

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Notice of the Competition Commission's intention to operate a confidentiality ring to allow review of data and calculations carried out by the Competition Commission in support of its provisional findings

As part of the investigation into Private Motor Insurance ('PMI'), the Competition Commission ('CC') has acquired information from a number of parties which has been used by the CC to calculate an estimation of consumer detriment under Theory of Harm ¹.

Certain information and calculations were redacted from the CC's provisional findings report (the [Report](#)). Several parties have requested the disclosure of data and calculation files underlying the CC's analysis under Theory of Harm 1. This information is specified information within the meaning of section 238 of the Enterprise Act 2002 ('the Act') which relates to the business of undertakings and therefore falls within the general restriction of its disclosure pursuant to section 237 of the Act.

Pursuant to section 241 of the Act, the CC may disclose specified information for the purposes of facilitating the exercise by it of its statutory functions. In view of the highly technical nature of this information, and to provide parties with an opportunity to fully respond to the CC analysis, the CC is proposing to disclose the following, by way of confidentiality ring, in anonymised form:

- the data and calculations underlying Table 6 in Appendix 6(1) of the Report, relating to the comparison of credit hire daily rates and insurer direct hire daily rates, as well as data and calculations underlying our estimation of the average cost difference between credit hire and direct;
- the excised data from Annexes B and C of Appendix 6(1) of the Report, relating to the frictional costs incurred by CMCs/CHCs and by insurers in the provision of replacement vehicles; and
- the data and calculations underlying Appendix 6(6) of the Report, relating to our estimation of the net effect of the separation of cost liability and cost control on insurers' costs.

(together 'the Data')

For the avoidance of doubt "anonymised" means that the identities of the parties to which the Data refers will be redacted.

The Data will be provided in Excel spreadsheet format. A description of the nature of the Data and of the calculations performed is given at Appendix 6(1), paragraphs 32-35, 64 and 74, and in Appendix 6(6) of the Report.

¹ Under ToH 1, discussed in section 6 of our [Report](#), the CC has provisionally identified the following two features of the supply of motor insurance and related services which have, in combination, an AEC: (i) separation—that is, that the insurer liable for the non-fault driver's claim as insurer to the at-fault driver is often not the party controlling the costs and (ii) various practices and conduct of the other parties managing such non-fault drivers' claims which (a) were focused on earning a rent from control of claims rather than competing on the merits; and (b) gave rise to an inefficient supply chain involving excessive frictional and transactional costs. We provisionally concluded that these features distorted competition in the motor insurance market.

In order to safeguard the confidentiality of the material contained in the Data, and in line with usual confidentiality ring procedures, those persons to whom disclosure is being made (as well as the advisory firms for which they act) will be required to sign confidentiality undertakings. We propose that access to the confidentiality ring be limited to the external legal and/or economic advisers ('the external advisers') designated for this purpose by the parties. The CC retains the right to limit the number of external advisers for each party.

The Data will be made available by the CC as of Wednesday 12 February 2014 and until Friday 28 February 2014, at which point the Data will no longer be available. It is currently planned that external advisers will be given the opportunity to make submissions in relation to the Data until Friday 28 February 2014 at which point the external advisers must destroy any documents incorporating the Data (other than documents which have been submitted to the CC). However, if external advisers attending the data room provide relevant reasons justifying a request to extend the period for additional submissions in relation to the Data, the CC will consider extending this period.

Please register your interest in entering the confidentiality ring, as soon as possible, and no later than 26 February 2014 at 5pm. When registering a confirmation of your interest please explain the basis of your interest in gaining access to this information as well as the name and role of those for whom access is requested (i.e. name, job title and firm of each external adviser).

Draft confidentiality undertakings are attached to this Notice. If you wish to comment on the scope of, and/or process for disclosure, or on the undertakings, please ensure that any comments be sent by **Tuesday 11 February 2014 at 5pm** at the very latest to the private motor insurance investigation team at PMI@cc.gsi.gov.uk, and that such comments be supported by appropriate explanation and reasons so that we are able to consider such representations properly. Confidentiality undertakings will be sent to parties' external advisers from Wednesday 12 February for signing before being entered into the confidentiality ring.

10 February 2014

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION**UNDERTAKINGS GIVEN BY [FIRM] TO THE COMPETITION COMMISSION IN
RELATION TO DISCLOSURE BY ELECTRONIC MEANS OF CERTAIN SPECIFIED
INFORMATION ('UNDERTAKINGS')****WHEREAS**

- I. On 28 September 2012, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 ('the Act'), the Office of Fair Trading made a reference to the Competition Commission ('the CC') for an investigation into the supply or acquisition of private motor insurance and related goods or services ('the Investigation').
- II. On the 19 December 2013, the CC published its provisional findings in the Investigation ('the Provisional Findings').
- III. During the course of the Investigation, the CC has acquired information from a number of parties which has been used by the CC to calculate an estimation of consumer detriment under Theory of Harm ¹. Certain information and calculations have been redacted from the CC's provisional findings report (the 'Report').
- IV. For the purposes of facilitating its market investigation functions, the CC has decided to disclose the following, by way of confidentiality ring:
 - a) the data and calculations underlying Table 6 in Appendix 6(1) of the Report, relating to the comparison of credit hire rates and insurer direct hire daily rates, as well as data and calculations underlying the CC's estimation of the average cost difference between credit hire and direct;
 - b) the excised data from Annexes B and C of Appendix 6(1) of the Report relating to the frictional costs incurred by Claims Management Companies (CMCs), Credit Hire Companies (CHCs) and by insurers in the provision of replacement vehicles; and
 - c) the data and calculations underlying Appendix 6(6) of the Report, relating to the CC's estimation of the net effect of the separation of cost liability and cost control on insurers' costs.(together 'the Data')
- V. The CC considers that the information contained in the Data is specified information within the meaning of section 238 of the Act which relates to the business of undertakings and therefore falls within the general restriction on its disclosure by virtue of section 237 of the Act. Pursuant to section 241 of the Act, the CC may disclose specified information to any other person for the purpose of facilitating the exercise by it of its statutory functions.

¹ Under Theory of Harm 1, discussed in section 6 of the Report, the CC has provisionally identified the following two features of the supply of motor insurance and related services which have, in combination, an adverse effect on competition: (i) separation—that is, that the insurer liable for the non-fault driver's claim as insurer to the at-fault driver is often not the party controlling the costs and (ii) various practices and conduct of the other parties managing such non-fault drivers' claims which (a) were focused on earning a rent from control of claims rather than competing on the merits; and (b) gave rise to an inefficient supply chain involving excessive frictional and transactional costs. The CC provisionally concluded that these features distorted competition in the motor insurance market.

- VI. The disclosure will be made to external advisers of [Name of Party] (each an 'Adviser' together 'Advisers') in order to allow the Advisers an opportunity to better understand the CC's analysis and to provide submissions in relation to the Data complementing [Name of Party]'s response to the Report ('the Permitted Purpose').
- VII. The Permitted Purpose must be completed no later than Friday 28 February 2014, at which point all documents in whatever format incorporating any of the Data, other than documents which have been submitted to the CC, must be destroyed. The CC requires Advisers to confirm the destruction of such documents by email on or before 28 February 2014.
- VIII. [Name of firm] has been instructed by [Name of Party], which is a party to the Investigation, for the purpose of professional [economic/legal] advice to [Name of Party] in relation to the Investigation.
- IX. Disclosure of the Data to the Advisers is subject to them and [Name of Firm] providing appropriate undertakings to the CC as set out below.
- X. Subject to the receipt of appropriate undertakings, the CC will make the Data available by a secure file transfer protocol website ('the FTP Website'). All parties will share a single log in and username and as such parties should only use it to download the Data material and not use it to upload any documents. [Name of Firm] will then be permitted to download the Data on a laptop for each Adviser who has given undertakings to the CC in respect of the disclosure of the Data (each a 'Permitted Copy').
- XI. Disclosure of the Data, other than with the prior written agreement of the CC, is not permitted and may constitute a criminal offence under section 245 of the Act.

NOW THEREFORE

[Name of Firm] which has been engaged by [Name of Party] in connection with the Investigation undertakes to the CC that:

1. only Advisers acting for [Name of Party] who have given undertakings to the CC in respect of the disclosure of the Data ('the Advisers of [Name of Party]') will be given access to the Data; and
2. it will notify the CC immediately if it becomes aware of or suspects that there has been any breach of these undertakings or that any Adviser of [Name of Firm] has failed to comply with the undertaking which (s)he has given to the CC in respect of this disclosure.

Further, [Name of Firm] also undertakes to the CC to use its best endeavours to ensure that the Advisers of [Name of Party]:

3. Will only use the FTP Website for the purpose of making one Permitted Copy and will only access the Data from a computer which is password-protected and accessible to the Advisers of [Name of Party] only;
4. Will only use the Data for, and only for, the Permitted Purpose and on the same day that the Permitted Purpose is completed, will destroy all documents in whatever format incorporating any of the Data, save for the documents which have been submitted to the CC, and confirm the destruction of such documents from the CC on or by no later than 28 February 2014;

5. Will not discuss, disclose, transmit, communicate or otherwise make the Data available in any other manner to any other person (including any other internal or external adviser, officer or employee of [Name of Party]) save to those Advisers of [Name of Party] who have also provided undertakings in this form to the CC in respect of the disclosure of the Data;
6. Without prejudice of paragraph 5 of these undertakings, will ensure that any analysis undertaken including any report or other document written by any Adviser of [Name of Firm] (including additional responses to the Report) which is derived from the Data (i) is shared only as necessary for the Permitted Purpose and only to individuals which involvement is necessary for the Permitted Purpose; and (ii) does not involve sharing material that can be used by [Name of Party] to gain any understanding of its position in the market relative to its competitors, suppliers and clients;
7. Will ensure that any report or document which is derived from the Data and shared with [Name of Party], to the extent permitted under paragraph 6 of these undertakings, has been appropriately redacted;
8. Will ensure that any document prepared by Advisers of [Name of Party] incorporating or referring to the Data is submitted separately from any other [Name of Party]'s submission; and
9. Will keep the Data and/or any report or document prepared in the context of the Permitted Purpose which refers to the Data secure at all times and held in a manner appropriate to circumstances so as to prevent unauthorised access by any other person (including any officer or employee of [Name of Firm]) save for the Advisers of [Name of Party].

PROVIDED THAT

These Undertakings above shall not apply to any of the Data that is required to be disclosed by law or regulation, so long as I consult with the CC prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure.

AND IN AGREEMENT THAT

These Undertakings shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the English courts for all purposes.

These Undertakings have been executed and take effect from the date on which they were signed.

[Name of Firm]

[Signature]

[Date]

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

**UNDERTAKINGS GIVEN BY [NAME OF ADVISER] TO THE COMPETITION
COMMISSION IN RELATION TO DISCLOSURE BY ELECTRONIC MEANS OF CERTAIN
SPECIFIED INFORMATION ('UNDERTAKINGS')**

WHEREAS

- I. On 28 September 2012, in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 ('the Act'), the Office of Fair Trading made a reference to the Competition Commission ('the CC') for an investigation into the supply or acquisition of private motor insurance and related goods or services ('the Investigation').
- II. On the 19 December 2013, the CC published its provisional findings in the Investigation ('the Provisional Findings').
- III. During the course of the Investigation, the CC has acquired information from a number of parties which has been used by the CC to calculate an estimation of consumer detriment under Theory of Harm ¹. Certain information and calculations have been redacted from the CC's provisional findings report (the 'Report').
- IV. For the purposes of facilitating its market investigation functions, the CC has decided to disclose the following, by way of confidentiality ring:
 - a) the data and calculations underlying Table 6 in Appendix 6(1) of the Report, relating to the comparison of credit hire rates and insurer direct hire daily rates, as well as data and calculations underlying the CC's estimation of the average cost difference between credit hire and direct;
 - b) the excised data from Annexes B and C of Appendix 6(1) of the Report relating to the frictional costs incurred by Claims Management Companies (CMCs), Credit Hire Companies (CHCs) and by insurers in the provision of replacement vehicles; and
 - c) the data and calculations underlying Appendix 6(6) of the Report, relating to the CC's estimation of the net effect of the separation of cost liability and cost control on insurers' costs.(together 'the Data')
- V. The CC considers that the information contained in the Data is specified information within the meaning of section 238 of the Act which relates to the business of undertakings and therefore falls within the general restriction on its disclosure by virtue of section 237 of the Act. Pursuant to section 241 of the Act, the CC may disclose specified information to any other person for the purpose of facilitating the exercise by it of its statutory functions.

¹ Under Theory of Harm 1, discussed in section 6 of the Report, the CC has provisionally identified the following two features of the supply of motor insurance and related services which have, in combination, an adverse effect on competition: (i) separation—that is, that the insurer liable for the non-fault driver's claim as insurer to the at-fault driver is often not the party controlling the costs and (ii) various practices and conduct of the other parties managing such non-fault drivers' claims which (a) were focused on earning a rent from control of claims rather than competing on the merits; and (b) gave rise to an inefficient supply chain involving excessive frictional and transactional costs. The CC provisionally concluded that these features distorted competition in the motor insurance market.

- VI. The disclosure will be made to external advisers of [Name of Party] (each an 'Adviser' together 'Advisers') in order to allow the Advisers an opportunity to better understand the CC's analysis and to provide submissions in relation to the Data complementing [Name of Party]'s response to the Report ('the Permitted Purpose').
- VII. The Permitted Purpose must be completed no later than Friday 28 February 2014, at which point all documents in whatever format incorporating any of the Data, other than documents which have been submitted to the CC, must be destroyed. The CC requires Advisers to confirm the destruction of such documents by email on or before 28 February 2014.
- VIII. [Name of firm] has been instructed by [Name of Party], which is a party to the Investigation, for the purpose of professional [economic/legal] advice to [Name of Party] in relation to the Investigation. [Name of Individual] is employed by [Name of Firm] as [economic adviser/legal adviser].
- IX. Disclosure of the Data to the Advisers is subject to them and [Name of Firm] providing appropriate undertakings to the CC as set out below.
- X. Subject to the receipt of appropriate undertakings, the CC will make the Data available by a secure file transfer protocol website ('the FTP Website'). All parties will share a single log in and username and as such parties should only use it to download the Data material and not use it to upload any documents. [Name of Firm] will then be permitted to download the Data on a laptop for each Adviser who has given undertakings in this form to the CC in respect of the disclosure of the Data (each a 'Permitted Copy').
- XI. Disclosure of the Data, other than with the prior written agreement of the CC, is not permitted and may constitute a criminal offence under section 245 of the Act.

NOW THEREFORE

I, [Name of Individual], [Job title] at [Name of Firm] who have been engaged by [Name of Party] in connection with the Investigation undertake to the CC in my own name and not that of [Name of Firm] which has given separate undertakings upon access to the Data, undertake :

1. To only use the FTP Website for the purpose of making one Permitted Copy, and to only access the Data from a computer which is password-protected and accessible to the Advisers of [Name of Party] only;
2. To only use the Data for, and only for, the Permitted Purpose and on the same day that the Permitted Purpose is completed destroy all documents in whatever format incorporating any of the Data, save for the documents which have been submitted to the CC, and confirm the destruction of such documents from the CC on or by no later than 28 February 2014;
3. To hold the Data in strict confidence and not to discuss, disclose, transmit, communicate or otherwise make the Data available in any other manner to any other person (including any other internal or external adviser, officer or employee of [Name of Party]) save to those Advisers acting for [Name of Party] who have also provided undertakings in this form to the CC in respect of the disclosure of the Data;
4. Without prejudice of paragraph 3 of these undertakings, to ensure that any analysis that I undertake including any report or other document that I write (including

additional responses to the Report) which is derived from the Data (i) is shared only as necessary for the Permitted Purpose and only to individuals which involvement is necessary for the Permitted Purpose; and (ii) does not involve sharing material that can be used by [Name of Party] to gain any understanding of its position in the market relative to its competitors, suppliers and clients;

5. To ensure that any report or document which is derived from the Data and shared with [Name of Party], to the extent permitted under paragraph 4 of these undertakings, has been appropriately redacted;
6. To ensure that any document incorporating or referring to the Data is submitted separately from any other [Name of Party]'s submission;
7. To keep the Data and/or any report or document prepared in the context of the Permitted Purpose which refers to the Data secure at all times and held in a manner appropriate to circumstances so as to prevent unauthorised access by any other person (including any officer or employee of [Name of Firm]) save for the Advisers acting for [Name of Party] who have also provided undertakings in this form to the CC in respect of the disclosure of the Data; and
8. To notify the CC immediately if I become aware of or suspect that there has been any breach of any of these undertakings as soon as I become aware of or suspect that there has been such breach.

PROVIDED THAT

These Undertakings above shall not apply to any of the Data that is required to be disclosed by law or regulation, so long as I consult with the CC prior to disclosure on the proposed forum, timing, nature and purpose of the proposed disclosure.

AND IN AGREEMENT THAT

These Undertakings shall be governed by and construed in accordance with English law and I submit to the exclusive jurisdiction of the English courts for all purposes.

These Undertakings have been executed and take effect from the date on which they were signed.

[Name of Adviser]

[Signature]

[Date]