

Dear Sirs,

We act for Gocompare and have been asked to submit the following comments to the Competition Commission ("CC") on its paper on MFNs between PCWs and Insurers. This was published on the working papers section of the CC's website and is part of the on-going inquiry into Private Motor Insurance ("PMI") being conducted by the CC.

Our client is concerned that the CC has misinformed itself on the issue of MFNs and has erroneously raised some preliminary concerns about wide MFNs (and to a lesser extent narrow MFNs) and their potential impact on competition in the market for the provision of PMI in the UK.

1. PCWs

Consumers save millions of pounds every year through PCWs. The market functions effectively and transparently. It is of huge benefit to consumers. Consumers understand the model and how to use it. Prior to the entry into the market of PCWs, comparing complex insurance products was difficult, time consuming and costly to consumers.

[X] million consumers visited our site in the first seven months of this year (of which [X] million were PMI consumers), on average 98.5 % could make a saving. In July 2013 51% of consumers could achieve a saving of £237.74 on their PMI renewal. PCWs offer a cost effective route to market for insurers and they lower the barriers to entry in the PMI market for new and niche insurers as up-front costs are limited.

If the CC seeks to undermine the role of PCWs by removing MFNs, the market will be destabilised and consumers will face an uncertain future. Insurers will no longer face empowered consumers and insurance premiums will inevitably rise and consumer costs will multiply as they seek (and fail) to replicate on an individual basis the essential role currently played by PCWs. Insurers will face higher advertising and market spend and undoubtedly they will seek to pass these costs onto consumers emboldened by the lack of transparency in such a market.

2. Evidence of Harm

The evidence led in the paper is insufficient, unclear and so heavily redacted that it is impossible for any party involved to defend its position and all rules of natural justice are therefore circumvented. [X].

If other PCWs have been able to increase CPAs above the rate of inflation then the CC does not have definitive evidence that this was caused by the application of MFN clauses. The CC mentions in its own paper several other equally credible reasons why this may have happened (including the role of niche players, the relationship between insurers and PCWs and the individual bargaining priorities of individual insurers and PCWs). The CC can only determine increases in CPAs have been caused by MFNs if it is able to discount all of these alternative reasons, something it has utterly failed to do so far.

In the absence of definitive proof [X], the CC is unable to reach the conclusion that MFNs are the cause of increased CPAs. Nor can it justify arguing that MFNs (particularly wide MFNs) are distorting competition with the possibility that it may then seek to remove them to restore "effective" competition.

In the first seven months of this year, the average CPAs paid to Gocompare by insurers was [X] per policy. The income per PMI visitor to the Gocompare website was [X]. If the CC remains concerned that CPAs may be marginally higher than a fully functioning market would suggest (despite all evidence to the contrary) it must take into account the risk that

removing MFNs would endanger the savings consumers currently are able to achieve because they have confidence in PCWs. Something which is underpinned by MFNs.

3. Potential Causes of Harm in the CC paper

The CC paper suggests there are four potential causes of harm (at para 3);

- * higher CPAs as no competitive constraints
- * MFNs mean price reductions have to be universal so would be more costly to insurers
- * MFNs restrict entry and innovation as lower premiums cannot be offered to a single PCW
- * MFNs shift price competition to advertising spend and create a barrier to new entry.

Overall Gocompare remains of the view that in its commercial negotiations it faces competitive constraints in the setting of its CPA even although it is only a small proportion of the overall cost to insurers in providing consumers with insurance. In keeping CPAs level over time, insurers have effectively constrained Gocompare's CPAs. As an insurer sets out to negotiate its contract with any PCW, it will be keen to ensure that the CPA is as low as possible to ensure that its profits are maximised when premiums are written via that PCW. This downward pressure on CPAs is evident to Gocompare in its negotiations with insurers and in the resulting CPAs.

Additionally, PCWs drive clicks and visits by ensuring they offer a wide panel of insurers. This further constrains the PCW in negotiating terms with insurers (including CPAs). PCWs cannot risk losing insurers from their panel, as a broad panel is important to consumers, ensures all consumers will be offered a policy and this fact is regularly monitored by the financial press and consumer websites (e.g moneysavingexpert.com).

On the second harm noted, the report shows a fundamental misunderstanding of how PCWs operate. Their aim is to give consumers confidence so that, despite the diverse and complex market covered, they are easily able to locate one of the lowest cost policies for their insurance needs. To put it another way, PCWs are there to help consumers easily find substantial cost savings and to exert downward pressure on insurance premiums.

In the absence of MFNs, consumers will be the ones to suffer; they will face an insurmountable task to locate these cost savings. It may be true that in certain circumstances insurers (who cannot circumvent their MFNs) may face higher costs as they will have to universally offer lower premiums if they are trying to gain greater sales volume; but surely this is in the consumer interest and since insurers remain intent on increasing market share they will be likely to offer all consumers lower prices. All that MFNs do is ensure that insurers do not only offer their lower premiums through a limited number of associated outlets but to all consumers regardless of their ability to spend excessive time and money comparing the market.

Innovation is a function of this market and is part of the relationship between Gocompare and all the insurers on the panel. However, it is important to note that PCWs are a shop window for insurers. It is not the role or task of PCWs to drive innovation or lower prices. It is for them to inform consumers so that they may determine with whom they wish to contract and in turn consumers are empowered to drive prices down or to encourage innovation through their choice of insurer. It is no more the job of ITV or any other advertiser to encourage innovation at Proctor and Gamble than it is for Gocompare to drive it at Swinton.

Nevertheless, Gocompare is acutely aware that consumers have a wide range of well recognised PCWs so it is keen to ensure it offers the best journey for the consumer seeking insurance. Additionally, insurers do not need to be on all PCWs as most consumers check more than one. Gocompare is in regular contact and discussion with its panel to ensure

thatGocompare offers what insurers need in terms of the innovation they require to match consumers to the right policy and to quote the best deal available.

Finally, Gocompare is uncertain what the CC believes to be the right level of advertising or indeed why it considers that the current level is inhibiting new entry. Tesco and Google who are the most likely undertakings to contest the market are unlikely to be concerned about the levels of current advertising spend. In addition, the advertising spends of the PCWs ensure that new and niche insurers can actively participate in the market, something that might prove prohibitively expensive if the PCWs were not active in this way. Finally, we are unaware of any evidence that the CC may have that suggests that the market needs new PCW entry to ensure that this market functions effectively. Without this evidence the CC cannot reach a conclusion on advertising spend as it has failed to assert that new entry is needed.

4. There are two main pro-competitive grounds (identified in para 4);

- * reduced need for consumers to shop around and
- * protection of a PCWs sunk and fixed costs.

Gocompare finds the evidence listed in these paragraphs to be accurate and convincing. Consumer detriment would occur if the CC sought to intervene in this well-functioning market by removing MFNs (either wide or narrow). The CC has not shown evidence of the adverse effects of undermining the PCWs market, the cost in premiums, search times and cost in marketing for insurers that removing MFNs would cause. Without this evidence clearly concluded the CC cannot balance the pro-competitive grounds and assess how that balance operates.

5. Additional Points

5.1 The CC suggests in its paper that innovation (e.g. fraud detection) by PCWs cannot be rewarded with unique lower premiums (para 11) but it is evident that if an insurer wanted to reward such behaviour it could do so through offering the PCW a higher CPA.

5.2 It is alleged that circumventing MFNs would be costly (para 14). This is not Gocompare's experience. Many insurers carry on business with affinity groups (i.e. groups with whom they have special arrangements such as clubs, trade unions, charities etc.). This circumvents the MFN and is not costly to administer. LV, for example, offers substantial discounts, lower excesses and other incentives to certain designated groups despite its MFN.

The AA and RAC also offer lower premiums to "members" who have taken out breakdown cover that are cheaper than those offered by it through PCWs.

5.3 It is also alleged that MFNs have widened as competition has increased (para 17). Despite requests to see the underlying evidence we have not been given access to this. However, it is clear to our client that the CC has reached an erroneous conclusion. It is difficult to identify how this has happened in the absence of the evidence. What is clear is that this is not Gocompare's experience in the market. It is clear those larger insurers who write most of the policies continue to push for narrower or no MFNs. It may be that the CC has not looked at overall policies written under wide MFNs over time but rather the number of insurers over time. It may be true that the small niche players who have proliferated in the market have wider MFNs than the major insurers and this may have led to the confusion. It is true that the barriers to entry for niche players have lowered since the advent of PCWs, as PCWs offer a cheap route to market and access to an enormous consumer base.

5.4 The CC notes that despite having insufficient evidence, PCWs are not encouraged to

"negotiate" with insurers to offer lower premiums to consumers because of MFNs (para 59). It is not the role of the PCW to negotiate premiums with insurers. This again is a fundamental misunderstanding of the role of PCWs. PCWs are a shop window for insurers and a tool for consumers to compare the market. They are not an agent working on behalf of consumers to negotiate lower costs. They are there to show consumers lower premiums thus allowing the consumer to make its own choice based on its own requirements. Without MFNs consumers cannot be confident they have been able to identify lower premiums.