COMPETITION COMMISSION

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Notice of Possible Remedies under Rule 11 of the *Competition Commission Rules of Procedure*

Introduction

1. On 28 September 2012, the Office of Fair Trading (OFT) referred the supply or acquisition of private motor insurance and related goods or services in the UK to the Competition Commission (CC) for investigation. The reference was made under sections 131 and 133 of the Enterprise Act 2002 (the Act).

2. In its provisional findings, published on 17 December 2013, the CC has provisionally found an adverse effect on competition (AEC) within the meaning of section 134(2) of the Act. Section 10 of the provisional findings identifies those features that the CC has provisionally found give rise to the AEC and the resulting detrimental effects on customers.

3. Where the CC finds that there is an AEC, it has a duty under section 134(4) of the Act to decide whether it should take action and/or whether it should recommend others take action to remedy, mitigate or prevent the AEC or any resulting detrimental effects. If the CC decides that such action is appropriate, it must also decide what action should be taken and what is to be remedied, mitigated or prevented. In deciding these questions, the CC has a duty to achieve as comprehensive a solution as is reasonable and practicable to the AEC and any resulting detrimental effects, as set out in section 134(6) of the Act.

4. This Notice of Possible Remedies (the Notice) sets out and invites comments on possible actions which the CC might take in order to remedy, mitigate or prevent the AEC or any resulting detrimental effects on customers. Prior to deciding what, if any, action should be taken and by whom, the CC will take into account all comments received in response to this Notice and consult further. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CC to consider, by 17 January 2014.

Provisional findings on the AEC and resulting detrimental effects

5. We have provisionally found an AEC in relation to four theories of harm.

6. Our first provisional finding is that there are two features of the supply of motor insurance and related services which have, in combination, an AEC:

   (a) separation of cost liability and cost control—the insurer liable for the claim as insurer to the at-fault driver is often not the party managing the costs; and

   (b) various practices and conduct of other parties managing such claims which *(i)* are focused on earning a rent from control of claims; and *(ii)* give rise to an inefficient supply chain involving excessive frictional and transactional costs.

   We provisionally concluded that these features distort competition in the motor insurance market and result in higher motor insurance premiums. We estimated the overall detriment to consumers to be £150–£200 million per year.

7. Our second provisional finding is that there are two features of the supply of motor insurance and related services which have, in combination, an AEC:

   (a) insurers and claims management companies (CMCs) do not monitor effectively the quality of repairs; and

   (b) there are significant limitations to claimants' ability to assess the quality of repairs.

   We provisionally concluded that these features distort competition between repairers to obtain business from insurers and other managers of drivers' claims and result in detrimental effects on consumers because they can lead to consumers' cars not being repaired to their pre-accident condition.

8. Our third provisional finding is that there are two features of the supply of motor insurance (and in particular of the supply of add-ons such as motor legal expenses insurance, personal injury cover, courtesy car cover, key loss cover, extended foreign use cover and no-claims bonus (NCB) protection) which have, in combination, an AEC:

   (a) information asymmetries between motor insurers and consumers in relation to the sale of add-ons; and

   (b) the point-of-sale advantage held by motor insurers when selling add-ons.

   We provisionally concluded that these features distort competition in the motor insurance market and result in detrimental effects on consumers because they mean it is more difficult for consumers to identify the best-value offers in the market and may lead to consumers buying products at inflated prices.

9. Our fourth provisional finding is that there is a feature relating to price comparison websites (PCWs) in the supply of motor insurance which has an AEC: 'wide most favoured nation' (MFN) clauses in contracts between motor insurance providers and PCWs,[1] and practices having equivalent effect where a PCW takes advantage of 'single homing' consumers (ie the practice of searching on only one PCW) to prevent a provider of motor insurance and PCWs from competing on price. This feature results in detrimental effects on consumers because it distorts competition between PCWs, and thus ultimately restricts entry to the PCW market, reduces innovation by PCWs and increases premiums for motor insurance to the retail customer.

Criteria for consideration of remedies

10. When deciding whether any remedial action should be taken and, if so, what that action should be, the CC will consider how comprehensively the possible remedy options—whether individually or as a package—address the provisional AEC and/or its resulting detrimental effects, and whether they are reasonable and practicable.[2] The CC will assess the extent to which different remedy options are likely to be effective in achieving their aims, including whether they are practicable and when they are likely to have effect (ie whether they are timely).[3] The CC will be guided by the principle of proportionality in ensuring that it acts reasonably in making decisions about

---

[1] In a 'wide' MFN clause an insurer undertakes that a motor insurance policy that is offered on a PCW's website will not be offered more cheaply on the insurer's own website or on other PCWs' websites (and in some cases in any other sales channel).
[2] *Guidelines for market investigations: Their role, procedures, assessment and remedies*, April 2013, paragraph 329: www.competition-commission.org.uk/assets/competitioncommission/docs/2013/publications/cc3_revised_.pdf.
[3] ibid, paragraphs 334–341.

remedies. The CC will therefore assess the extent to which different remedy options are proportionate, and in particular it will be guided by whether a remedy option:

(a) is effective in achieving its legitimate aim;

(b) is no more onerous than needed to achieve its aim;

(c) is the least onerous if there is a choice between several effective measures; and

(d) does not produce disadvantages which are disproportionate to the aim.[4]

11. In the event that the CC reaches a final decision that there is an AEC, the circumstances in which it will decide not to take any remedial action are likely to be rare but might include situations in which no practicable remedy is available, where the cost of each practicable remedy option is disproportionate compared with the extent that the remedy option resolves the AEC, or where relevant consumer benefits, as defined in section 134 of the Act, accruing from the market features are both large in relation to the AEC and would be lost as a consequence of any practicable remedy.[5]

Structure of this Notice

12. We are seeking views on the remedy options set out in this Notice and any other remedies which parties to the investigation or other interested persons consider would effectively and proportionately address the AEC or resulting detrimental effects identified in the provisional findings. We have included remedy options that have been put forward by some parties during the course of our investigation as well as a number of remedy proposals of our own.

13. In order to focus our analysis during the remedies phase of our investigation, we have distinguished in this Notice between those remedies which we believe have the potential to be effective and those which we believe do not. At this stage we are only minded to consider further those remedies in the first category, but we will consider further the remedies in the second category if parties are able to provide evidence and reasoning to explain why we should.

14. We have set out possible remedies under each theory of harm for which we have provisionally found an AEC. At this stage, we consider it likely that different remedies will be required for each theory of harm, such that overall there would be a package of remedies addressing the different provisional AECs that we have found.

15. We first set out a possible remedy which we consider cuts across many of the issues in our theories of harm and would support the other remedies set out in this Notice and enhance their effectiveness.

Remedy A: Measures to improve claimants' understanding of their legal entitlements

16. We have provisionally found under theories of harm 1 and 2 that consumers have a poor understanding of their legal entitlements following an accident. This affects how

[4] ibid, paragraph 344.
[5] ibid, paragraphs 355–359.

they are able to enforce their legal entitlements under both tort law[6] and their own insurance policy.

17. The aim of this informational remedy would be to give claimants a better understanding of their entitlements under their own insurance policy and their entitlements that arise through tort law. This remedy would support the measures we have proposed under theories of harm 1 and 2—it would ensure that claimants take into account what entitlements they have when making claims under tort law (theory of harm 1) and would enable at-fault and non-fault claimants to recognize better when they are provided with a level of service that does not meet their entitlements (theory of harm 2).

18. This remedy would work by providing better information at two important points. First, we would require motor insurers to set out the policyholder's legal entitlements in the event of an accident with appropriate prominence in the annual insurance policy documentation. Second, in order to ensure that claimants have information on their entitlements at the point when they have an accident, we would require insurers, CMCs and any other party to which a claimant makes the first notification of loss following an accident to inform the claimant more clearly of their legal entitlements. The statements would need to be simple enough to be understandable but detailed enough to give the necessary information. We would expect this information to include:

    (a) what happens when a claimant is at fault or not at fault and what the basic legal entitlements are in each case (in relation to both repairs and replacement cars);

    (b) whether a claimant claiming under their own insurance policy would have to pay an excess and/or would lose any NCB and how these can be recovered;

    (c) when a claimant is entitled to choose their own repairer and whether this affects their liability to pay an excess; and

    (d) what a claimant's contractual rights are if the claimant is unsatisfied with the repairs carried out.

19. We would expect to implement this remedy through an enforcement order directed at motor insurers and other parties who may receive the first notification of loss following an accident (for example, CMCs and brokers).

20. We are also considering making a recommendation that a small number of questions on the legal entitlements of at-fault and non-fault claimants in relation to insurance claims following an accident should be included in the driving theory test.

Issues for comment A

21. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

    (a) **What information should be provided to consumers?**

[6] The tort system has been developed by the courts over time. The general position is that a person who suffers loss as a result of another person's negligence is entitled to be put back into 'as good a position as he would have been if no wrong had occurred'.

(b) **When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?**

(c) **Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?**

(d) **Would this remedy give rise to distortions or have any other unintended consequences?**

(e) **What circumvention risks would this remedy pose and how could these be addressed?**

(f) **How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?**

(g) **How much would it cost to implement this remedy?**

(h) **Is there any reason why this remedy should not be implemented through an enforcement order?**

(i) Is this remedy more likely to be effective in combination with other remedies **than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?**

(j) **Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?**

Theory of harm 1: Separation of cost liability and cost control

22. We set out in paragraphs 24 to 64 those remedies which we believe most likely to be effective and which we are therefore minded to consider further (either on their own or in combination with other remedies).

23. We then set out in paragraphs 66 to 71 those remedies which we believe are not likely to be effective and which, therefore, we are not minded to consider further.

ToH 1: Remedies that we are minded to consider further

24. In this section, we consider seven remedies:

- 1A: first party insurance for replacement cars;
- 1B: at-fault insurers to be given the first option to handle non-fault claims;
- 1C: measures to control the cost of providing replacement cars to non-fault claimants;
- 1D: measures to control non-fault repair costs;
- 1E: measures to control non-fault write-off costs;

- 1F: improved mitigation in relation to the provision of replacement cars to non-fault claimants; and

- 1G: prohibition of referral fees.

25. Remedies 1A and 1B are aimed at addressing directly the separation of cost liability and cost control and 1C, 1D and 1E are aimed at reducing the costs arising from the separation of cost liability and cost control. Remedies 1F and 1G are primarily supporting measures which may enhance the effectiveness of other ToH 1 remedies if adopted in combination with them.

26. As part of our assessment, we will consider whether we should implement a single remedy or a package of remedies under ToH 1. At present we consider that 1A and 1B are alternative remedies. Remedies 1C to 1F could work in combination with one another and with 1A or 1B as appropriate.

27. Our current view is that Remedy 1A and the options under Remedy 1B set out in paragraphs 39 and 40 would require a change in law and therefore the CC would have to make a recommendation to the Government to implement these remedies. We consider that the options under Remedy 1B set out in paragraphs 38 and 41 and Remedies 1C to 1G could be implemented by the CC through an enforcement order.

Issues for comment 1

28. **Views are invited as to:**

(a) **Whether the possible remedies under ToH 1 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.**

(b) **Whether the possible remedies under ToH 1 should be implemented by the CC through an enforcement order or whether the CC should make recommendations to the Government (for example, the Ministry of Justice), regulators or other public bodies to implement the remedies.**

Remedy 1A: First party insurance for replacement cars

29. This remedy is to require replacement cars, but not repairs, to be insured on a first party basis such that a policyholder is provided with a replacement car by the policyholder's own insurer in the event of an accident, whether the policyholder is at fault or not.

30. Under this remedy, non-fault claimants (and hence non-fault insurers via the principle of subrogation[7]) would not be allowed to recover the costs of a replacement car from the at-fault insurer. Instead, insurers would be responsible for bearing the cost of providing a replacement car to their own policyholders in the event of a non-fault claim. We envisage that insurers would offer policyholders the option to choose the level of cover they would require in the event of an accident (ie no replacement car, a courtesy car or a like-for-like replacement car) for different premium levels. As a consequence, individuals would have the option to purchase a level of cover equivalent to their

[7] When a non-fault claimant is indemnified by their own insurer in accordance with the terms of their insurance policy, the principle of subrogation allows the non-fault insurer to exercise the policyholder's rights under tort law to claim compensation from the at-fault driver.

current entitlement under tort law or to trade off their legal entitlement with a lower premium.

31. This remedy would address the provisional AEC by removing the separation of cost liability and cost control in relation to the provision of replacement cars to non-fault claimants. As the non-fault insurer would bear the cost of providing the replacement car to its policyholder, the non-fault insurer would be incentivized to procure the replacement car for the lowest cost. In addition, it would reduce the overall cost of providing replacement cars to non-fault claimants compared with the current entitlements under tort law because replacement cars would be provided according to the level of cover chosen by the policyholder and would no longer be provided to policyholders who had not taken cover to be provided with a replacement car. In some circumstances, and depending on the choices made by the policyholder, this might mean that non-fault claimants would receive less than their current legal entitlements under tort law.

32. We envisage that frictional costs would be reduced because there would be no reason for disputes to arise between at-fault insurers, non-fault insurers and CMCs over the cost of replacement car provision. The form of vehicle provision would be likely to move away from credit hire towards direct hire which should lead to some reduction in costs.

33. Our current view is that this remedy could not be implemented without a change of law, given that it would affect the rights that non-fault claimants currently have under tort law. It would therefore require a recommendation to be made to Government. In considering the scope and practicability of such a recommendation, we would need to take into account the Road Traffic Act 1988 and the EU Directive relating to insurance against civil liability in respect of the use of motor vehicles.

Issues for comment 1A

34. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **What aspects of the law would need to be changed?**

(b) **How should policyholders be given a choice as to the extent of replacement car cover?**

(c) **To what extent would the need for consumers to pay a premium for replacement car cover be offset by the effect on premiums of the overall reduction in replacement car costs that would occur as a result of this remedy?**

(d) **How might this remedy affect NCBs and the premiums of non-fault claimants? Would non-fault claimants have to pay an excess when provided with a replacement car under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?**

(e) **How would this remedy affect the credit hire and direct hire activities of vehicle hire companies? How might the quality of service in the provision of replacement cars be affected if replacement car provision is contractually specified in motor insurance policies?**

(f) **Would it be likely that the non-fault insurer providing the replacement car would also handle the repair of the non-fault claimant's vehicle? What**

would be the consequences of this? Would complexities and costs arise if the replacement car is provided by the non-fault insurer and the repair is carried out by a different service provider?

(g) **Would this remedy give rise to distortions or have any other unintended consequences?**

(h) **How long would it take to implement this remedy? What administrative changes would need to be made?**

(i) **Would this remedy need any supporting measures? If so, what are those measures?**

Remedy 1B: At-fault insurers to be given the first option to handle non-fault claims

35. This remedy would give at-fault insurers first option to handle either the whole of a non-fault claim (paragraphs 37 to 39) or only the replacement car part of a non-fault claim (paragraphs 40 and 41).

36. The aim of this remedy would be to make it easier for at-fault insurers to capture non-fault claims, thus removing the separation of cost liability and cost control of the non-fault claim. By introducing competition from at-fault insurers at the first notification of loss, a greater constraint would be placed on the behaviour of non-fault insurers and other parties (such as CMCs).

37. The remedy would require that when a non-fault claimant makes the first notification of loss to their own insurer or CMC (or to a broker who refers the claim to the insurer or a CMC), the insurer or CMC should inform the at-fault insurer of the claim. The at-fault insurer would have a limited period of time to contact the non-fault claimant to offer to provide a replacement car and manage the repairs. The at-fault insurer would not be obliged to make an offer to the non-fault claimant. In addition, this remedy would not apply in cases where liability is undecided or split such that the distinction between the at-fault insurer and non-fault insurer cannot be made.

38. The non-fault claimant would then be able to elect to have their own insurer, broker or a CMC handle the claim instead of the at-fault insurer. The main risk with this approach is that, given the separation of cost liability and cost control, the non-fault claimant will only be assessing the different offers on the basis of service and not on the basis of cost, so it risks being ineffective.

39. In order to address the risk identified in paragraph 38, a variant of this remedy would be for the choice between service provider to be taken away from the non-fault claimant. In this variant, if the at-fault insurer wanted to capture the claim having seen the circumstances of the case, the claimant would be obliged to accept the at-fault insurer managing the claim and arranging provision of services such as a replacement car and repairs. We are mindful that this variant would remove the legal entitlement that the non-fault claimant currently has to choose the service provider. A further downside is that it risks underprovision to the non-fault claimant, as the at-fault insurer is incentivized to minimize the cost of the claim.

40. Given that the concerns set out in paragraph 39 may be higher in relation to repairs because consumers may wish to choose the repairer, it may be more appropriate to apply this remedy only to the provision of replacement cars. In this case, the at-fault insurer would have the option to provide a replacement car to the non-fault claimant and would thereby avoid the separation of cost liability and cost control in relation to the replacement car only. One way in which this remedy might work is as follows:

(a) When a non-fault claimant makes the first notification of loss to their own insurer or CMC (or to a broker who refers the claim to the insurer or a CMC), the non-fault insurer or CMC would agree with the claimant the type of replacement car to be provided having worked through the legal entitlements of the claimant (see Remedy 1F (improved mitigation in relation to the provision of replacement cars to non-fault claimants)).

(b) The non-fault insurer or CMC would then advise the at-fault insurer of its daily hire rate for the vehicle.

(c) The at-fault insurer would have the option to provide an equivalent replacement car itself. We envisage that the at-fault insurer would choose this option if it could provide the replacement car more cheaply than the non-fault insurer or CMC.

(d) If the at-fault insurer elected to provide the replacement car, the claimant would be obliged to accept the provision of a replacement car by the at-fault insurer. The identity of the vehicle provider should not be a material concern to the claimant if the vehicle type is agreed at the outset.

41. Another way this remedy might work is that steps *(a)*, *(b)* and *(c)* above would occur and instead of step *(d)*:

(a) If the at-fault insurer elected to offer a replacement car to the non-fault claimant, it would make clear that the at-fault insurer was going to pay a lower hire rate for the vehicle than the non-fault insurer or the CMC was intending to pay.

(b) The non-fault claimant would decide whether or not to accept the offer of the at-fault insurer. If the non-fault claimant chose not to accept this offer, and provided that the cost of hire from the at-fault insurer was made clear in its offer, the non-fault claimant (or the non-fault insurer or CMC managing the claim) would only be able to recover an amount equal to the at-fault insurer's costs for supplying the replacement car.

42. Our current view is that the remedy options set out in paragraphs 39 and 40 could not be implemented without a change in law given that the non-fault claimant's right to choose the service provided would be constrained. However, we consider that the remedy options in paragraphs 38 and 41 could be implemented through an enforcement order.

Issues for comment 1B

43. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **Which of the variants in paragraphs 38 and 39 are likely to be most effective:**

(i) If the non-fault claimant retains the right to choose who handles the claim, what incentive would they have to choose to have claims handled by the at-fault insurer? Would this remedy favour larger insurers with stronger brands?

(ii) If the at-fault insurer is able to capture the claim should it wish to do so, what incentive would the at-fault insurer have to provide the standard of service to which the non-fault claimant is entitled? What measures need

to be put in place to safeguard against this risk (see, for example, Remedy 2A)?

(b) **What are the implications of the non-fault claimant having the right to choose an alternative service provider?**

(c) **To what extent might this remedy inconvenience non-fault claimants, for example if they have to wait for the at-fault insurer to make contact? How long should the fault insurer be given to contact the non-fault claimant?**

(d) **Should non-fault claimants who make the first notification of loss to their own insurer, broker or CMC have to wait for an offer from the at-fault insurer before deciding who to appoint to handle the claim even if they want their own insurer or CMC to do so?**

(e) **Are there any advantages or disadvantages to the variant applying this only to replacement cars (see paragraphs 40 and 41) compared with applying this to both replacement cars and repairs? What might be the consequences of a replacement car being provided by the at-fault insurer but the repair being managed by the non-fault insurer?**

(f) **Would this remedy give rise to distortions or have any other unintended consequences?**

(g) **How might this remedy be circumvented? How could this circumvention be avoided?**

(h) **How should insurers, brokers and CMCs be monitored to ensure that claimants are properly informed of their rights when making the first notification of loss? How should non-fault insurers and CMCs be monitored to ensure that the at-fault insurer is informed of the claim? Who should undertake this monitoring? What additional costs would arise as a result of monitoring?**

(i) **How long would it take to implement this remedy? What administrative or legal changes would need to be made?**

Remedy 1C: Measures to control the cost of providing a replacement car to non-fault claimants

44. The aim of this remedy would be to control the cost to at-fault insurers of subrogated claims for the provision of replacement cars to non-fault claimants. This remedy would also aim to reduce the frictional costs arising in relation to the provision of replacement cars directly (through making the administration of claims more efficient) and indirectly (lower claims should result in fewer disputed claims). This remedy would most likely be implemented through an enforcement order that would apply to all insurers, CMCs, vehicle hire companies and any other providers of replacement cars (or finance used to cover replacement cars) to non-fault claimants.

45. There are several possible measures which could be included in this remedy which would reduce the hire costs for replacement cars. We envisage that these measures would replace the General Terms of Agreement (GTA)[8] and would contain:

[8] The GTA is a voluntary non-binding protocol between a number of insurers, CMCs and credit hire companies which sets out the terms, conditions and rates of credit hire for replacement vehicles provided to non-fault claimants.

(a) guidance on the duration of hire periods for replacement cars, in particular in cases when the claimant's vehicle is still driveable following the accident, to reduce the period between the start of the hire period and the commencement of repairs to the claimant's own vehicle;

(b) a cap on daily hire rates for each category of replacement car. Two possible approaches to determining the daily hire rate cap, which would be reviewed and re-set annually by an independent body, are as follows:

(i) an average of a basket of retail hire rates for each category of vehicle less a percentage based on the difference between the average retail rates and the average direct hire rates; or

(ii) an average of a basket of direct hire rates for each category of vehicle plus a small percentage to cover credit charges.

The average retail rates or average direct hire rates would be based on the relevant rates submitted by selected vehicle hire companies to the independent body on a periodic basis; and

(c) an allowance for administrative costs.

46. To allow effective exchange of information between insurers, CMCs and other parties, and to reduce the frictional costs arising from the administration of claims, this remedy could also require use of an online portal for the exchange of documentation. In our provisional findings we noted that the GTA Technical Committee is evaluating the technical feasibility of a credit hire portal (see Appendix 6.1, paragraph 9). This aspect of the remedy could build on that work.

47. We are mindful that the OFT provisionally found that a number of provisions of the GTA may have had the effect of preventing, restricting or distorting competition but the case was closed in 2007 as it was not considered an administrative priority. Our current view is that the measures set out in paragraph *45(b)* would not cause competition concerns because they propose that daily hire rates would be set by an independent body, rather than though collective agreement between motor insurance providers and credit hire organizations as under the GTA.

Issues for comment 1C

48. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, an undertaking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.**

(b) **Which parties should be covered by this remedy?**

(c) **What is the appropriate time period in which repairs should commence once a replacement car has been provided? How should the hire period be monitored and by whom?**

(d) **What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?**

(e) **What administrative costs should be allowed? At what level should administrative costs be capped?**

(f) **Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?**

(g) **What costs would the measures in this remedy entail?**

(h) **Would this remedy give rise to distortions or have any other unintended consequences?**

(i) **To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?**

Remedy 1D: Measures to control non-fault repair costs

49. The aim of this remedy would be to prevent subrogated claims for repair costs being marked up. This remedy would also aim to reduce the frictional costs associated with repair claims as lower claims should result in fewer disputed claims. We have considered two possible ways in which these aims could be achieved through an enforcement order:

Remedy 1D(a)

50. Non-fault insurers would be required to pass on to at-fault insurers the wholesale price they pay to repairers, plus an allowance for an administration charge.

51. However, there is a concern that this remedy might encourage inflated bills from repairers to insurers in exchange for referral fees. This remedy might therefore also need to be considered in conjunction with a remedy to prohibit referral fees (see Remedy 1G).

Remedy 1D(b)

52. The repair costs recoverable through subrogated claims would be limited to standardized costs. If the actual repair cost were higher than the standardized cost, then the non-fault insurer would not be able to recover that cost and would incur the costs. Conversely, if the actual repair cost were lower than the standardized cost, the benefit could be retained by the non-fault insurer. It is not proposed that the standardized costs would be used for any purpose other than in relation to subrogated claims.

53. The standardized costs could be developed with the help of cost estimation systems (eg Audatex or Glassmatix) used by repairers. Cost estimation systems use data from manufacturers' manuals and Thatcham repair standards to determine the parts required, the paint quantity and the labour time for different jobs. The cost estimation systems allow non-OEM parts to be specified instead of OEM parts. The systems use this information together with parts and paint prices and labour rates to calculate the estimated cost of a repair. The systems would therefore provide a number of aspects that would feed into the price control.

54. In order to develop standardized costs to provide a form of price control, it would be necessary to set standard discounts to the list price for parts and the paint index and to specify labour rates (with regional variation and provision for different types of labour). It would also be necessary to set out the circumstances in which non-OEM parts could be used.

Issues for comment 1D

55. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **What would be the most effective way of implementing this remedy?**

(b) **Would either variant of this remedy give rise to distortions or have any other unintended consequences?**

Regarding Remedy 1D(a)

(c) **How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?**

(d) **Could this remedy be circumvented by insurers vertically integrating with repairers?**

Regarding Remedy 1D(b)

(e) **Is it practicable to set standardized costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?**

(f) **What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?**

(g) **What would be the costs of implementing this arrangement?**

(h) **How would monitoring of this remedy work?**

(i) **What would be the most appropriate organization to review the inputs into the price control on a regular basis?**

(j) **What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?**

Remedy 1E: Measures to control non-fault write-off costs

56. We have provisionally found that when the non-fault claimant's vehicle is written off, and the claim subrogated to the at-fault insurer is calculated using an estimated salvage value for the vehicle from the salvage company acting for the non-fault insurer, the estimated salvage value is sometimes set too low, which results in a higher claim on the at-fault insurer (as the claim is the difference between the pre-accident value and the estimated salvage value). The aim of this remedy would be to ensure that claims costs reflect actual salvage proceeds. We have considered two possible ways in which this could be achieved through an enforcement order:

(a) *Remedy 1E(a).* Require that at-fault insurers are given the option to handle the salvage of non-fault vehicle write-offs in non-captured claims (but only once the pre-accident value of the vehicle has been agreed with the claimant by the non-fault insurer or CMC). The amount of the subrogated claim on the at-fault insurer would therefore be the pre-accident value of the vehicle; the at-fault insurer would receive the vehicle in return and would recover the salvage value.

(b) *Remedy 1E(b).* Require that all insurers use actual salvage proceeds (including any referral fee paid by the salvage company to the insurer) or that the amount of the subrogated claim on the at-fault insurer based on the estimated salvage value is adjusted (up or down) once the actual salvage proceeds (and any referral fee) have been received from the salvage company.

Issues for comment 1E

57. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **Would either variant of this remedy give rise to distortions or have any other unintended consequences?**

Regarding Remedy 1E(a)

(b) **Would at-fault insurers be likely to take up the option of handling the salvage?**

(c) **At what point in the claims process should at-fault insurers be given this option?**

Regarding Remedy 1E(b)

(d) **What impact would this remedy have on salvage companies? To what extent would this proposal reduce the incentives for insurers to get the best salvage value from salvage companies?**

(e) **What administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?**

Remedy 1F: Improved mitigation in relation to the provision of replacement cars to non-fault claimants

58. A non-fault claimant is entitled to a broadly equivalent replacement car while their own vehicle is unavailable subject to a duty to mitigate their loss with consideration to their need. We found that often non-fault insurers and CMCs do not enquire in detail about a non-fault claimant's need for a broadly equivalent replacement car. Mitigation statements are presently only signed by claimants upon receiving a replacement car.

59. This remedy would require that non-fault insurers and CMCs ask non-fault claimants standard questions about their need for a replacement car. The type of vehicle provided and hire duration should take account of the responses. Non-fault insurers and CMCs would be required to provide the at-fault insurer with adequate documentation showing that the appropriate vehicle had been provided by completing a 'mitigation declaration' setting out details of the claimant's responses and written confirmation that the cost of the replacement car had been appropriately mitigated. The at-fault

insurer would be entitled to be sent the mitigation declaration and to review the non-fault insurer's or CMC's call record in the event of a dispute.

60. This remedy would aim to reduce the amount of subrogated claims by ensuring that replacement cars are provided to non-fault claimants only in accordance with their needs. The remedy would also aim to reduce the frictional costs incurred by insurers and CMCs that arise when there is a dispute over the replacement car provided to a non-fault claimant because the at-fault insurer alleges that the replacement car exceeds the non-fault claimant's needs. It would also assist with the effectiveness of some of the remedies above (for example, Remedy 1B or 1C).

Issues for comment 1F

61. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **Could this remedy operate on a stand-alone basis?**

(b) **Which other remedies would benefit from this remedy as a supporting measure?**

(c) **What questions should the non-fault insurer or CMC ask non-fault claimants in order to assess the need for a replacement car, the appropriate type of replacement car and to demonstrate that the provision of a replacement car had been appropriately mitigated? Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need: for example, if the claimant's own policy included provision of a replacement car in the event of an at-fault claim, would that be sufficient evidence of need for a replacement car in the event of a non-fault accident?**

(d) **Would the right of the at-fault insurer to challenge the non-fault insurer or CMC and to see the 'mitigation declaration' and call record be sufficient for this remedy to be self-enforcing without additional monitoring? Would giving the at-fault insurer access to the non-fault insurer's or CMC's call records give rise to any data protection issues?**

(e) **How much would it cost to implement this remedy?**

(f) **Would this remedy give rise to distortions or have any other unintended consequences?**

Remedy 1G: Prohibition of referral fees

62. A prohibition of referral fees would aim to support measures set out above (for example, Remedy 1D*(a)*) where usage of referral fees may otherwise undermine the effectiveness of the remedy.

63. This remedy would prohibit:

(a) referral fees or commission paid by CMCs/CHCs/repairers/others to non-fault insurers/non-fault brokers/others for referring non-fault claimants in relation to the provision of replacement cars, repairs and paint; and

(b) referral fees or commission paid by salvage companies to non-fault insurers.

Issues for comment 1G

64. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **Could this remedy operate on a stand-alone basis?**

(b) **Would remedies 1A to 1F benefit from a prohibition of referral fees as a supportive measure? Or would remedies 1A to 1F have the effect of reducing referral fees in any event?**

(c) **What would be the impact on premiums if referral fees were prohibited?**

(d) **Would this remedy give rise to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?**

(e) **What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (eg discounts) having the same effect as referral fees be prevented?**

(f) **How could this remedy best be monitored and what costs would be incurred in doing so?**

ToH 1: Remedies that we are minded not to consider further

65. We are minded not to consider further two remedies which have been proposed to us at times during our investigation: first party motor insurance and prohibition of credit hire.

First party motor insurance

66. Under a first party insurance system, a policyholder's own insurer would meet the cost of any claims. There would be no subrogation of non-fault claims to the at-fault insurer. Such a system would address issues arising from the separation of cost liability and cost control.

67. We believe that this remedy would have implications beyond the scope of our investigation as it would affect other claims, for example for personal injury. We also have significant concerns that this remedy would not be practicable as it would not be consistent with the Road Traffic Accident 1988 and the EU Directive relating to insurance against civil liability which requires member states to ensure that civil liability in respect of the use of vehicles is covered compulsorily for both damage to property and personal injuries. This enshrines the right of a non-fault party to recover damages from the at-fault insurer.

68. We are therefore not minded to consider this remedy further.

Prohibition of credit hire

69. It was put to us that credit hire should be prohibited. A prohibition of credit hire may be effective in controlling some of the costs incurred in the provision of replacement cars to non-fault claimants. However, it would not address the separation of cost liability and cost control and would leave impecunious non-fault claimants in a position where they might not be able to access a replacement car (eg where fault is

undetermined). The costs of credit per se are not the main factor behind the higher costs we have identified in ToH 1 and hence our current view is that this remedy would not be effective in addressing the AEC we have provisionally found.

70. We are therefore not minded to consider this remedy further.

Issues for comment 1H

71. **The CC invites views on these two possible remedies which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found in relation to ToH 1. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.**

Theory of harm 2: Possible underprovision of service to those involved in accidents

72. In this section, we consider remedies to address the AEC we have provisionally found in relation to quality of service. The provisional AEC finding arises because insurers and CMCs do not monitor the quality of repairs effectively and because there are significant limitations to consumers' ability to assess the quality of repairs. We did not identify any issues in relation to quality of service for replacement cars.

ToH 2: Remedies that we are minded to consider further

73. We now set out a remedy relating to compulsory audits of the quality of vehicle repairs.

74. At this stage, we consider that this remedy would be likely to work together with Remedy A (see paragraphs 16 to 21) to address the issues we have provisionally identified under ToH 2.

Remedy 2A: Compulsory audits of the quality of vehicle repairs

75. The aim of this remedy would be to improve the quality of at-fault and non-fault vehicle repairs. We are concerned that at present audits of repairs and repairers by insurers and CMCs generally focus on the cost of the repairs and checking that invoices reconcile with the work undertaken, rather than on the quality of repairs.

76. We would need to consider how to minimize the additional costs that audit requirements could impose on repairers and insurers. We are not minded to require that each repair should be audited, rather that there should be periodic audits of repairers which assess the quality of repairs.

77. We are also considering whether a mechanism for the audit results to be published would incentivize repairers, insurers and CMCs to ensure that repairs are undertaken to the appropriate standard. This could either act in conjunction with compulsory quality audits or in order to incentivize quality audits. The published results could either rank insurance companies and CMCs or give insurers and CMCs ratings according to their repair quality records. These repair quality ratings could be required to be made available to consumers when choosing a repairer following an accident. We would expect that PCWs would also wish to use the information when assisting consumers in comparing insurers.

Issues for comment 2A

78. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **What costs would be involved in auditing the quality of repairs?**

(b) **How frequently should audits of repair quality be undertaken?**

(c) **Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to standardized and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?**

(d) **If the results of repair quality audits were to be published, who should collate the results? Should be results be categorized by repairer or insurer?**

(e) **If audits are carried out by insurers, how would consistent standards be achieved?**

(f) **If this remedy were to be implemented through expanding the scope of PAS 125**[9] **and the scope of audits undertaken in relation to PAS 125, is it necessary for PAS 125 accreditation to be made mandatory for all repairers undertaking insurance-related work?**

(g) **Would this remedy give rise to distortions or have any other unintended consequences?**

(h) **Whether this remedy is best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedy, and if so who that party should be.**

(i) **Whether this remedy is likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.**

ToH 2: Remedies that we are minded not to consider further

79. We are minded not to consider further a remedy which **gives consumers the right to have their repairs assessed by independent experts at no cost if there is a problem with the repair**. As we have found that many of the issues of quality repair are not easily spotted by consumers, we consider that this remedy is likely to be ineffective because consumers are likely to request assessment by independent experts on a random basis. This might create considerable costs and would have less chance of addressing the remedy than the measures we have considered above.

[9] PAS 125 is a standard which is owned and maintained by the British Standards Institution (BSI). The BSI told us that PAS 125 was a technical specification which provided repairers with the requirements for processes and procedures related to the safe repair of accident-damaged vehicles.

Issues for comment 2C

80. **The CC invites views on this possible remedy which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 2. Where parties are of the view that this remedy could be effective, they are asked to submit evidence to support their views.**

Theory of harm 3: Market concentration or horizontal effects

81. We have provisionally found that there is no AEC arising from market concentration or horizontal effects causing there to be too few providers in the relevant markets. Accordingly we have not considered remedies in relation to ToH 3.

Theory of harm 4: Add-ons

82. In this section, we consider remedies to address the AEC we have provisionally found in relation to add-ons. The provisional AEC finding arises from information asymmetries between motor insurers and consumers in relation to the sale of add-ons and the point-of-sale advantage held by motor insurers when selling add-ons.

ToH 4: Remedies that we are minded to consider further

83. We are minded to consider further the following three remedies:

- 4A: Provision of all add-on pricing from insurers to PCWs;
- 4B: Transparent information concerning NCB; and
- 4C: Clearer descriptions of add-ons.

84. At this stage we consider that Remedies 4A, 4B and 4C would be likely to work together as a package of remedies to address the issues we have provisionally identified under ToH 4.

85. We consider that for each of these remedies we could either make an enforcement order or make recommendations to another body, for example the Financial Conduct Authority (FCA). We have been liaising with the FCA given the work it is currently undertaking in relation to add-ons across all lines of insurance to ensure that any remedies selected by the CC are not inconsistent with any approach that is taken in relation to add-ons is consistent across the range of insurance products, unless there are specific issues that only relate to motor insurance.

Issues for comment 4

86. **Views are invited as to:**

(a) **whether the possible remedies under ToH 4 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found; and**

(b) **whether the possible remedies under ToH 4 are best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedies, and if so who that party should be.**

Remedy 4A: Provision of all add-on pricing from insurers to PCWs

87. We have provisionally found that comparisons on PCWs allow consumers to compare whether the most common add-ons are included in a basic motor insurance policy or can be purchased on top of the basic policy for an additional premium. However, the information provided when making comparisons is only a representative price of each add-on and does not allow comparison of the total price of the basic policy and the consumer's preferred add-ons. We found that this can enhance the point-of-sale advantage enjoyed by insurers when selling add-ons.

88. This remedy would require each insurer that wishes to offer add-on products to provide pricing information on all the add-ons it offers to the PCWs that list that insurer's policy. The PCWs would then be able to display the full range of add-ons available from each insurer so that a consumer can compare the total price of the policies offered by different insurers including the add-ons selected by the consumer. This would reduce any point-of-sale advantage the insurer has when the customer is passed from the PCW to the insurer's website.

Issues for comment 4A

89. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **Should PCWs be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites or are they sufficiently incentivized to do so without such a requirement?**

(b) **Should the remedy be extended to brokers?**

(c) **Should the remedy apply to all add-ons?**

(d) **How long would it take for insurers to prepare the pricing information to pass to PCWs and for PCWs to alter the design of their websites to accommodate this change?**

(e) **How much would it cost to make these changes?**

(f) **What circumvention risks would this remedy pose and how could these be mitigated?**

(g) **Would this remedy give rise to distortions or have any other unintended consequences?**

Remedy 4B: Transparent information concerning no-claims bonus

90. We have provisionally found that there is a lack of transparency of NCB scales and a lack of clarity on the difference between NCB and NCB protection, which means that consumers are unable to evaluate properly the protection on offer.

91. This remedy would address the specific issue we have found by requiring all insurers to:

(a) make available to consumers details of the NCB scales both when choosing whether to take out NCB protection and when receiving their policy quotation; and

(b) include in the description of NCB protection a clear statement that a policy-holder's premium may increase following an accident in which that policyholder was not at fault even when that policyholder has taken out NCB protection.

Issues for comment 4B

92. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **Is it necessary for consumers to be given the NCB scales both when choosing whether to take out NCB protection and when receiving their policy quotation?**

(b) **What wording could best be used to help consumers that NCB protection does not prevent premiums rising following an accident?**

(c) **Are there any obstacles to effective implementation of this remedy?**

(d) **How long would it take for insurers to prepare the NCB scales?**

(e) **What circumvention risks would this remedy pose and how could these be mitigated?**

(f) **Would this remedy give rise to distortions or have any other unintended consequences?**

Remedy 4C: Clearer descriptions of add-ons

93. We have provisionally found that consumers have limited understanding of add-ons based on the differences in the quality and quantity information provided by different motor insurers, which overall appears insufficient for consumers to make informed decisions when purchasing add-ons.

94. This remedy would aim to improve the quality of descriptions of add-on products. The remedy would require all insurers to revise their descriptions of add-ons to meet Plain English standards and strike an appropriate balance between providing the relevant information to the consumer and ensuring that the information is understandable and not unnecessarily complex.

Issues for comment 4C

95. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **What are the key aspects of each add-on product that need to be explained in such descriptions and how should the quality of these descriptions best be established?**

(b) **How should these descriptions be provided to consumers—for example, in the insurance policy documentation, on insurers' websites or on PCWs?**

(c) **How would this remedy best be monitored—both for initial approval of descriptions and ongoing approval?**

Theory of harm 5: Most favoured nation clauses in PCW and insurer contracts

96. In this section, we consider remedies to address the AEC we have provisionally found in relation to MFN clauses in contracts between PCWs and insurers. Our provisional AEC relates to 'wide' MFN clauses and not 'narrow' MFN clauses.[10] We have therefore considered remedies only in relation to addressing the issues we have found with 'wide' MFN clauses.

ToH 5: Remedies that we are minded to consider further

97. We have identified only one remedy that we consider to be effective in addressing the provisional AEC under ToH 5—a prohibition on 'wide' MFN clauses.

Remedy 5A: Prohibition on 'wide' MFN clauses

98. This remedy would prohibit the use of 'wide' MFN clauses in agreements between PCWs and insurers. It would require all PCWs to stop using MFN clauses that restrict a motor insurance provider from offering a motor insurance policy more cheaply on other PCWs' websites or through any other channel than on the PCW's website. However, a PCW and an insurer could still agree that the insurer would not offer a motor insurance policy more cheaply on its own website than on the PCW's website.

99. While a prohibition on 'wide' MFN clauses relates to the contractual arrangements between PCWs and motor insurance providers, we would also want to ensure that PCWs could not use other mechanisms or strategies that might have the same outcomes or effects as a 'wide' MFN clause, for example threatening to delist an insurer if it offered motor insurance policies more cheaply on other PCWs' websites.

100. This remedy could be implemented by seeking undertakings from existing PCWs or making an order to PCWs.

Issues for comment 5A

101. **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) **How would this remedy be best specified? Would the prohibition be best described in relation to all MFN clauses except those in relation to insurers' own websites?**

(b) **Could this remedy take effect immediately (or within a short period to remove the clauses) or would an adjustment period be required?**

---

[10] In a 'wide' MFN clause an insurer undertakes to a PCW that a motor insurance policy offered on the PCW's website will not be offered more cheaply on the insurer's own website, other PCWs' websites or through any other channel; in a 'narrow' MFN clause an insurer undertakes to a PCW that a motor insurance policy offered on the PCW's website will not be offered more cheaply on the insurer's own website.

(c) **What circumvention risks would this remedy pose and how could these be mitigated?**

(d) **In addition to threatening to delist an insurer, what other actions could a PCW take that might have the same effect as a 'wide' MFN? How could the risk of a PCW taking these actions be effectively mitigated?**

(e) **Would this remedy give rise to distortions or have any other unintended consequences?**

ToH 5: Remedies that we are minded not to consider further

102. We are minded not to consider further a remedy which **prohibits all MFN clauses.** We consider that it would be disproportionate to prohibit all MFNs if the prohibition only of 'wide' MFN clauses were to be considered an effective remedy because the former would clearly be more onerous. We have significant concerns that a prohibition on all MFNs would threaten the existence of PCWs. Without 'narrow' MFNs, consumers could search for policies on a PCW but then might be able obtain the chosen policy more cheaply by visiting the insurer's website directly, and the PCW would not be rewarded for the service it had provided.

Issues for comment 5B

103. **The CC invites views on the possible remedy in paragraph 102 which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 5. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.**

Relevant customer benefits

104. The CC may also have regard to the effects of any remedial action on any relevant customer benefits within the meaning of section 134(8) of the Act arising from a feature or features of the market giving rise to the AEC. Relevant customer benefits must comprise one or more of: lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services. Relevant customer benefits must also clearly result from one or more features and be unlikely to have come about absent the feature or features concerned.

Issues for comment 6

105. **Views are invited on the nature, scale and likelihood of any relevant customer benefits within the meaning of the Act and on the impact of any possible remedies on any such benefits.**

Next steps

106. The parties to this investigation and any other interested persons are requested to provide any views in writing, including any suggestions for additional or alternative remedies that they wish the CC to consider, by 17 January 2014, either by email to PMI@cc.gsi.gov.uk or by writing to:

Inquiry Manager
Competition Commission
Victoria House
Southampton Row
LONDON
WC1B 4AD

107. If necessary, the CC may publish a supplementary notice requesting views on particular issues on remedies that emerge from consultation (see also Note below).

(signed) ALASDAIR SMITH
Group Chairman
17 December 2013

Note: This Notice is given having regard to the CC's provisional findings, which were published on 17 December 2013. The parties to the investigation or other interested persons have until 7 February 2014 to respond to those provisional findings. In the light of any responses by the parties or by other interested persons, the CC's findings may change and the CC may consider other possible remedies, if appropriate.