Decision

Competition Act 1998

Anti-competitive conduct in relation to vehicle recycling and advertising of recycling-related features

Case 51098

01 April 2025

Confidential information in the original version of this Decision has been redacted from the published version on the public register. Redacted confidential information in the text of the published version of the Decision is denoted by [✂].

The names of individuals mentioned in the description of the infringement in the original version of this Decision have been removed from the published version on the public register. Names have been replaced by a general descriptor of the individual's role

CONTENTS

TABLES

1. INTRODUCTION AND EXECUTIVE SUMMARY

1.1 This decision (the '**Decision**') is addressed to the persons listed below (each a '**Party**', together the '**Parties**'):

(a) the following vehicle manufacturers ('**VMs**') (each a '**VM Party**', together the '**VM Parties**'):

(i) BMW (UK) Limited and its ultimate parent company, BMW AG (these entities, together with all other entities which form part of the same undertaking, '**BMW**');

(ii) Ford Motor Company Limited, Ford-Werke GmbH, Ford of Europe GmbH, and their ultimate parent company, Ford Motor Company (these entities, together with all other entities which form part of the same undertaking, '**Ford**');

(iii) Jaguar Land Rover Limited and Jaguar Land Rover Holdings Limited (together '**JLR**'), and their ultimate parent company,[1] Tata Motors Limited (these entities, together with all other entities which form part of the same undertaking '**Tata Motors Group**');

(iv) Mercedes-Benz UK Limited and its ultimate parent company, Mercedes-Benz Group AG (these entities, together with all other entities which form part of the same undertaking, '**Mercedes-Benz**');

(v) Mitsubishi Motor R&D Europe GmbH and Mitsubishi Motors Europe B.V. and their ultimate parent company, Mitsubishi Motors Corporation (these entities, together with all other entities which form part of the same undertaking, '**Mitsubishi**');

(vi) Nissan Automotive Europe SAS, Nissan Motor Manufacturing UK Limited, Nissan Motor Parts Centre B.V., Nissan Motor (GB) Limited and Nissan Motor Co. Ltd (these entities, together with all other entities which form part of the same undertaking, '**Nissan**');

(vii) Renault Retail Group UK Limited, Renault U.K. Limited, Renault S.A. and Renault S.A.S. (these entities, together with all other entities which form part of the same undertaking, '**Renault**');

(viii) Toyota (GB) Plc, Toyota Motor Europe NV/SA and their ultimate parent company, Toyota Motor Corporation (these entities, together with all other entities which form part of the same undertaking, '**Toyota**');

[1] From 2 June 2008 onwards.

(ix) Vauxhall Motors Limited ('**Vauxhall**'); Opel Automobile GmbH (as economic successor to Adam Opel GmbH) ('**Opel**'); Peugeot Motor Company Plc, PSA Automobiles S.A. and Citroen U.K. Limited (together '**Peugeot Citroen**'), and their ultimate parent company,[2] Stellantis N.V. (as economic successor to Peugeot S.A.) (these entities, together with all other entities which form part of the same undertaking, '**Stellantis**');

(x) the former parent company of Vauxhall and Opel,[3] General Motors Company ('**General Motors**');[4] and

(xi) Volkswagen Group United Kingdom Limited and its ultimate parent company, Volkswagen AG (these entities, together with all other entities which form part of the same undertaking, '**VW**');

(xii) and

(b) the following trade associations (each a '**Trade Association Party**', together the '**Trade Association Parties**'):

(i) Association des Constructeurs Européens d'Automobiles ('**ACEA**'); and

(ii) The Society of Motor Manufacturers and Traders Limited (the '**SMMT**').

1.2 By this Decision, the Competition and Markets Authority (the '**CMA**') concludes that the VM Parties and the Trade Association Parties have infringed the prohibition at section 2(1) (the '**Chapter I Prohibition**') of the Competition Act 1998 (the '**Act**').

1.3 The conduct relates to requirements on VMs which were established by Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles (the '**ELV Directive**'), and Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability (the '**RRR Directive**').[5] In particular, the ELV Directive and RRR Directive require EU Member States[6] to:

---

[2] From 1 August 2017 onwards.
[3] Between 10 July 2009 and 1 August 2017.
[4] As set out in further detail in Chapter 6, the CMA has not found that General Motors was directly involved in the conduct described in this Decision. Rather, the CMA has found that, as the parent company of Opel and Vauxhall between 10 July 2009 and 31 July 2017, General Motors is jointly and severally liable with Opel and Vauxhall for the latter companies' conduct during that period. Accordingly, references in this Decision to 'Parties' or 'VM Parties' should not be read as imputing any direct involvement or participation by General Motors in the conduct.
[5] The ELV Directive and RRR Directive were transposed into UK law via the End-of-Life Vehicles Regulations 2003, the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 and the Motor Vehicles (EC Type Approval Amendment) Regulations (the '**UK ELV Regulations**').
[6] At the time of the ELV Directive and RRR Directive coming into force, this included the UK.

(a) ensure that VMs meet minimum legal requirements on the recyclability and recoverability of their Vehicles[7] (Article 7(2) of the ELV Directive, and Annex I of the RRR Directive), and publish information on the design of Vehicles and their components with a view to their recoverability and recyclability (Article 9(2) of the ELV Directive);

(b) encourage VMs to integrate an increasing quantity of recycled material in Vehicles and other products (Article 4(c) of the ELV Directive); and

(c) ensure that VMs make arrangements to ensure that end-of-life Vehicles ('**ELVs**')[8] can be transferred to an authorised treatment facility ('**ATF**') for recycling and/or recovery to the required legal standard at no cost to the last owner or holder as a result of the Vehicle having no or a negative market value ('**Takeback**' or '**ELV Takeback**') (Article 5 of the ELV Directive).

1.4 The CMA finds that there were two infringements of the Chapter I Prohibition (each an '**Infringement**', together the '**Infringements**'), each of which had as its object the prevention, restriction or distortion of competition:

(a) a single and continuous agreement and/or concerted practice (or, insofar as the Trade Association Parties are concerned, a decision) between 29 May 2002 and 4 September 2017 (the '**NCI Infringement Period**') that the VM Parties would not compete by making advertising statements (i) suggesting that the recyclability or recoverability of their Vehicles exceeded minimum legal requirements, or (ii) (from 14 June 2007 onwards) relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles (the '**NCI Infringement**'); and

(b) a single and continuous agreement and/or concerted practice (or, insofar as the Trade Association Parties are concerned, a decision) between 26 April 2004 and 11 May 2018 (the '**ZTC Infringement Period**') that the VM Parties would refrain from paying ATFs and/or intermediaries[9] a per-Vehicle fee for ELV Takeback (the '**ZTC Infringement**').

1.5 The CMA opened an investigation under section 25 of the Act on 15 March 2022. It issued notices requiring the production of documents and information under sections 26 and 27 of the Act to the majority of the Parties on launch. During the course of the investigation, the CMA also interviewed a number of witnesses on a voluntary basis.

---

[7] In this Decision, '**Vehicle**' means passenger cars (with up to nine seats) and small commercial vehicles (up to 3.5 tonnes), referred to as 'M1' and 'N1' vehicles respectively at Article 2(1) of the ELV Directive.
[8] In this Decision, 'end-of-life vehicle' has the meaning given at Article 2(2) of the ELV Directive: a Vehicle which is waste within the meaning of Article 1(a) of Directive 75/442/EEC.
[9] As explained further at paragraphs 2.6–2.16, in the UK VMs typically fulfil their ELV Takeback obligations by contracting with companies that act as intermediaries ('**ATF Intermediaries**') by bringing together a network of ATFs and shredder businesses across the UK.

1.6 Mercedes-Benz approached the CMA for immunity under the CMA's leniency policy[10] prior to the launch of the investigation and has been granted Type A immunity. Following the launch of the investigation, the SMMT, Stellantis and Mitsubishi all approached the CMA for leniency and have been granted Type C leniency. These Parties have all provided information and documents to the CMA as part of their obligation to cooperate under the CMA's leniency policy.

1.7 On 7 March 2025, the CMA issued a draft Statement of Objections to all of the Parties.

1.8 On 14 March 2025, the CMA agreed to settle the case with all of the Parties except Mercedes-Benz.[11] Each of the settling parties:

(a) made a clear and unequivocal admission that it had infringed the Chapter I prohibition in the terms set out in the draft Statement of Objections issued on 7 March 2025;

(b) confirmed that the infringing behaviour had ceased, and committed that it would refrain from engaging in the same or similar infringing conduct;

(c) accepted that a maximum financial penalty would be imposed;

(d) agreed to cooperate with, and accept a streamlined administrative process for concluding, the CMA's investigation; and

(e) agreed: (i) to waive its statutory right under section 46 of the Act to challenge or appeal to the Competition Appeal Tribunal (the '**CAT**') in respect of the CMA's infringement decision; and (ii) not to make an application for judicial review (or participate in judicial review proceedings brought by a third party) against the CMA's infringement decision in any court or tribunal of the United Kingdom.

1.9 By this Decision the CMA is imposing financial penalties under section 36 of the Act in respect of the Infringements.

[10] *Applications for leniency and no-action in cartel cases* (OFT1495, adopted by the CMA Board).
[11] The CMA does not normally invite Type A immunity recipients to enter into settlement agreements.

2. INDUSTRY BACKGROUND

A End-of-life vehicles

2.1 ELVs are motor vehicles categorised as waste, generally due to age or accident. It is estimated that approximately 2 million Vehicles become ELVs in the UK each year.[12]

2.2 During the period of the Infringements, the requirements on VMs and professional importers of Vehicles relating to the treatment[13] of ELVs in the UK were governed by a number of European Directives and various provisions of UK secondary legislation. A detailed description of the relevant legislation appears at Annex 1.

B Authorised treatment facilities

2.3 As required under Article 5(2) of the ELV Directive, ELV treatment must be undertaken by ATFs. In the UK, ATFs must hold a site licence that meets certain requirements under the End-of-Life Vehicles Regulations 2003.[14] ATFs must safely remove pollutants from ELVs and recover retrievable parts which can be sold for reuse.[15] The remains of the ELV are then crushed or flattened for transport to a shredding site, which extracts the different materials from which the Vehicle was constructed.[16] The majority of these materials are recycled. A residual fraction of the extracted materials (known as automotive shredder residue) is unsuitable for recycling but can be used in energy recovery for combined heat and power.[17] ATFs are required to issue all depolluted ELVs with a certificate of destruction issued to the last owner of the Vehicle, to confirm that the ELV has been disposed of in accordance with the UK ELV Regulations.[18]

2.4 There are more than 2,000 ATFs registered in the UK.[19] The size of the businesses that own the ATFs varies from small firms with one ATF, to large companies that own multiple ATFs.

2.5 The CMA understands that there are a number of treatment facilities that operate in the UK without the required licence and/or that do not adhere to the required de-pollution and recycling standards. During the period 1 January 2016 to 1

[12] SIR-000015248, page 13.
[13] Under the End-of-Life Vehicles Regulations 2003, 'treatment' is defined as '*any activity after the end-of-life vehicle has been handed over to a facility for depollution, dismantling, shearing, shredding, recovery or preparation for disposal of the shredder wastes, and any other operation carried out for the recovery and/or disposal of the end-of-life vehicle and its components*'.
[14] End-of-Life Vehicles Regulations 2003, definition of 'authorised treatment facility'.
[15] SIR-000041127.
[16] SIR-000041119, page 1.
[17] SIR-000038354, page 25.
[18] SIR-000041127.
[19] SIR-000019939, page 32.

November 2018 the DVLA reported 1,232 suspected illegal Vehicle dismantlers in the UK.[20]

C ATF Intermediaries

2.6 In the UK, the VM Parties satisfy their obligation under the ELV Directive and UK ELV Regulations to provide free ELV Takeback by contracting with ATF Intermediaries. These ATF Intermediaries, in turn, work with many individual ATFs and shredder businesses, of varying sizes, located across the UK to establish a nationwide network of free Takeback locations for ELVs.

2.7 There are two ATF Intermediaries in the UK market that VM Parties contract with:

(a) CarTakeBack.com Limited ('**CarTakeBack**'); and

(b) Autogreen Limited ('**Autogreen**').

2.8 As well as providing a Takeback system with nationwide coverage for the VMs, the ATF Intermediaries process data on the number of ELVs recycled, and achievement of recycling targets, through that Takeback system. That information is provided to VMs to enable them to comply with their reporting obligations.

C.I CarTakeBack

2.9 CarTakeBack started trading in 2005. It was established by 11 metal shredding companies, each of which had equal shares in the company.[21] That structure has evolved over time and CarTakeBack now has three shareholders.[22] Two of those shareholders are active ATFs and were two of the original founding shredding companies. The third shareholder, [✂], is not an ATF but is the company that manages CarTakeBack.

2.10 The number of VMs that CarTakeBack contracts with, and the number of ATFs in its network, has fluctuated since 2005. In 2022, CarTakeBack had contracts which covered approximately 18 VM brands[23] and contracted with a network of 138 ATFs.

2.11 In 2022, CarTakeBack had a turnover of approximately £3.1 million.[24]

[20] SIR-000037644, page 52.
[21] SIR-000038461, page 1.
[22] SIR-000041120.
[23] SIR-000040760, page 4.
[24] SIR-000040760, page 4.

C.II Autogreen

2.12 Autogreen also started trading in 2005.[25] Its founders owned and managed an existing ATF related business within the recycling industry ([✂]).[26]

2.13 In 2022, Autogreen had contracts that covered approximately 12 brands and one trade association covering orphan Vehicles of all brands. Autogreen also contracted with a network of 78 ATFs.

2.14 In 2022, Autogreen had a turnover of approximately £1.5 million.[27]

C.III Use of Autogreen and CarTakeBack networks by ELV owners

2.15 There is no requirement for ELV owners to use the Takeback system arranged by the VM for their brand of Vehicle. ELV owners can seek out valuations from independent ATFs (for example by conducting an online search) and sell their ELV to whoever offers the highest price. However, if an ELV has no or a negative market value, the last holder and/or owner is entitled to deliver the ELV to an ATF without cost.[28]

2.16 The ATF Intermediary platforms are also available to all ELV owners, not only those whose ELVs were manufactured by the VMs with which they contract.

D Recycled materials

2.17 Recycled materials are sometimes used in the manufacture of certain components of Vehicles. There are no legal requirements regulating the use of recycled materials in the manufacture of new Vehicles. However, as set out at paragraph 1.3(b), the ELV Directive requires EU Member States (including, during the NCI Infringement Period, the UK) to encourage VMs to integrate an increasing quantity of recycled materials in Vehicles.

2.18 The CMA has been told by two employees of Ford that some VMs calculated the percentage of recycled material used in Vehicles in accordance with ISO 14021:2016.[29] The ISO standard recommends that, when making a claim of recycled content, the percentage of recycled material is disclosed.[30] According to the ISO standard, the percentage used should be verified by reference to fully

[25] SIR-000038354, page 6.
[26] SIR-000040531, page 2.
[27] SIR-000038354.
[28] ATFs can charge a fee to collect an ELV if the owner opts not to deliver it to the ATF, provided that the owner lives within 30 miles of an ATF in the relevant Takeback network.
[29] BS EN ISO 14021:2016+A1:2021 - Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling); SIR-000040946, page 79; SIR-000040931, page 156.
[30] Para 7.8.2.1, Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling), International Organisation for Standardization 2021.

documented evaluation measures that produce reliable and reproduceable results and that satisfy the requirements set out in Clause 6 of ISO 14021:2016.[31]

E Relevant trade association groups and meetings

2.19 There are a number of trade associations of which VMs are members, including ACEA at the EU level and the SMMT at UK level. All the VM Parties, except Mitsubishi and General Motors, are (either directly or through their group companies) members of ACEA and the SMMT.

2.20 Discussion of issues relating to the Infringements within ACEA usually took place within a working group to discuss recycling matters (the '**ACEA WG-RG**'). In addition to this, the 'RRR' working group was established to align on 'political issues' and to find common understanding in the form of a 'framework' in relation to the RRR Directive.[32]

2.21 At EU level, there was also an unofficial ELV working group to discuss the approach taken to ELV issues in individual countries. This group's activities involved quarterly telephone conferences (referred to as '**Country Audios**') and annual in-person workshops. At the Country Audios and workshops, the VMs discussed the approach to recycling matters in individual countries.[33] This unofficial working group was a precursor to a more recently formed official subgroup of the ACEA WG-RG (variously referred to as the '**Downstream Group**', the '**WG-RG-DU**' and the '**WG-RG-DA**').[34]

2.22 At UK level, the SMMT has an ELV working group comprising representatives from the VMs and SMMT. The SMMT ELV working group met quarterly to discuss areas that affect VMs' compliance with the UK ELV Regulations.[35]

[31] Para 6 Environmental labels and declarations – Self-declared environmental claims (Type II environmental labelling), International Organisation for Standardization 2021.
[32] SIR-000031641, page 5.
[33] SIR-000040979, pages 62–63.
[34] SIR-000039939, page 39.
[35] SIR-000035857, page 23.

3. MARKET DEFINITION

3.1 The CMA has formed a view of the relevant markets in order to calculate the Parties' 'relevant turnover' in the markets affected by the Infringements, for the purposes of establishing the level of the financial penalties that the CMA may decide to impose.[36]

A. Relevant product markets

3.2 The process of defining the relevant market starts with the focal products or services that are affected by the infringement(s). In this case, there are two Infringements and two focal products/services. These will be considered separately and sequentially for the purpose of market definition.

A.I The NCI Infringement

3.3 The NCI Infringement consists of an agreement and/or concerted practice that the VM Parties would not compete through advertising statements (i) suggesting that the recyclability or recoverability of Vehicles exceeded minimum legal requirements, or (ii) (from 14 June 2007 onwards) relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles. The CMA finds that this agreement restricted the way in which the VM Parties, all of which supplied Vehicles throughout the NCI Infringement Period, could advertise those Vehicles. The focal product of the NCI Infringement is therefore the supply of new Vehicles.

3.4 To define the relevant product markets from this starting point, the CMA has considered the following questions:

(a) whether the supply of new Vehicles encompasses two or more distinct product markets; and

(b) whether the supply of new Vehicles is part of a wider market including buses, coaches, and/or heavy goods vehicles.

[36] CMA73, *Guidance as to the appropriate amount of a penalty*, 16 December 2021 (the '**Penalty Guidance**'), paragraphs 2.1 and 2.10–2.13. When assessing the relevant market for these purposes, it is not necessary to carry out a formal analysis: the relevant market may properly be assessed on a broad view of the particular trade affected by the infringement in question. See *Argos Limited and Littlewoods Limited v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, paragraphs 169–173 and 189; *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13, paragraphs 176–178. See also judgment of 6 July 2000, *Volkswagen AG v Commission* T-62/98, EU:T:2000:180, paragraph 230 and judgment of 12 January 1993, *SPO and Others v Commission* T-29/92, EU:T:1995:34, paragraph 74, on the circumstances in which market definition is required.

Whether the supply of new Vehicles encompasses two or more distinct product markets

3.5 The CMA has considered whether the supply of new Vehicles might encompass two or more distinct product markets. This could, for example, involve separating passenger cars and light goods vehicles into separate markets, or further separating across dimensions like the size of the vehicle, type of engine and whether it is luxury or not.[37]

3.6 From a demand-side perspective, there is evidence that the level of substitution within certain segments of new Vehicles is limited. For example, passenger cars and light goods vehicles are used for different purposes. The former is used for passenger travel, while the latter is predominantly used for transporting goods or other commercial activities. This may also be true for other distinctions, with customers reluctant to switch between the type of engine that they have in their vehicles. Reflecting this, the European Commission found in various merger proceedings that passenger cars and light goods vehicles, or even narrower segments, can constitute distinct product markets.[38] Given the similar contexts, these could form several different product markets for this case as well.

3.7 However, defining narrower product markets would make no difference to relevant turnover for the purpose of deciding the level of the financial penalty which may be imposed on each Party in this case, as the NCI Infringement concerns the supply of all new Vehicles and is not limited to any particular market segment. The starting point of a penalty is generally calculated by reference to the turnover in the relevant product market and relevant geographic market affected by the suspected infringement. In this case, all types of new Vehicles that the VMs supplied to their customers in the UK are therefore covered, regardless of other characteristics.

3.8 The CMA does not, therefore, consider that it is necessary to come to a firm conclusion on the extent to which, or way in which, the market for new Vehicles may be further segmented.

Whether the supply of new Vehicles is part of a wider market including buses, coaches, and/or heavy goods vehicles

3.9 The CMA has considered whether the supply of new Vehicles is part of a wider market including other types of vehicle, such as buses, coaches, and heavy goods vehicles.

[37] These segmentations of vehicles have been considered in previous European Commission cases, as explained in Nissan/Mitsubishi, 2016, paragraph 12 (Case COMP M.8009 Nissan/Mitsubishi (2016)).
[38] For example, see Case COMP/M.8449 - Peugeot/Opel (2017), paragraphs 6–7 and 11 and Case COMP/M.9730 – FCA/PSA (2020), paragraphs 30, 90, 1082 and 1090.

3.10 From a demand-side perspective, there are significant differences in use. For instance, heavy goods vehicles tend to be used for long-haul transportation, while light goods vehicles tend to be used for local distribution. Requirements for drivers are also different. For example, a driver with a Category B licence can generally drive passenger cars and light goods vehicles, while buses, coaches, and heavy goods vehicles require different categories of licence.[39]

3.11 Supply-side substitutability is also limited. Some VMs, such as Scania and DAF,[40] are only active in the supply of buses, coaches, and/or heavy goods vehicles. Even when VMs are active across different segments, there is evidence that supply-side substitutability is limited (for example, passenger cars and light goods vehicles are produced in different plants from heavy goods vehicles).[41]

3.12 In various merger proceedings the European Commission has identified that light goods vehicles and heavy goods vehicles do not belong to the same product market,[42] and that passenger cars constitute a separate product market from buses and coaches.[43]

3.13 Overall, the CMA's view, for the purpose of deciding any financial penalty in this case, is that the supply of new Vehicles constitutes a separate product market and does not include other types of vehicle, such as buses, coaches, or heavy goods vehicles.

A.II The ZTC Infringement

3.14 For the ZTC Infringement, the focal service is the provision of Takeback and treatment[44] of ELVs provided via ATF Intermediaries.

3.15 The questions to consider for market definition for the ZTC Infringement are:

(a) whether the provision of this service encompasses two or more distinct product markets, separated for different types of vehicle; and

(b) whether the provision of this service is part of a wider market including the Takeback and treatment of buses, coaches and heavy goods vehicles.

[39] SIR-000041126.
[40] SIR-000041132, SIR-000041133, SIR-000041124 and SIR-000041125.
[41] SIR-000041129 and SIR-000041130.
[42] Light commercial vehicles of up to 3.5t and over 3.5t were found to belong to separate product markets (COMP/M.9730 – FCA/PSA (2020), paragraph 164); and so were medium-duty (5-16t) and heavy-duty trucks (>16t) (COMP/M.6267 – Volkswagen/MAN (2011), paragraph 8).
[43] Case COMP/M.8449 – Peugeot/Opel (2017), paragraph 11; Case COMP/M.6267 – Volkswagen / MAN, paragraph 73.
[44] See footnote 13.

Whether the provision of Takeback and treatment of ELVs encompasses two or more distinct product markets

3.16 The CMA has considered whether there might be separate markets for the provision of Takeback and treatment for the different characteristics of ELVs. This could for example separate passenger cars from light goods vehicles, or separate Vehicles by type of engine.

3.17 However, similar to the market definition for the supply of passenger cars and light goods vehicles (see paragraph 3.6), defining narrower product markets would make no difference to relevant turnover for the purpose of deciding the level of any financial penalty that may be imposed on each Party. This is because the contracts that VMs entered into with ATF Intermediaries covered all passenger cars and light goods vehicles.[45] This means that the service in question was for all ELVs and is not limited to any particular market segment.

3.18 The CMA does not, therefore, consider it necessary to come to a firm conclusion on the extent to which, or way in which, the market for the provision of Takeback and treatment for ELVs may be further segmented.

Whether the provision of Takeback and treatment of ELVs is part of a wider market including end-of-life buses, coaches, and heavy goods vehicles

3.19 The CMA has considered whether the provision of Takeback and treatment of ELVs is part of a wider market including other end-of-life vehicles, such as buses, coaches, and heavy good vehicles. However, as with the above question (see paragraph 3.17), the contracts for these services covered only passenger cars and light goods vehicles.[46]

3.20 The CMA therefore considers that the Takeback and treatment of ELVs constitutes a separate product market from other end-of-life vehicles such as buses, coaches, and heavy goods vehicles.

B Relevant geographic markets

3.21 Like the definition of the relevant product market, the process of defining the relevant geographic market starts with the scope of the suspected infringements. In this case, both the NCI Infringement and ZTC Infringement covered the entire UK.

3.22 To define the relevant geographic markets, the CMA has considered whether the relevant geographic market is wider than the UK, or whether the UK encompasses

[45] SIR-000038362 and SIR-000038462.
[46] The CMA notes that the ELV Directive also covered three-wheeled vehicles but did not require that VMs have to meet at least a significant part of the costs (Article 2, Article 3(5), Article 5(4)).

two or more distinct geographic markets. These questions are relevant to both product markets, which will be assessed in turn.

B.I The supply of new Vehicles (NCI Infringement)

3.23 The CMA first considers that it would not be appropriate to expand the geographic market of this product to be wider than the UK. This is primarily due to demand-side differences. For example, customers in different countries tend to have different preferences, which will affect the market structure and presence of VMs in a particular country.[47] There are also significant differences in the regulations around new Vehicles between countries, such as the taxation system and the position of the steering wheel, which will mean that the way Vehicles are made and sold will necessarily be different for each country. There are some factors on the supply-side which may point to a wider European market,[48] but market definition is usually determined more by demand side substitution,[49] and so the CMA considers that it is appropriate, for the purpose of deciding the level of any financial penalty in this case, to keep this market only as wide as the UK.

3.24 As for whether the UK encompasses two or more distinct geographic markets, most of the demand-side differences described above are national in scope and would not differ significantly within the UK. Moreover, VMs supply new Vehicles nationally, and the NCI Infringement covered the whole of the UK.

3.25 Therefore, the CMA considers, for the purpose of deciding the level of any financial penalty in this case, that the relevant geographic market for the supply of new passenger cars and light goods vehicles is UK-wide.[50]

B.II The provision of Takeback and treatment of ELVs (ZTC Infringement)

3.26 The CMA considers that it would not be appropriate, for the purpose of deciding the level of any financial penalty in this case, to expand the geographic market for these services to be wider than the UK. This is because, even though the ELV Directive covered all EEA countries, its implementation was country-specific, and there were differences between the systems and contractual arrangements for Takeback and treatment in different countries, such as whether intermediaries were used at all.[51]

---

[47] See, for example, COMP/M.9730 – FCA / PSA (2020), paragraph 229. PSA's share of supply was 50-60% in the UK but only 20-30% in Spain and 10-20% in Germany.
[48] For example, manufacturing often takes place centrally for the whole European market. See COMP/M.9730 – FCA / PSA (2020), paragraph 1109.
[49] Office of Fair Trading, 'Market Definition' (OFT403), paragraph 3.18 (adopted by the CMA Board).
[50] This is consistent with the European Commission's finding in FCA/PSA that the markets for the supply of passenger cars and light goods vehicles are national in scope. See COMP/M.9730 – FCA / PSA (2020), paragraphs 159 and 1103.
[51] SIR-000040896, page 19.

3.27 As for whether the UK encompasses two or more distinct geographic markets for Takeback and treatment services, VMs' contracts with ATF Intermediaries cover the whole UK, and only two ATF Intermediaries are active nationally.[52]

3.28 Therefore, the CMA considers, for the purpose of deciding the level of any financial penalty in this case, that the relevant geographic market for the provision of Takeback and treatment of ELVs is UK-wide.

C Conclusion on the relevant market

3.29 For the reasons set out above, the CMA has found that for the purposes of determining the level of any penalty in this case, the relevant markets are the following:

(a) the supply of new Vehicles in the UK; and

(b) the provision of Takeback and treatment of ELVs in the UK.

[52] SIR-000037644, page 6 and SIR-000038461, page 1.

4. THE LAW

4.1 This chapter sets out the key legal principles, including references to primary and secondary legislation and relevant case law, applied in this Decision.[53]

A. Chapter I prohibition

4.2 The CMA's findings are made by reference to the Chapter I Prohibition, which prohibits agreements between undertakings, decisions by associations of undertakings and concerted practices, which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the UK.[54, 55]

B Legal principles for establishing an infringement of the Chapter I prohibition

B.I Undertakings

4.3 For the purposes of the Chapter I Prohibition, the term 'undertaking' covers 'every entity engaged in an economic activity, regardless of the legal status of the entity and the way in which it is financed'.[56] An entity is engaged in 'economic activity' where it conducts any activity 'of an industrial or commercial nature by offering goods and services on the market'.[57] The concept covers an economic unit, even if in law that unit consists of several natural or legal persons.[58]

B.II Coordination between undertakings

Agreements

4.4 The Chapter I Prohibition is intended to catch a wide range of agreements.[59] The key question is whether there has been 'a concurrence of wills between at least

---

[53] Following the UK's exit from the EU, the UK no longer has jurisdiction to apply Article 101 of the Treaty on the Functioning of the European Union (the '**TFEU**'). However, EU case law applying Article 101 TFEU remains relevant pursuant to section 60A of the Act.
[54] Section 2(1) of the Act, as applicable in relation to (among other matters) agreements between undertakings made, and concerted practices engaged in, before the coming into force (on 1 January 2025) of amendments made to section 2 of the Act (section 119 of the Digital Markets, Competition and Consumers Act 2024 and the Digital Markets, Competition and Consumers Act 2024 (Commencement No. 1 and Savings and Transitional Provisions) Regulations 2024, S.I. 2024/1226).
[55] References to the UK are to the whole or part of the UK: section 2(7) of the Act.
[56] Judgment of 23 April 1991, *Klaus Höfner and Fritz Elser v Macrotron GmbH* C-41/90, EU:C:1991:161, paragraph 21
[57] Judgment of 16 June 1987, *Commission v Italian Republic* C-118/85, EU:C:1987:283, paragraph 7.
[58] Judgment of 10 September 2009, *Akzo Nobel NV and Others v Commission* C-97/08 P, EU:C:2009:536, paragraph 55 and the case law cited; *Sainsbury's v Mastercard* [2016] CAT 11 at 352–357 and 363.
[59] Judgment of 15 July 1970, *ACF Chemiefarma v Commission* C-41/69, EU:C:1970:71, paragraphs 106–114; judgment of 26 October 2000, *Bayer AG v Commission* T-41/96, EU:T:2000:242, paragraph 71; judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 81; *Argos Limited and Littlewoods Limited v OFT* [2004] CAT 24, paragraph 658.

two parties, the form in which it is manifested being unimportant, so long as it constitutes the faithful expression of the parties' intention'.[60] Courts have also described the concept of an agreement as a 'common understanding' between the parties.[61]

4.5 While it is essential to show the existence of a joint intention to act on the market in a specific way in accordance with the terms of the agreement, it is not necessary to establish a joint intention to pursue an anti-competitive aim.[62]

Concerted practices

4.6 A concerted practice is 'a form of coordination between undertakings which without having reached the stage where an agreement properly so-called has been concluded, knowingly substitutes practical cooperation between them for the risks of competition'.[63]

4.7 Each economic operator must determine independently the policy it intends to adopt on the market.[64] This principle precludes any direct or indirect contact between undertakings, the object or effect of which is to create conditions of competition which do not correspond to the normal conditions of the market in question.[65]

4.8 It follows that a concerted practice 'implies, besides undertakings concerting together, conduct on the market pursuant to those collusive practices, and a relationship of cause and effect between the two'.[66] However, that does not necessarily mean that the conduct should produce the concrete effect of restricting, preventing or distorting competition.[67]

---

[60] Judgment of 27 September 2006, *Dresdner Bank v Commission* cases T-44/02 etc, EU:T:2006:271, paragraph 55, citing judgment of 26 October 2000, *Bayer AG v Commission* T-41/96, EU:T:2000:242, paragraph 69 (upheld on appeal in *BAI and Commission v Bayer*, joined cases C-2/01 P and C-3/01 P, EU:C:2004:2, paragraphs 96 and 97) and judgment of 17 December 1991, *Hercules Chemicals v Commission* T-7/89, EU:T:1991:75, paragraph 256.
[61] For example, in its judgment in *Hitachi*, the EU General Court held that 'the Commission was right to find that the common understanding constituted an agreement between undertakings within the meaning of Article [101](1).' Judgment of 12 July 2011, *Hitachi v Commission* T-112/07, EU:T:2011:342, paragraph 272.
[62] Judgment of 27 September 2006, *GlaxoSmithKline Services Unlimited v Commission* T-168/01, EU:T:2006:265, paragraph 77 (upheld on appeal in *GlaxoSmithKline Services Unlimited v Commission* joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610).
[63] Judgment of 14 July 1971, *ICI v Commission* C-48/69, EU:C:1972:70, paragraph 64.
[64] Judgment of 16 December 1975, *Suiker Unie and Others v Commission* joined cases 40 to 48, 50, 54–56, 111, 113 and 114-73, EU:C:1975:174, paragraph 173.
[65] Judgment of 14 July 1981, *Züchner v Bayerische Vereinsbank* C-172/80, EU:C:1981:178, paragraph 14; judgment of 16 December 1975, *Suiker Unie and Others v Commission* joined cases 40–48, 50, 54–56, 111, 113 and 114–74, EU:C:1972:70, paragraph 174; judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 117; *Balmoral Tanks Limited v Competition and Markets Authority* [2017], CAT 23, paragraph 41.
[66] Judgments of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92P EU:C:1999:356, paragraph 118; and Hüls AG v Commission C-199/92 P, ECR I-4287, paragraph 161. See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206(ix).
[67] Judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92P EU:C:1999:356, paragraph 124. See also *Apex Asphalt and Paving Co Limited v Office of Fair Trading* [2005] CAT 4, at paragraph 206(xi).

Agreements and/or concerted practices

4.9 The concepts of agreement and concerted practice are fluid and may overlap; they are distinguishable from each other only by their intensity and the forms in which they manifest themselves.[68] It is therefore not necessary to distinguish between agreements and concerted practices, or to characterise conduct as exclusively an agreement or a concerted practice.[69]

Decisions by associations of undertakings

4.10 The Chapter I Prohibition also applies to decisions by associations of undertakings. Generally, an association of undertakings consists of undertakings of the same general type and makes itself responsible for representing and defending their common interests vis-à-vis other economic operators, government bodies and the public in general.[70] Undertakings should not be able to evade the rules on competition on account of the form in which they coordinate their conduct on the market.[71] Where appropriate, references to 'undertakings' in this Decision should be read as including associations of undertakings and references to 'agreements' should be read as including 'concerted practices' and 'decisions'.

4.11 The term 'decision' has a broad meaning and covers any measure which constitutes, 'the faithful reflection of the [association's] resolve to coordinate the conduct of its members'.[72] In relation to an association of undertakings, this may include the constitution or rules of the association, the resolutions of the management committee, binding decisions of the management or executive committee, or rulings of the chief executive.[73]

Object of preventing, restricting or distorting competition

4.12 Agreements and concerted practices that have the object of preventing, restricting or distorting competition are those forms of coordination between undertakings that can be regarded, by their very nature, as being harmful to the proper functioning of competition.[74] They include agreements and concerted practices that contain obvious restrictions of competition such as price-fixing.[75] Where an

---

[68] Judgment of 4 June 2009, *T-Mobile Netherlands* C-8/08, EU:C:2009:343, paragraph 23; judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92P, EU:C:1999:356, paragraph 131 *and Apex Asphalt and Paving Co Limited v OFT* [2005] CAT 4, paragraph 206(ii).
[69] *Argos Ltd and Littlewoods Ltd v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, paragraphs 21 and 22. See also, judgment of 8 July 1999, *Commission v Anic Partecipazioni SpA* C-49/92 P, EU:C:1999:356, paragraphs 81, 131 and 132.
[70] Opinion of Advocate Generale Léger of 10 July 2001, *Wouters* [2002] C-309/99, EU:C:2001:390, paragraph 61.
[71] Opinion of Advocate Generale Léger of 10 July 2001, *Wouters* [2002] C-309/99, EU:C:2001:390, paragraph 62.
[72] Case 45/85 *Verband der Sachversicherer v Commission* [1987] ECR 405, paragraph 32, as affirmed in Conduct in the ophthalmology sector Case CE/9784-13 CMA decision of 20 August 2015, paragraph A.42.
[73] OFT408 'Trade associations, professions and self-regulating bodies', paragraph 2.2.
[74] Judgment of 11 September 2014, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 50; judgment of 14 March 2013, *Allianz Hungária Biztosító and Others v Gazdasági Versenyhivatal* C-32/11, EU:C:2013:160, paragraph 35 and the case law cited.
[75] Judgment of 15 September 1998, *European Night Services v Commission* T-374/94, EU:T:1998:198, paragraph 136.

agreement or a concerted practice has as its object the prevention, restriction or distortion of competition, it is not necessary to examine its effect on competition.[76]

4.13 For forms of coordination to have the 'object' of preventing, restricting or distorting competition, they must 'reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects'.[77] This case law arises from the fact that certain types of coordination can be regarded, by their very nature, as being harmful to the proper functioning of normal competition.[78]

4.14 In order to establish whether an agreement and/or concerted practice may be considered a restriction of competition by object, it is necessary to take account of the content of its provisions and the objectives it pursues and of the economic and legal context of which it forms part.[79] It is also necessary to consider both the nature of the goods and services concerned and the real conditions of the functioning and structure of the market or markets in question.[80] It is not, however, necessary to examine nor, a fortiori, to prove the effects of that conduct on competition, be they actual or potential, or negative or positive.[81] Instead, it is sufficient that the agreement or concerted practice has the potential to have a negative impact on competition.[82]

4.15 The prohibition against anti-competitive agreements is designed to protect not only the immediate interests of individual competitors or consumers but also to protect the structure of the market and thus competition as such.[83] Similarly, it has been confirmed in the case law that the concept of an anti-competitive object does not require an analysis of the disadvantages for final consumers.[84]

4.16 Finally, the fact that an agreement or concerted practice pursues a legitimate objective does not preclude that it is regarded as having an object restrictive of competition as regards another aim pursued, which in turn cannot be regarded as

---

[76] Judgment of the General Court of 6 July 2000, *Volkswagen AG v Commission*, T-62/98, ECLI:EU:T:2000:180, paragraph 178; Judgment of the Court of Justice of 11 September 2014, *Groupement des cartes bancaires v Commission*, C-67/13 P, ECLI:EU:C:2014:2204, paragraph 49; Judgment of 19 March 2015, *Dole Food and Dole Fresh Fruit Europe v Commission*, C-286/13 P, ECLI:EU:C:2015:184, paragraph 113, Judgment of 21 December 2023, *European Superleague Company v Federation internationale de football association*, C-333/21, EU:C:2023:1011, paragraph 159.

[77] Judgment of 11 September 2014, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraphs 49 and 57; Judgment of 20 January 2016, *Toshiba v Commission* ('Power Transformers') C-373/14P, EU:C:2015:427, paragraph 26.

[78] Judgment of 11 September 2014, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraphs 49–50, approved in *Gascoigne Halman Limited v Agents' Mutual Limited* [2019] EWCA Civ 24, paragraph 35. See also judgment of 21 December 2023, *European Superleague,* Case C-333/21, paragraphs 161 ff.

[79] Judgment of 11 September 2014, *Groupement des cartes bancaires* v Commission C-67/13 P, EU:C:2014:2204, paragraph 53, and case law cited therein.

[80] Judgment of 26 September 2018, *Infineon Technologies AG v Commission* C-99/17 P, EU:C:2018:773, paragraph 156.

[81] See judgment of 21 December 2023, *European Superleague*, Case C-333/21, paragraphs 158, 159 and 166 with references to judgments of 11 September 2014, *CB* v *Commission*, C-67/13 P, EU:C:2014:2204, paragraph 53, and judgment of 23 January 2018, *F. Hoffmann-La Roche and Others*, C-179/16, EU:C:2018:25.

[82] Judgment of 4 June 2009, *T-Mobile Netherlands* C-8/08, EU:C:2009:343, paragraphs 30–31.

[83] Judgment of 4 June 2009, *T-Mobile Netherlands* C-8/08, EU:C:2009:343, paragraph 38.

[84] Judgment of 6 October 2009, *GlaxoSmithKline Services Unlimited v Commission* joined cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610 paragraph 63.

legitimate, also with a view to the content of the agreement or concerted practice and its context.[85]

4.17 Agreements between competitors that have been held by the EU courts to have the object of restricting competition include, amongst others, agreements, directly or indirectly:

(a) to fix purchase or selling prices or any other trading conditions;[86]

(b) to limit or control production, technical development or investment;[87]

(c) to share markets or sources of supply;[88] and

(d) to restrict capacity.[89]

Price fixing

4.18 The Chapter I Prohibition applies to agreements or concerted practices which 'directly or indirectly fix purchase or selling prices or any other trading conditions'.[90] Price-fixing agreements are, by their very nature, restrictive of competition[91] and have been held to constitute restrictions of competition by object.[92] A price-fixing agreement may infringe the Chapter I Prohibition even if it has no effect, or only an indirect effect, on the actual selling prices charged.[93] The CMA's Horizontal Guidance[94] confirms that, generally, agreements that involve price-fixing restrict competition by object within the meaning of the Chapter I Prohibition.[95]

4.19 The General Court confirmed that it is apparent from Article 101(1) TFEU that concerted practices may have an anti-competitive object if they 'directly or indirectly fix purchase or selling prices or any other trading conditions', even if

---

[85] Judgment of 11 September 2014, *Groupement des Cartes Bancaires v Commission* C-67/13 P, ECLI:EU:C:2014:2204, paragraph 70; judgment of 30 January 2020 *Generics (UK) Ltd* C-307/18, ECLI:EU:C:2020:52, paragraph 103; judgment of 2 April 2020, *Bank Budapest* C-228/18, ECLI:EU:C:2020:265, paragraph 52.
[86] Judgment of 9 July 2003, *Archer Daniels Midland* T-224/00, EU:T:2003:195 paragraphs 118–120.
[87] Judgment of 10 December 2014, *ONP v Commission* T-90/11, EU:T:2014:1049, paragraph 10.
[88] Judgment of 28 June 2016, *Portugal Telecom v Commission* T-208/13, EU:T:2016:368, paragraph 2.
[89] Judgment of 20 November 2008, *Competition Authority v Beef Industry Development Society* C-209/07, EU:C:2008:643, paragraph 40.
[90] Section 2(2)(a) of the Act.
[91] Judgment of 30 January 1985, *BNIC v Clair* C-123/83, EU:C:1985:33, paragraph 22, judgment of 11 September 2014, *Groupement des Cartes Bancaires v European Commission* C-67/13 P, BNP Paribas (intervening) and ors (intervening), ECLI:EU:C:2014:2204, paragraph 51, judgment of 15 September 1998, *European Night Services v Commission* T-374/94, EU:T:1998:198, paragraph 136.
[92] Judgment of 30 January 1985, *BNIC v Clair* C-123/83, EU:C:1985:33; judgment of 3 July 1985, *Binon v AMP* C-243/83, EU:C:1985:284; judgment of 11 July 1989, *Belasco v Commission* C-246/86, EU:C:1989:301; judgment of 19 April 1988, *Erauw-Jaquery v La Hesbignonne* C-27/87, EU:C:1988:183.
[93] Case C-8/08 *T-Mobile Netherlands* [2009] ECR I-4529, EU:C:2009:343, see Case C-286/13P *Dole Food v Commission*, paras 119 et seq and *Balmoral Tanks v CMA* [2017] CAT 23. See also Case T-587/08 *Fresh Del Monte v Commission*, paras 459–460.
[94] CMA's *Guidance on the application of the Chapter I Prohibition in the Competition Act 1998 to horizontal agreements* (CMA174) (the '**Horizontal Guidance**').
[95] Horizontal Guidance, paragraph 5.97.

'there is no direct connection between that practice and consumer prices'.[96] There have been a number of decisions, upheld by the European courts, in which the European Commission found agreements to fix the purchase price of goods or services to have had an anti-competitive object.[97]

Advertising restrictions

4.20 Relevant case law and decisional practice confirm that restrictions on advertising have the potential to restrict competition.

4.21 The General Court has confirmed the importance of advertising as an element of competition, and in helping customers to choose between products and services, following a decision by the European Commission that held that an advertising prohibition had the object or effect of restricting competition.[98] In the same judgment, the General Court held that 'advertising is an important element of the competitive situation on any given market, since it provides a better picture of the merits of each of the operators, the quality of their services and their fees'.[99] Even though the court did not expressly refer to advertising restrictions as 'by object' infringements, this conclusion was implied in its assessment as it did not require any analysis of anti-competitive effects.[100]

4.22 The Court of Justice also substantially upheld a decision[101] in which the Commission found a contractual restriction of price-matching advertisements in a selective distribution system to be a restriction of competition under Article 101(1)

---

[96] Judgment of 4 June 2009, *T-Mobile Netherlands* C-8/08, EU:C:2009:343, paragraphs 36 and 37. See also the wording of section 2(2)(a) of the Act.

[97] COMP/C.38.238/B.2, Commission Decision of 20 October 2004, *Raw tobacco – Spain*, substantially upheld on appeal, judgment of 27 October 2010, *Alliance One International v Commission* T-24/05, EU:T:2010:453 and on further appeal judgment of 19 July 2012, *Alliance One International v Commission* C-628/10 P EU:C:2012:479; judgment of 8 September 2010 *Deltafina v Commission* T-29/05, EU:T:2010:355, upheld on further appeal judgment of 19 July 2012 *Deltafina v Commission* C-537/10 P EU:C:2011:475; judgment of 8 March 2011 *World Wide Tobacco España v Commission* T-37/05, EU:T:2011:76, upheld on further appeal judgment of 3 May 2012, *World Wide Tobacco España v Commission* C-240/11 P EU:C:2012:269. See also COMP/C.38.281/B.2, Commission Decision of 20 October 2005, *Raw tobacco – Italy*, upheld on appeal judgment of 9 September 2011, *Deltafina v Commission* T-12/06, EU:T:2011:441, and on further appeal judgment of 12 June 2014 *Deltafina v Commission* Case C-578/11 P EU:C:2014:1742; AT.40018, Commission Decision of 23 November 2017, *Car battery recycling*, upheld on appeal in judgment of 7 November 2019, *Campine NV v Commission* T-240/17, EU:T:2019:778; AT.40410, Commission Decision of 14 July 2020, *Ethylene*, upheld on appeal in judgment of 18 October 2023, *Clariant AG v Commission* T-590/20, ECLI:EU:T:2023:650.

[98] Judgment of 28 March 2001, *Institute of Professional Representatives before the European Patent Office v Commission* T-144/99, EU:T:2001:105, paragraphs 72–75.

[99] Judgment of 28 March 2001, *Institute of Professional Representatives before the European Patent Office v Commission* T-144/99, EU:T:2001:105, paragraph 72.

[100] Ibid. In paragraphs 72–74, the General Court discussed the importance of advertising, and the detrimental effects of advertising restrictions more generally:
'72. [...] it should be noted, first of all, that advertising is an important element of the competitive situation on any given market, since it provides a better picture of the merits of each of the operators, the quality of their services and their fees.
73. Furthermore, when it is fair and in accordance with the appropriate rules, comparative advertising makes it possible in particular to provide more information to users and thus help them choose a professional representative in the Community as a whole whom they may approach.
74. Consequently, a simple prohibition on comparative advertising restricts the ability of more efficient professional representatives to develop their services, with the consequence, inter alia, that the clientele of each professional representative is crystallized within a national market.'

[101] IV/25.757 Commission Decision of 2 December 1981, *Hasselblad*, OJ [1982] paragraph 66.

TFEU.[102] The European Commission has in other cases objected to advertising restrictions in dealer contracts[103] and has confirmed the importance of preventing restrictions on promotional activity in its decisions.[104] In a previous decision, the CMA also found an advertising restriction to have been a restriction by object.[105]

Agreements liable to restrict competition regarding product characteristics

4.23 Section 2(2)(b) of the Act provides that the Chapter I Prohibition applies to agreements, decision or practices which limit technical development. In a previous decision, the European Commission held that an agreement by car manufacturers to coordinate certain product characteristics in the area of car emission cleaning technology was, by its nature, liable to restrict competition on product characteristics and thus technical development. The Commission further held that this conduct served to reduce uncertainty as to the manufacturers' conduct on the market[106] and held that it constituted a restriction of competition by object.[107]

4.24 The CMA's Green Agreements Guidance[108] considers an agreement between competitors that limits their or others' ability or incentive to innovate in order to meet or exceed a sustainability goal or to achieve that goal more quickly as a likely restriction of competition by object.[109] The CMA's Horizontal Guidance includes a similar analysis of a common understanding between competitors not to market products that exceed the applicable regulatory requirements.[110]

Subjective intention

4.25 The object of an agreement or concerted practice is to be identified primarily from an examination of objective factors, such as the content of its provisions, its objectives, and the legal and economic context of which it forms part.[111]

4.26 The object of an agreement or concerted practice is not assessed by reference to the parties' subjective intentions when they enter into it.[112] Anti-competitive subjective intentions on the part of the parties can be taken into account in the assessment, but they are not a necessary factor for a finding that the object of the

---

[102] Judgment of 21 February 1984, *Hasselblad v Commission* C-86/82, ECLI:EU:C:1984:65, paragraph 43.
[103] COMP37.975, Commission Decision of 16 July 2003, *Yamaha*, paragraph 125.
[104] COMP39.579, Commission Decision of 13 April 2011, *Consumer Detergents*, paragraph 25 and IV/31.593, Commission Decision of 11 July 1988, *British Dental Association*, paragraphs 19–23.
[105] CE/9827/13, CMA Decision of 8 May 2015, *Restrictive arrangements preventing estate and lettings agents from advertising their fees in a local newspaper*, paragraph 5.73.
[106] AT.40178, Commission Decision of 8 July 2021, *Car Emissions,* paragraphs 1, 122, 125.
[107] AT.40178, Commission Decision of 8 July 2021, *Car Emissions,* paragraphs 95-141.
[108] CMA's *Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements* (CMA185) (the '**Green Agreements Guidance**').
[109] Green Agreements Guidance, paragraph 4.6.
[110] Horizontal Guidance, paragraphs 8.86–8.87.
[111] Judgment of 14 March 2013, *Allianz Hungária Biztosító and Others* C-32/11, EU:C:2013:160, paragraph 36; judgment of 11 September 2014, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 54.
[112] Judgment of 28 March 1984, *Compagnie Royale Asturienne des Mines SA and Rheinzink GmbH v Commission*, joined cases 29/83 and 30/83, EU:C:1984:130, paragraphs 25 and 26.

conduct was anti-competitive.[113] Even if the parties to an agreement act without a subjective intent to prevent, restrict or distort competition and/or pursue certain other (even legitimate) objectives, this does not prevent the finding of a 'by object' infringement.[114]

Implementation

4.27 Parties cannot avoid liability for an infringement by arguing that they played a limited part in setting up an agreement or concerted practice; that they were not (or were not always) fully committed to the agreement or concerted practice; that the agreement or concerted practice was never implemented or put into effect by them; or that they 'cheated' on the agreement or concerted practice.[115]

4.28 The Court of Justice has also confirmed that an undertaking's participation in an anti-competitive meeting creates a presumption of the illegality of its participation, which that undertaking must rebut through evidence of public distancing, which must be perceived as such by the other parties to the cartel.[116] Once an undertaking's participation at such a meeting has been proved, it may be concluded that it participated in the anti-competitive scheme. It is incumbent on any undertaking which claims that it dissociated itself from decisions reached on agreed action to provide express proof thereof. A simple failure to put the concerted decisions into effect does not suffice to refute such participation.[117]

Participation in a Chapter I infringement

4.29 An undertaking will be considered to have participated in an infringement and will be liable for the various elements comprising the infringement where 'the undertaking concerned intended to contribute by its own conduct to the common objectives pursued by all the participants and that it was aware of the actual conduct planned or put into effect by other undertakings in pursuit of the same

---

[113] Judgment of 14 March 2013, *Allianz Hungária Biztosító and Others* C-32/11, EU:C:2013:160, paragraph 37 and judgment of 11 September 2014, *Groupement des cartes bancaires v Commission* C-67/13 P, EU:C:2014:2204, paragraph 54.
[114] See *European Superleague*, Case C 333/21, paragraph 167 which also refers to the judgments of 6 April 2006, *General Motors* v *Commission*, C-551/03 P, EU:C:2006:229, paragraphs 64 and 77 and the case law cited, and of 20 November 2008, *Beef Industry Development Society and Barry Brothers*, C-209/07, EU:C:2008:643, paragraph 21. See also *Kier v OFT [2011] CAT 3*, paragraph 107 (where the parties had argued that the cover pricing was primarily motivated by the need to remain on tender lists).
[115] Judgment of 14 March 2013, *Dole v Commission* T-588/08, EU:T:2013:130, paragraph 484; judgment of 1 February 1978, *Miller v Commission* C-19/77, ECR, EU:C:1978:19, paragraph 7; judgment of 21 February 1984, *Hasselblad v Commission* C-86/82, ECR, EU:C:1984:65, paragraph 46; judgment of 15 March 2000, *Cimenteries CBR v Commission* T-25/95 ECR, EU:T:2000:77, paragraphs 1389 and 2557 (this judgment was upheld on liability by the CJEU in *Aalborg Portland and Others v Commission*, joined cases C-204/00 P etc., EU:C:2004:6); judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraphs 79 and 80; judgment of 11 January 1990, *Sandoz v Commission* C-277/87, EU:C:1990:6, paragraph 3.
[116] Judgment of 17 September 2015, *Total Marketing Services SA v Commission* C-634/13P EU:C:2015:614, paragraph 21.
[117] Judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraphs 95–96. See also Judgment of 8 July 1999 *Hüls AG v Commission* C-199/92 P, ECR I-4287, paragraph 155.

objectives or that it could reasonably have foreseen it and that it was prepared to take the risk'.[118]

4.30 Further, an undertaking will be considered to have participated in an infringement even if it has played a passive role. The courts have held, for example, that an undertaking being present in meetings at which anti-competitive agreements were concluded, without that undertaking clearly opposing them, is indicative of collusion capable of rendering the undertaking liable, since a party which tacitly approves of an unlawful initiative, without publicly distancing itself from its content or reporting it to the administrative authorities, encourages the continuation of the infringement and compromises its discovery.[119]

Single and continuous infringement

4.31 A single and continuous infringement of the Chapter I Prohibition refers to a pattern of conduct involving a series of agreements and/or concerted practices entered into over a period of time where the practices at issue are interlinked in that they pursue a common anti-competitive objective.

4.32 Three conditions need to be satisfied to establish an undertaking's liability for a single and continuous infringement.[120] These conditions are:

(a) the agreements and/or concerted practices shared an overall plan pursuing a common objective or objectives;

(b) through its own conduct, each undertaking intended to contribute to the common objective(s) pursued by all the participants; and

(c) each undertaking was aware of the offending conduct (planned or put into effect) of the other participants in pursuit of the same objective(s) or each undertaking could reasonably have foreseen it and was prepared to take the risk that it would occur.

4.33 These three conditions are discussed in turn below.

[118] Judgment of 22 October 2015, *AC-Treuhand AG v Commission* C-194/14 P, EU:C:2015:717, paragraph 30 and the case law cited therein. See also judgment of 10 November 2017, *ICAP v Commission* T-180/15, ECLI:EU:T:2017:795, paragraph 100. On awareness, in judgment of 16 September 2013, *Masco v Commission* T-378/10, EU:T:2013:469, paragraph 70, the General Court confirmed that liability may be attributed to an undertaking for an infringement covering, in part, products that it did not manufacture. Such liability was attributable if it was aware of all the unlawful conduct planned or put into effect by the other participants in the cartel in pursuit of the same objectives.
[119] Judgment of 22 October 2015, *AC-Treuhand AG v Commission* C-194/14 P, EU:C:2015:717, paragraph 31 and the case law cited therein, including judgment of 28 June 2005, *Dansk Rørindustri and Others v Commission*, C-189/02 P, C-202/02 P, C-205/02 P to C-208/02 P and C-213/02 P, EU:C:2005:408, paragraphs 142 and 143 and the case law cited.
[120] Judgment of 11 July 2013, *International removal services,* C-444/11 P EU:C:2013:464, paragraphs 51–53.

The agreements and/or concerted practices shared an overall plan pursuing a common objective or objectives

4.34 What might otherwise appear to be separate agreements and/or concerted practices must have an 'identical' purpose or object so that they form 'part of a series of efforts made by the undertakings in question in pursuit of a single economic aim'.[121] Several factors are relevant to assessing whether there is an overall plan pursuing a common objective (or objectives).[122] These include the identity (or diversity) of the goods or services concerned, albeit a single and continuous infringement is not necessarily limited to a single product or to substitutable products only.[123] The common objective must go beyond a general reference to the distortion of competition in the market[124] but the conduct may nonetheless encompass a variety of different practices.[125]

4.35 The continuity of a practice is another feature of a single and continuous infringement. However, in the context of an overall plan, the courts have confirmed that the fact that there are certain gaps in the sequence of events established does not mean that the infringement cannot be regarded as uninterrupted. The question of whether or not a gap is long enough to constitute an interruption of the infringement cannot be examined in the abstract and should be assessed in the context of the functioning of the cartel in question.[126]

---

[121] Judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 197.
[122] Such factors include the extent to which the separate agreements and/or concerted practices involve identical: objectives (or diversity) of the practices at issue; goods or services concerned; participating undertakings; detailed rules for implementation of the plan; natural persons; geographical scope of the practices at issue. For example, judgment of 12 December 2012, *Almamet v Commission* ('Calcium carbide and magnesium based reagents for the steel and gas industries') T-410/09, EU:T:2012:676, paragraph 174 and the case law cited.
[123] Judgment of 12 December 2012, *Almamet v Commission* ('Calcium carbide and magnesium based reagents for the steel and gas industries') T-410/09, EU:T:2012:676, paragraphs 171–175; *Bathroom Fittings and Fixtures*: judgment of 16 September 2013, *Masco Corp v Commission* T-378/10, EU:T:2013:469, paragraph 67; COMP/39181, Commission Decision of 1 October 2008, *Candle Waxes*, paragraphs 287–296, upheld on appeal Case T-566/08 *Total Raffinage Marketing v Commission ('**Candle Waxes**')* EU:T:2013:423, paragraphs 270–273 (appeal on other grounds mostly dismissed, Case C-634/13P EU:C:2015:614).
[124] Judgment of 12 December 2007, *BASF AG and UCB SA v Commission* T-101/05 and T-111/05, EU:T:2007:380, paragraph 180. By way of example, in judgment of 11 July 2013, *Team Relocations NV v Commission* C-444/11 P, EU:C:2013:464 the common objective was to establish and maintain a high price level for the provision of international removal services in Belgium and to share this market.
[125] Judgment of 24 March 2011, *Aalberts Industries v Commission* T-385/06, EU:T:2011:114, paragraph 105, the Commission found a single and continuous infringement in the copper fittings market which consisted in fixing prices, agreeing on price lists, agreeing on discounts and rebates, agreeing on implementation mechanisms for introducing price increases, allocating national markets, allocating customers and exchanging other commercial information and also in participating in regular meetings and in maintaining other contacts intended to facilitate the infringement. The Commission concluded, however, that 'since the objective of the anti-competitive practices remained the same, namely collusion on prices in relation to fittings, the fact that certain characteristics or the intensity of those practices changed is not conclusive.'
[126] Judgment of 2 February 2012, *Denki Kagaku v Commission* T-83/08, ECLI:EU:T:2012:48, paragraphs 223–224. In this case, '*The cartel extended over a number of years and, accordingly, a gap of nine months between the various manifestations of that cartel, during which the applicants did not distance themselves from it, is immaterial*.' By contrast, in judgment of 17 May 2013, *Trelleborg Industrie SAS v Commission*, T-147/09, ECLI:EU:T:2013:259 an 18-month period in the course of the cartel, for which there was no evidence of anti-competitive contacts between the undertakings, was regarded as breaking the continuity of the overall plan, paragraph 68. In *Alloy Surcharge*, a single meeting was regarded as the basis of a four-year overall plan, in view of the fact that the reference values fixed at this single meeting were used throughout that four-year period in the calculation of the alloy surcharge (Judgment of 14 July 2005, *ThyssenKrupp Stainless GmbH and ThyssenKrupp Acciai speciali Terni SpA v Commission* C-65/02 P and C-73/02 P, EU:C:2005:454, paragraph 39).

Through its own conduct, each undertaking intended to contribute to the common objective(s) pursued by all the participants

4.36 An undertaking's intention to contribute to the overall objective pursued can be inferred from its participation in at least one element of the relevant conduct.[127] Its intention to contribute to the overall objective must not be confused with its individual motivations for behaving as it did which are not relevant to the assessment of this second condition.[128]

Each undertaking was aware of the offending conduct (planned or put into effect) of the other participants in pursuit of the same objective(s) or each undertaking could reasonably have foreseen it and was prepared to take the risk that it would occur[129]

4.37 It is not necessary for an undertaking to be aware of the full detail of all the participants' activities to be held liable for the entire single and continuous infringement, so long as it had sufficient awareness of the overall plan and intended to contribute to it.[130]

4.38 The courts have held that this approach is consistent with the principle of personal responsibility for infringements and that it neither neglects the individual analysis of evidence adduced against an undertaking, in disregard of the applicable rules of evidence, nor breaches the rights of defence of the undertakings involved.[131]

Liability for a single and continuous infringement

4.39 The finding of the existence of a single and continuous infringement is separate from the question of whether liability for the infringement as a whole is imputable to an undertaking.[132]

4.40 Each participating undertaking in a single and continuous infringement may bear personal responsibility not only for its own conduct, but also for the conduct of other participants to the single and continuous infringement.[133] Indeed, 'the mere

---

[127] In judgment of 15 March 2000, *Cimenteries CBR v Commission* T-25/95 ECR, EU:T:2011:286, paragraph 4123, a single and continuous infringement was found to exist on the ground that '*[e]ach party whose participation in the Cembureau agreement is established contributed, at its own level, to the pursuit of the common objective by participating in one of more of the implementing measures referred to in the contested decision.*'

[128] In judgment of 10 November 2017, *Icap Plc v European Commission* T-180/15, EU:T:2017:795, Icap argued that it did not intend to contribute to the common objective pursued by the other banks, it merely had the intention of satisfying the wishes of a sole trader. However, the Court held that Icap's argument was based on a '*confusion between the motives of Icap, which may indeed have consisted in the desire to satisfy the requests of a trader, and the knowledge that its conduct had the objective of facilitating the manipulation of rates…*', paragraph 181

[129] Judgment of 16 June 2011, *Team Relocations NV v Commission* T-204/08, EU:T:2011:286, paragraphs 32–37; judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 87.

[130] Judgment of 14 December 2006, *Raiffeisen Zentralbank Osterreich v Commission* T-259/02, EU:T:2006:396, paragraph 193.

[131] Judgment of 8 July 1999, *Commission v Anic Partecipazioni C*-49/92 P, EU:C:1999:356, paragraphs 83–85 and 203.

[132] Judgment of 26 September 2018, *Infineon Technologies AG v Commission* C-99/17 P, EU:C:2018:773, paragraphs 171–177.

[133] Judgment of 8 July 1999, *Commission v Anic Partecipazioni SpA* C-49\92 P, EU:C:1999:356, paragraph 83.

fact that each undertaking takes part in the infringement in ways particular to it does not suffice to exclude its responsibility for the entire infringement, including conduct put into effect by other participating undertakings but sharing the same anti-competitive object or effect'.[134] The liability of an undertaking for a single and continuous infringement is not therefore limited by the fact that it did not take part in all aspects of it, or that it played only a minor role in those aspects in which it did take part.[135]

4.41 However, an undertaking participating in one or more aspects of a single and continuous infringement is not automatically held liable for the infringement as a whole. Whether an undertaking should have liability beyond its own conduct depends on whether it meets all three limbs of the test described above. The second and third limbs relate respectively to the intention to contribute, through its own conduct, to the common objective and the awareness of the offending conduct of the other participants.[136]

Appreciable restriction of competition

4.42 An agreement or concerted practice will not infringe the Chapter I Prohibition if its impact on competition is not appreciable.[137] An agreement that has an anti-competitive object constitutes an appreciable restriction on competition by its nature and independently of any concrete effect that it may have.[138]

Effect on trade within the UK

4.43 The Chapter I Prohibition applies to agreements between undertakings which may affect trade within the UK, and have as their object or effect the prevention, restriction or distortion of competition within the UK.[139] For the purposes of the Chapter I Prohibition, the UK includes, in relation to an agreement which operates or is intended to operate only in a part of the UK, that part.[140]

---

[134] Judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 80. See also judgment of 22 October 2015, *AC-Treuhand AG v Commission* C-194/14 P, EU:C:2015:717, paragraphs 30 and 34 and 35.
[135] See also Judgment of 8 July 1999, *Commission v Anic Partecipazioni* C-49/92 P, EU:C:1999:356, paragraph 90.
[136] Judgment of 24 September 2019, *HSBC Holdings plc v Commission* T-105/17, EU:T:2019:675, paragraphs 199–200. See also judgment of 26 September 2018, *Infineon Technologies AG v Commission* C-99/17 P, EU:C:2018:773, paragraphs 172–173.
[137] Judgment of 9 July 1969, *Franz cc v S.P.R.L. Ets J. Vervaecke* C-5/69, EU:C:1969:35. See also *North Midland Construction plc v OFT* [2011] CAT 14, paragraphs 45 and 52 and judgment of 13 December 2012, *Expedia Inc. v Autorité de la concurrence and Others* C-226/11, EU:C:2012:795, paragraph 16.
[138] Judgment of 13 December 2012, *Expedia Inc. v Autorité de la concurrence and Others* C-226/11, EU:C:2012:795, paragraph 37; and European Commission Notice on agreements of minor importance [2014] OJ C291/01, paragraphs 2 and 3. In accordance with section 60A(2) of the Act, this principle applies mutatis mutandis in respect of the Chapter I prohibition. See also *Carewatch Care Services Limited v Focus Caring Services Limited and Others* [2014] EWHC 2313 (Ch), paragraph 148.
[139] Section 2(1) of the Act. See also footnote 54.
[140] Section 2(7) of the Act.

4.44 The CAT has held that this is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable.[141]

[141] *Aberdeen Journals v Director General of Fair Trading* [2003] CAT 11, paragraphs 459 and 460 and the case law cited. The CAT considered this point also in *North Midland Construction plc v OFT* [2011] CAT 14, paragraphs 48–51 and 62 but considered that it was '*not necessary […] to reach a conclusion.*'

5. CONDUCT AND LEGAL ASSESSMENT

A. Introduction

5.1 This chapter sets out the CMA's assessment that the Chapter I Prohibition has been infringed.

B Undertakings

5.2 The CMA has concluded that the legal entities and associations directly involved in the Infringements each are, or were during the ZTC Infringement Period and the NCI Infringement Period (together, the '**Infringement Periods**'), part of an undertaking or formed an association of undertakings for the purposes of the Chapter I Prohibition.[142] The legal entities and associations that the CMA finds were directly involved in one or both of the Infringements are:

(a) ACEA;

(b) BMW AG and BMW (UK) Limited;

(c) Ford-Werke GmbH, Ford of Europe GmbH and Ford Motor Company Limited;

(d) Jaguar Land Rover Holdings Limited and Jaguar Land Rover Limited;

(e) Mercedes-Benz Group AG and Mercedes-Benz UK Limited;

(f) Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH;

(g) Nissan Automotive Europe SAS, Nissan Motor Manufacturing UK Limited and Nissan Motor Parts Centre B.V.;

(h) Renault S.A.S.;

(i) the SMMT;

(j) Peugeot S.A., PSA Automobiles S.A, Adam Opel GmbH and Opel Automobile GmbH;

(k) Toyota Motor Europe NV/SA; and

(l) Volkswagen AG and Volkswagen Group United Kingdom Limited.

[142] During the Infringement Periods, each of the legal entities directly involved was engaged in an economic activity, including the distribution and sale of new Vehicles.

5.3 Chapter 6 sets out the CMA's conclusion as regards the entities that are jointly and severally liable for the Infringements. To the extent that these entities were not themselves directly involved in the Infringements, the CMA has concluded that they share liability as they formed part of the same undertaking as a company that was directly involved in the Infringements during all or part of the Infringement Periods or that they are liable as an economic successor.[143]

C Standard and proof of evidence

5.4 The CMA has applied the civil standard of proof to the evidence, that is, whether the evidence is sufficient to establish that an infringement has occurred on the balance of probabilities.[144] As regards establishing concertation, the CAT has previously held that '*cartels are by their nature hidden and secret; little or nothing may be committed to writing. In our view even a single item of evidence, or wholly circumstantial evidence, depending on the particular context and the particular circumstances, may be sufficient to meet the required standard*'.[145]

5.5 The CMA finds that the evidence is sufficient to establish, on the balance of probabilities, that both of the Infringements occurred.

5.6 In reaching its decision, the CMA has given particular weight to contemporaneous documentary evidence. However, it has also taken into account information from individuals directly involved in the Infringements. The CMA acknowledges that witness and interview evidence is subjective in nature and may be to some extent inconsistent. It has therefore carefully considered the credibility and reliability of the evidence provided by each witness. Further to this assessment, the CMA has relied on witness and interview evidence in this Decision only to the extent that the CMA considers it to be sufficiently clear, internally consistent, and corroborated by other witness evidence or contemporaneous documentary evidence.

D Conduct giving rise to the CMA's findings – the NCI Infringement

D.I Summary of findings of fact

5.7 On the basis of the documentary evidence, and contextualised by the witness evidence, the CMA finds that:

---

[143] There are, in all cases, other entities which also form or formed part of these undertakings but which the CMA has decided not to hold jointly and severally liable for the Infringements.
[144] *Tesco Stores Limited and Others v OFT* [2012] CAT 31, paragraph 88.
[145] *JJB Sports plc and Allsports Limited v Office of Fair Trading* [2004] CAT 17, paragraph 206. See also *Claymore Dairies Ltd and Express Dairies plc v The Office of Fair Trading* [2003] CAT 18, paragraphs 3–10; *Aalborg Portland and Others v Commission*, joined cases C-204/00 P etc., EU:C:2004:6, paragraphs 55–57; *Total Marketing Services v Commission*, C-634/13 P EU:C:2015:614 paragraph 26; *Durkan* [2011] CAT 6, paragraph 96; and *Quarmby Construction* [2011] CAT 11, paragraph 86.

(a) From May 2002, all the Parties except JLR had a common understanding at EU level, reflected in the minutes of two meetings held that month, that VM Parties should not compete through advertising statements in relation to certain information (the '**NCI Information**'); specifically, at that time, they would not compete in relation to the information they were required to publish under Article 9(2) of the ELV Directive by making advertising statements suggesting that their individual recyclability and recoverability rates exceeded minimum legal requirements. This position was reflected in the internal documents of certain[146] VM Parties as well as in email communications, circulated documents and the minutes of subsequent meetings of certain VM Parties, the SMMT and/or ACEA.

(b) By mid-2005, as discussions intensified on implementing the requirements of the RRR Directive, certain VM Parties and ACEA had explicitly agreed at EU level that those VM Parties should only confirm that they satisfied the minimum legal requirements on recyclability and recoverability (rather than competing with each other to publicise higher rates). It was also agreed that the position that had been agreed at EU level would be relayed to subsidiaries and national trade associations.

(c) From late-2005 onwards, certain VM Parties challenged one another on a number of occasions as to advertising statements on recyclability and recoverability that might have contravened the agreed position. This occurred at both EU and UK level, at times with the involvement of ACEA and/or the SMMT. Individual VM Parties also internally discussed and monitored their own compliance (at both EU and UK level) with the agreed position.

(d) By mid-2006, VM Parties and ACEA had identified concerns at EU level about certain VM Parties (particularly Renault) making advertising statements relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles.

(e) On 14 June 2007, VM Parties at EU level recorded the existing agreement that ELV and recycling matters were a 'non-competitive issue' in a document called the 'ELV Charta', which they described as setting out '*the existing common ACEA*-[✂]-[✂] *strategy*'.[147] Point four of the ELV Charta related to the 'non-competitive issue' and recorded an agreement to '*avoid competitive race in publishing customer faced / public communication of ELV relevant technical data (recyclates, recyclability, recovery)*' as well as to '*raise awareness of non-competitiveness of ELV*' within VMs. Accordingly, from 14 June 2007 onwards, the NCI Information included the use of recycled

[146] References in this chapter to 'certain' Parties or VM Parties should be read in conjunction with Annex 2, which sets out the CMA's findings as to which Party or Parties were involved in each of the events described.
[147] '[✂]' and '[✂]' are the automobile manufacturers trade associations of [country] and [country] respectively.

materials ('recyclates') – specifically, the percentage or mass of recycled materials used in the manufacture of Vehicles.

(f) The majority of the Parties explicitly agreed to the ELV Charta (or at least did not publicly distance themselves from it), although an exception was agreed for Renault to continue promoting its use of recycled materials (which it regarded as a 'competitive issue').

(g) JLR was a party to the common understanding from September 2008 onwards.

(h) The ELV Charta was updated by VM Parties in 2008, 2010 and 2016, with the text relating to the 'non-competitive issue' remaining unchanged after each update. There were proposals for ACEA to 'approve' the ELV Charta formally in 2010 and 2016, but this did not go ahead on either occasion. In 2010, the stated reason for not approving the Charta was that it '*may create problems in the context of antitrust considerations*', although it was agreed that the Charta would be retained '*as a base for a future position paper*'. In any event, the ELV Charta and the view that ELV and recycling matters were (or should be treated as) 'non-competitive' continued to be expressed, in both meeting minutes and communications of VM Parties and ACEA, as late as September 2017.

(i) In the years following the formulation of the ELV Charta, certain VM Parties continued to monitor and challenge each other's advertising statements on the NCI Information at both EU and UK level, sometimes with the involvement of ACEA and/or the SMMT, indicating the continued existence of the common understanding. They continued to refer to ELV and recycling matters as a non-competitive issue.

(j) The common understanding not to compete in respect of advertising statements regarding the NCI Information continued until September 2017 as evidenced by various events and continued references to the ELV Charta.

D.II Initial common understanding

ACEA WG-RG and ACEA/[✂] meetings – May 2002

5.8 On 29 May 2002, certain VM Parties, the SMMT and ACEA attended an ACEA WG-RG meeting.[148] According to the minutes of the meeting, [Employee] ([✂])[149]

[148] SIR-000002615.
[149] According to the minutes, [Employee] attended the meeting on behalf of [✂] SIR-000002615, page 7. According to [SMMT Employee D], [Employee] was also the chair of the ACEA WG-RG at that time (page 206, SIR-000040862). This appears to be consistent with SIR-000002615, page 2.

reminded attendees, during a discussion on the implementation of Article 9(2) of the ELV Directive, that:

> '[…] *according to the agreed industry position recycling is no competitive issue. For this reason the published information must not be used for sales promotion purposes.*
>
> *The ACEA approach is to establish guidelines, how to address this issue, and to propose them to the LC* [the Liaison Committee]'.[150, 151]

5.9 Later in the same day, certain VM Parties, the SMMT and ACEA attended a joint ACEA-[✂] meeting on ELV recycling.[152] According to the minutes of this meeting, there was a further discussion on implementation of Article 9(2) of the ELV Directive, at which [Employee] ([✂]) repeated that:

> '[…] *"recycling" is no competitive issue. For this reason the published information should not be used to compete against each other.*
>
> *The ACEA approach is to establish guidelines, how to address this issue respectively to define the content of information to be provided. Manufacturers should choose the words when using it in their literature (it should not look like copies).*'[153]

5.10 The CMA has not identified any evidence that any of the Parties who attended either of the meetings of 29 May 2002 stated that they disagreed with [Employee]'s ([✂]) comments or otherwise sought to distance themselves from what he described as the agreed industry position.

5.11 Given that the statements by [Employee] ([✂]) were made in the context of discussions on the implementation of Article 9(2) of the ELV Directive, the CMA infers that references in these statements to 'the published information' relate to the information that VMs were required to publish under Article 9(2). As set out at paragraph 8.7 of Annex 1, this included information on '*the design of vehicles and their components with a view to their recoverability and recyclability*'. Although Article 9(2) required publication of other related information, the CMA considers that other documents (described further below) demonstrate that the Parties were particularly concerned with publication of information relating to recyclability and recoverability.

---

[150] SIR-000002615, page 4.
[151] The CMA understands that the Liaison Committee is a meeting of national automotive trade associations – see SIR-000036038, which describes the Liaison Committee as a meeting of national associations together with local colleagues in Brussels.
[152] SIR-000036093.
[153] SIR-000036093, page 3.

5.12 This view is also supported by a note of a meeting attended by Opel/GME[154] during the same period, which states the following:

> '*neither materials nor recyclability or recoverability quota[155] should be published since all European producers want to keep the ELV issue out of any competition.* […] *In addition, producers should not exceed the recyclability / recoverability targets to prevent revision of these targets. If their calculation surpasses the required targets, they should recalculate it so that it stays round the required 85% for recyclability and 95% for recoverability*'.[156]

5.13 Accordingly, the CMA finds that the minutes of the meetings of 29 May 2002 evidence a common understanding amongst all the Parties except JLR (which did not attend either of the meetings of 29 May 2002) that the VM Parties (except JLR) would avoid publicly competing against one another in respect of the NCI Information, specifically through limiting advertising statements on these points.

ACEA WG-RG position paper on Article 9(2) – September-December 2002

5.14 On 24 September 2002, certain VM Parties, the SMMT and ACEA attended an ACEA WG-RG meeting. According to the meeting minutes, attendees discussed a paper on implementing Article 9(2) of the ELV Directive.[157] This paper included an 'urgent' recommendation that, when publishing information on the design of Vehicles and their components with a view to their recoverability and recyclability, VMs '*stick to fulfilment of the legal requirement, to avoid useless overbidding on figures for recoverability*'.[158] Meeting attendees agreed that the paper would be re-written as a joint position paper.[159]

5.15 On 27 November 2002, certain VM Parties, the SMMT and ACEA attended a further ACEA WG-RG meeting. According to the meeting minutes, the attendees

---

[154] The CMA understands that in 2001, General Motors Europe ('**GME**') (the European subdivision of the General Motors Corporation ('**GMC**') at that time) decided to set up a team to finalise and implement ELV strategy for all brands owned by GMC in Europe (including Opel and Vauxhall) (SIR-000039811, page 2). This team was part of the GME Aftersales division (SIR-000039807), and by September 2003 included Opel employees (SIR-000039939, page 17 and SIR-000039806). Accordingly, the CMA understands that individuals working in this team were acting on behalf of GME (and therefore representing brands including Opel and Vauxhall), regardless of which legal entity employed them. For the purpose of this Decision, the CMA has referred to individuals within this team as falling within 'GME' or, in the case of Opel employees who were part of this team, 'Opel/GME'. Findings relating to both GME and Opel/GME should therefore be understood to cover Opel and Vauxhall, unless otherwise stated. However, as set out at paragraph 6.81, the CMA has found that there is no functional or economic continuity between GMC (which owned Opel and Vauxhall until 10 July 2009) and General Motors (which owned Opel and Vauxhall between 10 July 2009 and 31 July 2017), and therefore that General Motors cannot be held liable for GMC's conduct prior to 10 July 2009. Accordingly, findings relating to GME and/or Opel/GME before 10 July 2009 should not be understood to imply any liability of General Motors. Further, as set out at footnote 4, the CMA has not found that General Motors was directly involved in the Infringements. Accordingly, findings relating to GME and/or Opel/GME after 10 July 2009 should not be read as imputing any direct involvement or participation by General Motors.

[155] The CMA understands that the word 'quota' used in this context referred to the recyclability and recoverability figures calculated for the purpose of demonstrating that a Vehicle satisfied the requirements of Article 7(4) of the ELV Directive. See, for example, SIR-000040913, page 138.

[156] SIR-000000203, pages 3 and 4.

[157] SIR-000026661, pages 3 and 9-10.

[158] SIR-000026661, page 9.

[159] SIR-000026661, page 3.

discussed an updated version of a proposed ACEA position paper on implementing Article 9(2) of the ELV Directive and agreed that the paper could be distributed to [✂].[160]

5.16 On 11 December 2002, the SMMT circulated the updated position paper to the SMMT ELV working group, noting that it had been adopted at the ACEA WG-RG meeting of 27 November 2002.[161] In this version of the paper, the 'urgent' recommendation described at paragraph 5.14 had been replaced by 'guidelines' recommending that VMs provided information regarding fulfilment of the legal requirements. The phrase '*to avoid useless overbidding on figures for recoverability*' had been removed.[162]

5.17 The CMA finds that, although the language had been softened by the time the position paper was adopted by the ACEA WG-RG and circulated to the SMMT ELV working group, the position paper evidences an intention to coordinate VM Parties' implementation of Article 9(2) of the ELV Directive.

D.III Additional events – November 2002 – January 2005

5.18 The CMA has identified intermittent references, in documents from the years following the meetings of May 2002, which support, or are at least consistent with, the finding of a common understanding not to compete via advertising statements in relation to the NCI Information:

(a) the minutes of an internal Mitsubishi meeting of 4 November 2002 refer to an 'industry consensus' that information published in relation to the ELV Directive should not be made competitive in sales promotional literature;[163]

(b) the programme for an international car recycling workshop held on 1 June 2004 states that '*recycling & related are deemed to be non competitive issues and will be collaboratively dealt with by the industry*';[164] and

(c) the draft minutes of an ACEA WG-RG strategy meeting of 28 January 2005 refer to a strategy to avoid competition in relation to the implementation of Article 9(2) of the ELV Directive and include an instruction to '*distribute ACEA position to national associations*'.[165] At interview, [Opel/GME Employee A] said that the intention behind this instruction was to ensure that trade association members were informed of the strategy and would commit not to compete with each other by making advertising statements that they

[160] SIR-000039816, page 2.
[161] SIR-000006003.
[162] SIR-000006003, page 4.
[163] SIR-000014860.
[164] SIR-000026097. According to the agenda, the event was sponsored by ACEA, [✂] and [✂], and co-sponsored by [✂], [✂], SMMT and [✂].
[165] SIR-000026700, page 12.

exceeded the minimum legal requirement on recyclability and recoverability.[166]

D.IV Development of position on recyclability and recoverability

5.19 Between 2005 and 2007, certain VM Parties and ACEA attended various meetings relating to the forthcoming implementation of the RRR Directive.

5.20 On 28 April 2005 certain VM Parties attended an RRR Working Group meeting.[167] The meeting minutes state that attendees:

> '[…] *found a common agreement, that the RRR-issue is a non-competitiveness one. This agreement should be communicated within the participating companies in order to avoid a misuse of RRR-related facts such as the value of Recyclability-Quota by e.g. the marketing departments.*'[168]

5.21 At interview, [Opel/GME Employee A], who had attended the RRR Working Group meeting, said that this statement in the meeting minutes reflected a common agreement amongst VMs not to communicate recyclability or recoverability figures that exceeded the minimum legal requirements. The 'misuse' that the meeting attendees were trying to avoid was marketing departments publishing figures that exceeded the minimum legal requirements.[169] [Ford Employee A], who also attended the meeting, told the CMA that he regarded recyclability figures as potentially misleading because all Vehicles are theoretically 99-100% recyclable. He viewed the reference to 'misuse' in this context – advertising figures that exceeded the minimum legal requirements would be a 'misuse' because '*it's not really telling the customer exactly what is the truth*'.[170]

5.22 On 17 November 2005, there was a further meeting of certain ACEA and [✂] members to discuss the RRR Directive.[171] According to the minutes of this meeting, attendees again discussed limiting advertising statements about recyclability and recoverability to keep them at or close to the legal requirements:

> '*ACEA asked each manufacturer to avoid giving a very optimistic image toward Type approval authorities. E.g., don't say that RRR compliance is very easy. A "push on the button" calculation system will deliver immediately recyclability*

---

[166] SIR-000040913, pages 160 – 163. It appears from the interview transcript that [Opel/GME Employee A] interpreted the reference to '[✂]' in the draft minutes of ACEA WG-RG strategy meeting of 28 January 2005 to mean that the minutes envisaged only distributing the ACEA position to the [✂]. However, the CMA considers that this interpretation is unlikely to be correct, given that the instruction refers to 'national associations' in the plural. The CMA considers that the reference to [✂] in this context was more likely to be assigning responsibility for the task in question.
[167] In the context of the meeting minutes, the CMA understands 'RRR' to refer to the reusability, recyclability, and recoverability of motor Vehicles and/or the implementation of the RRR Directive. According to the minutes of this meeting, the purpose of the RRR Working Group was to align on 'political issues' and to exchange experiences and ideas on technical items (SIR-000031641, page 5).
[168] SIR-000031641, page 5.
[169] SIR-000040913, pages 174–175.
[170] SIR-000040931, pages 76–77.
[171] SIR-000031647, page 1.

data for all versions. All our models easily exceed 85% &95% targets. (ACEA wants to go for 85-86%. But admits that this will need convincing of also the sales/marketing people)'.[172]

5.23 The attendees of the meeting also discussed the 'non-competitive nature' of recyclability data, noting that '*if one manufacturer would start to show of* [sic] *with excellent recyclability data it might bounce back to all manufacturers if the authority would impose more strict recyclability rates for the future*'. According to the meeting minutes, ACEA's preference was for VMs to keep recyclability and recoverability data as close as possible to the 85% and 95% legal requirements.[173]

5.24 At interview, [Mitsubishi Employee A], who attended the meeting of 17 November 2005, said that the reason for the discussion was to reach a common understanding on how to calculate recyclability – in particular, whether calculations should view materials as recyclable if the relevant recycling technology was not widely available or economic to use.[174] He explained that the meeting participants had agreed not to give a 'very optimistic image' on recyclability and recoverability because reporting higher figures would not reflect a technical improvement but rather a different calculation method that relied on the latest technology.[175] He recalled that he had informed Mitsubishi that this was an industry agreement that should be followed.[176]

5.25 The common understanding not to exceed the 85% and 95% minimum legal requirements in advertising was reiterated in the minutes of further meetings of the RRR Working Group on 22 June 2006,[177] 13 September 2006[178] and 25 September 2006.[179] The minutes of the meetings of 13 and 25 September 2006 also repeated the message that 'RRR' was not a competitive issue.[180]

5.26 [Ford Employee A], who attended the 13 September 2006 meeting, told the CMA that the purpose of the common understanding was to limit the effort required to obtain type approval, given that (in his view) recyclability calculations were potentially misleading (see paragraph 5.21).[181] He explained that 'RRR' was viewed as non-competitive because '*it makes no sense and it's not valuable and it's not creating any differences*'.[182]

5.27 On 14 December 2006, certain VM Parties and ACEA attended a joint meeting of ACEA, [✂] and [✂] at which, according to the meeting minutes, they reviewed a

[172] SIR-000031647, page 1.
[173] SIR-000031647, page 8.
[174] SIR-000040956, pages 96-97.
[175] SIR-000040956, page 108–109.
[176] SIR-000040956, page 110.
[177] SIR-000036110, page 2.
[178] SIR-000014824, page 6.
[179] SIR-000014827, page 4.
[180] SIR-000014824, page 7 and SIR-000014827, page 4.
[181] SIR-000040931, page 88.
[182] SIR-000040931, page 96.

presentation outlining the common understanding reached at the previous four meetings of the RRR working group. The presentation included, under 'common agreements', statements that 'the RRR-issue' was non-competitive and that VMs should not state that they exceeded the 85% and 95% minimum legal requirements.[183] According to the meeting minutes, '*the participants agreed to the statements. These could be considered as commonly agreed*'.[184]

5.28 At interview, [Opel/GME Employee A], who attended the meeting of 14 December 2006, said that the statement in the presentation that the 'RRR-issue' was non-competitive meant that VMs should '*stick to 85* [%]*… full stop*'.[185] [Ford Employee A][186] and [Mitsubishi Employee A],[187] who also attended the meeting, also agreed that the presentation reflected the common understanding not to publish recyclability or recoverability figures that exceeded the minimum legal requirements.

5.29 The CMA finds that the evidence described above demonstrates (i) the ongoing existence of a common understanding that the VM Parties (except JLR) would avoid publicly competing against one another, specifically by limiting their advertising statements, in respect of the NCI Information, and (ii) that the VM Parties considered that, absent this common understanding, recyclability and recoverability figures that exceeded the minimum legal requirements may have been used for advertising purposes.

D.V Development of position on recycled materials

5.30 In June 2006, certain VM Parties discussed possible concerns about making advertising statements on the percentage or mass of recycled materials in used in the manufacture of new Vehicles. In this context, the CMA notes that at this point in time, Renault considered that there was a growing public interest in issues around environmentally-friendly design.[188]

5.31 On 30 June 2006, [Renault Employee A] sent an email to [Ford Employee B] referring to a 'difficult discussion' about recycled content at a previous ACEA WG-RG meeting (specifically, a discussion regarding Renault having a target for recycled content),[189] and a proposed ACEA statement that it was not necessarily environmentally beneficial to increase the quantity of recycled content in Vehicles. According to this email, [Ford Employee B] had claimed at the ACEA WG-RG meeting that Renault was the only VM to have a target on recycled content

[183] SIR-000014830, page 2.
[184] SIR-000014829, page 3.
[185] SIR-000040913, page 206.
[186] SIR-000040931, page 117.
[187] SIR-000040956, pages 124–126.
[188] SIR-000022779, page 5.
[189] The CMA considers that this is likely to refer to an ACEA WG-RG meeting that had taken place on the previous day (29 June 2006). However, the minutes of this meeting do not appear to refer to the discussion in question (SIR-000026712).

(referring to Renault's publicised target of using 50kg of recycled materials per Vehicle by 2015). In his email, [Renault Employee A] pointed out advertising statements made by [✂] and Ford regarding target levels of recycled content and suggested that these would also contradict the proposed ACEA statement.[190]

5.32 In a reply on the same date, [Ford Employee B] explained that the concern around VMs making advertising statements on recycled materials related to the risk that such statements would be used to justify increasing the minimum legal requirements for recycling ELVs. In this context, [Ford Employee B] suggested that ACEA should make the argument that recycled content is not automatically beneficial in order to lobby against the minimum legal requirements being increased. In relation to [Renault Employee A]'s point about advertising statements made by [✂] and Ford,[191] he stated that (i) [✂] had agreed to revise a statement on its website that suggested plans to increase the mass of recycled materials used in its Vehicles, and (ii) Ford had not communicated a target on the use of recycled materials. However, he stated that Renault was not being asked to abandon its own recycled materials target, but rather to agree that ACEA could argue that increasing recycled materials use was not necessarily environmentally beneficial ('*We can do both: say that we use recycled content AND claim that it makes not always sense*').[192]

5.33 At interview, [Ford Employee B] told the CMA that his concern had related to the planned increase in legal minimum recycling requirement from 80% to 85%, which was due to come into effect in 2015. The European Commission had justified this increase on the basis that recycled material could easily be used as a substitute for virgin material in the production of new cars. The proposed ACEA statement would dispute the overall environmental benefits of increasing recycled content as part of wider lobbying against the increase in the minimum legal requirement for recycling. In this context, there was a concern that Renault's target of 50kg of recycled content per Vehicle might be taken to support the position that recycled material could easily be used as a substitute.[193]

5.34 The CMA infers from this email exchange that at least Ford, Renault and ACEA had discussed, at an ACEA WG-RG meeting in or before June 2006, the possibility of limiting advertising statements on the use of recycled materials in Vehicle manufacture. However, the CMA has not been able to identify any documentary evidence of the discussion at the ACEA WG-RG meeting in question (other than the email exchanges described at paragraphs 5.31 and 5.32 above), and accordingly it is not clear whether an understanding regarding advertising statements on the use of recycled materials was reached at this stage.

---

[190] SIR-000008795.
[191] [✂].
[192] SIR-000008795.
[193] SIR-000040946, pages 48-49 and 97-101.

D.VI Monitoring

5.35 In this section, the CMA sets out evidence that certain VM Parties discussed and monitored compliance with the common understanding not to compete through advertising statements in relation to the NCI Information. Some of this evidence also demonstrates that certain VM Parties considered that at least certain consumers may have been interested in this area, such that recyclability and recoverability were potential parameters of competition amongst VM Parties.

Internal Opel discussions – September 2005

5.36 On 20 September 2005, [Employee] ([✂])[194] and [Opel/GME Employee A] exchanged emails discussing whether certain statements made by Mercedes-Benz had broken the 'gentleman agreement'.[195] During this exchange, [Opel/GME Employee A] stated that, while both Opel and Mercedes-Benz had made statements that they had met recyclability requirements, no VMs had claimed to exceed the requirements:

> '*sales organizations are requesting and asking frequently if we fulfil the recyclability targets, because the customers (fleetsales for organisations, companies, cities, etc) like to know rhis*. [sic] *We also mention, that we are already at 85%., which the target and the agreed upon value to be mentioned… I have not seen so far, that any of the competitors mention 88%, 97% or 103%. So far we are in line*'.[196]

5.37 At interview, [Opel/GME Employee A] explained that he understood the 'gentleman agreement' that [Employee] ([✂]) had referred to in her email was the common understanding not to publish anything that exceeded the 85% recyclability requirement.[197] According to [Opel/GME Employee A] '*if an OEM* [VM] *is publishing 85% it's fine. It's okay according to our gentleman agreement. It's not okay if they are publishing 88 or 97 or even beyond*'.[198] He confirmed that while individual customers were not interested in recyclability rates at that time, commercial customers such as leasing companies were concerned about appearing environmentally unfriendly and might have been interested in recyclability as a way of improving their environmental credentials.[199]

5.38 The CMA finds that that the reference in [Employee]'s ([✂]) email to a 'gentleman agreement', and [Opel/GME Employee A]'s response that he had not seen any competitors state that they exceed the 85% minimum legal requirement on recyclability, are consistent with the ongoing existence of a common

---

[194] [✂]
[195] SIR-000031619.
[196] SIR-000031619.
[197] SIR-000040913, pages 180-181.
[198] SIR-000040913, page 181.
[199] SIR-000040913, pages 187-188.

understanding not to compete through advertising statements in respect of the NCI Information. The CMA also finds that the statement in [Opel/GME Employee A]'s email that Opel was regularly asked by commercial customers whether it met the minimum legal requirements on recyclability indicates that at least certain customers may have been interested in recyclability.

Internal Ford discussion – July 2006

5.39 On 4 July 2006, [Ford Employee B] sent an internal email regarding a draft article for Ford Magazine. In this email, he asked colleagues to amend a statement about using recycled materials in Vehicle design to state that this would be done '*where* […] *from a holistic perspective reasonable*'. To justify this, he attached a copy of the email exchange with Renault described at paragraphs 5.31 and 5.32, noting that '*we are in the process of cleaning up our messages to maintain credibility*'.[200]

5.40 At interview, [Ford Employee B] recalled that he had been concerned about Ford's lobbying credibility and did not want to make statements suggesting that it was always environmentally beneficial to use recycled material, given his view that it was not necessarily environmentally beneficial to increase the quantity of recycled content in Vehicle manufacture.[201]

5.41 The CMA finds that the purpose of [Ford Employee B] request was to avoid publicly suggesting that Ford was taking a particularly ambitious approach to incorporating recycled materials in Vehicle manufacture. Further, the CMA finds that the proposal to include information about recycled materials in the draft article indicates that Ford considered that there was potential customer interest in this area.

Internal Mitsubishi discussion – February 2007

5.42 In an internal Mitsubishi email exchange of 19 to 23 February 2007, [Mitsubishi Employee B] requested information on the recyclability of the Mitsubishi L200 on behalf one of Mitsubishi's importers, which was competing to sell Mitsubishi Vehicles to a potential customer and had been asked about recyclability.[202] In response, [Mitsubishi Employee A] stated that:

> '*ACEA,* [✂]*,* [✂] *agreed to apply Recyclability just to fulfil 85% requirement. This recyclability ratio is not the matter of racing among manufacturer.* […] *Does* [the importer] *want to hear the figure 85.1% or want to hear much more higher figure, such as 95%? I am afraid, once we submit real maximum*

[200] SIR-000008794, page 1.
[201] SIR-000040946, pages 113-117.
[202] SIR-000014648.

possible figure, gentleman's agreement among ACEA, [✂] *and* [✂] *becomes meaningless.*'[203]

5.43 At interview, [Mitsubishi Employee A] explained that recalculating the recyclability of certain Vehicles for distributors would be contrary to the industry agreement to publish the minimum legal requirements.[204] He explained that he had referred in his email to a 'gentleman's agreement' because it related to an unofficial industry agreement rather than a formal or written agreement.[205]

5.44 The CMA finds that the reference in this email to a 'gentleman's agreement' amongst ACEA, [✂] and [✂] not to exceed the 85% minimum legal requirement for recyclability evidences the continued existence of a common understanding not to compete through advertising statements in relation to the NCI Information. Additionally, the CMA finds that the request to provide information about recyclability for the purpose of winning a contract indicates that at least certain customers may have been interested in recyclability.

Discussions regarding Renault video – May 2007

5.45 On 10 May 2007, certain VM Parties attended an ACEA WG-RG or ACEA/[✂]/[✂] meeting.[206] The meeting minutes state that attendees discussed a video published on Renault's website which included claims of 95% recyclability. According to the meeting minutes, the attendees found that:

'*the message of Renault is conflicting with the official ACEA position regarding the non-communication of more than 85% recyclability* […] *Even in the French version, there is some reference to 95% recyclability, going towards 100%* […] *This communication is putting the ACEA position at risk and we are loosing* [sic] *ground against the Commission and other stakeholders. [Renault Employee B]* [207] *will ask for a correction of this message…* [*Renault Employee B] confirmed that Renault was supporting the ACEA position*'.[208]

5.46 The CMA interviewed several attendees of the meeting of 10 May 2007. The interviewees said the following in relation to the discussion on the Renault video:

(a) [Opel/GME Employee A] confirmed that the discussion recorded in the minutes related to Renault breaching the 'common position' not to publish recyclability figures over 85%. His view was that publishing higher figures

[203] SIR-000014648.
[204] SIR-000040956, pages 137-138.
[205] SIR-000040956, pages 150-151.
[206] SIR-000040913, pages 210-211.
[207] SIR-000026714, page 7.
[208] SIR-000026714, page 3.

risked the European Commission increasing minimum legal requirements on recyclability.[209]

(b) [Ford Employee B] gave a similar view that publishing higher figures risked the European Commission increasing minimum legal requirements on recyclability.[210]

(c) [Ford Employee A] considered that Renault had deviated from ACEA's 'common strategy'.[211]

(d) [Nissan Employee A] agreed that ACEA members were upset that Renault had gone '*a different way than what was agreed and publicly communicated on it*'.[212] He considered that Renault had made PR statements on recycling and building greener Vehicles because it had substantially invested into this area.[213]

5.47 The CMA finds that the evidence demonstrates (i) the continued existence of a common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) certain VM Parties and ACEA asking Renault to withdraw an advertising communication in order to comply with the common understanding. The CMA has not identified any documentary evidence (other than the minutes referred to in paragraph 5.45 above) that confirms the outcome of this incident. However, the minutes of the meeting indicate that Renault supported the 'ACEA position' and agreed to remove advertising references to recyclability figures above 85%.

Discussions regarding ADEME questionnaire – May-June 2007

5.48 Later in the minutes of the same meeting of 10 May 2007, there is an agenda item relating to a questionnaire, from the French Environment and Energy Management Agency ('**ADEME**'), which asked VMs to declare actions they had taken to encourage recycling. According to the meeting minutes, a 'small [✂] action team' had drafted a common response for VMs to send to ADEME.[214] The draft response included a statement that '*it is not possible to set reliable targets*' for the use of non-metallic recycled materials in new Vehicles. It also referenced a number of scientific studies that allegedly demonstrated (i) that '*recycling-driven changes to the product design can sometimes jeopardize the overall environmental vehicle performance*' and (ii) that some efforts to recover material from ELVs have a neutral or negative environmental performance relative to other

[209] SIR-000040913, pages 214–220.
[210] SIR-000040946, page 134.
[211] SIR-000040931, page 124–125.
[212] SIR-000040918, page 115.
[213] SIR-000040918, pages 108-109.
[214] SIR-000026714, page 5.

ELV treatment options.[215] The meeting minutes state that Renault did not agree with the proposed common response and would send its comments to ACEA, and that ACEA would organise a teleconference to come to a common position.[216]

5.49 On 6 June 2007, [Renault Employee B] sent representatives of various VM Parties a redacted copy of Renault's proposed declaration (response) to ADEME and invited the recipients to attend a teleconference on 12 June 2007 to discuss the declaration before it was submitted to ADEME.[217]

5.50 Renault's proposed declaration included information about actions it had taken to meet recyclability requirements and improve the recyclability of parts and materials in its new Vehicles. It also included details of Renault's target to include 50kg of recycled materials in every Vehicle by 2015, and stated that Renault had decided to express this target as a percentage rather than a mass going forward in order to facilitate public understanding.[218]

5.51 On 12 June 2007, [Opel/GME Employee A] sent an internal email to [Opel/GME Employee B] and [GME Employee C] regarding the teleconference.[219] In his email [Opel/GME Employee A] stated:

> '*Renault is completely committed to competition, I did not support that, I cannot support that; I will not be "unfaithful" to the matter and to myself.* […] *We should stay at "non-competitive"; the battle of competition will be disadvantageous for everyone*'.[220]

5.52 At interview, [Opel/GME Employee A] confirmed that he had been disappointed that Renault was '*taking this as a competitive issue here. And not sticking to the common silent agreement not to go public*'. He explained that there was a fear that the European Commission, or individual Member States, would increase the minimum legal requirements for recyclability if they saw evidence of individual VMs exceeding the existing requirements.[221]

5.53 [Opel/GME Employee B] told the CMA that he thought, based on [Renault Employee B]'s email of 6 June 2007, that Renault had shared its proposed ADEME declaration with other VMs in order to explain why it was 'deviating' from a common position on recycled material.[222] He considered that Renault had always been 'aggressive' in terms of advertising, whereas [Opel/GME Employee A] was more focused on technical engineering issues and was mindful of the complexity

[215] SIR-000026714, pages 134 and 136.
[216] SIR-000026714, page 5.
[217] SIR-000031669, SIR-000031669_CT, pages 2-3. SIR-000031672, SIR-000031672_CT.
[218] SIR-000031672, SIR-000031672_CT, page 5.
[219] SIR-000040913, pages 223-224.
[220] SIR-000031669, SIR-000031669_CT.
[221] SIR-000040913, pages 222– 226.
[222] SIR-000040940, pages 247.

of making changes to the material composition of a Vehicle.[223] However, he considered that Opel/GME would have made its own statements on use of recycled material if it had thought that this affected customers' purchasing decisions.[224]

5.54 [Opel/GME Employee D], who was a copy recipient of [Opel/GME Employee A]'s email of 12 June 2007, told the CMA that she considered certain parts of Renault's proposed response to ADEME as 'showing off' by going beyond the minimum legal requirements for recyclability and recoverability.[225] She recalled that [Opel/GME Employee A] had been concerned that anything done voluntarily by VMs would become legal requirements when the ELV Directive was revised.[226]

5.55 The CMA infers that [Opel/GME Employee A] reaction to the teleconference on Renault's proposed declaration to ADEME related either wholly or partly to Renault's commitment to public promotion of recyclability and the use of recycled materials, which he viewed as contrary to the 'common silent agreement'. Accordingly, the CMA finds that this event evidences the ongoing existence of a common understanding not to compete through advertising statements in relation to the NCI Information.

D.VII ELV Charta

5.56 On 14 June 2007, certain VM Parties attended a 'Vehicle Manufacturer – ELV Information Exchange' meeting at Mercedes-Benz's headquarters in Stuttgart. According to the minutes of this meeting, the attendees agreed the terms of an 'ELV Charta', which was described in the meeting minutes as a document reiterating '*the existing common ACEA*-[✂]-[✂] *strategy to handle ELV-issues as a non-competitive matter*'. Point 4 of the ELV Charta, titled 'non-competitive issue', included provisions to avoid a 'competitive race' in publishing technical data relating to the use of 'recyclates' (recycled material), recyclability or recovery,[227] and to raise awareness within each business that ELV issues were to be treated as 'non-competitive'.[228]

5.57 According to the meeting minutes, all the attendees agreed to support the ELV Charta and to promote it within their companies. Limited exceptions were agreed for Renault, which regarded recycled material as a competitive issue, and

[223] SIR-000040940, pages 242-244.
[224] SIR-000040940, pages 261–262.
[225] SIR-000040977, page 101-102.
[226] SIR-000040977, pages 116-117.
[227] The CMA infers that this reference in the document to 'recovery' is an error and should read 'recoverability'. This is because it would be unusual to refer to recyclability and recovery together, without also mentioning recycling and recoverability. The CMA's inference is also consistent with what various interviewees told the CMA about the meaning of the '*non-competitive issue'* provision in the ELV Charta.
[228] SIR-000002616, pages 1-3.

Toyota,[229] which disagreed with certain other provisions of the ELV Charta (not related to the 'non-competitive issue').[230]

5.58 The ELV Charta was subsequently acknowledged and discussed at meetings of the ACEA WG-RG on 14 September 2007[231] and 13 December 2007,[232] and at a joint [✂]-ACEA-[✂] meeting also held on 13 December 2007.[233]

5.59 In interview, [Mercedes-Benz Employee A] explained that the ELV Charta contained '*the official lobby position of ACEA*',[234] having been formulated in the Downstream Group and then sent to the ACEA WG-RG,[235] and was created to record the common understandings amongst VM Parties on issues relating to ELV and recycling matters.[236] Similarly, [Opel/GME Employee E] described the ELV Charta as a '*kind of guidelines or red line through the different topics which are occurring under the headline ELV*', to which VMs could refer in order to check '*what is the common idea behind the different or the various ELV topics*'.[237]

5.60 In relation to the 'non-competitive issue' provision articulated in the ELV Charta, [Ford Employee B] told the CMA at interview that he thought that this provision arose because recyclability and recoverability calculations were misleading.[238] Earlier in the interview, he had told the CMA that the members of the ACEA WG-RG agreed that it would be misleading to compete in relation to these figures.[239] [Opel/GME Employee A] also confirmed that this provision reflected what he described as a 'silent agreement' amongst VMs not to compete in relation to advertising statements on recyclability or recoverability,[240] although he was not aware of a 'silent agreement' in relation to recycled materials and thought that this position was slightly less strict.[241]

5.61 In relation to the status of the ELV Charta, [Employee] [242] stated that the VMs accepted the ELV Charta.[243] [Opel/GME Employee E] said that '*Opel was definitely supporting the Charta. And for me personally, yes, it was helpful*'.[244] Both [Opel/GME Employee E] and [Employee] reported that they understood the ELV Charta to contain guidelines rather than rules. [Opel/GME Employee E]

---

[229] Toyota did not attend the meeting of 14 June 2007, but subsequently provided comments by email SIR-000033364, pages 1-2. These comments were added to the final version of the minutes at SIR-000002616.
[230] SIR-000002616, page 3.
[231] SIR-000000850, page 2.
[232] SIR-000000840, page 3.
[233] SIR-000026717, pages 2 and 9.
[234] SIR-000040896, page 200.
[235] SIR-000040896, pages 196-197 and 201-202.
[236] SIR-000040896, pages 198-200.
[237] SIR-000039939, page 173.
[238] SIR-000040946, pages 191–193.
[239] SIR-000040946, pages 64-65.
[240] SIR-000040913, pages 123-124 and 326-327.
[241] SIR-000040913, pages 133 and 326-327.
[242] [Employee] is a current employee of Stellantis. However, during this period he worked for companies within the [✂] group and its predecessors.
[243] SIR-000039937, page 114.
[244] SIR-000039939, page 181.

emphasised that the commitments made in the Charta were not enforced, noting that '*the Charta is not a binding document. So everybody was absolutely free to act as a company and to do whatever they want. It was only some kind of guidelines, but it was not binding* […] *there may have been some disputes in the meetings but without having any consequences*'.[245] Similarly, when asked in interview [Employee] stated that '*from my point of view they were more principles than rules*'.[246]

5.62 In relation to the provisions in the ELV Charta relating to 'recyclates' (recycled material), the CMA understands that the VM Parties were particularly concerned with not publishing the percentage or mass of recycled material per Vehicle. This is consistent with a statement by [GME Employee C] in an email to various Opel/GME colleagues summarising the meeting of 14 June 2007, in which he stated that Renault had agreed to all points in the ELV Charta '*with the exception of "use of recyclates"* [recycled materials]*, where they absolutely want to communicate percentages*'.[247] [Ford Employee B] told the CMA at interview that the concern with publishing percentages or mass of recycled material per Vehicle was the risk that this might lead regulators to impose a minimum legal requirement of recycled material per Vehicle.[248]

5.63 Based on the documentary evidence and the accounts given at interviews, the CMA concludes that the ELV Charta recorded the common understanding not to compete through advertising statements in relation to the NCI Information and that from 14 June 2007 onwards, the 'NCI Information' for the purpose of the common understanding had extended to include the percentage or mass of recycled material used in the manufacture of new Vehicles.

5.64 The CMA finds that the VM Parties (except JLR) explicitly accepted the ELV Charta or at least did not publicly distance themselves from it, although an exception was agreed for Renault to continue to promote its use of its recycled material. Additionally, the CMA finds that ACEA and the SMMT[249] were aware of the ELV Charta, from attending meetings at which the ELV Charta was acknowledged and discussed (see paragraph 5.58).

5.65 As set out in more detail at paragraphs 5.74, 5.101 and 5.163 below, the ELV Charta was reaffirmed and updated in 2008, 2010 and 2016.

[245] SIR-000039939, page 182.
[246] SIR-000039937, page 157.
[247] SIR-000000072, SIR-000022757.
[248] SIR-000040946, page 84.
[249] Through its attendance of the ACEA WG-RG and ACEA/[✂]/[✂] meetings of 13 December 2007 (see Annex 2).

D.VIII Ongoing coordination, implementation and monitoring

5.66 As set out in further detail below, the CMA finds that following the adoption of the ELV Charta, certain VM Parties continued to reaffirm the common understanding not to compete through advertising statements in relation to the NCI Information at meetings and in other communications. They also monitored and questioned their own and each other's activity in relation to advertising communications regarding the NCI Information and took steps to implement the agreed position, sometimes with the involvement of ACEA and/or the SMMT. This occurred in relation both to issues arising specifically in the UK, and to issues affecting the EU (including, at that time, the UK) more widely.

Internal Ford discussions – July 2007

5.67 In July 2007, [Ford Employee B] and [Ford Employee C] exchanged emails confirming that, amongst other things, Ford sales brochures should not make any claims as to the recyclability or recoverability of Ford Vehicles, other than that they met the legal requirements of 85% and 95% respectively.[250] The CMA finds that this email exchange evidences Ford taking steps to ensure that its sales brochures complied with the common understanding not to compete through advertising statements in relation to the NCI Information.

[✂] press release – November 2007

5.68 In November 2007, certain VM Parties exchanged emails regarding claims made in an article in *Automobile Week* that [✂] was the first VM to meet the requirements of the RRR Directive. During this exchange, [BMW Employee A] stated: '*I find it amazing how carefree we communicate these topics to the public*'.[251] [Opel/GME Employee E] replied in support of [BMW Employee A]'s email, asking '*Can we avoid this in the future? What is an ELV Charter worth?*'[252]

5.69 At interview, [Opel/GME Employee E] explained that he had been surprised that [✂] had publicised its achievements on recyclability, given that there had been an industry understanding not to communicate recyclability figures publicly.[253]

5.70 The CMA considers that this email exchange evidences the ongoing existence of a common understanding not to compete through advertising statements in relation to the NCI Information.

---

[250] SIR-000008868, Pages 1-2.
[251] SIR-000031683, SIR-000031683_CT, page 2.
[252] SIR-000031683, SIR-000031683_CT, page 1.
[253] SIR-000039939, page 150.

Internal Mitsubishi meeting – February 2008

5.71 In February 2008, Mitsubishi held an internal meeting regarding preparations for the RRR Directive. According to the meeting minutes, under the sub-heading '*Recycling and Recoverability quota*', '*All members confirmed that these quota of each model is the noncompetitive item and manufacturers do not use for their advertisement*'.[254]

5.72 At interview, [Mitsubishi Employee C], who attended the meeting, explained that he understood the extract described above to mean that Mitsubishi would not use recyclability or recoverability rates for advertising purposes, in accordance with a common agreement at the ACEA/[✂]/[✂] level.[255] Similarly, [Mitsubishi Employee A], who also attended the meeting, considered that the phrase 'non-competitive item' meant that manufacturers should not advertise recyclability figures that exceeded the 85% minimum legal requirements.[256]

5.73 The CMA finds that this evidences (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) Mitsubishi ensuring that its staff members were aware of and complied with the common understanding.

Reaffirmation of the ELV Charta – June 2008

5.74 On 12 June 2008, certain VM Parties attended an ELV Information Exchange meeting at Mercedes-Benz's headquarters in Stuttgart. According to one version of the meeting minutes, the attendees '*re-iterated and expressively supported*' the ELV Charta, although Renault repeated its 'reservations' from the previous year (see paragraph 5.57) regarding the position on recycled material.[257] Another version of the same meeting minutes[258] included the following:

> '*It has been suggested that ELV has become less of a "non-competitive" issue in the past year, which should not be the case. Commitment to the Charta needs to be reinforced in order to have a strong front to defend against potentially dangerous situations in some markets*'.[259]

5.75 On 16 July 2008, [Mercedes-Benz Employee B] circulated minutes of the meeting and an updated ELV Charta to certain VM Parties.[260] The provisions of the ELV

[254] SIR-000014858, page 2.
[255] SIR-000040949, pages 63 – 66.
[256] SIR-000040956, page 162.
[257] SIR-000014658, page 1.
[258] The CMA understands that the meeting minutes were updated following input from [✂] (SIR-000002648). The content in respect of item 2 ('ELV Charta') is broadly consistent across both sets of minutes.
[259] SIR-000002646, page 2.
[260] SIR-000002648 and SIR-000031692.

Charta under the heading '*non competitive issue*' remained unchanged from June 2007 (see paragraph 5.56).

5.76 Following the meeting of June 2008, the common understanding not to compete through advertising statements in relation to the NCI Information was reiterated at an ACEA/[✂]/[✂] RRR meeting in September 2008 ('*it was again stressed strongly to keep to the commonly agreed rule not to use RRR results for environmental advertisements of the vehicles*')[261] and at two EU ELV [✂] Europe meetings of November 2008 ('*it was confirmed that OEMS capable of recycling above the 85-95% targets would not use it as a competitive issue*').[262]

5.77 The CMA finds that the reaffirmation of the ELV Charta in June 2008, and reiteration of decisions not to advertise recyclability or recoverability rates above the minimum legal requirements in September and November 2008, evidence an ongoing commitment by at least certain VM Parties[263] and ACEA to the common understanding not to compete through advertising statements in relation to the NCI Information.

5.78 Further, the CMA finds that from September 2008 onwards, JLR had become party to the common understanding not to compete through advertising statements in relation to the NCI Information. JLR was an attendee of the ACEA/[✂]/[✂] RRR meeting in September 2008 described in paragraph 5.76 above.

Internal Opel email exchange – October 2008

5.79 In October 2008, [Opel Employee F] sent an email to [Opel/GME Employee A] asking how to report recyclability in relation to Vehicles that exceeded the minimum legal requirements in light of the '*agreement between the OEM's not to report anything out beyond 85%* [recyclability]'. [Opel/GME Employee A] responded with advice that the particular Vehicle identified by [Opel Employee F] did not need type approval, but that he would seek information from '*some other European colleagues*' on whether they had similar cases of Vehicles exceeding 85% recyclability.[264]

5.80 At interview, [Opel/GME Employee A] confirmed that this email exchange related to an agreement not to publicise recyclability figures higher than the legal requirement of 85%.[265] He thought that the Opel Hummer H3 (the Vehicle model discussed in the email exchange) was at least 97% recyclable.[266]

[261] SIR-000014859, page 4.
[262] SIR-000014832, SIR-000036239, page 1, and SIR-000036239, page 4.
[263] Those who attended at least one of the meetings described at paragraphs 5.74–5.76, as set out at Annex 2.
[264] SIR-000031694.
[265] SIR-000040913, pages 252-253.
[266] SIR-000040913, pages 122 and 253.

5.81 The CMA considers that this email exchange demonstrates (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) that Opel was aware of the common understanding and considered whether it was necessary to take steps to comply with it (specifically, to ensure that it did not publish recyclability figures above 85%).

Opel email to VMs and ACEA regarding the International Automobile Recycling Congress – November 2008

5.82 On 5 November 2008, [ACEA Employee A] forwarded an email message from [Opel/GME Employee A] to certain VM Parties regarding a forthcoming conference of the International Automobile Recycling Congress.[267] In this message, [Opel/GME Employee A] advised people to be guarded about what they said at the conference given that individuals close to or representing the European Commission or national regulators might be in the audience. He noted that there was a lot of diversity in different Member States as to fulfilling the recycling requirements in the ELV Directive and implementing the RRR Directive, and stated that:

> '*this ELV business as such is still seen as "none-competitive"* [sic]
>
> *We all need to fulfil the directive(s), that's all….*
>
> *Please let us, the OEMs not reinforce the issues by making misleading statements*'.[268]

5.83 At interview, [Opel/GME Employee A] said that his email referred to the fact that the automotive industry did not view ELV matters as competitive:

> '*we need to fulfil the law, we need to achieve the quota. I'm talking about ELV business. And this is not competitive*'.[269]

5.84 [Opel/GME Employee A] further said that he considered that VMs were competing in relation to factors such as design, speed and emissions. In contrast, he considered that it did not make sense for VMs to compete in relation to ELV or recycling matters, which he considered were not of interest to consumers.[270] His concern regarding the conference had been that statements made in presentations by VMs or dismantlers might be misleading or misunderstood by the European Commission or other stakeholders.[271]

---

[267] The International Automobile Recycling Congress is a forum for the automotive and recycling sectors to discuss the latest advancements and challenges in the circular economy and automotive recycling.
[268] SIR-000002367, page 2.
[269] SIR-000040913, page 261.
[270] SIR-000040913, pages 261-262.
[271] SIR-000040913, pages 266-267.

5.85 The CMA finds that the email from [ACEA Employee A] and message from [Opel/GME Employee A] contained a reminder to certain VM Parties to limit their communications to confirming that they fulfilled the ELV and/or RRR Directives, consistent with the common understanding not to compete through advertising statements in relation to the NCI Information.

Internal JLR email exchange – August 2009

5.86 On 20 August 2009, [JLR Employee A] sent an email to [JLR Employee B] regarding a statement in a Mercedes-Benz environmental certificate that the Mercedes-Benz e-Class range already met the 2015 minimum legal requirement of a 95% recycling rate. In this email, [JLR Employee A] referred to an ACEA agreement that recycling was considered to be a '*non-competitive topic, hence why there is such a good level of working cooperation between ACEA companies & to be fair the* [✂] */* [✂] *importers as well*'. He also stated that there was an agreement that '[the RRR Directive targets] *will not be used competitively*' and that '*in respect of RRR Homologation the calculations will only show conformity with the 85/95% requirements & no more*'.[272]

5.87 At interview, [JLR Employee A] told the CMA that the statements in his email about recycling being a 'non-competitive topic' referred to an understanding across all the VMs who were members of ACEA, [✂] and [✂] that they would not communicate recyclability or recoverability rates above the minimum legal requirements. He had been concerned that statements that VMs were exceeding the legal requirements of the ELV and RRR Directives would prompt legislators to impose stricter requirements.[273]

5.88 The CMA finds that the email described above demonstrates the ongoing existence of the common understanding not to compete through advertising statements in relation to the NCI Information

The 10th SMMT Sustainability Report – September 2009

5.89 On 16 September 2009, [SMMT Employee A] circulated a draft copy of the SMMT's Tenth Sustainability Report for comment.[274] The draft report included a claim that Vehicle engineers were increasing the use of recycled material in Vehicle manufacture and referred to an example from Nissan, whose latest models had over 50 parts with a recycled plastic content, and Renault's target of incorporating 50kg of recycled material per Vehicle by 2015.[275]

[272] SIR-000026141, page 2.
[273] SIR-000040897, pages 96-98.
[274] SIR-000002372, pages 3–4.
[275] SIR-000002549, page 37.

5.90 On 17 September 2009, [JLR Employee A] sent a response to [SMMT Employee A]'s email, copying [Volkswagen Employee A], [Ford Employee D] and [SMMT Employee B] and asking for the references to specific VMs to be removed from the document: '*Recycling & ELV activity was agreed at ACEA to be a non competitive issue yet this section quotes two manufactures* [sic] *own achievements & strategy*'. He also raised a concern that there was no '*agreed automotive standard*' of the definition of recycled plastic.[276] In response, [Volkswagen Employee A] said that the examples of individual VMs' actions did not imply competition. However, he subsequently agreed that it would be reasonable to remove the Renault application from the draft because it indicated '*a commitment or aspiration, not actual practice*'.[277] The final copy of SMMT's Tenth Sustainability Report does not contain the disputed content about Renault's plan to increase recycled content.[278]

5.91 At interview, [SMMT Employee C] told the CMA that she did not recall the exchange but that she understood from reviewing the correspondence that she had removed the Renault example as requested.[279] [JLR Employee A] told the CMA that he had raised concerns because 'recyclable'[280] material is contained in the ELV Directive and '*in general, we are trying not to make that a competitive issue. All we're trying to do is to attain compliance and to ensure that regulations are not onerous*'.[281]

5.92 The CMA finds that [JLR Employee A] reaction to the inclusion of Renault's ambition to include 50kg of recycled plastic in its new Vehicles by 2015 in the draft SMMT 10th Sustainability Report was based on his understanding that promoting the percentage or mass of recycled content used in the manufacture of Vehicles contravened the common understanding not to compete in relation to the NCI Information. As explained at paragraph 5.62, the CMA understands that the VM Parties were particularly concerned to avoid advertising statements about the percentage or mass of recycled content per Vehicle because this would make it easier for regulators to set a minimum legal requirement. This may explain why Renault's target of 50kg of recycled material per Vehicle was seen as more of a concern than the Nissan example of using parts containing recycled material.

Internal Ford email exchange – October 2009

5.93 In October 2009, [Ford Employee E] sent an internal Ford email asking for input on 'green stories' to be included in a publicity campaign that would focus on Ford's efforts to improve its environmental performance. One of the suggested 'stories' was that '*today at least 85% of a Ford vehicle is recyclable*'. [Ford Employee F]

---

[276] SIR-000002372, pages 2–3.
[277] SIR-000002372.
[278] SIR-000002550.
[279] SIR-000035857, page 57.
[280] Although [JLR Employee A] referred to 'recyclable' material at this point in the interview, in this instance the CMA considers that he meant 'recycled' given the context of the statement.
[281] SIR-000040897, pages 111–112.

replied that Ford Vehicles were more than 90% reusable, in addition to being 85% recyclable. However, these individuals were later advised by [Ford Employee G] to say only that Ford Vehicles met the legal requirements on recyclability because '*we are not allowed to say more on this, due to ACEA agreement*'.[282]

5.94 The CMA finds that this email exchange evidences (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information and (ii) Ford deciding not to publicise recyclability of 'at least', or greater than, the legal requirement in order to comply with the common understanding. Further, the CMA finds that the suggestion to include information about recyclability in the publicity campaign indicates that Ford considered that there was potential consumer interest in this area, such that it was a potential parameter of competition amongst VMs.

Discussions on recycled material – November 2009

5.95 On 25 November 2009, certain VM Parties and ACEA attended an ACEA/[✂]/[✂] meeting. According to the meeting minutes, attendees discussed a risk that legislators might introduce minimum legal requirements on the use of recycled material in Vehicle manufacture if VMs advertised the levels of recycled material used in their Vehicles. The meeting minutes go on to state that '*even if there is a certain risk, it is up to each OEM to decide how to use such information*'.[283] However, a note of the same meeting taken by [Ford Employee A], who had attended the meeting, states that there was a '*strong warning of GM to not publish recycled content data as this may lead to stronger legal requirements*'.[284, 285]

5.96 At interview, [Ford Employee A] said that the meeting minutes reflected a common understanding that VMs should be careful not to motivate regulators to introduce minimum legal requirements on the use of recycled material. He explained that the statement that it was '*up to each OEM to decide how to use such information*' reflected the fact that ACEA could not force any member to take a particular approach: '*we just have to try to get a common understanding that we should be careful to not motivate regulators implementing increases with these targets*'.[286]

5.97 [Opel/GME Employee A], who had also attended the ACEA/[✂]/[✂] meeting of 25 November 2009, told the CMA that there was a fear that referring to the percentage of a Vehicle being manufactured from recycled materials would lead the European Commission to impose a minimum legal requirement in this area. However, he did not think that there was a common understanding in this area –

[282] SIR-000009037, pages 5-8.
[283] SIR-000020457, page 5.
[284] SIR-000009038, page 2.
[285] SIR-000020457, pages 11-12.
[286] SIR-000040931, page 131.

'*each OEM could, could advertise how good he is in with regard to recycled materials*'.[287]

5.98 The CMA notes that there are inconsistencies in the evidence described above. Although the meeting minutes and [Opel/GME Employee A]'s account at interview suggest that there was no common understanding in relation to recycled materials, the account given by [Ford Employee A] at interview suggests that a common understanding did exist. Additionally, while the meeting minutes refer only to a discussion of the potential risk, [Ford Employee A]'s contemporaneous note of the same meeting suggests that 'GM'[288] gave a 'strong warning' not to publish recycled content data. However, all the evidence is consistent in suggesting that there was a concern amongst meeting attendees that advertising in relation to the percentage or mass of recycled materials used in the manufacture of Vehicles could lead to a minimum legal requirement being introduced.

5.99 The CMA considers that the existence of a common understanding regarding advertising statements relating to the percentage or mass of recycled materials used in the manufacture of Vehicles is evidenced by the ELV Charta. In particular, the fact that an exception was specifically noted for Renault to continue to advertise its use of recycled materials (see paragraphs 5.57 and 5.74) suggests that the issue of recycled materials was discussed when both the 2007 and 2008 versions of the ELV Charta were agreed.

5.100 Given the existence of other evidence of a common understanding regarding advertising statements relating to the percentage or mass of recycled materials, and the inconsistencies in the evidence relating to the meeting on 25 November 2009, the CMA does not consider that this evidence undermines its view that the common understanding not to compete through advertising statements in relation to the NCI Information (including advertising statements in relation to the percentage or mass of recycled materials used in Vehicle manufacture) was ongoing at this point.

Further reaffirmation of the ELV Charta – January 2010

5.101 On 19 January 2010, certain VM Parties attended a VM workshop meeting in Stuttgart. According to the meeting minutes, the attendees discussed slight modifications to the wording of the ELV Charta and again agreed to use the '*ACEA/*[✂]*/*[✂] *position*'.[289]

5.102 On 17 February 2010, [Mercedes-Benz Employee B] circulated the meeting minutes and updated ELV Charta by email to various VM Parties.[290] There was no

[287] SIR-000040913, pages 272-277.
[288] See footnote 285.
[289] SIR-000014665, page 8.
[290] SIR-000014675, pages 2-3.

substantive change to the provisions of the ELV Charta under the heading 'non competitive issue'.[291]

5.103 On 25 February 2010, certain VM Parties and ACEA attended an ACEA WG-RG audio meeting. According to the draft meeting minutes, the attendees discussed the ELV Charta but considered that it might create problems '*in the context of anti-trust considerations*'. In view of this, it was agreed that the ELV Charta would not be approved but rather would serve '*as a base of a future position paper to deal with 2015 targets (and beyond)*.'[292]

5.104 On 2 March 2010, [Opel/GME Employee E] sent an email to [BMW Employee B] expressing surprise that the ELV Charta had not been approved by ACEA and suggesting that the Charta could be adjusted in light of an ongoing SWOT analysis on revision of the ELV Directive – '*in our view, a coordinated and agreed least common denominator is important for the future strategy and implementation of the same*'.[293]

5.105 At interview, [Opel/GME Employee A], who attended the ACEA WG-RG meeting of 25 February 2010, told the CMA that he did not recall the discussion. He understood the meeting minutes to mean that the ELV Charta was not approved but remained as a paper that could be used, but was not binding: '*it's a good guideline but it's not engraved in stone. It had been weakened a little bit from a strong recommendation to a voluntary paper to use*'.[294] Neither [Mercedes-Benz Employee A] nor [Employee], who also attended the ACEA WG-RG meeting of 25 February 2010, recalled the discussion in detail, but both were under the impression that the ELV Charta continued to exist after this time.[295]

5.106 [Opel/GME Employee E], who did not attend the meeting of 25 February 2010 but was updated afterwards by [Opel/GME Employee A],[296] told the CMA that he had been surprised that the ELV Charta was not approved by the ACEA WG-RG given that nobody had raised concerns when it was discussed at VM workshop meetings. He thought that the ELV Charta would have been a 'stronger instrument' with ACEA branding, but otherwise it did not make a practical difference not to have ACEA approval given that he did not view the Charta as binding.[297]

5.107 The CMA finds that the reaffirmation of the ELV Charta in 2010 reflects a continuing commitment by the Parties to the common understanding not to compete through advertising statements in relation to the NCI Information. Further, the CMA finds that despite the recognition of 'antitrust considerations' at the ACEA

[291] SIR-000000273, page 6.
[292] SIR-000002377, page 4.
[293] SIR-000033617, SIR-000033617_CT.
[294] SIR-000040913, pages 335–338
[295] SIR-000040896, page 204, pages 235–240. SIR-000039937, pages 151–153 and 158.
[296] SIR-000033617, SIR-000033617_CT.
[297] SIR-000039939, pages 200–202.

WG-RG meeting of 25 February 2010, the ELV Charta and the common understanding continued to have the support of the Parties after this date, as evidenced by the additional events relating to the ELV Charta and the common understanding described further below.

Internal JLR emails – May-June 2010

5.108 On 20 May 2010, [JLR Employee A] sent an email to various JLR recipients in which he shared details of an SMMT and Department for Environment, Food and Rural Affairs ('**Defra**') workstream concerning environmental advertising guidelines. This included draft guidance on best practice for making environmental claims in advertising to consumers. In his email, [JLR Employee A] stated that the material enclosed did not supersede the agreement in the auto industry involving '*total vehicle recyclability & RRR*', and noted that '*ACEA,* [✂] *&* [✂] *agree that this should remain a non competitive topic*'.[298]

5.109 On 11 June 2010, [JLR Employee A] sent a further email to various JLR recipients regarding the work being done on establishing formal guidance on environmental claims. In this email, [JLR Employee A] stated that he wanted to remind the recipients of the existing industry agreements between ACEA, [✂] and [✂] concerning 'Recycling legislations', which were deemed to be non-competitive:

> '*no claims concerning vehicle recyclability or reuse above the statutory target levels of 85% or recycling/reuse & 95% of recovery will be made. For RRR the reclability* [sic] *calculation will only show compliance with and be adjusted to show 85% recyclability compliance.*
>
> *Breech* [sic] *of this agreement will result in company censure by ACEA JC*'.[299, 300]

5.110 At interview, [JLR Employee A] explained that his reference to 'company censure' meant that the technical managers from VM members of ACEA would have '*an intense discussion about the advisability or not of making certain claims*'.[301] He considered that this position was justified because the recyclability and recoverability calculations were purely theoretical. He referred back to an explanation he had given earlier in the interview, in which he had explained that some materials or components would never be recycled even though it was technically possible, because recycling would not be profitable or environmentally beneficial. In view of this, he considered that VMs should limit themselves to confirming that their Vehicles met the 85% and 95% legal requirements, and that

[298] SIR-000026166.
[299] SIR-000026172.
[300] [JLR Employee A] explained to the CMA that 'JC' referred to the ACEA joint committee, the body of technical directors from the VMs who were members of ACEA, and that this body managed ACEA at board level (SIR-000040897, pages 119 and 96-97).
[301] SIR-000040897, page 119.

advertising rates above these requirements risked greenwashing (because what was theoretically possible would not happen in practice).[302]

5.111 The CMA finds that these emails evidence (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information and (ii) JLR taking steps to ensure that its advertising complied with the common understanding in order to avoid consequences from the ACEA Joint Committee.

JLR sustainability report – October 2010

5.112 On 12 October 2010, [JLR Employee A] sent an email to [Employee] ([✂])[303] providing comments on a draft JLR Sustainability Report. The draft report describes JLR's Vehicles as 85% recyclable and 95% recoverable, and states that '*we will be improving this further*'.[304] In his email, [JLR Employee A] instructed [Employee] ([✂]) to delete the phrase '*and we will be improving this further*' on the basis that all VMs had deemed recycling to be non-competitive. In this email, [JLR Employee A] stated that '*we will not ever use any statement that infers greater achievement than 85/95% per legislation*'.[305]

5.113 When asked in interview about this email, [JLR Employee A] explained that he considered that there were technical limitations on the figures that meant that JLR could not improve on them, other than by lying. He had therefore been instructing the recipients '*don't tell lies, use the legal requirement*'.[306]

5.114 The CMA finds that this email exchange evidences JLR taking steps to ensure that its external communications complied with the common understanding not to compete through advertising statements in relation to the NCI Information.

Internal Opel/GME/General Motors email – January 2011

5.115 On 28 January 2011, [GM Employee G] forwarded some legal advice to [Opel/GME Employee H] and [Opel/GME Employee I] regarding claims made about recyclability. In response, [Opel/GME Employee I] stated that:

> '*as you know we don't make particular marketing claims about recycling since it's a non competitive issue in our understanding – all are able to claim the same!*'[307]

[302] SIR-000040897, pages 60-62 and 118.
[303] SIR-000040897, page 123.
[304] SIR-000037435, page 10.
[305] SIR-000026182.
[306] SIR-000040897, page 125.
[307] SIR-000033735.

5.116 The CMA finds that this email exchange evidences ongoing adherence by Opel/GME to the common understanding not to compete through advertising statements in relation to the NCI Information.

Ford/Nissan email exchange – January 2011

5.117 On 28 January 2011, [Ford Employee A] sent an email to [Nissan Employee B] regarding a claim in a press release that the Nissan Leaf was 99% recyclable. In this email, [Ford Employee A] noted that '*our industry has agreed on associations' level to never state recyclability numbers above 85% (recoverability 95%) to not motivate the legislator to further increase the legal requirements*'. He asked [Nissan Employee B] to communicate this agreement to Nissan's public affairs department or to let [Ford Employee A] know if Nissan had decided to stop following this approach.[308] In response, [Nissan Employee B] stated that the matter was subject to internal discussion at Nissan, and made assurances that until agreement was reached, future press releases would not refer to rates above the 85% and 95% minimum legal requirements.[309]

5.118 At interview, [Ford Employee A] described the Nissan Leaf promotional claims as an example of marketing departments engaging in greenwashing.[310] He had explained, earlier in the interview, his view that the minimum legal requirement for recyclability did not make sense because '*everything is recyclable, 100%* […] *it's just a matter of time and money to put in to separate the material composition down to a level where there is the technology available to recycle this level of material'*.[311] For this reason, he considered that publishing recyclability figures that exceeded the minimum legal requirement would mislead customers, would not deliver environmental benefits, and risked resulting in an increase of the legal requirements:[312]

> '*we believe that there is no competition possible as everything is recyclable to 100% and the standard does allow to declare that 99 or 100%. Therefore, if someone would start competing in that area, it would not be - you would not tell the truth* […] *that is not based on a change of the design of the vehicle, it's just declaring a different number*'.[313]

5.119 [Ford Employee A] further told the CMA that he had sent his email of 11 February 2011 because he suspected that the recycling experts at Nissan were not aware that such statements were being made.[314] While he considered the claim to be technically true (in light of his position that everything is recyclable in principle) he

[308] SIR-000026217.
[309] SIR-000026217.
[310] SIR-000040931, page 57–58.
[311] SIR-000040931, page 35.
[312] SIR-000040931, page 41.
[313] SIR-000040931, page 46.
[314] SIR-000040931, page 134–135.

noted that the claim might cause the legislator to increase the legal targets.[315] This was undesirable because it would increase the regulatory burden on VMs and risked giving the impression that increasing recyclability targets '*would change anything in the actual recycling on the environment*'.[316]

5.120 [Nissan Employee B] told the CMA that he did not believe that there was an agreement not to publicise recyclability rates exceeding 85% or recoverability rates exceeding 95%, but rather that '*there was an agreement that it would be better if it didn't happen*'.[317] In particular, he thought that [Ford Employee A] had raised a concern in his email of 28 January 2011 (see paragraph 5.117) because ACEA members would be frustrated that, having spent time negotiating with the European Commission to agree the 85% minimum legal requirement for recyclability, another VM had announced that a much higher rate was possible.[318]

5.121 [Nissan Employee B] further told the CMA that, while he could not recall precisely, he thought that he had contacted the Nissan Europe communications team about the 99% recyclability claim after being alerted to it by [Ford Employee A]. The team had advised him that the 99% figure had been produced by Nissan headquarters in Japan, based on the Japanese legal definition of recyclability.[319] Following this exchange, the Nissan Europe communications team had decided not to refer to the 99% figure until it received clarification from Nissan headquarters in Japan (in light of concerns that it could not justify the claim under the European definition of recyclability). It was later agreed that Nissan Europe would amend the advertising in Europe to give a more general 'positive statement' rather than making a specific claim on recyclability.[320]

5.122 The CMA finds that the evidence demonstrates Nissan agreeing to withdraw advertising communications regarding the recyclability of the Nissan Leaf, in response to concerns raised by Ford. While there is evidence to suggest that there was a concern about the accuracy of the 99% recyclability figure under the European legal definition of recyclability, the CMA notes that the email exchange described above did not raise this concern but rather referred to the common understanding not to communicate recyclability and recoverability levels that exceeded the minimum legal requirements. Accordingly, the CMA finds that this event evidences the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information.

---

[315] SIR-000040931, page 137.
[316] SIR-000040931, page 140.
[317] SIR-000039938, page 89.
[318] SIR-000039938, page 90.
[319] The CMA understands that the definition of 'recyclability' in Japan includes thermal recovery, whereas under the ELV Directive, thermal recovery is included under 'recoverability'.
[320] SIR-000039938, pages 90-96.

Internal JLR email exchange – February 2011

5.123 On 7 February 2011, [JLR Employee A] sent an email to [JLR Employee C] regarding amendments to a draft JLR brochure. In this email, [JLR Employee A] described an extract containing Vehicle recyclability, recoverability and reusability figures as 'not straightforward' and noted that this topic was regarded as non-competitive by the auto industry at the ACEA, [✂] and [✂] level. In this context, he suggested replacing the proposed extract with verbatim text from the ELV Directive.[321]

5.124 When asked in interview about the exchange, [JLR Employee A] confirmed that he had been referring to the 'ACEA position' that VMs would not publicise recyclability or recoverability figures that exceeded the 85% and 95% legal requirements.[322]

5.125 The CMA finds that this email is consistent with (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) JLR continuing to adhere to the common understanding.

SMMT/JLR email exchange – February 2011

5.126 On 24 February 2011, [SMMT Employee C] and [JLR Employee A] exchanged emails regarding an SMMT member's query as to whether a particular material would be classed as recyclable for the purpose of calculating recyclability. As part of this email exchange, [JLR Employee A] explained that:

> '*all autos have agreed to work the ISO* [recyclability] *calculation so that we show attainment of 85%, nope we don't show the 90+ that can be attained by say a Transit or Defender.*
>
> *The ELVD* [ELV Directive] *says prove the model is 85% and thats what we all do, it speaks to the agreement that recyclability is a non competitive hygiene requirement*'.[323]

5.127 When asked in interview about the exchange, [JLR Employee A] explained that he had been referring to the ACEA position not to compete on recyclability or recoverability.[324] In relation to the reference in his email to the Transit and Defender, he confirmed that certain commercial Vehicles could achieve a high recycling rate (earlier in the interview he had stated that the old Defender would be 95-96% recyclable because of its high metal content).[325]

---

[321] SIR-000026190, pages 1-2.
[322] SIR-000040897, page 133.
[323] SIR-000002386.
[324] SIR-000040897, page 135.
[325] SIR-000040897, pages 138 and 65.

5.128 [SMMT Employee C] told the CMA that she understood [JLR Employee A]'s email to mean that VMs should not publish recyclability rates above the minimum legal requirement of 85%.[326]

5.129 The CMA finds that this email exchange evidences (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) JLR's ongoing adherence to, and the SMMT's awareness of, the common understanding.

Internal JLR email exchange – March 2011

5.130 On 22 March 2011, [JLR Employee D] sent an email to various JLR employees stating that it was against business policy to quote any recyclability figures that exceeded the 85% minimum legal requirement.[327] [JLR Employee A] responded to the email on 23 March 2011 and explained that the restriction was not just company policy, but was also part of an industry agreement that recycling was non-competitive and that VMs would only declare the achievement of the minimum value required by law:

> '*bottom line JLR will only refer to the minimum legislative requirements the product has to achieve in any publicity where it may feel the need to do so as a matter of hygene* [sic]'.[328, 329]

5.131 When asked in interview about this email exchange, [JLR Employee A] confirmed that he had been referring to the 'ACEA position' on recyclability and recoverability that he had explained earlier in the interview.[330]

5.132 The CMA finds that this email exchange evidences (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) JLR promoting internal compliance with the common understanding by ensuring that its external communications did not include claims that its Vehicles exceeded the 85% recyclability requirement.

Internal JLR emails – April 2011 and August 2011

5.133 On 4 April 2011, [JLR Employee A] sent an email to [JLR Employee E] providing comments on a paper regarding ELV regulation. In his email, [JLR Employee A] stated:

---

[326] SIR-000035857, pages 79-84.
[327] SIR-000026198, page 2.
[328] SIR-000026198, page 1.
[329] [JLR Employee A] explained at interview that his use of the word '*hygiene*' in this context referred to '*not releasing materials into the environment that are damaging'*. He drew an analogy between releasing hazardous waste into the environment and releasing unproven advertising claims, both of which could result in '*things go*[ing] *wrong*' (Pages 134 and 139, SIR-000040897).
[330] SIR-000040897, page 151.

'*As you will appreciate in EU ALL manufacturers & importers have agreed recycling is a non competitive issue and as such has enabled reasonably bump free collaboration & common approach*'.[331]

5.134 On 1 August 2011, [Ford Employee A] sent an email to [JLR Employee A] regarding ELV regulation and raising concerns about the topic of recycling being made into 'a competitive issue'.[332] On 3 August 2011, [JLR Employee A] sent an email to 'colleagues'[333] regarding an audio conference, the purpose of which he described as exploring how to 'de militarise' the topic of ELV. In this email, [JLR Employee A] again referred to the collaboration within the automotive industry:

'*The auto industry bodies & their members all agree that ELV is & must be a non competitive area. We have many other things we can compete on, colour, power, luxury, toys etc*'.[334]

5.135 The CMA finds that these emails evidence (i) the ongoing existence of the common understanding not to compete through advertising statements in relation to the NCI Information, and (ii) JLR's ongoing awareness of and adherence to the common understanding. Further, the CMA finds that the exchange indicates that JLR considered that recycling was a potential parameter of competition amongst VMs.

Further exchanges regarding the Nissan Leaf – August-September 2011

5.136 In August and September 2011, certain VM Parties, ACEA and the SMMT had further exchanges about claims in Nissan promotional material that the Nissan Leaf was 99% recyclable:

(a) On 18 August 2011, [JLR Employee A] sent an email to [ACEA Employee B] and [SMMT Employee C], copied to certain VM Parties, noting that claims on Nissan's website that the Nissan Leaf was 99% recyclable broke '*all the auto industry agreements that recycling is non-competitive & declarations concerning attainment of RRR 85/95 requirements*'. [JLR Employee A] stated that he would '*leave it to you to make the appropriate political noises*'.[335] On 19 August 2011, [SMMT Employee C] forwarded this email to [BMW Employee C] and asked to discuss the best way of tackling it.[336]

(b) Also on 18 August 2011, [JLR Employee A] sent a further email to [Nissan Employee B], again noting the claims on Nissan's website and stating that '*other autos are aware*'. [Nissan Employee B] replied to [JLR Employee A] on

[331] SIR-000026199, page 1.
[332] SIR-000026212, page 2.
[333] SIR-000026212, page 1.
[334] SIR-000026212, page 1.
[335] SIR-000002388.
[336] SIR-000002388.

the same date to say that he had thought the issue had been resolved but would follow up again.[337] [JLR Employee A] responded to say that while he did not have a problem with Japanese companies using their own standards in their national territories, the EU had a different take which included the '*non competitive recycling agreement that we apply in Europe*'.[338]

(c) On 22 August 2011, [BMW Employee D] sent an email to various VM Parties, pointing them to the claims on Nissan's website that the Nissan Leaf was 99% recyclable.[339] [Ford Employee A] responded on the same day, sharing a message that he had received from [Nissan Employee B] to say that this was in the process of being corrected by Nissan's communications team.[340] Later that day, [JLR Employee A] forwarded this email exchange to [SMMT Employee C] and explained the background to the issue:

> '*ALL the ACEA member companies decided in the JC that recycling would be considered a non competitive issue*
>
> 1. *We would not escalate recyclability claims above the legal requirements of 85/95*
> 2. *That for RRR type approval we would stop calculation at 85.1% demonstrating compliance no more.* […]
>
> [SMMT Employee D] *was party to this and understood the rules.*
>
> *You may be aware that ACEA engages with* [✂], [✂] *&* [✂][341] *twice a year to share status and policy, this non competitive agreement was agreed by all parties as the best way forward on the issue of recycling. Reconfirmed by an ACEA /* [✂] *meeting in* [✂] *earlier this year.*
>
> *So along comes Nissan UK and breaks the agreement !!*'[342]

(d) On 19 September 2011, [JLR Employee A] forwarded his email of 18 August 2011 to [ACEA Employee B], [Volkswagen Employee B] and [Ford Employee A] and stated that the Nissan advertisement had not been removed or modified. [JLR Employee A] described this as '*clearly a flagrant breach of position agreed by auto industry vis non competitive, RRR reporting etc possibly a breach of ASA* [Advertising Standards Agency] *rules as well*'. He suggested that '*we either rescind the position held for @10 years or officially*

[337] SIR-000026214.
[338] SIR-000026214.
[339] SIR-000002391.
[340] SIR-000002391.
[341] [✂].
[342] SIR-000002391.

ask Nissan to abide by the above' and that they discuss the issue in 'RGT' (the ACEA WG-RG).[343, 344]

(e) On 20 September 2011, [ACEA Employee B] responded to [JLR Employee A] to suggest discussing the issue that Friday (23 September 2011), '*because in my point of view it's one part of our strategy 2015*'.[345] [JLR Employee A] responded that he would dial into the meeting on Friday but was unable to attend in person '*due to the last minute notification*'.[346]

5.137 When asked in interview, [JLR Employee A] explained that he found the claim that the Nissan Leaf was 99% recyclable to be implausible.[347] He recalled that he had sent his email of 18 August 2011 (see paragraph 5.136(a)) because he viewed the claim of 99% recyclability as '*a direct problem that could lead straight back into* [the] *WG-RG*', and that his reference to making 'appropriate political noises' meant informing others in the ACEA WG-RG about the issue.[348]

5.138 [Nissan Employee B] told the CMA that his email exchange with [JLR Employee A] on 18 August 2011 (see paragraph 5.136(b)) had been a continuation of the concerns raised about the Nissan Leaf in January 2011. He thought that the issue might have re-arisen because the advertising materials coming from Nissan's headquarters in Japan had not been fully corrected following the concerns raised previously. He could not recall what action he had taken but thought that he would have contacted the Nissan Europe communications team again to point out that the recyclability claim was potentially misleading.[349]

5.139 The CMA finds that the evidence demonstrates that certain VM Parties, with the awareness and involvement of the SMMT and ACEA, engaged with and put pressure on Nissan to withdraw advertising communications regarding the recyclability of the Nissan Leaf. While there is evidence to suggest that there was a concern about the accuracy of the 99% recyclability figure (specifically whether this related to the Japanese definition of recyclability, as outlined at paragraph 5.121), the CMA notes that the majority of the communications described above emphasise the point that the claim of 99% recyclability breached the common understanding not to compete through advertising statements in relation to the NCI Information, rather than raising concerns that the figure itself was incorrect. Accordingly, the CMA finds that these communications evidence (i) the continued existence of the common understanding, and (ii) ongoing monitoring and adherence to the common understanding.

---

[343] SIR-000026221, pages 1-2.
[344] At interview, [JLR Employee A] explained that RGT, standing for 'recycling group thematic', was another name for the ACEA WG-RG - SIR-000040897, page 175.
[345] SIR-000026221.
[346] SIR-000026221.
[347] SIR-000040897, page 157.
[348] SIR-000040897, pages 159-160.
[349] SIR-000039938, pages 102-105.

ACEA WG-RG discussion – September 2011

5.140 As set out in paragraph 5.136(e) above, on 20 September 2011 [ACEA Employee B] sent an email to [JLR Employee A] in which he suggested that they discuss the issue of the Nissan advertisement on the following Friday (23 September 2011).

5.141 On Thursday, 22 September 2011, certain VMs, ACEA and the SMMT attended an ACEA WG-RG meeting. The meeting minutes do not refer to any discussion relating to the common understanding not to compete through advertising statements in relation to the NCI Information.[350]

5.142 The CMA infers that an additional ACEA WG-RG meeting took place on 23 September 2011:

(a) On 18 August 2011, [ACEA Employee B] sent an email invitation to certain VMs for an 'additional' ACEA WG-RG meeting on 23 September 2011.[351] According to the invitation, the subject of the meeting was '*ELV strategy 2015 + Resource efficiency and recycling*'.[352]

(b) [JLR Employee A] responded to [ACEA Employee B]'s email invitation to confirm that he could attend by telephone.[353] [Ford Employee A] and [Ford Employee B] both had calendar entries for the meeting of 23 September 2011.[354]

(c) As set out below, [JLR Employee A] subsequently sent an email to various JLR colleagues in which he summarised a discussion that had taken place at an ACEA WG-RG meeting regarding the understanding between ACEA, [✂] and [✂] of recycling as a non-competitive activity. There is no reference to this discussion in the minutes of the ACEA WG-RG meeting of 22 September 2011.

5.143 However, the CMA has not identified any minutes for an ACEA WG-RG meeting of Friday, 23 September 2011.

5.144 On 26 September 2011, [JLR Employee A] sent an email to various individuals at JLR. In this email, he stated that the understanding between ACEA, [✂] and [✂] of recycling as a 'non-competitive activity' had been 're-addressed' at an ACEA WG-RG meeting during the previous week. According to [JLR Employee A], the reason for this discussion was that one VM had made claims seen as '*highly competitive in nature*' by all other VMs.

---

[350] SIR-000020465.
[351] SIR-000040539.
[352] SIR-000040540.
[353] SIR-000040557.
[354] SIR-000040543 and SIR-000040854.

5.145 In his email, [JLR Employee A] summarised the discussion at the ACEA WG-RG meeting as follows:

> '*We affirmed that the 2015 recycling targets of 85% Reuse/Recycling & 95% Reuse/Recovery are the maximums we will declare in customer literature and for type approval, ie we will only show compliance with legislation.*
>
> *We further came to the understanding that for recycled content use we would be free to declare material where the definitions of WFD* [Waste Framework Directive] *& ISO* [International Organisation for Standardisation] *standards are met for metal, non metal etc but would avoid reference to any % or mass data that could be used to set legislative recycled content quota targets on the auto industry.* […] *Please consider the above in relation to any public / customer facing literature we may develop.*'[355, 356]

5.146 At interview, [JLR Employee A] explained that the reference in his email to a VM making 'highly competitive' claims was likely to have related to Nissan's advertising of the Nissan Leaf as being 99% recyclable. In this context, the purpose of his email was to tell colleagues that despite the recent issue with Nissan, the 'ACEA position' of ELV and recycling matters being non-competitive had not changed. He explained that the reason for avoiding advertising the percentage or mass of recycled content was to avoid giving legislators any information that might lead them to set legal requirements on the proportion or mass of recycled content in Vehicles.[357]

5.147 The CMA finds that the discussion described in [JLR Employee A]'s email of 26 September 2011 took place either at the ACEA WG-RG meeting of 22 September 2011 or (more likely) at an additional meeting of 23 September 2011 attended by at least [JLR Employee A] and certain other members of the ACEA WG-RG. The CMA finds that at this meeting, the attendees confirmed their ongoing adherence to the common understanding not to compete through advertising statements in relation to the NCI Information, both in respect of recyclability and the percentage or mass of recycled material used in Vehicle manufacture. Accordingly, the CMA finds that these events evidence the continued existence of the common understanding.

---

[355] SIR-000026222.
[356] The CMA considers that although [JLR Employee A]'s email of 26 September 2011 refers to recycling and recovery, it is more likely than not that this is an error and that the discussion actually related to recyclability and recoverability. This is because there is no requirement to declare recycling and recovery rates for type approval purposes. Additionally, the 2015 recycling and recovery legal requirements of 85% and 95% respectively correspond to the legal requirements for recyclability and recoverability under the RRR Directive. Finally, the discussions about Nissan's advertising of the Nissan Leaf related to claims about the recyclability of that Vehicle, rather than to claims about recycling.
[357] SIR-000040897, pages 178–184.

Internal Opel/Vauxhall email exchange – August 2012

5.148 On 21 and 22 August 2012, [Opel/GME Employee D] [358] (Opel/GME) and [Vauxhall Employee A] exchanged emails regarding a proposed Vauxhall public sustainability report. In response to [Vauxhall Employee A]'s request for recycling and re-use percentages to include in the report, [Opel/GME Employee D] stated that the company's central ELV policy was only to report that Vehicles met the minimum legal requirements of 85% recyclability and 95% recoverability, and to refrain from publishing data that exceeded the minimum legal requirement:

> '*Agreed GM* [General Motors][359] *position* […] *is that we don't get into a competition run as this will only lead to someone finally reporting more than 100%. The only way to avoid competition, is to stick to the legal requirements.*'[360]

5.149 At interview, [Opel/GME Employee D] explained that she was responsible for the Opel/GME relationship with Vauxhall in the UK between 2008 and 2018,[361] and that this role included setting '*a certain strategic background to* […] *publish or not publish certain information*'.[362] She confirmed that the position of not reporting recyclability figures above the minimum legal requirements was an agreed position within ACEA, [✂] and [✂], although there was no mechanism to enforce the agreement. She explained that there was a fear that if VMs competed on recycling performance, this would result in exaggerated claims (with someone eventually reporting recycling 'more than 100%' of a car), and that this could lead to accusations that the industry was not taking its responsibilities seriously. The purpose of keeping to the minimum legal requirements was to avoid competition, given that recycling performance and recyclability did not appear to be important to customers.[363]

5.150 The CMA finds that this email, taken together with [Opel/GME Employee D]'s account, evidences Opel instructing Vauxhall (its UK subsidiary) not to publicise recyclability or recoverability statistics that exceeded the minimum legal requirements, in compliance with the common understanding not to compete through advertising statements in relation to the NCI Information.

---

[358] [✂].
[359] Given the roles and formal employment of the individuals involved, as well as the fact that this exchange relates to ELV policy in the EU and UK, the CMA finds that the reference to 'GM' in this context should be understood as relating to GME and/or Opel (see footnote 154).
[360] SIR-000031791, pages 2-3.
[361] SIR-000040977, pages 12-15.
[362] SIR-000040977, page 144.
[363] SIR-000040977, page 154-157.

ACEA/JLR email exchange – October 2012

5.151 In October and November 2012, individuals at JLR, [✂], VW and ACEA exchanged emails regarding a claim in a brochure for the new [✂] that the Vehicle was 'around 95% recyclable':

(a) On 30 October 2012, [JLR Employee A] sent an email to [Employee] and [ACEA Employee B], pointing out the claim and suggesting that it was a typographical error.[364]

(b) Later on the same day, [ACEA Employee B] replied to [JLR Employee A]'s email, copying in [Volkswagen Employee B],[365] and asked [Employee] to change the wording.[366]

(c) On 5 November 2012, [Volkswagen Employee B] responded to confirm that the claim was a translation error and would be changed as soon as possible.[367]

(d) Later on 5 November 2012, [JLR Employee A] forwarded the email exchange to various internal JLR recipients. In this email, he explained that the 95% claim in the [✂] brochure was a 'silly accident' and noted that he was confident the figure would not appear again.[368]

5.152 When asked in interview about this email exchange, [JLR Employee A] explained that JLR had come across the claim in the [✂] brochure when reviewing competitor models to JLR sports Vehicles. He attributed the issue to '*sales and marketing doing some funny things*'. [JLR Employee A] explained he had included [ACEA Employee B] in his email to [✂] as he had thought it was a problem that might be discussed in an ACEA WG-RG meeting.[369]

5.153 The CMA finds that this email exchange evidences JLR (with the support of ACEA) raising a concern about [✂]'s external communications regarding recyclability, [✂] confirming that the communication in question would be amended.

5.154 While both JLR and VW appeared to suggest in their emails that the 95% recyclability figure in the [✂] brochure was an error, the CMA notes that there was no explanation in [JLR Employee A]'s initial email of why he thought that the figure was wrong. In the context of similar emails sent by [JLR Employee A] during this period, the CMA infers that [JLR Employee A] had concluded that the 95% was a typographical error because it was not consistent with the ACEA, [✂] and [✂]

---

[364] SIR-000026264.
[365] [✂]
[366] SIR-000026264.
[367] SIR-000026264.
[368] SIR-000026264.
[369] SIR-000040897, page 190.

position that VM Parties would not publicise recyclability figures above the legal requirement. Accordingly, the CMA finds that this email exchange is consistent with the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information.

Ford/JLR email exchange – November 2012

5.155 On 14 November 2012, [Ford Employee A] sent an email to [JLR Employee A] attaching the minutes of a meeting regarding draft ELV standards. [Ford Employee A] stated in his email that there had been *'*some strange proposals' at the meeting, including a suggestion of being able to declare higher 'RRR' (ie recyclability and recoverability) rates.[370] In a subsequent internal email, [JLR Employee A] described the proposal as 'a little concerning' because the higher RRR values created a potential competitive battle zone: '*just what we have spent years avoiding'*.[371]

5.156 When asked in interview about the exchange, [JLR Employee A] recalled that he had been concerned that the proposal might result in VMs quoting 'silly' recyclability and recoverability figures.[372]

5.157 The CMA finds that the reference in [JLR Employee A]'s email to having spent years avoiding a 'competitive battle zone', in the context of a proposal to allow VMs to declare higher recyclability and recoverability rates, relates to the common understanding not to compete through advertising statements in relation to the NCI Information. Accordingly, the CMA finds that this email exchange evidences the continued existence of the common understanding up to that point.

Ford presentation – March 2013

5.158 A training presentation by Ford on ELV recycling from March 2013 states that '*Recycling is a non-competitive item within the industry, therefore exceeding of legal requirements should not be a Ford target*'.[373]

5.159 When asked in interview about the presentation, [Ford Employee A] recalled that in general, Ford's internal environmental strategy was to exceed legal requirements if possible. However, with respect to recyclability and recoverability, Ford considered that it did not make sense to try to exceed the legal requirements, because it could have a more substantial environmental impact in other areas.[374]

[370] SIR-000026266.
[371] SIR-000026266.
[372] SIR-000040897, page 196.
[373] SIR-000009787, page 21.
[374] SIR-000040931, page 148.

5.160 The CMA notes that while [Ford Employee A]'s explanation focused on Ford's internal strategy as an explanation for not exceeding the legal requirements, the statement in the presentation justifies this position on the basis of recycling being a non-competitive item within the industry. On this basis, the CMA finds that the presentation demonstrates (i) the continued existence of the common understanding not to compete through advertising statements in relation to the NCI Information and (ii) Ford's internal adherence to the common understanding.

Circulation of the ELV Charta – October 2014

5.161 In October 2014, the ELV Charta was referenced in two email exchanges amongst certain VMs and ACEA:

(a) On 16 October 2014, [BMW Employee D] circulated a draft agenda for an ACEA OEM workshop, to be held in March 2015, to certain VMs and ACEA. The draft agenda included an item for '*review of ELV Charta from 2010 – rules among OEMs*'.[375] The CMA has not identified any evidence of this ACEA OEM workshop taking place.

(b) On the same day, [Opel Employee J] circulated the 2010 ELV Charta to certain VMs and ACEA, asking them to review it so that it could be discussed as necessary at a future ELV Country Audio meeting.[376]

5.162 The CMA has not identified any evidence of the recipients of these emails publicly distancing themselves from the positions set out in the 2010 ELV Charta. Accordingly, the CMA finds that these emails demonstrate that the ELV Charta, including the common understanding not to compete through advertising statements in relation to the NCI Information (as articulated in the ELV Charta), continued to have the support of ACEA and the VM Parties at this point.

Update to the ELV Charta – April to October 2016

5.163 On 21 April 2016, certain VM Parties attended an ACEA WG-RG-DU meeting. According to the minutes of the meeting, attendees agreed that the ELV Charta would be reviewed and a revised draft provided as a proposal for the group.[377] A note of the meeting taken by [Employee] described the ELV Charta as a starting point for analysing critical markets. The note goes on to state that the ELV Charta had probably never been approved by the ACEA WG-RG but that '*the today revision confirms it is still mostly valid, only some limited changes and updates are requested after six years*'.[378]

[375] SIR-000017845 and SIR-000017846.
[376] SIR-000026350.
[377] SIR-000002466.
[378] SIR-000034505, pages 46-47 and SIR-000039937.

5.164 On 4 July 2016, [Volkswagen Employee D] sent a draft copy of the ELV Charta 2016 to [ACEA Employee C] and asked him to distribute the draft to the ACEA WG-RG for approval or comment.[379] The only change to the 'non-competitive issue' provision of the draft compared with the 2010 ELV Charta was an additional bullet to '*promote achievements of the automotive industry*'.[380]

5.165 On 6 September 2016, certain VMs and ACEA attended an ACEA WG-RG meeting. According to the draft meeting minutes, members of the ACEA WG-RG were asked to review the updated ELV Charta and provide comments by 30 September 2016. If no feedback was received, the ELV Charta would be approved, transferred to an ACEA template and recirculated.[381]

5.166 On 3 October 2016, shortly after the 30 September 2016 deadline had passed for ACEA WG-RG members to comment on the ELV Charta, [ACEA Employee C] had an appointment in his Outlook calendar titled '*ELV Charta approval – see minutes WG-RG*'.[382] Additionally, a version of the 2016 ELV Charta in an ACEA template and with a subheading '*approved after WG-RG meeting 06/09/2016*' was saved to an ACEA SharePoint folder for an ACEA WG-RG-DU meeting of 4 September 2017.[383, 384] As set out in further detail at paragraph 5.173 below, the minutes of the meeting of 4 September 2017 indicate that a further discussion was held about the ELV Charta at that point.

5.167 At interview, [Employee] recalled that at the time of the ACEA WG-RG meeting of 6 September 2016, ACEA was using the ELV Charta as an internal record of its members' principles. He did not recall any input being given to the request for comments.[385] [Mercedes-Benz Employee A] told the CMA that she thought the position and underlying principles of the ELV Charta were still in place at the time of the 6 September 2016 ACEA WG-RG meeting.[386]

5.168 The CMA finds that the update to the ELV Charta in 2016 reflects a continuing commitment by at least certain VM Parties[387] and ACEA to the common understanding not to compete through advertising statements in relation to the NCI Information.

---

[379] SIR-000032654, SIR-000032654_CT, and SIR-000032655.
[380] SIR-000032655, page 6.
[381] SIR-000002642, page 13.
[382] SIR-000018528.
[383] SIR-000019147.
[384] This document contains a date field that is set to update automatically, so the actual date of the document is unknown.
[385] SIR-000039937, pages 164–165.
[386] SIR-000040896, pages 242–243.
[387] Those who attended the meetings of 21 April 2016 and/or 6 September 2016, and/or were involved in drafting the updated ELV Charta.

Internal JLR email exchange – February 2017

5.169 On 6 February 2017, [JLR Employee F] sent an email to [JLR Employee G] in which he outlined a meeting he had had with JLR colleagues regarding the opportunities associated with the use of plastics recycled from automotive waste. In his email, [JLR Employee F] stated:

> '*I took the opportunity to explain* […] *how great it can be for JLR to anticipate and get ahead of our competitors. Although* ***there's a gentleman's agreement not to publish information on recycled materials content across the industry****,* […] *there's an important incentive to anticipate any requirement which might come up in 5, 10 or 15 years*'[388] [emphasis added]

5.170 When asked in interview about the email exchange, [JLR Employee F] explained that he had thought that there were advantages in JLR increasing its use of recycled plastics so that it could meet the requirements of upcoming legislation and also potentially secure external funding. He considered that the reference in his email to a gentleman's agreement was 'probably wrong', because he did not think that the ELV Charta referred to recycled materials.[389]

5.171 The CMA considers that the reference in [JLR Employee F]'s email to a 'gentleman's agreement' is consistent with both the common understanding not to compete through advertising statements in relation to the NCI Information and the ELV Charta. Although [JLR Employee F] did not think that any gentleman's agreement covered recycled content, this is not consistent with his email of 6 February 2017. Additionally, he was mistaken in stating that the ELV Charta did not refer to recycled materials: the 2007, 2008, 2010 and 2016 versions of the ELV Charta all included a provision to avoid a competitive race in publishing technical data relating to the use of 'recyclates' (recycled materials).[390]

5.172 Accordingly, the CMA finds that this email demonstrates (i) the continued existence of the common understanding and (ii) JLR's internal awareness of and adherence to the common understanding.

Proposed update to the ELV Charta – September 2017

5.173 On 4 September 2017, certain VMs and ACEA attended a WG-RG-DA workshop.[391] According to the meeting minutes, attendees noted, in the context of a discussion of cost issues arising in certain countries, a '*necessity to extend the*

[388] SIR-000026421, page 4.
[389] SIR-000040979, pages 129–136.
[390] SIR-000002616, page 3; SIR-000031692, page 6; SIR-000000273, page 6 and SIR-000032655, page 6.
[391] According to the minutes of this meeting, attendees decided at this meeting to name the group 'downstream activities (DA)' and agreed that it would be a subgroup of and report to the ACEA WG-RG (SIR-000002625, page 2).

scope of ELV-Charta'.[392] On the same date, [ACEA Employee C] sent an email to undisclosed recipients containing the text of the ELV Charta 2010.[393]

5.174 At interview, [Ford Employee A], who attended the WG-RG-DA workshop of 4 September 2017, told the CMA that he thought that the reason that the meeting minutes referred to extending the scope of the ELV Charta at that time was to reflect changes in certain markets and regulations. However, he could not recall whether the ELV Charta was revised at that point.[394]

5.175 The CMA has not identified any evidence that there was an update to the ELV Charta at this time. However, the CMA finds that that the references to the ELV Charta in September 2017, including the proposal to extend its scope, indicate that the ELV Charta and the common understanding not to compete in relation to the NCI Information continued to have the support of ACEA and at least certain VM Parties at this point.

E Legal assessment – the NCI Infringement

5.176 On the basis of the evidence set out in section D above, and having regard to the legal principles set out in Chapter 4, the CMA finds that all Parties participated in a single continuous agreement and/or concerted practice (or, insofar as the Trade Association Parties are concerned, a decision) contrary to the Chapter I Prohibition, that the VM Parties would refrain from competing through advertising statements relating to (i) the recyclability or recoverability of Vehicles exceeding the minimum legal requirements, or (ii) (from 14 June 2007 onwards) the percentage or mass of recycled materials used in the manufacture of new Vehicles (previously defined as the *'NCI Infringement*').

E.I Agreement, concerted practice or decision

5.177 The CMA concludes that the common understanding of the VM Parties in relation to the matters covered by the NCI Infringement (see section D above) constituted an 'agreement' for the purposes of the Chapter I Prohibition. In the CMA's view, at the very least, there was coordination between the VM Parties regarding these matters (including via meetings at ACEA and the SMMT), which knowingly substituted practical cooperation between them for the risks of competition (and therefore a concerted practice).

5.178 Insofar as the Trade Association Parties' conduct relating to the matters covered by the NCI Infringement is concerned, the CMA finds that this constituted the

[392] SIR-000002625, page 7.
[393] SIR-000019146.
[394] SIR-000040931, pages 191–192.

faithful reflection of the associations' resolve to coordinate the conduct of their members and therefore a 'decision' for the purposes of the Chapter I Prohibition.

5.179 Specifically, as regards ACEA's role in the NCI Infringement, the CMA finds that:

(a) the common understanding regarding the matters covered by the NCI Infringement was reached in part during ACEA meetings;[395]

(b) ACEA promoted a position paper aimed at coordinating the VM Parties' implementation of Article 9(2) of the ELV Directive;[396]

(c) ACEA was actively involved in encouraging the VM Parties to adhere to the NCI Infringement;[397] and

(d) the ELV Charta was acknowledged and discussed at ACEA meetings.[398]

5.180 As regards the SMMT's role in the NCI Infringement, the CMA finds that:

(a) the SMMT attended meetings relating to matters covered by the NCI Infringement and was copied into relevant emails; and

(b) the SMMT took certain actions to promote the NCI Infringement.[399]

E.II 'By object' restriction

5.181 The CMA finds that the NCI Infringement was an advertising restriction, which was, by its very nature, injurious to the proper functioning of normal competition. It had as its 'object' the prevention, restriction or distortion of competition between the VM Parties through limiting advertising statements relating to (i) the recyclability and recoverability of Vehicles **in excess of the minimum legal requirements**, and (ii) (from 14 June 2007 onwards) the percentage or mass of recycled materials used in the manufacture of new Vehicles.

5.182 This conclusion is based on an assessment of the *Cartes Bancaires* criteria, in particular, the terms of the coordination, the economic and legal context of which it formed a part, its objectives and the Parties' subjective intent. It is also supported by case law relating to advertising restrictions specifically that such agreements have the potential to restrict competition, in this instance by potentially reducing competitive pressure on the VM Parties which may have lowered incentives to invest and innovate to exceed the legal targets relating to recyclability and

[395] See paragraphs 5.8–5.13 and 5.18(c) above.
[396] See paragraphs 5.14–5.17 above.
[397] See paragraphs 5.22–5.23, 5.82, 5.136–5.147, and 5.151–5.154 above.
[398] See paragraph 5.58, 5.103–5.107, and 5.163–5.168 above.
[399] See paragraphs 5.16 and 5.89–5.92 above.

recoverability and/or for more recycled material to be used in their manufacturing.[400, 401, 402]

Content of the NCI Infringement

5.183 The content of the NCI Infringement was that the VM Parties would not advertise, and therefore not compete through advertising statements with regard to (i) the recyclability and recoverability of Vehicles in excess of the minimum legal requirements, and (ii) (from 14 June 2007 onwards) the percentage or mass of recycled materials used in the manufacture of new Vehicles.

5.184 In the CMA's view, the matters covered by the NCI Infringement were at least potential parameters of competition, which the agreement had the potential to restrict. While the CMA recognises that these matters may not have been key parameters for many customers, the CMA finds that there was at least potential interest in these features. This is supported by the evidence set out in paragraphs 5.30, 5.38, 5.41, 5.44, 5.94 and 5.135 above, which indicates that the Parties themselves thought that there was at least potential consumer interest in this area and that the matters covered by the NCI Infringement were a potential parameter of competition amongst VMs. The restriction on making advertising statements also had the potential to delay the relevant features affected by the NCI Infringement from becoming more important parameters of competition.[403]

Legal and economic context

5.185 As regards the legal and economic context, the ELV Directive imposed certain (minimum) environmental/recycling-related requirements which VMs had to comply with.[404] However, VMs were free to go beyond those minimum requirements and to advertise and publicly compete in relation to these factors. In this respect, the ELV Directive imposed a requirement to publish information on the recoverability and recyclability of vehicles, as part of a wider intention that consumers would be adequately informed in order to adjust their behaviour and attitudes.[405]

5.186 In the CMA's view, the NCI Infringement was capable, by its very nature, of preventing consumers from differentiating between the VM Parties' Vehicles on the basis of recyclability/recoverability and the percentage or mass of recycled materials. Some consumers' purchasing decisions may have been influenced by

---

[400] See for a summary of the relevant law on 'by object' restrictions (including the '*Cartes Bancaires'* criteria) paragraphs 4.12–4.26 above.
[401] See also the CMA's Horizontal Guidance, paragraphs 8.86–8.87.
[402] As set out in paragraph 5.196, since the CMA has concluded that the NCI Infringement constitutes a 'by object infringement', it has not carried out an effects analysis.
[403] As set out in paragraph 5.196, since the CMA has concluded that the NCI Infringement constitutes a 'by object infringement', it has not carried out an effects analysis.
[404] See paragraph 1.3(a) and (b) above.
[405] Recital 27 of the ELV Directive.

the recyclability/recoverability of a Vehicle and the percentage or mass of recycled materials in a Vehicle if they had had the relevant information. As such, in the CMA's view, the NCI Infringement had at least the potential to restrict a potential parameter of competition. As set out above, it also had the potential to delay the relevant features affected by the NCI Infringement from becoming more important parameters of competition, thereby distorting competition.

5.187 Given an increasing environmental awareness, the relative importance of environmental considerations in consumer purchasing decisions may have increased during the course of the NCI Infringement. Although the CMA has not investigated this specific point, in the CMA's view, throughout this period, at least some consumers may have paid greater attention to recyclability/recoverability and the percentage or mass of recycled materials when choosing which car to purchase, if they had had greater knowledge of these factors.

5.188 In the CMA's view, the NCI Infringement also had the potential to reduce competitive pressure on the VM Parties, which may have lowered incentives for the VM Parties to invest and innovate in this area with a view to exceeding the legal targets relating to recyclability and recoverability and/or for more recycled material to be used in their manufacturing, something which may have been in the wider public interest. The CMA acknowledges that certain VM Parties adduced some evidence of innovation and investment in relation to recyclability and recoverability (including on exceeding the applicable minimum legal requirements) and the use of more recycled materials in the manufacture of Vehicles during the NCI Infringement Period. However, the CMA has not found it necessary to assess this evidence given that (as set out at paragraph 5.196 below), no assessment of the actual or potential effects of the NCI Infringement is required for the purpose of the CMA's findings.[406]

5.189 The Parties to the NCI Infringement include the main VMs with activities in the UK, who should have been free to make advertising statements – and so compete without restriction – about their achievements in exceeding the requirements set out in the ELV Directive. As it is, the evidence shows that some of them did exceed the requirements of the ELV Directive (see for example paragraph 5.22, 5.42, 5.79, 5.93 and 5.126), but in the CMA's view, the NCI Infringement had the object of preventing them from publicly advertising this fact, thus depriving consumers of the opportunity to take it into account when making a purchasing decision.

[406] As set out in paragraph 5.196, since the CMA has concluded that the NCI Infringement constitutes a 'by object infringement', it has not carried out an effects analysis.

Objective and subjective intent

5.190 The CMA concludes that the objective aim of the NCI Infringement was to restrict advertising statements relating to (i) the recyclability and recoverability of Vehicles in excess of the minimum legal requirements and (ii) (from 14 June 2007 onwards) the percentage or mass of recycled materials used in the manufacture of new Vehicles, in each case with the object of thereby restricting or eliminating competition between the VM Parties based on those characteristics of the Vehicles manufactured by them.

5.191 The CMA concludes that the NCI Infringement, in its legal and economic context, had 'the potential to have a negative impact on competition'.[407]

5.192 Even if consumers may not have attached the same importance to relevant recycling considerations at the time the NCI Infringement was originally put in place as they may do today, the CMA's view is that they at least had the potential to do so. The reference in the ELV Charta to 'avoid[ing] a competitive race' and other evidence shows that the Parties regarded the matters in question as having at least the potential to be relevant parameters of competition.[408]

5.193 Even if the Parties had acted without a subjective intent to prevent, restrict or distort competition and/or pursued certain other objectives, this would not prevent the finding of a 'by object' infringement.[409]

Relevant case law and guidance

5.194 The relevant case law supports the CMA's conclusion that the NCI Infringement constituted a 'by object' infringement. As set out in paragraphs 4.21 to 4.22 above, the negative effects of advertising restrictions on competition were discussed and confirmed by the General Court in *EPI*[410] and a number of Commission decisions, including the Commission's recent *Car Emissions* case. In that case, the Commission found that an agreement by car manufacturers to coordinate certain product characteristics in the area of car emission cleaning technology was liable

[407] As set out in paragraph 4.14 above, this is the relevant question in this context.
[408] For example, there is evidence of Renault making advertising claims on both recyclability and use of recycled materials from 2005 onwards (see paragraphs 5.31 and 5.45, although it appears to have agreed to remove claims about recyclability when challenged by other VMs (see paragraph 5.45). There are also examples of Nissan making advertising claims about the recyclability of the Nissan Leaf in 2011 (although we understand that VMs objected to these claims at least partly on the basis that the recyclability figure advertised by Nissan was incorrect under the European definition of recyclability) (see paragraphs 5.117–5.139).
[409] See paragraphs 4.25–4.26 above.
[410] Case T-144/99, *Institute of Professional Representatives before the European Patent Office v Commission* EU:T:2001:105.

to restrict competition regarding the relevant product characteristics and to limit customer choice, and thus amounted to a 'by object' restriction of competition.[411]

5.195 Although in this case there is no finding that the NCI Infringement amounted to a restriction of competition on Vehicle product characteristics, as was the case in *Car Emissions*, the CMA finds that the advertising restriction on (i) the recyclability or recoverability of Vehicles in excess of the minimum legal requirements and/or (ii) the percentage or mass of recycled materials used in the manufacture of new Vehicles potentially limited consumer choice.[412]

Conclusion on 'by object' restriction

5.196 Based on an assessment of the above factors in the round, the CMA concludes that the NCI Infringement can be regarded, by its very nature, as being injurious to the proper functioning of normal competition and therefore constitutes a 'by object' restriction. On this basis, no assessment of its actual or potential effects is required.

E.III Single and continuous infringement

5.197 The CMA finds that the NCI Infringement is made up of a number of individual agreements, which collectively amount to a single and continuous infringement of the Chapter I Prohibition. For the reasons set out in paragraphs 5.203 to 5.210 below, the CMA has found that this single and continuous infringement covered the period from 29 May 2002 to 4 September 2017.

5.198 The CMA's conclusion that the various expressions of a common understanding regarding the matters covered by the NCI Infringement during the course of the NCI Infringement Period reflected and gave rise to a single and continuous infringement of the Chapter I Prohibition is based on the following factors:

(a) They form a **pattern of conduct that is interlinked in terms of pursuing a common anti-competitive objective**, namely to restrict advertising statements, and therefore to restrict or eliminate competition between the VM Parties based on the recyclability and recoverability of Vehicles in excess of the minimum legal requirements, and the percentage or mass of recycled materials in the manufacture of new Vehicles. Throughout the NCI Infringement Period, this common objective was reflected in the internal documents of certain VM Parties as well as in email communications,

[411] See Commission Decision of 08/07/2021 - AT.40178 - *Car Emissions*, paragraphs 95–141, which considered, inter alia, an agreement between VMs on diesel technology, and highlighted that the competition rules also protect the structure of the market and competition as such (see paragraph 119) and that the agreement reduced uncertainty of the VMs' future conduct on the market (see paragraph 125). In its press release, the European Commission noted that the parties to that case restricted competition on '*product characteristics relevant for the customers*'. Its decision states that the effectiveness of 'exhaust gas cleaning' systems is a relevant parameter of competition (see paragraph 138).
[412] See also Horizontal Guidance, paragraphs 8.86–8.87 and the CMA's Green Agreements Guidance, paragraph 4.6.

circulated documents and the meeting minutes of certain VM Parties, the SMMT and/or ACEA.

(b) The conduct involved, over time, the same Parties, albeit that some of the evidence and events only relate to certain Parties and not others.

(c) Although there are certain temporal gaps between contacts in the evidence, in the CMA's view, the nature of the NCI Infringement was such that such gaps were to be expected, as, once agreed, there was no need to renew or reaffirm the arrangement at regular or indeed frequent intervals. Therefore, the CMA concludes that any temporal gaps throughout the NCI Infringement Period do not suggest an interruption of the suspected single and continuous infringement, the core content of which remained largely the same throughout the NCI Infringement Period (albeit that the NCI Infringement did not originally cover advertising statements on the percentage or mass of recycled materials, which were added later on).

(d) In the CMA's view, there was also an **overarching agreement** that the Parties would pursue their common position in relation to the issues covered by the NCI Infringement, which did not have a defined end date. This common understanding, which was eg recorded in **the ELV Charta from 2007**, was regularly discussed and affirmed at industry association meetings (ACEA and the SMMT) and united the various individual instances of 'agreements' over time.

(e) The CMA concludes that **each of the Parties intended to contribute to the common objective** pursued by all the Parties through the NCI Infringement Period. An undertaking's intentional contribution to the common objectives pursued by all the participants can normally be inferred from its participation in at least one aspect of an infringement in respect of the period of its participation.

5.199 In the CMA's view, based on the evidence above, all Parties (apart from Renault) participated in all aspects of the single and continuous infringement relating to the NCI Infringement during their respective periods of participation by attending at least some of the relevant meetings and/or being involved in relevant correspondence without publicly distancing themselves from the relevant arrangements during the NCI Infringement Period.

5.200 Renault had publicly distanced itself, and was therefore specifically not party to one of the two aspects of the NCI Infringement, namely the agreement to refrain from advertising the percentage or mass of recycled materials in its new

Vehicles.[413] The CMA concludes that Renault did, however, participate in the remainder of the conduct that forms the basis of the NCI Infringement.

5.201 The CMA therefore finds that each of the Parties intended through its own conduct to contribute to the common objective pursued by all of the Parties. An undertaking's conduct does not need to be identical to that of the other participants for it to be a party to a single and continuous infringement.

5.202 The CMA concludes **that each Party was aware of the overarching understanding relating to, and objectives of, the NCI Infringement (as set out in the ELV Charta from 2007) and the offending conduct** (planned or put into effect) of the other Parties in pursuit of the same objectives, or each Party could reasonably have foreseen it and was prepared to take the risk that it would occur. This is evidenced, for example, by the fact that VM Parties challenged one another on a number of occasions as to advertising statements on recyclability and recoverability that might have contravened the agreed position, at both EU and UK level, at times with the involvement of ACEA and/or the SMMT.[414] The issue was also raised regularly at ACEA meetings attended by the Parties and included in meeting notes circulated to the Parties, suggesting that there was a continuing awareness and at least tacit approval of other Parties' conduct regarding, and agreement with, the NCI Infringement.

E.IV Duration

5.203 The CMA concludes that all Parties except JLR participated in the NCI Infringement from 29 May 2002, that the NCI Infringement was extended to advertising statements relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles from 14 June 2007, and that the NCI Infringement continued until 4 September 2017.

5.204 On 29 May 2002, during separate ACEA WG-RG and ACEA/[✂] meetings attended by all Parties apart from JLR, the Parties set out an 'agreed industry position' at EU level, that VM Parties should not compete on the information they were required to publish under Article 9(2) of the ELV Directive by making advertising statements suggesting that their individual recyclability or recoverability rates exceeded legal requirements.[415]

5.205 As set out in paragraph 5.10 above, the CMA has not identified any evidence that any of the Parties who attended either of the meetings on 29 May 2002 stated that they disagreed with this 'agreed industry position' during or after either of the meetings or otherwise sought to distance themselves from it.

---

[413] See paragraph 5.57.
[414] See paragraphs 5.45, 5.117, 5.136 and 5.151.
[415] See paragraphs 5.8 and 5.9.

5.206 Based on the evidence, the CMA concludes that JLR became involved in the NCI Infringement from 23 September 2008: in the CMA's view, JLR's attendance of the ACEA/[✂]/[✂] RRR meeting of that date, during which the common understanding not to compete through advertising statements in relation to the NCI Information was reiterated, indicates both JLR's awareness of, and intention to comply with, the NCI Infringement.[416]

5.207 As set out in paragraphs 5.14 to 5.175 above, there is evidence of the common understanding, ie agreement relating to the matters covered by the NCI Infringement being periodically reaffirmed between 29 May 2002 and 4 September 2017.

5.208 On 4 September 2017, certain Parties attended a WG-RG-DA workshop at which (according to the meeting minutes) they discussed extending the scope of the ELV Charta (see paragraph 5.173 above). As set out at paragraph 5.175 above, the CMA finds this indicates that at this point, the ELV Charta (including the common understanding, ie agreement relating to the matters covered by the NCI Infringement recorded in it) continued to have the support of the Parties who attended the meeting in question (or at least that these Parties had not publicly distanced themselves from it).

5.209 As regards the Parties who did not attend the meeting of 4 September 2017, the CMA has not found any evidence of them publicly distancing themselves from the NCI Infringement either at or before this point in time.

5.210 The CMA therefore concludes that the NCI Infringement continued as a single and continuous agreement for all Parties until 4 September 2017, with the conduct of individual Parties throughout this time period being attributed to the other Parties involved in the conduct.[417]

E.V Conclusion on the period of involvement in the NCI Infringement of each of the Parties

5.211 Based on the above, the CMA concludes that

(a) JLR participated in the NCI Infringement from 23 September 2008 to 4 September 2017; and

(b) all other Parties participated in the NCI Infringement throughout the NCI Infringement Period, namely from 29 May 2002 to 4 September 2017.

---

[416] See paragraphs 5.76 and 5.78.

[417] The CMA has not identified any specific evidence as to the specific date on which the NCI Infringement ended, but in the absence of any evidence of it continuing after 4 September 2017 or on any particular date thereafter, the CMA has not made an infringement finding for the time period after this date.

5.212 As set out in paragraphs 5.178 to 5.180 above, in the case of ACEA and the SMMT, in the CMA's view, the involvement consisted in a range of actions, including the attendance at, and the facilitation of, meetings where the NCI Infringement or issues relating to it were discussed; the encouragement of the VM Parties to adhere to the NCI Infringement, in ACEA's case, the promotion of a position paper aimed at coordinating the VM Parties' compliance with Article 9(2) of the ELV Directive as well as the involvement in other events like relevant email exchanges.

F Conduct giving rise to the CMA's findings – the ZTC Infringement

F.I Summary of findings of fact

5.213 On the basis of the documentary evidence, and contextualised by the witness evidence, the CMA finds that:

(a) From April 2004, certain VM Parties[418] had a common understanding that they would seek contracts with ATFs and/or ATF Intermediaries on a 'zero treatment cost' ('**ZTC**')[419] basis (that is, not involving a per-Vehicle fee for ELV Takeback) in all European countries (including the UK) in which the ELV Directive had been transposed in such a way as to allow VMs to negotiate contracts with ATFs and ATF Intermediaries.[420]

(b) ACEA, the SMMT, Nissan and Mitsubishi became party to the common understanding from February 2006. JLR became party to the common understanding from April 2016.

(c) Certain Parties referred to ZTC as an agreed industry approach. Certain VM Parties also challenged each other, sometimes with the involvement or knowledge of ACEA and/or the SMMT, in response to suggestions that a VM was paying, or was willing to pay, a per-Vehicle fee for ELV Takeback.

(d) As explained at paragraph 5.56 above, in June 2007 certain VM Parties recorded '*the existing common ACEA*-[✂]-[✂] *strategy*' in the ELV Charta. The ELV Charta does not explicitly refer to the common understanding to seek ZTC contracts for ELV Takeback, but does include an indirect reference to the common understanding in the form of a commitment to '*self-sustainable network solutions*'. As set out at paragraph 5.64 above, the

[418] Ford, BMW, Mercedes-Benz, Opel/Vauxhall, Peugeot Citroen, Renault, Toyota and VW.
[419] In documents from the earlier part of the period, references are to 'zero cost' rather than to 'zero treatment cost'. The CMA understands that this was a difference in terminology rather than in approach. For ease of reference, the CMA has adopted the terminology of 'zero treatment cost' and 'ZTC' throughout.
[420] A small number of countries adopted a 'funded' approach to ELV Takeback – for example the Netherlands' system, which involved a fee being charged with the sale of a new Vehicle and distributed to ATFs to cover the costs of recycling and recovery.

majority of VM Parties explicitly agreed to the ELV Charta (or at least did not publicly distance themselves from it).

(e) The ELV Charta was still being referenced in communications and meetings of the VM Parties and ACEA in September 2017. The provision for '*self-sustainable network solutions*' did not change during the updates to the ELV Charta made in 2008, 2010 or 2016.

(f) In the years following the creation of the ELV Charta, certain VM Parties (sometimes with the involvement or knowledge of ACEA and/or the SMMT) continued to discuss potential risks relating to the availability of ZTC contracts. This included concerns that agreeing to pay for ELV Takeback in one country would risk jeopardising the availability of ZTC contracts across the rest of Europe (including the UK), as well as discussions of whether it would still be possible to obtain or renew ZTC contracts after 2015 when the minimum legal requirements for recycling and recovery of ELVs were due to increase (such that the costs of recycling and recovering ELVs to the required standards were expected to rise).

(g) Between 2015 and 2017, a combination of circumstances created a perceived threat that it would not be possible for ATFs to meet the minimum legal requirements for recycling and recovery on a profitable basis under ZTC contracts. From November 2016 onwards, certain VM Parties in the UK, with the involvement of the SMMT, began discussing a common strategy to respond to requests for financial support from Autogreen. ACEA and its members also discussed the profitability of recycling in the UK and the risk to VM Parties' '*positive business ELVs principles*' in this context. The issue was ultimately resolved without any payments being made to Autogreen.

(h) In 2018, the SMMT and certain VM Parties discussed how to address certain ELV issues in the UK without setting a precedent of paying for individual ELVs.

(i) The common understanding to adopt a ZTC approach to ELV Takeback continued until May 2018, as evidenced by various events until this date.

F.II Background

5.214 The CMA finds that in 2002 and 2003, VM Parties were considering their approach to contracting with ATFs and/or ATF Intermediaries in Europe (including the UK) for the provision of ELV Takeback. The evidence shows that there was initially a divergence between VM Parties who were willing to pay ATFs and/or ATF Intermediaries and those who thought that it would be possible to obtain ZTC

contracts,[421] and that at least certain VM Parties saw benefits in adopting a common approach.[422]

F.III Initial common understanding

Ford email – April 2004

5.215 On 26 April 2004, [Ford Employee D] sent an email to various VM Parties in which he referred to being told at various meetings that Ford was willing to pay '*on a cost per unit basis*' (ie per Vehicle) for ELV Takeback. In his email, [Ford Employee D] confirmed that Ford was seeking a ZTC solution in the UK and stated that:

> '*I am committed to achieve this not only for FMC* [Ford Motor Company] *and its brands but, in line with the ACEA position, for the industry also*'.[423]

5.216 At interview, [Ford Employee D] told the CMA that he could not recall what had prompted his email. He explained that 'the ACEA position' referred to a consensus amongst ACEA members that VMs should not pay a per-Vehicle treatment cost for ELVs.[424]

5.217 [Ford Employee D] also explained to the CMA that in each country, the VM that was the market leader in that country had taken the lead in negotiating the transposition of the ELV Directive with the relevant government and developing a network of ATFs. Once a network of ATFs had been established, other VMs would negotiate their own contracts with the network.[425] In the UK, although all VMs were already in discussions with the ATF Intermediaries, as the UK market leader Ford had 'led the way' in developing the UK network. [Ford Employee D] had negotiated with CarTakeBack the approach of Ford paying an annual administrative fee (but not a per-Vehicle payment) to finance CarTakeBack supporting a network of ATFs. He later disclosed this approach (albeit not the level of the administrative fee) to other VMs at an SMMT meeting. He thought that other VMs had then sought similar arrangements with either CarTakeBack or Autogreen.[426]

5.218 The CMA finds that the reference in [Ford Employee D]'s email of 26 April 2004 to 'the ACEA position' indicates the existence of a common understanding, from that

---

[421] SIR-000000205, SIR-000022759, page 3 SIR-000000205, SIR-000022759.
[422] See for example: (i) SIR-000000205, SIR-000022759, which suggests that other VMs entering into contracts to pay for ELV Takeback '*would send a negative signal and could lead to our strategy being undermined'*, and (ii) SIR-000000022, which states (in relation to arrangements in the another EU country) that it would best to have a common approach to negotiations with ATFs and others – '*It would look stupid if GM is trying to negotiate to have "zero cost" and Toyota comes afterwards telling completely a different story. The efforts from both parties would only be delayed'.* Given that this document relates to the implementation of the ELV Directive in the EU, the CMA finds that the reference to 'GM' in the latter document should be understood as relating to GME and/or Opel.
[423] SIR-000002620, page 4.
[424] SIR-000039940, pages 191-195.
[425] SIR-000039940, pages 15-16.
[426] SIR-000039940, pages 152-159.

point onwards, that VM Parties who were members of ACEA would seek ZTC contracts for ELV Takeback.

5.219 On this basis, the CMA finds that the following VM Parties (all of which were recipients of [Ford Employee D]'s email of 26 April 2004) were party to the common understanding in April 2004: Ford, BMW, Mercedes-Benz, Renault, Opel/Vauxhall, Peugeot Citroen, Toyota and VW.[427]

Opel and Vauxhall internal report – July 2004

5.220 On 19 July 2004, Opel and Vauxhall published an internal 'ELV Process Update Letter' which outlined updates in relation to ELV legislation, Takeback systems and financials in a number of countries. In relation to the UK, the report sets out details of contract negotiations and notes concerns about VMs being willing to agree to terms with ATFs and/or ATF Intermediaries that were less favourable than those achieved in other countries. It goes on to state that '*any unfavourable agreements in the U.K. could have negative impacts across the rest of Europe*'.[428]

5.221 The CMA infers that concerns about VMs entering into less favourable contract terms may have related to the same or similar concerns as those mentioned in [Ford Employee D]'s email of 26 April 2004 (see paragraph 5.215 above), that individual VMs might have been prepared to pay for ELV Takeback on a per-Vehicle basis despite the 'ACEA position' of seeking ZTC contracts. The concern regarding 'negative impacts' of this is also consistent with evidence of VM Parties' concerns that if one VM agreed to pay for ELV Takeback, this would delay or undermine the ZTC strategy for other VMs (see footnote 422 above).

5.222 Accordingly, the CMA finds that this report is consistent with a view that absent a common approach, VM Parties might have been unable to maintain ZTC contracts, reinforcing the need for coordination.

Internal GME email – January 2005

5.223 On 11 January 2005, [GME Employee L] sent an email to two GME colleagues explaining GME's arrangements for ELV Takeback in another EU country. As part of this explanation, he stated that:

> '*Since we are convinced that* [treatment of ELV] *is a profitable business we have concluded as Automotive Industry to go for Zero Cost Treatment contracts in each and every single country in the EU*'.[429]

[427] The CMA notes that Toyota was not a member of ACEA at the time the email was sent. However, it was a recipient of [Ford Employee D]'s email of 26 April 2004 and did not publicly distance itself from the 'industry position' set out in the email. The CMA therefore concludes that Toyota was party to the common understanding by April 2004.
[428] SIR-000033111, page 2.
[429] SIR-000000046, page 1.

5.224 The CMA finds that the reference in this email to concluding 'as Automotive Industry' evidences GME's view that there was a common understanding that at least certain VM Parties would seek ZTC contracts for ELV Takeback in the EU (including, at that time, the UK), which in turn evidences the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

F.IV Contractual arrangements - 2005

5.225 In 2005, the VM Parties entered into ten-year contracts with ATF Intermediaries to provide ELV Takeback in the UK as follows:

(a) Mercedes-Benz, BMW, Toyota and Vauxhall entered into contracts with Autogreen, under which Autogreen and its network of ATFs would meet all costs associated with taking back, treating and recycling ELVs and achieving the legal minimum targets.[430]

(b) Peugeot Citroen, Nissan, Renault, Ford[431] and VW entered into contracts with CarTakeBack, under which they agreed to pay an annual administrative fee ([✂]) to CarTakeBack.[432] This fee covered the cost of establishing and providing a national network of ATFs, as well as the cost of providing evidence to enable the VM Parties to report compliance with the minimum legal requirements on recycling and recovery. It was not directly related to the number of ELVs treated.[433]

5.226 The CMA considers that the terms of these contracts were consistent with the implementation of the common understanding to adopt a ZTC approach to ELV Takeback. Although the CarTakeBack contracts included a small annual administration fee, they did not include a per-Vehicle fee.

5.227 The CMA understands that although the Autogreen contracts described at paragraph 5.225(a) above specified that Autogreen would meet all costs, the VM Parties contracted to Autogreen made financial contributions in order to meet the minimum legal requirements for recycling and recovery performance in 2006 and 2007.[434] Autogreen told the CMA that this payment amounted to £175,000, split amongst its contracted VMs, and was used to purchase 'surplus' evidence of target achievement from CarTakeBack.[435] The CMA finds that these payments were not inconsistent with the common understanding, because they were small,

[430] SIR-000038394, page 8 and SIR-000038362.
[431] At that time, Ford's contract with CarTakeBack also covered Jaguar and Land Rover. JLR entered into a separate contract with CarTakeBack in 2011 (Page 1, SIR-000038461 and SIR-000038462).
[432] [✂], [✂] also had a contract with CarTakeBack.
[433] SIR-000037620, page 1.
[434] SIR-000034175, page 47.
[435] SIR-000039277, pages 2-3 and 10-11.

one-off, retrospective payments and did not amount to an agreement to pay for any treatment costs associated with ELV Takeback on an ongoing basis.

F.V Continuing coordination, implementation and monitoring

5.228 As set out in further detail below, the CMA finds that following the initial common understanding, certain VM Parties referred to ZTC as an agreed industry position. Certain VM Parties also challenged each other, sometimes with the involvement or knowledge of ACEA and/or the SMMT, in response to suggestions that a VM was paying, or was willing to pay, a per-Vehicle fee for ELV Takeback.

ACEA WG-RG meeting – February 2006

5.229 On 1 February 2006, certain VM Parties, the SMMT and ACEA attended an ACEA WG-RG meeting. According to the meeting minutes, the attendees discussed a presentation by Toyota (which was in the process of applying to join ACEA) on its '*environmental objectives and priorities*' in Europe. In relation to ELVs and recycling, this included '*Zero-cost proposition but certain* [financial] *reservation for future provision*'. The meeting minutes note that, in contrast, no European VMs had made financial provisions to cover potential future costs.[436]

5.230 The meeting minutes go on to state:

> '*Major risk is seen when the ACEA position on zero-cost is undermined. Any financial or material support to dismantlers (examples were given on handing out used computers for free to dismantlers to help them sign a contract, etc.) would be seen as a dilution of this position.*
>
> *The situation is especially dangerous in* [certain EU countries]*, where financial support could break the dam, not just for those countries. Only Toyota has made provision, the others have not. To avoid a major disaster for the whole industry we need to stick together.*
>
> ***ACTION: ACEA members including Toyota* […] *to stick together and avoid serious consequences for our industry. Consult each other when necessary. ACEA could act as an intermediary***.'[437] [emphasis in original]

5.231 A note of the same meeting taken by a Mercedes-Benz employee describes 'fierce discussion' of the fact that Toyota did not necessarily support the 'zero-cost target' and provided financial support to ATFs.[438]

5.232 The CMA finds that the ACEA WG-RG meeting minutes further demonstrate the existence of a common understanding (described as being '*the ACEA position on*

---

[436] SIR-000026706, pages 2-4.
[437] SIR-000026706, page 4.
[438] SIR-000002704, page 1 and SIR-000004524.

zero-cost') across certain VM Parties in favour of ZTC contracts. The minutes also demonstrate that ACEA believed that there was a need for consensus on the issue of ZTC contracts, and that any divergence '*could break the dam*' and lead to a breakdown of the ZTC approach. Concerns were particularly focused on Toyota, which was challenged by ACEA and certain VM Parties because its practice of making financial reserves for future costs associated with ELV Takeback conflicted with the common understanding. The '*ACTION*' from this discussion was to continue with the coordinated position that certain VM Parties (including Toyota) should 'stick together' and adopt ZTC contracts, with ACEA willing to act as an intermediary if needed.

5.233 In view of this, the CMA finds that the meeting minutes evidence (i) the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback, and (ii) an ongoing view that absent a common approach, VM Parties might have been unable to maintain ZTC contracts.

5.234 Additionally, the CMA finds that ACEA and the SMMT (who attended the ACEA WG-RG meeting of 1 February 2006) were party to the common understanding from February 2006 onwards.

[✂] announcement – February-March 2006

5.235 On 24 February 2006, [GME Employee C] sent an email to [Mercedes-Benz Employee A], copied to other VMs (including certain VM Parties), enclosing the text of an announcement by [✂].[439] The announcement included a statement that [✂] members that contracted with [✂] to provide ELV Takeback in another EU country would receive 20% off the price of a new Vehicle: '*thus, for the first time, a kind of compensation for the free-of-charge disposal has been achieved*'.[440]

5.236 In his email, [GME Employee C] suggested discussing the issue at a VM ELV information exchange meeting scheduled for 2 March 2006:

> '*Contrary to the ACEA/*[✂]*/*[✂] *commitment to refrain from any financial subsidy towards our contractors for the takeback and treatment of ELVs,* [✂] *has obviously agreed to such kind of subsidy.*
>
> *We are absolutely sure, that this information will spread over Europe and will put our zero-cost approach at high risk*'.[441]

5.237 The CMA finds that [GME Employee C]'s observation that the [✂] announcement was contrary to '*the ACEA/*[✂]*/*[✂] *commitment to refrain from any financial* subsidy' for ELV Takeback further demonstrates the existence of the common

[439] [✂] is an association for collaborative research and development amongst major VMs in Europe.
[440] SIR-000002702, page 2 and SIR-000004522.
[441] SIR-000002702, page 1 and SIR-000004522.

understanding to adopt a ZTC approach to ELV Takeback. [GME Employee C] was clearly of the view that the announcement diverged from agreed industry practice.

5.238 Later on 24 February 2006, [ACEA Employee D] sent an email to [Employee] ([✂]) regarding the announcement:

> '*There is a clear understanding and agreement between the European car manufacturers including Toyota as well as* [✂] *and* [✂] *that any financial support of contractors for the takeback and treatment of ELVs bears highest risk for our industry and in particular to our interest of a zero-cost approach.*
>
> *Once awarded to one contractor the message will spread around Europe generated* [sic] *uncontrolled demand from other operators to get financial support for equipment, computers, etc., etc. the list is long. As we have experienced those things already in other countries an agreement was reached not to do this anymore.*'[442]

5.239 In this email, [ACEA Employee D] went on to ask [Employee] ([✂]) to review the policy of linking a discount on new car prices to ELV Takeback, and offered to discuss '*the potential medium-term consequences*' of such a policy if needed.[443, 444]

5.240 On 27 February 2006, [Employee] ([✂]) sent an email to [ACEA Employee D] and individuals at [✂] and [✂], attaching a [✂] statement addressed to 'ACEA/[✂]/[✂]'. The statement clarified that the [✂] announcement related to a privately owned importer rather than to [✂] and that '*in no sphere of our operations have we* [✂] *indulged in a strategy other than a zero cost strategy for the take-back of vehicles and will continue to do so as long as market forces allow this*'.[445] [ACEA Employee D] forwarded this email and attachment to [Opel/GME Employee I] and [Opel/GME Employee A] shortly after receiving it.[446] The CMA finds that this email exchange demonstrates the ongoing existence of a common understanding to adopt a ZTC approach to ELV Takeback.

5.241 On 28 February 2006, [Employee] ([✂]) sent a further email to various VMs (including certain VM Parties), ACEA, [✂] and [✂], stating that the [✂]

---

[442] SIR-000002612, SIR-000004523.
[443] SIR-000002612, SIR-000004523.
[444] Although some of the evidence on the CMA's file suggested that the common understanding also involved VMs other than the VM Parties, for reasons of administrative priority the CMA decided to focus its investigation on the VM Parties and Trade Association Parties (see *Prioritisation principles for the CMA* (CMA188), dated October 2023). [✂] is not one of the Parties prioritised for investigation by the CMA, and the CMA is therefore not making any findings as to whether or not [✂]'s conduct infringed the Chapter I Prohibition.
[445] SIR-000039846, SIR-000039846_CT and SIR-000039845.
[446] SIR-000039846, SIR-000039846_CT.

announcement was incorrect and repeating her statement that [✂] had not aimed at a strategy other than zero cost.[447]

5.242 On 2 March 2006, certain VM Parties attended a VM ELV Information Exchange meeting. According to the meeting minutes, the attendees discussed the [✂] announcement again and reiterated that this was '*contrary to the ACEA/*[✂]*/*[✂] *commitment to refrain from any financial subsidy*'.[448]

5.243 At interview, [Mercedes-Benz Employee A], who attended the meeting of 2 March 2006, confirmed that the reference to the '*ACEA/*[✂]*/*[✂] *commitment*' in the meeting minutes referred to a common understanding amongst ACEA, [✂] and [✂] that VMs should not incentivise or subsidise ATFs. This was based on the view that ELV Takeback was a profitable business. She described a risk that if it became known that a VM had paid for ELV Takeback, ATFs would expect payment from other VMs. However, she thought that in this situation it would still be possible to negotiate ZTC contracts.[449]

5.244 The CMA finds that the events described above evidence the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback. In particular, the emails from GME (see paragraph 5.235 above) and ACEA (see paragraph 5.238 above) explicitly refer to a 'commitment' and 'agreement' respectively that VMs would not provide any financial subsidy to ATFs. Further, the CMA finds that the events described above evidence a view by those involved that, absent a common approach, VM Parties might have been unable to maintain ZTC contracts.

5.245 Additionally, the CMA finds that Nissan and Mitsubishi were party to the common understanding to adopt a ZTC approach to ELV Takeback from February 2006 onwards. Nissan and Mitsubishi were copy recipients of the emails of 24 February 2006 which referred to a commitment across ACEA, [✂][450] and [✂] not to provide financial subsidies for ELV Takeback (see paragraphs 5.236 and 5.238 above). They also attended the VM ELV Information Exchange meeting of 2 March 2006 at which the issue was again discussed (see paragraph 5.242 above). The CMA has not identified any evidence to suggest that Nissan or Mitsubishi publicly distanced themselves from the position set out in these emails or the minutes of the VM ELV Information Exchange meeting.[451]

---

[447] SIR-000002705.
[448] SIR-000000295, SIR-000000295_CT.
[449] SIR-000040896, pages 145-148.
[450] Nissan and Mitsubishi are members of [✂].
[451] The CMA has found that all the Parties except JLR were party to the common understanding by February 2006 (see also paragraphs 5.219 and 5.234 above). Accordingly, findings relating to 'the Parties' and/or 'the VM Parties' in relation to events from February 2006 onwards and before 21 April 2016 (see paragraph 5.323 below) include all Parties and/or VM Parties except JLR.

ELV Charta – June 2007

5.246 As set out at paragraphs 5.56 and 5.57 above, on 14 June 2007 certain VM Parties agreed the terms of the ELV Charta.

5.247 The ELV Charta does not explicitly refer to the common understanding to adopt a ZTC approach to ELV Takeback. However, point 3 of the ELV Charta, titled '*ELV Take-Back Network*', includes a provision for '*self sustainable network solutions*'.[452] [Opel/GME Employee E] told the CMA at interview that this provision meant that there was enough value in an ELV to pay for all the costs associated with ELV Takeback.[453] [Mercedes-Benz Employee A] also confirmed that the provision meant '*the possibility to have free contracts*'.[454] Based on these accounts and the wider evidence, the CMA finds that '*self sustainable network solutions*' referred to a system that did not require VM Parties to pay for ELV Takeback, and therefore that the ELV Charta recorded the common understanding.

5.248 As explained at paragraph 5.58 above, after the meeting of 14 June 2007 the ELV Charta was subsequently acknowledged and discussed at meetings of the ACEA WG-RG on 14 September 2007[455] and 13 December 2007,[456] and at a joint [✂]-ACEA-[✂] meeting also held on 13 December 2007.[457]

5.249 As set out at paragraph 5.64, the CMA finds that all the VM Parties except JLR explicitly agreed to the ELV Charta, or at least did not publicly distance themselves from it,[458] and that the ACEA and the SMMT were aware of the ELV Charta from meetings at which the ELV Charta was acknowledged and discussed.

Reaffirmation of the ELV Charta – June 2008

5.250 As set out at paragraph 5.74 above, on 12 June 2008 certain VM Parties attended an ELV Information Exchange meeting at which they reiterated their support for the ELV Charta.[459] Following this meeting, on 16 July 2008, [Mercedes-Benz Employee B] circulated minutes of the meeting and an updated ELV Charta to certain VM Parties.[460] The provision of the ELV Charta on '*self-sustainable network solutions*' remained unchanged from June 2007.

5.251 An internal Mercedes-Benz note of the meeting of 12 June 2008 states that:

---

[452] SIR-000002616, page 2.
[453] SIR-000039939, page 190.
[454] SIR-000040896, page 220.
[455] SIR-000000850, page 2. See also footnote 231.
[456] SIR-000000840, page 3. See also footnote 232.
[457] SIR-000026717, pages 2 and 9.
[458] The exception for Renault described at paragraph 5.57 did not affect the provision on '*self-sustainable network solutions*'.
[459] SIR-000014658, page 1.
[460] SIR-000002648 and SIR-000031692

'*The group again approved the ELV Charta adopted one year ago in which all manufacturers commit* […] ***to form a collective front*** *towards legislators, ministries, public authorities, interest groups, and groups affected by ELV legislation* ***such as collection, dismantler, shredder, recycler and other groups and companies*** *so as to ensure that the consequences of ELV legislation are handled in a robust, successful, and cost-effective way.*'[461] [emphasis added]

5.252 The CMA infers from the reference to forming 'a collective front' to groups including dismantlers and recyclers (ATFs) that the ELV Charta was partly concerned with maintaining a common approach to negotiating with commercial entities including ATFs and ATF Intermediaries so as to achieve a 'cost-effective' outcome. On this basis, the CMA finds that this statement is consistent with the position that the ELV Charta recorded the common understanding to adopt a ZTC approach to ELV Takeback.

5.253 Accordingly, the CMA finds that the reaffirmation of the ELV Charta in 2008 evidences an ongoing commitment by certain VM Parties to the common understanding.

ELV meeting – June 2008

5.254 On 16 June 2008, certain VM Parties held a discussion regarding a request that had arisen from a service provider for VMs to make payments for ELV Takeback in another EU country. According to the meeting minutes:

'*Companies underlined that when anybody start to talk with* [service provider] *on money for dismantlers it would be beginning of end of a* [sic] *escalation demand process spreading to other European markets*'.[462]

5.255 The CMA understands this to mean that if VM Parties were to discuss providing financial support to one service provider, they might face similar demands from ATFs and/or ATF Intermediaries in other European countries (including the UK), resulting in the eventual breakdown of the common understanding to adopt a ZTC approach to ELV Takeback.

5.256 The CMA finds that this evidences (i) the ongoing existence of the common understanding, and (ii) a view amongst at least certain VM Parties that pursuing different approaches to contracts with ATFs (or ATF Intermediaries) in one country might cause problems in maintaining a ZTC approach elsewhere in Europe, thereby reflecting the ongoing need for the VM Parties to continue to coordinate their conduct in this regard.

[461] SIR-000002650, page 1 and SIR-000004500
[462] SIR-000000298, page 5 and SIR-000000298_CT.

Mercedes-Benz presentation – October 2008

5.257 A Mercedes-Benz presentation from October 2008 on the treatment of catalytic converters in ELVs states the following:

> '*It has proven essential that the automotive industry form a united front* […] *towards* […] *contractual partners on the disposal side, in order to prevent significant economic disadvantages* […] *from fees demanded by contractual partners, some of whom have a monopoly*'.[463]

5.258 The presentation goes on to refer to VMs stating in a 'charta' that they would not treat ELV activities as a competitive issue, but instead would act in a collective and unified way, including for the purpose of preserving a strong position against local recovery businesses.[464] The CMA infers that this relates to the collective position that VM Parties would not pay ATFs or ATF Intermediaries for ELV Takeback.

5.259 Accordingly, the CMA finds that this presentation evidences the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback, as well as a view within Mercedes-Benz that coordination amongst VM Parties was necessary for the purpose of obtaining and retaining ZTC contracts.

ELV meeting – February 2009

5.260 On 17 February 2009, [Opel/GME Employee D] sent an email to various recipients including certain VM Parties in which she set out a summary of a meeting earlier that day in relation to ELV Takeback in another EU country. According to the summary, a service provider in that country had mentioned seeking a temporary monetary contribution from VMs.[465] In her response to a suggestion that it might be better for members to fund any gaps themselves rather than make a monetary contribution, because '*usually what it is temporarily tends to become permanently* [sic]',[466] [Opel/GME Employee D] stated:

> '*I agree wholeheartedly! Any monetary solution sets a very bad example, be it temporary at the beginning or planned long-term.* ***It would also be quite critical for the rest of Europe***'.[467] [emphasis added]

5.261 At interview, [Opel/GME Employee D] told the CMA that certain VMs had been asked to make a temporary financial contribution because metal prices (which significantly affected the profitability of ELV Takeback)[468] were low at the time. She explained that she had been concerned that if VMs had suddenly started paying

---

[463] SIR-000002651, page 6 and SIR-000004501.
[464] SIR-000002651, page 9 and SIR-000004501.
[465] SIR-000000103, pages 2-3.
[466] SIR-000000103, page 2.
[467] SIR-000000103, page 1.
[468] According to [Opel/GME Employee D] 80% of the money in ELV Takeback came from scrap metal (SIR-000040977, page 253)

for ELV Takeback in one country, it would have become known and weakened the VMs' negotiating position in other countries.[469]

5.262 The CMA finds that this event evidences (i) the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback, and (ii) a view amongst at least certain VM Parties that pursuing different approaches to contracts with ATFs (or ATF Intermediaries) in one country might cause problems in maintaining a ZTC approach elsewhere in Europe (including the UK), reinforcing the need for ongoing coordination among VM Parties.

ACEA WG-RG meeting – September 2009

5.263 On 24 September 2009, certain VM Parties attended an ACEA WG-RG meeting. According to the minutes of this meeting, the attendees discussed the increases to the minimum legal requirements on recycling and recovery due to be introduced in 2015, including whether these requirements could be met while maintaining ZTC contracts. They agreed that Toyota, GME and ACEA would prepare a SWOT analysis on different approaches to meet the updated targets, and that the ELV Charta would be updated '*once we agree on a common way forward*'.[470]

5.264 The CMA finds that this evidences an intention amongst the attendees to agree a common approach to maintaining ZTC contracts following the increase to the minimum legal requirements on recycling and recovery, consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

Further reaffirmation of the ELV Charta – January 2010

5.265 As set out at paragraph 5.101 above, on 19 January 2010, certain VM Parties attended a VM workshop meeting in Stuttgart. According to the meeting minutes, the attendees discussed slight modifications to the wording of the ELV Charta and again agreed to use the '*ACEA/*[✂]*/*[✂] *position*'.[471] On 17 February 2010, [Mercedes-Benz Employee B] circulated the meeting minutes and updated ELV Charta by email to various VM Parties.[472] There was no change to the provision for '*self sustainable network solutions*'. [473]

5.266 According to the minutes of the meeting of 19 January 2010, the attendees also agreed that the phrase 'zero treatment cost' would not be used for external communications '*as the conditions of our agreements are not of anybody's business*'.[474] At interview, [Opel/GME Employee B], who had attended the

[469] SIR-000040977, pages 242-245.
[470] SIR-000000931, page 3.
[471] SIR-000014665, page 8.
[472] SIR-000014675, pages 2-3.
[473] SIR-000000273, page 5.
[474] SIR-000014665, page 7.

meeting, told the CMA that he thought that Opel had added this point to the agenda because it viewed ZTC as a confidential element of the VMs' contractual relationships with ATFs (or ATF Intermediaries). There had also been some misunderstanding of what the term ZTC meant, and Opel wanted to reduce this misunderstanding.[475]

5.267 As set out at paragraph 5.107 above, the CMA has found that, although there was recognition of 'antitrust considerations' in relation to the ELV Charta at an ACEA WG-RG meeting of 25 February 2010, the ELV Charta continued to have the support of ACEA and VM Parties. In view of this, the CMA finds that the reaffirmation of the ELV Charta in 2010, including the provision for '*self-sustainable network solutions*', reflects a continuing commitment to the common understanding to adopt a ZTC approach to ELV Takeback.

SWOT analysis meeting – March 2010

5.268 On 16 March 2010, [Toyota Employee A] sent an email to [ACEA Employee A], following an audio conference held earlier that day, providing some 'additional comments' to be included in a draft paper. The subject line of the email was '*Strategic levers – SWOT analysis – ELV Directive (version March 2010)*'. One of the specific comments provided was as follows:

> '*BAU (individual contracts) – threats: reluctance from dismantlers/shredders to sign new contracts – Question: what countermeasures need to be taken?*'[476]

5.269 The CMA infers that this comment relates to the perceived risk that ATFs and ATF Intermediaries would not agree to new ZTC contracts when the existing ten-year contracts expired in 2015 (which coincided with the increase to the minimum legal requirements for recycling and recovery). In particular:

(a) the reference in the email subject line to a 'SWOT analysis' regarding the ELV Directive is consistent with minutes of the ACEA WG-RG meeting of 24 September 2009 (see paragraph 5.263 above), which indicate that ACEA, Toyota and GME would prepare a SWOT analysis in relation to the 2015 increases to the minimum legal requirements on recycling and recovery, including whether it would be possible to meet these increases while maintaining ZTC contracts; and

(b) at the start of [Toyota Employee A]'s email, he made a 'general statement' that '*I think we agreed not to use anymore the terminology "zero cost"*', suggesting that his comments came in the context of references to zero cost, either at the audio conference or in the draft paper.

[475] SIR-000040940, pages 165-166.
[476] SIR-000020781.

5.270 Accordingly, the CMA finds that this email evidences concern as to how VM Parties could maintain the ZTC approach following the increase to the minimum legal requirements for recycling and recovery in 2015, consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

ELV arrangements: April and June 2010

5.271 In the first half of 2010, there is evidence of various discussions amongst certain VM Parties and recycling providers regarding ELV Takeback arrangements in another EU country. This appears to have arisen in relation to a contractual dispute with a service provider.

5.272 According to a Mercedes-Benz chronology of emails and communications regarding the arrangements in question, in April 2010 certain VMs considered the possibility of seeking a quotation for paid ELV Takeback services in the affected country. On 12 April 2010, [Opel/GME Employee P] sent an email in which she raised concerns about this approach:

> '*ALL other providers will hear about such a request. This would result in the end of the zero cost strategy in* [country] ***and perhaps in the whole of Europe****. It would look like we were suddenly willing to pay money*'.[477] [emphasis added]

5.273 On 21 June 2010, [Mercedes-Benz Employee C] sent an internal email to Mercedes-Benz colleagues summarising a meeting between certain VM Parties and a service provider regarding the issue. According to this summary, [Mercedes-Benz Employee C] had explained to the other attendees that Mercedes-Benz was considering an alternative contract which involved compensating the service provider's costs, despite the fact that '*payments are against EU position*'. However, he was clear that what Mercedes-Benz had in mind was designed to ensure the common understanding to adopt a ZTC approach to ELV Takeback could be maintained, observing that he had made a proposal '*to not weaken our cooperation and to ensure that nobody loses his face*':

> '*We asked* [service provider] *to NOT link the compensation to the market share/amount of cars imported. This would kill our EU position for ZTC. Payments could be e.g. a fee per contracted partner (one-time fee) + maintenance fee (monitoring, field visits, etc.) – that sums up to a kind of yearly "service fee" for ELV collection and treatment*'.[478]

5.274 At interview, [Mercedes-Benz Employee C] explained that Mercedes-Benz's priority had been to sign a new contract so that it had arrangements in place to

[477] SIR-000002628, pages 22-23 and SIR-000004505.
[478] SIR-000003343

comply with the ELV Directive, even if it meant paying a per-Vehicle fee. He explained that the request to avoid linking any payment to Vehicle numbers was to try to ensure that any payments were limited to specific costs that arose, rather than paying for each Vehicle regardless of any costs. This reflected the common industry position that ELV Takeback was a profitable business: '*if in one country now we would pay per imported vehicle then the risk would be that other countries say the same*'. He confirmed that the reference in his email to '*our EU position for ZTC*' referred to the position of the VMs.[479]

5.275 The CMA finds that these emails further demonstrate the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback. The correspondence again shows a concern among VM Parties that proposals to pay for ELV Takeback services in one country might have resulted in VM Parties being unable to maintain ZTC contracts more generally across Europe (including the UK), thereby reinforcing the need for ongoing coordination between VM Parties in this regard.

5.276 In respect of the email of 21 June 2010, the CMA finds that the references to payments being '*against EU position*' and to '*our EU position for ZTC*' evidence the ongoing existence of the common understanding. Further, the CMA considers that this email evidences Mercedes-Benz seeking to avoid payments being linked to ELV numbers in order to avoid undermining cooperation amongst VMs Parties and the common understanding in the rest of the EU (which, at that time, included the UK). The CMA finds that this is also evidence of the ongoing existence of the common understanding.

Opel/GME email – September 2010

5.277 On 7 September 2010, certain VM Parties met to discuss ELV arrangements in another EU country. According to the meeting minutes, there was a discussion about being unable to foresee future changes in ELV matters, including changes in law. In this context, the meeting minutes (which were circulated on 9 September 2010) state that '[*Opel/GME Employee P],*[480] *agreed with forespeaker and emphasized that* […] *we are only Interested to keep the cost free strategy. In her opinion ELV it is a business which it is still profitable what was forgotten by dismantlers*'.[481]

5.278 On 10 September 2010, [Opel/GME Employee P] sent an email to the meeting attendees with comments on the meeting minutes, including stating that '*we are*

[479] SIR-000040978, pages 126-130.
[480] Given that this document relates to ELV arrangements in an EU country, the CMA infers that the reference to 'GM' in this context relates to GME (see footnote 154).
[481] SIR-000014187, page 2 and SIR-000014188.

not "only interested" in keeping zero cost, but also stick with the complete bunch of strategy as agreed on ACEA/[✂]*/*[✂] *level*'.[482]

5.279 The CMA finds that this reference to ZTC as part of the '*strategy as agreed on ACEA/*[✂]*/*[✂] *level*' implies that there was a common understanding amongst VM Parties who were members of ACEA, [✂] and [✂] to adopt ZTC as a commercial strategy. This conclusion is supported by the previous reference to the ACEA/[✂]/[✂] position on ELV Takeback being understood as meaning VM Parties refraining from '*any financial subsidy towards our contractors for the takeback and treatment of ELVs*' (see paragraph 5.236 above). Accordingly, the CMA finds that [Opel/GME Employee P]'s email of 10 September 2010 evidences the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

ELV Country Audio – May 2011

5.280 On 17 May 2011, certain VM Parties attended an ELV Country Audio. According to a note of this meeting, there was a discussion regarding the risk of ATFs or ATF Intermediaries charging for the Takeback of electric Vehicles, in order to cover the cost of recycling high-voltage batteries. The note states that if some importers were to start paying for Takeback of electric Vehicles, '*other countries/companies might follow in charging OEMs*'. In view of this, there was a suggestion to develop a common industry position via ACEA, although it was noted that VMs should check internally whether they were willing to cooperate on the issue given that some might see high-voltage batteries as a competitive issue. The note ends with a proposal that '*we should stick to zero cost, also for batteries*'.[483]

5.281 The CMA finds that this document evidences the attendees of the meeting agreeing to continue the common understanding to adopt a ZTC approach to ELV Takeback. Further, the CMA finds that this document evidences a view amongst the attendees that VM Parties might have been unable to maintain ZTC contracts absent a common approach, reinforcing the ongoing need for VM Parties to coordinate their behaviour in this regard.

VW and Opel/GME bilateral discussion – July 2011

5.282 On 5 July 2011, VW and Opel/GME met for a bilateral discussion regarding ELV matters. According to a note of the meeting, the attendees agreed that: '*There is no change to the basic strategy: The manufacturers must not incur in any costs in*

[482] SIR-000001370, page 1.
[483] SIR-000020507, pages 2-3.

the ELV area!' The note goes on to set out the strategy of each party in implementing ZTC arrangements in individual countries.[484]

5.283 At interview, [Opel/GME Employee E], who attended the meeting of 5 July 2011, told the CMA that the purpose of the meeting was to exchange information with VW on how they could cooperate and how to position themselves in respect of the requirements of the ELV Directive.[485] He confirmed that the reference to the 'basic strategy' in the meeting note related to the strategy of both VW and Opel/GME to keep costs for ELV Takeback to a minimum, ideally zero. According to him, this position came not only from the VMs, but also from ATFs (and ATF Intermediaries) who actively offered to enter into ZTC contracts.[486] When asked why Opel/GME and VW had exchanged information about their individual strategies, he said that the purpose was to exchange information about their experiences:

> '*everybody has been a bit uncertain, and so when we see exchange of this kind of information, we got the confidence – and the same for VW – that we are on the right way*'.[487]

5.284 The CMA finds that (i) the reference in the meeting note to the 'basic strategy' of not incurring costs related to ELV is consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback, and (ii) the meeting supported the common understanding by VW and Opel/GME reassuring each other that their respective strategies were consistent with the common understanding to adopt a ZTC approach to ELV Takeback.

ACEA WG-RG meeting – September 2012

5.285 On 20 September 2012, certain VM Parties, the SMMT and ACEA attended an ACEA WG-RG meeting. According to the meeting minutes, under the agenda item 'ACEA recycling strategy' the attendees discussed the position of '*recycling as a profitable business*':

> '*ELVs cannot be compared to normal waste, they are a source for valuable secondary raw materials* […] *Based on average Western European cost and revenue data ELVs do generate profits. No funds are necessary for the collection and treatment of ELVs.*[488]

Decision:

[484] SIR-000000208, page 1 and SIR-000022762.
[485] SIR-000039939, pages 93-94.
[486] SIR-000039939, pages 95-96.
[487] SIR-000039939, pages 103-104.
[488] The CMA notes that in this context, the reference to 'funds' may refer to funded systems for ELV Takeback (see footnote 420).

- *All ACEA members agree to this ACEA strategic position of recycling as a profitable business*.'[489] [emphasis in original]

5.286 At interview, [JLR Employee A], who attended the ACEA WG-RG meeting, told the CMA that the profitability of ELV Takeback was '*a straight economic fact*'.[490] He thought the reason that ACEA members had felt the need to agree this as a strategic position was to avoid the risk of incorrect messaging by sales and marketing teams.[491] [Mercedes-Benz Employee A], who also attended the meeting, said that the profitability of ELV Takeback was clear from the value and demand for scrap metals. The reason for ACEA members agreeing this as a 'strategic position' was so that ACEA could use it as a lobbying position when needed.[492]

5.287 The CMA finds that the agreement amongst meeting attendees to '*recycling as a profitable business*' as an ACEA strategic position is consistent with and supports the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

ELV Group meeting – January 2013

5.288 On 18 January 2013, certain VM Parties attended an ELV Group meeting in another EU country. According to the meeting minutes, the attendees discussed further demands from ATFs for financial subsidies for ELV Takeback in that country. The meeting minutes go on to state that:

> '*It is difficult to explain that dismantlers* [ATFs] *in other EU States don't need financial support but this support is needed in* [country].
>
> *Any change in the approach in* [country] *might affect the situation in Europe.*'[493]

5.289 The CMA finds that this document evidences a view that pursuing different approaches to contracts with ATFs (or ATF Intermediaries) in one country might cause problems in maintaining a ZTC approach elsewhere, reinforcing the need for ongoing coordination among VM Parties.

Mercedes-Benz presentation – March 2013

5.290 A Mercedes-Benz presentation of March 2013 on environmental management sets out a list of tasks, responsibilities and competencies within Mercedes-Benz's

[489] SIR-000002393, page 4.
[490] SIR-000040897, pages 242-243.
[491] SIR-000040897, pages 244-247.
[492] SIR-000040896, pages 177-185.
[493] SIR-000009504, pages 2-3.

Global Service & Parts department. The responsibilities include '*Cost minimisation for ELVs through coordination between OEMs*'.[494]

5.291 At interview, [Mercedes-Benz Employee C], one of the authors of the presentation, told the CMA that the 'cost minimisation' in this context referred to ZTC contracts, and that he had used this wording in light of the decision not to use the phrase 'zero treatment cost' (see paragraphs 5.266 and 5.269(b) above).[495, 496]

5.292 Taken together with [Mercedes-Benz Employee C]'s account, the CMA finds that the reference in this presentation to 'coordination' amongst VMs, in the context of costs associated with ELVs, is consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

ELV risk analysis slides – July 2013

5.293 On 5 July 2013, [Peugeot Citroen Employee A] sent an email to certain VM Parties inviting comments and corrections on a draft '*ELV risk analysis summary*' document.[497] On 8 July 2013, she sent a further email to the same VM Parties enclosing a further draft of '*our ELV RA* [risk analysis]', which she said was to be presented at an ACEA WG-RG meeting of 10 July 2013.[498]

5.294 The draft ELV risk analysis summary attached to [Peugeot Citroen Employee A]'s email sets out details of work undertaken by a 'task force' of Renault, Ford, Opel/GME, [✂], Toyota, Mercedes-Benz and Peugeot Citroen between March and June 2013. It contains a list of recommendations in relation to contracted (ATF) networks, one of which is '*maintain or introduce the status that ELV is a profitable recycling business (zero-treatment-cost)*'.[499]

5.295 The CMA has not been able to identify minutes of the ACEA WG-RG meeting of 10 July 2013. However, a note of the meeting taken by [Ford Employee A] confirms that the slides were discussed under an agenda item titled '*Achievement of the 2015 targets – ELV Risk Analysis ACEA / Renault / PSA* [Peugeot Citroen]'. According to this note, some attendees stated that the current wording of the document '*(e.g. "zero cost strategy")*' prevented the document from becoming an official ACEA position and action plan.[500]

---

[494] Mercedes-Benz presentation of March 2013 titled 'Trade Association Work at GSP. Environmental Management', SIR-000020500, page 2 and SIR-000020545.
[495] SIR-000040978, pages 163-164.
[496] Although [Mercedes-Benz Employee C] did not attend the meeting of 19 January 2010 at which, according to the meeting minutes, participants agreed not to use the term 'zero treatment cost' in external communications, he had been made aware of the decision both because he received a copy of the meeting minutes and because he had been informed by [Mercedes-Benz Employee A] that they should not use the phrase (SIR-000040978, pages 114-117).
[497] SIR-000036353, page 2.
[498] SIR-000036353, pages 1-2.
[499] SIR-000034013, page 8.
[500] SIR-000009584, page 2.

5.296 The CMA notes that the note of the meeting taken by [Ford Employee A] appears to show that certain attendees of the meeting of 10 July 2013 did not support the ZTC approach as an official ACEA position. However, the CMA finds that while ZTC was not adopted as an official ACEA position, the common understanding to adopt a ZTC approach to ELV Takeback continued to have the support of the Parties (including ACEA), as evidenced by the events that took place after this date.

Mercedes-Benz email – July 2013

5.297 Between May and September 2013, [Mercedes-Benz Employee C] exchanged a number of emails with one of Mercedes-Benz's general agents in another EU country. These emails related to proposals by an ATF in that country to increase its fees significantly.

5.298 In the course of this email exchange, [Mercedes-Benz Employee C] stated the following:

> '*Our* [Mercedes-Benz] *position is that the "vehicle recovery" business model is always a profitable model, given the high value of the materials in the vehicle alone (in particular in the case of a Mercedes). Accordingly,* ***the automotive industry has been collectively (and largely successfully) rejecting any form of "subsidization",*** *whether indirectly (through a fund-based system – i.e. the levy per imported vehicle) or* ***directly through subsidies paid to dismantlers*** *or payments into collective systems or the like*'.[501] [emphasis added]

5.299 The CMA infers that the reference to the automotive industry 'collectively' rejecting payment of subsidies to dismantlers (ATFs) relates to the common understanding that VM Parties would seek to adopt a ZTC model in their dealings with ATFs and/or ATF Intermediaries. This conclusion is supported by the wider evidence, which the CMA has found demonstrates the VM Parties co-ordinating exactly such a strategy.

5.300 Although the email exchange was prompted by a discussion of the situation in another EU country, the CMA infers that the passage quoted above related to the whole of the EU (including, at that time, the UK) in light of the reference to fund-based systems, subsidies paid to dismantlers and payments into collective systems. These relate to the different ways in which the ELV Directive was implemented in different EU countries, such that the statement is likely to relate to the general approach taken across the EU rather than the particular circumstances in the country in question.

[501] SIR-000004493, page 2 and SIR-000002629.

5.301 Accordingly, the CMA finds that this statement evidences the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

Internal Mercedes-Benz emails – June and October 2014

5.302 Between 3 and 6 June 2014, [Mercedes-Benz Employee A] and [Mercedes-Benz Employee D] exchanged emails regarding the provision of ELV Takeback in relation to high-voltage batteries from electric Vehicles in the UK. In an email of 5 June 2014, [Mercedes-Benz Employee A] asked [Mercedes-Benz Employee D] not to discuss the possibility of separate treatment of electric Vehicles '*as the automotive industry position as well as independent studies proved that ELV recycling is a positive business case in Europe*'.[502]

5.303 In September and October 2014, individuals at Mercedes-Benz exchanged further emails regarding arrangements for ELV Takeback in relation to high-voltage batteries in the UK. In an email of 2 October 2014, [Mercedes-Benz Employee E] stated that '*ELV recycling is basically a profitable business from our point of view, and, also from SMMT/ACEA, no matter of which vehicle is treated*'.[503]

5.304 The CMA finds that the references in these emails to an 'automotive industry position' and an SMMT/ACEA point of view on the profitability of ELV recycling, in the context of discussing contractual arrangements for ELV Takeback in the UK, are consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

Circulation of the ELV Charta – October 2014

5.305 As set out at paragraph 5.161 above, in October 2014 there was a proposal to review the ELV Charta at a future meeting. In the meantime, the 2010 ELV Charta was recirculated to certain VM Parties and ACEA by email.

5.306 The CMA finds that the recirculation of the 2010 ELV Charta and the proposal to review it at a future meeting demonstrate that the ELV Charta, including the provisions relating to the common understanding to adopt a ZTC approach to ELV Takeback, continued to have the support of ACEA and VM Parties at this point.

F.VI Contractual arrangements – 2015

5.307 As set out at paragraph 5.225 above, the contracts that the VM Parties entered into with ATF Intermediaries in 2005 covered a ten-year period.

5.308 From 2015 onwards, the VM Parties' contracts for ELV Takeback were as follows:

[502] SIR-000002734, page 5 and SIR-000004536.
[503] SIR-000002597, page 1.

(a) [✂], [✂], Toyota, Vauxhall and VW had contracts with Autogreen, under which Autogreen and its network of ATFs [✂] associated with taking back, treating and recycling ELVs and achieving minimum legal requirements.[504]

(b) Peugeot Citroen, Nissan, JLR and Ford had contracts with CarTakeBack.[505] [✂]. None of the contracts included a fee directly related to the number of ELVs treated.[506]

(c) Renault's contract with CarTakeBack lasted until the end of 2015, following which it had a contract with Autogreen in 2016 and then returned to CarTakeBack in 2017. [✂].[507]

5.309 The SMMT also had a contract with Autogreen from 2016 onwards to cover Takeback of orphan Vehicles.[508] Under this contract, Autogreen and its network of ATFs would meet all costs associated with taking back, treating and recycling any ELVs and achieving minimum legal requirements.[509]

5.310 In line with paragraph 5.226 above, the CMA considers that the terms of these contracts were consistent with the common understanding to adopt a ZTC approach to ELV Takeback.

F.VII Falling profitability – 2015 onwards

5.311 The CMA has found that the commercial rationale that the Parties relied upon when adopting the common understanding to adopt a ZTC approach to ELV Takeback was that ELV Takeback was, in and of itself, a profitable business, meaning that ATFs and/or ATF Intermediaries did not require any further subsidy from VM Parties. However, from 2015 there was a significant decline in the profitability of ELV Takeback in the UK due to a combination of factors, including a decline in scrap metal prices.

5.312 As set out in further detail below, the CMA finds that during this period certain Parties coordinated to ensure a common response to any requests for financial support on a per-Vehicle basis, demonstrating the continued existence of the common understanding.

---

[504] SIR-000038394, page 8 and SIR-000038362
[505] [✂] also had a contract with CarTakeBack.
[506] SIR-000038461, page 1 and SIR-000038462.
[507] SIR-000038461, page 1; SIR-000038462; SIR-000038394, page 8; and SIR-000038362.
[508] 'Orphan Vehicles' are Vehicles that have been placed on the market, but for which no VM has taken responsibility in accordance with the requirements of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005. This could occur, for example, when a VM has gone out of business. Regulation 8 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 allows the Secretary of State to allocate orphan Vehicles to another VM, which would then be responsible for establishing a Takeback network for those Vehicles. Alternatively, Regulation 26 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 provides that the Secretary of State may accept an alternative scheme for dealing with orphan Vehicles.
[509] SIR-000038394, page 8 and SIR-000038362.

Initial discussions on profitability

5.313 In the second half of 2015, certain Parties began to discuss the impact of declining scrap metal prices on the profitability of ELV Takeback, and the risk this posed to the common understanding:

(a) On 16 September 2015, [Nissan Employee C] sent an email to [SMMT Employee E] in which she noted that the scrap metal price had declined to its lowest level since December 2009. She asked whether the SMMT or ACEA monitored scrap metal prices, and whether VMs had '*a coordinated reply in case of questions from external parties regarding the profitability of ELV recycling if metal price falls further*'.[510] [SMMT Employee E] responded on the same day to confirm that the issue of scrap metal prices had been added to the agenda of an SMMT ELV working group meeting of 1 October 2015.[511]

(b) On 1 October 2015, certain VM Parties and the SMMT attended an SMMT ELV working group meeting. According to the meeting minutes, the attendees discussed the decline in scrap metal prices and noted that this might '*provide danger to the zero-cost compliance schemes*'. It was agreed that the working group would continue to monitor the situation and include it as an agenda item for the SMMT ELV working group meetings.[512]

(c) On 30 October 2015, [Peugeot Citroen Employee B] and [SMMT Employee C] exchanged emails in which they discussed the decline in scrap metal prices. During this exchange, [Peugeot Citroen Employee B] noted that the decline in prices risked threatening ELV Takeback networks: '*we may need to think of some cunning plans to mitigate that risk…although we need to be careful of competition legislation when discussing it :)*'.[513] At interview, [SMMT Employee C] told the CMA that low scrap prices were a potential problem for VMs because the ATF Intermediaries would not continue to provide ELV Takeback services if they were not profitable.[514] She thought that the reference to a 'cunning plan' in her email exchange with [Peugeot Citroen Employee B] was a joke, and that they had been aware that any discussion could not include details of the individual contracts between VMs and ATF Intermediaries.[515]

(d) On 20 November 2015, [Opel/GME Employee D] sent an email to [SMMT Employee C] regarding declining metal prices. In this email, she stated that some ATFs were '*definitely pretty close to the edge*', because there was no profit from selling ELV scrap materials at current prices, and that she was

[510] SIR-000002516.
[511] SIR-000002516.
[512] SIR-000002567, page 2.
[513] SIR-000002426, page 1.
[514] SIR-000035857, page 148.
[515] SIR-000035857, page 152.

worried about '*being pushed into corners we don't like*'.[516] [Opel/GME Employee D] confirmed at interview that '*corners we don't like*' referred to the risk of VMs having to make a direct per-Vehicle payment for ELV Takeback.[517]

(e) On 20 November 2015, [SMMT Employee C] sent an email to [ACEA Employee C] asking whether anyone else had raised the issue of declining metal prices to ACEA. She stated that as far as she knew, ELVs were still being recycled at zero cost in the UK, but that the situation could change if the decline in prices continued.[518] On 25 November 2015, [ACEA Employee C] responded to confirm that he was aware of the situation but '*we do not see the need to deviate from any of our positions until now but have to monitor the situation (in particular on OEM level) for the different countries*'.[519] [SMMT Employee C] told the CMA at interview that she thought that [ACEA Employee C] reference to not deviating from '*our positions*' related to '*the red line of not paying per ELV*'.[520]

(f) On 24 November 2015, [SMMT Employee F] circulated an agenda for an SMMT Environmental Policy Committee meeting scheduled for 1 December 2015.[521] The agenda included an item on ELVs, which stated: '*Scrap price concern raised at ELVWG* [ELV Working Group], *fear it could result in request for financial support from OEMs*'.[522]

5.314 At interview, [Opel/GME Employee D] told the CMA that the fall in scrap metal prices meant there was a risk of a critical situation developing in the UK, given that scrap metal prices are a determining factor in the profitability of ELV Takeback.[523] The fall in scrap metal prices coincided with the recent increase in minimum legal requirements for recycling and recovery in 2015, as well as an increase in the average Vehicle weight used to calculate recycling and recovery performance.[524] All of these factors reduced the overall profitability of ELV Takeback.[525]

5.315 Based on the evidence described above, the CMA finds that from September 2015 onwards, certain Parties perceived a potential risk to the common understanding to adopt a ZTC approach to ELV Takeback in the UK due to a combination of factors affecting the profitability of ELV Takeback. Additionally, the CMA finds that

---

[516] SIR-000002431.
[517] SIR-000040977, pages 283-284.
[518] SIR-000002440, pages 1-2.
[519] SIR-000002440, page 1.
[520] SIR-000035857, pages 157-158.
[521] SIR-000002432.
[522] SIR-000002437, page 2.
[523] SIR-000040977, pages 253-256.
[524] Recycling and recovery performance in the UK is calculated against average Vehicle weight multiplied by the total number of ELVs. Between 2005 and 2015, the average Vehicle weight was taken to be 971kg, but in 2015 this figure was increased to 1,130kg. This meant that for a given number of ELVs, a larger volume of material needed to be recycled and/or recovered in order to satisfy the minimum legal requirements (SIR-000007630, page 1).
[525] SIR-000040977, page 268.

the view of at least some of the Parties was that VM Parties should not 'deviate' from the ZTC approach. Accordingly, the CMA finds that the evidence described above is consistent with the ongoing existence of the common understanding.

Internal Toyota email – February 2016

5.316 On 10 February 2016, [Toyota Employee B] responded to an email from [Toyota Employee C] regarding a request for financial support for ATFs in another EU country. This request for financial support had arisen due to concerns about the profitability of ELV Takeback.[526] In his response, [Toyota Employee B] noted that the problem was not confined to that country and suggested that the matter be discussed within ACEA:

> '*In order to come to an acceptable common EU solution, may I ask you to propose to the group of experts from the different head offices, to discuss this topic urgently within ACEA.*
>
> *Whether or not to make a financial contribution to ATF's* [sic] *in one country, migh* [sic] *affect the overall ACEA strategy on end-of-life vehicles*'.[527]

5.317 The CMA finds that [Toyota Employee B]'s suggestion of discussing the request for financial support with other VMs within ACEA, and the reference in this context to the 'overall ACEA strategy' on ELVs, evidences the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback. Additionally, the CMA finds that the suggestion that making a financial contribution in one country might affect the overall approach evidences a view within Toyota that it might not be possible to sustain ZTC contracts in the absence of a common approach, reinforcing the ongoing need for coordination.

Update to the ELV Charta – April to October 2016

5.318 As set out at paragraphs 5.163 to 5.168 above, between April and October 2016, certain VM Parties and ACEA were involved in proposals to update the ELV Charta. There was no change to the provision for '*self-sustainable network solutions*' in the proposed update.[528]

5.319 The CMA finds that the update to the ELV Charta in 2016 reflects a continuing commitment by certain VM Parties and ACEA to the common understanding to adopt a ZTC approach to ELV Takeback.

[526] SIR-000025082, pages 1-3.
[527] SIR-000025082, page 1.
[528] SIR-000032655, page 5.

ACEA Downstream User workshop – April 2016

5.320 On 21 April 2016, ACEA and certain VM Parties attended an ACEA WG-RG-DU workshop. According to the minutes, the attendees noted that scrap metal prices had begun to increase again and that '*this should be considered when talking to contractual partners from ELV-treatment*'.[529] They further noted that:

> '*Legally (ELV Directive) dismantlers* [ATFs] *have the right to ask for financial compensation in case of negative values.*
>
> […]
>
> [The] *Basic idea in setting up take-back networks was that OEMs will not interfere with dismantlers* [ATFs] */shredder business case and do not intend to take out revenues but should not be charged if prices are not ideal.*'[530]

5.321 A note taken by [✂] of the same workshop states that VMs '*should use some approaches*' when responding to 'emerging requests' from ATFs, including considering the average values of metal scrap prices rather than their current value.[531]

5.322 The CMA finds that these documents evidence the attendees of the ACEA Downstream User workshop agreeing their proposed commercial strategy to any requests for financial support from ATFs and/or ATF Intermediaries. Accordingly, the CMA finds that they evidence the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

5.323 Further, the CMA finds that JLR was party to the common understanding to adopt a ZTC approach to ELV Takeback from April 2016 onwards. JLR was an attendee of the ACEA Downstream User workshop of 21 April 2016 described above.

GME presentation – May 2016

5.324 A GME presentation on ELVs dated 17 May 2016 outlines the fact that the decline in metal scrap prices had endangered '*the economic basis of the dismantlers* [ATFs] *and shredders*'. The CMA understands this to refer to the ability of ATFs and shredders to operate at a profit without financial support from VMs.

5.325 The presentation goes on to refer to the ACEA WG-RG and downstream workshops, noting that there was '*alignment of general positions and take-back strategies, documented in "ELV Charta"*'. According to the presentation, the concerns around the profitability of ELV Takeback had been discussed at a 'recent

[529] SIR-000002466, page 1.
[530] SIR-000002466, page 2.
[531] SIR-000034505, page 1.

workshop', noting the worst-case scenario of '*economic operators requiring financial compensation*'. It concludes:

> '***Only together we have the chance to realize our Zero-Cost Strategy!***'[532] [emphasis in original]

5.326 Given that this presentation is dated around three weeks after the ACEA Downstream User workshop of 21 April 2016, the CMA considers that this is likely to be the 'recent workshop' referred to in the GME presentation. Further, the CMA infers that the reference to 'only together' being able to realise the ZTC strategy indicates a view that VM Parties needed to align their positions in order to resist requests for financial support from ATFs and/or ATF Intermediaries.

5.327 Accordingly, the CMA finds that this presentation is further evidence that the attendees of the ACEA Downstream User meeting of 21 April 2016 agreed their proposed commercial strategy towards requests for financial support from ATFs and/or ATF Intermediaries. On this basis, the CMA finds that the presentation is further evidence of the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

Opel/VW email exchange – June 2016

5.328 On 21 June 2016, [Opel/GME Employee E] sent an email to [Volkswagen Employee D] proposing some changes to the ELV Charta. In relation to slide four (titled '*Recycling – Recovery / future industrial processes (PST)*'), he proposed retaining a provision to '*promote economic efficiency (automotive)*':

> '*I suggest staying with "economic". (That is what we actually want. Economic efficiency to avoid the risk of payments. What would be "environmental efficiency"? Promoting environmental efficiency also carries the risk of higher costs*'.[533]

5.329 At interview, [Opel/GME Employee E] told the CMA that he thought that there had been a proposal to amend the wording on slide four of the ELV Charta from 'economic efficiency' to 'environmental efficiency'. From Opel's perspective, there was an implicit risk that aiming for environmental efficiency would lead to higher costs to treat (ie recycle and recover) ELVs, and that these costs might fall on VMs. In view of this, Opel's preference was to retain the emphasis on economic efficiency.[534]

5.330 Placing this document in the wider context of the evidence, the CMA finds that the reference in [Opel/GME Employee E] email of 21 June 2016 to avoiding '*the risk of payments*' meant VM Parties avoiding payments to ATFs and/or ATF

---

[532] SIR-000000247, pages 4 and 5.
[533] SIR-000032652 and SIR-000032652_CT, page 1.
[534] SIR-000039939, pages 206-207.

Intermediaries for ELV Takeback. Accordingly, the CMA finds that this email is consistent with (i) the position that the ELV Charta recorded the common understanding to adopt a ZTC approach to ELV Takeback and (ii) the ongoing existence of the common understanding.

F.VIII Requests for financial support in the UK

5.331 According to meeting minutes of an SMMT ELV working group meeting of 6 July 2016, the decline in scrap metal prices continued to affect profitability of ELV Takeback.[535] At this time Autogreen and its partner European Metal Recycling ('**EMR**') also began to experience problems generating sufficient volumes of ELVs to meet the minimum legal requirements for recycling and recovery.[536]

5.332 As set out in further detail below, the CMA finds that these circumstances resulted in Autogreen requesting financial support from its contracted VMs, and that certain VM Parties coordinated their response to this request in order to avoid providing per-Vehicle payments, consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

Requests from Autogreen for financial support – October - November 2016

5.333 On 24 October 2016, [Autogreen Employee A] sent emails to Autogreen's contracted VMs, including Opel,[537] BMW,[538] Mercedes-Benz,[539] Toyota[540] and VW,[541] forecasting the costs to each VM of providing Autogreen with financial support of £50, £75 or £100 per ELV. Although these emails did not explicitly request that VMs begin making payments per ELV, it appears that at this point some VM Parties began to engage with Autogreen about the possibility of providing financial support.[542]

5.334 On 17 November 2016, [Autogreen Employee B] sent an email to [Opel/GME Employee D] with an attached PowerPoint presentation.[543] Following this, Autogreen sent copies of the PowerPoint presentation to VW on 23 November 2016,[544] and to Mercedes and Toyota on 25 November 2016.[545] The presentation confirmed that Autogreen was seeking financial support from VMs in order to

[535] SIR-000002570, page 7.
[536] SIR-000007630 and SIR-000007628.
[537] SIR-000040841, pages 6-9.
[538] SIR-000037647, pages 2-3.
[539] SIR-000037678, pages 3-4
[540] SIR-000037697, pages 12-13.
[541] SIR-000037705, pages 11-12.
[542] SIR-000037705, page 14 and SIR-000037697, page 16.
[543] SIR-000040842 and SIR-000040843.
[544] SIR-000037705, page 15 and SIR-000037710.
[545] SIR-000037697, page 18 and SIR-000037678, page 6.

increase the price offered to last owners of ELVs, with the aim of increasing the number of ELVs going through its network.[546]

Internal Toyota email – November 2016

5.335 In November 2016, individuals at Toyota exchanged emails about the risk of missing the 95% minimum legal requirement for recovery from ELV Takeback in the UK. As part of this exchange, in an email of 11 November 2016, [Toyota Employee B] stated that he had been asked by individuals at [✂] whether Toyota had received a request from Autogreen regarding financial reimbursement. He asked for details of any request made by Autogreen to Toyota, noting that:

> '*we believe a common strategy between the OEM's* [sic] *need to be defined, In order not to have copied a similar request / behaviour to other countries*'.[547]

5.336 The CMA finds that this email indicates an intention by Toyota to adopt a 'common strategy' with other VM Parties in response to requests by Autogreen for financial support for ELV Takeback, consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

Internal consideration of financial support – early 2017

5.337 The CMA has identified some evidence of certain VM Parties considering providing financial support in response to Autogreen's request:

(a) An internal VW paper dated 27 January 2017 and an accompanying presentation outline the problems experienced by Autogreen and its network in achieving the minimum legal requirements for recycling and recovery of ELVs. The internal paper states that Autogreen had proposed that VMs provide support to increase the volume of ELVs sent to EMR, either by providing direct financial support (approximately £1m in the first year) or by advertising initiatives such as scrappage schemes.[548] The accompanying presentation lists various options for VW to support Autogreen and EMR, including providing financial support, with the aim of increasing the volume of ELVs going through the correct channels. It proposes a solution of using VW retail locations to supplement compliant ATFs as part of the Autogreen network, in order to increase the volume of ELVs.[549]

[546] SIR-000037710, pages 11-12.
[547] SIR-000004275, page 3.
[548] SIR-000015285.
[549] SIR-000015284, pages 7-8.

(b) An undated Mercedes-Benz presentation, which also appears to be from around early 2017,[550] sets out details of a request for financial support from Autogreen and a proposal by Mercedes-Benz to provide Autogreen with £100 per car to help it procure more ELVs.[551]

5.338 In both cases, however, it appears that the VM Party in question decided against providing financial support:

(a) In respect of VW, [Volkswagen Employee C] confirmed at interview that VW had considered Autogreen's request but decided against financial support because it believed that better regulation of non-compliant and illegal ATFs was required to resolve the situation.[552]

(b) In respect of Mercedes-Benz, [Mercedes-Benz Employee F] who wrote the presentation described at paragraph 5.337(b) above, told the CMA at interview that he thought that the document was a draft that had never been presented to anybody. He thought that the £100 figure had been suggested by Autogreen and that the proposal had never been implemented. Instead, [✂].[553]

ACEA/SMMT email exchange – March 2017

5.339 On 1 March 2017, [ACEA Employee C] sent an email to [SMMT Employee C] asking for an update on '*the UK ELV scheme*':

'*One of the rumours I heard was that there is a very intensive discussion on a potential payment for ELV treatments > 100 € ?? and that some/single SMMT/ACEA members are even supportive to such an idea ?*

All a little bit confusing and properly not in line with our common agreement in the WG-RG'.[554]

5.340 [SMMT Employee C] responded to [ACEA Employee C] email of 1 March 2017 asking for a convenient time to call and discuss. The CMA has not identified any further evidence relating to this exchange.

5.341 At interview, [SMMT Employee C] told the CMA that she understood [ACEA Employee C] reference to 'our common agreement' to refer to ZTC. She thought

[550] For example, slide 4 of the presentation refers to a concern that the 95% minimum legal requirement would not be met in 2017, whereas slide 6 states that *'for 2016, We will show 95% but on a considerably smaller volume'*. Slides 22 onwards duplicate an Autogreen presentation which refers to the beginning of 'reporting year 2017' being less than two months away. On this basis, the CMA infers that the presentation was produced in early 2017.
[551] SIR-000002609, pages 19 and 31.
[552] SIR-000039942, pages 37-39.
[553] SIR-000040984, pages 106-111.
[554] SIR-000007634.

that she had suggested a call as a quicker way to respond, but she could not recall the discussion.[555]

5.342 The CMA finds that the statement in [ACEA Employee C] email of 1 March 2017 that payments for ELV treatments were not '*in line with our common agreement*' evidences the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

VMs meeting in the UK – March 2017

5.343 On 15 March 2017, [Opel/GME Employee D] sent an email to [Volkswagen Employee D], [Toyota Employee B], [BMW Employee D], [Employee] ([✂]), [Employee] and [Renault Employee C][556] in which she proposed a meeting in the UK to discuss requests for financial support from Autogreen:

> '*you have probably all been contacted by your UK representatives regarding a request for support by Autogreen.*
>
> *Talking to some of you, it seems necessary to have a meeting in the UK on headquarter level.*
>
> […]
>
> *There is indeed urgent need to align our positions and ensure we are not played against each other.*'[557]

5.344 On 16 March 2017, following an exchange of emails regarding the proposed meeting, [Opel/GME Employee D] sent a further email in which she stated that:

> '*the aim of this meeting is indeed to ensure a common approach to the issues at hand and also to avoid one of us being played against another.*'[558]

5.345 At interview, [Opel/GME Employee D] told the CMA that the reference to VMs needing to align positions in her email of 15 March 2017 arose from a concern that some VMs were '*inclined to act a bit quickly sometimes*' and might have decided to pay money in response to Autogreen's request for support. She was aware that the VMs should not discuss the details of their proposed response but had wanted to reach an agreement on providing support '*that is not a direct payment of any kind*' (in other words, to continue to implement the common understanding).[559]

---

[555] SIR-000035857, pages 177-180.
[556] [Renault Employee C] responded to [Opel/GME Employee D]'s email of 15 March 2017 to explain that Renault had switched from Autogreen to CTB and therefore that he would not participate in the meeting (SIR-000039893, page 1). As a result, [Renault Employee C] was removed from the email chain and did not receive any of the other emails described in this subsection.
[557] SIR-000032910, page 4.
[558] SIR-000039895, page 1.
[559] SIR-000040977, page 293-294.

5.346 On 30 March 2017, [Opel/GME Employee D], [BMW Employee E], [BMW Employee D], [Employee] ([✂]), [Toyota Employee B] and [SMMT Employee C] met at the SMMT premises in London. According to the meeting minutes, the attendees discussed the background to the problems experienced by EMR before agreeing that their contract was with Autogreen alone: '*the EMR situation comes into play but manufacturers do not have any contractual agreement with them*'. They discussed a '*gesture of good will*' of supporting EMR by helping them to increase volumes but noted the need for greater clarity on the underlying problems. They agreed that [Opel/GME Employee D] would seek further information from Autogreen to inform a meeting between Autogreen and its contracted VMs in May 2017. The minutes do not indicate any discussion of providing financial support to Autogreen.[560]

5.347 At interview, [Opel/GME Employee D] explained that the attendees had agreed that she would seek information from Autogreen (for example the number of ELVs going through its network and the amount of money it was making) to help understand why support was needed.[561]

5.348 The CMA finds that [Opel/GME Employee D]'s emails of 15 and 16 March 2017 and her account at interview evidence an intention to agree a common position amongst VMs that they would not provide financial support to Autogreen. Additionally, the CMA infers, in light of [Opel/GME Employee D]'s emails of 15 and 16 March 2017 and her account at interview, that the meeting of 30 March 2017 proceeded on the basis of an implicit or explicit understanding amongst the meeting attendees that they would not provide financial support. Accordingly, the CMA finds that these events evidence the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

5.349 Finally, the CMA finds that the statement in [Opel/GME Employee D]'s email of 15 March 2017 that there was a need to '*align our positions*' in order to avoid being '*played against each other*' is consistent with a view by Opel that it might have been difficult to sustain ZTC if the VM Parties did not adopt a common approach, reinforcing the ongoing need for coordination.

ACEA WG-RG meeting – May 2017

5.350 On 11 April 2017, [Employee] sent an email to [ACEA Employee C] suggesting that the agenda for the next ACEA WG-RG meeting include an item on '*the worrying and increasing demands of financial support from some ELVs service providers*':

[560] SIR-000007643.
[561] SIR-000040977, pages 311-315.

'*Are the recent cases of the UK* […] *maybe a sign of the fact that our positive business ELVs principles are at risk??*

It could be a good opportunity to share some general positions and to re-establish a common approach in the face of similar requests'.[562]

5.351 At interview, [Employee] confirmed that, in respect of the UK, his email related to the requests for financial support by Autogreen. He had suggested discussing the matter within the ACEA WG-RG to ensure that VMs did not give differing responses to any further requests for financial support by ATFs or ATF Intermediaries.[563]

5.352 On 3 May 2017, certain VM Parties and ACEA attended an ACEA WG-RG meeting. According to the meeting minutes, the attendees discussed developments in the UK and agreed that 'better market surveillance' was needed to ensure they had a good understanding of current technologies and the market situation.[564]

5.353 In the evening of 3 May 2017, [Employee], who had attended the ACEA WG-RG meeting, sent a summary of the meeting to individuals at [✂]. According to his email, the idea of market surveillance had first been suggested at a downstream user meeting during the previous year with the purpose of being more prepared for future negotiations with ELV operators. At the meeting of 3 May 2017, Toyota had described the UK issue as one that had to be solved individually, but [ACEA Employee C] had emphasised the importance of organising another downstream user meeting '*for having ONE VOICE in front of problems like these occurring in UK*'.[565]

5.354 At interview, [Employee] explained that the purpose of market surveillance was to avoid the risk he had identified of VMs giving different responses to any future requests from ATFs or ATF Intermediaries for financial support.[566]

Toyota pilot scheme – June-September 2017

5.355 On 8 June 2017, [Toyota Employee D] sent an email to [Autogreen Employee B] in which he proposed a pilot scheme for Toyota to provide an average of £50 per ELV support between July and September 2017. According to the email, the purpose of this scheme was to increase the number of Toyota ELVs going through Autogreen's network. The payments would cease if scrap metal prices and oil prices rose above a certain level.[567]

---

[562] SIR-000000255.
[563] SIR-000039937, pages 71-75.
[564] SIR-000001441, page 3.
[565] SIR-000039906, page 2 and SIR-000039906_CT.
[566] SIR-000039937, pages 76-80.
[567] SIR-000038367

5.356 [Autogreen Employee A] told the CMA that the Toyota pilot scheme was launched in June 2017 and ran until August or September 2017, with Toyota funding £50 per Vehicle to add to quotes offered to last owners of Toyota ELVs.[568] This is consistent with certain emails between Toyota and Autogreen in July and August 2017.[569] However, it is unclear whether Toyota made any payments under the pilot scheme while it was active.[570]

5.357 Based on the evidence described above, the CMA finds that Toyota entered into the pilot scheme described at paragraph 5.355 above and that this was contrary to the common understanding to adopt a ZTC approach to ELV Takeback. However, the CMA has not identified any evidence to suggest that any of the other Parties were aware of the Toyota pilot scheme,[571] or that Toyota had otherwise distanced itself from the common understanding. In light of this, and taking account of the evidence that the CMA has found to indicate Toyota's awareness of and involvement in the common understanding prior to this date, the CMA finds that Toyota remained a party to the common understanding at this point.

5.358 Similarly, the CMA has not identified any evidence to suggest that any other Party had withdrawn from or otherwise distanced itself from the common understanding at this point. Accordingly, and in light of the evidence (described below) of subsequent events consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback, the CMA finds that there is no evidence that the common understanding had ceased to exist at this point.

Scrappage schemes – May-September 2017

5.359 In May 2017, [Vauxhall Employee B] sent an email to [Autogreen Employee A] stating that Vauxhall intended to launch a scrappage scheme that month.[572] In August and September 2017, BMW,[573] Mercedes-Benz,[574] Toyota[575] and VW[576] also communicated with Autogreen about launching scrappage schemes.

5.360 Autogreen told the CMA that the difficulties it had experienced were resolved by the VMs launching scrappage schemes that increased the volumes of ELVs going through its networks.[577] Most of the VM Parties contracted to Autogreen at that time (see paragraph 5.308(a) above) launched scrappage schemes in 2017.[578]

---

[568] SIR-000040531.
[569] SIR-000037697, page 39; SIR-000037697, page 40 and SIR-000037697, page 42
[570] SIR-000037612.
[571] SIR-000037612.
[572] SIR-000037703, page 5.
[573] SIR-000037647, page 10.
[574] SIR-000037678, pages 19-20.
[575] SIR-000037697, pages 42-49.
[576] SIR-000037705, page 24.
[577] SIR-000039383, page 4.
[578] SIR-000039273, pages 2-4.

The arrangements varied between brands, but all involved providing a discount against a new Vehicle order when a qualifying Vehicle was traded in for scrap and sent through Autogreen's network.[579]

F.IX Proposed update to the ELV Charta – September 2017

5.361 As set out at paragraph 5.173 above, the minutes of an ACEA WG-RG-DA workshop of 4 September 2017 refer to a '*necessity to extend the scope of ELV-Charta*'.[580] On the same date, [ACEA Employee C] sent an email to undisclosed recipients containing the text of the ELV Charta 2010.[581]

5.362 The CMA finds that the references to the ELV Charta in September 2017, including the proposal to extend its scope, indicate that the ELV Charta and the common understanding to adopt a ZTC approach to ELV Takeback continued to have the support of ACEA and the VM Parties at this point.

5.363 The minutes of the ACEA WG-RG-DA workshop of 4 September 2017 also summarise a discussion of the situation in certain 'critical markets'. In relation to the UK, the situation is described as follows:

> '*OEM contracted network do not receive enough ELVs (illegal activities). Concern regarding the fact recycling targets could not be met due to illegal dismantling activities. Need to have an eye on this during the next Country audio.*'[582]

5.364 An [✂] note of the ACEA WG-RG-DA workshop of 4 September 2017 does not refer to the ELV Charta but includes details of the discussion of 'critical markets', including the following in relation to the UK:

> '*UK: economic problems with money request from service providers started with metal prices crash* […] *After some evaluation made mainly by OPEL the* ***recommendation is to leave everything as it is,*** *even if Defra could take offense and consequently adapt legislation in the direction of a collection quota*'.[583] [emphasis in original]

5.365 The CMA infers that this passage refers to Autogreen's requests for financial support in the UK described at paragraphs 5.331 to 5.334 above, and that the reference to a 'recommendation', in the context of dealing with a request from ATF Intermediaries for financial support, implies a degree of coordination in the way that VM Parties decided how to respond to the request. Accordingly, the CMA finds that this document is consistent with the finding that certain VM Parties

[579] SIR-000039383, page 4.
[580] SIR-000002625, page 7.
[581] SIR-000019146.
[582] SIR-000002625, page 5.
[583] SIR-000039907, page 1.

coordinated their response to Autogreen's requests for financial support, and therefore with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

F.X ELVs in remote areas

5.366 In 2018, there were various discussions amongst certain VM Parties and the SMMT regarding an issue relating to collection costs for ELVs in remote areas of the UK. This issue arose because UK ELV regulations allow ATFs to charge for collecting an ELV (provided that the owner lives within 30 miles of an ATF). However, there were concerns that some ELV owners in remote areas could not afford to dispose of their ELVs due to the high cost of collection.[584] For this reason, Defra proposed introducing a cap on how much ATFs could charge for collection. This would potentially leave a shortfall that might affect the overall profitability of ELV Takeback in remote areas.

5.367 Documents relating to meetings in January and February 2018 both refer to risks relating to the proposed cap on collections charges:

(a) A spreadsheet containing notes of an ELV Country Audio in January 2018 describes the proposed cap and a proposal to organise support for service providers through the SMMT. It goes on to state that: '*Most important is, that the auto industry is not visible in supporting*'.[585]

(b) A presentation for an SMMT ELV working group meeting of 1 February 2018 sets out a list of options for addressing the issue, including making an additional payment to service providers to collect certain ELVs, or each brand paying individually for collection of their Vehicles. Under both of these options, there is a bullet point stating '*creates precedence of paying for individual ELVs*'.[586] At interview, [Volkswagen Employee C], who had attended the meeting of 1 February 2018, told the CMA that the reference to creating 'precedence' related to a perceived risk that if VMs made payments towards the collection of ELVs in the Scottish islands, they might be asked to pay for collection in other areas.[587]

5.368 A memo dated 11 May 2018, written by the SMMT and circulated to the SMMT ELV working group, outlines the issue of ELVs in remote areas. It also outlines a risk that Autogreen might decline to renew an existing ZTC contract to collect orphan Vehicle ELVs, in which case responsibility for ensuring free Takeback of orphan Vehicle ELVs would fall to the automotive industry.[588] In light of these

[584] SIR-000002600, page 2.
[585] SIR-000001414.
[586] SIR-000006268, page 12.
[587] SIR-000039942, page 68.
[588] See footnote 508.

issues, the memo proposes reinvigorating the 'CARE group' fund to enable the industry to act quickly if any ELV-related costs arose.[589] It goes on to state that:

> '*Arranging for any cost coverage through the CARE Fund would also have the advantage of any cost being covered without setting a precedent for paying for individual ELV,* ***which continues to be a political priority for the auto industry***'.[590] [emphasis added]

5.369 At interview, [SMMT Employee C] explained that VMs had put together the CARE fund some years earlier to cover costs arising from ELV regulations being implemented in the UK. It had previously been used to fund some educational material and to cover some costs associated with shredder trials. When asked about the 'political priority' of not paying for individual ELVs, she said that not paying per ELV was an 'ACEA level' position.[591]

5.370 The CMA finds that the statement in the SMMT memo that not paying for individual ELVs was a 'political priority' for the automotive industry, taken together with [SMMT Employee C]'s account at interview, is consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

5.371 On this basis, the CMA infers that the references in the meeting minutes described at paragraph 5.367 above to avoiding a 'precedent' of payments per ELV or 'visible' support of service providers are also likely to refer to the risk that making such payments would undermine the ZTC approach to ELV Takeback. Accordingly, the CMA finds that these events are also consistent with the ongoing existence of the common understanding to adopt a ZTC approach to ELV Takeback.

G Legal assessment – the ZTC Infringement

5.372 On the basis of the evidence set out in section F above, and having regard to the legal principles set out in Chapter 4, the CMA finds that all Parties participated in a single continuous agreement and/or concerted practice (or insofar as the Trade Association Parties are concerned, a decision) contrary to the Chapter I Prohibition that the VM Parties would refrain from paying ATFs or ATF Intermediaries a per-Vehicle fee for ELV Takeback (previously defined as the '*ZTC Infringement*').

---

[589] The CMA understands that 'CARE' in this context refers to the Consortium for Automotive Recycling ('**CARE**'), which was established by a group of VMs in the UK with the objective of researching and demonstrating the technical feasibility of recovery and recycling processes (SIR-000040862, page 34).
[590] SIR-000002600, SIR-000007698 and SIR-000042711.
[591] SIR-000035857, pages 104-111.

G.I Agreement, concerted practice or decision

5.373 The CMA concludes that the common understanding of the VM Parties in relation to the matters covered by the ZTC Infringement (see section F above) constituted an 'agreement' for the purposes of the Chapter I prohibition. In the CMA's view, at the very least, there was coordination between the VM Parties in relation to these matters, which without having reached the stage where an agreement properly so-called had been concluded, knowingly substituted practical cooperation between them for the risks of competition and therefore constituted a 'concerted practice'.

5.374 Insofar as the Trade Association Parties' conduct in relation to the matters covered by the ZTC Infringement is concerned, the CMA finds that it constituted 'the faithful reflection of the associations'' resolve to coordinate the conduct of its members and therefore a 'decision' for the purposes of the Chapter I prohibition.

5.375 Specifically, as regards ACEA's role in the ZTC Infringement, the CMA finds that

(a) ACEA was actively involved in encouraging the VM Parties to adhere to the ZTC Infringement;[592]

(b) the ZTC Infringement was regularly discussed at ACEA meetings;[593] and

(c) the ELV Charta was acknowledged and discussed at ACEA meetings.[594]

5.376 As regards the SMMT's role in the ZTC Infringement, the CMA finds that it was actively involved in certain events aimed at ensuring the ZTC Infringement was adhered to.[595]

G.II 'By object' infringement

5.377 The CMA concludes that the ZTC Infringement was a buyer cartel, which was, by its very nature, injurious to the proper functioning of normal competition: it had as its 'object' the prevention, restriction or distortion of competition in relation to the procurement of ELV Takeback services provided by the ATFs, via the networks set up by the ATF intermediaries. The CMA's conclusion regarding the 'by object' nature of the ZTC Infringement is based on an assessment of the *Cartes Bancaires* criteria, in particular the terms of the coordination, the economic and legal context of which it formed a part, its objectives and the Parties' subjective intent. It is also supported by relevant case law and the CMA's public guidance.[596]

---

[592] See paragraphs 5.229–5.231, 5.238–5.239, 5.285–5.286 and 5.339 above.
[593] See paragraphs 5.229–5.230, 5.285–5.286, 5.320, 5.325 and 5.352 above.
[594] See paragraphs 5.248, 5.267, 5.361 and 5.364 above.
[595] See paragraphs 5.313–5.314, 5.339–5.349, and 5.366–5.371 above.
[596] See for a summary of the relevant law on 'by object' restrictions (including the '*Cartes Bancaires'* criteria) at paragraphs 4.12–4.26 above.

Content of the agreement or concerted practice

5.378 The key term of the ZTC Infringement was the common understanding between the Parties that when a VM Party entered into an agreement with an ATF Intermediary in relation to ELV Takeback, the 'purchase' price it would pay for Takeback services per ELV would be zero. Pursuant to section 2(2)(a) of the Act, agreements that 'directly or indirectly fix purchase or selling prices or any other trading conditions' are examples of prohibited agreements between undertakings.

Legal and economic context

5.379 As set out in paragraph 1.3 above, the ELV Directive, as transposed into UK law, required VMs, amongst other things, to take ultimate responsibility for the environmentally compliant processing of any of their ELVs that consumers did not arrange to have recycled themselves.[597] Specifically, it required VMs to make arrangements to ensure that ELVs with no or a negative market value could be transferred to an ATF for recycling and/or recovery to the required legal standard at no cost to the last owner or holder (Article 5 of the ELV Directive).

5.380 The recycling and recovery of ELVs requires time and resources and has an economic value.

5.381 There are a number of references in the documentary and witness evidence suggesting that ELV Takeback services are or were 'profitable' and some of the VM Parties therefore took the view that they were justified in not paying for ELV Takeback.[598] While it cannot be excluded that absent the ZTC Infringement, a price determined by the market could (at least in some cases) have been zero or even negative (ie have involved payment from the ATFs to the VM Parties), this did not justify the Parties agreeing between them to fix the price at zero (as opposed to a unilateral decision by individual VM Parties not to pay ATF intermediaries/ATFs for ELV Takeback). In the CMA's view, a buyer cartel is not only illegal (or a 'by object' infringement) if it leads to sellers having to provide goods or services at a loss – indeed, as reflected in the case law - the prohibition against anti-competitive agreements is designed to protect the process of competition as such.

5.382 Furthermore, the fact that the VMs clearly felt the need to enter into an express agreement not to pay recyclers and dismantlers, and that they maintained and attempted to enforce this agreement over a period of many years,[599] suggests that at least some of the VM Parties may have considered the risk that they may have had to pay for the services in question at least to some extent and/or at certain

[597] The last holder or owner of a Vehicle remains free to dispose of their ELV with any ATF directly, thus bypassing the ATF intermediaries.
[598] See paragraphs 5.223, 5.243, 5.274, 5.277, 5.285, 5.294, 5.298 and 5.303 above.
[599] See for example, paragraphs 5.230, 5.236, 5.254, 5.260, 5.272, 5.288, 5.316 and 5.335 above.

times[600] absent an agreement not to do so. This indicates that there was, and continued to be, a commercial need for it.

Objective and subjective intent

5.383 The CMA concludes that the objective and subjective intent behind the ZTC Infringement was to enable the VM Parties to resist having to pay for a service which they were under a duty to supply and thus to prevent competition with regard to the procurement of this service. As a 'classic' horizontal buyer cartel, this arrangement was capable, by its very nature, of distorting competition with regard to the procurement of such services.

5.384 As set out in paragraphs 5.230, 5.236, 5.254, 5.260, 5.272, 5.288, 5.316 and 5.335 above, there are clear suggestions in the documentary evidence that the Parties felt that departing from the agreed position could result in demands for payments from recyclers and dismantlers because: '*Once awarded to one contractor the message will spread around Europe generated* [sic] *uncontrolled demand from other operators to get financial support for equipment, computers, etc,, etc. the list is long. As we have experienced those things already in other countries an agreement was reached not to do this anymore*'.[601]

5.385 Some of the evidence suggests that one aim of the ZTC Infringement was to avoid legislation imposing a particular recycling or payment model (eg a collective fund model in which VMs were legally required to pay a set fee per ELV).[602] In the CMA's view, this was not a pro-competitive objective or intention. In any event, as set out in paragraph 4.16 above, even the pursuit of a legitimate objective does not prevent the finding of a 'by object' restriction if (like here) the objective aim of an agreement or concerted practice is clearly to restrict competition.

Relevant case law and guidance

5.386 The relevant case law supports the CMA's conclusion that the ZTC Infringement constituted a 'by object' infringement. As set out in paragraph 4.19, the European Courts have confirmed on a number of occasions that collusion between buyers to fix the purchase price of goods and services constitutes a 'by object' infringement.[603] This view is also consistent with the CMA's Horizontal Guidance.[604]

---

[600] The case for VMs to pay for recycling services of ELVs would be stronger in cases where the economic value of ELVs would be negative, eg due to higher costs of Takeback (eg with ELVs in remote locations) or lower incomes from the scrap metal (eg in times of low metal prices).
[601] See paragraph 5.238 above.
[602] See for example paragraph 5.298 above.
[603] See on the topic the European Commission's 'Horizontal Guidelines on Delineation between purchasing agreements: by object and by effect restrictions – Final Report' – drafted by Richard Whish and David Bailey.
[604] See paragraph 4.18 above.

Conclusion

5.387 Based on the above, the CMA concludes that the ZTC Infringement constituted an agreement or concerted practice (or, as far as the Trade Association Parties are concerned, a decision) within the meaning of section 2(1) and 2(2)(a) of the Act which had as its **object** the prevention, restriction or distortion of competition as it had the clear potential, by its very nature, to prevent, distort or restrict competition on the market for the procurement of ELV Takeback services. This means that no assessment of the actual or potential effects of the ZTC Infringement is required.

G.III Single and continuous infringement

5.388 The CMA finds that the ZTC Infringement is made up of numerous individual agreements, which collectively amount to a single and continuous infringement of the Chapter I prohibition. In the CMA's view, for the reasons set out in paragraphs 5.389 to 5.397 below, this single and continuous infringement covered the period from 26 April 2004 to 11 May 2018 (the ZTC Infringement Period), with varying periods of involvement of the different Parties.

5.389 The CMA's conclusion that the various expressions of a common understanding regarding the matters covered by the ZTC Infringement during the course of the ZTC Infringement Period (as set out in section F) reflected and gave rise to a single and continuous infringement of the Chapter I prohibition, is based on the following factors:

5.390 They form a **pattern of conduct that is interlinked in terms of pursuing a common anti-competitive objective**, namely to resist having to pay for a service which they were under a duty to supply and thus to prevent competition with regard to the procurement of such services.

5.391 Like for the NCI Infringement, the conduct involved, over time, the same Parties, albeit that some of the evidence only relates to certain Parties and not others.

5.392 Although there are certain temporal gaps between contacts in the evidence, in the CMA's view, the nature of the ZTC Infringement was such that these gaps were to be expected, as once agreed, there was no need to renew or reaffirm the arrangement at regular or indeed frequent intervals. In particular, as set out at paragraph 5.225 above, in 2005 the VM Parties entered into ten-year contracts with ATF Intermediaries to provide ELV Takeback on a ZTC basis in the UK. Therefore, the CMA concludes that any temporal gaps throughout the ZTC Infringement Period do not suggest an interruption of the single and continuous infringement, the core content of which remained the same throughout the ZTC Infringement Period.

5.393 There was also an **overarching agreement** that the Parties would pursue their common position in relation to the issues covered by the ZTC Infringement, which did not have a defined end date. This common understanding was regularly discussed and affirmed at industry association meetings (ACEA and the SMMT) and united the various individual instances of 'agreements' over time.

5.394 The CMA concludes that **each of the Parties intended to contribute to the common objective** pursued by all the Parties through the ZTC Infringement Period. An undertaking's intentional contribution to the common objectives pursued by all the participants can normally be inferred from its participation in at least one aspect of an infringement in respect of the period of its participation.

5.395 In the CMA's view, based on the evidence above, all Parties participated in all aspects of the single and continuous infringement relating to the ZTC Infringement during their respective periods of participation by attending at least some of the relevant meetings and/or being involved in relevant correspondence, without publicly distancing themselves from the relevant arrangements during the ZTC Infringement Period.

5.396 The CMA therefore finds that each of the Parties intended through its own conduct to contribute to the common objective pursued by all of the Parties. An undertaking's conduct does not need to be identical to that of the other participants for it to be a party to a single and continuous infringement.

5.397 The CMA concludes **that each Party was aware of the overarching understanding relating to, and objectives of, the ZTC Infringement (as set out in the ELV Charta from 2007) and the offending conduct** (planned or put into effect) of the other Parties in pursuit of the same objectives, or each Party could at least reasonably have foreseen it and was prepared to take the risk that it would occur. This is evidenced, for example, by (i) the minutes of the ACEA WG-RG meeting of 1 February 2006, which state that ACEA members, including Toyota and [✂], should '*stick together and avoid serious consequences for our industry*' by not providing '*financial or material support*' to ATFs (see paragraph 5.230 above), and (ii) the email of 2 March 2006 describing the '*ACEA/*[✂]*/*[✂] *commitment to refrain from any financial subsidy towards our contractors for the takeback and treatment of ELVs*' (see paragraph 5.236 above). The issue was also raised regularly at trade association meetings attended by the Parties and included in meeting notes circulated to the Parties, suggesting that there was a continuing awareness of, and at least tacit approval of other Parties' conduct regarding, and agreement with, the ZTC Infringement.

G.IV Duration

5.398 The CMA concludes that the ZTC Infringement covered the period from 26 April 2004 to 11 May 2018.

5.399 As set out in paragraph 5.215 above, on 26 April 2004, [Ford Employee D] sent an email to a number of VM Parties in which he referred to being told at various meetings that Ford was willing to pay '*on a cost per unit basis*' (ie per Vehicle) for ELV Takeback. In his email, he rejected this suggestion and confirmed that Ford was seeking a ZTC solution in the UK, stating that he was committed to do so not only for Ford but '*in line with the ACEA position*', for the wider industry.

5.400 As set out in paragraphs 5.218 to 5.219 above, the CMA finds that the reference in [Ford Employee D]'s email to 'the ACEA position' indicates that on 26 April 2004, VM Parties who were members of ACEA had reached a common understanding that they would seek ZTC contracts for ELV Takeback. This was the case for the following VM Parties (all of which were members of ACEA in April 2004 and were also recipients of [Ford Employee D]'s email of 26 April 2004): Ford, BMW, Mercedes-Benz, Renault, Opel/Vauxhall, Peugeot Citroen and VW. Although Toyota was not a member of ACEA at the time the email was sent, it was a recipient and did not publicly distance itself from the 'industry position' set out in the email. The CMA therefore concludes that Toyota was party to the common understanding on 26 April 2004 as well.

5.401 The CMA further concludes that ACEA and the SMMT were involved in the ZTC Infringement from 1 February 2006 onwards. As set out in paragraph 5.229 above, on that day, certain VM Parties, the SMMT and ACEA attended an ACEA WG-RG meeting where the importance of VMs sticking to a ZTC approach was reaffirmed, with the meeting minutes stating: '***ACTION: ACEA members including Toyota*** […] ***to stick together and avoid serious consequences for our industry. Consult each other when necessary. ACEA could act as an intermediary***.'[605] [emphasis in original]

5.402 The CMA further concludes that Mitsubishi and Nissan were involved in the ZTC Infringement from 24 February 2006 onwards. On that day, they were copied on an email from [GME Employee C] regarding an [✂] announcement which stated that [✂] members that contracted with [✂] to provide ELV Takeback in another EU country would receive 20% off the price of a new Vehicle.[606] The email suggested that the [✂] announcement was contrary to '*the ACEA/*[✂]*/*[✂]*commitment to refrain from any financial subsidy*' for ELV Takeback and in the CMA's view, demonstrates the ongoing existence of an agreement to adopt a ZTC approach to ELV Takeback at that time. The CMA has not identified any evidence which suggests that Mitsubishi or Nissan publicly distanced themselves from the contents of the email at the time.

5.403 As set out in paragraph 5.323 above, the CMA further concludes that JLR was involved in the common understanding, ie the agreement to adopt a ZTC approach

[605] SIR-000026706, page 4.
[606] See paragraph 5.235 above.

to ELV Takeback, from 21 April 2016 onwards. On that day, JLR attended an ACEA Downstream User workshop where, in the CMA's view, attendees agreed their proposed commercial strategy to any requests for financial support from ATFs and/or ATF Intermediaries, consistent with the ongoing existence of the ZTC Infringement (see paragraphs 5.320 to 5.327 above).

5.404 As set out in paragraphs 5.215 to 5.371 above, there is evidence of the ZTC Infringement continuing as a single and continuous infringement and being periodically reaffirmed between 26 April 2004 and 11 May 2018.

5.405 As set out in paragraph 5.368 above, an SMMT memo of that day addressed to the SMMT ELV working group stated that avoiding a precedent of paying for individual ELVs continued to be a political priority for the automotive industry. [SMMT Employee C] confirmed at interview that this related to the 'ACEA level' position of not paying per ELV (see paragraph 5.369 above).

5.406 As set out at paragraph 5.370 above, the CMA finds that the statement in the SMMT memo of 11 May 2018 is consistent with the ongoing existence of the common understanding relating to the matters covered by the ZTC Infringement.

5.407 The CMA is not aware of any evidence of any of the Parties having publicly distanced themselves from the ZTC Infringement prior to this date.

5.408 The CMA therefore concludes that the ZTC Infringement continued as a single and continuous agreement for all Parties until 11 May 2018, with the conduct of individual Parties throughout this time period being attributed to the other Parties involved in the conduct.[607]

Conclusion on the period of involvement in the ZTC Infringement of each of the Parties

5.409 Based on the above, the CMA concludes that:

(a) all Parties except for ACEA, JLR, Mitsubishi, Nissan and the SMMT participated in the ZTC Infringement throughout the ZTC Infringement Period between 26 April 2004 and 11 May 2018;

(b) ACEA and the SMMT participated in the ZTC Infringement between 1 February 2006 and 11 May 2018;

(c) Mitsubishi and Nissan participated in the ZTC Infringement between 24 February 2006 and 11 May 2018; and

[607] The CMA has not identified any specific evidence as to the specific date on which the ZTC Infringement ended, but in the absence of any evidence of it continuing after 11 May 2018, the CMA has not made an infringement finding for the time period after this date.

(d) JLR participated in the ZTC Infringement between 21 April 2016 and 11 May 2018.

5.410 In the case of ACEA and the SMMT, in the CMA's view, the involvement consisted in both the attendance at, and the facilitation of, relevant meetings where the ZTC Infringement or issues relating to it were discussed; furthermore, in the involvement in other events like email exchanges relating to the ZTC Infringement.

H No exclusions or exemptions

H.I No exclusions

5.411 The Chapter I Prohibition does not apply in any of the cases in which it is excluded by or as a result of Schedules 1 to 3 of the Act.[608] The CMA finds that none of the relevant exclusions applies to the Infringements.

H.II No assimilated exemptions

5.412 Pursuant to section 10 of the Act, an agreement is exempt from the Chapter I Prohibition provided that it falls within a category of agreement which is exempt by virtue of an assimilated block exemption regulation. The CMA finds that neither of the two Infringements benefits from an assimilated block exemption.

H.III No individual exemptions

5.413 Agreements which satisfy the criteria set out in section 9 of the Act are exempt from the Chapter I Prohibition.

5.414 Under section 9(1), there are four cumulative criteria to be satisfied:

(a) The agreement contributes to improving production or distribution, or promoting technical or economic progress;

(b) The agreement allows consumers a fair share of the resulting benefit;

(c) The agreement does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of those objectives; and

(d) The agreement does not afford the undertakings concerned the possibility of eliminating competition in respect of a substantial part of the products in question.

[608] Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations; Schedule 2 covers competition scrutiny under other enactments; and Schedule 3 covers general exclusions.

5.415 In considering whether an agreement satisfies the criteria set out in section 9 of the Act, the CMA will have regard to the European Commission's Article 101(3) Guidelines.[609]

5.416 The CMA notes that agreements which have as their object the prevention, restriction or distortion of competition are unlikely to benefit from individual exemption, as such restrictions generally fail (at least) the first two conditions for exemption: they neither create objective economic benefits, nor do they benefit consumers. Moreover, such agreements generally also fail the third condition: indispensability.[610] However, each case ultimately falls to be assessed on its merits. It is for the party claiming the benefit of such exemption to adduce evidence that substantiates its claim.[611] No such evidence has been provided by any of the Parties for either of the two Infringements.

I Appreciable restriction of competition

5.417 As set out in paragraph 4.42 above, an agreement that has an anti-competitive object constitutes an appreciable restriction of competition by its nature and independently of any concrete effect that it may have. In this case, the CMA has concluded that both Infringements constitute 'by object' infringements. It therefore finds that both of them constitute appreciable restrictions of competition.

J Effect on trade within the UK

5.418 As set out in paragraph 4.44 above, the CAT has held that the requirement for agreements to have an effect on trade within the UK is a purely jurisdictional test to demarcate the boundary line between the application of EU competition law and national competition law, and that there is no requirement that the effect on trade within the UK should be appreciable. The CMA finds that both of the Infringements had an effect on trade in the UK – in the case of the NCI Infringement on the advertising and sale of new Vehicles in the UK, and in the case of the ZTC Infringement on the procurement of ELV Takeback services in the UK.

---

[609] Commission Notice, *Guidelines on the Application of Article 81(3) of the Treaty* [2004] OJ C101/97 ('**Article 101(3) Guidelines**'). See also Agreements and concerted practices: OFT401 (December 2004), paragraph 5.5.
[610] Article 101(3) Guidelines, paragraph 46.
[611] Section 9(2) of the Act.

6. ATTRIBUTION OF LIABILITY

A. Legal framework

A.I Identification of the appropriate legal entity

6.1 Competition law uses the concept of an 'undertaking' to designate the perpetrator of an infringement of competition law.[612] When an undertaking infringes the competition rules (through one or more of the entities which form part of it), it is for the entire economic unit to answer for that infringement, and any entity of which that economic entity was made up at the time the infringement was committed can be held jointly and severally liable for the infringement.[613]

A.II Direct and indirect personal liability

6.2 Liability for an infringement rests with the legal person(s) responsible for operating the undertaking at the time of the infringement (the 'personal responsibility' principle).[614]

6.3 Parent companies which form part of an undertaking that has been found to have infringed competition law can be directly or indirectly responsible for the infringing conduct.

6.4 A parent company can be directly responsible where it was directly involved in an infringement (eg by participating directly in the infringing conduct, directing a directly infringing subsidiary's involvement or being aware of its subsidiary's infringing conduct without actively intervening to end it).

6.5 Even where a parent company was not directly involved in an infringement, it may still be held jointly and severally liable for an infringement committed by its subsidiary – even without the parent's knowledge or involvement.[615] This will be the case where, as a matter of economic reality,[616] at the time of the infringement, the parent company had the ability to exercise decisive influence over the conduct of the subsidiary in question and actually exercised such decisive influence with the effect that the subsidiary did not decide independently upon its own conduct on the market but carried out, in all material respects, the instructions given to it by the parent company.[617] This assessment turns not only on intervention in, or

---

[612] C-882/19 *Sumal, S.L. v Mercedes Benz Trucks España, S.L.* ('***Sumal***'), ECLI:EU:C:2021:800, paragraph 39.
[613] C-882/19 *Sumal*, ECLI:EU:C:2021:800, paragraphs 42 and 44.
[614] Judgment in Case T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraphs 236–237.
[615] C-90/09 P *General Química SA v Commission*, ECLI:EU:C:2011:21, paragraph 102. See also C-97/08 *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraphs 59 and 77.
[616] C-293/13 P *Del Monte v Commission*, ECLI:EU:C:2015:416.
[617] C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536, paragraph 60; C-179/12 P *Dow v Commission*, ECLI:EU:C:2013:605.

supervision of, the subsidiary's commercial conduct in the strict sense,[618] but on the economic, organisational and legal links between parent and subsidiary, which may be informal.[619] Where the test is met, the parent company and its subsidiary form a single economic unit and consequently a single undertaking responsible for the infringing conduct.[620] The parent company, as the controlling legal entity in the undertaking, is deemed to have itself committed the infringement of competition law.

6.6 If a subsidiary is wholly (or nearly wholly) owned by a parent company, whether directly or indirectly,[621] then the parent company is able to exercise decisive influence over the subsidiary and there is a rebuttable presumption in law that the parent did in fact exercise decisive influence over the commercial policy of the subsidiary (the 'AKZO presumption').[622]

6.7 Equally, a subsidiary can be held responsible for the infringing conduct of its (direct or indirect) parent company if the parent company exercised decisive influence over it at the time of the infringement and there is a specific link between the economic activity of the subsidiary and the subject matter of the infringement.[623] In such a scenario, both entities form part of the same economic unit (undertaking) and are therefore jointly and severally liable for its conduct.

A.III Economic successor liability

6.8 In some instances, responsibility for the operation of an undertaking may have changed during or following an infringement and the new person responsible for the operation of the undertaking may be held liable for the infringement (the 'economic successor' principle).[624]

6.9 If undertakings could escape liability and penalties by simply changing their identity through restructurings, sales or other legal or organisational changes, the objective of suppressing conduct that infringes the competition rules and

---

[618] C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:536.
[619] C-440/11 *Commission v Stichting Administratiekantoor Portielje and Gosselin Group NV*, ECLI:EU:C:2013:514.; Case C-97/08 P *Akzo Nobel v Commission*, ECLI:EU:C:2009:356.
[620] C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, paragraph 59; *Sainsbury's Supermarkets Ltd v MasterCard* [2016] CAT 11, paragraph 363.
[621] C-508/11 P *Eni Spa v Commission*, EU:C:2013:289, paragraph 48; C-595/18P *Goldman Sachs v Commission*, EU:C:2021:73, paragraphs 32–33.
[622] C-97/08 P *Akzo Nobel NV v Commission*, ECLI:EU:C:2009:536, paragraphs 60 and 61; T-24/05 *Alliance One & Others v European Commission*, ECLI:EU:T:2010:453, paragraphs 126–130. See also C-508/11 P *ENI v Commission*, paragraph 47; T-299/08 *Elf Aquitaine v Commission*, EU:T:2011:217, paragraphs 51–57 and 64 (where the presumption was held to apply in relation to a shareholding of approximately 98%); T-217/06 *Arkema France and Others v Commission*, EU:T:2011:251, paragraphs 53–65; T-24/05 *Alliance One International and Others v Commission*, EU:T:2010:453, paragraphs 126–130.
[623] C-882/19 *Sumal*, ECLI:EU:C:2021:800, paragraphs 44, 51 and 52.
[624] This operates as an exception to the personal responsibility principle: T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraph 237; C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6, paragraphs 344 and 358–359; T-161/05 *Hoechst v Commission*, paragraph 51; C-280/06 *ETI v Commission*, paragraph 41. Where economic succession is established, the CMA has the power, but not an obligation, to impute to the new operator an infringement committed by the former operator: T-161/05 *Hoechst v Commission*, paragraphs 51 and 64; C-444/11 P *Team Relocations v Commission*, ECLI:EU:C:2013:464, paragraphs 159–161.

preventing its reoccurrence by means of deterrent penalties would be jeopardised.[625]

6.10 To ensure the effective enforcement of competition law, the economic successor principle has been applied where an infringing business is transferred from one legal entity (the transferor) to another (the transferee) and:

(a) the transferor no longer exists[626] or is no longer economically active;[627]

(b) the transferee continued the transferor's economic activities on the market affected by the infringement after the transfer whereas the transferor itself is no longer active in the relevant market;[628] and

(c) at the time of the transfer, there were economic and organisational structural links between the transferor and the transferee based on which it may be considered that the two entities form/ed part of a single undertaking.[629]

6.11 A change in the legal form and name of an undertaking does not necessarily have the effect of creating a new undertaking free from liability for the anti-competitive behaviour of its predecessor when, from an economic point of view, the two are identical.[630] In order to establish whether a person may be regarded as an economic successor, it is necessary to identify the 'combination of physical and human elements [ie the assets and personnel] which contributed to the commission of the infringement and then to identify the person who has become responsible for their operation'.[631]

6.12 It is not necessary for the economic successor to have taken over all of the assets and personnel of the legal entity that committed, or was in control of the undertaking that committed, the infringement. It is sufficient that the transferee/successor has taken over 'the main part of those physical and human elements that were employed in [the relevant business] and therefore contributed to the commission of the infringement in question'.[632]

---

[625] C-601/18 P *Prysmian v Commission*, ECLI:EU:C:2020:751, paragraph 86.
[626] C-40/73 *Suiker Unie v. Commission*, ECLI:EU:C:1975:174; C-29/83 C*ompagnie Royale Asturienne des Mines and Rheinzink GmBH v Commission*, ECLI:EU:C:1984:130; T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74.
[627] T-134/94 *NMH Stahlwerke GmbH v Commission*, ECLI:EU:T:1999:44; C-280/06 *Autorita Garante Della Concorrenza e del Mercato v Ente Tabacchi Italiani – ETI SpA*, ECLI:EU:C:2007:775, paragraph 40 onwards.
[628] Continuation of economic activities is indicative of an economic successor - C-29/83 *CRAM v Commission*, EU:C:1984:130, paragraph 9.
[629] C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6, paragraphs 358–359; T-161/05 *Hoechst v Commission*, paragraph 52; C-280/06 *ETI v Commission*, paragraphs 45 and 49; C-511/11 P *Versalis SpA v Commission*, ECLI:EU:C:2013:386, paragraphs 6 and 52; C-434/13 P *Commission v Parker Hannifin Manufacturing Srl*, EU:C:2014:2165, paragraphs 39–41 and 50–51; C-601/18 P *Prysmian v Commission*, ECLI:EU:C:2020:751, paragraphs 85–90.
[630] C-204/00 P *Aalborg Portland A/S v Commission*, ECLI:EU:C:2004:6, paragraph 59; C-434/13 P *Commission v Parker Hannifin*, EU:C:2014:2456, paragraphs 40–41.
[631] T-6/89 *Enichem Anic SpA v European Commission*, ECLI:EU:T:1991:74, paragraph 237.
[632] T-134/94 *NMH Stahlwerke GmbH v Commission*, ECLI:EU:T:1999:44, paragraph 130.

6.13 The principle of economic continuity/succession may apply where the transfer of the infringing business took place after the infringement had come to an end, provided that the structural links existed at the time of that transfer.[633]

B Application to the Parties

6.14 For each undertaking that the CMA finds has infringed the Act, the CMA has first identified the legal entity that was directly involved in each of the Infringements. It has then determined whether liability for the relevant Infringement/s should be on a joint and several basis with another legal entity or legal entities which form/ed part of the same undertaking at the time of the relevant Infringement/s. Where relevant, the CMA has also considered whether responsibility for the activities of the undertaking in question is attributable to any other legal entity pursuant to the 'economic successor' principle.

6.15 The CMA has exercised its discretion **not** to address the Decision to each legal entity which formed part of each of the undertakings which it has found to have infringed the Chapter I prohibition (eg intermediate companies). Instead, it has addressed the Decision only to the legal entities directly involved in the Infringements, the top parent companies (whether or not directly involved) and any UK subsidiaries (whether or not directly involved) controlled by a legal entity directly involved in the Infringements.

C Association des Constructeurs Européens d'Automobiles (ACEA)

C.I NCI Infringement

6.16 The CMA finds that ACEA was directly involved in, and is therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

C.II ZTC Infringement

6.17 The CMA finds that ACEA was directly involved in, and is therefore liable for, the ZTC Infringement from 1 February 2006 to 11 May 2018.

C.III Conclusions on addressees

6.18 Based on the above, this Decision is addressed to ACEA.

[633] C-204/00 P *Aalborg Portland and Others v Commission*, EU:C:2004:6, paragraphs 59, 351, 356 and 357; and C-434/13 P *Commission v Parker Hannifin*, EU:C:2014:2456, paragraph 49.

D BMW

D.I NCI Infringement

6.19 The CMA finds that BMW AG was directly involved in, and is therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

6.20 During this entire period, BMW AG held an indirect 100% shareholding in BMW (UK) Limited and is therefore presumed to have exercised (indirect) decisive influence over the latter's commercial policy. There was also a specific link between the economic activity of BMW (UK) Limited and the subject matter of the NCI Infringement (sale of new Vehicles).

6.21 The CMA therefore finds that BMW AG and BMW (UK) Limited formed part of the same undertaking and are jointly and severally liable for BMW AG's involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

D.II ZTC Infringement

6.22 The CMA finds that BMW AG was directly involved in the ZTC Infringement from 26 April 2004 to 11 May 2018; and BMW (UK) Limited from 1 January 2005 to 11 May 2018.

6.23 As set out above, during this entire period BMW AG is presumed to have exercised decisive influence over BMW (UK) Limited and there was also a specific link between the economic activity of BMW (UK) Limited and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore finds that both entities formed part of the same undertaking between 26 April 2004 and 11 May 2018 and are therefore jointly and severally liable for their respective involvement in the ZTC Infringement during this time period.

D.III Conclusion on addressees

6.24 Based on the above, this Decision is addressed to BMW AG and to BMW (UK) Limited.

E Ford

E.I NCI Infringement

6.25 The CMA finds that Ford-Werke GmbH and Ford of Europe GmbH were directly involved in, and are therefore liable for, the NCI Infringement, from 29 May 2002 to 4 September 2017.

6.26 During this entire period, Ford Motor Company held a direct or indirect 100% shareholding in Ford-Werke GmbH and Ford of Europe GmbH and is therefore presumed to have exercised decisive influence over each of these entities' commercial policy.

6.27 The CMA therefore finds that Ford Motor Company, Ford-Werke GmbH and Ford of Europe GmbH, formed part of the same undertaking and are jointly and severally liable for Ford-Werke GmbH and Ford of Europe GmbH's involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

E.II ZTC Infringement

6.28 The CMA finds that Ford-Werke GmbH and Ford of Europe GmbH were directly involved in, and are therefore liable for, the ZTC Infringement, from 26 April 2004 to 11 May 2018; and Ford Motor Company Limited from 1 January 2005 to 11 May 2018.

6.29 As set out above, during this entire period Ford Motor Company is presumed to have exercised decisive influence over Ford-Werke GmbH, Ford of Europe GmbH and Ford Motor Company Limited and there was also a specific link between the economic activity of Ford Motor Company Limited and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore finds that all four entities formed part of the same undertaking between 26 April 2004 and 11 May 2018 and are therefore jointly and severally liable for Ford-Werke GmbH, Ford of Europe GmbH and Ford Motor Company Limited's involvement in the ZTC Infringement during this time period.

E.III Conclusions on addressees

6.30 Based on the above, this Decision is addressed to Ford Motor Company, Ford-Werke GmbH, Ford of Europe GmbH and Ford Motor Company Limited.

F Jaguar Land Rover

F.I NCI Infringement

6.31 The CMA finds that Jaguar Land Rover Holdings Limited[634] and Jaguar Land Rover Limited[635] were directly involved in, and are therefore liable for, the NCI Infringement from 23 September 2008 to 4 September 2017.

[634] Company number 04019301. Previous name: 'Land Rover' between 16 August 2000 and 4 October 2013.
[635] Company number 01672070. Previous name: 'Jaguar Cars Limited' between 14 December 1982 and 28 December 2012.

6.32 During this entire period, Tata Motors Limited held an indirect 100% shareholding in Jaguar Land Rover Holdings Limited and Jaguar Land Rover Limited respectively and is therefore presumed to have exercised decisive influence over each entity's commercial policy. The CMA therefore finds that Tata Motors Limited, Jaguar Land Rover Holdings Limited and Jaguar Land Rover Limited formed part of the same undertaking and are jointly and severally liable for Jaguar Land Rover Holdings Limited and Jaguar Land Rover Limited's involvement in the NCI Infringement.

F.II ZTC Infringement

6.33 The CMA finds that Jaguar Land Rover Limited was directly involved in, and is therefore liable for, the ZTC Infringement from 21 April 2016 to 11 May 2018.

6.34 As set out above, during the period from 21 April 2016 to 11 May 2018, Tata Motors Limited is presumed to have exercised decisive influence over Jaguar Land Rover Limited. The CMA therefore finds that both companies formed part of the same undertaking and are jointly and severally liable for Jaguar Land Rover Limited's involvement in the ZTC Infringement during this time period.

F.III Conclusions on addressees

6.35 Based on the above, this Decision is addressed to Tata Motors Limited, Jaguar Land Rover Holdings Limited and Jaguar Land Rover Limited.

G Mercedes-Benz

G.I NCI Infringement

6.36 The CMA finds that Mercedes-Benz Group AG[636] was directly involved in, and is therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

6.37 During this entire period, Mercedes-Benz Group AG held an indirect 100% shareholding in Mercedes-Benz UK Limited[637] and is therefore presumed to have exercised (indirect) decisive influence over the latter's commercial policy. There was also a specific link between the economic activity of Mercedes-Benz UK Limited and the subject matter of the NCI Infringement (sale of new Vehicles).

6.38 The CMA therefore finds that Mercedes-Benz Group AG and Mercedes-Benz UK Limited formed part of the same undertaking and are jointly and severally liable for

[636] Previous names: 'DaimlerChrysler AG' from 1 January 2000 to 18 October 2007, 'Daimler AG' from 19 October 2007 to 31 January 2021.
[637] Company number 02448457. Previous names: 'DaimlerChrysler UK Ltd' from 1 January 2000 to 31 October 2007, 'Mercedes-Benz UK Ltd' from 1 November 2007 to 30 December 2012 and 'Mercedes-Benz Cars UK Ltd' from 31 December 2013 to 4 July 2023.

Mercedes-Benz Group AG's involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

G.II ZTC Infringement

6.39 The CMA finds that Mercedes-Benz Group AG was directly involved in the ZTC Infringement from 26 April 2004 to 11 May 2018; and Mercedes-Benz UK Limited from 1 January 2005 to 11 May 2018.

6.40 As set out above, during this entire period, Mercedes-Benz Group AG is presumed to have exercised (indirect) decisive influence over Mercedes-Benz UK Limited and there was also a specific link between the economic activity of Mercedes-Benz UK Limited and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore finds that both entities formed part of the same undertaking between 26 April 2004 and 11 May 2018 and are therefore jointly and severally liable for their respective involvement in the ZTC Infringement during this time period.

G.III Conclusion on addressees

6.41 Based on the above, this Decision is addressed to Mercedes-Benz Group AG and to Mercedes-Benz UK Limited.

H Mitsubishi

H.I NCI Infringement

6.42 The CMA finds that Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH were directly involved in, and are therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

6.43 During this entire period, Mitsubishi Motors Corporation[638] held a direct, 100% shareholding in Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH and is therefore presumed to have exercised decisive influence over both entities' commercial policy. The CMA therefore finds that Mitsubishi Motors Corporation, Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH formed part of the same undertaking and are jointly and severally liable for

[638] Between October 2016 and September 2017, Nissan Motor Co Ltd. held a 34% shareholding in Mitsubishi Motors Corporation. The CMA has not considered in any detail whether this shareholding gave Nissan Motor Co Ltd the ability to exercise decisive influence over the commercial policy of Mitsubishi Motors Corporation and whether it actually exercised decisive influence over the latter during this period. Instead, the CMA has used its discretion to treat the Nissan and Mitsubishi groups as separate undertakings for the purposes of this Decision and the penalty calculation.

Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH's involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

H.II ZTC Infringement

6.44 The CMA finds that Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH were directly involved in, and are therefore liable for, the ZTC Infringement from 24 February 2006 to 11 May 2018.

6.45 As set out above, during this entire period Mitsubishi Motors Corporation is presumed to have exercised decisive influence over Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH. The CMA therefore finds that all three entities formed part of the same undertaking between 24 February 2006 and 11 May 2018 and are therefore jointly and severally liable for Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH's involvement in the ZTC Infringement during this time period.

H.III Conclusions on addressees

6.46 Based on the above, this Decision is addressed to Mitsubishi Motors Corporation, Mitsubishi Motors Europe B.V. and Mitsubishi Motor R&D Europe GmbH.

I Renault and Nissan

I.I Strategic alliance

6.47 In 1999, Renault S.A. acquired a 36.8% share in Nissan Motor Co. Ltd, and the two entered a 'strategic alliance'. Renault S.A.'s shareholding increased to 44.4% in 2002, then reduced to 43.4% in 2010. It remained at that level until 2023. On 6 February 2023, a restructuring of the strategic alliance was announced. Renault S.A.'s shareholding in Nissan Motor Co Ltd reduced to 15%, while Nissan Motor Co. Ltd also retained a 15% share in Renault S.A. Renault S.A. transferred its other 28.4% of shares in Nissan Motor Co. Ltd to a trust, which would vote neutrally save for certain specific circumstances.

6.48 The CMA finds that Renault S.A. exercised decisive influence over the commercial policy of Nissan Motor Co. Ltd from 1999 to 2023. This conclusion is based on findings of the European Commission's 1999[639] and 2016[640] merger decisions, according to which Renault S.A. acquired and retained 'de facto sole control' of

[639] Case IV/M.1519 – 12 May 1999.
[640] Case M.8099 – 5 October 2016.

Nissan Motor Co. Ltd, and Renault and Nissan's confirmation that such control was, in fact exercised by Renault S.A. from 1999 to 2023.[641]

6.49 Based on the above, the CMA finds that Renault S.A. and Nissan Motor Co. Ltd and their respective subsidiaries formed part of the same undertaking between 1999 and 2023 and are therefore jointly and severally liable for their respective participation in the NCI and ZTC Infringements as set out below. Following the restructuring in February 2023, Renault S.A. and Nissan Motor Co. Ltd no longer form part of the same undertaking at the time of this Decision and this Decision is therefore addressed separately to each of them.

I.II NCI Infringement

Renault

6.50 The CMA finds that Renault S.A.S. was directly involved in, and is therefore liable for, the NCI Infringement[642] from 29 May 2002 to 4 September 2017. During this entire period, Renault S.A. held a direct[643] or indirect 100% shareholding in Renault S.A.S., Renault U.K. Limited[644] and Renault Retail Group UK Limited,[645] and is therefore presumed to have exercised decisive influence over the commercial policy of these entities, which means that they were part of the same undertaking. There was also a specific link between the economic activity of Renault U.K. Limited and Renault Retail Group UK Limited, and the subject matter of the NCI Infringement (sale of new Vehicles).

Nissan

6.51 The CMA finds that Nissan Automotive Europe SAS and Nissan Motor Manufacturing UK Limited[646] were directly involved in, and are therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017. During this entire period, Nissan Motor Co. Ltd held a direct or indirect 100% shareholding in Nissan Automotive Europe SAS and Nissan Motor Manufacturing UK Limited and is therefore presumed to have exercised decisive influence over the commercial policy of these entities. This means that they were part of the same undertaking. There was also a specific link between the economic activity of Nissan Motor

[641] SIR-000040086.
[642] References in this chapter to Renault's participation in, and liability for, the NCI Infringement should be read as relating only to the part of the agreement relating to recyclability and recoverability. As set out at paragraph 5.200 above, the CMA has found that Renault did not participate in the agreement in respect of advertising the use of recycled materials in its new Vehicles.
[643] Direct in the case of Renault S.A.S.
[644] Company number 00082932.
[645] Company number 02304689. Previous names: 'Reagroup UK Limited' between 1 December 2005 and 31 December 2007; 'Renault Retail Group Limited' between 11 November 1988 and 1 December 2005.
[646] Company number 01806912.

Manufacturing UK Limited, and the subject matter of the NCI Infringement (sale of new Vehicles).

Conclusion on joint and several liability

6.52 The CMA therefore finds that Renault S.A., Renault S.A.S., Renault U.K. Limited, Renault Retail Group UK Limited, Nissan Motor Co. Ltd, Nissan Automotive Europe SAS and Nissan Motor Manufacturing UK Limited, formed part of the same undertaking and are jointly and severally liable for their respective involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

I.III ZTC Infringement

Renault

6.53 The CMA finds that Renault S.A.S. was directly involved in, and is therefore liable for, the ZTC Infringement from 26 April 2004 to 11 May 2018; and Renault U.K. Limited and Renault Retail Group UK Limited from 1 January 2005 to 11 May 2018.

6.54 As set out above, during this entire period Renault S.A. held a direct or indirect 100% shareholding in Renault S.A.S., Renault U.K. Limited and Renault Retail Group UK Limited and is therefore presumed to have exercised decisive influence over these entities' commercial policy. There was also a specific link between the economic activity of Renault U.K. Limited and Renault Retail Group UK Limited, and the subject matter of the ZTC Infringement (arranging ELV Takeback).

Nissan

6.55 The CMA finds that Nissan Motor Parts Centre B.V. and/or Nissan Automotive Europe SAS were directly involved in, and are therefore liable for, the ZTC Infringement from 24 February 2006 to 11 May 2018; Nissan Motor (GB) Limited[647] from 1 January 2005 to 11 May 2018; and Nissan Motor Manufacturing UK Limited from 12 June 2008 to 11 May 2018.

6.56 As set out above, during this entire period Nissan Motor Co. Ltd held a direct or indirect shareholding in Nissan Automotive Europe SAS and Nissan Motor Manufacturing UK Limited and is therefore presumed to have exercised decisive influence over the commercial policy of these entities. Nissan Motor Co. Ltd also held an indirect 100% shareholding in Nissan Motor (GB) Limited, so is presumed to have exercised decisive influence over the commercial policy of the latter. There was also a specific link between the economic activity of Nissan Motor (GB)

[647] Company number 02514418.

Limited and Nissan Motor Manufacturing (UK) Limited, and the subject matter of the ZTC Infringement (Takeback and treatment of ELVs).

Conclusion on joint and several liability

6.57 The CMA therefore finds that Renault S.A., Renault S.A.S., Renault U.K. Limited, Renault Retail Group UK Limited, Nissan Motor Co. Ltd, Nissan Automotive Europe SAS, Nissan Motors Parts Centre B.V., Nissan Motor Manufacturing UK Limited, and Nissan Motor (GB) Limited formed part of the same undertaking and are jointly and severally liable for their respective participation in the ZTC Infringement from 26 April 2004 to 11 May 2018.

I.IV Conclusions on addressees

6.58 Based on the above, this Decision is addressed to Renault S.A., Renault S.A.S., Renault U.K. Limited, Renault Retail Group UK Limited, Nissan Motor Co. Limited, Nissan Automotive Europe SAS, Nissan Motor Parts Centre B.V., Nissan Motor Manufacturing UK Limited and Nissan Motor (GB) Limited.

J The Society of Motor Manufacturers and Traders (SMMT)

J.I NCI Infringement

6.59 The CMA finds that the SMMT was directly involved in, and is therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

J.II ZTC Infringement

6.60 The CMA finds that the SMMT was directly involved in, and is therefore liable for, the ZTC Infringement from 1 February 2006 to 11 May 2018.

J.III Conclusions on addressees

6.61 Based on the above, this Decision is addressed to the SMMT.

K Stellantis

6.62 Stellantis was established on 16 January 2021 following the merger of Peugeot S.A. and Fiat Chrysler Automobiles N.V.. Fiat Chrysler Automobiles N.V., which was renamed Stellantis N.V., was the surviving entity from the merger, while Peugeot S.A. ceased to exist.

6.63 The CMA finds that there is functional and economic continuity between Peugeot S.A. and Stellantis N.V. and therefore the latter is the economic successor of the former. This is for the following reasons:

(a) Stellantis N.V. assumed all liabilities, assets, operations, employees, and subsidiaries of Peugeot S.A. as a consequence of the merger.

(b) The purpose of the merger was for Stellantis N.V. to continue to operate the Peugeot S.A. business, as a merged business with Fiat.

(c) Stellantis N.V. allotted for each issued and outstanding Peugeot S.A. ordinary share in the renamed Stellantis N.V. entity. All shares in Peugeot S.A. were cancelled.[648]

6.64 Prior to the creation of Stellantis, on 1 August 2017, Peugeot S.A. had acquired ownership of the Opel/Vauxhall business from General Motors. As part of that transaction, General Motors transferred all its European operations and assets of the Opel/Vauxhall brands from the existing Adam Opel GmbH to a shelf company that was renamed Opel Automobile GmbH and continued the former's operations. Peugeot S.A. subsequently acquired 100% of the shares in Opel Automobile GmbH. The CMA finds that, based on the above, there is functional and economic continuity between Adam Opel GmbH and Opel Automobile GmbH, and that therefore the latter is the economic successor of the former. As Opel Automobile GmbH's sole shareholder, Peugeot S.A. is presumed to have exercised decisive influence over its commercial policy following the acquisition, and consequently, both formed part of the same undertaking from 1 August 2017.

6.65 As stated above, when Stellantis N.V. was formed as a consequence of the 2021 merger, it also acquired all of Peugeot S.A.'s subsidiaries including the Opel/Vauxhall business, which still forms part of the Stellantis undertaking to date.

6.66 Based on the above, the CMA finds that Stellantis N.V. is responsible for the conduct of Peugeot S.A. (and its respective subsidiaries) prior to 2021, and for the conduct of the Opel/Vauxhall brands from 1 August 2017.

K.I NCI Infringement

Peugeot Citroen

6.67 The CMA finds that Peugeot S.A. and PSA Automobiles S.A. were directly involved in, and are therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

6.68 During this entire period, Peugeot S.A. held a direct 100% shareholding in PSA Automobiles S.A. It also held an indirect 100% shareholding in Peugeot Motor

[648] SIR-000041098.

Company Plc,[649] and a near 100%[650] shareholding in Citroen U.K. Limited.[651] Peugeot S.A. is therefore presumed to have exercised decisive influence over the commercial policy of these three entities. There was also a specific link between the economic activity of Peugeot Motor Company Plc and Citroen U.K. Limited, and the subject matter of the NCI Infringement (sale of new Vehicles). The CMA therefore concludes that Peugeot S.A. (now Stellantis N.V.), PSA Automobiles S.A, Peugeot Motor Company Plc and Citroen U.K. Limited formed part of the same undertaking and are jointly and severally responsible for their respective involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

Opel/Vauxhall

6.69 The CMA finds that Adam Opel GmbH was directly involved in the NCI Infringement from 29 May 2002 to 31 July 2017; and Opel Automobile GmbH from 1 August 2017 to 4 September 2017. As explained above, Opel Automobile GmbH was the economic successor of Adam Opel GmbH. The CMA therefore concludes that Opel Automobile GmbH is liable for the NCI Infringement from 29 May 2002 to 4 September 2017.

6.70 During this entire period, Adam Opel GmbH,[652] and subsequently Opel Automobile GmbH as its economic successor,[653] held an indirect 100% shareholding in Vauxhall Motors Limited,[654] and is therefore presumed to have exercised decisive influence over the commercial policy of the latter. There was also a specific link between the economic activity of Vauxhall Motors Limited and the subject matter of the NCI Infringement (sale of new Vehicles). The CMA therefore concludes that both were part of the same undertaking and therefore jointly and severally liable for their respective involvement in the NCI Infringement.

Conclusion on joint and several liability

6.71 Based on the above, the CMA finds that Stellantis N.V. (as the economic successor of Peugeot S.A.), PSA Automobiles S.A., Peugeot Motor Company Plc and Citroen U.K. Limited are jointly and severally liable for the NCI Infringement from 29 May 2002 to 31 July 2017; they are also jointly and severally liable, with Opel Automobile GmbH and Vauxhall Motors Limited, for their own and the latter's involvement in the NCI Infringement from 1 August 2017 to 4 September 2017.

6.72 In addition to this, Opel Automobile GmbH and Vauxhall Motors Limited are jointly and severally liable for their respective involvement in the NCI Infringement in the

[649] Company no. 00148545.
[650] 99.97%.
[651] Company no. 00191579.
[652] May 2002 to August 2017.
[653] August 2017 to September 2017.
[654] Company no. 00135767.

period from 29 May 2002 to 31 July 2017. This liability is not shared with Stellantis N.V. or any other entities that now form part of the Stellantis group; however, as explained in further detail in paragraphs 6.80 to 6.87 below, during the period from 10 July 2009 and 31 July 2017, Opel Automobile GmbH and Vauxhall Motors Limited's liability is shared on a joint and several basis with General Motors Company, the owner of Adam Opel GmbH at the time.

K.II ZTC Infringement

Peugeot Citroen

6.73 The CMA finds that Peugeot S.A. and PSA Automobiles S.A. were directly involved in, and are therefore liable for, the ZTC Infringement from 26 April 2004 to 11 May 2018; and Peugeot Motor Company Plc and Citroen U.K. Limited from 1 January 2005 to 11 May 2018.

6.74 As set out above, during this entire period Peugeot S.A. is presumed to have exercised decisive influence over the commercial policy of PSA Automobiles S.A., Peugeot Motor Company Plc and Citroen U.K. Limited and there was also a specific link between the economic activity of Peugeot Motor Company Plc and Citroen U.K. Limited, and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore concludes that all four entities formed part of the same undertaking between 26 April 2004 and 11 May 2018 and are therefore jointly and severally liable for their respective involvement in the ZTC Infringement during this time period.

Opel/Vauxhall

6.75 The CMA finds that Adam Opel GmbH was directly involved in the ZTC Infringement from 26 April 2004 to 31 July 2017; Opel Automobile GmbH from 1 August 2017 to 11 May 2018; and Vauxhall Motors Limited from 1 January 2005 to 11 May 2018.

6.76 As set out above, during this entire period Opel Automobile GmbH, as the economic successor of Adam Opel GmbH, is presumed to have exercised decisive influence over Vauxhall Motors Limited and there was also a specific link between the economic activity of Vauxhall Motors Limited and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore concludes that both entities formed part of the same undertaking between 26 April 2004 and 11 May 2018 and are therefore jointly and severally liable for their respective involvement in the ZTC Infringement during this time period.

Conclusion on joint and several liability

6.77 Based on the above, the CMA finds that Stellantis N.V. (as the economic successor of Peugeot S.A.), PSA Automobiles S.A., Peugeot Motor Company Plc and Citroen U.K. Limited are jointly and severally liable for the ZTC Infringement from 26 April 2004 to 31 July 2017; they are also jointly and severally liable, with Opel Automobile GmbH and Vauxhall Motors Limited, for their own and the latter's involvement in the ZTC Infringement from 1 August 2017 until 11 May 2018.

6.78 In addition to this, Opel Automobile GmbH and Vauxhall Motors Limited are jointly and severally liable for their respective involvement in the ZTC Infringement in the period from 26 April 2004 to 31 July 2017.

K.III Conclusions on addressees

6.79 Based on the above, this Decision is addressed to Stellantis N.V., PSA Automobiles S.A., Peugeot Motor Company Plc, Citroen U.K. Limited, Opel Automobile GmbH and Vauxhall Motors Limited.

L General Motors

6.80 General Motors Corporation owned the Opel/Vauxhall business through its subsidiary Adam Opel GmbH from 1929 until 10 July 2009,[655] at which point General Motors Corporation filed for bankruptcy. In the course of the bankruptcy proceedings, a new company was created named General Motors Company. Most of the assets of General Motors Corporation were transferred to General Motors Company, including Adam Opel GmbH and its business operations. General Motors Corporation was dissolved in 2011.

6.81 The CMA concludes that there is no functional and economic continuity between General Motors Company and General Motors Corporation, and the former therefore cannot be held liable for the latter's conduct prior to the transfer, for the following reasons:

(a) None of the shareholders of General Motors Corporation acquired shares in the new General Motors Company.

(b) The Sale Order for the sale of assets from General Motors Corporation to General Motors Company specified that General Motors Company shall not be liable for any claims against the sellers and shall have no 'theory of antitrust', successor or transferee liability.

[655] It has not been possible to obtain records showing the exact corporate structure for this period.

(c) Several decisions of US courts determined that General Motors Company cannot be held liable as a successor for General Motors Corporation.[656]

6.82 General Motors Company held all shares in Adam Opel GmbH from 10 July 2009 until its transfer to Peugeot S.A. on 1 August 2017 and is therefore presumed to have exercised decisive influence over the commercial policy of the latter during this time period. The CMA therefore concludes that both entities formed part of the same undertaking and are therefore jointly and severally liable for the involvement of Adam Opel GmbH and any entities controlled by it in the NCI and ZTC Infringements from 10 July 2009 to 31 July 2017.

L.I NCI Infringement

6.83 As outlined above, the CMA finds that Adam Opel GmbH was directly involved in the NCI Infringement from 29 May 2002 to 31 July 2017, and that throughout this period it exercised decisive influence over the commercial policy of Vauxhall Motors Limited.

6.84 The CMA therefore finds that General Motors Company, Opel Automobile GmbH (as the economic successor of Adam Opel GmbH) and Vauxhall Motors Limited are jointly and severally liable for the NCI Infringement from 10 July 2009 to 31 July 2017.

L.II ZTC Infringement

6.85 As outlined above, the CMA finds that Adam Opel GmbH was directly involved in the ZTC Infringement from 26 April 2004 to 31 July 2017; and Vauxhall Motors Limited from 1 January 2005 to 31 July 2017.

6.86 The CMA therefore finds that General Motors Company, Opel Automobile GmbH (as the economic successor of Adam Opel GmbH) and Vauxhall Motors Limited are jointly and severally liable for the NCI Infringement from 10 July 2009 to 31 July 2017.

L.III Conclusions on addressees

6.87 Based on the above, this Decision is addressed to General Motors Company, Opel Automobile GmbH and Vauxhall Motors Limited.

[656] SIR-000040790.

M Toyota

M.I NCI Infringement

6.88 The CMA finds that Toyota Motor Europe NV/SA[657] was directly involved in, and is therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

6.89 During this entire period, Toyota Motor Corporation held a direct or indirect,[658] near 100%[659] shareholding in Toyota Motor Europe NV/SA and is therefore presumed to have exercised decisive influence over the latter's commercial policy. In the same period, Toyota Motor Corporation held a direct or indirect,[660] near 100%[661] shareholding in Toyota (GB) Plc[662] and is therefore presumed to have exercised decisive influence over the latter's commercial policy. There was also a specific link between the economic activity of Toyota (GB) Plc and the subject matter of the NCI Infringement (sale of new Vehicles).

6.90 The CMA therefore finds that Toyota Motor Corporation, Toyota Motor Europe NV/SA and Toyota (GB) Plc formed part of the same undertaking and are jointly and severally liable for Toyota Motor Europe NV/SA's involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

M.II ZTC Infringement

6.91 The CMA finds that Toyota Motor Europe NV/SA was directly involved in the ZTC Infringement from 1 February 2006 to 11 May 2018; and Toyota (GB) Plc from 1 January 2005 to 11 May 2018.

6.92 As set out above, during this entire period Toyota Motor Corporation is presumed to have exercised decisive influence over Toyota Motor Europe NV/SA and Toyota (GB) Plc and there was also a specific link between the economic activity of Toyota (GB) Plc and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore finds that all three entities formed part of the same undertaking between 1 February 2006 and 11 May 2018 and are therefore jointly and severally liable for the ZTC Infringement during this time period.

---

[657] Toyota Motor Europe NV/SA was named 'Toyota Motor Europe Marketing & Engineering NV/SA' between 29 May 2002 and 1 July 2002, then 'Toyota Motor Marketing Europe' from 1 July 2002 to 1 October 2005.
[658] Indirect between 29 May 2002 and 1 October 2005, then direct between 1 October 2005 and the end of the NCI Infringement.
[659] [✂]
[660] Direct between 29 May 2002 and 1 April 2003, then indirect through Toyota Motor Europe NV/SA between 1 April 2003 and the end of the NCI Infringement.
[661] [✂]
[662] Company number 00916634.

M.III Conclusions on addressees

6.93 Based on the above, this Decision is addressed to Toyota Motor Corporation, Toyota Motor Europe NV/SA and Toyota (GB) Plc.

N Volkswagen

N.I NCI Infringement

6.94 The CMA finds that Volkswagen AG was directly involved in, and therefore liable for, the NCI Infringement from 29 May 2002 to 4 September 2017.

6.95 During this entire period, Volkswagen AG held an indirect 100% shareholding in Volkswagen Group United Kingdom Limited[663] and is therefore presumed to have exercised (indirect) decisive influence over the latter's commercial policy. There was also a specific link between the economic activity of Volkswagen Group United Kingdom Limited and the subject matter of the NCI Infringement (sale of new Vehicles).

6.96 The CMA therefore finds that Volkswagen AG and Volkswagen Group United Kingdom Limited formed part of the same undertaking and are jointly and severally liable for Volkswagen AG's involvement in the NCI Infringement from 29 May 2002 to 4 September 2017.

N.II ZTC Infringement

6.97 The CMA finds that Volkswagen AG was directly involved in the ZTC Infringement from 26 April 2004 to 11 May 2018; and Volkswagen Group United Kingdom Limited from 1 January 2005 to 11 May 2018.

6.98 As set out above, during this entire period Volkswagen AG is presumed to have exercised decisive influence over Volkswagen Group United Kingdom Limited and there was also a specific link between the economic activity of Volkswagen Group United Kingdom Limited and the subject matter of the ZTC Infringement (arranging ELV Takeback). The CMA therefore finds that both entities formed part of the same undertaking between 26 April 2004 and 11 May 2018 and are therefore jointly and severally liable for their respective involvement in the ZTC Infringement during this time period.

[663] Company number 00514809.

N.III Conclusion on addressees

6.99 Based on the above, this Decision is addressed to Volkswagen AG and Volkswagen Group United Kingdom Limited.

7. THE CMA'S ACTION

A. The CMA's decision

7.1 On the basis of the evidence set out in this Decision, the CMA has made an infringement decision addressed to the Parties in respect of the NCI Infringement and the ZTC Infringement, finding them liable for the two infringements of the Chapter I Prohibition of the Act.

B Directions

7.2 Section 32(1) of the Act provides that if the CMA has made a decision that an agreement infringes the Chapter I Prohibition, it may give to such person or persons as it considers appropriate such directions as it considers appropriate to bring the infringement to an end.

7.3 As the CMA considers that the Infringements have already come to an end, it does not propose to issue directions in this case.

C Financial penalties

7.4 On making a decision that an agreement has infringed the Chapter I prohibition, the CMA may require an undertaking which is party to the agreement to pay the CMA a penalty in respect of the infringement.[664]

C.I Intention / negligence

7.5 The CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition only if it is satisfied that the infringement has been committed intentionally or negligently by the undertaking.[665] The CMA is not obliged to specify whether it considers the infringement to be intentional or merely negligent for the purposes of determining whether it may exercise its discretion to impose a penalty.[666]

7.6 The Competition Appeal Tribunal has defined the terms 'intentionally' and 'negligently' as follows:

> '*…an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting*

[664] Section 36(1) of the Act.
[665] Section 36(3) of the Act.
[666] *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, paragraphs 453–457.

competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition'.[667]

7.7 It is sufficient to show that the undertaking could not have been unaware, or ought to have known, that its conduct had the object or would have the effect of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I prohibition.[668] In some cases, the fact that certain consequences are plainly foreseeable is an element from which the requisite intention may be inferred.[669]

7.8 With regard to the NCI Infringement, as set out in paragraphs 5.190 to 5.193 above, the CMA has found that the objective aim of the Parties was to restrict advertising statements (i) suggesting that the recyclability and recoverability of their Vehicles exceeded the minimum legal requirements or (ii) (from 14 June 2007 onwards) relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles. In the CMA's view, this coordination was capable, by its very nature, of preventing consumers from differentiating between the VM Parties' Vehicles on the basis of those characteristics and (notwithstanding that the Parties may have had other objectives as well) thus had the object of restricting competition in this regard. The Parties must have been aware, or cannot have been unaware, of this. At the very least, the Parties ought to have known that their conduct would result in the restriction of competition.

7.9 With regard to the ZTC Infringement, as set out in paragraphs 5.383 to 5.385 above, the CMA has found that the objective and subjective intent of the Parties was to enable the VM Parties to resist having to pay for a service which they were under a duty to supply, with the object of preventing competition with regard to the procurement of such services. It follows that the Parties must have been aware, or cannot have been unaware, that their conduct in respect of the ZTC Infringement had the object of restricting competition. At the very least, the Parties ought to have known that the conduct would be restrictive of competition.

7.10 Accordingly, the CMA concludes that both Infringements were committed intentionally or at least negligently by the Parties.

C.II The CMA's margin of appreciation in determining the appropriate penalty

7.11 Provided that:

---

[667] *Argos Limited and Littlewoods Limited v OFT* [2005] CAT 13 at paragraph 221. This is consistent with the approach taken by the Court of Justice of the European Union: Judgment of 14 October 2010, *Deutsche Telekom v Commission*, C-280/08 P, EU:C:2010:603, paragraph 124.
[668] *Napp Pharmaceutical Holdings Limited and Subsidiaries v Director General of Fair Trading* [2002] CAT 1, paragraph 456.
[669] Ibid.

- the penalties it imposes in a particular case are within the range of penalties permitted by section 36(8) of the Act and the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (the '**2000 Order**');[670] and

- it has had regard to the guidance on penalties in force at the time when setting the amount of the penalty ('**Penalty Guidance**')[671] in accordance with section 38(8) of the Act,

the CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act.[672]

7.12 The CMA is not bound by its decisions in relation to the calculation of financial penalties in previous cases.[673] Rather, the CMA makes its assessment on a case-by-case basis,[674] having regard to all relevant circumstances and the objectives of its policy on financial penalties.

C.III Attribution of liability

Vauxhall and Opel's involvement

7.13 As set out in Chapter 6, the CMA has held a number of different legal entities liable for Vauxhall and Opel's participation in the Infringements to take account of the fact that Vauxhall and Opel had successive parents during the periods of infringement.[675, 676] The CMA has apportioned liability for any penalty ultimately imposed for Vauxhall and Opel's involvement in the Infringements in the way outlined in Table 7.1 and Table 7.2 below.

Table 7.1: NCI Periods for Vauxhall and Opel's involvement

Period	Dates	Penalty	Attribution
NCI Period 1	29 May 2002 to 9 July 2009	£1,510,715	Joint and several liability for Vauxhall and Opel as direct participants for the full amount

[670] SI 2000/309, as amended by the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259.
[671] *CMA's Guidance as to the appropriate amount of a penalty* (CMA73) – 16 December 2021.
[672] *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at paragraph 168 and *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, at paragraph 102.
[673] See, for example, *Eden Brown and Others v OFT* [2011] CAT 8 ('***Eden Brown***'), at paragraph 78.
[674] See, for example, *Kier Group and Others v OFT* [2011] CAT 3, at paragraph 116 where the CAT noted that '*other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the maxim that each case stands on its own facts is particularly pertinent*'. See also *Eden Brown*, at paragraph 97 where the CAT observed that '*[d]ecisions by this Tribunal on penalty appeals are very closely related to the particular facts of the case*'.
[675] Chapter 6 sets out the CMA's findings on liability for the Infringements in full. See in particular paragraphs 6.69–6.72 and 6.75–6.78 in relation to Vauxhall and Opel.
[676] Where an infringing subsidiary is owned by successive parents during the infringement period, each parent is jointly and severally liable with that subsidiary only for the penalty in relation to its ownership period – C-247/11 P and C-253/11 P *Areva and Others v Commission*, EU:C:2014:257, paragraphs 126–142.

NCI Period 2	10 July 2009 to 31 July 2017	£1,829,904	Joint and several liability for Vauxhall and Opel as direct participants and General Motors as parent for the full amount
NCI Period 3	1 August 2017 to 4 September 2017	£22,704	Joint and several liability for Vauxhall and Opel as direct participants and Stellantis N.V. as parent for the full amount

Table 7.2: ZTC Periods for Vauxhall and Opel's involvement

Period	Dates	Penalty	Attribution
ZTC Period 1	26 April 2004 to 9 July 2009	£670,412	Joint and several liability for Vauxhall and Opel as direct participants for the full amount
ZTC Period 2	10 July 2009 to 31 July 2017	£1,037,145	Joint and several liability for Vauxhall and Opel as direct participants and General Motors as parent for the full amount
ZTC Period 3	1 August 2017 to 11 May 2018	£100,369	Joint and several liability Vauxhall and Opel as direct participants and Stellantis N.V. as parent for the full amount

Renault and Nissan's involvement

7.14 The CMA has found that Renault and Nissan formed part of the same undertaking ('**Renault-Nissan**') throughout the Infringement Periods and are therefore jointly and severally liable for a major portion of the combined penalty for Renault-Nissan's involvement in the Infringements, with Nissan being solely liable for an additional amount as explained in further detail below.

D Calculation of financial penalties

7.15 In accordance with section 38(8) of the Act, the CMA must have regard to the guidance on penalties in force at the time when setting the amount of the penalty. The Penalty Guidance sets out a six-step approach for calculating the penalty.[677]

7.16 Annexes 3 to 5 set out a summary of the CMA's penalty calculations for all Parties in respect of the NCI Infringement (Annex 3), the ZTC Infringement (Annex 4) and the combined penalties (Annex 5).

D.I Step 1 – starting point

7.17 The starting point for determining the level of financial penalty which will be imposed on an undertaking is calculated having regard to the seriousness of the infringement and the need for general deterrence, and the relevant turnover of the undertaking.[678] This is a case-specific assessment, taking into account: how likely it is for the type of infringement at issue, by its nature, to harm competition; the extent and likelihood of harm to competition in the specific relevant circumstances of the individual case; and whether the starting point is sufficient for the purpose of general deterrence.[679]

Determination of relevant turnover

7.18 The relevant turnover is the turnover of the undertaking in the relevant product and geographic market affected by the infringement in the undertaking's last business year, that is, the financial year preceding the date when the infringement ended.[680]

7.19 The CMA has found that, for the purposes of determining the financial penalty, the relevant markets are as follows:

---

[677] Penalty Guidance, paragraph 2.1. See also footnote 13 of the Penalty Guidance, which provides that '*in applying the steps to individual undertakings in multi-party cases, the CMA has a duty to observe the requirements of procedural fairness and rationality*' (*R (on the application of Gallaher Group Ltd and others) (Respondents) v The Competition and Markets Authority*, [2018] UKSC 25, at paragraphs 24–41). In doing so, the CMA will take account of the judgment of the CAT in *Kier* that, '…*it is perfectly rational for a bigger undertaking to receive a more severe penalty than a smaller company … However, this does not mean that penalties should be precisely proportionate to the relative sizes of the undertakings on which they are imposed … it will not necessarily be fair or proportionate to impose on a bigger company a penalty which reflects the same proportion of its total worldwide turnover as a penalty imposed on a smaller company represents in relation to the latter's turnover.*' (See *Kier Group plc and others v Office of Fair Trading* [2011] CAT 3, at paragraph 177). In this context, the CMA also notes the CAT's judgment in *GF Tomlinson Group Limited v Office of Fair Trading* [2011] CAT 7 at paragraph 158, which recognises that the principle of equal treatment is not breached where fines imposed on undertakings vary in size as a result of other factors coming into play. This has also been articulated by the Court of First Instance (now the General Court) in the *Tokai Carbon* case as follows: '*The fact none the less remains that … [the Commission] must comply with the principle of equal treatment, according to which it is prohibited to treat similar situations differently and different situations in the same way, unless such treatment is objectively justified (FETTCSA, paragraph 406).*' (See Case T-236/01 *Tokai Carbon Co. Ltd and Others v Commission* [2004] ECR II-1181, paragraph 219).

[678] Penalty Guidance, paragraphs 2.2–2.13.

[679] Penalty Guidance, paragraph 2.4.

[680] Penalty Guidance, paragraph 2.10.

(a) the relevant market affected by the NCI Infringement is the supply of new Vehicles in the UK; and

(b) the relevant market affected by the ZTC Infringement is the provision of Takeback and treatment of ELVs in the UK.

VM Parties – NCI Infringement

7.20 The CMA has found that, for the purposes of determining the financial penalty, the relevant market affected by the NCI Infringement is the supply of new Vehicles in the UK.[681]

7.21 In respect of Vauxhall and Opel, for which the relevant period is split into different ownership periods, the CMA has exceptionally calculated relevant turnover by reference to the total revenue from the supply of new Vehicles in the UK during the last financial year prior to the end of each ownership period.

7.22 The CMA has set out below the periods during which it has found that each of the VM Parties participated in the NCI Infringement and the relevant turnover for each of them.

BMW

7.23 The CMA has found that BMW participated in the NCI Infringement from 29 May 2002 until 4 September 2017. The relevant turnover for BMW's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year ending 31 December 2016, namely £4,666,232,440.

Ford

7.24 The CMA has found that Ford participated in the NCI Infringement from 29 May 2002 until 4 September 2017. The relevant turnover for Ford's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year ending 31 December 2016, namely £5,310,000,000.

[681] In order to minimise any discrepancies in relevant turnover calculation arising from the fact that VM Parties have different arrangements as regards the leasing of new Vehicles, the CMA has made the following adjustments to the VM Parties' relevant turnover for the NCI Infringement, on a purely discretionary and exceptional basis: First, the CMA has excluded sales of new Vehicles which were ultimately supplied to end customers by way of an operating lease arranged through a VM Party's internal finance provider (as well as the turnover associated with the relevant operating lease) as internal sales ([✂]). Second, the CMA has applied a uniform 5% discount to the relevant turnover of (i) those VM Parties that do not arrange operating leases through an internal finance provider as well as (ii) [✂]. Given that external sales (whether or not ultimately resulting in the supply of a new Vehicle by way of an operating lease) and leasing turnover would normally be included in the relevant turnover for the supply of new Vehicles, the above approach is very conservative. However, the CMA considers that the exceptional adjustments are appropriate in the specific circumstances of this case to take account of the different business models of different manufacturers.

General Motors

7.25 The CMA has concluded that General Motors is jointly and severally liable as the former parent of Vauxhall and Opel for their involvement in the NCI Infringement during NCI Period 2. As set out in paragraph 7.21 above, the CMA has calculated the relevant turnover for each period of Vauxhall and Opel's involvement in the NCI Infringement by reference to Opel and Vauxhall's total revenue from the supply of new Vehicles in the UK during the last financial year prior to the end of that period. The relevant turnover for NCI Period 2 is therefore £2,457,091,400 (financial year ending 31 December 2016).

JLR

7.26 The CMA has found that JLR participated in the NCI Infringement from 23 September 2008 until 4 September 2017. The relevant turnover for JLR's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year ending 31 March 2017, namely £3,377,601,114.

Mitsubishi

7.27 The CMA has found that Mitsubishi participated in the NCI Infringement from 29 May 2002 to 4 September 2017. The relevant turnover for Mitsubishi's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year ending 31 March 2017, namely £387,717,782.

Nissan and Renault

7.28 The CMA has found that Renault-Nissan participated in the NCI Infringement from 29 May 2002 to 4 September 2017. The relevant turnover for Renault-Nissan's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year prior to the end of the NCI Infringement,[682] namely £3,828,077,940.

Peugeot Citroen

7.29 The CMA has found that Peugeot Citroen participated in the NCI Infringement from 29 May 2002 until 4 September 2017. The relevant turnover for Peugeot Citroen's involvement in the NCI Infringement is therefore its total revenue from

[682] The CMA has used the revenue from the supply of new Vehicles in the UK for Nissan in the financial year ending March 2017 and for Renault in the financial year ending December 2016.

the supply of new Vehicles in the UK in the financial year ending 31 December 2016, namely £2,091,455,400.

Toyota

7.30 The CMA has found that Toyota participated in the NCI Infringement from 29 May 2002 until 4 September 2017. The relevant turnover for Toyota's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year ending 31 March 2017, namely £1,687,493,870.

Vauxhall/Opel

7.31 As set out in paragraph 7.21 above, the CMA has calculated the relevant turnover for each period of Vauxhall and Opel's involvement in the NCI Infringement by reference to Vauxhall and Opel's total revenue from the supply of new Vehicles in the UK during the last financial year prior to the end of that period. The relevant turnover for each ownership period is therefore as follows:

(a) NCI Period 1: £2,296,309,600 (financial year ending 31 December 2008).

(b) NCI Period 2: £2,457,091,400 (financial year ending 31 December 2016).

(c) NCI Period 3: £2,457,091,400 (financial year ending 31 December 2016).

VW

7.32 The CMA has found that VW participated in the NCI Infringement from 29 May 2002 until 4 September 2017. The relevant turnover for VW's involvement in the NCI Infringement is therefore its total revenue from the supply of new Vehicles in the UK in the financial year ending 31 December 2016, namely £8,124,187,787.

VM Parties – ZTC Infringement

7.33 The CMA has found that, for the purposes of determining the financial penalty, the relevant market affected by the ZTC Infringement is the provision of Takeback and treatment of ELVs in the UK.

7.34 None of the Parties are active in the provision of Takeback and treatment of ELVs. Given that the ZTC Infringement relates to the coordination of the purchase price paid for the Takeback and treatment of ELVs, the CMA has considered whether it would be appropriate to use the value of purchases as a proxy for the relevant turnover. However, in this case the conduct involves an agreement that the VM Parties would not pay at all for the Takeback and treatment of ELVs, resulting in a value of purchases of zero.

7.35 Accordingly, the CMA considers it appropriate to apply paragraph 2.23 of the Penalty Guidance, which states that where an undertaking's relevant turnover is very low or zero with the result that the figure at the end of step 3 would be very low or zero, the CMA would expect to make more significant adjustments, both for general and specific deterrence, at step 4. In this case, this means that rather than going through steps 1 to 3 of the Penalty Guidance (with a final outcome of zero), the CMA has started its assessment of the appropriate amount of the penalty for the ZTC Infringement at step 4, with relevant factors from steps 1 to 3 being taken into account in steps 4 and 5 of the assessment.

7.36 Details of how the CMA has calculated the Parties' penalties in respect of the ZTC Infringement are set out in paragraphs 7.71 to 7.78 and 7.103 below.

Trade Association Parties

7.37 Neither ACEA nor the SMMT had any turnover in the relevant markets affected by either the NCI Infringement or the ZTC Infringement. Their penalties in respect of both Infringements after step 3 would therefore be zero. Accordingly, in line with paragraph 2.23 of the Penalty Guidance, the CMA considers it appropriate to start its assessment of the appropriate amount of the penalty for ACEA and SMMT for both the NCI Infringement and the ZTC Infringement at step 4, with relevant factors from steps 1 to 3 being taken into account in steps 4 and 5 of the assessment.

Assessment of seriousness and the need for general deterrence

7.38 At step 1, the CMA will apply a starting point of up to 30% to an undertaking's relevant turnover in order to reflect adequately the seriousness of the particular infringement (and ultimately the extent and likelihood of actual or potential harm to competition and consumers), and the need to deter the infringing undertaking and other undertakings from engaging in that type of infringement in the future.[683]

7.39 The CMA will generally use a starting point between 21% and 30% of relevant turnover for the most serious types of infringement, that is, those which the CMA considers are likely by their very nature to harm competition most. A starting point between 10% and 20% is more likely to be appropriate for infringements of the Chapter I prohibition by effect and for certain, less serious object infringements of the Chapter I prohibition.[684]

[683] Penalty Guidance, paragraph 2.3.
[684] Penalty Guidance, paragraph 2.5.

NCI Infringement

7.40 The CMA concludes that the appropriate starting point for the NCI Infringement is 14%.

7.41 In reaching this conclusion, the CMA has taken account of the fact that it considers that the NCI Infringement was an agreement under which the VM Parties would not compete by making advertising statements (i) suggesting that the recyclability or recoverability of their Vehicles exceeded minimum legal requirements, or (ii) (from 14 June 2007 onwards) relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles.

7.42 The CMA considers that the NCI Infringement had as its 'object' the prevention, restriction or distortion of competition (see paragraph 5.196 above).[685] Further, the CMA considers advertising restrictions relating to actual or potential competitive parameters to be serious infringements of the Chapter I prohibition. Accordingly, the appropriate starting point for the NCI Infringement falls within the 10% to 30% range.

7.43 In determining an appropriate starting point within the 10% to 30% range, the CMA has also taken account of the additional factors set out below.

Nature of the product

7.44 Over 2.5 million new cars were registered in the UK in the year the infringement ended (2017).[686] Throughout the NCI Infringement Period, most households in the UK owned at least one vehicle.[687] Given the considerable cost of a vehicle, most consumers spend a significant amount of time researching before making a purchase.[688] It is estimated that VMs generated revenues of £33.5 billion from sales of new vehicles in the UK in the year the infringement ended (2017).[689] The NCI Infringement therefore concerned an important product which is relied on by a significant proportion of the UK population in their day-to-day lives.

Structure of the market and market coverage

7.45 The VM Parties accounted for the majority (approximately 65%) of the supply of new Vehicles in the UK in the year when the infringement ended (2017).[690] Although the CMA does not have data on Vehicle supply for the entire NCI Infringement Period, there is no indication that this was not the case throughout

[685] For a detailed analysis of the 'by object' element of the NCI Infringement, please refer to paragraphs 5.181–5.196 above.
[686] SIR-000041104.
[687] SIR-000041145, page 10.
[688] SIR-000041134.
[689] SIR-000041146, SIR-000041141, SIR-000041142 and SIR-000041143.
[690] SIR-000041104.

that period. Accordingly, the majority of the supply of new Vehicles in the UK during that period was potentially affected by the NCI Infringement.

7.46 The NCI Infringement applied across the whole of the UK.

Actual or potential harm caused to consumers whether directly or indirectly

7.47 Given that the CMA has concluded that the NCI Infringement is a 'by object' infringement, it is not required to assess its actual effects for the purposes of establishing an infringement.[691] However, the CMA concludes that the NCI Infringement at least had the potential to cause harm to competition and consumers, as well as the wider public interest.

7.48 The NCI Infringement was capable, by its very nature, of preventing consumers from differentiating between the VM Parties' Vehicles on the basis of their recyclability and recoverability in excess of the minimum legal requirements, and (from 14 June 2007 onwards) the percentage or mass of recycled materials used in the manufacture of new Vehicles. As set out in paragraph 5.184 above, the CMA has found that although the matters concerned may not have been key parameters for every single customer, the CMA considers that there was at least potential customer interest in this area even dating back to 2005. In light of this, the CMA considers that the matters covered by the NCI Infringement were, therefore, at least potential parameters of competition. As such, the NCI Infringement had the potential to have restricted or eliminated at least a potential parameter of competition.

7.49 In the CMA's view, the NCI Infringement also had the potential to reduce competitive pressure on the VM Parties, which may have lowered incentives for the VM Parties to invest and innovate in this area to exceed the legal targets relating to recyclability and recoverability and/or for more recycled material to be used in their manufacturing, something which may have been in the wider public interest. As set out in paragraph 5.184 above, the NCI Infringement also had the potential to delay the relevant features affected by the NCI Infringement from becoming more important parameters of competition. The CMA acknowledges that certain VM Parties adduced some evidence of innovation and investment in relation to recyclability and recoverability (including on exceeding the applicable minimum legal requirements) and the use of more recycled materials in the manufacture of Vehicles during the NCI Infringement Period. However, the CMA has not found it necessary to assess this evidence given that (as set out in

[691] Judgment in *Consten and Grundig v Commission*, joined cases C-56/64 and C-58/64, EU:C:1966:41, page 342. See also *Cityhook Limited v OFT* [2007] CAT 18, paragraph 269.

paragraph 5.196 above), no assessment of the actual or potential effects of the NCI Infringement is required for the purpose of the CMA's findings.[692]

7.50 It is also relevant that the NCI Infringement was not a short-term arrangement; it was an industry practice that went on for more than 15 years.

7.51 Although these factors support the adoption of a high starting point, the CMA considers that there are other factors which suggest that the NCI Infringement should not be classified as amongst the most serious types of infringement.

7.52 First, while advertising restrictions have the potential to be amongst the most serious infringements of the Chapter I prohibition, the restriction in this case was limited to advertising on certain characteristics of Vehicles, specifically (i) the recyclability and recoverability of new Vehicles above the minimum legal requirements, and (ii) (from 14 June 2007 onwards) the percentage or mass of recycled materials used in the manufacture of new Vehicles.

7.53 Second, while these relevant characteristics were potentially of interest to at least some consumers, the CMA considers that other characteristics are likely to have had a greater influence on purchasing decisions during the NCI Infringement Period.

7.54 Third, as regards the recyclability and recoverability of Vehicles, it was a legal requirement that Vehicles must be recyclable to 85% and recoverable to 95%. The scope to compete on exceeding these limits was therefore limited.

Need for general deterrence

7.55 In setting the starting point, the CMA has also considered whether it is sufficient for the purpose of deterring other undertakings, whether in the same market or more broadly, from engaging in the same or similar conduct.[693] Arrangements between competitors which affect, or relate to, the environmental impact/sustainability of their products and which have the potential to prevent customers from making informed choices are serious infringements, requiring a substantial starting point.

Conclusion on percentage starting point for NCI Infringement

7.56 The CMA's assessment of the above factors in the round is that, whilst the nature of the 'by object' restriction is serious, the NCI Infringement is not amongst the most serious types of infringement. Therefore, the CMA considers that a starting

[692] As set out in paragraph 5.196, since the CMA has concluded that the NCI Infringement constitutes a 'by-object infringement', it has not carried out an effects analysis.
[693] Penalty Guidance, paragraph 2.8.

point of 14% is appropriate for the NCI Infringement to reflect both the seriousness and the need for general deterrence.

Calculation at the end of step 1 for the NCI Infringement

7.57 The starting point for determining the level of penalty for the VM Parties for the NCI Infringement is therefore as follows:

(a) BMW: £653,272,542 (ie 14% of £4,666,232,440)

(b) Ford: £743,400,000 (ie 14% of £5,310,000,000)

(c) General Motors: £343,992,796 (ie 14% of £2,457,091,400)[694]

(d) JLR: £472,864,156 (ie 14% of £3,377,601,114)

(e) Mitsubishi: £54,280,489 (ie 14% of £387,717,782)

(f) Nissan: £535,930,912 (ie 14% of £ £3,828,077,940)[695]

(g) Renault: £535,930,912 (ie 14% of £3,828,077,940)[696]

(h) Stellantis:

  (i) Peugeot Citroen: £292,803,756 (ie 14% of £2,091,455,400)

  (ii) Vauxhall / Opel:

    (1) NCI Period 1: £321,483,344 (ie 14% of £2,296,309,600)

    (2) NCI Period 2: £343,992,796 (ie 14% of £2,457,091,400)[697]

    (3) NCI Period 3: £343,992,796 (ie 14% of £2,457,091,400)

(i) Toyota: £236,249,142 (ie 14% of £1,687,493,870)

(j) VW: £1,137,386,290 (ie 14% of £8,124,187,787)

[694] As set out in paragraphs 6.84 and 6.86 above, General Motors' liability (by virtue of its ownership of Vauxhall and Opel from 10 July 2009 to 31 July 2017) for Vauxhall/Opel NCI and ZTC Period 2, is shared, on a joint and several basis, with Vauxhall and Opel – see also paragraph 7.57(h)(ii)(2) above.
[695] As explained in further detail in the remainder of this Decision, Nissan's liability for a portion of its penalty is shared, on a joint and several basis, with Renault and it is liable for an additional amount.
[696] As explained in further detail in the remainder of this Decision, Renault's liability for its penalty is shared, on a joint and several basis, with Nissan.
[697] As set out in paragraphs 6.84 and 6.86 above, Vauxhall and Opel's liability for Vauxhall/Opel NCI and ZTC Period 2 is shared, on a joint and several basis, with General Motors – see also paragraph 7.57(c) above.

D.II Step 2 – adjustment for duration

7.58 The amount resulting from step 1 may be increased or, in exceptional circumstances, decreased to take into account the duration of the infringement. Where the total duration of an infringement is more than one year, the CMA will generally round up part years to the nearest quarter year.[698] In this case, however, the NCI Infringement Period is being split into separate periods for Stellantis in order to attribute liability accurately. As a result, due to the specific circumstances of this case, the CMA has adjusted for duration on the basis of the exact length of a party's involvement.

7.59 For the reasons set out above in paragraphs 7.34 to 7.35 relating to the ZTC Infringement, the CMA has only conducted an assessment of step 2 for the NCI Infringement.

NCI Infringement

7.60 As set out in paragraph 5.211 above, the CMA has concluded that the period of each VM Party's involvement in the NCI Infringement was as follows:

(a) JLR: from 23 September 2008 to 4 September 2017. The CMA has therefore applied a duration multiplier of 8.96.

(b) Vauxhall and Opel: Table 7.1 above sets out the lengths of each period of Vauxhall's and Opel's involvement in the NCI Infringement by ownership period. The CMA has applied a duration multiplier at Step 2 based on the length of each ownership period as follows:

(i) NCI Period 1 ran from 29 May 2002 to 9 July 2009 and therefore the CMA has applied a duration multiplier of 7.12;

(ii) NCI Period 2 ran from 10 July 2009 to 31 July 2017 and therefore the CMA has applied a duration multiplier of 8.06;

(iii) NCI Period 3 ran from 1 August 2017 to 4 September 2017 and therefore the CMA has applied a duration multiplier of 0.10.

(c) All other VM Parties: from 29 May 2002 to 4 September 2017. The CMA has therefore applied a duration multiplier of 15.28 to all VM Parties except JLR and Vauxhall/Opel.

[698] Penalty Guidance, paragraph 2.14.

Calculation at the end of step 2 for the NCI Infringement

7.61 At the end of step 2, the penalty for the NCI Infringement for each VM Party is therefore as follows:

(a) BMW: £9,982,004,436

(b) Ford: £11,359,152,000

(c) General Motors: £2,772,581,936

(d) JLR: £4,236,862,837

(e) Mitsubishi: £829,405,879

(f) Nissan: £8,189,024,329

(g) Renault: £8,189,024,329

(h) Stellantis:

(i) Peugeot Citroen: £4,474,041,392

(ii) Vauxhall / Opel:

(1) NCI Period 1: £2,288,961,409

(2) NCI Period 2: £2,772,581,936

(3) NCI Period 3: £34,399,280

(i) Toyota: £3,609,886,887

(j) VW: £17,379,262,514

D.III Step 3 – adjustment for aggravating and mitigating factors

7.62 The amount resulting from step 2 may be increased where there are aggravating factors, or decreased where there are mitigating factors.[699] For the reasons set out above in paragraph 7.35 relating to the ZTC Infringement, the CMA has not carried out a step 1-3 assessment for the ZTC Infringement. Instead, it has taken such factors into account in its step 4 and step 5 assessments. The following assessment, while only directly relevant for the NCI Infringement, is therefore also indirectly relevant for the ZTC Infringement.

[699] Penalty Guidance, paragraphs 2.15–2.18.

7.63 The CMA concludes that there are no relevant mitigating factors to be taken into account at Step 3 in respect of the NCI Infringement for BMW, General Motors, Mitsubishi, the SMMT, Stellantis and Toyota.[700]

Mitigating factor: cooperation

7.64 The CMA may decrease the penalty at step 3 for cooperation which enables the enforcement process to be concluded more effectively and/or speedily. The Penalty Guidance provides that, for these purposes, what is expected is cooperation over and above respecting time limits specified or otherwise agreed (which will be a necessary but not sufficient criterion to merit a reduction).[701]

7.65 The CMA considers that the overall approach during the CMA's investigation of Ford, JLR, Nissan, Renault and VW enabled the enforcement process to be concluded more effectively and/or speedily.[702] This includes, but is not limited to, assisting in making individuals available for voluntary interview.

7.66 Ford, JLR, Nissan, Renault and VW each made individuals available for voluntary interview, in some cases providing them with separate legal representation and funding the cost of travel. The CMA therefore considers that it is appropriate to apply a reduction of 5% to the penalties of Ford, Nissan, Renault and VW, and a reduction of 10% to the penalty of JLR at this step.

7.67 JLR's higher discount is justified by the exceptional circumstances surrounding a former employee [✂]. As a direct result of JLR's efforts, the CMA was able to conduct a voluntary interview with the individual. The evidence obtained from this interview advanced the CMA's investigation and is frequently referred to in this Decision.

Calculation at the end of step 3 for the NCI Infringement

7.68 Taking the above into account, the penalties for the VM Parties for the NCI Infringement at the end of step 3 are as follows:

(a) BMW: £9,982,004,436

(b) Ford: £10,791,194,400

(c) General Motors: £2,772,581,936

---

[700] In accordance with footnote 31 of the Penalty Guidance, the SMMT, Stellantis and Mitsubishi, who are each benefitting from the CMA's leniency programme, will not receive an additional reduction in financial penalties under this head (since continuous and complete cooperation is a condition of leniency).
[701] Penalty Guidance, paragraph 2.17 and footnote 31.
[702] The CMA also considers that ACEA provided cooperation which enabled the enforcement process to be concluded more effectively and/or speedily (see paragraph 7.82 below).

(d) JLR: £3,813,176,554

(e) Mitsubishi: £829,405,879

(f) Nissan: £7,779,573,113

(g) Renault: £7,779,573,113

(h) Stellantis:

(i) Peugeot Citroen: £4,474,041,392

(ii) Vauxhall / Opel:

(1) NCI Period 1: £2,288,961,409

(2) NCI Period 2: £2,772,581,936

(3) NCI Period 3: £34,399,280

(i) Toyota: £3,609,886,887

(j) VW: £16,510,299,388

D.IV Step 4 – adjustment for specific deterrence

7.69 The penalty figure reached after steps 1 to 3 may be increased to ensure that the penalty to be imposed on the undertaking is sufficient to deter it from breaching competition law in the future. The CMA may increase the penalty reached after step 3 where this is appropriate in order to ensure that the penalty achieves deterrence given the undertaking's specific size and financial position, and any other relevant circumstances of the case.[703]

VM Parties – NCI Infringement

7.70 Taking into account each VM Party's worldwide turnover[704] and having regard to the factors set out in paragraphs 2.20 to 2.23 of the Penalty Guidance, in the

[703] Penalty Guidance, paragraph 2.19.

[704] BMW's worldwide turnover for the financial year ending 31 December 2023 was approximately £135 billion. Ford's worldwide turnover for the financial year ending 31 December 2024 was approximately £145 billion. Tata Motors Group's worldwide turnover for the financial year ending 31 March 2024 was approximately £43 billion. General Motors's worldwide turnover for the financial year ending 31 December 2024 was approximately £147 billion. Mitsubishi's worldwide turnover for the financial year ending 31 March 2024 was approximately £15 billion. Nissan's worldwide turnover for the financial year ending 31 March 2024 was approximately £70 billion. Renault's worldwide turnover for the financial year ending 31 December 2023 was approximately £46 billion. Stellantis's worldwide turnover for the financial year ending 31 December 2023 was approximately £165 billion. Toyota's worldwide turnover for the financial year ending 31 March 2024 was approximately £248 billion. VW's worldwide turnover for the financial year ending 31 December 2023 was approximately £280 billion. BMW, Renault, Stellantis and VW use the Euro as the reporting currency. Toyota and Nissan use the Japanese Yen as the reporting currency. Ford and General Motors use the US Dollar as the reporting currency. Tata Motors Group use the Indian Rupee, measured in Crore, as the reporting currency. All figures have been converted to Pound Sterling by using the yearly average exchange rate (Source: Bank of England).

CMA's view, the penalties at the end of step 3 in respect of the NCI Infringement are sufficient to achieve deterrence for each VM Party, both by reference to each VM Party's size and financial position and the nature of the NCI Infringement, and do not require any increase for specific deterrence.

VM Parties – ZTC Infringement

7.71 In determining the appropriate penalty at step 4 in respect of the ZTC Infringement and ensuring that it is sufficient to deter the Parties and others from breaching competition law in the future, the CMA has taken into account its conclusions regarding the seriousness of the ZTC Infringement and the relative impact of each Party's participation in the ZTC Infringement.

Seriousness of the ZTC Infringement

7.72 The CMA has concluded that the ZTC Infringement took the form of an agreement between the Parties that, when a VM Party entered into an agreement with an ATF Intermediary in relation to ELV Takeback, the 'purchase' price it would pay per ELV would be zero. As set out in paragraph 5.387 above, the CMA concludes that the ZTC Infringement had as its object the prevention, restriction or distortion of competition.[705] The CMA therefore considers, as a starting point, that the ZTC Infringement is amongst the most serious types of infringement.

7.73 The CMA has also considered the actual or potential harm caused to competition, third parties and consumers by the ZTC Infringement:

(a) The ZTC Infringement distorted the process of competition by resulting in a market outcome which was not the result of competition but of collusion.

(b) The ZTC Infringement applied across the whole of the UK and was an industry practice that went on for more than 14 years.

(c) As set out in paragraph 5.384 above, there is some evidence which suggests that at least some of the VM Parties may have considered the risk that they may have had to pay for the Takeback and treatment of ELVs at least to some extent and/or at certain times during the ZTC Infringement Period. To the extent that the VM Parties would otherwise have paid for the Takeback and treatment of ELVs through the VM's authorised networks, even if only during certain times (eg when scrap metal prices were low), the ZTC Infringement may have led to potential effects on the relevant product market. These potential effects may have included: lower payments made to ATFs or ATF Intermediaries, which may have reduced volumes of ELVs passing through the VM's authorised network and may have impacted

[705] For a detailed analysis of the 'by object' element of the ZTC Infringement, please refer to paragraphs 5.377–5.387.

commercial choices made by ATFs or ATF Intermediaries, including the development of improved techniques to support the recyclability and recoverability of ELVs in excess of the legal requirements.[706]

7.74 On the other hand, as set out in paragraph 5.381 above, it cannot be excluded that, absent the ZTC Infringement, a price determined by the market could have been zero or even negative at certain times. The CMA therefore acknowledges that, to the extent that would have been the case, and during those times, the harm caused by the ZTC Infringement (other than to the process of competition) would have been limited.

7.75 Moreover, the ZTC Infringement only concerned ATFs in the VM Parties' contracted networks. This may have further limited the harm caused by the ZTC Infringement.

7.76 Taking the above into account, the CMA considers the ZTC Infringement to be amongst the more serious types of infringement, but its seriousness somewhat diminished by the specific circumstances.

Relative impact of each Party's participation

7.77 In order to assess the relative impact of each VM Party's participation in the ZTC Infringement, the CMA has estimated the number of ELVs that were recycled/recovered in the UK under that VM Party's arranged network of ATFs during its period of participation in the ZTC Infringement and multiplied the resulting number by a nominal amount of £10.[707] Where appropriate, it has then reduced the resulting step 4 penalty figure by the relevant cooperation discount.[708] On this basis, the CMA concludes that the following constitute appropriate step 4 penalties for the ZTC Infringement for each of the VM Parties (with the first two numbers in brackets setting out the respective number of ELVs recycled/recovered per year under each Party's arranged network of ATFs and the relevant duration multiplier which reflects the duration of each Party's involvement in the ZTC Infringement):[709]

---

[706] For the avoidance of doubt, the CMA makes no findings as to what ATFs or ATF Intermediaries would have done absent the ZTC Infringement.
[707] £10 per ELV is a nominal amount which the CMA considers leads to a proportionate penalty for each party. It is not intended to represent an actual, presumed or likely hypothetical cost for the recycling and/or recovery of ELVs on a per vehicle basis.
[708] For the reasons explained in paragraphs 7.64–7.67 above, the CMA has applied a 5% reduction to Nissan, Ford, Renault and VW's respective step 4 penalties and a 10% reduction to JLR's step 4 penalty for the cooperation provided which has enabled the CMA's enforcement process to be concluded more effectively and/or speedily.
[709] SIR-000038362SIR-000038463. Given the availability of data for all parties, the CMA has calculated an average number of ELVs recycled/recovered per year under the arranged network of ATFs using the data from 2013 to 2017, and multiplied it by the duration of the relevant party's involvement in the ZTC Infringement. The CMA notes that the number of ELVs recycled/recovered by ATFs within a VM Party's arranged network may include both (i) cases in which the last owner or holder of the ELV has specifically decided to make use of the VM Party's arranged network and (ii) cases in which the last owner or holder of the ELV has independently chosen an ATF which happens to be part of the VM Party's arranged network.

(a) BMW: £500,180 (3,560 x 14.05 x £10)

(b) Ford: £6,990,620 ((52,374 x 14.05 x £10) – 5%)

(c) General Motors: £2,357,147 (29,245 x 8.06 x £10 – in respect of its ownership of Vauxhall and Opel during ZTC Period 2)

(d) JLR: £63,240 ((3,411 x 2.06 x £10) – 10%)

(e) Mitsubishi: £253,443 (2,074 x 12.22 x £10)

(f) Nissan: £4,539,618 ((34,011 x 14.05 x £10) – 5%)

(g) Renault: £4,539,618 ((34,011 x 14.05 x £10) – 5%)

(h) Stellantis:

(i) Peugeot Citroen: £5,084,274 (36,187 x 14.05 x £10)

(ii) Vauxhall / Opel:

(1) ZTC Period 1: £1,523,665 (29,245 x 5.21 x £10)

(2) ZTC Period 2: £2,357,147 (29,245 x 8.06 x £10)

(3) ZTC Period 3: £228,111 (29,245 x 0.78 x £10)

(i) Toyota: £700,955 (4,989 x 14.05 x £10)

(j) VW: £1,604,370 ((12,020 x 14.05 x £10) – 5%)

7.78 The CMA considers that the step 4 penalties set out above for the ZTC Infringement are appropriate in light of all other circumstances of the case as well. The CMA notes that the penalties set out in paragraph 7.77 above are very low when compared with the VM's Parties' total worldwide turnover figures, and on their own would likely be insufficient to achieve specific deterrence.[710] However, the CMA recognises that the penalties for the NCI Infringement will already have a deterrent effect on the VM Parties. As such, the CMA concludes that the incremental penalties set out in paragraph 7.77 above for the ZTC Infringement are sufficient for deterrence when viewed alongside the penalties for the NCI Infringement.

Trade Association Parties – NCI Infringement

7.79 In determining the appropriate penalty at step 4 for ACEA and the SMMT in respect of the NCI Infringement and ensuring that it is sufficient to deter them and

[710] See footnote 704 for each VM Party's worldwide turnover.

others from breaching competition law in the future, the CMA has taken into account its conclusions regarding the seriousness of the NCI Infringement, the relative impact of each Trade Association Party's participation in the NCI Infringement, and any mitigating or aggravating factors.

Seriousness of the NCI Infringement

7.80 The CMA's conclusions regarding the seriousness of the NCI Infringement are set out in paragraphs 7.40 to 7.56 above. As set out in paragraph 7.56 above, the CMA's assessment of the relevant factors in the round is that, whilst the nature of the 'by object' restriction is serious, the NCI Infringement is not amongst the most serious types of infringement.

Relative impact of ACEA's participation

7.81 The CMA has taken into account the following factors when assessing the relative impact of ACEA's participation in, and therefore the level of penalty that would be appropriate and necessary for ACEA in respect of, the NCI Infringement:

(a) The common understanding comprising the NCI Infringement was reached in part during ACEA meetings.[711]

(b) ACEA promoted a position paper aimed at coordinating the VM Parties' compliance with Article 9(2) of the ELV Directive.[712]

(c) ACEA was actively involved in encouraging the VM Parties to adhere to the NCI Infringement.[713]

(d) The ELV Charta was acknowledged and discussed at ACEA meetings.[714]

(e) The CMA has concluded that ACEA was involved in the NCI Infringement for over 15 years.[715]

(f) In the financial year ending 31 December 2024, ACEA's revenue amounted to £[✂].[716]

(g) ACEA currently has 16 members, the majority of which are Parties to the CMA's investigation into the ZTC Infringement.

[711] See paragraphs 5.8–5.13 and 5.18(c) above.
[712] See paragraph 5.179(b) above.
[713] See paragraph 5.179(c) above.
[714] See paragraph 5.179(d) above.
[715] See paragraph 5.211 above.
[716] SIR-000042731. ACEA's revenue is derived only from membership fees. Reporting currency is in Euros, converted to Pound Sterling by using the yearly average exchange rate (Source: Bank of England).

Mitigating / aggravating factors – ACEA

7.82 The CMA considers that ACEA's cooperation during the CMA's investigation enabled the enforcement process to be concluded more effectively and/or speedily. In particular, ACEA provided the CMA with a significant number of documents at a point in time when there was arguably some uncertainty about the extraterritorial reach of the CMA's information-gathering powers under section 26 of the Act in relation to case parties without a UK territorial connection. The CMA therefore considers that it is appropriate to apply a reduction of 5% to ACEA's penalty for the NCI Infringement.

Relative impact of the SMMT's participation

7.83 The CMA has taken into account the following factors when assessing the relative impact of the SMMT's participation in, and therefore the level of penalty that would be appropriate and necessary for the SMMT in respect of, the NCI Infringement:

(a) The SMMT's involvement in the NCI Infringement mainly comprised attendance at meetings and being copied into relevant emails. The SMMT also took certain actions to promote the NCI Infringement.[717]

(b) The CMA has concluded that the SMMT was involved in the NCI Infringement for over 15 years.[718]

(c) In the financial year ending 31 December 2023, the SMMT's revenue amounted to £[✂].[719]

(d) The SMMT has over 500 members, the vast majority of which are not VMs and were not involved in the Infringements.[720]

Mitigating / aggravating factors – the SMMT

7.84 The CMA concludes that there are no relevant mitigating or aggravating factors to be taken into account in respect of the NCI Infringement for the SMMT.[721]

[717] See paragraph 5.180 above.
[718] See paragraph 5.211 above.
[719] SMMT annual report and financial statements for the year ended 31 December 2023, available at Companies House. SMMT's revenue is derived from a variety of sources including membership fees, the sale of database reports and the running of seminars and functions.
[720] SIR-000041149, SIR-000041150, SIR-000041151, SIR-000041152, SIR-000041153, SIR-000041154, SIR-000041155, SIR-000041156, SIR-000041157 and SIR-000041158.
[721] As set out in footnote 700 above, the SMMT, who is benefitting from the CMA's leniency programme, will not receive an additional reduction in financial penalties for cooperation (since continuous and complete cooperation is a condition of leniency).

Conclusion on the appropriate penalty for the NCI Infringement at the end of step 4 for the Trade Association Parties

ACEA

7.85 Taking the above factors into account, the CMA considers that a step 4 penalty of £114,000 for ACEA for the NCI Infringement is appropriate. A penalty of £114,000 amounts to [✂]% of ACEA's total revenue of £[✂] in the financial year ending 31 December 2024. The CMA concludes that a penalty for the NCI Infringement at this level is sufficient for deterrence.

The SMMT

7.86 Taking the above factors into account, the CMA considers that a step 4 penalty of £60,000 for the SMMT for the NCI Infringement is appropriate. A penalty of £60,000 amounts to [✂]% of the SMMT's total revenue of £[✂] in the financial year ending 31 December 2023. The CMA concludes that a penalty for the NCI Infringement at this level is sufficient for deterrence.

Trade Association Parties – ZTC Infringement

7.87 In determining the appropriate penalty at step 4 for ACEA and the SMMT in respect of the ZTC Infringement and ensuring that it is sufficient to deter them and others from breaching competition law in the future, the CMA has taken into account its conclusions regarding the seriousness of the ZTC Infringement and the relative impact of ACEA's and the SMMT's participation in the ZTC Infringement, the need for general deterrence, and any mitigating or aggravating factors.

7.88 The CMA's conclusions regarding the seriousness of the ZTC Infringement are set out in paragraphs 7.72 to 7.76 above. As set out in paragraph 7.76, the CMA considers the ZTC Infringement to be amongst the more serious types of infringement, but its seriousness somewhat diminished by the specific circumstances.

Relative impact of ACEA's participation

7.89 As regards the relative impact of ACEA's participation in the ZTC Infringement, the CMA has taken into account the following factors:

(a) ACEA was actively involved in encouraging the VM Parties to adhere to the ZTC Infringement.[722]

[722] See paragraph 5.375(a) above.

(b) The ZTC Infringement was regularly discussed at ACEA meetings.[723]

(c) The CMA has concluded that ACEA was involved in the ZTC Infringement for over 12 years.[724]

Mitigating / aggravating factors – ACEA

7.90 As set out in paragraph 7.82 above, the CMA considers that ACEA's cooperation during the CMA's investigation enabled the enforcement process to be concluded more effectively and/or speedily, entitling it to a cooperation discount of 5%. The CMA considers that it is appropriate to take into account this cooperation discount when determining an appropriate step 4 penalty for ACEA for the ZTC Infringement.

Relative impact of the SMMT's participation

7.91 As regards the relative impact of the SMMT's participation in the ZTC Infringement, the CMA has taken into account the following factors:

(a) The SMMT was actively involved in certain events aimed at ensuring the ZTC Infringement was adhered to.[725]

(b) The CMA has concluded that the SMMT was involved in the ZTC Infringement for over 12 years.[726]

Mitigating / aggravating factors – the SMMT

7.92 As set out in paragraph 7.84 above, the CMA concludes that there are no relevant mitigating or aggravating factors to be taken into account for the SMMT.

Conclusion on the appropriate penalty for the ZTC Infringement at the end of step 4 for the Trade Association Parties

ACEA

7.93 Taking the above factors into account, the CMA considers that a step 4 penalty of £28,500 for ACEA for the ZTC Infringement is appropriate. In reaching this conclusion, the CMA has had regard to the fact that the penalty for the NCI Infringement will already have a deterrent effect on ACEA. As such, the CMA

[723] See paragraph 5.375(b) above.
[724] See paragraph 5.409 above.
[725] See paragraph 5.376 above.
[726] See paragraph 5.409 above.

concludes that the incremental penalty of £28,500 for the ZTC Infringement is sufficient for deterrence.

The SMMT

7.94 Taking the above factors into account, the CMA considers that a step 4 penalty of £30,000 for the SMMT for the ZTC Infringement is appropriate. In reaching this conclusion, the CMA has had regard to the fact that the penalty for the NCI Infringement will already have a deterrent effect on the SMMT. As such, the CMA concludes that the incremental penalty of £30,000 for the ZTC Infringement is sufficient for deterrence.

D.V Step 5 – adjustment to check that the penalty is proportionate and prevent the maximum penalty being exceeded

7.95 At step 5, the CMA will take a step back to check whether, in its view, the overall penalty reached after steps 1 to 4 is proportionate 'in the round'.[727]

VM Parties – NCI Infringement

7.96 The CMA considers that the step 4 penalties for all VM Parties for the NCI Infringement are disproportionate, having regard to the nature and the likely impact of the NCI Infringement on competition. This is because the NCI Infringement related only to certain, very limited, aspects of the characteristics and competitive appeal of a Vehicle (see paragraphs 7.52 to 7.53 above). Accordingly, in the CMA's view, using the total value of Vehicle sales as relevant turnover overstates the actual or potential impact of the NCI Infringement. The CMA has therefore applied a uniform step 5 downward adjustment (of 99.85%) to the step 4 penalties of each of the VM Parties to reflect this.

7.97 As a result of the downward adjustment at step 5, the penalties for the VM Parties in respect of the NCI Infringement are as follows:

(a) BMW: £14,973,007

(b) Ford: £16,186,792

(c) General Motors: £4,158,873

(d) JLR: £5,719,765

(e) Mitsubishi: £1,244,109

[727] Penalty Guidance, paragraph 2.25.

(f) Nissan: £11,669,360

(g) Renault: £11,669,360

(h) Stellantis:

(i) Peugeot Citroen: £6,711,062

(ii) Vauxhall / Opel:

(1) NCI Period 1: £3,433,442

(2) NCI Period 2: £4,158,873

(3) NCI Period 3: £51,599

(i) Toyota: £5,414,830

(j) VW: £24,765,449

7.98 The CMA considered whether a further adjustment to the NCI Infringement penalties was warranted at this step by assessing other relevant circumstances of the case separately for each Party. The CMA does not consider a further adjustment to be warranted in respect of Ford, JLR, General Motors, Mitsubishi, the SMMT or Stellantis.

7.99 The CMA does, however, consider a further adjustment to the NCI Infringement penalty to be warranted at this step for the other VM Parties:

(a) In respect of BMW, Toyota, Renault-Nissan and VW, the CMA has taken into account the fact that their respective relevant turnover includes all brands of Vehicles sold by them, and therefore includes turnover from the sale of Vehicle brands which are not covered by the CMA's infringement finding.[728] Exceptionally, on a purely discretionary basis, the CMA has applied a further downward adjustment to the penalties of these VM Parties. In each case, this further downward adjustment equates to around half the percentage of turnover that each of these VM Parties derived from the sale of Vehicle brands not covered by the CMA's infringement finding.[729]

(b) In respect of Renault, the CMA has further taken into account the fact that, as set out in paragraph 5.200 above, Renault had publicly distanced itself, and

[728] As can be seen in the table at Annex 2: Party Involvement, the CMA has made infringement findings on a brand-by-brand basis.
[729] The discretionary, additional out-of-scope brands reductions applied at this step are as follows: BMW (11%), Renault-Nissan (2%), Toyota (9%) and VW (32%). For example, in respect of Toyota, the out-of-scope brand reduction relates to the Lexus brand; in respect of Nissan, the out-of-scope brand reduction relates to the Infiniti brand; and in respect of BMW, the out-of-scope brand reduction relates to the exclusion of the Mini and Rolls-Royce brands from the scope of the infringement findings.

was therefore specifically not party to one of the two aspects of the NCI Infringement, namely the agreement to refrain from advertising the percentage or mass of recycled materials in its new Vehicles. To acknowledge this, the CMA has applied a further discount of 30% to Renault's penalty at step 5.

7.100 As a result of the further downward adjustments, the penalties for the VM Parties in respect of the NCI Infringement at the end of step 5 are as follows:

(a) BMW: £13,325,976

(b) Ford: £16,186,792

(c) General Motors: £4,158,873

(d) JLR: £5,719,765

(e) Mitsubishi: £1,244,109

(f) Nissan: £11,435,972

(g) Renault: £7,935,165

(h) Stellantis:

(i) Peugeot Citroen: £6,711,062

(ii) Vauxhall / Opel:

(1) NCI Period 1: £3,433,442

(2) NCI Period 2: £4,158,873

(3) NCI Period 3: £51,599

(i) Toyota: £4,927,496

(j) VW: £16,840,505

7.101 The CMA considers that the penalties set out in paragraph 7.100 above remain sufficient to deter the VM Parties from breaching competition law in the future. Whilst the penalties may appear low when compared with the VM Parties' total worldwide turnover figures,[730] the CMA has taken into account the nature of the NCI Infringement in coming to this conclusion. The CMA has also taken into

[730] See footnote 704.

account the incremental deterrent effect arising from the penalty for the ZTC Infringement.

7.102 Accordingly, having regard to all relevant circumstances of the case, the CMA considers the penalties set out in paragraph 7.100 above to be appropriate and not disproportionate for the NCI Infringement.

VM Parties – ZTC Infringement

7.103 The CMA considers that the penalties set out in paragraph 7.77 above in respect of the ZTC Infringement are not disproportionate in light of the VM Parties' size and financial position[731] or all other relevant circumstances of the ZTC Infringement.

Trade Association Parties

ACEA – NCI Infringement

7.104 As set out above, ACEA's revenue in the financial year ending 31 December 2024 was £[✂]. A penalty of £114,000 would therefore amount to [✂]% of ACEA's revenue for that year.

7.105 Having regard to all relevant circumstances of the case, the CMA considers £114,000 to be an appropriate and proportionate penalty for the NCI Infringement for ACEA. The CMA has also taken into account the nature of the infringement, as well as the incremental deterrent effect arising from the penalty for the ZTC Infringement in coming to this conclusion.

ACEA - ZTC Infringement

7.106 The CMA considers that a penalty of £28,500 is not disproportionate in light of ACEA's size and financial position as well as all other relevant circumstances of the ZTC Infringement.

The SMMT – NCI Infringement

7.107 As set out above, the SMMT's revenue in the financial year ending 31 December 2023 was £[✂]. A penalty of £60,000 would therefore amount to [✂]% of the SMMT's revenue for that year.

7.108 Having regard to all relevant circumstances of the case, the CMA considers £60,000 to be an appropriate and proportionate penalty for the NCI Infringement for the SMMT. The CMA has also taken into account the nature of the

[731] Ibid.

infringement, as well as the incremental deterrent effect arising from the penalty for the ZTC Infringement in coming to this conclusion.

The SMMT – ZTC Infringement

7.109 The CMA considers that a penalty of £30,000 is not disproportionate in light of the SMMT's size and financial position as well as all other relevant circumstances of the ZTC Infringement.

Step 5 assessment of combined penalty

7.110 Finally, the CMA has also taken a step back to ensure that, taken together, the penalties for the NCI Infringement and the ZTC Infringement would not lead to the imposition of a combined penalty for any Party that is disproportionate 'in the round'.

7.111 When the CMA's step 5 penalties for the NCI Infringement and the ZTC Infringement are combined, the total penalties would be as follows:

(a) ACEA: £142,500

(b) BMW: £13,826,156

(c) Ford: £23,177,412

(d) General Motors: £6,516,020

(e) JLR: £5,783,005

(f) Mitsubishi: £1,497,552

(g) Nissan: £15,975,590

(h) Renault: £12,474,783

(i) Stellantis:

  (i) Peugeot Citroen: £11,795,336

  (ii) Vauxhall / Opel:

    (1) NCI and ZTC Period 1: £4,957,107

    (2) NCI and ZTC Period 2: £6,516,020

    (3) NCI and ZTC Period 3: £279,710

(j) SMMT: £90,000

(k) Toyota: £5,628,451

(l) VW: £18,444,875

7.112 The CMA considers that, having regard to all relevant circumstances of the case as well as each Party's relative size and worldwide turnover, these combined penalties are appropriate and not disproportionate.

Adjustment to prevent maximum penalty being exceeded

7.113 No further adjustment has been made at this step to any Party's penalty for either the NCI Infringement or the ZTC Infringement as none of the penalties exceed any of the Parties' statutory caps.

D.VI Step 6 – application of reductions including under the CMA's leniency programme, settlement and voluntary redress schemes

Leniency

7.114 Mitsubishi, the SMMT and Stellantis have admitted their involvement in the NCI Infringement and ZTC Infringement and signed leniency agreements with the CMA. Provided they continue to cooperate and comply with the other conditions of leniency, they will benefit from a leniency discount to their penalty as follows:

(a) Mitsubishi: 25%

(b) SMMT: 35%

(c) Stellantis: 45%

7.115 Accordingly, the penalty for Mitsubishi, the SMMT and Stellantis after the application of the leniency discount is as follows:

(a) Mitsubishi: £1,123,164

(b) SMMT: £58,500

(c) Stellantis:

(i) Peugeot Citroen: £6,487,435

(ii) Vauxhall / Opel:

(1) NCI and ZTC Period 1: £2,726,409

(2) NCI and ZTC Period 2: £3,583,811

(3) NCI and ZTC Period 3: £153,840

Settlement

7.116 As set out in paragraph 1.8 above, the settling Parties have admitted the facts and legal characterisation of the Infringements as set out in the draft Statement of Objections issued on 7 March 2025, which are now reflected in this Decision. In light of these admissions, and their cooperation in expediting the process for concluding the investigation, the CMA has reduced each settling Party's penalty by 20%.

7.117 Accordingly, the penalties after the application of the settlement discount are as follows:

(a) ACEA: £114,000

(b) BMW: £11,060,925

(c) Ford: £18,541,929

(d) General Motors: £2,867,049

(e) JLR: £4,626,404

(f) Mitsubishi: £898,531

(g) Nissan: £12,780,473

(h) Renault: £9,979,826

(i) Stellantis:

(i) Peugeot Citroen: £5,189,948

(ii) Vauxhall / Opel:

(1) NCI and ZTC Period 1: £2,181,127

(2) NCI and ZTC Period 2: £2,867,049

(3) NCI and ZTC Period 3: £123,072

(j) SMMT: £46,800

(k) Toyota: £4,502,760

(l) VW: £14,755,900

D.VII Penalties imposed by the CMA

7.118 In light of the above, the CMA requires the following penalties to be paid:

(a) a combined penalty of £114,000 on ACEA, being the sum of:

(i) £91,200 in respect of the NCI Infringement; and

(ii) £22,800 in respect of the ZTC Infringement;

(b) a combined penalty of £11,060,925 on BMW, with BMW (UK) Limited and BMW AG being liable, on a joint and several basis for this combined penalty, being the sum of:

(i) £10,660,781 in respect of the NCI Infringement; and

(ii) £400,144 in respect of the ZTC Infringement;

(c) a combined penalty of £18,541,929 on Ford, with Ford Motor Company Limited, Ford-Werke GmbH, Ford of Europe GmbH and Ford Motor Company being liable, on a joint and several basis for this combined penalty, being the sum of:

(i) £12,949,433 in respect of the NCI Infringement; and

(ii) £5,592,496 in respect of the ZTC Infringement;

(d) a combined penalty of £4,626,404 on Tata Motors Group, with Jaguar Land Rover Limited, Jaguar Land Rover Holdings Limited and Tata Motors Limited being liable, on a joint and several basis for this combined penalty, being the sum of:

(i) £4,575,812 in respect of the NCI Infringement; and

(ii) £50,592 in respect of the ZTC Infringement;

(e) a combined penalty of £898,531 on Mitsubishi, with Mitsubishi Motor R&D Europe GmbH, Mitsubishi Motors Europe B.V. and Mitsubishi Motors Corporation being liable, on a joint and several basis for this combined penalty, being the sum of

(i) £746,465 in respect of the NCI Infringement; and

(ii) £152,066 in respect of the ZTC Infringement;

(f) a combined penalty of £12,780,473 on Nissan, with Nissan Automotive Europe SAS, Nissan Motor Manufacturing UK Limited, Nissan Motor Parts Centre B.V., Nissan Motor (GB) Limited and Nissan Motor Co. Ltd being

liable, on a joint and several basis for this combined penalty,[732] being the sum of:

(i) £9,148,778 in respect of the NCI Infringement; and

(ii) £3,631,695 in respect of the ZTC Infringement;

(g) a combined penalty of £9,979,826 on Renault, with Renault Retail Group UK Limited, Renault U.K. Limited, Renault S.A. and Renault S.A.S. being liable, on a joint and several basis for this combined penalty,[733] being the sum of

(i) £6,348,132 in respect of the NCI Infringement; and

(ii) £3,631,695 in respect of the ZTC Infringement;

(h) a combined penalty of £46,800 on the SMMT, being the sum of:

(i) £31,200 in respect of the NCI Infringement; and

(ii) £15,600 in respect of the ZTC Infringement;

(i) insofar as Stellantis is concerned:

(i) a combined penalty of £5,189,948 on Peugeot Motor Company Plc, PSA Automobiles S.A. and Citroen U.K. Limited and Stellantis N.V. on a joint and several basis, being the sum of:

(1) £2,952,867 in respect of the NCI Infringement; and

(2) £2,237,080 in respect of the ZTC Infringement;

(ii) a combined penalty of £2,181,127 on Vauxhall Motors Limited and Opel Automobile GmbH on a joint and several basis, being the sum of:

(1) £1,510,715 in respect of the NCI Infringement; and

(2) £670,412 in respect of the ZTC Infringement;

(iii) a combined penalty of £2,867,049 on the undertaking of which Vauxhall Motors Limited, Opel Automobile GmbH and General Motors Company formed part between 10 July 2009 and 31 July 2017, with Vauxhall Motors Limited, Opel Automobile GmbH and General Motors Company being liable, on a joint and several basis for this combined penalty, being the sum of:

---

[732] Nissan's liability for £9,979,826 of this combined penalty is shared, on a joint and several basis, with Renault, and it is solely liable for an additional £2,800,646.
[733] Renault's liability for this combined penalty is shared, on a joint and several basis, with Nissan.

(1) £1,829,904 in respect of the NCI Infringement; and

(2) £1,037,145 in respect of the ZTC Infringement;

(iv) a combined penalty of £123,072 on Vauxhall Motors Limited, Opel Automobile GmbH and Stellantis N.V. on a joint and several basis, being the sum of:

(1) £22,704 in respect of the NCI Infringement; and

(2) £100,369 in respect of the ZTC Infringement;

(j) insofar as General Motors Company is concerned, by virtue of its ownership of Vauxhall Motors Limited and Opel Automobile GmbH from 10 July 2009 to 31 July 2017, a combined penalty of £2,867,049, with General Motors Company, Vauxhall Motors Limited and Opel Automobile GmbH being liable, on a joint and several basis for this combined penalty,[734] being the sum of:

(i) £1,829,904 in respect of the NCI Infringement; and

(ii) £1,037,145 in respect of the ZTC Infringement;

(k) a combined penalty of £4,502,760 on Toyota, with Toyota (GB) Plc, Toyota Motor Europe NV/SA and Toyota Motor Corporation being liable, on a joint and several basis for this combined penalty, being the sum of:

(i) £3,941,996 in respect of the NCI Infringement; and

(ii) £560,764 in respect of the ZTC Infringement;

(l) a combined penalty of £14,755,900 on VW, with Volkswagen Group United Kingdom Limited and Volkswagen AG being liable, on a joint and several basis for this combined penalty, being the sum of:

(i) £13,472,404 in respect of the NCI Infringement; and

(ii) £1,283,496 in respect of the ZTC Infringement.

7.119 The penalties will become due to the CMA on 2 June 2025[735] and must be paid to the CMA by close of banking business on that date.

[734] Ordinarily, the CMA would have required General Motors to pay an additional penalty of £2,345,766 (being the sum of £1,497,194 in respect of the NCI Infringement and £848,572 in respect of the ZTC Infringement) because General Motors does not benefit from Stellantis' leniency discount and therefore would remain liable for the discounted part of the penalty. [✂]. Accordingly, the CMA has, exceptionally, decided not to require General Motors to pay an additional penalty. [✂].

[735] The next working day two calendar months from the expected date of receipt of the Decision.

Lucília Falsarella Pereira

Senior Director, Competition Enforcement

for and on behalf of the Competition and Markets Authority

1 April 2025

8. ANNEX 1: LEGAL BACKGROUND

A. The ELV Directive

8.1 The ELV Directive applies to all passenger cars (with up to nine seats) and small commercial vehicles (up to 3.5 tonnes).[736] It lays down measures aimed at minimising the impact of ELVs on the environment.

8.2 Recital (2) of the ELV Directive states that the framework is intended to attain the objectives of minimising the impact of ELVs on the environment, in particular with a '*view to the design of vehicles for recycling and recovery, to the requirements for collection and treatment facilities, and the attainment of reuse, recycling and recovery targets, taking into account… the polluter-pays principle*'. In this context, the 'polluter' refers to the producer of the product (ie the VM).

8.3 Recital (19) of the ELV Directive states that the '*recyclability and recoverability of vehicles should be promoted*' and recital (27) states that consumers '*have to be adequately informed in order to adjust their behaviour and attitudes; to this end, information should be made available by the relevant economic operators*'. [737]

8.4 Article 4(1) of the ELV Directive provides that in order to promote the prevention of waste Member States shall encourage, in particular:

(a) vehicle manufacturers, in liaison with material and equipment manufacturers, to limit the use of hazardous substances in vehicles and to reduce them as far as possible from the conception of the vehicle onwards, so as in particular to prevent their release into the environment, make recycling easier, and avoid the need to dispose of hazardous waste;

(b) the design and production of new vehicles which take into account and facilitate the dismantling, reuse and recovery, in particular the recycling, of ELVs, their components and materials;

(c) vehicle manufacturers, in liaison with material and equipment manufacturers, to integrate an increasing quantity of recycled material in vehicles and other products, in order to develop the markets for recycled materials.

8.5 Article 5 of the ELV Directive relates to ELV Takeback.

(a) Article 5(1) of the ELV Directive provides that: '*Member States shall take the necessary measures to ensure that economic operators set up systems for the collection of all end-of life vehicles and, as far as technically feasible, of*

[736] Article 2(1) ELV Directive and Annex II.A paragraphs 1 and 2, Directive 70/156/EEC of 6 February 1970 (as amended by Directive 2000/40/EC of 26 June 2000).
[737] In this context, 'economic operator' refers to both VMs and professional importers of vehicles.

waste used parts removed when passenger cars are repaired, [and] the adequate availability of collection facilities within their territory'.

(b) Article 5(2) of the ELV Directive provides that: '*Member States shall also take the necessary measures to ensure that all end-of life vehicles are transferred to authorised treatment facilities.*'

(c) Article 5(4) of the ELV Directive provides that:

(i) '*Member States shall take the necessary measures to ensure that the delivery of the vehicle to an authorised treatment facility […] occurs without any cost for the last holder and/or owner as a result of the vehicle's having no or a negative market value'*.

(ii) '*Member States shall take the necessary measures to ensure that producers*[738] *meet all, or a significant part of, the costs of the implementation of this measure and/or take back end-of life vehicles under the same conditions as referred to in the first sub-paragraph.*'

8.6 Article 7 of the ELV Directive sets out measures to promote the reuse and recovery of vehicles. In particular:

(a) Article 7(2) of the ELV Directive provides that Member States ensure: [739]

(i) '*no later than 1 January 2006* […] *the reuse and recovery* [of ELVs] *shall be increased to a minimum of 85% by an average weight per vehicle and year* [and] *within the same time limit the reuse and recycling shall be increased to a minimum of 80% by an average weight per vehicle and year*'; and

(ii) '*no later than 1 January 2015* […] *the reuse and recovery* [of ELVs] *shall be increased to a minimum of 95% by an average weight per vehicle and year* [and] *within the same time limit, the re-use and recycling shall be increased to a minimum of 85% by an average weight per vehicle and year*'.

(b) Article 7(4) of the ELV Directive provides that the European Commission shall:

(i) '*promote the preparation of European standards relating to the dismantlability, recoverability and recyclability of vehicles*'; and

[738] 'Producers' is defined in Article 2 of the ELV Directive to include VMs and professional importers of vehicles.
[739] The reason for having two separate targets at any one time (covering recycling and recovery) is that some parts of an ELV are not suitable for recycling but can be used in energy recovery. Energy recovery can count towards VMs meeting up to 10% of the 95% target (prior to 2015 it could count towards 5% of the 85% target).

(ii) propose to the European Parliament and the Council a requirement that '*vehicles type approved in accordance with (Directive 70/156/EEC) and put on the market after three years after the amendment of the Directive 70/156/EEC are re-usable and/or recyclable to a minimum of 85% by weight per vehicle and are re-usable and/or recoverable to a minimum of 95% by weight per vehicle*'.

8.7 Article 9 of the ELV Directive deals with reporting and information requirements. Specifically, Article 9(2) provides that Member States must require VMs to publish information on:

(a) '*The design of vehicles and their components with a view to their recoverability and recyclability,*

(b) *The environmental sound treatment of end-of life vehicles, in particular the removal of all fluids and dismantling,*

(c) *The development and optimisation of ways to reuse, recycle and recover end-of life vehicles and their comments,*

(d) *The progress achieved with regard to recovery and recycling to reduce the waste to be disposed of and to increase the recovery and recycling rates*'.

8.8 Article 9(2) further provides that Member States must require VMs to '*make this information accessible to the prospective buyers of vehicles*' and include it in '*promotional literature used in the marketing of new the new vehicle*'.

B The RRR Directive and type approval

8.9 The requirements at Article 7 of the ELV Directive were further developed by the RRR Directive, which sets out certain requirements that need to be met by vehicles in order to receive 'type approval'. In order to place vehicles on the market in the UK (and EU), VMs must obtain 'type approval' for them. This involves demonstrating to the relevant authority that the vehicle or component meets specified performance standards.

8.10 Annex I (1) of the RRR Directive sets out that in order to obtain type-approval, vehicles must be reusable and/or recyclable to a minimum of 85% by mass and reusable and/or recoverable to a minimum of 95% by mass. Further, Annex I (2) states that '*the manufacturer shall demonstrate to the satisfaction of the approval authority that the reference vehicles meet the requirements. The calculation method prescribed in Annex B to the standard ISO 22628: 2002 shall apply*'.

8.11 ISO 22628:2002 sets out the standards for calculating the recyclability and recoverability of vehicles. When VMs apply for type approval, they must provide details of the calculation method (calculated in accordance with ISO 22628:2002)

and the strategy employed, including detail on how they intend to manage the ELV and processes they intend to use.[740]

C The UK ELV regulations

8.12 The provisions of the EU Directives set out above were transposed into UK law by the UK ELV Regulations.

8.13 Defra enforces certain aspects of these regulations, including the requirements for producers to have a convenient ELV Takeback network in place and to meet recovery and recycling targets in accordance with Article 39 of the End-of-Life Vehicles Regulations 2003.[741] Defra has appointed the Office for Product Safety and Standards ('**OPSS**') to enforce other aspects of the regulations in the UK, including the publication of design and dismantling information.[742] The Vehicle Certification Agency, the UK's type approval authority, is responsible for ensuring that vehicles meet the recyclability and recoverability requirements of the RRR Directive.[743]

C.I The End-of-Life Vehicles Regulations 2003

8.14 The End-of-Life Vehicles Regulations 2003 transposed measures relating to the prevention, reduction and elimination of pollution caused by waste and the prevention of waste from vehicles and forms of recovery of ELVs and their components.[744]

8.15 Regulation 20 of the End-of-Life Vehicles Regulations 2003 transposes Article 9(2) of the ELV Directive, requiring that VMs publish information on:

(a) '*The design of vehicles and their components with a view to their recoverability and recyclability;*

(b) *The environmentally sound treatment of end-of-life vehicles in particular the removal of all fluids and dismantling;*

(c) *The development and optimisation of ways to reuse, recycle and recover end-of-life vehicles and their components;*

(d) *The progress achieved with regard to recovery and recycling to reduce the waste to be disposed of and to increase the recovery and recycling rates*'.[745]

[740] SIR-000041137 and SIR-000041138
[741] SIR-000041131.
[742] SIR-000041131.
[743] SIR-000041139.
[744] End-of-Life Vehicles Regulation 2003, introductory text.
[745] Regulation 20 of the End-of-Life Vehicles Regulation 2003.

8.16 In line with Article 9(2) of the ELV Directive, Regulation 20 of the End-of-Life Vehicles Regulations 2003 further requires that VMs make the information '*accessible to prospective buyers of vehicles*' and include it '*in promotional literature used in the marketing of new vehicles*'.[746]

8.17 Regulation 10(6) of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 provides that '*where an end-of-life vehicle has no market value no charge shall be imposed on the last owner or holder of that end-of-life vehicle when it is delivered*'.[747]

C.II The End-of-Life Vehicles (Producers Responsibility) Regulations 2005

8.18 The End-of-Life Vehicles (Producers Responsibility) Regulations 2005 similarly transposed measures relating to the prevention of waste from vehicles and forms of recovery of ELVs and their components.[748]

8.19 Regulation 10 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 transposes Article 5(1) of the ELV Directive by placing an obligation on VMs to '*establish a system for the collection of the vehicles for which he has declared responsibility for placing on the market[…] which the producer anticipates will become end-of-life vehicles*'.[749] Regulation 10(6) provides that from 1 January 2007 onwards, the last owner of an ELV that has no market value must not be charged when the ELV is delivered to the responsible VM's ELV Takeback network.

8.20 Regulation 11 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 further provides that VMs:

(a) '*Shall ensure that, as regards vehicles for which he has declared responsibility for placing on the market […] his system for collection as referred to in regulation 10 is reasonably accessible to any person who wishes to deliver to it an end-of-life vehicle for which that producer is responsible*'; or

(b) '*Make alternative arrangements for the collection of vehicles referred to in regulation 10, provided those arrangements are at least as convenient for the last owner or holder of the vehicle as the requirement for delivery referred to in paragraph (1)*'. [750]

8.21 Regulation 18 of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005 transposes Article 7(2) of the ELV Directive by providing that in respect of

---

[746] Regulation 20 of the End-of-Life Vehicles Regulation 2003.
[747] Regulation 10(6) of the End-of-Life Vehicles (Producer Responsibility) Regulations 2005.
[748] End-of-Life Vehicle (Producer Responsibility) Regulations 2005, introductory text.
[749] Regulation 10 of the End-of-Life Vehicle (Producer Responsibility) Regulations 2005, introductory text.
[750] Regulation 11 of the End-of-Life Vehicle (Producer Responsibility) Regulations 2005, introductory text.

ELVs treated at ATFs that are part of a VM's ELV Takeback network, VMs must attain targets of:

(a) '*At least 85% reuse and recovery by an average weight per vehicle and year; and at least 80% reuse and recycling by an average weight per vehicle and year*' between 2006 and 2014; and

(b) '*At least 95% reuse and recovery by an average weight per vehicle and year and at least 85% reuse and recycling by an average weight per vehicle and year*' after 2015.[751]

C.III The Motor Vehicles (EC Type Approval) (Amendment) Regulations 2007

8.22 The Motor Vehicles (EC Type Approval) (Amendment) Regulations 2007 amended the Motor Vehicles (EC Type Approval) Regulations 1998, which set out the procedure and technical requirements for the type approval of certain vehicles. The amendments, amongst other things, implemented the requirements set out in the RRR Directive set out above relating to reusability, recyclability and recoverability, namely that vehicles will only obtain type approval if they are reusable and/or recyclable to a minimum of 85% by mass and reusable and/or recoverable to a minimum of 95% by mass.

[751] Regulation 18 of the End-of-Life Vehicle (Producer Responsibility) Regulations 2005, introductory text.

ANNEX 2: PARTY INVOLVEMENT

This Annex sets out the CMA's conclusion as to which Parties were involved in the events described in Chapter 5, in relation to (i) the NCI Infringement and (ii) the ZTC Infringement.

Table 8.1: Parties involved in events relating to the NCI Infringement

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ACEA WG-RG and ACEA/[✂] meetings – 29 May 2002[753] (paragraphs 5.8 and 5.9)	Attended	Attended	Attended		Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended	Attended
ACEA WG-RG meeting – 24 September 2002[754] (paragraph 5.14)	Attended	Attended	Attended		Attended			Attended	Attended	Attended	Attended		Attended
ACEA WG-RG meeting – 27 November 2002[755] (paragraph 5.15)	Attended	Attended	Attended		Attended			Attended	Attended	Attended	Attended		Attended

[752] As set out at footnote 154, the CMA understands that one team reporting to GME handled ELV strategy on behalf of all GMC (or, after 10 July 2009, General Motors) brands in Europe. This included Opel and Vauxhall until they were acquired by PSA Peugeot Citroen on 1 August 2017. Accordingly, for the purpose of this table certain events involving GME have been taken to include the involvement of Opel and Vauxhall. The CMA further notes that in certain documents, members of the GME team were referred to as representing GMC, General Motors or 'GM' (Page 7, SIR-000002615), which refer to [Opel/GME Employee A] and [GME Employee K] as having represented 'GM' (GMC) at the meeting). For the purpose of this table, these references have been taken to mean 'GME' (and therefore to include the involvement of Opel and Vauxhall).
[753] SIR-000002615, page 7 and SIR-000036093, page 6.
[754] SIR-000026661, page 8.
[755] SIR-000039816, page 8.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ACEA 'position paper' on Article 9(2) – November 2002[756] (paragraph 5.16)	Produced the paper								Circulated the paper to SMMT members				
Internal Mitsubishi meeting – 4 November 2002[757] (paragraph 5.18(a))						Attended							
ACEA WG-RG strategy meeting – 28 January 2005[758] (paragraph 5.18(c))	Attended	Attended	Attended		Attended			Attended	Attended	Attended			Attended
RRR working group meeting – 28 April 2005[759] (paragraph 5.20)		Attended	Attended		Attended					Attended		Attended	Attended

[756] SIR-000006003. The precise recipients of the SMMT Memo and attached ACEA position paper are unknown, although the memo is marked for circulation to groups including the SMMT ELV working group.
[757] SIR-000014860.
[758] SIR-000026700, page 15.
[759] SIR-000031641.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Internal Opel discussions – 20 September 2005[760] (paragraph 5.36)										Sender			
ACEA/[✂] meeting – 17 November 2005[761] (paragraph 5.22)	Represented [762]		Attended			Attended	Attended					Attended	Attended
RRR working group meeting – 22 June 2006[763] (paragraph 5.25)		Attended	Attended		Attended		Attended	Attended		Attended		Attended	Attended
Ford/Renault exchange – 30 June 2006[764] (paragraphs 5.30 to 5.32)			Sender/ recipient					Sender/ recipient					
Internal Ford discussion – July 2006[765] (paragraph 5.39)			Sender										

[760] SIR-000031619.
[761] SIR-000031647, page 1.
[762] See footnote 171.
[763] SIR-000036110, page 1.
[764] SIR-000008795.
[765] SIR-000008794.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
RRR working group meeting – 13 September 2006[766] (paragraph 5.25)		Attended	Attended		Attended							Attended	Attended
RRR working group meeting – 25 September 2006[767] (paragraph 5.25)		Attended	Attended					Attended		Attended		Attended	Attended
ACEA/[✂]/ [✂] meeting – 14 December 2006[768] (paragraph 5.27)	Attended	Attended	Attended		Attended	Attended	Attended	Attended		Attended		Attended	Attended
Internal Mitsubishi discussion – February 2007[769] (paragraph 5.42)						Sender							

[766] SIR-000014824, page 1.
[767] SIR-000014827, page 1
[768] SIR-000014829, page 1.
[769] SIR-000014648.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ACEA WG-RG or ACEA/[✂]/ [✂] meeting – 10 May 2007[770] (paragraphs 5.45 and 5.48)	Attended	Attended	Attended		Attended	Attended	Attended	Attended		Attended		Attended	Attended
Internal Opel email – June 2007[771] (paragraph 5.51)										Sender			
Vehicle manufacturer ELV information exchange meeting – 14 June 2007[772] (paragraph 5.56)		Attended	Attended		Attended	Attended	Attended	Attended		Attended		Submitted comments[773]	Attended
ACEA WG-RG meeting – 14 September 2007 (paragraph 5.58)[774]	Chaired	Attended	Attended		Attended			Attended		Attended	Attended	Attended	Attended
ACEA WG-RG meeting – 13 December 2007 (paragraph 5.58)[775]	Chaired	Attended	Attended		Attended			Attended	Attended	Attended			Attended

[770] SIR-000026714.
[771] SIR-000031669_CT.
[772] SIR-000002616, page 1.
[773] SIR-000033364.
[774] SIR-000000850, pages 6-7.
[775] SIR-000000840, pages 4-5.

Event	***ACEA***	***BMW***	***Ford***	***JLR***	***Mercedes-Benz***	***Mitsubishi***	***Nissan***	***Renault***	***SMMT***	***[Stellantis] Opel/ Vauxhall*** [752]	***[Stellantis] Peugeot-Citroen***	***Toyota***	***VW***
[✂]-ACEA-*[✂]* meeting – 13 December 2007 (paragraph 5.58)[776]	Attended	Attended	Attended		Attended	Attended	Attended	Attended	Attended	Attended			Attended
Internal Ford discussion – July 2007 (paragraph 5.67)[777]			Sender										
Discussion regarding [✂] press release – November 2007 (paragraph 5.68)[778]		Sender/ recipient	Recipient		Recipient					Sender/ recipient			Recipient
Internal Mitsubishi meeting – February 2008 (paragraph 5.71)[779]						Attended							
Vehicle Manufacturer – ELV Information Exchange meeting – 12 June 2008 (paragraph 5.74)[780]		Attended	Attended		Attended	Attended	Received minutes[781]	Attended		Attended	Received minutes[781]	Received minutes[781]	Attended

[776] SIR-000026717, page 10.
[777] SIR-000008868.
[778] SIR-000031683_CT.
[779] SIR-000014858.
[780] SIR-000014658, page 1.
[781] SIR-000002648.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ACEA/[✂]/ [✂] RRR meeting – September 2008 (paragraph 5.76)[782]		Received minutes [783]	Attended	Attended	Attended	Attended	Received minutes[783]	Received minutes[783]		Attended	Attended	Attended	Attended
Internal Opel emails – October 2008 (paragraph 5.79)[784]										Sender			
EU ELV [✂] Europe meeting – 8 November 2008 (paragraph 5.76)[785]					Received minutes	Received minutes	Received minutes					Received minutes	
EU ELV [✂] Europe meeting – 28 November 2008 (paragraph 5.76)[786]						Attended	Attended						
Opel email – 5 November 2008 (paragraph 5.82)[787]	Sender	Recipient	Recipient	Recipient	Recipient			Recipient	Recipient	Sender	Recipient	Recipient	Recipient
JLR email – 20 August 2009 (paragraph 5.86)[788]				Sender									

[782] SIR-000040536 and SIR-000040532.
[783] SIR-000040532.
[784] SIR-000031694.
[785] SIR-000036239, page 3.
[786] SIR-000036239, page 4.
[787] SIR-000002367.
[788] SIR-000026141.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Exchange about SMMT Sustainability Report – September 2009 (paragraphs 5.89 and 5.90)[789]			Recipient	Sender/ recipient					Sender/ recipient				Sender/ recipient
Internal Ford email exchange – October 2009 (paragraph 5.93)[790]			Sender										
ACEA/[✂]/[✂] meeting – 25 November 2009 (paragraph 5.95)[791]	Attended	Attended	Attended	Attended	Attended	Attended	Attended			Attended	Attended	Attended	Attended
Vehicle Manufacturer workshop – 19 January 2010 (paragraph 5.101)[792]		Attended	Attended		Attended	Attended	Received minutes[793]	Received minutes[793]		Attended	Attended	Attended	Attended
ACEA WG-RG meeting – 25 February 2010 (paragraph 5.103)[794]	Attended		Attended	Attended	Attended			Attended		Attended		Attended	Attended

[789] SIR-000002372, pages 3-4; SIR-000002372, pages 2-3 and SIR-000002372.
[790] SIR-000009037, pages 5-8.
[791] SIR-000020457, pages 11-12.
[792] SIR-000014665, page 1.
[793] SIR-000014675, page 2.
[794] SIR-000002377, page 7.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Internal JLR email – 20 May 2010 (paragraph 5.108)[795]				Sender									
Internal JLR email – 11 June 2010 (paragraph 5.109)[796]				Sender									
Email about JLR Sustainability Report – 12 October 2010 (paragraph 5.112)[797]				Sender									
Internal Opel/GME/ General Motors email – 28 January 2011 (paragraph 5.115)[798]										Sender			
Ford/Nissan email exchange – January 2011 (paragraph 5.117)[799]			Sender/ recipient				Sender/ recipient						
Internal JLR email – 7 February 2011 (paragraph 5.123)[800]				Sender									

[795] SIR-000026166.
[796] SIR-000026172.
[797] SIR-000026182
[798] SIR-000033735.
[799] SIR-000026217.
[800] SIR-000026190.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
SMMT/JLR email exchange –24 February 2011 (paragraph 5.126)[801]				Sender/ recipient					Sender/ recipient				
Internal JLR email – 22 March 2011 (paragraph 5.130)[802]				Sender									
Internal JLR emails – 4 April 2011 and 3 August 2011 (paragraph 5.133)[803]				Sender									
Ford/JLR email exchange – August 2011 (paragraph 5.134)[804]			Sender/ recipient	Sender/ recipient									
Emails regarding the Nissan Leaf – August-September 2011 (paragraph 5.136)[805]	Sender/ recipient	Sender/ recipient	Sender/ recipient	Sender/ recipient	Recipient		Sender/ recipient	Recipient	Sender/ recipient	Recipient			Recipient
ACEA WG-RG meeting 23 September 2011 (paragraph 5.142)[806]	Attended		Attended	Attended									

[801] SIR-000002386.
[802] SIR-000026198.
[803] SIR-000026199 and SIR-000026212
[804] SIR-000026212.
[805] SIR-000002388, SIR-000002388SIR-000026214, SIR-000002391, SIR-000002391, SIR-000002391, SIR-000026221 and SIR-000026221.
[806] As set out at paragraph 5.143, the CMA has been unable to identify minutes (or an attendance list) of this meeting. Based on the evidence described at paragraphs 5.140, 5.142 and 5.144, the CMA finds that at least ACEA, JLR and Ford attended the meeting.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Internal JLR email – 26 September 2011 (paragraph 5.144)[807]				Sender									
Internal Opel/Vauxhall email – 22 August 2012 (paragraph 5.148)[808]										Sender/ recipient			
ACEA /JLR/ VW email exchange – October 2012 (paragraph 5.151)[809]	Sender / recipient			Sender / recipient									Sender/ recipient
Ford / JLR email exchange – 14 November 2012 (paragraph 5.155)[810]			Sender	Sender/ recipient									
Ford presentation - March 2013 (paragraph 5.158)[811]			Author										
BMW email – 16 October 2014 (paragraph 5.161(a))[812]	Recipient	Sender								Recipient	Recipient		Recipient

[807] SIR-000026222.
[808] SIR-000031791.
[809] SIR-000026264, SIR-000026264, SIR-000026264 and SIR-000026264.
[810] SIR-000026266 and SIR-000026266.
[811] SIR-000009787.
[812] SIR-000017845.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Circulation of ELV Charta – 16 October 2014 (paragraph 5.161(b))[813]	Recipient	Recipient	Recipient	Recipient	Recipient	Recipient	Recipient	Recipient		Sender / recipient	Recipient	Recipient	Recipient
ACEA Downstream user meeting – 21 April 2016 (paragraph 5.163)[814]	Attended	Attended	Attended	Attended						Attended		Attended	Attended
VW email – 4 July 2016 (paragraph 5.164)[815]	Recipient									Recipient			Sender
ACEA WG-RG meeting – 6 September 2016 (paragraph 5.165)[816]	Attended	Attended	Attended	Attended				Attended		Attended	Attended	Attended	Attended
ACEA outlook appointment – 3 October 2016 (paragraph 5.166)[817]	Sender												
Internal JLR email – 6 February 2017 (paragraph 5.169)[818]				Sender									

[813] SIR-000026350.
[814] SIR-000018071, page 1.
[815] SIR-000032654_CT.
[816] SIR-000001366.
[817] SIR-000018528
[818] SIR-000026421.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [752]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ACEA WG-RG-DA workshop – 4 September 2017 (paragraph 5.173)[819]	Attended	Attended	Attended	Attended						Attended	Attended	Attended	Attended
ACEA email – 4 September 2017 (paragraph 5.173)[820]	Sender												

[819] SIR-000001424.
[820] SIR-000019146.

Table 8.2: Parties involved in events relating to the ZTC Infringement

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Ford email – 26 April 2004 (paragraph 5.215)[822]	Referred to in email	Recipient	Sender		Recipient			Recipient		Recipient	Recipient	Recipient	Recipient
Opel/Vauxhall internal report – 19 July 2004 (paragraph 5.220)[823]										Author			
Internal GME email – 11 January 2005 (paragraph 5.223)[824]										Sender			
ACEA WG-RG meeting – 1 February 2006 (paragraph 5.229)[825]	Attended	Attended	Attended		Attended			Attended	Attended	Attended		Attended	Attended
Email exchanges regarding [✂] – 24-27 February 2006[826] (paragraphs 5.235 to 5.241)	Sender/ recipient	Recipient	Recipient		Recipient	Recipient	Recipient	Recipient		Sender/ recipient	Recipient	Recipient	Recipient
VM ELV Information Exchange meeting – 2 March 2006 (paragraph 5.242)[827]		Attended	Attended		Attended	Attended	Attended	Attended		Attended		Attended	Attended

[821] See footnote 752.
[822] SIR-000002620, page 4.
[823] SIR-000033111.
[824] SIR-000000046, page 1.
[825] SIR-000026706, page 8.
[826] SIR-000004522, page 1; SIR-000004523, page 1; SIR-000039846_CT and SIR-000002705.
[827] SIR-000000295_CT, page 1.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
VM ELV Information Exchange meeting – 14 June 2007 (paragraph 5.246)[828]		Attended	Attended		Attended	Attended	Attended	Attended		Attended		Submitted comments[829]	Attended
ACEA WG-RG meeting – 14 September 2007 (paragraph 5.248)[830]	Chaired	Attended	Attended		Attended			Attended		Attended	Attended	Attended	Attended
ACEA WG-RG meeting – 13 December 2007 (paragraph 5.248)[831]	Chaired	Attended	Attended		Attended			Attended	Attended	Attended			Attended
[✂]-ACEA-[✂] meeting – 13 December 2007 (paragraph 5.58)[832]	Attended	Attended	Attended		Attended	Attended	Attended	Attended	Attended	Attended			Attended
ELV Information Exchange meeting – 12 June 2008 (paragraph 5.250)[833]		Attended	Attended		Attended	Attended	Received minutes[834]	Attended		Attended	Received minutes834	Received minutes834	Attended

[828] SIR-000002616, page 1.
[829] SIR-000033364.
[830] SIR-000000850, pages 6-7.
[831] SIR-000000840, page 4.
[832] SIR-000026717, page 10.
[833] SIR-000014658, Page 1.
[834] SIR-000002648.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ELV Meeting– 16 June 2008 (paragraph 5.254)[835]													
Mercedes-Benz presentation – October 2008 (paragraph 5.257)[836]					Author								
Email exchange regarding ELV meeting – 17 February 2009 (paragraph 5.260)[837]		Recipient	Recipient		Recipient			Recipient		Sender/ recipient			
ACEA WG-RG meeting – 24 September 2009 (paragraph 5.263)[838]	Chaired	Attended	Attended	Attended				Attended		Attended	Attended	Attended	Attended
VM Workshop – 19 January 2010 (paragraph 5.265)[839]		Attended	Attended		Attended	Attended				Attended	Attended	Attended	Attended
Email circulating ELV Charta – 17 February 2010 (paragraph 5.265)[840]		Recipient	Recipient		Sender	Recipient	Recipient	Recipient		Recipient	Recipient	Recipient	Recipient

[835] The CMA has not been able to identify details of who participated in this meeting.
[836] SIR-000004501.
[837] SIR-000000103.
[838] SIR-000000931, pages 8-9.
[839] SIR-000014665, page 1.
[840] SIR-000014675, pages 2-3.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Email regarding SWOT analysis meeting – 16 March 2010 (paragraph 5.268)[841]	Recipient											Sender	
Opel/GME email of 12 April 2010 (paragraph 5.272)[842]					Recipient					Sender			
Mercedes-Benz email of 21 June 2010 (paragraph 5.273)[843]					Sender								
Emails of 9 and 10 September 2010 (paragraph 5.278)[844]										Sender			
ELV Country Audio – 17 May 2011 (paragraph 5.280)[845]	Received minutes	Received minutes	Received minutes		Circulated minutes	Received minutes	Received minutes	Received minutes		Received minutes	Received minutes	Received minutes	Received minutes
VW and Opel/GME bilateral discussion – 5 July 2011 (paragraph 5.282)[846]										Attended			Attended

[841] SIR-000020781.
[842] SIR-000004505, pages 22-23.
[843] SIR-000003343.
[844] SIR-000001370, page 1.
[845] SIR-000009166.
[846] SIR-000022762.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ACEA WG-RG meeting – 20 September 2012 (paragraph 5.285)[847]	Chaired	Attended	Attended	Attended	Attended			Attended	Attended	Attended	Attended	Attended	Attended
ELV Group meeting – 18 January 2013 (paragraph 5.288)[848]													
Mercedes-Benz presentation – March 2013 (paragraph 5.290)[849]					Author								
ELV risk analysis summary – July 2013 (paragraphs 5.293 to 5.296)[850]	Attended ACEA WG-RG meeting		Part of task force Attended ACEA WG-RG meeting	Attended ACEA WG-RG meeting	Received emails Part of task force Attended ACEA WG-RG meeting			Received emails Part of task force Attended ACEA WG-RG meeting		Received emails Part of task force Attended ACEA WG-RG meeting	Sent emails Part of task force Attended ACEA WG-RG meeting	Received emails Part of task force Attended ACEA WG-RG meeting	Attended ACEA WG-RG meeting
Mercedes-Benz email – July 2013 (paragraph 5.298)[851]					Sender								

[847] SIR-000002393, page 9.
[848] The CMA has not been able to identify details of who participated in this meeting. The CMA finds that the following VM Parties were invited to attend: BMW, Mercedes-Benz, Ford, Mitsubishi, Nissan, Opel/GME, Peugeot Citroen, Renault, Toyota and VW (SIR-000009503).
[849] SIR-000020545.
[850] SIR-000036353, pages 1-2; SIR-000036353, page 1 and SIR-000009584, page 1.
[851] SIR-000004493, page 2.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Mercedes-Benz emails – June and October 2014 (paragraph 5.302 and 5.303)[852]					Sender								
BMW email – 16 October 2014 (paragraph 5.161(a))[853]	Recipient	Sender								Recipient	Recipient		Recipient
Email exchange – 16 October 2014 (paragraph 5.161(b))[854]	Recipient	Recipient	Recipient	Recipient	Recipient	Recipient	Recipient	Recipient		Sender / recipient	Recipient	Recipient	Recipient
Nissan/SMMT email – 16 September 2015 (paragraph 5.313(a))[855]							Sender		Recipient				
SMMT ELV working group meeting – 1 October 2015 (paragraph 5.313(b))[856]			Attended		Attended		Attended	Attended	Attended	Attended	Attended		Attended
Peugeot Citroen/SMMT email – 30 October 2015 (paragraph 5.313(c))[857]									Recipient		Sender		

[852] SIR-000004536, page 5 and SIR-000002597, page 1.
[853] SIR-000017845
[854] SIR-000026350.
[855] SIR-000002516.
[856] SIR-000002567, page 1.
[857] SIR-000002426, page 1.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Opel//GME/ SMMT email – 20 November 2015 (paragraph 5.313(d))[858]									Recipient	Sender			
SMMT/ACEA email – 20-25 November 2015 (paragraph 5.313(e))[859]	Recipient/ sender								Sender/ recipient				
SMMT meeting agenda – 24 November 2015 (paragraph 5.313(f))[860]		Recipient	Recipient	Recipient	Recipient		Recipient	Recipient	Author/ sender	Recipient	Recipient	Recipient	Recipient
Internal Toyota email – 10 February 2016 (paragraph 5.316)[861]												Sender	
ACEA Downstream user meeting – 21 April 2016 (paragraph 5.318 and 5.320)[862]	Attended	Attended	Attended	Attended						Attended		Attended	Attended
GME presentation – 17 May 2016 (paragraph 5.324)[863]										Author			

[858] SIR-000002431
[859] SIR-000002440
[860] SIR-000002432 and SIR-000002437.
[861] SIR-000025082, page 1.
[862] SIR-000018071, page 1.
[863] SIR-000000247.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Opel/VW email exchange – 21 June 2016 (paragraph 5.328)[864]										Sender			Recipient
VW email – 4 July 2016 (paragraph 5.164)[865]	Recipient									Recipient			Sender
ACEA WG-RG meeting – 6 September 2016 (paragraph 5.165)[866]	Attended	Attended	Attended	Attended				Attended		Attended	Attended	Attended	Attended
ACEA outlook appointment – 3 October 2016 (paragraph 5.166)[867]	Sender												
Toyota internal email – November 2016 (paragraph 5.335)[868]												Sender	
ACEA/SMMT email exchange – 1 March 2017 (paragraphs 5.339 and 5.340)[869]	Sender								Recipient				

[864] SIR-000032652_CT, page 1.
[865] SIR-000032654_CT.
[866] SIR-000001366.
[867] SIR-000018528.
[868] SIR-000004275, page 3.
[869] SIR-000007634.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
Opel/GME emails – 15 and 16 March 2017 (paragraph 5.343 and 5.344)[870]		Recipient						Recipient of initial email only[871]		Sender		Recipient	Recipient
Meeting of 30 March 2017 (paragraph 5.346)[872]		Attended							Attended	Attended		Attended	
Email of 11 April 2017 (paragraph 5.350)[873]	Recipient												
ACEA WG-RG meeting – 3 May 2017 (paragraph 5.352)[874]	Attended	Attended	Attended	Attended	Attended			Attended		Attended	Attended	Attended	Attended
ACEA WG-RG-DA workshop – 4 September 2017 (paragraph 5.361)[875]	Attended	Attended	Attended	Attended						Attended	Attended	Attended	Attended
ACEA email – 4 September 2017 (paragraph 5.361)[876]	Sender												

[870] SIR-000032910, page 4 and SIR-000039895, page 1.
[871] See footnote 556.
[872] SIR-000007643.
[873] SIR-000000255.
[874] SIR-000001441, page 1.
[875] SIR-000001424.
[876] SIR-000019146.

Event	*ACEA*	*BMW*	*Ford*	*JLR*	*Mercedes-Benz*	*Mitsubishi*	*Nissan*	*Renault*	*SMMT*	*[Stellantis] Opel/ Vauxhall* [821]	*[Stellantis] Peugeot-Citroen*	*Toyota*	*VW*
ELV Country Audio – January 2018 (paragraph 5.367(a))[877]													
SMMT ELV working group meeting – 1 February 2018 (paragraph 5.367(b))[878]		Attended		Attended	Attended		Attended	Attended	Attended	Attended	Attended	Attended	Attended
SMMT memo – 11 May 2018 (paragraph 5.368)[879]		Received	Received	Received	Received		Received	Received	Author	Received	Received	Received	Received

[877] The CMA has not been able to identify the attendees of this meeting.
[878] SIR-000006268, page 1.
[879] SIR-000002600. The memo was circulated to certain VM Parties as blind copy recipients of an email of 11 May 2018 (SIR-000007698). The SMMT provided the CMA with evidence of the blind copy recipients (SIR-000042707) with attached screenshot of the email of 11 May 2018 (SIR-000042711).

ANNEX 3: PENALTY CALCULATIONS BY PARTY FOR NCI INFRINGEMENT

Step	NCI Infringement	BMW	Ford	JLR[880]	Mitsubishi	Renault-Nissan	
						Renault Liability	Nissan Liability
	Relevant turnover	£4,666,232,440	£5,310,000,000	£3,377,601,114	£387,717,782	£3,828,077,940	
1	Starting point as a percentage of relevant turnover	14%	14%	14%	14%	14%	
	Penalty at the end of step 1 (starting point)	£653,272,542	£743,400,000	£472,864,156	£54,280,489	£535,930,912	
2	Adjustment for duration	x15.28	x15.28	x8.96	x15.28	x15.28	
	Penalty at the end of step 2	£9,982,004,436	£11,359,152,000	£4,236,862,837	£829,405,879	£8,189,024,329	
3	Mitigating factor: co-operation	0%	-5%	-10%	0%	-5%	-5%
	Penalty at the end of step 3	£9,982,004,436	£10,791,194,400	£3,813,176,554	£829,405,879	£7,779,573,113	£7,779,573,113
4	Adjustment for specific deterrence	n/a	n/a	n/a	n/a	n/a	n/a
	Penalty at the end of step 4	£9,982,004,436	£10,791,194,400	£3,813,176,554	£829,405,879	£7,779,573,113	£7,779,573,113
5	Adjustment for proportionality	-£9,968,678,460[881]	-£10,775,007,608	-£3,807,456,789	-£828,161,770	-£7,771,637,948[882]	-£7,768,137,140[883]
	Adjustment to take account of the statutory maximum penalty	n/a	n/a	n/a	n/a	n/a	n/a
	Penalty at the end of step 5	£13,325,976	£16,186,792	£5,719,765	£1,244,109	£7,935,165	£11,435,972
6	Leniency discount	n/a	n/a	n/a	-25%	0%	0%
		n/a	n/a	n/a	-£311,027	£0	£0
	Total penalty (after leniency discount)	£13,325,976	£16,186,792	£5,719,765	£933,082	£7,935,165	£11,435,972
	Settlement discount	-20%	-20%	-20%	-20%	-20%	-20%
		-£2,665,195	-£3,237,358	-£1,143,953	-£186,616	-£1,587,033	-£2,287,194
	Penalty payable	£10,660,781	£12,949,433	£4,575,812	£746,465	£6,348,132[884]	£9,148,778[885]

[880] Tata Motors and JLR to be jointly and severally liable for the penalty for this period.
[881] This includes a reduction by 99.85% plus a subsequent further discretionary reduction by 11% to take account of the fact that BMW's relevant turnover includes all brands of Vehicles sold by BMW, and therefore includes significant turnover from the sale of Vehicle brands which are not covered by the CMA's infringement finding – see paragraph 7.99(a) above.
[882] This includes a reduction by 99.85% plus a subsequent further reduction by 30% to take account of the fact that Renault had publicly distanced itself and was therefore specifically not party to one of the two aspects of the NCI Infringement, namely the agreement to refrain from advertising the percentage or mass of recycled materials in its new Vehicles (see paragraph 7.99(b) above). It also includes a further discretionary reduction by 2% to take account of the fact that Renault-Nissan's relevant turnover includes all brands of Vehicles sold by Renault, and therefore includes turnover from the sale of Vehicle brands which are not covered by the CMA's infringement finding – see paragraph 7.99(a) above.
[883] This includes a reduction by 99.85% plus a subsequent further discretionary reduction by 2% to take account of the fact that Renault-Nissan's relevant turnover includes all brands of Vehicles sold by Nissan, and therefore includes turnover from the sale of Vehicle brands which are not covered by the CMA's infringement finding – see paragraph 7.99(a) above.
[884] Renault's liability for this is shared, on a joint and several basis, with Nissan.
[885] Nissan's liability for £6,348,132 of this is shared, on a joint and several basis, with Renault. Nissan is solely liable for the remaining £2,800,646.

Step	NCI Infringement	Peugeot Citroen	Vauxhall/Opel Period 1[886]	Vauxhall/Opel Period 2[887]	Vauxhall/Opel Period 3[888]	Toyota	VW	ACEA	SMMT
	Relevant turnover	£2,091,455,400	£2,296,309,600	£2,457,091,400	£2,457,091,400	£1,687,493,870	£8,124,187,787	n/a	n/a
1	Starting point as a percentage of relevant turnover	14%	14%	14%	14%	14%	14%	n/a	n/a
	Penalty at the end of step 1 (starting point)	£292,803,756	£321,483,344	£343,992,796	£343,992,796	£236,249,142	£1,137,386,290	n/a	n/a
2	Adjustment for duration	x15.28	x7.12	x8.06	x0.10	x15.28	x15.28	n/a	n/a
	Penalty at the end of step 2	£4,474,041,392	£2,288,961,409	£2,772,581,936	£34,399,280	£3,609,886,887	£17,379,262,514	n/a	n/a
3	Mitigating factor: cooperation	0%	0%	0%	0%	0%	5%	5%	n/a
	Penalty at the end of step 3	£4,474,041,392	£2,288,961,409	£2,772,581,936	£34,399,280	£3,609,886,887	£16,510,299,388	n/a	n/a
4	Adjustment for specific deterrence	n/a	n/a	n/a	n/a	n/a	n/a	£114,000	£60,000
	Penalty at the end of step 4	£4,474,041,392	£2,288,961,409	£2,772,581,936	£34,399,280	£3,609,886,887	£16,510,299,388	£114,000	£60,000
5	Adjustment for proportionality	-£4,467,330,330	-£2,285,527,967	-£2,768,423,063	-£34,347,681	-£3,604,959,391[889]	-£16,493,458,883[890]	n/a	n/a
	Adjustment to take account of the statutory maximum penalty	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Penalty at the end of step 5	£6,711,062	£3,433,442	£4,158,873	£51,599	£4,927,496	£16,840,505	£114,000	£60,000
6	Leniency discount	-45%	-45%	-45%	-45%	0%	0%	0%	-35%
		-£3,019,978	-£1,545,049	-£1,871,493	-£23,220	£0	£0	£0	-£21,000
	Total penalty (after leniency discount)	£3,691,084	£1,888,393	£2,287,380	£28,379	£4,927,496	£16,840,505	£114,000	£39,000
	Settlement discount	-20%	-20%	-20%	-20%	-20%	-20%	-20%	-20%
		-£738,217	-£377,679	-£457,476	-£5,676	-£985,499	-£3,368,101	-£22,800	-£7,800
	Penalty payable	£2,952,867	£1,510,715	£1,829,904	£22,704	£3,941,996	£13,472,404	£91,200	£31,200

[886] Opel and Vauxhall to be jointly and severally liable for the penalty for this period.
[887] Opel, Vauxhall and General Motors to be jointly and severally liable for the penalty for this period.
[888] Opel, Vauxhall and Stellantis N.V. to be jointly and severally liable for the penalty for this period.
[889] This includes a reduction by 99.85% plus a subsequent further discretionary reduction by 9% to take account of the fact that Toyota's relevant turnover includes all brands of Vehicles sold by Toyota, and therefore includes turnover from the sale of Vehicle brands which are not covered by the CMA's infringement finding – see paragraph 7.99(a) above.
[890] This includes a reduction by 99.85% plus a subsequent further discretionary reduction by 32% to take account of the fact that VW's relevant turnover includes all brands of Vehicles sold by VW, and therefore includes significant turnover from the sale of Vehicle brands which are not covered by the CMA's infringement finding – see paragraph 7.99(a) above.

ANNEX 4: PENALTY CALCULATIONS BY PARTY FOR ZTC INFRINGEMENT

Step	ZTC Infringement	BMW	Ford	JLR[891]	Mitsubishi	Renault-Nissan	
						Renault Liability	Nissan Liability
4	**Penalty at the end of step 4[892]**	£500,180	£6,990,620[893]	£63,240[894]	£253,443	£4,539,618[895]	
5	Adjustment for proportionality	£0	£0	£0	£0	£0	
	Adjustment to take account of the statutory maximum penalty	n/a	n/a	n/a	n/a	n/a	
	Penalty at the end of step 5	£500,180	£6,990,620	£63,240	£253,443	£4,539,618	
6	Leniency discount	0%	0%	0%	-25%	0%	
		£0	£0	£0	-£63,361	£0	
	Total penalty (after leniency discount)	£500,180	£6,990,620	£63,240	£190,082	£4,539,618	
	Settlement discount	-20%	-20%	-20%	-20%	-20%	
		-£100,036	-£1,398,124	-£12,648	-£38,016	-£907,924	
	Penalty payable	£400,144	£5,592,496	£50,592	£152,066	£3,631,695[896]	

[891] Tata Motors and JLR to be jointly and severally liable for the penalty.
[892] This takes into account the seriousness of the ZTC Infringement, as well as the relative impact of each brand's participation as it is based on the estimated number of ELVs recycled/recovered in the UK under each brand's arranged network of ATFs during its period of participation in the ZTC Infringement and, where appropriate, the relevant Party's cooperation discount.
[893] This includes a 5% discount for cooperation.
[894] This includes a 10% discount for cooperation.
[895] This includes a 5% discount for cooperation (reflecting Renault and Nissan's respective cooperation).
[896] Nissan and Renault are jointly and severally liable for this penalty.

Step	ZTC Infringement	Peugeot Citroen	Vauxhall/Opel Period 1[897]	Vauxhall/Opel Period 2[898]	Vauxhall/Opel Period 3[899]	Toyota	VW	ACEA	SMMT
4	**Penalty at the end of step 4[900]**	£5,084,274	£1,523,665	£2,357,147	£228,111	£700,955	£1,604,370[901]	£28,500[902]	£30,000
5	Adjustment for proportionality	£0	£0	£0	£0	£0	£0	£0	£0
	Adjustment to take account of the statutory maximum penalty	n/a	n/a	n/a	n/a	n/a	n/a	n/a	n/a
	Penalty at the end of step 5	£5,084,274	£1,523,665	£2,357,147	£228,111	£700,955	£1,604,370	£28,500	£30,000
6	Leniency discount	-45%	-45%	-45%	-45%	0%	0%	0%	-35%
		-£2,287,923	-£685,649	-£1,060,716	-£102,650	£0	£0	£0	-£10,500
	Total penalty (after leniency discount)	£2,796,350	£838,015	£1,296,431	£125,461	£700,955	£1,604,370	£28,500	£19,500
	Settlement discount	-20%	-20%	-20%	-20%	-20%	-20%	-20%	-20%
		-£559,270	-£167,603	-£259,286	-£25,092	-£140,191	-£320,874	-£5,700	-£3,900
	Penalty payable	£2,237,080	£670,412	£1,037,145	£100,369	£560,764	£1,283,496	£22,800	£15,600

[897] Opel and Vauxhall to be jointly and severally liable for the penalty for this period.
[898] Opel, Vauxhall and General Motors to be jointly and severally liable for the penalty for this period.
[899] Opel, Vauxhall and Stellantis N.V. to be jointly and severally liable for the penalty for this period.
[900] This takes into account the seriousness of the ZTC Infringement; as well as the relative impact of each brand's participation as it is based on the estimated number of ELVs recycled/recovered in the UK under each brand's arranged network of ATFs during its period of participation in the ZTC Infringement and, where appropriate, the relevant Party's cooperation discount.
[901] This includes a 5% discount for cooperation.
[902] This includes a 5% discount for cooperation.

ANNEX 5: COMBINED PENALTY CALCULATIONS BY PARTY

Step	Infringements	BMW	Ford	JLR[903]	Mitsubishi	Renault-Nissan	
						Renault Liability	Nissan Liability
5	NCI penalty at the end of Step 5	£13,325,976	£16,186,792	£5,719,765	£1,244,109	£7,935,165	£11,435,972
	ZTC penalty at the end of Step 5	£500,180	£6,990,620	£63,240	£253,443	£4,539,618	£4,539,618
	Combined penalty at the end of step 5	£13,826,156	£23,177,411	£5,783,005	£1,497,552	£12,474,783	£15,975,591
6	Aggregate leniency discount	0%	0%	0%	-25%	0%	0%
		£0	£0	£0	-£374,388	£0	£0
	Aggregate penalty (after leniency discount)	£13,826,156	£23,177,411	£5,783,005	£1,123,164	£12,474,783	£15,975,591
	Aggregate settlement discount	-20%	-20%	-20%	-20%	-20%	-20%
		-£2,765,231	-£4,635,482	-£1,156,601	-£224,633	-£2,494,957	-£3,195,118
	Combined penalty payable	£11,060,925	£18,541,929	£4,626,404	£898,531	£9,979,826[904]	£12,780,473[905]

[903] Tata Motors and JLR to be jointly and severally liable for this penalty.
[904] Renault and Nissan are jointly and severally liable for this penalty.
[905] This penalty includes the penalty of £9,979,826 for which Renault and Nissan are jointly and severally liable (see above) and an additional amount of £2,800,646, for which Nissan is solely liable. See also footnotes 884 and 885 above.

Step	Infringements	Peugeot Citroen	Vauxhall/Opel Period 1[906]	Vauxhall/Opel Period 2[907]	Vauxhall/Opel Period 3[908]	Toyota	VW	ACEA	SMMT
5	NCI penalty at the end of Step 5	£6,711,062	£3,433,442	£4,158,873	£51,599	£4,927,496	£16,840,505	£114,000	£60,000
	ZTC penalty at the end of Step 5	£5,084,274	£1,523,665	£2,357,147	£228,111	£700,955	£1,604,370	£28,500	£30,000
	Combined penalty at the end of step 5	£11,795,336	£4,957,107	£6,516,020	£279,710	£5,628,450	£18,444,875	£142,500	£90,000
6	Aggregate leniency discount	-45%	-45%	-45%	-45%	0%	0%	0%	-35%
		-£5,307,901	-£2,230,698	-£2,932,209	-£125,869	£0	£0	£0	-£31,500
	Aggregate penalty (after leniency discount)	£6,487,435	£2,726,409	£3,583,811	£153,840	£5,628,450	£18,444,875	£142,500	£58,500
	Aggregate settlement discount	-20%	-20%	-20%	-20%	-20%	-20%	-20%	-20%
		-£1,297,487	-£545,282	-£716,762	-£30,768	-£1,125,690	-£3,688,975	-£28,500	-£11,700
	Combined penalty	£5,189,948	£2,181,127	£2,867,049	£123,072	£4,502,760	£14,755,900	£114,000	£46,800

[906] Opel and Vauxhall to be jointly and severally liable for the penalty for this period.
[907] Opel, Vauxhall and General Motors to be jointly and severally liable for the penalty for this period.
[908] Opel, Vauxhall and Stellantis N.V. to be jointly and severally liable for the penalty for this period.

ANNEX 6: GLOSSARY

'**2000 Order**': the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000.

'**ACEA**': Association des Constructeurs Européens d'Automobiles.

'**ACEA WG-RG**': ACEA recycling working group.

'**Act**': the Competition Act 1998.

'**ADEME**': the French Environment and Energy Management Agency.

'**Infringements**': the NCI Infringement and the ZTC Infringement.

'**Infringement Periods**': the NCI Infringement Period and ZTC Infringement Period.

'**NCI Infringement**': the infringement that the VM Parties would not compete by making advertising statements (i) suggesting that the recyclability or recoverability of their Vehicles exceeded minimum legal requirements, or (ii) (from June 2017 onwards) relating to the percentage or mass of recycled materials used in the manufacture of new Vehicles.

'**NCI Infringement Period**': 29 May 2002 to 4 September 2017.

'**ZTC Infringement**': the infringement that the VM Parties would refrain from paying ATFs or ATF Intermediaries for ELV Takeback.

'**ZTC Infringement Period**': 26 April 2004 to 11 May 2018.

'**ATFs**': authorised treatment facilities.

'**ATF Intermediaries**': businesses that contract with many individual ATFs and shredder businesses, of varying sizes, located across the UK to establish a nationwide network of free Takeback locations for ELVs.

'**Autogreen**': Autogreen Limited.

'**BMW**': BMW (UK) Limited, BMW AG and all other entities which form part of the same undertaking.

'**CARE**': the Consortium for Automotive Recycling.

'**CarTakeBack**': CarTakeBack.com Limited.

'**Chapter I Prohibition**': the prohibition in section 2(1) of the Competition Act 1998.

'**CMA**': Competition and Markets Authority.

‘**Country Audio**’: quarterly telephone conference held by the Downstream Group.

‘**Defra**’: the Department for Environment, Food and Rural Affairs.

‘**Downstream Group**’: an unofficial ELV working group of VMs, later made an official subgroup of the ACEA WG-RG (at which point it was also known as the ‘**WG-RG-DU**’ and/or the ‘**WG-RG-DA**’).

‘**ELVs**’: End-of-life vehicles.

‘**ELV Directive**’: Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of life vehicles.

‘**ELV Takeback**’: arrangements made by VMs to satisfy the requirement under the ELV Directive and UK ELV Regulations that ELVs can be transferred to an ATF for recycling/recovery to the required legal standards at no cost to the last owner or holder as a result of the vehicle having no or a negative market value.

‘**EMR**’: European Metal Recycling.

‘**Ford**’: Ford Motor Company Limited, Ford-Werke GmbH, Ford of Europe GmbH, and their ultimate parent company, Ford Motor Company, together with all other entities which form part of the same undertaking.

‘**General Motors**’: General Motors Company.

‘**GMC**’: General Motors Corporation.

‘**GME**’: General Motors Europe.

‘**Green Agreements Guidance**’: CMA’s *Guidance on the application of the Chapter I prohibition in the Competition Act 1998 to environmental sustainability agreements* (CMA185).

‘**Horizontal Guidance**’: CMA’s *Guidance on the application of the Chapter I Prohibition in the Competition Act 1998 to horizontal agreements* (CMA174).

‘**JLR**’: Jaguar Land Rover Limited and Jaguar Land Rover Holdings Limited.

‘**Mercedes-Benz**’: Mercedes-Benz UK Limited, Mercedes Benz Group AG and all other entities which form part of the same undertaking.

‘**Mitsubishi**’: Mitsubishi Motor R&D Europe GmbH and Mitsubishi Motors Europe B.V., Mitsubishi Motors Corporation and all other entities which form part of the same undertaking.

‘**NCI Information**’: information on (i) exceeding the minimum legal requirement for the recyclability or recoverability of Vehicles or (ii) (from 14 June 2007 onwards) the percentage or mass of recycled material used in the manufacture of Vehicles.

‘**Nissan**’: Nissan Automotive Europe SAS, Nissan Motor Manufacturing UK Limited, Nissan Motor Parts Centre B.V., Nissan Motor (GB) Limited, Nissan Motor Co. Ltd and all other entities which form part of the same undertaking.

‘**Opel**’: Opel Automobile GmbH (as economic successor to Adam Opel GmbH).

‘**OPSS**’: Office for Product Safety and Standards.

‘**Parties**’: the persons listed in paragraph 1.1.

‘**Peugeot Citroen**’: Peugeot Motor Company Plc, PSA Automobiles S.A. and Citroen U.K. Limited.

‘**Penalty Guidance**’: CMA’s *Guidance as to the appropriate amount of a penalty*, 16 December 2021 (CMA73).

‘**Renault**’: Renault Retail Group UK Limited, Renault U.K. Limited, Renault S.A., Renault S.A.S. and all other entities which form part of the same undertaking.

‘**RRR Directive**’: Directive 2005/64/EC of the European Parliament and of the Council of 26 October 2005 on the type-approval of motor vehicles with regard to their reusability, recyclability and recoverability and amending Council Directive 70/156/EEC.

‘**SMMT**’: Society of Motor Manufacturers and Traders Limited.

‘**Stellantis**’: Vauxhall Motors Limited (‘**Vauxhall**’); Opel Automobile GmbH (as economic successor to Adam Opel GmbH) (‘**Opel**’); Peugeot Motor Company Plc, PSA Automobiles S.A. and Citroen U.K. Limited (together ‘**Peugeot Citroen**’), Stellantis N.V. (as economic successor to Peugeot S.A.), and all other entities which form part of the same undertaking.

‘**Takeback**’: see ‘ELV Takeback’.

‘**Tata Motors Group**’: Jaguar Land Rover Limited and Jaguar Land Rover Holdings Limited (‘**JLR**’), Tata Motors Limited and all other entities which form part of the same undertaking.

‘**TFEU**’: the Treaty on the Functioning of the European Union.

‘**Toyota**’: Toyota (GB) Plc, Toyota Motor Europe NV/SA, Toyota Motor Corporation and all other entities which form part of the same undertaking.

‘**Trade Association Parties**’: the Parties listed at paragraph (b).

‘**UK ELV Regulations**’: (a) the End-of-Life Vehicles Regulations 2003; (b) the End-of-Life Vehicles (Producer Responsibility) Regulations 2005; (c) the Motor Vehicles (EC Type Approval Amendment) Regulations.

‘**Vauxhall**’: Vauxhall Motors Limited.

‘**Vehicle**’: a passenger car (with up to nine seats) or small commercial vehicle (up to 3.5 tonnes), referred to as ‘M1’ and ‘N1’ vehicles respectively at Article 2(1) of the ELV Directive.

‘**VMs**’: vehicle manufacturers.

‘**VM Parties**’: the persons listed in paragraph (a).

‘**VW**’: Volkswagen Group United Kingdom Limited, Volkswagen AG and all other entities which form part of the same undertaking.

‘**WG-RG-DA**’: see ‘Downstream Group’.

WG-RG-DU’: see ‘Downstream Group’.

‘**ZTC**’: zero treatment cost.