<sup>156</sup> to any relevant customer benefits (RCBs) arising from the merger.
- 10.3 The Merger Remedies Guidance sets out four aspects to be considered in assessing the effectiveness of a remedy:<sup>157</sup>

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<sup>153</sup> Sections 35(4) of the Act.

<sup>154</sup> Merger Remedies Guidance, 'Merger Remedies: CC8' (November 2008). Save for Appendix A, the Merger Remedies Guidance has been adopted by the CMA (see Annex D to CMA2, [Mergers: Guidance on the CMA's Jurisdiction and Procedure](#), January 2014).

<sup>155</sup> Merger Remedies Guidance, paragraphs 1.7 to 1.13.

<sup>156</sup> Sections 35(5) of the Act. See also Merger Remedies Guidance, paragraphs 1.14 to 1.20.

<sup>157</sup> Merger Remedies Guidance, paragraph 1.8.

- (a) *Impact on the SLC and its resulting adverse effects*: normally, the CMA will seek to restore competitive rivalry through remedies that re-establish the structure of the market expected in the absence of the merger.
- (b) *Appropriate duration and timing*: the CMA prefers a remedy that quickly addresses competitive concerns, with the effect of the remedy sustained for the likely duration of the SLC.
- (c) *Practicality*: a practical remedy should be capable of effective implementation, monitoring and enforcement.
- (d) *Acceptable risk profile*: the CMA will seek remedies that have a high degree of certainty of achieving their intended effect.

10.4 In determining an appropriate remedy, the CMA will consider the extent to which different remedy options could be effective in remedying, mitigating or preventing the SLC or any resulting adverse effect that has been identified. The CMA will also consider whether a combination of measures is required to achieve a comprehensive solution, and will evaluate the cumulative impact of any such combination of measures on the SLC or any resulting adverse effect.

10.5 In our notice of possible remedies issued on 14 September 2017 (the Remedies Notice),<sup>158</sup> we invited comments on possible remedies to remedy the SLCs and their resulting adverse effects we had provisionally identified in our Provisional Findings.

10.6 Following our consultation period on the Remedies Notice, we set out our provisional views on the appropriate remedy in a Remedies Working Paper (the RWP), where we provisionally concluded that a divestiture of one of the Parties' depots in each SLC area would address the SLC that the CMA had provisionally identified in each SLC area. We shared the RWP with the Parties in order to provide them with an opportunity to comment on our preliminary assessment.

10.7 In reaching our final decision on the appropriate remedy to the SLCs we have identified, we have taken into account:

- (a) ECP's written submissions in response to the RWP and Remedies Notice; and

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<sup>158</sup> The Remedies Notice sets out the actions which the CMA considers it might take for the purpose of remedying the SLC and resulting adverse effects identified in the Provisional Findings. The Remedies Notice can be found [here](#).

- (b) oral evidence from the response hearings we held with ECP and two third parties, namely MPD and PA, and CMA staff calls with two third parties, namely [X] and [X].<sup>159</sup>

10.8 In this section, we consider the appropriate remedy to address the SLCs and the resulting adverse effects we have identified. We then consider whether there are any RCBs arising from the Merger which we should take into account, and the issue of proportionality.

### ***Overview of remedy options***

10.9 As set out in the Merger Remedies Guidance,<sup>160</sup> remedies are conventionally classified as either structural or behavioural:

- (a) Structural remedies, such as divestiture or prohibition, are generally one-off measures that seek to restore or maintain the competitive structure of the market through a direct change in market structure.
- (b) Behavioural remedies are measures that are designed to regulate or constrain the behaviour of the merging parties with the aim of restoring the level of competition that would have been present absent the merger.

10.10 In merger inquiries, the CMA generally prefers structural remedies rather than behavioural remedies because:<sup>161</sup>

- (a) structural remedies are likely to deal with a SLC and its resulting adverse effects directly and comprehensively at source in restoring rivalry;
- (b) behavioural remedies may not be effective and may create significant costly distortions in market outcomes; and
- (c) structural remedies do not normally require monitoring and enforcement once implemented.

10.11 These factors mean that behavioural remedies are generally subject to higher risks than structural remedies and are therefore less likely to be effective solutions to a SLC in a merger inquiry.

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<sup>159</sup> A further motor factor confirmed by email that it considered that divestment of a depot would be an effective remedy and that it was interested in acquiring one or more depots.

<sup>160</sup> See Part 2 of the Merger Remedies Guidance.

<sup>161</sup> Merger Remedies Guidance, paragraph 2.14



- 10.12 In our Remedies Notice, we stated our initial view that either a prohibition of the Merger or a divestiture of some of the Parties' depots in each of the local areas where we provisionally identified a SLC (the Overlap depots) would be likely to be an effective remedy to each SLC and its resulting adverse effects,<sup>162</sup> as it would remove the SLC in each SLC area at source and therefore represent a comprehensive solution to all aspects of each SLC, as well as present few risks in terms of effectiveness.<sup>163</sup> We noted however that divestiture(s) in the SLC areas alone would represent a more proportionate remedy.<sup>164</sup> In the Remedies Notice, we invited, therefore, the Parties and third parties to submit their views on a structural remedy involving the divestiture of the Overlap depots in the SLC areas, including on its effectiveness and design.<sup>165</sup>
- 10.13 We also stated in our Remedies Notice that, in light of the various dimensions over which competition takes place in the supply of IAM car parts to local IMT customers, it was our initial view that behavioural remedies would not be effective in addressing the SLC in each of the SLC areas.<sup>166</sup>
- 10.14 Neither ECP (on behalf of the Parties) nor any third party which contacted us, or which we contacted, told us that we should consider remedies other than divestiture of the Overlap depots (as set out in our Remedies Notice).
- 10.15 Accordingly, we focus the remainder of this section on a structural remedy requiring the Parties to divest some of their Overlap depots (the local divestiture remedy). We then consider whether we should take into account any RCBs in our assessment, before turning to the proportionality of the local divestiture remedy in addressing the SLCs we have identified. Finally, we set out our conclusions on what we considered to be the least costly remedy, or package of remedies, that is effective in addressing the SLCs and their resulting adverse effects.

### ***Effectiveness assessment of the local divestiture remedy***

- 10.16 We set out below our assessment of, and conclusions on, the effectiveness of the local divestiture remedy in remedying, mitigating or preventing the SLC in each of the nine SLC areas.

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<sup>162</sup> Remedies Notice, paragraphs 13 and 28.

<sup>163</sup> Remedies Notice, paragraphs 17 and 28.

<sup>164</sup> Remedies Notice, paragraph 29.

<sup>165</sup> Remedies Notice, paragraphs 24 to 27.

<sup>166</sup> Remedies Notice, paragraph 14.

## *Remedy description*

- 10.17 The local divestiture remedy would require the divestiture by the Parties of one of their Overlap depots in each SLC area to a suitable purchaser.<sup>167</sup>
- 10.18 Table 10.1 below sets out, for each of the nine SLC areas, the identity of the AP depot (AP Overlap depot) and the ECP depot (ECP Overlap depot), and the identity of the alternative bidder(s) for each of the AP Overlap depots during the accelerated sale process in October 2016 which resulted in the Merger.

**Table 10.1: Parties' Overlap depots in each SLC area**

<i>SLC area</i>	<i>AP Overlap depot</i>	<i>ECP Overlap depot</i>	<i>Alternative bidder</i>
Blackpool	AP Lytham	ECP Blackpool	[X]
Brighton	AP Hove	ECP Brighton	[X]
Gloucester	AP Gloucester	ECP Gloucester	[X]
Liphook	AP Liphook	ECP Haslemere	[X]
Scunthorpe	AP Scunthorpe	ECP Scunthorpe	[X]
Sunderland	AP Sunderland	ECP Sunderland Ngh	[X]
Wakefield	AP Wakefield	ECP Wakefield	[X]
Worthing	AP Worthing	ECP Worthing – Satt	[X]
York	AP York	ECP York	[X]

Source: CMA.

- 10.19 As Table 10.1 shows, each SLC area has one AP Overlap depot and one ECP Overlap depot.

## *General views of Parties and third parties on remedy effectiveness*

- 10.20 ECP told us that divestiture in each SLC area to a suitable purchaser would remove at source the SLCs, and therefore represent a comprehensive solution to all aspects of the SLC identified in each SLC area and that it would present few risks in terms of effectiveness. It told us that this was a structural remedy that would permanently restore the rivalry that the CMA expected to be lost as a result of the Merger, and that divestiture could be implemented quickly; would act immediately to address the SLCs identified; would require no ongoing monitoring; and could be enforced easily.<sup>168</sup>
- 10.21 ECP also told us that this remedy would 'not raise any particularly difficult or complicated issues', and that there was therefore 'no need for the CMA to impose limitations or obligations that go beyond the standard approach to divestiture, in particular with respect to the depots to be selected, the timeframe for divestiture or procedural safeguards'.<sup>169</sup>

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<sup>167</sup> Remedies Notice, paragraphs 12 and 17.

<sup>168</sup> ECP's response to the Remedies Notice.

<sup>169</sup> ECP's response to the Remedies Notice.

- 10.22 All the third parties which contacted us, or which we contacted, told us that a remedy requiring the Parties to divest an Overlap depot would be effective.

*Remedy design considerations*

- 10.23 We agreed with the Parties and third parties that a local divestiture remedy would be an effective remedy to the SLCs we have identified, as it would address each SLC at source, provided that it was well-designed and properly implemented.
- 10.24 To ensure that a divestiture remedy would achieve its intended effects, we considered the following three aspects of its design:
- (a) the scope of the divestiture package;
  - (b) the identification, and likely availability, of suitable purchasers; and
  - (c) the need to ensure an effective divestiture process, which would require an appropriate timescale for achieving the divestiture and any procedural safeguards necessary to minimise the risk that the assets to be divested will deteriorate before completion of the divestiture, eg through the loss of customers or staff.

*Scope of the divestiture package*

- 10.25 The composition of the divestiture package would need to be appropriately configured to address each SLC; be attractive to potential purchasers; and enable the purchaser to operate effectively as an independent competitor.
- 10.26 We first consider which Overlap depots should be divested, including whether the Parties should be given the choice of deciding which Overlap depot should be selected for divestiture. We then consider what elements might form part of a divestiture package to ensure the remedy is effective.
- *Which Overlap depots should be divested?*
    - *Parties' and third parties' views on which Overlap depots should be divested*
- 10.27 ECP told us that removal of the overlap between the Parties through divestiture of a single Overlap depot within each area would be sufficient to

address the SLC and that there was no basis for requiring the divestiture of more than one depot in any area.<sup>170</sup>

- 10.28 ECP told us that the CMA had found a SLC in each of the SLC areas because the Parties' focal depots were close to each other and served substantially the same customers, and because, post-Merger, ECP would be constrained by only one or two competitors (with the exception of Wakefield, where ECP would face 'limited competition'). ECP therefore told us that the divestiture of either one of the focal depots in each area to a competitor would restore the pre-Merger constraint previously posed by that depot and would increase the number of competitors in the market to pre-Merger levels.<sup>171</sup>
- 10.29 There was a broad consensus from third parties<sup>172</sup> that a remedy requiring the divestiture of one Overlap depot in an area would be effective in addressing the SLC in each SLC area.
- 10.30 In relation to whether the Parties should be given the choice of which Overlap depot to divest, ECP told us that it would be unnecessary and disproportionate for the CMA to specify which divestment would address the SLC in each local area. In this regard, ECP told us that there was no reason to depart from the standard practice of allowing the merger parties the flexibility to select the depots for divestiture. ECP told us that, provided the pre-Merger constraint was replicated, the SLC identified by the CMA would be remedied and the CMA should, on this basis, be agnostic as to the identity' of the Overlap depot to be divested.<sup>173</sup>
- 10.31 ECP indicated at its response hearing that, at this initial stage, its preference would be to divest the AP Overlap depot in each area, as this would represent a 'simpler' solution than divesting the ECP Overlap depot. However, ECP told us that, in order to make a decision on which Overlap depot to divest, it would consider a number of factors, including each depot's square footage, turnover and profitability.<sup>174</sup>
- 10.32 We received the following views from third parties on the question of whether the Parties should be allowed to choose which Overlap depot to divest:

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<sup>170</sup> ECP's response to the Remedies Notice and the RWP.

<sup>171</sup> ECP's response to the Remedies Notice and the RWP.

<sup>172</sup> [REDACTED]

<sup>173</sup> ECP's response to the Remedies Notice.

<sup>174</sup> Response hearing with ECP (5 October 2017).

- (a) PA told us that, if the Parties were given the choice of which depots they were required to divest, there would be a risk that the Parties would choose to divest the depot which was performing less well.<sup>175</sup>
  - (b) MPD told us, however, that the Parties should be free to choose which depot to divest in any particular local area.<sup>176</sup>
  - (c) [X] told us that, [X], both the ECP and AP depots were ‘reasonably robust’ depots; and
  - (d) [X] told us that, in Sunderland, it might be difficult for ECP to find a buyer for the ECP depot, given that it is a large ‘supercentre’ and might not be suitable for ECP’s competitors, many of which do not operate the same ‘business model’ as ECP.
- *Our assessment and conclusions on which Overlap depots should be divested*

10.33 Table 10.1 above shows that, in each SLC area, there is one ECP Overlap depot and one AP Overlap depot. Therefore, a divestiture of one Overlap depot in each of the nine SLC areas would restore the number of competitors in the market to pre-Merger levels.

10.34 In relation to whether the Parties should be given the choice of which Overlap depot to divest in each SLC area, we consider that, in general, the divestiture of either the AP or ECP Overlap depot could address the SLC identified in each of the nine SLC areas.

10.35 Accordingly, it is our view that the Parties should be given the choice of which Overlap depot to divest in each SLC area. However, we cannot at this stage rule out the possibility that an Overlap depot chosen for divestiture fails to attract a purchaser (for whatever reason). Further consideration is given to this risk when we consider ensuring an effective divestiture process later in this section.

10.36 ***Conclusions on which Overlap depots should be divested:*** we concluded that:

- (a) a divestiture of one Overlap depot in each SLC area would address the SLC we have identified in each SLC area;

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<sup>175</sup> Response hearing with PA (20 September 2017).

<sup>176</sup> Response hearing with MPD (27 September 2017).

- (b) it should be at the Parties' discretion which Overlap depot is selected for divestiture; and
- (c) the Parties should inform the CMA as soon as reasonably practical after the date of the divestiture order or undertakings which Overlap depots the Parties propose to divest.

- *Which elements should be included in a divestiture package?*

10.37 We now turn to the question on which we consulted in our Remedies Notice regarding which elements should be included in the divestiture package. We framed our assessment by focusing on the elements that should form part of the divestiture of a single Overlap depot.

10.38 We sought views on each of the following elements which might form part of the divestiture package for each Overlap depot to be divested:<sup>177</sup>

- (a) the right to enter into, or assign, the lease of the Overlap depot property;
- (b) transfer of the relevant staff;
- (c) transfer of any existing customer contracts and the rights to fulfil these;
- (d) access to relevant customer data;
- (e) transfer of existing supplier contracts;
- (f) option to acquire (or to assign the lease of) the delivery vehicles at the Overlap depot;
- (g) plant, machinery, computers, fixtures and fittings of the Overlap depot;
- (h) provision of services and utilities currently being provided at the sites to be divested, eg telecoms, gas, electricity, building access and services; and
- (i) an option to acquire the stock/inventory.

10.39 We stated in our Remedies Notice that it might be necessary for the Parties to provide certain support services on a transitional basis, depending on the requirements of the purchaser, eg provision of central support services such

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<sup>177</sup> Remedies Notice, paragraphs 21 and 24.

as finance, IT and procurement, and access to any database or software, for example, customer data.<sup>178</sup>

10.40 Finally, in our Remedies Notice, we stated our initial view that, given the relatively small number of Overlap depots being divested, and the expectation that a potential purchaser would be an existing market operator with its own infrastructure and distribution model, the divestiture package should not be required to include a regional or national distribution centre (eg AP's national distribution centre at Markham Vale), or AP's head office in Leeds.<sup>179</sup>

10.41 We first set out the views of Parties and third parties, before setting out our own assessment and conclusions on the elements that should form part of the divestiture package.

- *Parties' and third parties' views on divestiture package elements*

10.42 ECP told us that the elements listed in paragraph 21 of the Remedies Notice, and repeated above, were 'comprehensive' and covered 'all areas necessary or indeed advantageous for the effective running of a depot', and that there were 'no other elements that would need to be included within the scope of the package'.<sup>180</sup>

10.43 In relation to each of the divestiture package elements, we set out the views of the Parties and third parties in Appendix 10.1 and set out below our assessment and conclusions on the appropriate scope of the divestiture package.

- *Our assessment and conclusions on the divestiture package elements*

10.44 We considered that, in general, in relation to the elements which third parties told us were critical, the Parties should be required to transfer these to the purchaser as part of the divestiture package, namely:

(a) *Transfer of the lease of the Overlap depot:* we considered that a purchaser occupying a depot under a temporary licence granted by a landlord cannot be considered to have security of tenure until it enters into a lease agreement with the landlord, and this could undermine the effectiveness of our remedy. We therefore considered that completion of the divestiture of an Overlap depot should be conditional on a purchaser

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<sup>178</sup> Remedies Notice, paragraph 23.

<sup>179</sup> Remedies Notice, paragraph 22.

<sup>180</sup> ECP's response to the Remedies Notice.

having secured its rights to occupy and operate from the depot. We consider further below how a purchaser might occupy the AP Overlap depot it wishes to acquire on completion, given that the Parties' licences to occupy the AP depots are due to expire on [X].

- (b) *Depot staff*: third parties considered depot staff to be a critical element of the divestiture package. We therefore considered that staff employed at the relevant Overlap depot should be transferred to the purchaser under Transfer of Undertakings (Protection of Employment) Regulations (TUPE). Given the importance placed by third parties on depot staff, we consider further below whether additional interim measures should be put in place to safeguard the depot staff at the Overlap depots.
- (c) *Customer data*: based on the views of third parties, we considered that data relating to customers served by the divested Overlap depot should be included in the divestiture package, and that this would enable the Overlap depot, once divested, to continue to serve its customers and compete effectively in the local area. We therefore considered that customer data should be transferred, subject to our further consideration below in relation to whether customer data relating to Key Accounts should be excluded, and the types of customer data that should be transferred to the purchaser.
- (d) *Rights to receive services and utilities currently being provided*: this element would cover telecoms, gas, electricity, building access and services (as applicable) at the Overlap depot. Third parties considered the continued provision of these services as important, in particular access to telecoms. On the basis of this evidence, we considered that the Parties should take all necessary steps to assist in ensuring a smooth transition of any services and utilities (as required) to the purchaser of an Overlap depot.

10.45 For those elements which we considered might be required by some (but not all purchasers), we considered that purchasers should be given the option to request these elements be included in the divestiture package, namely:

- (a) *Customer supply contracts*: we noted that most depot customers made purchases on the basis of trading terms rather than formal supply contracts, and the evidence from third parties on whether customer supply contracts should be transferred to a purchaser was mixed. Therefore, we considered that, to the extent that there are any customer supply contracts at an Overlap depot with local customers, these should be included in the divestiture package at the option of the purchaser. However, in relation to whether such contracts in so far as they relate to



Key Accounts should be excluded from the divestiture package (as submitted by the Parties), we consider this in further detail below.

- (b) *Supplier contracts*: ECP told us that it noted that third parties considered that a purchaser that was already operating in this market would already have contracts with its own supplier base and, therefore, the transfer of the divested depot's existing supplier contracts to a purchaser would not be necessary. We agreed that a potential purchaser that was also a motor factor operating in the UK would be unlikely to require the transfer of supplier contracts in relation to car parts. We considered that a purchaser should therefore only have the option to take on supplier contracts to the extent there are any that are necessary to enable continuity of supply to local customers.
- (c) *Vehicle fleet*: based on the evidence from third parties, we noted that whilst some third parties told us that it was relatively straight-forward for purchasers to make their own arrangements in relation to putting in place the necessary vehicle fleet, we considered that some purchasers might require the flexibility to acquire the vehicle fleet, eg if a purchaser was acquiring multiple Overlap depots. We therefore considered that the purchaser should have the option to acquire (or to assign the lease of) some (or all) of the delivery vehicles used at the Overlap depot. We consider in further detail below, the Parties' submission that they should generate a 'reasonable return' on the sale of any vehicles added by ECP to the Overlap depots since its acquisition of the AP business.
- (d) *Plant, machinery, computers, fixtures and fittings*: based on the evidence we received from third parties, we considered that in relation to these various fixed assets, each purchaser may have its own requirements, and that some fixed assets may be considered essential by some purchasers but not others. We therefore considered that the purchaser should be given the option to decide which fixed assets it would wish to acquire as part of its acquisition of the Overlap depot.
- (e) *Inventory*: whilst the evidence from third parties on whether inventory should be included in the divestiture package was mixed, we noted that the transfer of inventory could be considered by some purchasers to be necessary to ensure continuity of supply to customers. We therefore considered that a purchaser should be given the option to acquire the stock/inventory to the extent that it is necessary to ensure continuity of supply to local customers. We consider in further detail below, the Parties' views that: (i) they should only be obliged to offer the Overlap depot's 'original stock level' (ie as at the Merger completion date), with any additional inventory being offered to the purchaser at the Parties'

discretion; and (ii) they should generate a 'reasonable return' on the sale of any stock added by ECP to the Overlap depots since its acquisition of the AP business.

- (f) *Transitional services*: whilst an existing motor factor that is currently operating in the UK, may not require transitional services from the Parties, we have not ruled out the possibility that for some purchasers, there may be a requirement for certain transitional services. Whilst we expect the scope of such services to be limited for an existing motor factor, we considered that the purchaser should be given the option to request the Parties to provide transitional services, the terms of which should be subject to bilateral negotiations between the Parties and a purchaser.

10.46 In relation to whether a purchaser should be able to acquire a regional or national distribution centre or AP's head office, we noted that no third party considered these to be critical, and we therefore considered that they should not be part of the divestiture package.

10.47 As mentioned above, we address below a number of specific points in relation to some of the elements of the divestiture package, namely:

- (a) *AP Overlap depot property rights*: how a purchaser might occupy the AP Overlap depot it wishes to acquire on completion, given that the Parties' licences to occupy the AP depots are due to expire on [REDACTED];
- (b) *Customer supply contracts*: ECP's view that only customer supply contracts relating to local customers and not Key Account contracts should be transferred to the purchaser (given the nature of the SLC findings);
- (c) *Customer data*: the scope of the customer data that should be transferred to a purchaser, as well as ECP's view that any customer data transferred to the purchaser should not include the relevant depot's historic customer pricing information and pricing algorithm, which it considered to be confidential and commercially sensitive to the Parties;
- (d) *Inventory/stock*: ECP's view that it should only be obliged to offer a purchaser the level of stock that existed at the time ECP acquired AP; and
- (e) *Reasonable return on the sale of any inventory and vehicle fleet*: ECP's views that there should be a provision in the divestiture order or undertakings that the Parties should be able to generate a reasonable

return on the sale of any inventory and/or vehicle fleet (added by ECP since its acquisition of AP) in the divestiture package.

- *(a) The nature of the property rights for each depot to be made available to a purchaser*

10.48 We understand that since the Merger was completed, the Parties have agreed heads of terms with landlords in relation to [X] of the AP Overlap depots,<sup>181</sup> but not in respect of the other [X] AP Overlap depots.<sup>182</sup> We also understand that the ECP Overlap depots have existing leases which may be assigned to a suitable purchaser subject to landlord's consent.

10.49 As explained at paragraph 10.44 above, we considered that completion of the divestiture of an Overlap depot should be conditional on a purchaser having secured its rights to occupy and operate from the depot.

10.50 Therefore, we considered that the Parties:

- (a) should first take all necessary steps to secure the Parties' legal right to continue to occupy and operate from the premises of all of the Overlap depots (ie both the ECP and AP Overlap depots) during the entire divestiture process period (eg on the basis of a new lease agreement or a licence to occupy granted by the landlord);
- (b) take all reasonable steps to ensure that the divestiture process provides sufficient time and opportunity to the purchaser to take assignment of any existing lease, or to finalise a lease agreement following agreement on heads of terms; and
- (c) ensure that each purchaser obtains a legal right under a lease agreement, for example through assignment of the relevant lease or by entering into a new lease agreement, to occupy the relevant Overlap depot(s) from the date of the completion of the divestment. Legal completion of an acquisition of an Overlap depot by a suitable purchaser should be contingent on the suitable purchaser entering into a lease agreement with the relevant landlord.

10.51 We would require the steps described above to be included in the divestiture order or undertakings.

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<sup>181</sup> AP Gloucester and AP York.

<sup>182</sup> At its response hearing, ECP told us that in relation to [X]. ECP also told us that of the remaining AP Overlap depot leases still to be negotiated, in many cases, the landlords were unwilling to progress matters until the CMA had issued its final decision.

- 10.52 In relation to this requirement, which is in line with our provisional views set out in our RWP which we shared with the Parties, ECP told us that it interpreted the CMA's preference to be that ECP should approach landlords as soon as possible, with a view to reaching heads of terms on a lease, so that the purchaser could begin negotiations from the starting point of those heads of terms (while recognising that the purchaser might wish to negotiate on any given term). ECP told us that it was therefore engaging with landlords to this end. ECP considered that these steps should ensure that the CMA's concerns regarding security of tenure would be addressed in 'good time' within the agreed timescales to complete a divestiture.<sup>183</sup>
- 10.53 For the avoidance of doubt, we are not requiring the Parties to enter into heads of terms with each of the landlords at the AP Overlap depots, and we have left it open to the Parties to decide whether heads of terms with the relevant landlords are agreed by the Parties or by the potential purchaser(s). The Parties must however ensure that the divestiture process provides sufficient time and opportunity to the purchaser to take assignment of any existing lease, or to finalise a lease agreement, as completion of the divestiture transaction would be conditional on this.
- *(b) Whether Key Account contracts should form part of the divestiture package*
- 10.54 As noted above, the Parties told us that Key Account contracts should be excluded from the divestiture package.
- 10.55 Table 10.2 below sets out, for each Overlap depot, the relative size of its various revenue streams. From this it can be seen that the exclusion of Key Account contracts (based on the Parties' definitions of a Key Account customer – see further below) from the divestiture package would likely have a bigger impact on the sales of some Overlap depots, eg [X] than on the sales of other Overlap depots.

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<sup>183</sup> ECP's response to the RWP.

**Table 10.2: Sales breakdown for each Overlap depot**

Overlap depot	Total Sales (£'000s)	Local IMT car parts (%)	Local GE (%)	Key Accounts car parts (%)	Key Accounts GE (%)	Other (%)
<b>Blackpool</b>						
AP Lytham	[X]	[X]	[X]	[X]	[X]	[X]
ECP Blackpool	[X]	[X]	[X]	[X]	[X]	[X]
<b>Brighton</b>						
AP Hove	[X]	[X]	[X]	[X]	[X]	[X]
ECP Brighton	[X]	[X]	[X]	[X]	[X]	[X]
<b>Gloucester</b>						
AP Gloucester	[X]	[X]	[X]	[X]	[X]	[X]
ECP Gloucester	[X]	[X]	[X]	[X]	[X]	[X]
<b>Liphook</b>						
AP Liphook	[X]	[X]	[X]	[X]	[X]	[X]
ECP Haslemere	[X]	[X]	[X]	[X]	[X]	[X]
<b>Scunthorpe</b>						
AP Scunthorpe	[X]	[X]	[X]	[X]	[X]	[X]
ECP Scunthorpe	[X]	[X]	[X]	[X]	[X]	[X]
<b>Sunderland</b>						
AP Sunderland	[X]	[X]	[X]	[X]	[X]	[X]
ECP Sunderland Ngh	[X]	[X]	[X]	[X]	[X]	[X]
<b>Wakefield</b>						
AP Wakefield	[X]	[X]	[X]	[X]	[X]	[X]
ECP Wakefield	[X]	[X]	[X]	[X]	[X]	[X]
<b>Worthing</b>						
AP Worthing	[X]	[X]	[X]	[X]	[X]	[X]
ECP Worthing - Satt	[X]	[X]	[X]	[X]	[X]	[X]
<b>York</b>						
AP York	[X]	[X]	[X]	[X]	[X]	[X]
ECP York	[X]	[X]	[X]	[X]	[X]	[X]
AP (max)	[X]	[X]	[X]	[X]	[X]	[X]
AP (avg)	[X]	[X]	[X]	[X]	[X]	[X]
AP (min)	[X]	[X]	[X]	[X]	[X]	[X]
ECP (max)	[X]	[X]	[X]	[X]	[X]	[X]
ECP (avg)	[X]	[X]	[X]	[X]	[X]	[X]
ECP (min)	[X]	[X]	[X]	[X]	[X]	[X]

Source: The Parties.

- 10.56 However, we note that, during the PwC accelerated sale process, MPD (a regional motor factor with limited Key Account sales) made an offer for some of the AP depots where sales to Key Accounts accounted for a relatively high proportion of total sales (eg around [X] per cent), ie for [X] and [X]. Given that Key Account sales at the ECP Overlap depots did not exceed [X] per cent of total sales (see Table 10.2 above), we consider that the exclusion of Key Account revenues at any of the AP Overlap depots or the ECP Overlap depots would not necessarily deter potential purchasers.
- 10.57 Further, Key Account contracts are not depot-specific or negotiated at a depot level. Therefore, it may not be practicable to transfer Key Account contracts to a purchaser. In line with this, we considered that such contracts and customer data relating to Key Accounts should not be required to be included in the divestiture package.

- 10.58 However, without a clear definition of Key Accounts and depending on the scope of this exclusion, excluding Key Account revenues could potentially have a detrimental impact on the divested depot's total revenues and, consequently, its ongoing viability.
- 10.59 We therefore considered that only clearly defined Key Account contracts and related customer data should be excluded from the scope of the divestiture package.
- 10.60 In defining what a Key Account customer is, in its response to our RWP, ECP told us that, given the absence of a widely used definition of a 'Key Account customer', the 'simplest and most effective way' to ensure that such contracts and data were excluded was to use the Parties' data submitted in response to the CMA's information request during the Phase 2 investigation, where ECP and AP highlighted which of their respective customers were Key Account customers.<sup>184</sup>
- 10.61 We reviewed this data:
- (a) ECP provided an extensive list of customers (around 60,000 in total), which it categorised as either 'National' (or Key Accounts), 'Trade' or 'Retail'. This data did not specify which customers were being served by the ECP Overlap depots, and how ECP determined whether a customer was a 'National' customer.
  - (b) AP provided a list of customers for each of its depots, and highlighted which customers it considered were Key Accounts. However, this data did not specify how AP had determined whether a customer was a Key Account. We noted that at a depot level, AP's customer data showed that annual purchases by customers categorised as Key Accounts by AP varied considerably, eg ranging from around £1,000 to just over £200,000 [redacted] (with average annual purchases of only around £[redacted]).
- 10.62 In section 5, we set out the Parties' views on the characteristics that distinguish Key Accounts from other IMT customers (although the Parties noted that not all Key Accounts would have all of these characteristics). These characteristics were as follows:
- (a) Key Accounts are usually large, generally making purchases in excess of £[redacted] per year;
  - (b) Key Accounts often require consistent pricing across all of their sites;

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<sup>184</sup> ECP's response to the RWP.

- (c) Some Key Accounts have specific requirements for the product range that can be purchased by their sites (or outlets); and
  - (d) Key Accounts generally require centralised management, invoicing and back-office support.
- 10.63 We considered that any customer at an Overlap depot that has all of these characteristics is likely to be regarded as a Key Account. However, as set out in section 5, we recognise that there is a continuum between Key Accounts and local IMT customers, with Key Accounts varying significantly in size and geographic coverage requirements. However, a common factor for Key Accounts, which is also the basis for our findings that the Merger will impact on such larger customers in a different way, is a requirement for deliveries of car parts to be made to multiple sites (usually national or multi-regional) from multiple depots by a primary supplier able to supply the majority of the customer's needs across such multiple sites. They also generally require such supplies to be made under a single contract centrally managed by the primary supplier.
- 10.64 We therefore considered that an appropriate definition of a Key Account for the purposes of our divestiture remedy would be:
  - (a) a customer which has a single supply agreement, in the case of an AP Overlap depot, with AP, or, in the case of an ECP Overlap depot, with ECP, under which:
    - (i) the customer requires car parts to be delivered on a regular basis to multiple sites; and
    - (ii) the customer is supplied on a regular basis by more than one AP depot, in the case of an AP Overlap depot, or more than one ECP depot in the case of an ECP Overlap depot; and
  - (b) a customer which requires centralised management, invoicing and back-office support.
- 10.65 As part of the divestiture process, the Parties will be required to submit for the CMA's approval a list of customers at each Overlap depot to be divested which they consider to be Key Accounts and believe should therefore be excluded from the divestiture package. This will include, for each such customer, an explanation of why that customer should be considered to be a Key Account (with reference to our definition above), and therefore carved out from the scope of the divestiture package.

- (c) *Scope of any customer data transferred to a purchaser*
- 10.66 We considered that the scope of any customer data should be determined by what a purchaser would need to supply the divested depot's existing customers effectively, including customer contact details, records of past purchases, and any delivery van route data (if any).
- 10.67 We note that ECP told us that, whilst a purchaser would require historic monthly customer spend, the likely purchasers would be established companies with their own pricing methods, and therefore would not require historic pricing information to take over supply.<sup>185</sup> ECP told us that, to the extent that there were any returns and warranty claims relating to transactions prior to the divestment, the Parties would undertake responsibility for these, should the purchaser indicate during the divestment process that it would want the Parties to do so.<sup>186</sup>
- 10.68 In our view, whilst the pricing algorithm or the commercial/strategic rationale to arrive at a particular price would be commercially sensitive to the Parties:
- (a) data on the historic prices (eg past customer invoices) charged to customers by the divested depot would be important to enable a purchaser of the divested depot both to compete for, and continue to supply, those customers; and
  - (b) allowing the Parties to retain the historic customer pricing data for the customers of the Overlap depot being divested could provide the Parties' retained Overlap depot with an unfair competitive advantage over the divested depot in each SLC area.
- 10.69 We therefore concluded that the Parties should transfer to a purchaser all customer related data including any archived data (except as discussed above data relating to Key Accounts) as described in paragraph 10.66 above, including historic customer pricing information, but not their pricing algorithms or models.
- 10.70 In relation to the handling of any returns and warranty claims and, for completeness, any debtors, relating to customer transactions prior to the divestiture, we considered that following divestiture, some purchasers may not wish ECP to be involved in the handling of any returns, warranty claims or debtor collections. For example, we note that one third party (see Appendix 9.1) told us that it would want to take over from ECP, the handling

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<sup>185</sup> ECP's response to the RWP.

<sup>186</sup> ECP's response to the RWP.



of debtor collections in relation to customer transactions that took place prior to the divestiture. We therefore considered that these should be matters for negotiation in good faith between the Parties and any potential purchaser.

- *(d) Whether the Parties should only be obliged to offer the level of stock that was available at the time ECP acquired AP*

- 10.71 Next, we turn to the question of whether the Parties should only be obliged to offer the Overlap depot's 'original stock level' (ie as at the Merger completion date), with any additional inventory being offered to the purchaser at the Parties' discretion as submitted by the Parties.<sup>187</sup>
- 10.72 AP faced considerable stock shortages and product availability issues in the months leading up to the Merger and this required ECP to invest in replenishing stock at the acquired AP depots in order to preserve and maintain the AP depots as going concerns (see also section 6). We do not consider that the Parties' proposal to limit their obligation to transfer to a purchaser the Overlap depots' 'original stock levels' as appropriate to enable a purchaser to acquire the Overlap depot as a going concern and to ensure continuity of supply to local customers.
- 10.73 ECP told us that, if an option were granted to a purchaser to acquire inventory, this should be limited to what was 'strictly necessary' to ensure continuity of supply to the depot's local customers, and suggested that this could be effectively negotiated with the purchaser to reach an acceptable agreement.<sup>188</sup>
- 10.74 Given the importance of product availability to local customers in this market, and to ensure continuity of supply to local customers, but also recognising that not all purchasers might want to acquire the inventory and stock, we considered that the purchaser should have the option to acquire any inventory and stock at the Overlap depot as at the time of the divestment that is necessary to ensure continuity of supply to that depot's local customers. However, a purchaser should not be obliged to acquire, and the Parties should not be required to sell, all of the depot's inventory and stock.

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<sup>187</sup> ECP's response to the Remedies Notice.

<sup>188</sup> ECP's response to the RWP.

- (e) *Reasonable return on inventory and vehicle fleet added by ECP since the Merger*

10.75 In relation to ECP's view set out in Appendix 10.1 that the Parties should be able to make a 'reasonable return' on the sale of any inventory or vehicle fleet (which had been added by ECP to the 'local businesses' since its acquisition of AP) to a purchaser,<sup>189</sup> we considered that the question of valuation should be a matter for bilateral negotiations between the Parties and potential purchasers, and that the price paid by a potential purchaser should be a function of any competitive auction process for the assets to be divested. Therefore, we do not consider it appropriate to prescribe, as part of our remedy, what might, or should, constitute a reasonable return for the Parties for any element of the divestiture package.

10.76 We conclude our consideration of the scope of the divestiture package with Table 10.3 below, which summarises all of our conclusions in relation to the scope of the divestiture package.

10.77 ***Conclusions on the divestiture package elements***: we concluded that:

- (a) in order to enable a purchaser of an Overlap depot to compete effectively, the Parties should be required to offer any potential purchaser of an Overlap depot the elements set out in Table 10.3 below; and
- (b) the Parties should not be required to make available a regional distribution centre, AP's national distribution centre or head office to purchasers.

**Table 10.3: Elements to be offered to potential purchasers of an Overlap depot**

<i>Element</i>	<i>Requirement</i>
<ul style="list-style-type: none"> <li>• <i>Transfer of the lease of the Overlap depot property</i></li> </ul>	<ul style="list-style-type: none"> <li>• The Parties shall be required to:               <ul style="list-style-type: none"> <li>(a) take all necessary steps to secure their legal right to continue to occupy and operate from the premises of all of the Overlap depots (ie both the ECP and AP Overlap depots) during the entire divestiture process period (eg on the basis of a new lease agreement or a licence to occupy granted by the landlord);</li> <li>(b) take all reasonable steps to ensure that the divestiture process provides sufficient time and opportunity to the purchaser to take assignment of any existing lease, or to finalise a lease agreement following agreement on heads of terms; and</li> <li>(c) ensure that each purchaser obtains a legal right under a lease agreement, eg through assignment of the relevant lease or by entering into a new lease agreement, to occupy the relevant Overlap depot(s) from the date of the completion of the divestment.</li> </ul> </li> <li>• Legal completion of an acquisition of an Overlap depot by a suitable purchaser shall be contingent on the suitable purchaser entering into a lease agreement with the relevant landlord.</li> </ul>

<sup>189</sup> ECP's response to the RWP.

• <i>Transfer of the depot staff</i>	• Staff employed at the relevant Overlap depot to be transferred under Transfer of Undertakings (Protection of Employment) Regulations (TUPE).
• <i>Option to transfer any existing customer supply contracts (excluding Key Account contracts)</i>	<ul style="list-style-type: none"> <li>• The purchaser shall have the option of taking on any existing customer supply contracts relating to customers served by the Overlap depot (but excluding Key Account contracts).</li> <li>• The Parties shall be required to submit for the CMA's approval, a list of Key Accounts at each Overlap depot selected for divestiture, together with an explanation of why that customer should be considered to be a Key Account, and therefore carved out from the scope of the divestiture package.</li> <li>• We considered that an appropriate definition of a Key Account for the purposes of our divestiture remedy would be: (a) a customer which has a single supply agreement, in the case of an AP Overlap depot, with AP, or in the case of an ECP Overlap depot, with ECP, under which: (i) the customer requires car parts to be delivered on a regular basis to multiple sites; and (ii) the customer is supplied on a regular basis by more than one AP depot, in the case of an AP Overlap depot, or more than one ECP depot in the case of an ECP Overlap depot; and (b) a customer which requires centralised management, invoicing and back-office support.</li> </ul>
• <i>Access to relevant customer data (excluding Key Accounts data)</i>	<ul style="list-style-type: none"> <li>• The Parties shall transfer to the purchaser all of the customer data relating to the customers served by the Overlap depot (including any archived customer data), but excluding customer data relating to Key Accounts (as defined above).</li> <li>• Customer data shall include (among others) customer contact details; records of past purchases; delivery van route data (if any); and historic customer pricing information.</li> <li>• The Parties shall not be required to transfer the pricing algorithms or models used by the divested depots.</li> </ul>
• <i>Option to transfer any existing supplier contracts</i>	• The purchaser shall have the option to take on supplier contracts to the extent there are any that are necessary to enable continuity of supply to local customers.
• <i>Option to acquire (or to assign the lease of) the fleet of delivery vehicles at the Overlap depot</i>	• The purchaser shall have the option to acquire (or to assign the lease of) some (or all) of the delivery vehicles used at the Overlap depot.
• <i>Option to acquire plant, machinery, computers, fixtures and fittings of the Overlap depot</i>	• The purchaser shall have the option to decide which fixed assets it would wish to acquire as part of the Overlap depot.
• <i>Rights to receive services and utilities currently being provided at the Overlap depot</i>	<ul style="list-style-type: none"> <li>• This element covers telecoms, gas, electricity, building access and services (as applicable).</li> <li>• The Parties shall take all necessary steps to assist in ensuring a smooth transition of any services and utilities (as required) to the purchaser of an Overlap depot.</li> </ul>
• <i>Option to acquire the current stock/inventory at the Overlap depot</i>	<ul style="list-style-type: none"> <li>• The purchaser shall have the option to acquire the current stock/inventory at the Overlap depot, to the extent it is necessary to ensure continuity of supply to local customers.</li> <li>• The purchaser should not be obliged to acquire, and the Parties should not be required to sell, all of the depot's inventory and stock.</li> </ul>
• <i>Option to request transitional services from the Parties</i>	• The purchaser shall be given the option to request the Parties to provide transitional services (the terms of which will be subject to bilateral negotiations between the Parties and a purchaser).

Source: CMA.

### *Identification and availability of suitable purchasers*

10.78 In order to ensure that the local divestiture remedy will achieve its intended effects, and in line with the Merger Remedies Guidance,<sup>190</sup> we will wish to satisfy ourselves on the following purchaser suitability criteria (see Table 10.4).

**Table 10.4: Purchaser suitability criteria (Merger Remedies Guidance)**

• <i>Independence</i>	• The purchaser should have no significant connection to the merger parties that might compromise the purchaser's incentives to compete with the merged entity, for example, an equity interest, shared directors, reciprocal trading relationships or continuing financial assistance.
• <i>Capability</i>	• The purchaser must have access to appropriate financial resources, expertise and assets to enable the divested business to be an effective competitor in the market. This access should be sufficient to enable the divestiture package [ie the divested depot] to continue to develop as an effective competitor. For example, a highly leveraged acquisition of the divestiture package [ie the divested depot] that left little scope for competitive levels of capital expenditure or product development would be unlikely to satisfy this criterion.
• <i>Commitment to relevant market</i>	• The CMA will wish to satisfy itself that the purchaser has an appropriate business plan and objectives for competing in the relevant market(s).
• <i>Absence of competitive or regulatory concerns</i>	• Divestiture to the purchaser should not create a realistic prospect of further competition or regulatory concerns.

Source: Merger Remedies Guidance, paragraph 3.15.

10.79 We first consider the profile of a suitable purchaser (as well as the question of whether the Parties should be given the choice of deciding whether to sell a package of depots or depots individually), before considering the likely availability of suitable purchasers.

- *Profile of a suitable purchaser*
  - *Parties' and third parties' views on the profile of a suitable purchaser*

10.80 In its response to our RWP, ECP told us that it agreed with our provisional conclusion that a suitable purchaser was likely to be: (a) an existing motor factor operating in the UK with its own distribution and business infrastructure; and (b) a motor factor that was currently not operating in the area in which it is acquiring an Overlap depot. It also noted the views of third parties (see below) that a 'credible suitable purchaser' did not need to be a

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<sup>190</sup> Merger Remedies Guidance, paragraph 3.15.

‘large national motor factor’, and that there was no reason to require one purchaser to acquire all of the Overlap depots in a single transaction.<sup>191</sup>

- 10.81 ECP told us that it considered that it was ‘entirely possible’ that an operator with a single depot could act as an effective competitive constraint in a particular local area, provided that it was an ‘existing motor factor in the UK with a presence in the market (albeit not in the local area in question)’. It told us, however, that it might be ‘slightly more difficult or time consuming to conclude a deal with a one-depot operator’.<sup>192</sup>
- 10.82 In its response to our RWP, ECP told us that the reference to a ‘leveraged acquisition’ under the ‘Capability’ criterion set out in our Merger Remedies Guidance (and repeated in Table 10.4 above) would be of little relevance in this case, as the car parts distribution business was not one that required product development (for example).<sup>193</sup>
- 10.83 In relation to whether there should be a limit on the number of potential purchasers of the Overlap depots, ECP told us that:<sup>194</sup>
- (a) given that the SLCs identified were ‘discrete local SLCs’, there was no reason from the perspective of the efficacy of the remedy to require there to be a single purchaser or to limit the number of purchasers; nor was there any reason why national coverage would be needed to restore the competitive constraints in discrete local areas; and
  - (b) if the CMA were to impose such a requirement, this could serve to narrow down the list of potential purchasers to those interested in purchasing all or a substantial portion of the divestiture sites and could thereby dampen interest in the divestiture package and/or allow ‘game playing’ by potential purchasers. ECP also told us that [REDACTED].
- 10.84 In relation to the profile of a suitable purchaser, some of the third parties (PA and MPD) told us that the purchaser should be of sufficient scale to compete effectively:
- (a) PA told us that that a purchaser which was able to finance the acquisition as well as having a certain scale (eg four or five depots in an existing network and being a member of a buying group) would probably be ‘sufficient’ to buy one or two depots. It told us that a purchaser should

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<sup>191</sup> ECP’s response to the RWP.

<sup>192</sup> ECP’s response to the RWP.

<sup>193</sup> ECP’s response to the RWP.

<sup>194</sup> ECP’s response to the Remedies Notice.

be a credible competitor with sufficient scale in terms of resources to be able to stock depots and provide a full offering to customers.<sup>195</sup> It told us that it expected that, following divestiture, ECP would be very aggressive in the market and, given that ECP was more than competent at driving sales performance, a competitor must be able to withstand this. In this regard, PA considered that a new entrant with a single depot would not be successful, because it would not be able to compete with ECP effectively.<sup>196</sup>

- (b) MPD told us that small players might not be able to compete with ECP and, therefore, selling to a larger competitor would mean that the acquired depot would be more likely to survive. It told us that a purchaser of a depot must be financially robust in order to be able to compete with ECP effectively.<sup>197</sup>

10.85 Other third parties ([redacted] and [redacted]) told us that a credible suitable purchaser did not need to be a large national motor factor, and that there were customer benefits from selling to an independent motor factor:

- (a) [redacted] told us that the depots should be sold to independent distributors, to 'truly give customer choice and a different option' from the larger national operators, such as ECP and PA. It also told us that a purchaser would need to be financially robust to compete with ECP, eg a depot would typically need to hold around £300,000 to £400,000 of stock.
- (b) [redacted] told us that a local operator would be a better purchaser for the depots given that the industry was becoming 'very top heavy', with the likes of ECP, PA and AAG. It added that local customers buy from local businesses because they know their customers personally. It told us that it was able to compete with ECP and AP at the local level, with access to all the major suppliers and brands, as well as providing customers with a very good offering.

10.86 In relation to whether there should be a limit on the number of potential purchasers of the Overlap depots, the evidence was mixed:

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<sup>195</sup> PA told us that for any new site, it would budget around £[redacted] for the following: (a) around £[redacted] for the inventory; (b) around £[redacted] for the trade counter and fittings; and (c) around £[redacted] for [redacted] or [redacted] delivery vans. Source: Response hearing with PA (20 September 2017).

<sup>196</sup> Response hearing with PA (20 September 2017).

<sup>197</sup> Response hearing with MPD (27 September 2017).

(a) PA told us that there was no reason to require one purchaser for all of the depots, given that the CMA had identified local competition problems;<sup>198</sup> and

(b) MPD told us that PwC's accelerated sale process demonstrated that it was much easier to sell AP to a single purchaser than selling the business piecemeal. It therefore considered that it would be easier to sell a larger number of the depots to one purchaser (subject to the Parties having realistic valuation expectations).<sup>199</sup>

○ *Our assessment and conclusions on the profile of a suitable purchaser*

- 10.87 We noted the Parties' and third parties' views that a suitable purchaser would be an existing market operator, and the general consensus among third parties that a purchaser would need to be financially robust in order to compete effectively. We also noted that there was mixed evidence from third parties in relation to whether this financial robustness could only be demonstrated by a large national operator.
- 10.88 We considered that a suitable purchaser would be likely to be an existing market operator, but one that currently does not impose a competitive constraint on the Parties in the SLC area where it is looking to acquire an Overlap depot.
- 10.89 We will consider the suitability of each potential purchaser on its own merits and on a case-by-case basis, and having regard to our purchaser suitability criteria set out in the Merger Remedies Guidance. We considered that our purchaser suitability criteria would cover the areas necessary to determine the suitability of a potential purchaser, including a potential purchaser's capability (including its financial strength) and commitment to the market, as well as its strategy in the relevant market.
- 10.90 Given our conclusion above that a divestiture of one Overlap depot in each SLC area would address the SLC we have identified in each SLC area, we considered that we would not be concerned if a purchaser which met our suitability criteria, were to acquire an Overlap depot in more than one SLC area. Accordingly, we concluded that the Parties should be given the choice of deciding whether to sell a package of depots or depots individually to one or more suitable purchasers.

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<sup>198</sup> Response hearing with PA (20 September 2017).

<sup>199</sup> Response hearing with MPD (27 September 2017).

10.91 ***Conclusions on the profile of a suitable purchaser:*** we concluded that:

- (a) we will assess the suitability of any potential purchaser on its respective merits and having regard to the criteria set out in the Merger Remedies Guidance (see also Table 10.4). In essence, we will regard a potential purchaser as suitable if it: (i) is independent from the Parties; (ii) is capable of competing effectively; (iii) is committed to the relevant markets; and (iv) does not raise further competition or regulatory concerns;
- (b) a suitable purchaser would be likely to be: (i) an existing motor factor operating in the UK with its own distribution and business infrastructure; and (ii) a motor factor that is currently not operating in the SLC area in which it is acquiring an Overlap depot (ie a motor factor that is currently not imposing a competitive constraint on the Parties' Overlap depots in the relevant SLC area). However, we would not rule out any purchaser which meets our purchaser suitability criteria;
- (c) the CMA will approve the eventual purchaser of any Overlap depot, as well as any associated transaction documents; and
- (d) it will be at the Parties' discretion whether the Overlap depots are sold as a package or individually to one or more suitable purchasers.

- *Likely availability of suitable purchasers*

10.92 We now consider the likely availability of suitable purchasers.

- *Parties' and third parties' views on availability of suitable purchasers*

10.93 In relation to the likely availability of suitable purchasers, ECP told us that all of the AP depots in the SLC areas received an alternative bid from PA and/or MPD, and that this indicated that there would be no problems in identifying a purchaser for each SLC area.<sup>200</sup> ECP also told us that, given the interest from PA and MPD, the AP Overlap depots were 'presumptively viable' in the longer term.<sup>201</sup>

10.94 At its response hearing, ECP told us that it had received several expressions of interest from third parties interested in acquiring some, or all, of the AP

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<sup>200</sup> ECP's response to the Remedies Notice.

<sup>201</sup> Response hearing with ECP (5 October 2017).



Overlap depots, and that some of these third parties had not participated in the PwC accelerated sale process.<sup>202</sup>

10.95 ECP also told us that, given that ECP had improved the performance of the AP depots since acquiring them, this would further increase the likelihood of interest from other competitors, and of achieving a timely divestiture.<sup>203</sup>

10.96 Similarly, PA told us that, in relation to a sale process for the Overlap depots, it believed that there would be a sufficient number of interested purchasers, and considered that the opportunity to 'bolt a depot on to' a regional network would mean that there would be a lot of interest from purchasers.<sup>204</sup>

10.97 MPD told us that there would be interest in the depots, and that entering the markets in any of the areas where divestiture might be required would likely be attractive to a number of purchasers, including MPD.<sup>205</sup>

10.98 [X] told us that it believed that there would be interest from a number of potential purchasers for the AP depot in [X], including [X], the national buying groups and national competitors.

○ *Our assessment and conclusions on availability of suitable purchasers*

10.99 In deciding on the likely availability of suitable purchasers, we took into account the following:

(a) all of the AP Overlap depots were the subject of interest from PA, MPD or both during the PwC accelerated sale process in October 2016;

(b) the improvement in the performance of the AP Overlap depots compared with their performance at the time of the accelerated sale process; and

(c) the initial expressions of interest from various third parties of which we have been made aware, in some, or all, of the AP Overlap depots.

10.100 ***Conclusions on the availability of suitable purchasers:*** based on our assessment above, we concluded that the risk of not finding suitable purchasers would be low.

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<sup>202</sup> Response hearing with ECP (5 October 2017).

<sup>203</sup> ECP's response to the Remedies Notice.

<sup>204</sup> Response hearing with PA (20 September 2017).

<sup>205</sup> Response hearing with MPD (27 September 2017).

- *Ensuring an effective divestiture process*

10.101 As set out in the Merger Remedies Guidance,<sup>206</sup> an effective divestiture process requires an assessment by the CMA of:

- (a) the appropriate timeframe for divestiture to complete (the “Divestiture Period”);
- (b) the extent of any interim measures required during the divestiture process; and
- (c) whether there is a need to appoint an external and independent monitor to oversee the divestiture (the “Divestiture Trustee”) to ensure that the Overlap depots are maintained and preserved during the course of the process; or to mitigate the risk that the sale process is not completed within the agreed Divestiture Period.

- *Appropriate Divestiture Period*

10.102 We considered the appropriate timeframe for the divestiture to be completed, ie the appropriate Divestiture Period. In our RWP, we provisionally concluded that the Parties should be given [X] from the date of the divestiture order or undertakings to complete any divestiture.

- *Parties’ and third parties’ views on the appropriate Divestiture Period*

10.103 ECP considered six months to be the appropriate timescale for achieving divestiture of the Overlap depots, and told us that, given the ‘limited number of SLCs identified and the small scale of the divestiture’, there was ‘no need to depart from standard practice’.<sup>207</sup> At its response hearing, ECP told us that it should be allowed to run a competitive auction process to obtain a ‘reasonable return’, and that it should be provided with a reasonable amount of time to complete the divestitures. ECP told us that, whilst the PwC accelerated sale process was completed within a matter of weeks, it believed that the tight timescales for that sale process had adversely affected the price which PwC received for the AP business.<sup>208</sup>

10.104 At its response hearing, ECP also told us that, whilst it would like to complete a transaction quickly in order to proceed to integrate the remaining

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<sup>206</sup> Merger Remedies Guidance, paragraphs 3.20 to 3.26.

<sup>207</sup> ECP’s response to the Remedies Notice, response hearing with ECP (5 October 2017) and ECP’s response to the RWP.

<sup>208</sup> Response hearing with ECP (5 October 2017).

AP depots, based on its experience, transactions typically took more than six months to complete (including the time taken to prepare the data room materials and the subsequent commercial negotiations). In this regard, ECP told us that it had already taken limited preparatory steps to prepare for a potential sale process.<sup>209</sup>

10.105 In contrast, all of the third parties, to which we spoke, told us that a transaction could be completed within a much shorter timescale, ranging from a matter of weeks (similar to that of the PwC accelerated sale process) to three months:

- (a) PA told us that, once the data room was set up, it could take around four weeks to complete a transaction. It told us that timing was dependent on the legal process and the type of sale process the Parties wanted to run (eg allowing time for multiple bids to be made for each depot). It also told us that this sale process should be much easier than selling out of receivership, and only a few depots are involved, which makes this a very different proposition from the accelerated sale process run by PwC.<sup>210</sup>
- (b) MPD told us that the Parties should not be given a long time to sell the depots, and that it was appropriate to give purchasers a few weeks similar to PwC's accelerated sale process. It told us that, from a purchaser's perspective, any sale would only take two weeks and that the element of the transaction which would take the longest period of time would be in relation to the properties and the licences to occupy.<sup>211</sup>
- (c) [REDACTED], and that it could complete a transaction within six to eight weeks, and certainly within three months. It told us that, if there were an insufficient number of interested purchasers, and/or ECP's asking price was too high, then these factors could delay the sale.
- (d) [REDACTED] told us that it considered that around three months would appear to be appropriate as the Divestiture Period.

10.106 In relation to the views of third parties that the Divestiture Period should not exceed three months, ECP told us, in its response to our RWP, that third parties appeared to be basing their estimates on a time period running from the opening of the data room set up by the Parties to the completion of the transaction, and therefore the time period until the data room stage (including the initial solicitation of interest) should also be taken into account.

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<sup>209</sup> Response hearing with ECP (5 October 2017).

<sup>210</sup> Response hearing with PA (20 September 2017).

<sup>211</sup> Response hearing with MPD (27 September 2017).

It also told us that references by third parties to the time taken to complete the PwC accelerated sale process did not take into account the fact that, by that time, AP had already been on sale for over a year, and that all the required materials were already in place (and indeed the business had already been marketed to a number of parties) at the time of the sale process.<sup>212</sup>

- *Our assessment and conclusions on the appropriate Divestiture Period*

10.107 We noted that there was a broad consensus from third parties that a divestiture of the Overlap depots could be completed relatively quickly, with no third party suggesting that the Divestiture Period should exceed three months.

10.108 In coming to a decision on the appropriate Divestiture Period, we wanted to ensure that the timescales to complete a transaction were not too short such that they would prejudice a purchaser's ability to negotiate and finalise a lease agreement with the relevant landlord on fair commercial terms.

10.109 Given our conclusion that a suitable purchaser must enter into a new lease agreement for the Overlap depot as a condition precedent to completing a transaction, it is our view that the Divestiture Period should not be unduly long (reflecting the relatively simple nature of the transaction absent the lease issue on the AP Overlap depots), and provide sufficient time for a purchaser(s) to enter into to a lease agreement with the relevant landlord, as well as enable the Parties to run a competitive sale process.

10.110 ***Conclusions on the appropriate Divestiture Period:*** we concluded that, from the date of the divestiture order or undertakings, the Parties should be required to complete the divestiture of the Overlap depots to a suitable purchaser(s) within [X].

- *Interim measures during the Divestiture Period*

10.111 We considered the extent to which any interim measures might be required during the divestiture process.

10.112 In our RWP, we provisionally concluded that interim measures should focus on the preservation and saleability of both the AP and ECP Overlap depots, and that we would consider the extent to which the existing hold separate measures under the Initial Enforcement Order (the IEO), which was served

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<sup>212</sup> ECP's response to the RWP.

on the Parties on 12 October 2016, should remain in place in relation to all the AP depots acquired under the Merger.

- *Parties' and third parties' views on interim measures during the divestiture process*

10.113 ECP told us that the AP depots were currently being operated under the supervision of a Monitoring Trustee, and that continuation of this supervision until the time of divestiture would be sufficient to ensure that the business was maintained in good order and that its competitive position was not undermined.<sup>213</sup>

10.114 In its response to our RWP, ECP told us that a Monitoring Trustee would be able to ensure effectively that the business of the depots to be divested was maintained in good order and that, in this respect, running a depot was 'not a technically complex matter', and that it should be clear from the financial information relating to the AP business that stock levels were being maintained sufficiently and that sales to customers were similarly remaining at a level that tracked previous sales. ECP also told us that, since the IEO, the CMA had effectively been monitoring the performance of the depots, and this would provide the Monitoring Trustee with a baseline and comparator. Accordingly, ECP considered that there was no reason to doubt the effectiveness of the supervision by a Monitoring Trustee as a procedural safeguard over the Divestiture Period.<sup>214</sup>

10.115 ECP told us that it would be sufficient to have in place standard asset maintenance undertakings which impose a general duty to maintain the divestiture package in good order and not to undermine its competitive position.<sup>215</sup>

10.116 In relation to the extent to which the hold separate measures under the existing IEO should continue to remain in place, ECP told us, in its response to our RWP, that, if the CMA decided to focus interim measures on the preservation and saleability of the Overlap depots, the Parties should be permitted to integrate the other AP depots (in the non-SLC areas) when final undertakings have been agreed. ECP told us that this would be consistent both with the fact that there would be 'significant interest' from potential purchasers (as reflected in the bids by PA and MPD and the expressions of

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<sup>213</sup> ECP's response to the Remedies Notice.

<sup>214</sup> ECP's response to the RWP.

<sup>215</sup> ECP's response to the Remedies Notice.

interest already received by ECP), and with third party views on the 'ease and speed' with which the depots could be sold.<sup>216</sup>

10.117 In relation to the risks of a drawn-out sale process, third parties highlighted the following:

- (a) the risk that the Parties might run the business down at the depots being divested, thereby undermining their ability to compete effectively; and
- (b) the risk of uncertainty for the depot's employees.

10.118 One third party told us that it would be very difficult to mitigate the risks that the Parties might run the business down, without a 'full raft' of provisions. For example, MPD cited the following examples as some of the many areas which would need to be checked:<sup>217</sup>

- (a) stocks being replenished in a timely manner with good products;
- (b) ensuring delivery vans were maintained and replaced if necessary; and
- (c) departing staff being replaced in a timely manner.

10.119 MPD told us that any external monitoring trustee would not have adequate knowledge to monitor all of the relevant areas, eg the monitoring trustee would not understand stock quality or be able to identify who the 'good' employees were.<sup>218</sup>

10.120 In relation to the risk of staff departures:

- (a) in its response to our RWP, ECP told us that it would expect to have 'non-solicitation' clauses in relation to the depot staff transferred to a purchaser, and that it understood this to mean that ECP would not approach the staff of the divested depot to offer them a job. However, it told us that ECP should retain the right to hire such persons if they, for example, responded to a generally advertised job vacancy. It also told us that, if the Parties were required to take reasonable steps to encourage staff to stay at the Overlap depots, then this must, as a matter of practicality, be limited to the period prior to divestiture.<sup>219</sup>

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<sup>216</sup> ECP's response to the RWP.

<sup>217</sup> Response hearing with MPD (27 September 2017).

<sup>218</sup> Response hearing with MPD (27 September 2017).

<sup>219</sup> ECP's response to the RWP.

- (b) PA told us that, given the importance of depot staff in any depot acquisition, non-solicit clauses were normal for these types of transactions, eg to ensure that the Parties would not be able to poach staff from the divested depot.<sup>220</sup>
  - (c) [X] told us that, if employees at the depot understood what was happening (eg through open communication), then employees were more likely to stay at the depot. It told us that offering depot employees 'guaranteed contracts' up to a certain date might also help to mitigate the risk of staff departures.<sup>221</sup>
  - (d) However, MPD told us that there was no way to mitigate the risk of staff departures, as the Parties could ask staff at the divested depot to return to them after completion, eg by making a higher salary offer.<sup>222</sup>
- *Our assessment and conclusions on interim measures during the divestiture process*

10.121 Once the divestiture order is issued or the divestiture undertakings are given by the Parties, the interim measures contained in the divestiture order or undertakings will supersede those in the current IEO, and the IEO will no longer remain in force. We therefore considered the extent to which the interim measures that are currently in place under the existing IEO should be transferred over to the divestiture order or undertakings, and the extent to which any additional interim measures (which are not currently in the IEO) should be included.

10.122 In relation to the extent to which the existing hold separate measures under the IEO should remain in place under the divestiture order or undertakings, we considered that the Parties should be permitted to integrate the AP depots in the non-SLC areas, provided that the CMA is satisfied that the integration of the AP depots in the non-SLC areas would not have any adverse impact on: (a) the viability or saleability of the AP Overlap depots; and (b) the effectiveness of the hold separate measures in relation to all of the AP Overlap depots. However, if the CMA considers that these conditions would not be met, we will reserve the right to require the Parties to postpone any integration of the AP depots in the non-SLC areas until completion of the divestiture.

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<sup>220</sup> Response hearing with PA (20 September 2017).

<sup>221</sup> [X]..

<sup>222</sup> Response hearing with MPD (27 September 2017).

10.123 We would expect the Parties to submit their proposals to integrate the AP depots in the non-SLC areas either by way of a request for a derogation under the IEO following publication of this report, or as part of the process to finalise the divestiture order or undertakings.

10.124 We also noted the views of third parties which suggested that there was a risk that the competitiveness or viability of the Overlap depots to be divested could be diminished by the Parties during the divestiture process.

10.125 Whilst we considered that the Parties may have some incentive to maintain and preserve the assets to be divested to ensure a better sale price, we did not consider that this would necessarily provide sufficient protection against such a degradation occurring, given that the Parties could benefit from the purchaser being a less effective competitor in the relevant SLC area. This would mean the SLC would not be addressed effectively.

10.126 Therefore, in relation to:

(a) *the AP Overlap depots*: we considered that the existing hold separate provisions and restrictions contained in the IEO (and any derogations granted by the CMA to it) should continue to apply to the AP Overlap depots (or the whole AP business if the CMA does not approve the integration of the AP depots in the non-SLC areas), including restrictions on the information that can be shared with ECP;<sup>223</sup> and

(b) *both the ECP and AP Overlap depots*: we considered that additional interim measures (see below) should be added that would focus on the preservation and the marketability of all of the AP and ECP Overlap depots (noting the possibility that, if the Parties fail to sell their nominated Overlap depot, they might be required to divest an alternative Overlap depot instead).

10.127 In relation to the additional interim measures that should be added in relation to the AP and ECP Overlap depots, given the general consensus from third parties about the importance of a depot's customer base and staff (see our assessment of the scope of the divestiture package), as well as security of tenure, we would require from the date of the divestiture order or undertakings until completion of the divestiture:

(a) the Parties to encourage staff at the Overlap depots to remain, and not to dismiss or transfer the staff at the Overlap depots; and

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<sup>223</sup> [X]



- (b) the Monitoring Trustee to provide periodic updates to the CMA on: (i) the progress of the divestiture process (including the progress in relation to the Parties' obligations to ensure security of tenure at each of the AP and ECP Overlap depots); and (ii) various performance indicators (to be agreed between the CMA/Monitoring Trustee and the Parties) in relation to each Overlap depot (ie for the avoidance of doubt, both the AP Overlap depots and the ECP Overlap depots), including financial and operational performance indicators, staffing and inventory levels.

10.128 The Parties' compliance with their existing obligations under the IEO is currently being monitored by an external and independent monitor, the Monitoring Trustee, who was appointed under the IEO. We considered that the Monitoring Trustee should also monitor the Parties' compliance with the interim measures we are proposing under this remedy.

10.129 ***Conclusions on interim measures during the divestiture process:*** we concluded the following:

- (a) in relation to the integration of the AP depots in the non-SLC areas:

- (i) the CMA is minded to permit the integration of the AP depots in the non-SLC areas, provided that the CMA is satisfied that the integration of the AP depots in the non-SLC areas will not have any adverse impact on: (i) the viability or saleability of the AP Overlap depots; and (ii) the effectiveness of the hold separate measures that will continue to apply to all of the AP Overlap depots; and
- (ii) we would expect the Parties to submit their proposals to integrate the AP depots in the non-SLC areas either by way of a request for a derogation under the IEO following publication of this report, or as part of the process to finalise the divestiture order or undertakings;

- (b) from the date of the divestiture order or undertakings until completion of the divestiture, the existing hold separate provisions and restrictions contained in the IEO (and any derogations granted by the CMA) should continue to apply to the AP Overlap depots (or the whole AP business if the CMA does not approve the integration of the AP depots in the non-SLC areas), including restrictions on the information that can be shared with ECP; and

- (c) from the date of the divestiture order or undertakings until completion of the divestiture, additional interim measures should be included that would focus on the preservation and the marketability of all of the AP and ECP Overlap depots until completion of the remedy:

- (i) until the first anniversary of the date of completion of any divestiture, the Parties shall not solicit any staff (and not just 'Key Staff' within the meaning of the IEO),<sup>224</sup> employed at each of the Overlap depots; and
- (ii) until the date of completion of the divestiture, the Parties shall not (without first obtaining the CMA's approval): (a) dismiss any employee at an Overlap depot; and (b) employ, or make any formal or informal offer of employment to any employee of an Overlap depot (including, for the avoidance of doubt, an employee responding to a vacancy advertisement); and the Parties shall also be required to take reasonable steps to encourage staff to stay at the Overlap depots; and
- (iii) the Monitoring Trustee will be responsible for monitoring the Parties' compliance with the interim measures and shall report periodically to the CMA on: (i) progress of the divestiture process (including progress in relation to the Parties' obligations to ensure security of tenure at each of the AP and ECP Overlap depots); (ii) the Parties' compliance with the interim measures; and (iii) various performance indicators (to be agreed between the CMA/Monitoring Trustee and the Parties) in relation to each Overlap depot (ie for the avoidance of doubt, both the AP Overlap depots and the ECP Overlap depots), including financial and operational performance indicators, staffing and inventory levels.

- *Divestiture Trustee*

- *Parties' views on a Divestiture Trustee*

10.130 ECP argued that, given the very low risk that it would be difficult to find a purchaser or to progress the divestiture in the standard timeframe (ie six months), there would be no need to require the appointment of a Divestiture Trustee to oversee the process.<sup>225</sup>

10.131 In response to our RWP, ECP told us that it did not expect there to be difficulties in obtaining a purchaser for each depot to be divested, and told us

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<sup>224</sup> In the IEO, 'Key Staff' is defined as 'staff in positions of executive or managerial responsibility and/or whose performance affects the viability of the business'.

<sup>225</sup> ECP's response to the Remedies Notice.

that it had already received a number of unsolicited enquiries from potential purchasers.<sup>226</sup>

- *Our assessment and conclusions on a Divestiture Trustee*

10.132 In concluding that the Parties should be given the choice at the start of the divestiture process to nominate which Overlap depot they will divest in a given SLC area, we considered that there may be a risk that the Parties fail to find a suitable purchaser for the nominated Overlap depot, or that a divestiture cannot be completed (for whatever reason) within the agreed timescales.

10.133 To mitigate this risk, we considered that the CMA should reserve its rights to appoint a Divestiture Trustee, as well as require either the Parties or the Divestiture Trustee (whichever applies) to divest a different Overlap depot instead.

10.134 We considered that the prospect of the Parties being required to divest a different Overlap depot, would incentivise the Parties not only to nominate an Overlap depot for divestiture which would be likely to be attractive to potential purchasers but also to complete any divestitures within the Divestiture Period.

10.135 **Conclusions on a Divestiture Trustee:** we concluded that:

- (a) the CMA should reserve its rights either to appoint a Divestiture Trustee or enhance the role of the Monitoring Trustee (as required) if the CMA expects that the divestiture process (for whatever reason) would be delayed or fail to be completed within the Divestiture Period;
- (b) the CMA also reserves its rights to require the Parties or a Divestiture Trustee to divest an alternative Overlap depot, if the CMA expects a divestiture of the Parties' nominated Overlap depot to be delayed or fail to be completed (for whatever reason) within the Divestiture Period; and
- (c) the requirement to appoint a Divestiture Trustee under these circumstances should be incorporated in the divestiture order or undertaking.

10.136 **Re-acquisition condition:** our Merger Remedies Guidance states that 'the merger parties will generally be prohibited from subsequently purchasing

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<sup>226</sup> ECP's response to the RWP.

assets or shareholdings sold as part of a divestiture package or acquiring material influence over them', and that we would 'normally limit this prohibition to a sunset clause period of 10 years'.<sup>227</sup> In line with the Merger Remedies Guidance, it is also our conclusion that our divestiture remedy should be accompanied by obligations on the Parties not to re-acquire any of the divested Overlap depots for a period of 10 years from the legal completion date of the Parties' divestiture of the Overlap depots.

### ***Conclusions on remedy effectiveness***

- 10.137 Based on our assessment above, we concluded that divestiture of one Overlap depot to a suitable purchaser in each of the nine SLC areas would be achievable and effective in addressing the SLCs which we have identified by addressing our concerns at source. We would expect the local divestiture remedy to be a timely and low-risk solution to the SLCs we have identified, with no future monitoring requirements on the CMA or others.
- 10.138 Based on our assessment and conclusions above, a summary of the key elements of our local divestiture remedy is provided in Figure 10.1 below.
- 10.139 It is also our conclusion that the prohibition of the Merger, whereby the Parties would be required to divest all of the AP depots, including those in local areas where we have not found a SLC, as well as AP's national distribution centre and head office, would also be an effective remedy. We consider its proportionality later in this section.

### ***Relevant Customer Benefits***

- 10.140 When deciding remedies, we are required to have regard to the effects of remedial action on any RCBs.<sup>228</sup>
- 10.141 In our Remedies Notice, we stated our initial view that we were not aware of any RCBs (within the meaning of section 30 of the Act) arising from the Merger, and invited comments, and any supporting evidence, on: the nature of any RCBs; the scale and likelihood of such benefits; and the extent to which they would be preserved by a local divestiture remedy.

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<sup>227</sup> Merger Remedies Guidance, paragraph 3.8.

<sup>228</sup> RCBs are limited by the Act to benefits to relevant customers in the form of lower prices, higher quality, or greater choice of goods or services, or greater innovation in relation to goods or services. Relevant customers are customers at any point in the chain of production and distribution. A benefit is only an RCB if the CMA believes that: (a) the benefit has accrued as a result of the creation of the relevant merger situation concerned or may be expected to accrue within a reasonable period as a result of the creation of that situation; and (b) the benefit was, or is, unlikely to accrue without the creation of that situation or a similar lessening of competition.

10.142 If a benefit is an RCB, the CMA may choose to modify a remedy, or impose a different remedy, in order to ensure the retention of the RCB, and any RCBs foregone as a result of a remedy are considered as costs in the proportionality assessment.

#### *Parties' and third parties' views on RCBs*

10.143 The Parties did not make any representations in relation to any RCBs, and no third party told us that there would be RCBs which we should take into account in our remedy assessment.

#### *Conclusions on RCBs*

10.144 The evidence from the Parties and third parties suggests that there are no RCBs to take into account as part of our remedy assessment. We have also not identified any RCBs. Therefore, we concluded that there would be no RCBs within the meaning of the Act arising from the Parties' ownership of both the Overlap depots in each SLC area.

#### ***Proportionality***

10.145 Having concluded that either prohibition of the Merger or divestiture of the Overlap depots would represent effective remedies, we now consider proportionality.

10.146 As set out in the Remedies Notice,<sup>229</sup> given that our SLC findings only affect a small number of depots relative to the overall transaction, we considered that a divestiture of one Overlap depot in each of the nine SLC areas would represent a more proportionate remedy to the SLCs identified than prohibition.

#### *Parties' views on proportionality*

10.147 ECP considered the divestiture of Overlap depots in the relevant local areas to be proportionate, and more likely to be an effective remedy than behavioural commitments, and told us that the alternative remedy, prohibition, would be clearly disproportionate in light of the CMA's SLC findings.<sup>230</sup>

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<sup>229</sup> Remedies Notice, paragraphs 28 and 29.

<sup>230</sup> ECP's response to the Remedies Notice.

10.148 In relation to the cost of implementation, ECP told us that adopting a standard six-month timeframe for divestiture without the need for a Divestiture Trustee would keep the implementation costs to a minimum and ensure that the remedy was proportionate'.<sup>231</sup>

*Our assessment and conclusions on proportionality*

10.149 Our view is that a divestiture of one Overlap depot in each of the nine SLC areas alone (without requiring a prohibition of the Merger) would be effective in remedying the SLC and would therefore represent the least costly remedy which we consider would be effective in remedying the SLCs we have identified.

10.150 We further considered whether the local divestiture remedy might be disproportionate in relation to the SLC and its adverse effects.

10.151 We did not consider that the SLCs were time-limited, and therefore we would expect the adverse effects to persist absent our remedy.

10.152 We have not identified material costs (as described in paragraphs 1.9 to 1.13 of the Merger Remedies Guidance) which would be disproportionate to the scale of the SLCs we have identified.

10.153 ***Conclusion on proportionality:*** we therefore concluded that a local divestiture remedy would not be disproportionate to the adverse effects we identified.

***Conclusion on remedies***

10.154 We concluded that divestiture of one of the Overlap Depots in each local area, ie the local divestiture remedy, would be an effective and proportionate remedy to address the SLCs and their resulting adverse effects which we have identified.

10.155 Figure 10.1 below summarises the main aspects of our local divestiture remedy.

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<sup>231</sup> ECP's response to the Remedies Notice.

**Figure 10.1: Summary of the main elements of our local divestiture remedy**

***Remedy description and scope of the divestiture package***

- In each SLC area, the Parties shall be required to divest one Overlap depot to a suitable purchaser.
- It should be at the Parties' discretion which Overlap depot is selected for divestiture. The Parties should inform the CMA as soon as reasonably practical after the date of the divestiture order or undertakings which Overlap depots the Parties propose to divest.
- The Parties shall be required to offer a potential purchaser the elements set out in Table 10.3.
- As set out in Table 10.3, the Parties shall be required to ensure that each purchaser obtains a legal right to occupy the relevant Overlap depots in order to complete the transaction(s).
- Legal completion of an acquisition of an Overlap depot by a suitable purchaser shall be contingent on the suitable purchaser entering into a lease agreement with the relevant landlord of the Overlap depot.

***Suitable purchasers***

- We will assess the suitability of any potential purchaser on its respective merits and having regard to the criteria set out in the Merger Remedies Guidance (see also Table 10.4).
- A suitable purchaser of an Overlap depot would be likely to be: (a) an existing motor factor operating in the UK with its own distribution and business infrastructure; and (b) a motor factor that is currently not imposing a competitive constraint on the Parties' Overlap depots in the relevant SLC area. However, we would not rule out any purchaser which meets our purchaser suitability criteria.
- The eventual purchaser(s) and the relevant transaction documents will be subject to CMA approval.
- It will be at the Parties' discretion whether the Overlap depots are sold as a package or individually to one or more suitable purchasers.

***Divestiture Period***

- From the date of an order or the CMA accepting undertakings from the Parties, the Parties will be required to complete the divestiture of the Overlap depots to a suitable purchaser(s) within [✂].

***Interim measures***

- The CMA is minded to permit the integration of the AP depots in the non-SLC areas, provided that the CMA is satisfied that this will not have any adverse impact on: (a) the viability or saleability of the AP Overlap depots; and (b) the effectiveness of the hold separate measures that will continue to apply to all of the AP Overlap depots.
- From the date of the divestiture order or undertakings until completion of the divestiture, the existing hold separate provisions and restrictions contained in the IEO (and any derogations granted by the CMA) should continue to apply to the AP Overlap depots (or the whole AP business if the CMA does not approve the integration of the AP depots in the non-SLC areas).
- From the date of the divestiture order or undertakings: (a) until the first anniversary of the completion date of any divestiture, the Parties shall not solicit any staff (and not just 'Key Staff' within the meaning of the IEO), employed at each of the Overlap depots; and (b) until the date of completion of any divestiture, the Parties shall not (without first obtaining the CMA's approval): (i) dismiss any employee at an Overlap depot; and (ii) employ, or make any formal or informal offer of employment to any employee of an Overlap depot (including for the avoidance of doubt, an employee responding to a vacancy advertisement); and the Parties shall also be required to take reasonable steps to encourage staff to stay at the Overlap depots.
- The Monitoring Trustee will be responsible for monitoring the Parties' compliance with the interim measures and shall report periodically to the CMA on: (i) progress of the divestiture process (including progress in relation to the Parties' obligations to ensure security of tenure at each of the AP and ECP Overlap depots); (ii) the Parties' compliance with the interim measures; and (iii) various performance indicators (to be agreed between the CMA/Monitoring Trustee and the Parties) for each Overlap depot, including financial and operational performance indicators, staffing and inventory levels.

***Divestiture Trustee***

- The CMA reserves its right either to appoint a Divestiture Trustee or enhance the role of the Monitoring Trustee (as required) if the CMA expects that the divestiture process will be delayed or fail to be completed (for whatever reason) within the Divestiture Period.
- Similarly, in these circumstances, the CMA also reserves its rights to require the Parties or a Divestiture Trustee to divest an alternative Overlap depot.

***Restrictions on re-acquisition***

- The Parties shall not be permitted to re-acquire any of the divested Overlap depots for a period of 10 years following legal completion.