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The Competition Commission
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Dear Sir

The Supply or Acquisition of Private Motor Insurance and Related Goods and Services (the “Market”)

I am writing following publication of your Statement of Issues and Administrative Timetable regarding the Market.

My two written submissions to the OFT and my written submission to you of 15 October also refer. I am grateful for the opportunity to submit preliminary observations in respect of a limited number of the issues raised in the Statement of Issues that affect credit hire and its interaction with the insurance industry; however, I would propose to develop these points and, if possible, offer supporting information to the Competition Commission (CC) in due course to help further the CC’s analysis.

As the Director General of the trade body representing the interests of credit hire operators in the UK, The Credit Hire Organisation Limited (CHO), I am focussed on considering your Theories of Harm 1 and 2. I make no submissions on your Theories of Harm 3 through 5 other than agreeing with your paragraph 16.

1. Theory of Harm 1 – Harm arising from the separation of cost liability and cost control

1.1 I am broadly in agreement with your summary of the legal position in paragraphs 19 to 26.

1.2 That said, in paragraph 20, you indicate that the ‘only control on cost is the non-fault party’s legal duty to mitigate his loss’, which may possibly mischaracterise the issue in



the sense that the cost is ultimately confined to (or controlled by) the cost of putting the injured party back into the position he would have been but for the incident, as adjusted by the non-fault party's obligation to mitigate. Further, although perhaps limited in scope (and for good reason given that the interest of the fault insurer and an injured consumer may be diametrically opposed), the fault insurer is itself able to exert some control over costs, whether by capturing the claim itself (even where the solution provided comes at the expense of the non-fault party's legal entitlement) or through cost reduction mechanisms provided by the likes of the GTA.

- 1.3 More importantly however, in paragraph 27, you state that the provider of the service has little incentive to keep the price down and there may be an incentive to "over provide" services. In this regard, in relation to pricing, the Statement of Issues does not yet elaborate sufficiently on the considerable pricing (or, rather, cost) protection afforded to the fault insurer by the significant quantity of case law that has developed over the last decade or more.
- 1.4 Contrary to the position advanced by many insurers, Credit Hire Companies (CHCs) cannot simply impose a day rate for the hire of a vehicle of their choosing. I would summarise the position as being that the day rate charged to the fault insurer has to be within the range of rates available in the local market place. The supply of vehicle rental in the UK is highly competitive and as such this competitive market drives down the daily rental cost of vehicles and provides an element of control or at least protection over the day rates being charged to insurers by CHCs.
- 1.5 It is open to CHCs to charge lower rates to fault insurers (the GTA is a widely used mechanism that most CHCs use to do exactly that). These lower prices are offered in exchange for (most notably) agreed payment terms from the fault insurer given that it can otherwise take a year or more for a claim to get to court – and hence the CHC avoids a significantly extended and large working capital requirement. Avoiding the need for this working capital provision (especially post credit crunch with materially reduced banking appetite to lend) is a material incentive for CHCs to charge lower rates than are justifiable in law.
- 1.6 The protection of the law as to recoverable day rates and fault insurers' perceptions that those day rates (charged by CHCs) are exaggerated has been massively influenced by the industry-wide fraud perpetuated by Autofocus. It is of concern that the Statement of Issues is silent on this matter but, as the CC progresses its analysis, I would urge the CC to become familiar with Autofocus' history and industry impact - as it is why (as stated in my previous submissions) at fault insurers have perceived the GTA as not being the price discount mechanism that was anticipated. This is the case even though most insurers are members of the GTA. That said, some insurers have, more recently, re-energised their understanding of the benefits of the GTA as the magnitude and implications of the Autofocus fraud has increasingly come to light. The CHO would be delighted to prepare a more detailed briefing for the CC on this area given its very



significant impact on how the market has developed and insurers' perceptions of costs over recent years.

- 1.7 The Statement of Issues also postulates that the potential control distortion may provide an incentive to "over-provide" on service. For example, again in paragraph 27, it is suggested that there is an incentive on any CHC to provide a "high-value replacement car...even though the customer would have been content with a less expensive car."
- 1.8 In this regard, and given the legal protections available to insurers, I would have preferred the language in the Statement of Issues to have confirmed your understanding of the fact that the customer may be offered and accept a car of "like for like" quality and standard to their damaged vehicle even though they may be willing to accept a car of lower quality or specification. Their legal right is to a replacement car of a "like for like" standard, subject, inter alia, to their need (or 'loss').
- 1.9 CHCs will not "over-provide" a more expensive vehicle than the one that is used by the customer, as they know they will not recover the costs of that vehicle. Furthermore, every CHC will speak with their client to ascertain their client's need for the replacement vehicle provided. CHCs know that if the claim has to go to court to be settled that their client will be questioned on the issue of need and if the client says, in court, that they would have been content with a vehicle of lower specification, that the claim will fail. This threat to cost recovery contributes to insurer protection against the CHC over providing on service but does not seem to be recognised in the Statement of Issues.
- 1.10 In paragraph 32, you are correct that referral fees represent a cost of acquiring business. You go on to state that "as they need to be recovered they result in costs to fault insurers". This linkage is not correct. The value of a claim made against the fault insurer depends only on the length of the hire period and the day rate being charged. These are independent of whether a referral fee was paid or not. I think you are appreciative of the fact that the existence of referral fees mean that the consumer is more likely to be made aware of their legal rights to a replacement vehicle. What I mean by this is that "FNOL" has no duty to explain the legal rights to consumers but if they choose to do so they will incur costs in so doing (the salary cost of the person doing the explanation not least). Receiving a referral fee makes the cost benefit of explaining the legal position (or referring the consumer to someone who can) more obvious. Therefore the receipt of a referral fee may increase the number of consumers who are made aware of their legal rights and hence increase costs to fault insurers in that way, but on a claim by claim basis the referral fee does not comprise a cost that can be recovered from the at-fault insurer.
- 1.11 The issue of referral fees is therefore complex. This complexity is compounded by the fact that, as you have identified, it is insurers (non fault) who tend to receive such fees to augment their revenues and profits, some of the benefit of which may be passed on



in the form of lower motor premiums to motorists, at the insurer's discretion. Any eventual ban on referral fees will, in the opinion of the CHO, result in materially fewer consumers being made aware of their right to a replacement vehicle at all and should be a material consideration for you. Such a ban may therefore, by virtue of its ability to stifle claims regardless of merit, be attractive to insurers (although denying them, in principle, a revenue stream when occupying the position of a non-fault referrer) but would be to the detriment of consumers.

- 1.12 The CHO is pleased that you identify in paragraph 34 that there is an incentive on insurers to provide a service of lower quality than the consumer is entitled to. The CHO would go further to say that the cost incentive exists for the fault insurer to provide a service of as low a quality as possible, including not providing a service at all. Any changes to the control aspect that favour insurers beyond the current position (ie the position that has emerged after decades of case law and insurer / CHC cooperation) carry significant risk of materially disadvantaging the consumer.
- 1.13 Your summary paragraph 38 states that there is lack of price competition and I contend (as stated above in my paragraph 1.4) that there is very considerable competition (within the vehicle rental marketplace) that protects the insurer as to the day rate charges being made by CHCs. The overlapping existence of these market places does not seem to be explored in the Statement of Issues but is something the CHO urges you to become familiar with (together with the Autofocus fraud which has contributed to so much misunderstanding of the true industry dynamics).
- 1.14 As the CHO has mentioned in its previous submissions it is wrong to assume that the current market offers the fault insurer no control opportunity over the post accident solution and associated costs. It is open to any insurer to agree an arrangement with a rental car provider (whether they are also a CHC or not) whereby if the insurer becomes aware, in any particular case, that it is the 'fault insurer' that they request their rental car provider to contact the at fault party to offer a solution. It is then for the insurer and the rental car provider to agree a discounted market day rate thus potentially ensuring greater volume for the CHC and certainly lower cost per claim for the insurer, particularly if the consumer is not made fully aware of their rights and is offered a vehicle of lower specification and therefore cost – ie the consumer is perhaps directed to a low cost solution as a result of the misleading tactics of the insurer or its rental car provider. The insurer and the fleet operator have a clear mutual advantage in so doing.
- 1.15 The ability of a rental car provider/CHC to enter into such insurer relationships and their ability to offer discounted rates is, inter alia, materially linked to that rental car provider/CHC's ability to purchase its fleet as cheaply as possibly. This therefore gives larger fleet operators a material competitive advantage to offer this discounted service provision as they will use their size and scale to obtain vehicle manufacturer discounts that are not available to smaller fleet operators or CHCs.



1.16 Furthermore, as highlighted by the recent administration of Drive Assist, such arrangements can create a very substantial dependency of the relevant rental car provider /CHC on its insurer partners and consequent vulnerability, including when such insurers begin terminating such arrangements at short notice. Even if an insurer chooses not to terminate, the influence that the threat of such termination (or more onerous terms) might have over the rental car provider/CHC (and the services it can provide to customers or how it might handle their claims) is potentially significant. It follows that the long term effect of such arrangements requires careful consideration, in the sense that even if they deliver certain cost benefits to insurers; there is a clear risk to consumer welfare to see them as a replacement to the traditional CHC model or to require modification to the traditional CHC model in such a way that undermines the ability of smaller operators to capture business. This traditional model, which is more reliant on referral fees etc, serves as a key competitive alternative to the insurer/CHC partnering model and, for this reason, represents a long term consumer welfare safeguard.

1.17 The CHO would reiterate that many insurers are members of the GTA and the terms of the GTA provide that the fault insurer should not attempt to contact the at fault party once the GTA CHC member has placed the non fault party in a car under the terms of the GTA. Insurers are therefore accepting that the costs incurred under the GTA are low enough not to justify the operational costs otherwise incurred by entering into direct supply arrangements such as those described above. The GTA is the cost control mechanism that works and which balance consumer rights fairly.

2. Theory of Harm 2 – Harm arising from the beneficiary of post-accident services being different from and possibly less well informed than the procurer of those services.

2.1 The CHO agrees with your description of the issues involved as per your paragraphs 39 to 45.

2.2 As regards the provision of replacement vehicles, the CHO urges you to consider the position of the consumer. With an accident rate of c. 17% consumers have an accident every six or seven years and as such they are mostly completely unaware of the range of solutions available to them, or the consequences of those solutions as regards service level or consequent and subsequent inconvenience (eg having to attend court if the fault insurer does not settle the rental invoice).

2.3 The ultimate provision of the replacement vehicle is done by the CHC which, given the risks it will itself assume throughout the process, is extremely aware of the need to provide a replacement vehicle for a period and at a rate that is recoverable in law. It follows that each CHC will devote time to ensuring that the consumer understands the key elements of the contract that they are entering into. So, whilst the FNOLs may not



spend time matching the consumer solution to the consumer need, the ultimate provider of the service (the CHC) does.

- 2.4 The referral fee component between the CHC and the FNOL has been covered earlier in this document and is not repeated save to say again that the existence of referral fees is to the benefit of the consumer who otherwise, the CHO contends, will be materially less likely to have his legal rights explained to him.

3. Future submissions from the CHO to the Competition Commission

- 3.1 In all previous submissions the CHO has urged both the OFT and the Competition Commission to consider the Market (and especially the provision of replacement vehicles) from the perspective of the consumer.
- 3.2 The CHO is considering the appointment of economic advisers to provide you with economic models from this perspective. Certain difficulties exist in this regard, not least the cost associated with doing it and the lack of available data to populate it (given insurers and the ABI hold most data and we do not have access to it).

4. Summary

- 4.1 The CHO is pleased that your report acknowledges that insurers also have incentives to conduct themselves in a way to take advantage of the consumer who is not versed in the range of solutions or legal position post an accident. The CHO found your report to be balanced in this regard but urges your consideration of the issues raised above especially to the highly competitive rental market providing cost control to the fault insurer (leaving the insurer free to further reduce costs by cooperating with CHC's via the GTA for example).
- 4.2 The CHO would, of course, invite the CC – in progressing its analysis and considering the proportionality of any findings or remedies - to balance those features which form part of its Theories of Harm, with the potentially far more significant impact of other issues or features which, currently, seem outside the scope of the CC review, but which are the subject of separate influences (the effects of which are not yet clear). The factors which appear to be outside the scope of the CC's review range from the cyclical nature of investment returns and pricing in the insurance market to the rise in, and associated effect on costs of, personal injury claims (which is being addressed through LAPSO reforms) and, perhaps even more materially, fraud in general. It may be difficult for the CC to assess these factors at this stage; however, they are difficult to disregard in the context of a full and proper understanding of the markets concerned, even if simply to put those issues within the scope of the CC's review into their true context.



4.3 The CHO is available to you to discuss any aspect of your deliberations and would be pleased to participate in any further hearings the CC organises with a view any provisional findings.

Yours faithfully,

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