

BGL Group Limited

Private Motor Insurance Market Investigation

Response to the Annotated Issues Statement dated 05th July 2013

1. Introduction

1.1 This response is intended to set out the position of the BGL Group in relation to the points made in the Annotated Issues Statement and particularly those areas of continued focus for the Competition Commission. We welcome the approach of the Competition Commission in seeking to pinpoint the emphasis of this market investigation using the evidence gathered to date as its guide; however, we have grave concerns that, in considering the significant body of evidence and the perspectives of numerous market participants, the position and perspective of the consumer is being overlooked. For reasons, including those outlined below, such an oversight could lead to the consumer benefits realised in this market over recent years becoming stagnated or even reversed. Of equal concern is the prospect that without any or sufficient focus on the consumer, this market investigation will perpetuate the polar imbalance between consumers and PMI providers in this market.

1.2 The imbalance referred to above is centred around the manifest conflict of interest that exists between the consumer and the majority of product providers. This conflict, to some extent, is mitigated by regulation of the PMI market. That regulation, however, is focused on the nature of the product provided, sales process and the broader prudential and conduct considerations relevant to providers and other market participants. However, it remains a fact of the PMI market that the interests of PMI providers (particularly underwriters) are to limit and, where possible, avoid the utilisation of the product by the consumer in the form of claims.

1.3 This conflict is exacerbated by the fact that PMI, as a product, is compulsory. In some areas we consider existing regulation to be both comprehensive and proportionate. However, we consider that the Competition Commission (perhaps in considering certain areas not currently covered by regulation) should continually place the consumer at the heart of its analysis and ensure that its focus (rather than being predominantly on insurer cost) is on areas of potential customer vulnerability, the two principal ones of which can be summarised as follows:-

- (i) the availability and accessibility by consumers of PMI products at competitive prices on a sustainable, on-going basis; and
- (ii) the protection and preservation of the legal rights of the victims of PMI accidents.

1.4 In recognising the two areas set out above as the appropriate focus for this investigation from a consumer perspective, we do not consider, based on our experience or the information that we have seen from this market investigation, that the current operation of the PMI market is fundamentally broken. We consider the operation of the PMI market to be characterised by multiple offerings, transparency and a number of participants whose interests are aligned with those of the consumer. The focus for these elements of the PMI market, rebalancing the natural imbalance or, at least, mitigating the risks attendant upon the inherent conflicts of interest. This is not to say that there is no room for improvement, as we reference below there are some areas where we consider alternative approaches may result in discernable consumer benefit. However, our overriding view is that the evolution of the PMI market (an on-going process) driven particularly by the significantly improved

transparency price comparison websites have brought demonstrates its capability to address issues in favour of the consumer. Our concern at the apparent absence of focus on the consumer outcome is that this could lead to interventions or potential remedies being proposed that change the balance of the PMI market to the detriment of consumers.

- 1.5 Whilst we will look to cover the specifics relating to the Theories of Harm and the Competition Commission's published working papers below, a generic example may help to provide our understanding of what is driving our concerns. These concerns relate to the potential subversion of the interests of the consumer to alternative market considerations.

The example to which we would point is taken from your working paper 'Background to PMI'.¹ Whilst this document does not deal specifically with any of the Theories of Harm, the detail and information contained appear to underpin much of the focus and some of the conclusions set out in the Annotated Issues Statement and associated working papers. Whilst we would concur with some of the logic applied, the assumptions and some of the data referenced, we would consider to be fundamentally flawed.

Specifically, we note that the information that you have gathered on the top ten largest PMI providers concludes that they collectively provided 64% of all PMI policies in 2012. According to this document, when asked for the breakdown of PMI policies by reference to sales channel "*all the insurers provided figures for new business but excluded renewals*". Given that renewals count for the majority of sales for every PMI provider of which we are aware, any analysis which referred exclusively to new business is, by definition, skewed and unrepresentative.

As we have referenced above this data fails to take as its starting point the position of the consumer. The position of the consumer would, of course, be better served by an analysis of the market seeking to determine the predominant source through which consumers had purchased PMI policies in the current market. As we have consistently maintained, the answer to this question would include consumers who had purchased by renewal from their existing provider. However, the remainder of this working paper and related documents produced by the Competition Commission appear to substantively disregard this sales channel preferring, without explanation, to focus on narrower sales channels.

Additionally, this working paper makes reference to claims cost and relates the same to both consumer premiums and insurer profits. Underpinning this interrelationship is the assumption that there is a direct, if not linear, relationship between these factors. Put simply, the assumption appears to be that claims costs, driving insurer loss ratios, are the primary determinant of consumer premiums. In relation to price comparison websites (**PCWs**) this assumption seems to be carried one stage further to suggest that the risk price for each individual consumer determined in this way then needs to be adjusted to take account of the additional cost per acquisition incurred in utilising a price comparison website.

We refer to this analysis as an assumption owing to the fact that it does not appear to have been borne out by any of the information set out in your working papers. More significantly, we consider this assumption to be unsupported by reference to key facts as follows:-

¹ http://www.competition-commission.org.uk/assets/competitioncommission/docs/2012/private-motor-insurance-market-investigation/130812_background_to_pmi_insurers_brokers_and_pcws.pdf

- the information available relating to underwriter profitability is unreliable for many of the larger insurers these figures seem to hide significant and disproportionate funding of Group costs. When compared to insurers whose results are unaffected by these issues, notable examples being [DELETED] a more representative reflection of underwriter profitability is available. This illustrates substantial profits in the current market.
- if the payment of PCW costs per acquisition were a determinant of increased premiums, this would be reflected in lower premiums for renewal customers. From our own experience and by reference to our knowledge of almost all of the major PMI providers, this is not the case.

The incompleteness of the information that appears to have been provided to the Competition Commission (based on how it has reported certain issues in the working papers) leaves us with a concern that some of the analysis, and therefore some of the conclusions, will, at best, not benefit from all of the necessary information. At worst, there is a risk that any conclusions and recommendations will be distorted by deliberate (if not concerted) attempts to direct the Competition Commission towards certain market practices or remedies (the effect of which could be to undermine the competitive dynamic of the market and consumer welfare in favour of giving greater control to underwriters) and away from other issues which might actually lead to more positive market developments.

2 BGL Background & Approach

- 2.1 The BGL business model is consumer centric focussed on value built through long-term relationships with consumers, partners, brands and PMI providers. The Group's model, whilst certainly not immune to the insurance cycle or pressure from PMI providers, is intended to operate independently of factors outside of the PMI market, for example, the investment returns of PMI providers.
- 2.2 The consumer centricity of our model is reflected in:-
 - 2.2.1 the origination of and continued investment in comparethemarket.com (Ctm), the Group's PCW, which represents a response to consumer demand offering visibility and choice across a number of products and services including PMI where prices are delivered across a wide range of suppliers;
 - 2.2.2 the development of the a range of personal lines intermediary proposition characterised by a highly innovative own-brand offering and established affinity relationships with some of the most successful and trusted brands both within financial services and wider facilitating greater customer choice and new market entrants; and
 - 2.1.3 the Group's claims management business, which provides a market-leading comprehensive service for not-at-fault consumers. The focus here is to ensure quality and consistency of consumer experience to customers both of the Group brands and others when the need arises ie at the 'moment of truth'.
- 2.3 Our proposed approach to this response will be to consider the Theories of Harm in turn as they are set out in the Annotated Issues Statement. We will do that in light of the general comments set out in the introduction above.

3 Theories of Harm 1: harm arising from the separation of cost liability and cost control (morale hazard)

- 3.1 The evidence that the Competition Commission has considered in relation to Theory of Harm 1 is summarised in the Annotated Issues Statement and, to some extent, expanded in the related working paper. We propose to provide a more detailed response to that working paper but, in looking to respond to the matters raised in the Annotated Issues Statement, we summarise our views below. A point we would note is that this area of PMI provisions has been subject to significant recent reform as a result of LASPO and other changes. There are further significant planned changes relating to road traffic cases and accordingly, we do not consider this an appropriate point at which to make a market assessment.
- 3.2 In overview, having considered the evidence provided to the Competition Commission and from our own experience we do not consider there is any or any sufficient evidence to conclude that harm arises from the separation of cost control and cost liability. Moreover, there is even less evidence of harm arising to consumers. On the contrary, we consider the evidence suggests a very real prospect of harm to consumers arising from any attempt to alter the balance between the underwriters who have cost liability and the consumer who ultimately has cost control.
- 3.3 Once again we note that consumer welfare appears to have been supplanted from the focus of the Competition Commission investigation in favour of an analysis of selective elements of insurer costs. We consider the approach to be misconceived as we do not consider that cost savings taken alone can or should be the primary objective or the gauge against which market function or dysfunction is measured. To this end, we would see the most valuable work in relation to Theory of Harm 1 as the consumer survey carried out by the Competition Commission into consumer experiences of temporary replacement vehicles (**TRVs**).

The survey referenced above illustrates the overwhelming majority of consumers surveyed (87%) consider that their temporary replacement vehicle was supplied for the correct amount of time i.e. no longer or shorter than it actually was required by them. By stark contrast, a much smaller (but still concerning) proportion of consumers have felt that the temporary replacement vehicle they had been provided did not cover the entire period of their requirement (9%). Only a very small proportion (4%) felt that the temporary replacement vehicle with which they had been supplied was provided for too long a period.

Notwithstanding the disproportionate focus on the considerations relating to potential overprovision or overcosting of temporary replacement vehicles and/or accident repairs, our view of the evidence is that it is simply inconclusive and cannot be used to substantiate any actual detriment arising from Theory of Harm 1. The Competition Commission has concluded from its statistical analysis that there is a differentiation between the costs of temporary replacement vehicles and accident repairs when provided to at fault and not at fault consumers.

Repairs

- 3.4 We note the Competition Commission finding that there is no evidence of the overprovision of repairs. We would take issue with any conclusion that the differentiation in average costs of repairs between those managed by the at fault insurer and those managed elsewhere is attributable to the payment of referral fees. There are many other considerations which explain some or all of this differentiation including the following:-
- 3.4.1 The quality of repairs and/or replacement parts
- 3.4.2 Where the at fault insurer is providing an indemnity it has the benefit of having saved the cost of having arranged and administered the repair. It follows that in comparing the invoice cost for repairs this is not a like for like comparison.

- 3.4.3 The use of repairs and/or replacement parts.
- 3.4.4 The operational and administrative costs, together with the financial risks and exposure, involved in the provision of credit repairs.
- 3.4.5 The point that referral fees should be assessed against any alternative means of consumer acquisition for repair, which we would argue is likely to be less targeted and, therefore, less efficient.

Temporary Replacement Vehicles

- 3.5 The Annotated Issues Statement identifies two areas of additional costs which it concludes “may” represent evidence of overcosting. The first of these frictional costs, are a consequence of the consumer having the free choice as to the provider of the temporary replacement vehicle of which there is an indemnity from the at fault party and ultimately the at fault insurer. Our view is that any such frictional costs would be marginal and insignificant when compared to the public policy consideration of removing this entitlement from the victim of an accident. Additionally, any such frictional costs should be considered against the cost savings to the at fault insurer consequent upon the at fault insurer not being required to arrange the provision of the temporary replacement vehicle or fund its cost in the interim.

Applicable to both temporary replacement vehicles and repairs are the following overriding points:-

- 3.5.1 The vast majority of all claims are settled within the guidelines and stipulations set out in the GTA. Accordingly, how these costs are arrived at i.e. which parties in the chain receive which sums, is largely relevant to the total cost applied. The underwriters responsible for payment of these costs are also exclusively involved in the setting of these agreed rates.
- 3.5.2 In the current adversarial system any approach targeted to act as a disincentive to the freedom of the innocent victim of road traffic accidents to seek redress, within parameters clearly set by the courts, from a provider of their choice, would significantly erode the rights of the not at fault party.
- 3.5.3 In BGL’s view, the key risk is that greater control by the fault insurer over the provision of repairs and TRV services could feasibly result in consumers (who are likely to be in a vulnerable position) receiving a service below that to which they are entitled or, in extreme cases, no service at all.

4 Theories 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

- 4.1 We welcome the consideration of this area and the recognition of the imbalance between the knowledge, understanding and experience of the providers and potentially those of the consumers. Of course, within the BGL model we operate to redress that balance and ensure that notwithstanding the status of the consumer’s knowledge, he/she will always receive all of their legal entitlements.
- 4.2 We note your interim conclusion that within the current market there is no evidence of harm being occasioned to consumers owing to their lack of knowledge. While there may be some evidence to support this, the Competition Commission’s research also reveals instances of where consumer information could be better. In any event, consumer welfare in this respect is preserved only by the existing balance between non-fault consumer representatives and those engaged by at fault insurers. We consider that the results of the survey into the quality of insurer-managed repairs that you have commissioned (not yet published) may be important in assessing the risks

associated with any potential changes to the operation of the PMI market in relation to non-fault claims.

- 4.3 Whilst we support any initiative to identify whether these costs can be managed more efficiently; we remain concerned that any remedy that might feasibly expose consumers to excessive risks.
- 4.4 The traditional imbalance between the consumer (who needs a speedy and adequate repair and mobility solution) and the fault insurer (whose economic incentive is to avoid or minimise costs) has, in BGL's view, been addressed by certain market developments, for example, the growth of CMCs, as well as the activities of brokers to ensure that their non-fault customers receive the solution to which they are entitled.

Referral fees

- 4.5 Referral fees support consumer need to receive access to justice.
- 4.6 At the same time the ability for, say, one CMC to refer work to multiple providers in return for referral fees, is the most efficient and sustainable approach to the fulfilment of these consumer needs in that:
 - 4.6.1 its result in a predictable level of business (which helps providers plan, invest and manage costs in an appropriate and sustainable manner); and
 - 4.6.2 relates acquisition costs to income – generating opportunities thereby avoiding potentially expensive marketing to attract consumers which may be less targeted or effective thereby generating incremental provider costs.
- 4.7 We can see no evidence to support the contention that the removal of referral fees would reduce third party insurer costs. As the majority of such costs are set by reference to the GTA, it is hard to see how any adjustments to referral fees, essentially provider acquisition costs, could have any impact on the cost of each repair or TRV.
- 4.8 The only potential cost reduction which could arise would be from a reduction in the number of repairs or TRVs for which innocent customers claim. Although we remain committed to the provision of appropriate outcomes for our customers, we can envisage some market participants no longer taking steps to ensure that appropriate and necessary repairs and/or TRVs are provided owing to the removal of the financial recompense. The outcome for the consumer would be that only those having the necessary funds and understanding of the requirements could obtain their legal entitlements. This would seriously disadvantage consumers and would not be a positive policy outcome.
- 4.9 Given the limited influence of referral fees on costs and the disproportionate impact for consumers, particularly the most vulnerable, we would suggest on balance referral fees remain positive in relation to the provision of repair and TRV services.

5 Theories of Harm 3 - harm due to horizontal effects

- 5.1 We do not propose to comment in detail on the areas covered in relation to Theories of Harm 3. We broadly concur with your conclusions that no element of horizontal concentration in the PMI market is likely to dilute or impact the nature of competition within that market
- 5.2 We do, however, consider that your analysis underplays the impact of PCWs. We deal below with the more specific considerations in relation to PCWs but our view is that the assessment contained in the Annotated Issues Statement does not take account of the finely balanced and highly competitive nature of the PMI market which has been achieved over recent years partly owing to the influence of PCWs. The vulnerability of this model and the undoubted consumer benefits it has driven is evident by reference to other markets. For example, recent commentary relating to the Italian PMI market and

specifically the absence of PCWs references the imbalance in bargaining power between the PCWs and the major PMI providers. We ourselves have experience of several European markets and have looked at markets worldwide. In terms of the adoption and facilitation of switching for PMI driven by PCW's we consider the current operation of the UK market to be world leading. Elsewhere consumers suffer from less choice and competition and higher premiums in the meantime.

5.3 The reason for the relative and recent success of PCWs within the PMI sector is often attributed to changing consumer behaviour in relation to on-line purchases and highly effective marketing. Whilst both of these factors are true they, by no means, explain the difference between the adoption of PCWs by PMI consumers and that of consumers of other insurance, financial services or wider retail products. We would summarise the reasons for this differential as follows:-

5.3.1 Consumer Trust - even before the existence of PCWs consumers had adopted the process of shopping around for PMI products. This was driven in part by the differentiation in pricing between different product providers but also a lack of trust in existing product providers to provide competitive prices or reward loyalty. We consider *[DELETED]* any dilution in the role of PCWs will have the impact of exposing consumers to suboptimal pricing.

5.3.2 Customer Journeys - the process of purchasing PMI has historically been over complicated by extended lists of questions, varying between product providers and aimed as much at claim avoidance as information gathering. Whilst it is not to the benefit of PCWs (nor in our case is it our intention to commoditise PMI products), where possible PCWs have helped to standardise information requirements, reduce the length and complexity of consumer journeys and so significantly assist on the transparency and understanding of the PMI product.

6 Theories of Harm 4 - harm arising from providers' strategies to soften competition

6.1 Again in relation to these Theories of Harm we do not propose to restate our position on the matters set out in the Annotated Issues Statement or the accompanying working papers in detail. Broadly, we concur with the Competition Commission's overall observation that the high levels of switching that characterises the market are not indicative of any obstacles to consumers taking advantage of alternative provider propositions. Once again, it would be easy to overlook the impact and consumer benefit of the consistent and on-going investment by PCWs in ensuring the availability of consumer options in terms of switching and, certainly in the case of Ctm, constantly seeking to improve the process of switching for the benefit of consumers.

7 Theories of Harm 5 - harm arising from vertical relationships (vertical integration)

Ownership of Price Comparison Websites by Insurers/Brokers

7.1 We welcome your finding that there is no evidence of distortion of competition owing to the vertical integration of some PMI providers with large PCWs. The theoretical practices of under cutting or manipulation of quotes are neither based on any facts nor do they properly take account of the balance of risk and reward for these providers.

Most Favoured Nation Clauses

7.2 We propose to deal below with the detail and impact of so-called Most Favoured Nation Clauses. However, we consider it is important to place the role of PCWs and, therefore, of these types of clauses into context. It is important to take account of the still limited influence of PCWs on PMI sales. Notwithstanding the somewhat skewed data provided by many PMI providers, sales of PMI via all of the PCWs collectively amount to around a quarter of the policies in force currently (estimates vary between 22% and 27%). Therefore the existence of any bilateral contractual term between a

PCW and a product provider cannot have a significant impact upon the operation of the PMI market.

- 7.3 None of the PCWs has a market share which on any meaningful analysis could be suggested to be dominant or to represent a proportion of sales which could significantly and detrimentally impact the profitability of any PMI provider. Accordingly, in our view these bilateral contractual clauses are simply one of the component parts of a series of short term, frequently renewed and rapidly evolving commercial agreements. The Competition Commission has chosen variously to categorise these agreements into two or three groups for the purposes of the Annotated Issues Statement and the attendant working papers. This categorisation which belies the true nature of the individual negotiations is unhelpful and has led, in our view, to an inaccurate and unsustainable view of the cohesion of market activity, which simply does not exist. We consider the details of the MFN clauses below but would first like to address the question of the purpose and intention of these types of clauses.

Comparethemarket (Ctm)

- 7.4 The Group's PCW has a specific and unique proposition which is overridingly based on its relationship with the consumer. What Ctm has set out to do is create a relationship with its customers which is unprecedented in the financial services sector and particularly in the PMI sector. The cornerstone of this proposition is to aspire to go further than any previous intermediary or broker model which would be limited to the provision of a best price from a range of available providers using an agreed journey. Ctm is focused on seeking out the very best market price with the most suitable (to the consumer) customer journey. In being able to return on average quotes from 100 providers within five minutes ranked by price, Ctm is getting some way towards those aspirations.
- 7.5 MFN clauses which, we would reiterate, are variable between individual providers are intended primarily to obtain, enhance and protect that proposition. In relation to MFN clauses, the same factors are in play as appear in other areas of the PMI market. In broad terms they are as follows:-
- 7.5.1 The consumer has an interest in accessing the best price on the basis of the information provided as quickly and easily as possible.
- 7.5.2 Ctm has an interest directly aligned with that of the consumer to ensure that it is the provider of the best price such that the consumer both obtains the best price and Ctm is rewarded - by the provider for the sale and the consumer with enhanced loyalty.
- 7.5.3 The product provider has the opposite interest in that it is focused on securing the sale at the best available margin. On a wider level, the product provider has an interest in diminishing the strength of the Ctm proposition in order to reduce the likelihood of switching and maintain stronger margins going forward.
- 7.6 Any consideration of the impact of MFNs should take account of the overall actual impact as opposed to the relative, theoretical positions of different market participants. This, more restricted consideration of these clauses has lead the Competition Commission to reference only two of the benefits of MFN clauses.
- 7.7 We concur with the Competition Commission's recognition of the ability of MFN clauses to enhance the search experience by reducing the need for consumers to visit a number of sites in order to find a cheaper price. Given the historic experience of consumers in accessing a number of providers by telephone, we think it would be easy to understate the relevance and extent of this benefit to consumers. Consumers carrying out a comparison exercise without the benefit of PCWs would be restricted in the number of prices they would be able to access, simply by constraint of time and

never be certain as to whether the comparison they were making was a like for like comparison.

- 7.8 We note the Competition Commission's recognition of the role of MFN clauses in protecting the investment required for a quality PCW offering. As we have set out above, the Ctm view of what constitutes a quality PCW offering may not be that of other PCW providers and we certainly consider it to be more ambitious than that of any other provider in the sector. This on-going investment includes mobile technology, constant journey updates to ease access, etc. The impact of erosion to that proposition would be significant given how far it has to fall. Recent challenges to financial services providers have not resulted in significant changes in market share owing to the perception of many financial services providers being already extremely low. Ctm has the opposite challenge.
- 7.9 Consumer expectation is another key element of MFNs. According to research carried out earlier this year by the European Commission on the subject of price comparison tools; *"finding the best price remains the number one reason for consumers using (comparison tools), with many of them using price comparison websites as an information source to find the best deal even if making the final purchase offline"*.
- 7.10 The same European Commission research highlights the need for PCWs to be able to engender trust amongst consumers and reports the following; *"in a consumer market study on E-Commerce conducted in 2011 on behalf of the European Commission only 10% of the consumers who said they did not use comparison websites sighted lack of trust as the reason. However, the same study revealed that one in eight respondents felt that they had been misled by price comparison websites. In most of the cases, the reason was that they went on to find a cheaper price elsewhere, while in other cases the price indicated on the price comparison website did not correspond to the price on the seller's website. Such discrepancies, if not adequately addressed, risk further confusing and misleading customers and under mining their overall trust in "comparison tools and PMI"*.
- 7.11 This conclusion is consistent with earlier UK based research which found *"future levels of price comparison used and the way they are used, is not dependant solely on market coverage and cheap insurance quotes, but also consumer attitudes towards - and a trust in - these sites"*.
- 7.12 From the Ctm perspective, it is striving to provide prices across the widest possible range of PMI product providers. However, in the negotiations of these individual clauses, Ctm is required to balance its overall proposition and the protection/enhancement of consumer trust against the benefits each new provider might bring. Taking a customer outcomes perspective, it is equally as unacceptable for the consumer to purchase a policy via Ctm only to find the identical policy was available at a better price elsewhere, as it would be for the consumer to decide on a policy based on the price displayed on Ctm only to find that, that price was not available following click through to the provider site.
- 7.13 As we have said above the categorisation of these clauses into broad and narrow MFN's or own website, online sales and all sales MFN's does not do justice to the heavily negotiated nature of each. We propose to deal with the considerations relevant to each of the categories of these clauses that are relevant to Ctm in a separate response to the relevant working paper. However, we cannot see any evidence for concluding that any of the potential sources of harm, identified by the Competition Commission are crystallising within the current operation of the PMI market.
- 7.14 The evidence provided to the Competition Commission seems, universally, to suggest that the existence of MFN clauses has not led to significant or unsustainable increases in CPA fees. On the contrary, the Competition Commission's own finding is *"CPA fees have risen only slightly during recent years, at near or below the rate of general inflation"*. As the evidence we have provided illustrates, there is no

substantive correlation between MFNs and CPAs. As you would expect in any sales related remuneration structure, CPA's tend to be lower for those providers who are effective at selling the largest number of policies via Ctm.

7.15 Equally we have not seen any evidence of MFN clauses making price reductions more costly to PMI providers. Recent evidence illustrates slight CPA increases but premium restrictions. No PMI provider is required to provide a price for any specific risk on Ctm. Accordingly, each PMI provider is at liberty to provide prices in any sales channel, at any time with any level of reduction it chooses. *[DELETED]*

7.16 Another proposition contained in Theories of Harm 5 is the potential for MFNs to restrict innovation and entry to the PCW market. This contention is also wholly unsupported by any of the facts. There has been frequent and significant entry into the PCW market by a number of participants each of whom has a different business background and structure. There is no restriction, of which we are aware, preventing any new entrant agreeing terms with any PMI provider to sell policies at lower prices whether they are as a result of CPA discounts or otherwise. The MFN clauses would simply limit those same providers in providing higher prices to identical consumers and for identical risks on Ctm and thus eroding its strong consumer-centric proposition. This reinforces the objective of the MFN as outlined above.

7.17 The concern that MFN clauses have the potential to shift competition from being based on price to being based on advertising and thus causes excessive advertising and leads to barriers to entry, is again theoretical but largely academic when set against the actual position. For Ctm, our advertising spend is related to the attainment of our ambitious consumer goals but also related to the on-going effectiveness of that advertising. Given the relatively small market share of Ctm (approximately *[DELETED]* in relation to PMI and the commensurate growth potential both in relation to PMI) and other product verticals, it simply makes sound economic sense to continue to try drive up consumer utilisation in view of the growth potential. As we have previously stated this approach is accessible to all market participants and potential market participants and some, owing to their financial and technological capabilities, are significantly better placed than Ctm. Notwithstanding this position we disagree with any proposal aimed at restricting any market entrant's ability to compete using a variety of advertising media that is open to all.

Conclusion

8.0 Whilst we welcome much of the work undertaken by the Competition Commission, we do not see that the Annotated Issues Statement and/or any of the Working Papers identify issues that require further action. Our view remains that, whilst not yet perfect, the PMI market is characterised by a large number of participants of varying size, scale and business models. This has created a highly competitive market with a wide range of products/prices available to consumers, particularly those prepared to undertake a relatively small amount of research. When compared to other markets either within the financial services or other sectors, PMI exhibits a prevalence of competitive activity and an absence of restrictive anti-competitive practices. Additionally, the direction of travel for this market led by the example of PCWs is to provide transparency of price and offering, which leads to increasing differentiation of the consumer proposition.

BGL Group Limited

Private Motor Insurance Market Investigation

Response to Working Papers covering Theory of Harm 1 – concerns arising from the separation of cost liability and cost control

1 Introduction

- 1.1 This response, which supplements BGL Group's 'Response to the Annotated Issues Statement dated 5 July 2013', is intended to set out, in greater detail, the position of BGL Group in relation to certain points made in the Competition Commission's several working papers concerning Theory of Harm 1: harm arising from the separation of cost liability and cost control (moral hazard).
- 1.2 As regards the working paper 'Overcosting and overprovision of repairs', notwithstanding the research and analysis published by the Competition Commission to date, it is difficult for any party to comment on whether the separation of cost liability and cost control in relation to repair services gives rise to actual consumer harm. The same observation applies to the provision of temporary replacement vehicles (TRVs).¹
- 1.3 In the absence of very compelling and consistent evidence, which in our view has not been produced so far, we consider it would not work in the interests of consumers for the Competition Commission to make any assumptions to that effect. Indeed, any recommendations based on such assumptions would, in our view, potentially give rise to serious consumer detriment in the longer term.
- 1.4 It is self-evident that an insurer who is ultimately liable for the cost of repairs (or, indeed, a TRV) will seek to avoid or minimise such costs. It should not, however, be accepted that a cost base which reflects such avoided or reduced costs represents an acceptable benchmark against which other costs should be measured.
- 1.5 There is a manifest conflict of interest between the consumer and those underwriting PMI. This conflict, to some extent, is mitigated by the regulation of the PMI market. That regulation, however, is focused on the nature of the product provided, sales process and broader prudential and conduct considerations relevant to providers and other market participants. However, it remains a fact of the PMI market that the interests of PMI providers (particularly underwriters) are to limit and, where possible, avoid the utilisation of their products by the consumer in the form of claims.
- 1.6 As indicated in BGL Group's 'Response to the Annotated Issues Statement dated 6 September 2013', we have grave concerns that, in considering the significant body of evidence and the perspectives of numerous market participants, the position and perspective of the consumer is being overlooked. Such a step potentially disregards the consumer welfare benefit of (and, indeed, a consumer's legal entitlement to) a comprehensive repair and mobility solution, in favour of cost reductions.
- 1.7 This is particularly the case where such costs have not been shown, to date, to correlate to any rise in premiums; nor should it be presumed that a reduction in those costs would lead to greater investment in innovation for the benefit of consumers. Finally, any assessment should, in our view, attempt to evaluate the actual and anticipated impacts of other recent regulatory reforms (eg LAPSO²) before further action is undertaken that might, at best, seek to correct features that are already in the process of being improved or, worse, lead to unintended adverse consumer outcomes.

¹ 'Overcosting and overprovision of TRVs'

² Legal Aid, Sentencing and Punishment of Offenders Act 2012

2 Concerns arising from the Working Papers

- 2.1 Any assessment of the impact of the separation of cost liability and cost control should, while taking costs into account, fully evaluate the potential for consumer detriment if the party with the greatest incentive to eliminate or reduce costs were to be given greater control over the provision of the services incurring those costs.
- 2.2 The Competition Commission should not overlook certain points conceded by former insurer personnel (in the multi-lateral broker hearing³) that the rise of claims management and credit hire companies represents a market response to insurers' unwillingness to look after non-fault consumers following an accident.
- 2.3 Moreover, the fact that certain repair or replacement vehicle services are provided at a lower cost, should not imply that similar services which cost more represent overprovision or overcosting.
- 2.4 In other words, while the point is conceded in footnotes in the Competition Commission's working paper 'Statistical analysis of claim costs', it should be made clearer that 'overcosting' and 'overprovision' etc does not mean 'excessive cost' or 'excessive provision'.
- 2.5 Apart from the fact that this is not borne out by the data, a whole range of other issues are also highly relevant (aside from referral fees and frictional costs, which we discuss separately below), for example:
- 2.5.1 the quality and duration of services provided, whether repair services or those connected with TRVs, including the vehicle itself;
 - 2.5.2 the quality of replacement parts used;
 - 2.5.3 tendencies to replace as opposed to repair parts;
 - 2.5.4 the savings achieved by the fault insurer in having someone else manage the repair and TRV;⁴
 - 2.5.5 operational and administrative costs and risks incurred by relevant service providers, whether claims management or credit hire operators; and
 - 2.5.6 the need to ensure that pressure continues to be applied to fault insurers to offer reasonable alternative repair and TRV solutions to consumers who have suffered harm which is not their fault.
- 2.6 Each of these elements necessitates a proportionate assessment of cost against quality, taking into account the consumer's legal rights and the need to foster competition in the market for the provision of these services; the assessment should not focus on cost reduction to the exclusion of anything else, particularly where there is no clear evidence to suggest that savings would be reflected in reduced premiums.
- 2.7 As regards referral fees, we agree with the Competition Commission that referral fees represent a cost of acquiring business. At the same time, we consider that they support the consumer's need to receive access to justice. Any suggestion that they are part of the 'moral hazard' problem associated with the separation of cost control and cost liability should be challenged.
- 2.8 Referral fees should be assessed against any alternative, arguably less targeted and less efficient means of customer acquisition (which would be essential in the absence of referral fees). Proper consideration should also be given to the public policy objective of facilitating the operation of a system which ensures that consumers in a vulnerable

³ [DELETED]

⁴ [DELETED]

situation are made aware of their legal rights, without giving rise to unmeritorious claims.

- 2.9 In our view, referral fees represent a highly efficient⁵ and cost-effective means of marketing and facilitate consumer welfare. Little, if anything, in the Competition Commission's working papers contradicts this view. We would disagree with any suggestion on the part of the Competition Commission that referral fees represent 'overcosting'. In the same way, we do not accept that any differentiation in average costs of repairs between those managed by the at fault insurer and those managed elsewhere is attributable to the payment of referral fees.
- 2.10 As regards frictional costs, these will occur in any market where the person responsible for funding certain services does not have absolute control over how those services are provided and their cost. In other words, they are a consequence of the consumer having free choice as to the provider of the TRV of which there is an indemnity from the at fault party and ultimately the at fault insurer. However, as already identified by the Competition Commission and described in **section 1** above, there are strong consumer welfare arguments for retaining this system.
- 2.11 To summarise our view, frictional costs are marginal and insignificant when compared to the public policy consideration of removing this entitlement from the victim of the accident. It is always open to the Competition Commission to explore how insurers – without conceding every claim and perhaps through further adjustments to the industry GTA - might adjust their behaviours to moderate such costs further. At the same time, any assessment of potential changes designed to address frictional costs should balance such savings against those cost savings which already benefit the at fault insurer consequent upon the at fault insurer not being required to arrange the provision of, say, TRVs. We have suggested in **section 4** below areas for further consideration as to how the GTA itself might be improved.

3 Cost savings v consumer welfare

- 3.1 Without revisiting in significant further detail points made elsewhere, we are concerned that the working papers published in connection with Theory of Harm 1 seem to present a position where, as a purely economic exercise, cost savings are seen as the primary objective or the gauge against which market function or dysfunction is measured, without putting such an assessment into context in terms of a wider consumer welfare objective.
- 3.2 Put simply, consumer welfare appears to have been supplanted from the focus of the investigation in favour of an analysis of selective elements of insurer costs. We also note that certain areas, such as renewal business, and which have a much greater potential impact on consumers appear to have been overlooked altogether.
- 3.3 We appreciate the very considerable difficulty encountered by the Competition Commission in gathering data in order to be able to conduct any comprehensive econometric analysis.⁶ We also appreciate that the Competition Commission's analysis is ongoing. However, in our view, the Annotated Issues Statement and working papers would benefit from clearer emphasis on and more balanced recognition of those market features which already protect the interests of consumers. This causes us concern, which we would urge the Competition Commission to address subsequently.
- 3.4 We would also observe, while fully recognising the difficulties encountered by the Competition Commission and mentioned above, that data identified in the relevant working papers does not appear to be particularly consistent, compelling nor conclusive, for example:

⁵ [DELETED]

⁶ [DELETED]

- 3.4.1 Table 4 of the working paper ‘Analysis of the results of the non-fault survey in relation to overprovision’ indicates shorter repair periods for low and high damage repairs, which are managed by or for the fault insurer (captured) as opposed to the non-fault insurer. At the same time, the table records significantly longer periods for ‘captured’ medium damage repairs (22 days as against 12)⁷. In light of this inconsistency, and given the Competition Commission’s acceptance that *“hire duration is largely determined by repair duration”*⁸, it is difficult to see how this would support any conclusion (which the Competition Commission seems to be working towards based on comments in the same working paper) that TRV services under credit hire are provided for *‘unnecessarily long periods’*
- 3.4.2 Aside from any concerns with the consistency of this data, in the absence of further research and compelling evidence, the Competition Commission should guard against any assumption that direct hire durations are correct or adequate.
- 3.4.3 In this regard, the vast majority of consumers surveyed by the Competition Commission indicated that they considered that they had their TRV for the right amount of time (87%) and, indeed, over twice as many (9%) indicated that they had it for a shorter period of time than needed, than those indicating they had it longer than necessary (4%). It follows that if the Competition Commission is going to quote this research, it is difficult to come to a conclusion that the provision of TRVs involve excessive periods. Similar considerations apply in the context of the quality of repair services.
- 3.4.4 In its working paper ‘Overcosting and overprovision of TRVs’ the Competition Commission states that:
- “We have found that credit hire appears to be more expensive than direct hire. On average, insurers pay around twice as much for a credit hire vehicle than for a direct hire vehicle. This is driven principally by a higher daily rate but also by a longer hire duration.”*
- It should not, without further investigation of the costs involved and the other controls in place designed to mitigate those costs, be inferred from this that credit hire is excessively expensive.
- One cannot assume that any service element or value added service element beyond that which a fault insurer might offer as part of a managed repair or TRV solution is ‘overcosted’, in the sense that this implies excessive or unjustified costs or inefficiencies. We do not consider that these costs have been sufficiently assessed in the working papers or, rather, reflected in the evidence gathered, to support such a conclusion.
- 3.4.5 As regards repairs, the Competition Commission comments⁹ that fault insurers pay around 35 per cent (£400) more for credit repairs (managed by a third party) than they pay for captured non-fault repairs (which they manage themselves); however, aside from the potential difference in the quality of the services provided or the margins needed by credit repairers to ensure a viable operation, the Competition Commission acknowledges that this increased cost may be attributable to a range of other factors, not all of which are quantifiable (for example, the increased cost associated with the use by credit repairers of replacement OEM parts, rather than repairing parts or using cheaper non-original parts).

⁷ This point is disregarded in para. 17 of working paper ‘Analysis of the results of the non-fault survey in relation to overprovision’.

⁸ Working paper ‘Overcosting and overprovision of TRVs’, para. 13

⁹ Working paper ‘Overcosting and overprovision of repairs’, para 4

- 3.4.6 The Competition Commission notes in the Annotated Issues Statement as regards the provision of repairs, that it has:
- “...found no systematic evidence that the quality of repair services received by either fault or non-fault claimants is sub-standard (compared with their contractual or legal rights). Our finding is based on a review of survey evidence, how insurers and CMCs monitor the quality of repairs, the standards repairers adhere to when undertaking repairs, and customer feedback and complaints ratios in relation to vehicle repairs.”*
- 3.4.7 However, the Competition Commission goes on to say:
- “Notwithstanding this evidence, we also received a number of submissions (mainly from repairers, CMCs and other industry participants) suggesting that the repair quality of insurer-managed repairs is often poor; and we also noted that many consumers might not be able to assess whether a repair to their vehicle is adequately performed.”*
- 3.4.8 This suggests quite strongly that the Competition Commission is not yet a in a position to come to a firm view on this issue, and that concerns remain as to the quality of service provided by those with a strong incentive to reduce or eliminate cost. On this basis, the Competition Commission has commissioned further research (yet to be published) from an independent researcher (MSX International).
- 3.4.9 It follows that it is difficult to come to any conclusion about overcosting or overprovision of repair services, because an important piece of research which might indicate whether potentially lower cost repairs are, in fact, of adequate or equivalent quality, is still missing.
- 3.4.10 Finally, the Competition Commission’s inference that if made aware of the total hire costs of their TRV, consumers would be content with: i) a lower-quality vehicle; or ii) a vehicle for less time, does not appear to be supported by the evidence gathered.
- 3.4.11 Aside from the fact that a clear majority of consumers surveyed indicated that they would not be prepared to compromise in this way (59% and 79% respectively), such research presumes that all consumers are aware of their legal entitlements (as well as the actual costs paid by the insurer under the GTA), which they are not. It follows that the Competition Commission should not use this research to justify any proposal which would involve a diminished service being offered to consumers.

4 The GTA

- 4.1 We note that while the GTA has been criticised in certain instances as being not ‘fit for purpose’¹⁰ a number of respondents recognise its general value, and that improvements to the GTA have the potential to address some of the cost issues that have formed the current focus of the investigation.
- 4.2 In this regard, the Competition Commission might well consider exploring one or more of the following themes with the GTA Technical Committee and other interested industry parties (including those who are currently excluded from participation in the GTA):
- 4.2.1 The potential benefit associated with the GTA becoming a formal regulatory body for credit hire operators and insurers active in PMI.
- This might, at its most extreme, entail mandatory membership (assuming this could be reconciled with other competition law considerations), so that all such market participants are required to join and to abide by the GTA’s rules and regulations in order to operate in the PMI or credit hire space.
- This might help ensure a more level playing field, albeit it would not necessarily prevent insurers, credit hire operators etc from entering into bilateral agreements and agreeing lower rates than those provided for in the GTA.
- 4.2.2 Broadening membership and governance of the GTA, and perhaps extending participation to other service providers.
- 4.2.3 Measures designed to support more active participation in the GTA generally, with members ensuring mandatory attendance of their representatives at technical committee meetings.
- 4.2.4 A credit hire and repair portal could be developed to streamline the claims process and ensure that payment terms are met more efficiently and quickly, thus reducing frictional costs and the need for litigation.
- 4.2.5 A clear and meaningful set of customer service principles could be agreed as part of the terms of the new GTA.
- 4.2.6 Changes to the GTA rate-setting or review process, with perhaps more frequent review to complement any annual review.
- 4.3 While there is some scope for improving the GTA, it should not be overlooked that the GTA already affords those that wish to participate in it a reasonable level of reassurance on costs. In other words, underwriters responsible for the payment of costs under the GTA are also exclusively involved in the setting of these rates collectively.

¹⁰ [DELETED]

5 Conclusions

- 5.1 We consider that the market has – through the advent of claims management and credit hire operators, as well the growth of price comparison websites – evolved to the point where:
 - 5.1.1 not only is greater transparency (and, therefore, downward pressure) placed on the pricing of insurers;
 - 5.1.2 insurers are incentivised to offer consumers a comprehensive solution in the event of a claim, or fund a solution provided by a third party.
- 5.2 Both of these developments clearly work in the consumer interest, particularly as no evidence has been produced which shows that any associated costs are excessive or contribute to rising premiums.
- 5.3 As part of its further consideration of these issues, it is vital that the Competition Commission takes a perspective, which considers cost, but which places consumer welfare in its widest context at the heart of its analysis to ensure:
 - 5.3.1 the continued availability and accessibility by consumers of PMI products at competitive prices on a sustainable, on-going basis; and
 - 5.3.2 the protection and reservation of the legal rights of the victims of PMI accidents.
- 5.4 Improvements to the GTA as described above may be consistent with the objective of improving efficiency and lowering cost, without giving rise to unintended adverse consequences as regards consumer welfare. However, in recognising the two areas set out above as the appropriate focus for the Competition Commission's investigation, we do not consider that the current operation of the PMI market is fundamentally broken, at least as regards those areas that the Competition Commission has examined so far. Without this focus on the consumer outcome, there is a risk that this could lead to interventions or potential remedies being proposed that change the balance of the PMI market to the detriment of consumers.

BGL Group Limited

Private Motor Insurance Investigation

Response to Working Paper Theory of harm 5: Impact of MFN clauses in contracts between PCWs and PMI providers

1 Introduction

- 1.1 This response, which supplements BGL Group's 'Response to the Annotated Issues Statement dated 5 July 2013', is intended to set out, in greater detail, the position of BGL Group in relation to certain points made in the Competition Commission's working paper concerning Theory of Harm 5: impact of MFN clauses in contracts between PCWs and PMI providers.
- 1.2 Contracts between certain PCWs and PMI providers contain clauses that – subject to certain variations - require the PMI provider to promise that the premium quoted by that PMI provider to a customer accessing a policy through the relevant PCW is as cheap as that offered for the same policy to the same customer by the PMI provider through other sales channels (including any direct sales channel).
- 1.3 These clauses have been categorised by the Competition Commission as Most Favoured Nation (**MFN**) clauses.
- 1.4 While acknowledging that MFN clauses vary in scope, for the purposes of the Competition Commission's assessment, it has defined three common MFN clause types, namely those where:
 - 1.4.1 a PMI provider may not offer a particular policy on its own website for less than it is advertised on the PCW (**own website-MFN**);
 - 1.4.2 a PMI provider may not offer a particular policy on any online sales channel for less than it is advertised on the PCW (**online-sales MFN**); and
 - 1.4.3 a PMI provider may not offer a particular policy on any sales channel for less than it is advertised on the PCW (**all sales-MFN**).
- 1.5 BGL Group is concerned, however, that defining MFNs by reference to these broad categories only focuses on the distribution channel and does not reflect the true range and scope of such clauses, as balanced against the various levels of reassurance they can provide to PCW customers that they are getting the best prices available in the market through the PCW.
- 1.6 It is important that as part of any classification exercise, the varied scope of individual MFNs (and the degree to which they actually restrict alternative and cheaper PMI product offerings) should be examined in specific detail. Put simply, MFNs come in a wide variety of permutations within the classifications set out in paragraph 1.4, very few of which restrict true innovation through alternative routes or the passing on of savings (through genuine efficiencies) to customers. BGL Group has described in paragraphs 6.6 to 6.8 below the spectrum of potential MFN clauses to offer further insight into the actual potential effects of these clauses.
- 1.7 Moreover, in the PMI space, it is important to note that MFNs applied by PCWs do not benefit PCWs directly in terms of savings on input costs; instead, they help ensure that the most competitive deals are passed on to consumers.
- 1.8 Considerable attention and criticism has been focused on the subject of MFNs by certain respondents to the Competition Commission's investigation; the purpose of this

paper, aside from explaining some of the countervailing benefits of MFNs, is to identify whether such criticism is valid in the context of PMI and PCWs and in light of an in-depth understanding of how certain MFNs should actually work.

2 Competition Commission's focus

- 2.1 The Competition Commission wishes to assess whether, insofar as MFNs concern the supply of PMI, they:
 - 2.1.1 cause an adverse effect on competition and consumer detriment; or
 - 2.1.2 generate positive effects on competition and consumer welfare; or
 - 2.1.3 give rise to both and that there is a trade-off between the beneficial and harmful effects.
- 2.2 As part of this analysis, the Competition Commission has considered four main sources of harm:
 - 2.2.1 whether MFN clauses may lift constraints on cost-per-acquisition (**CPA**) fees and therefore result in higher CPA fees and, if these higher fees are passed through by PMI providers, higher PMI premiums;
 - 2.2.2 whether MFN clauses may lead to higher PMI prices irrespective of CPA fees because price reductions become more costly to PMI providers;
 - 2.2.3 whether MFN clauses may restrict entry and innovation, and therefore choice and price competition, in the provision of PCWs; and
 - 2.2.4 whether MFN clauses may shift competition from being based on prices to being based on advertising, thus causing excessive advertising, which in turn might raise barriers to entry.
- 2.3 At the same time, the Competition Commission recognises the benefits associated with MFNs. The Competition Commission notes two examples in particular, that:
 - 2.3.1 MFN clauses may enhance the search experience by reducing the need for consumers to shop around to find a cheaper price; and
 - 2.3.2 MFN clauses may protect the sunk and fixed cost investments required for a good PCW offering.
- 2.4 However, while these benefits are valid, they do not recognise all of the efficiencies associated with MFNs, for example, by reducing the need and cost for relevant PCWs to continually renegotiate terms with PMI providers to ensure that the most competitive prices are displayed on their site.
- 2.5 Finally, BGL Group would also reiterate the point raised in its 'Response to the Annotated Issues Statement dated 5 July 2013' that sales of PMI via all PCWs collectively amount to only around a quarter (estimates vary between 22% and 27%) of the policies in force currently. It follows that the existence of any bilateral contractual term between a PCW and PMI provider is unlikely to have a significant impact upon the operation of the PMI market.

3 Background

3.1 It is important, as part of any analysis of the effects of MFNs in the context of PMI premiums, to recognise the following:

3.1.1 The Competition Commission has identified that despite the presence of MFNs *“CPA fees have risen only slightly during recent years, at near or below the rate of general inflation”*¹

3.1.2 The AA has, again despite the presence of MFNs, recently reported a record (9.8%) fall in British motor insurance premiums (between July 2012 and July 2013) and the *“sixth successive quarterly drop in premiums”*²

3.1.3 *[Deleted]*

[Graph deleted]

3.2 As regards the rationale for MFNs, evidence suggests that consumer confidence in finding the best price remains consumers’ main motivation for using PCW’s. According to research carried out earlier this year by the European Commission on the subject of price comparison tools:

*“Finding the best price remains the number one reason for consumers using CTs [comparison tools], with many of them using price comparison websites as an information source to find the best deal even if making the final purchase offline”*³

3.3 The same research⁴ highlights the need for PCWs to be able to engender trust amongst consumers and reports the following:

“...in a consumer market study on e-commerce conducted in 2011 on behalf of the European Commission⁵ only 10% of the consumers who said they did not use price comparison websites cited lack of trust as the reason. However the same study revealed that one in eight respondents felt that they had been misled by price comparison websites. In most of the cases, the reason was that they went on to find a cheaper price elsewhere, while in other cases the price indicated on the price comparison website did not correspond to the price on the seller’s website. Such discrepancies, if not adequately addressed, risk further confusing and misleading consumers and undermining their overall trust in CTs”

3.4 This conclusion is consistent with earlier UK research:

*“Future levels of price comparison site use and the way they are used is not dependent solely on market coverage and cheap insurance quotes, but also consumer attitudes towards – and trust in - these sites”*⁶

4 Own-website MFNs

¹ Competition Commission working paper ‘Horizontal concentration in PCWs’ – para. 14

² AA British Insurance Premium Index – Quarter 2 2013, page 2

³ European Commission Directorate-General for Health and Consumers (DG SANCO) - “Comparison Tools - Report from the Multi-Stakeholder Dialogue”. Report presented at the European Consumer Summit on 18-19 March 2013 – page 26

⁴ Ibid, page 18

⁵ “Consumer market study on the functioning of e-commerce” (2011), conducted on behalf of the European Commission, DG SANCO, by Civic Consulting (**Civic Report**)

⁶ Consumer Intelligence “The Use of Price Comparison Sites in the UK General Insurance Market”, Emily Knight, Strategist, Consumer Intelligence, page 21

4.1 The Competition Commission has indicated that in the case of an own-website MFN, it does not expect substantial harm to arise on the basis that:

4.1.1 Competition over CPA fees is unlikely to be weakened by own-website MFNs. The Competition Commission notes that other channels, and especially other PCWs, continue to be a source of competition when an own-website MFN is in place.

4.1.2 The Competition Commission's survey of PMI policyholders also suggests that most consumers are likely to visit multiple channels, with 63% of those who searched on one PCW visiting more than one PCW.

4.1.3 The Competition Commission has also indicated that it has no evidence that CPA fees are higher for policies with own-website MFNs than for those with no MFN.

4.2 BGL Group would not disagree with the logic of this element of the Competition Commission's analysis as regards own-website MFNs, albeit it is unable to assess the impacts in detail without having access to the same data as the Competition Commission.

4.3 The Competition Commission also suggests that entry to the PCW market, which could be based on a new entrant's ability to compete on CPA fees (on the assumption that PMI providers would pass through their lower costs to lower policy prices), would not be hampered by an own-website MFN. As regards this suggestion, while BGL Group accepts that an own-website MFN would not discourage new-entry, BGL considers that the ability of a wider MFN to restrict new entry is purely theoretical.

4.4 In this regard, BGL Group would make two critical observations:

4.4.1 *[Deleted]*

4.4.2 There is no evidence, as far as BGL Group is aware, to support the proposition that, irrespective of the existence of any MFN (own-website MFNs or otherwise), PMI providers would pass through any reduction in cost to lower PMI premiums.

This is demonstrated most clearly in the context of insurance renewals where the PMI provider has already acquired a customer and therefore has no or negligible acquisition costs.

If PMI providers were disposed towards extending such cost-savings to customers, one would expect to see lower premiums offered at renewal (assuming the customer's risk profile had not deteriorated) particularly as the PMI provider will have had time to assess the customer's risk over the previous year; however, the opposite is true and reports of renewal premiums being up to five times higher than new business premiums have, in July, prompted the Financial Conduct Authority to investigate PMI providers to see whether customers are being treated fairly.⁷

4.4.3 More importantly the wider elements of this investigation highlight the number and variety of factors influencing PMI pricing, including claims costs and provider models. We would additionally reference shared group costs and investment returns as significantly greater impacts on consumer premiums.

For these reasons, while BGL Group would agree with the Competition Commission that the above concern is not relevant to own-website MFNs, BGL Group considers that there is no empirical evidence to support such a concern in the context of wider MFNs

⁷ *[Deleted]*

either, as the impact of CPAs on premiums is negligible, nor are theoretical savings likely to be passed on to customers.

- 4.5 The Competition Commission also comments that the degree to which an own-website MFN will make it costlier for a PMI provider to reduce its prices depends on the proportion of sales that go through PCWs covered by the MFN compared with the proportion going through the direct channel only.
- 4.6 The Competition Commission concludes that if sales exclusive to the direct channel are a small proportion of total sales, it would expect the own-website MFN to increase significantly the cost of a price reduction on the PMI provider's own website.
- 4.7 BGL Group interprets this conclusion in the sense that, in the context of an own-website MFN, a PMI provider choosing to lower the price on its own website would face the prospect of having to lower prices on the PCW covered by the MFN and therefore, if the proportion of sales going through the PMI provider's own website were small, they would have a disproportionate effect on discounts generally (assuming the PCW covered by the MFN, as opposed to other channels, accounted for most sales). While, in principle, this is correct, the benefits of having a mechanism which encourages the PMI provider to offer the most competitive pricing to the largest group of customers should also be recognised.
- 4.8 Finally, the Competition Commission notes that the mechanism by which MFNs might lead to high levels of advertising expenditure is directly related to the degree to which they allow for higher CPA fees. The Competition Commission then concludes that since it expects CPA-fee competition to be maintained by own-website MFNs, it would not expect them to lead to higher advertising expenditure.
- 4.9 *[Deleted]*
- 4.10 *[Deleted]*.
- 4.11 *[Deleted]*.
- 4.12 *[Deleted]*.
- [Graph deleted]*
- 4.13 *[Deleted]*
- 4.14 *[Deleted]*.
- 4.15 Evidence gathered by the Competition Commission (and referenced in paragraph 35 of the working paper) would suggest that CPAs, irrespective of their negligible impact on premiums, are simply a question of the respective negotiating positions of the parties involved. In this regard, the Competition Commission reports that CPAs tend to be between 6% and 8% lower for the largest 50% of insurers, as against the smallest 50%.
- 4.16 *[Deleted]*.

5 Online-sales MFNs

- 5.1 The Competition Commission suggests that an online-sales MFN, which (by specifying that a PMI provider may not offer a particular policy on any online sales channel, including the PMI provider's own website, for less than it is advertised on the PCW) has a wider scope than an own-website MFN, is more likely to lead to harm.
- 5.2 The Competition Commission bases its view on the assumption that online-sales MFNs reduce the scope for CPA fee competition being used to gain market share. In

particular, according to the Competition Commission, CPA fee competition between PCWs is effectively undermined.

5.3 The theory goes that a PCW wishing to gain sales by lowering its CPA fee to a PMI provider in reliance on the PMI provider offering lower consumer prices will not be able to follow this strategy if another PCW has an online-sales MFN which applies to the policies concerned. The incentive for competing PCWs to lower their CPA fees is thus reduced. Moreover, according to the Competition Commission, a PCW with an online-sales MFN which is considering a rise in the CPA fee will not have to worry that such a rise will make its offering uncompetitive, since any pass-through of the CPA fee rise will need to be applied to all PCWs.

5.4 *[Deleted]*

5.5 *[Deleted]*:

[Graph deleted]

5.6 *[Deleted]*

5.7 *[Deleted]*.

5.8 An equally plausible explanation for lack of entry based on this strategy – assuming it is in fact the case – is that PCWs recognise that CPAs do not have a bearing on PMI premiums, and so any new entrant would focus its attention on being able to build a strong brand and customer proposition which will enable it to elicit better deals for its customers from the PMI providers using its platform.

5.9 The Competition Commission is concerned that an online-sales MFN might also stifle innovation which was aimed at reducing PMI premiums. It gives the example that, as a result of the MFN, a PCW would not see any direct benefit to its market share from improving its fraud detection or from enabling the more accurate pricing of risks.

5.10 In the Competition Commission's view, these innovations could plausibly reduce premiums by reducing the cost of provision but a PMI provider constrained by an online MFN could not reward the PCW which invested in such innovation by reducing PMI premiums through its website without also reducing PMI premiums to all PCWs with the MFN. According to the Competition Commission, incentives to innovate are therefore reduced. BGL has detailed evidence to refute this conclusion. *[Deleted]*.

5.11 *[Deleted]* BGL does not agree with this conclusion. The reason is that any innovation which allows a PMI provider and an alternative partner PCW (or other platform) to analyse the customer or assess risks in greater detail would be likely to result in the creation of a different policy (and hence any MFN which requires the PMI provider to offer the same or better price via the beneficiary PCW as it does on the basis of the same policy through any other PCW or platform would not bite).

5.12 It follows that MFNs – unless drafted in such a way so as to focus entirely on the identity of the customer to the exclusion of any other variables and to restrict any better offer via a third party to that particular customer – will not inhibit genuine innovation or investment of the type envisaged by the Competition Commission. BGL is not aware that any such widely drafted MFNs exist in the PMI market. A more detailed explanation of the different contractual variables associated with MFNs, which supports the position that they should not be categorised simply by reference to the channel through which they are sold is set out in paragraphs 6.6 to 6.8 below.

5.13 Finally, the Competition Commission surmises that, to the extent that online-sales MFNs increase CPA fees, they will tend to encourage competition for market share through advertising expenditure rather than through price competition. *[Deleted]*.

5.14 [Deleted]

5.15 [Deleted].

6 All-sales MFNs

6.1 The Competition Commission suggests that all-sales MFNs (which extend beyond online platforms to other routes to market) have a similar, but stronger, potential for harm than online-sales MFNs. In BGL's view, the above comments apply equally to all-sales MFNs.

6.2 The Competition Commission acknowledges that it is possible to circumvent any MFN. However, it posits that many of these strategies are likely to be costly (for example, a multi-brand strategy) or in fact restricted by MFN clauses (for example, time-limited price-based offers).

6.3 [Deleted]

6.4 MFNs need to underpin a solid customer savings proposition or experience (even if, as result of the rigours and complexities of advertising standards, the same is not marketed to customers explicitly). In other words, a PCW needs to be able to live up to the customer's expectation that the customer will be able to access the most competitive deals in the market (or a significant part of it) and make good savings. This is born out by independent consumer research, which reports why consumers use PCWs and ranks 'cheapest prices' highly.⁸

[Graph deleted]

6.5 At the same time, in the context of PMI, MFNs tend to be confined to ensuring the most competitive proposition on like-for-like products. In other words, despite being a relatively standard base product, there is considerable scope for customisation. With this in mind, MFNs, even those that are seemingly widely drafted, do not prevent genuine product differentiation (and cheaper pricing) if the product being offered to the customer can be properly differentiated.

6.6 The following explains how a PMI provider (or intermediary) could come up with a better premium for a customer even though the PMI provider has agreed an MFN, even an all-sales MFN. The PMI provider or intermediary could:

6.6.1 ask the customer a different set of questions (to those developed/posed by the PCW covered by the MFN) to elicit a different risk/consumer preference profile, for example, a different excess level;

6.6.2 offer different product features or value-added services, for example, free or discounted Legal Expenses or Breakdown Cover;⁹

6.6.3 offer a non-PMI product related incentive, ranging from free MOTs to cuddly toys;¹⁰

6.6.4 offer cash-back, although this may be restricted by some MFNs;¹¹

6.6.5 run a multi-brand strategy, offering different brands and/or cover levels and different pricing through different channels.¹²

⁸ Civic Report (see footnote 5), reproduction of graph (23,619 PCW users) on page 65.

⁹ [Deleted]

¹⁰ [Deleted]

¹¹ [Deleted]

¹² [Deleted]

- 6.7 Not all of these initiatives require sophisticated processes or significant investment. Indeed, the fact that numerous PMI providers already seek to differentiate their products in this way irrespective of the existence of MFNs, belies the notion that they are prohibitively expensive or not feasible. On the contrary, they encourage product differentiation and innovation.
- 6.8 As indicated in paragraph 6.6 above, it should be stressed that MFNs have the potential to vary in scope and impact quite considerably and that by placing them in three broad categories by reference to sales channel (own-website, online or all-sales) the Competition Commission risks strongly overstating the restrictive effects of such provisions. Defining MFNs by reference to these broad categories does not reflect their actual impact nor recognise the benefits they can provide to PCW customers in terms of reassuring them that they will get the best prices available. By way of illustration, in the PMI PCW market the key variables in an MFN clause are:
- 6.8.1 The identity of the customer (and the definition of the insurance product or risk covered by the MFN clause)
- At a more restrictive end of the spectrum would be a clause which focuses on prices delivered to an individual customer without reference to timing, the range and type of data they provide, their willingness to entertain different variables (levels of excess etc) or the exact risk that customer is seeking to insure.
- At the least restrictive end of the spectrum would be a clause which focuses on quotes provided the customer for the exact same risk on a like for like basis based on exactly the same data. In such a situation, the MFN clause would only bite where the customer provides exactly the same information to the insurer, wants exactly the same product (level of cover) and is, potentially, time limited (eg to quotes provided on the same day).
- 6.8.2 The range of exclusions to the MFN clause (in addition to those set out in paragraph 6.6 above)
- In BGL Group's experience, notwithstanding the above scope for variation, MFN clauses may incorporate a range of exclusions where the requirement to offer the best price may be qualified in some way, for example:
- (a) Offers to the insurer's own employees
 - (b) Offers to the insurer's existing customers
 - (c) Offers to customers in defined groups who may benefit from targeted discounts by the insurer
 - (d) Offers to customers who vary the data provided when accessing the insurer via a route other than CtM
 - (e) Facilities enabling the insurer to carry out limited price testing on its own website
- 6.8.3 The distribution channels covered by the MFN clause
- As indicated in the Competition Commission's analysis already, a more restrictive clause would cover all sales channels both online (insurer website accessed directly, via aggregators or via any click-through advertising etc) and offline (brokers, branches, telephone). A less restrictive clause would be one covering only one specific sales channel.
- However, as already described, this is only one feature of any MFN, so even a clause covering all-sales (ie a wide MFN) has the potential for allowing very considerable competition and innovation depending on how

the other features of that clause are drafted – in order to balance the desirability of giving customers the confidence that they are getting very competitive prices with fostering some sensible scope for proportionate variation and innovation.

- 6.9 This scope for variation within MFN categories has not, in BGL Group's view, been adequately recognised as part of the Competition Commission's assessment of MFNs to date. This has led to excessive criticism of wide MFNs. The Competition Commission should also, in BGL Group's view, give greater weight to the benefits associated with MFNs, although BGL agrees with the Competition Commission's comments that wide MFNs afford greater reassurance to customers.
- 6.10 In BGL Group's view, taking these points into consideration, MFNs strike a balance between, on the one hand, delivering a satisfying customer experience and trying to engender the trust which is critical to the ongoing viability of PCWs; and, on the other, avoiding inhibiting any form of product differentiation and customisation for the same consumer.
- 6.11 At the same, contrary to the Competition Commission's suggestion (in paragraph 46 of the Working Paper) that wide MFNs can lead to coordination and upward pressure on PMI premiums, the ability to differentiate offerings (and the fact that many offerings are being differentiated) would suggest that these concerns are misplaced and, at best, theoretical. This is aside from the absence of any empirical evidence linking wide MFNs with higher PMI premiums, which the Competition Commission acknowledges in paragraph 60 of the Working Paper.

7 The benefits of MFNs

- 7.1 BGL considers that the Competition Commission has identified two key benefits of MFNs; however, these benefits should be given greater prominence in the Competition Commission's analysis and developed further. In addition, BGL considers that other benefits are linked to MFNs, which are not addressed in the Working Paper. The Competition Commission notes that MFNs may be pro-competitive on two grounds:

1. Consumer experience and trust

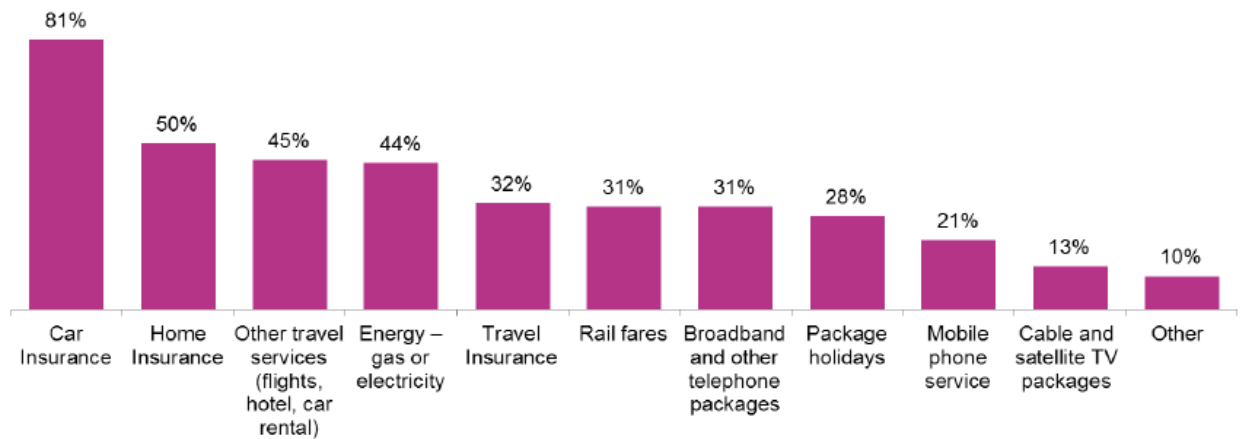
- 7.2 MFNs enhance the consumer experience of searching for PMI products by reducing the need for consumers to shop around to find a cheaper price. With an MFN in place, consumers can reasonably infer that they are getting a good deal on the PCW, which reduces their search time and effort.
- 7.3 The Competition Commission comments that this effect would be particularly strong if the MFNs are commonly known to be in place, but could also be the result of learning. BGL agrees that greater consumer awareness of MFNs would be beneficial; however, it would point out the practical and legal difficulties of communicating such MFN arrangements (which may not cover all PMI providers and which may be subject to a variety of permutations) to consumers in a way that is concise, easily understandable and does not run the risk of overstating the proposition and falling foul of other consumer protection regulation.
- 7.4 In any event, while PCWs try to communicate to customers the substantial and tangible savings that they can achieve, the most convincing way of instilling consumer confidence in a PCW's proposition is to ensure that consumers' actual experience of using the site is satisfying and that, based on the results achieved by the consumer, the site has in fact delivered the best price. If the consumer subsequently discovers that he or she can secure a better like-for-like deal elsewhere, then trust in the PCW is eroded.
- 7.5 Consumers' focus on price and the importance of consumer trust to a successful PCW proposition is continually reflected in different consumer research:

"Finding the best price remains the number one reason for consumers using CTs [comparison tools], with many of them using price comparison websites as an information source to find the best deal even if making the final purchase offline"¹³

"Future levels of price comparison site use and the way they are used is not dependent solely on market coverage and cheap insurance quotes, but also consumer attitudes towards – and trust in – these sites"¹⁴

- 7.6 Research carried out by RS Consulting for Consumer Futures (which will become part of Citizens Advice in 2014), reveals that consumers use PCWS to compare and purchase PMI (81%) more than any other consumer product (see Fig 4.10 below from the RS Consulting Report)¹⁵, hence the importance of effective and trusted PCWs in the PMI space is critical.

Figure 4.10: Products/ services that price comparison websites are used for



Base: 1088 (All respondents who have used a price comparison website in the last 2 years)

- 7.7 Further, consumers' principal aim (85%) for using PCWs is to find the 'best deal'.¹⁶

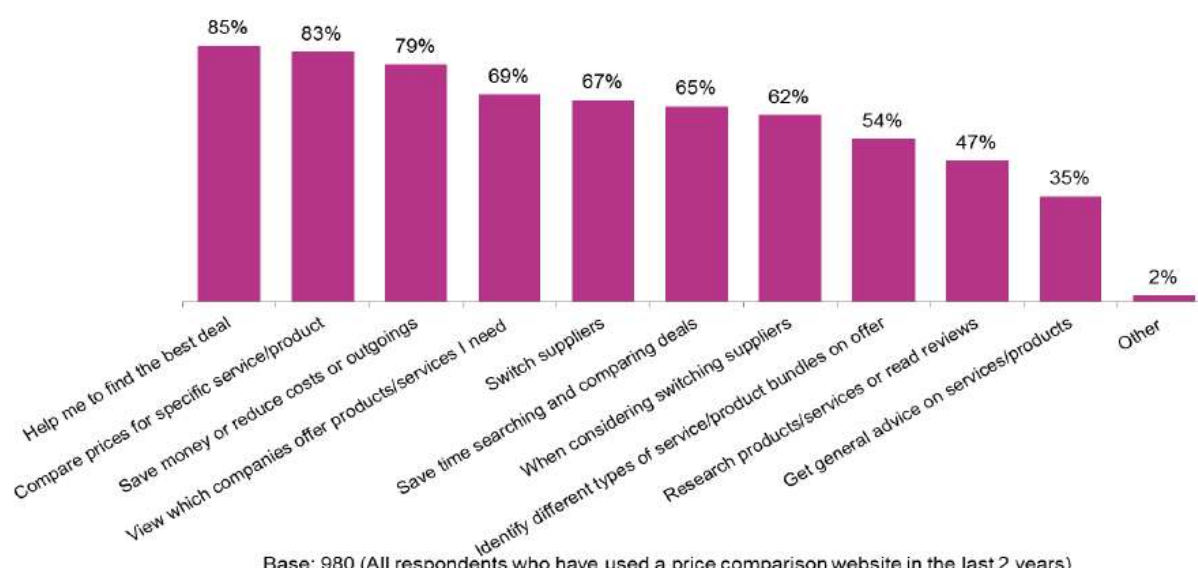
¹³ European Commission Directorate-General for Health and Consumers (DG SANCO) - "Comparison Tools - Report from the Multi-Stakeholder Dialogue". Report presented at the European Consumer Summit on 18-19 March 2013 – page 26

¹⁴ Consumer Intelligence "The Use of Price Comparison Sites in the UK General Insurance Market", Emily Knight, Strategist, Consumer Intelligence, page 21

¹⁵ "Price comparison websites: consumer perceptions and experiences" - A report by RS Consulting for Consumer Futures (July 2013) (**RS Consulting Report**), page 22

¹⁶ Ibid, page 20

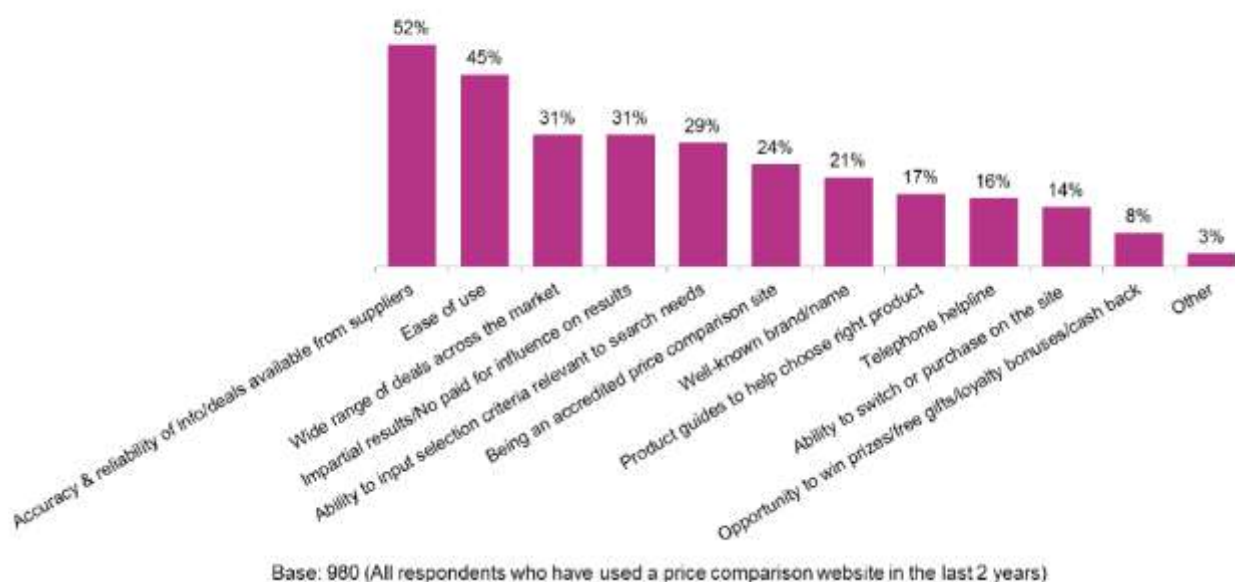
Figure 4.9: What price comparison websites are used for



7.8 Many consumers have noticed a rise in the cost of basic products and services, such as utilities and insurance in the last few years. It follows that they use the PCWs to see if they can find a better deal that saves them money on bills. Consequently, the primary benefit of PCWs is getting better deals and saving money. If PCWs are unable to accommodate this basic objective, which is likely to be underpinned by a variety of MFNs, it loses its core differentiating factor and strength.

7.9 The same consumer research reveals that accuracy and reliability are also important to consumers using PCWs:¹⁷

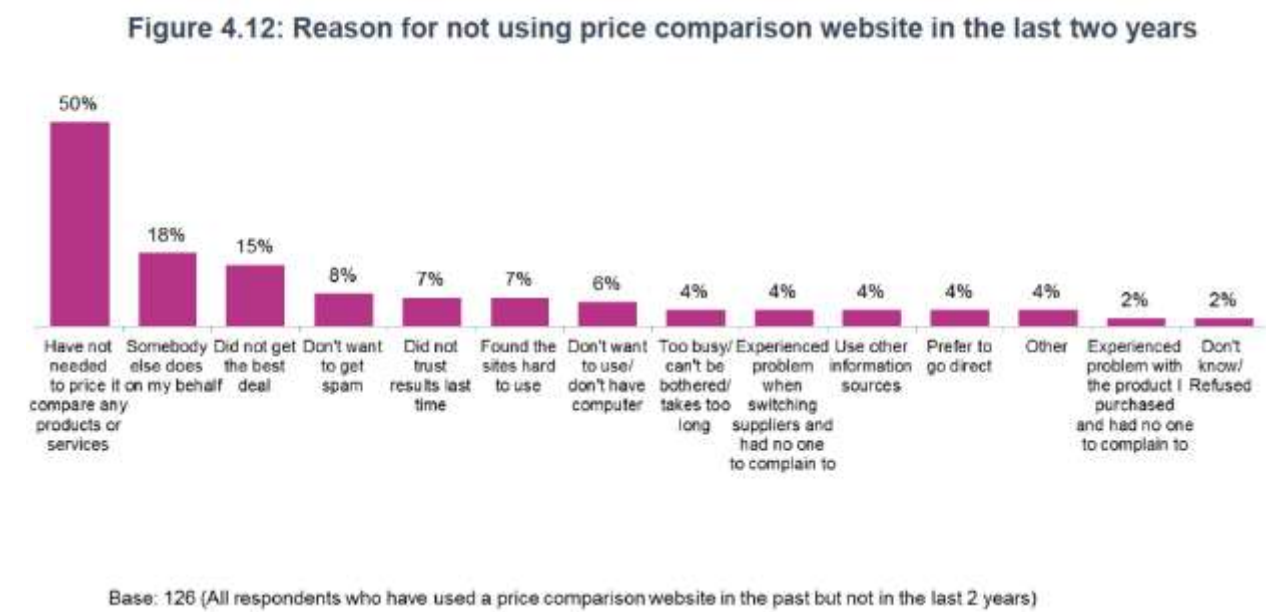
Figure 5.3: Most important features when using price comparison websites



7.10 At the same time, in respect of consumers surveyed who had discontinued using PCWs over the past two years, aside from those who had not needed to undertake price comparisons and those who had delegated the exercise to someone else, consumers primary reasons (15% and 7%) for choosing not to use PCWs was their belief that they did not get the best deal or did not trust the results last time round.

¹⁷ Ibid, page 37

7.11 This research highlights the very real impact for PCWs who are unable to offer (or, more importantly, deliver) any reassurance to the consumer that they are getting the best price:¹⁸

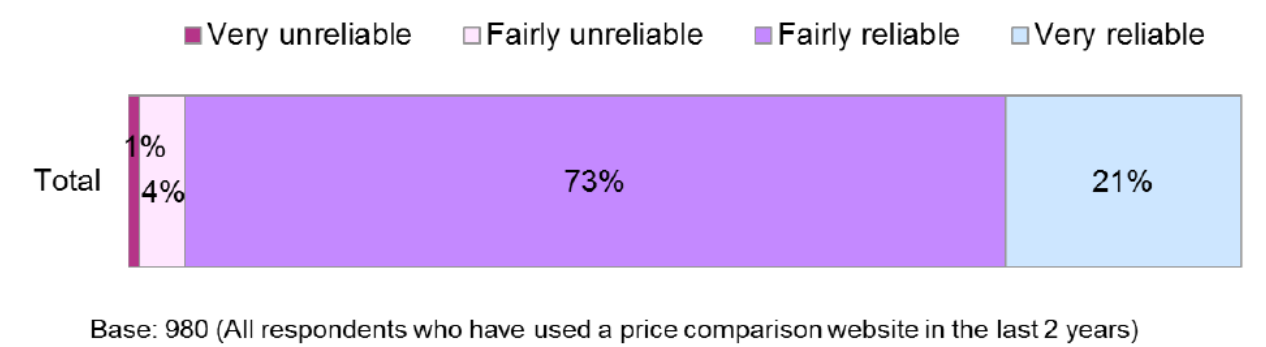


7.12 It follows that while consumers also rate other factors, such as ease of use and breadth of offering, highly, engendering consumer confidence that the PCW will deliver the best deal is the most important factor within the control of the PCW to ensuring that consumers feel confident enough to continue to use it.

7.13 PCWs have, at least historically and over a period when MFNs have been in place, been successful in inspiring consumer trust. Consumers place a high degree of confidence in PCWs.

7.14 RS Consulting reports that a large majority (94%) of those who recall PCWs they have used consider them to be either ‘very’ (21%) or ‘fairly’ reliable (73%):¹⁹

Figure 6.1: Reliability of price comparison websites



7.15 This is the case notwithstanding the fact that research reveals that the majority of customers consult multiple sites. RS Consulting does not attribute this to any mistrust

¹⁸ Ibid, page 25
¹⁹ Ibid, page 48

of PCWs themselves; rather a belief that the sheer volume of data makes further research expedient:

“For most consumers, the verifying and cross-checking undertaken is not borne out of a feeling that providers are wilfully trying to mislead them, but an instinctive belief that the sheer volume of information online makes fact-checking necessary. For example, each site may have a slightly different selection of providers and associated deals, and some sites may have more recent information than others. By casting their search nets a little more widely, they can feel confident that they haven’t missed the best deals.”²⁰

- 7.16 BGL Group considers that while there is scope for any PCW to improve its offering to consumers, which is something that it continually strives to do whether in terms of best practice, technological investment or securing the most advantageous terms for its customers, a reliable proposition built around being able to offer its customers the best like-for-like deals is core to its growth and longevity.
- 7.17 If BGL Group and other PCWs are unable to offer their customers any reassurance on this, then they simply become an online marketing tool for PMI providers rather than a device to empower consumers to achieve real savings.
- 7.18 MFNs are a core part of this proposition, as without them (or with them in only a highly diluted form), customers will lose any confidence that they are getting a good, and ideally the best, deal. This will result in customer inertia and, in the longer term, less downward pressure on PMI prices, with customers remaining with their incumbent PMI providers, who are far more likely to charge them higher prices (as demonstrated by the recent decision of the FCA to investigate this practice) .

2. Fostering investment and innovation

- 7.19 BGL Group considers that MFNs help protect the sunk and fixed cost investments required for a good PCW offering.
- 7.20 If a PCW invested in offering good-quality search (including the investment required to advertise such a product) but consumers discovered that the policy offered on the PCW was available cheaper elsewhere, they might use the search but not purchase the product through the PCW. As highlighted by Mintel research:

*“Many consumers begin the purchasing journey using price comparison sites but end up dropping out before the process is complete. Many choose to drop out in order to check if they can get a better deal by going directly. **Price comparison sites should consider offering customers a price promise guarantee [Emphasis added]**”²¹*

- 7.21 In these circumstances and given the challenge that each PCW faces, it is important to be able to offer the customer an incentive to purchase through the PCW, rather than the PCW simply operating as an online shop window. If a PCW is unable to do this, the resultant risk is that it will, in the longer term, reduce the quality of its offering or go out of business. Consumers will then suffer as effective and sophisticated search solutions will not be available to them.
- 7.22 An MFN acts to protect a sunk cost in the PCW and allows a PCW to earn a return on its investment.
- 7.23 In BGL Group view, a wide MFN is a proportionate reaction to the problem of fixed and sunk cost recovery.

²⁰ Ibid, page 52

²¹ Stevan Obradovic, Financial Services Analyst - Web Aggregators in Financial Services - UK - June 2013 (Mintel)

- 7.24 BGL Group notes that there are ways other than CPAs supported by MFNs to cover such costs; however, in its view, these alternatives are not practicable or, indeed, are likely to give rise to more adverse outcomes. For example, upfront fees or annual subscriptions would create greater barriers to entry for newer or smaller PMI providers and a cost per click model would take away the direct correlation between policy sales and acquisition costs which contributes so significantly to the efficiency of the PCW model.

3. Operational efficiencies

- 7.25 *[Deleted]*

4. Additional observations

- 7.26 BGL Group agrees with the Competition Commission that the pro-competitive effects of MFNs become stronger as the scope of each MFN becomes wider (at least insofar as such clauses are commonly drafted presently).
- 7.27 It is fair to say that the comfort a consumer has from knowing that no alternative channel will offer the same product at a cheaper price is greater than in, say, a situation where the MFN is confined to the PMI provider itself. More importantly, if when a consumer shops around he or she is routinely able to identify lower prices for the same products (because the PCW has no or only a narrow MFN), the consumer will see little advantage in using that PCW in future.
- 7.28 It is also correct that the probability that a PCW is used for search but is not the recipient of the conversion fee is lower if the chance of finding a cheaper similar product elsewhere is lower, as would be the case with a wide MFN in place.
- 7.29 As regards the use and proliferation of MFN clauses, BGL does not consider that they have been introduced with the intention or indeed the effect of shielding PCWs from the full impact of competition. On the contrary, they are central to the customer proposition of effective and increasingly popular PCWs and, indeed, as the popularity of certain PCWs has increased, they have been able to negotiate them with more PMI providers.

8 Conclusions

- 8.1 In light of the above, while BGL Group agrees that own-website MFNs have weak anti-competitive effects, their capacity to deliver tangible pro-competitive effects requires further investigation
- 8.2 At the same time, BGL Group would argue that wider MFNs, as currently defined by the Competition Commission, cannot be categorised as forming part of a single group (or even divided between online-sales MFNs and all-sales MFNs) as to do so exaggerates the actual ability of such clauses to limit alternative competitive offerings and innovation.
- 8.3 Moreover, while BGL Group agree that wide MFNs have the capacity to deliver significant pro-competitive benefits, any anti-competitive effects are unproven. This is for a number of reasons, including:
- 8.3.1 there little if any correlation between CPAs and PMI premiums;
 - 8.3.2 there is little if any correlation between (wide or narrow) MFNs and CPAs;
 - 8.3.3 there is no evidence that PMI providers pass on efficiency savings in any event (as demonstrated by significantly higher priced renewals);
 - 8.3.4 MFNs concern only a small part of the PMI market (in particular they do not concern renewals);

- 8.3.5 even the most broadly drawn MFN will, while trying to deliver the best like-for-like pricing commitment, not limit differentiated and genuinely innovative value-added offerings through alternative channels.
- 8.4 Further, BGL Group is not convinced that advertising expenditures would be reduced in the absence of MFNs (on the assumption that price competition would replace advertising-based competition). On the contrary, the deterioration in trust in any PCW's ability to deliver the best prices for its customers would result in customer inertia and resultant exposure to higher renewal prices, which PCWs would have to try to address through increased advertising expenditure. This, in turn, could have the effect of increasing barriers to market entry.
- 8.5 To summarise BGL Group's position, in its view, the Competition Commission should refrain from any strong pronouncement as to the compatibility of MFNs or certain categories of MFN with competition law, whether expressly or impliedly. This is all the more important in the absence of a very detailed analysis of MFNs revealing solid evidence of consumer detriment in the PMI market connected with their application. In BGL Group's view, neither MFNs nor broad categories of MFN (direct, online-only or all-sales) have been shown to be problematic from a competition law perspective, at least to the point where any category is likely to give rise to an appreciable effect on competition, or one that is unlikely to merit exemption. A much more circumspect approach is required, which recognises that such clauses are part and parcel of normal commercial dealings and should be assessed on their individual merits, taking into account their drafting and the precise nature of any restriction, the nature of the market, the size of the parties involved, the actual adverse impact (if any) on the market and a thorough assessment of the necessity of the provision and its capacity to deliver pro-competitive benefits. This more balanced position should be clarified in any subsequent Competition Commission paper. In BGL Group's view, despite calls from certain quarters, the Competition Commission should avoid prejudging any common contractual provision of this nature, particularly when such a provision is not proven to give rise to an appreciable effect on competition or, even if it did, would normally benefit from exemption under EU competition law."