



**SUBMISSION OF DRIVE ASSIST UK LIMITED (“DRIVE ASSIST”) IN CONNECTION WITH
THE COMPETITION COMMISSION MARKET INVESTIGATION INTO PRIVATE MOTOR
VEHICLE INSURANCE**

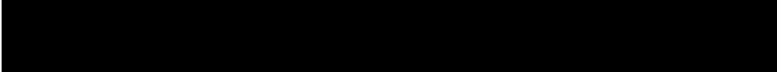
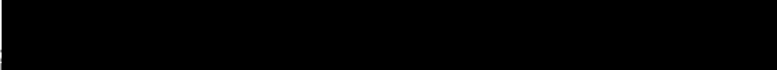
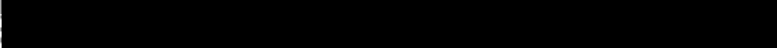
12 OCTOBER 2012


This submission is provided by Drive Assist in response to the Competition Commission’s (the “CC”) First Day Letter dated 1 October 2012 regarding the reference made to the CC by the Office of Fair Trading (the “OFT”) for an investigation into the supply or acquisition of private motor insurance and related goods or services¹.

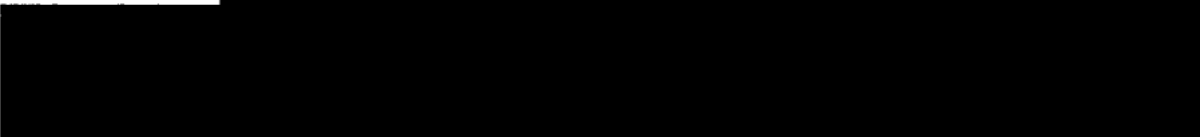
This document summarises the key observations and views that Drive Assist submitted to the OFT during the course of its market study on private motor insurance (the “Market Study”), and is divided into the following sections:

- *Section 1 : Summary of Drive Assist’s position on the Market Study*
- *Section 2 : Legal basis of credit hire services*
- *Section 3 : Differences between vehicle hire business models*
- *Section 4 : Daily hire rates and length of hire*
- *Section 5 : Existing cost control mechanisms*
- *Section 6 : Proposed remedy: cap on referral fees*

For ease of reference, Drive Assist also encloses the following Annexes together with this submission.

- *Annex A:* 
- *Annex B:* 
- *Annex C:* 

Drive Assist would be happy to provide further information and/or clarification on the points raised in this submission. 



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1. SUMMARY OF DRIVE ASSIST'S POSITION ON THE MARKET STUDY

In summary, during the course of the Market Study, Drive Assist maintained the position that in order for the OFT to conclude that the section 131 Enterprise Act 2002 reference test was met, it would be important for the OFT to understand the context in which credit hire services are provided to consumers in the UK, and to distinguish clearly between the different forms of vehicle hire business model within the sector.

Drive Assist's submissions to the OFT were therefore focused on providing information to the OFT which is relevant to those matters.

2. LEGAL BASIS OF CREDIT HIRE SERVICES

Drive Assist believes that an understanding of the legal framework within which credit hire services are provided is crucial to any assessment of competition in that segment of the motor vehicle insurance industry.

Drive Assist provided information to the OFT on this point in its submissions to the OFT during the Market Study². In particular, Drive Assist believes that it is important to consider the legal positions of the at-fault and not-at-fault motorists, and their respective insurers, in the context of a road traffic accident in which one motorist may be liable for a breach of his legal duty of care towards the other motorist.

2.1 The legal position of the not-at-fault motorist

Common law in the UK requires an at-fault motorist to compensate a not-at-fault motorist so that he is placed in the position that he would have been in, had the road traffic accident not occurred.

Credit hire organisations, such as Drive Assist, attempt to minimise the inconvenience associated with the collision, and the impact it would otherwise cause, by providing a comparable replacement vehicle (where justified by reference to the customer's needs) to a not-at-fault motorist for the whole period during which his car is being repaired at no upfront cost. This enables the not-at-fault motorist to be restored to the position that he would have been in if the accident had not occurred, consistent with his rights under the law of tort.

In principle, and consistent with other areas of the law of tort, Drive Assist believes that it should be for the innocent party to make an assessment of his own loss and damage, and to choose a replacement vehicle commensurate with the extent of that loss and damage³. Therefore, if the

² See for example *Annex A*, sections 2 and 3, and also *Annex C*, section 2.

³ In the case of credit hire services, Drive Assist also takes an active role in this assessment, asking specific questions of its customers in order to determine whether there is a genuine need for a vehicle, and, if so, the type or class of vehicle required. To the extent that the not-at-fault motorist's and/or Drive Assist's assessment is incorrect, Drive Assist would not expect to be able to recover any excessive sums at court. The operation of the law of tort therefore protects the interests of the insurers of at-fault motorists.

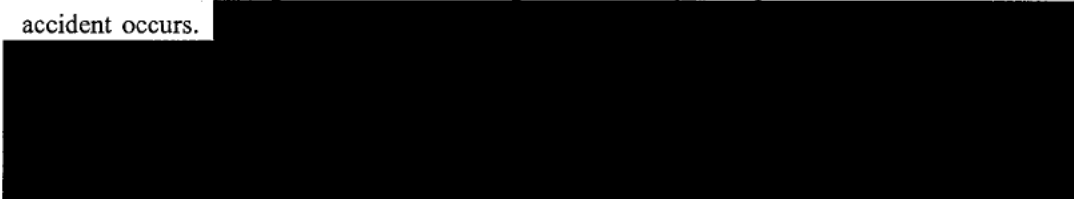


insurers of at-fault drivers are unable to exercise choice over the way in which a not-at-fault driver chooses a replacement vehicle⁴, that would appear to Drive Assist to be entirely consistent with practices in other areas of the law of tort in England and Wales.

2.2 The legal position of insurers of at-fault motorists

It is also important to consider the legal position of the insurers of at-fault motorists, and the incentives which derive from that legal position.

Insurers of at-fault motorists are liable to pay compensation to not-at-fault motorists for loss and damage caused by their policyholders. In light of that financial exposure, insurers of at-fault motorists have a strong incentive to challenge both liability and quantum when a road traffic accident occurs.



Therefore, if the insurers of at-fault motorists were to be permitted to exercise choice over the services provided to not-at-fault motorists following an accident⁵, and if credit hire services were not available to them, there would be a significant risk that many not-at-fault motorists would not receive replacement vehicles at all and/or other justified forms of compensation⁶.

3. DIFFERENCES BETWEEN VEHICLE HIRE BUSINESS MODELS

Drive Assist noted that at various points during the Market Study, the OFT produced comparisons of the cost and duration of credit hire with a mix of different other models of vehicle hire⁷.

Drive Assist believes that in order to draw meaningful conclusions about the costs of providing credit hire, and typical hire periods in a credit hire context, it is important to understand the way in which credit hire differs from other forms of vehicle hire, and to take those factors into

⁴ As stated at paragraph 4.3 of the OFT's *Decision to make a market investigation reference* (September 2012, OFT1451) (the "*Reference Decision*").

⁵ As stated at paragraph 4.3 of the *Reference Decision*.

⁶ Drive Assist believes that a number of the potential remedies considered by the OFT, and discussed at the Round Table on 24 April 2012, would lead to overall worse outcomes for not-at-fault motorists, in part due to the incentives of the insurers of at-fault motorists outlined above.

⁷ See for example the *Reference Decision*, paragraph 2.8, and the *Report on the market study and proposed decision to make a market investigation reference* (May 2012, OFT 1422) (the "*Market Study Report*"). Such comparisons were made solely on the basis of which party had control over the claim, and it was therefore difficult for Drive Assist to understand which specific vehicle hire models were being used as a basis for comparison. For example, vehicles provided under direct hire schemes, intervention schemes, and bilateral agreements, will produce different outcomes in terms of average daily rates and the average duration of hire.



account in making comparisons across the different business models. Drive Assist therefore made a number of explanatory submissions to the OFT on this point⁸.

3.1 Core service provided by credit hire companies

The core service provided by credit hire companies – the provision of comparable replacement vehicles to not-at-fault motorists at no upfront cost which enables them to continue with their daily routine and business for the entire period that their own vehicle is being replaced – is not provided to consumers under any other model of vehicle hire in the motor vehicle insurance sector.

3.2 Additional services provided by credit hire companies

In contrast to the other forms of vehicle hire in the motor vehicle insurance sector, Drive Assist and other credit hire companies provide additional services to not-at-fault motorists, including repair work, the recovery of out-of-pocket expenses, and outsourced first notification of loss services to insurance companies.

3.3 Business model and risk

In essence, credit hire involves the loan of a vehicle to a not-at-fault party before liability has been resolved. Credit hire companies must carry out their own assessment of whether an alleged not-at-fault party is genuinely not-at-fault and therefore entitled to compensation. In some cases, although credit hire companies are very effective at assessing liability, the recipient of credit hire will turn out to have been at-fault for the road traffic accident and therefore the credit hire company will be unable to recover all of its costs. In contrast, direct hire involves the hire of vehicles to insurers in return for guaranteed payment, leading to a much lower risk profile to the provider for this type of vehicle hire. The entirely different risk profiles of these activities, and the different costs inherent in the provision of such services (e.g. Drive Assist must invest in staff and equipment which will allow it to assess claims effectively and efficiently) result in very different pricing models and levels. In addition, due to the requirement for liability to be resolved with the insurer, Drive Assist will sometimes be paid several months after the service has been provided to the consumer.

4. DAILY HIRE RATES AND LENGTH OF HIRE

By way of illustration of the methodological submissions outlined at section 3 above, Drive Assist made a number of specific submissions in relation to the OFT's view that replacement vehicle costs are higher than they might otherwise be because credit hire is charged at a higher daily rate than other options, and because not-at-fault drivers appeared to receive replacement

⁸ See for example *Annex C*, section 3, and *Annex A*, section 5.



vehicles for longer periods than necessary⁹. Drive Assist made a number of submissions on these points to the OFT, seeking to clarify and explain those differences¹⁰.

4.1 Costs

It is not necessarily the case that credit hire is charged at a higher rate than other options. For example, in many cases, the GTA credit hire rate is lower than daily “spot” hire rates for vehicles. However, in cases where credit hire is a more expensive option than other forms of vehicle hire, Drive Assist has sought to explain to the OFT that this is in part caused by the differences in business models, the range of services offered to not-at-fault motorists, and in the adequacy of the replacement vehicles offered to consumers outlined above.

4.2 Duration

In Drive Assist’s view, a comparison of vehicle hire durations across different vehicle hire options does not result in meaningful conclusions about whether vehicle hire durations in the context of credit hire are longer than necessary. In particular, in relation to duration, it should be noted that credit hire vehicles are provided for the *full* length of time of the repair in a comparable vehicle (where necessary). In contrast, direct hire arrangements are not necessarily related to the time taken to repair the car (and in some cases are contractually limited to a defined time period).

5. COST CONTROLS ON CREDIT HIRE SERVICES

Drive Assist also noted that the OFT was concerned that the insurers of at-fault motorists exercised only limited control over costs incurred by not-at-fault motorists when seeking a replacement vehicle through credit hire¹¹.

Drive Assist’s position during the Market Study has been that insurers are in fact able to exert a significant degree of control over credit hire costs using a range of commercial, legal, and industry tools, and Drive Assist made a number of submissions to the OFT on this point¹².

5.1 Late payment of invoices

One simple method of controlling costs would be for insurers to pay invoices due to credit hire companies in a timely manner. In Drive Assist’s experience, insurers very often delay payment for significant periods.

[Redacted] Late payment of fees (without a reasonable

⁹ See for example the *Reference Decision*, paragraph 2.8, and the *Market Study Report*, chapters 3 and 6. In connection with the relative costs and durations of credit hire, Drive Assist notes that its submissions to the OFT on consumer detriment (*Annex C*, section 7) were acknowledged in the *Reference Decision* (paragraph 3.30), although Drive Assist has no written record of discussing “a number of problems with this approach” with the OFT at the time of the Market Study.

¹⁰ See for example *Annex A*, section 5 and *Annex C*, section 3.


¹¹ See for example the *Reference Decision*, paragraph 4.3, and the *Market Study Report*, chapter 5.

¹² See for example *Annex A*, section 5, *Annex B*, section 3, also *Annex C*, section 2.4.



basis for challenge) will result in additional charges being incurred by insurers which are fully within their control, entirely avoidable, and which may well ultimately be passed onto consumers by insurers.

5.2 Claimants must demonstrate a need for a vehicle

It is not the case that a vehicle is automatically provided by a credit hire company to a not-at-fault motorist. All claimants need to be able to demonstrate that they have a genuine need for a comparable vehicle to their own. Once this need has been identified, as above at section 1, it is a matter of law that it is reasonable for them to take a comparable vehicle and then recover the cost of doing so from the at-fault party. Drive Assist notes that as a consequence of this requirement, in  of cases, it will supply a smaller vehicle than the not-at-fault motorist's vehicle where a larger vehicle is not required, thus minimising costs to the at-fault motorist's insurer.

5.3 General Terms of Agreement ("GTA")

Drive Assist believes that the GTA terms apply to approximately 90% of the UK motor vehicle insurance sector¹³. The GTA contains a number of robust cost control provisions that aim to prevent credit hire companies from recovering excessive amounts by extending the hire period.

6. PROPOSED REMEDY: CAP ON REFERRAL FEES

During the course of the Market Study, Drive Assist made a number of submissions and took part in a meeting with the OFT to discuss the possibility of setting a cap on referral fees¹⁴.

Drive Assist believes that capping referral commissions (combined with reductions in GTA rates, and further reform to the GTA) would result in the removal of a significant cost element from the supply chain, whilst preserving the benefits derived by consumers from the provision of credit hire services¹⁵. If a cap was set at an appropriate level:

- (a) insurers and other referrers would still retain a sufficient incentive to make consumers aware of the availability of credit hire;
- (b) credit hire companies would be able to remove a significant cost element from their business models which could ultimately result in a more efficient service delivery and/or reduced premiums for consumers; and
- (c) consumers would continue to receive a valuable and popular service.

¹³ On a value of premiums basis.

¹⁴ See for example *Annex 2*, section 5.

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