

Helphire Group plc response to the Competition Commission Annotated Issues Statement and Working Papers

Helphire Group has four main observations on the work of the competition thus far, before going on to consider the individual papers in more detail.

1. The process

There has been a marked disparity between the treatment of the claimant side (innocent victims of non-fault accidents) and the defendant side (indemnity insurers) by the Commission. It is understood that the logistics of the number of defendant insurers meant that two round table sessions were required but a number of bilateral sessions were also held and, as far as I am aware, few if any bilateral sessions were offered to any of the accident management industry.

The access granted was limited to a round table discussion with our peers and competitors. This necessarily limited the scope of discussion. This was raised prior to the discussion and subsequently.

Helphire, and others, requested individual consultations. The recommendations of the Commission could have a fundamental impact on our business and the thousands that work for us plus our investors. Not to have equal access to the investigation Group is, in our opinion not acceptable..

The working papers were not published prior to the round table discussion so none of the attendees had the chance to put questions to the inquiry team on the content of the papers. The papers were then drip- fed out, with no notification, leaving interested parties to pick up the publication as and when. Even now we are informed that the engineering report will not be available for some time.

In summary the process has not been equitable and is fundamentally flawed.

1. The market and Theory of Harm

The Competition Commission (CC) is an independent public body which helps to ensure healthy competition between companies in the UK for the ultimate benefit of consumers and the economy.

The claims industry is not a market. It is a set of supporting functions that process claims against the third party insurers. This requires participants to act in the best interests of its (claimant) clients and to comply with the general law on recovery of damages and mitigation as it applies to any particular case. In this context to expect competition amongst claims management providers (except in relation to securing referrals) is illogical, it cannot behave that way so there cannot be anti-competitive behaviour. This is supported by the comment of David Powell of Lloyd's Underwriting in the evidence to the Transport Select Committee in October 2011 that innocent victim's of non-fault accidents are not 'consumers' as such, they do not (in the main) select the services that they receive and they do not pay for them.

The theory is that premiums for the motorist are higher than they need be owing to the over-costing of certain services, namely TRV's and repairs. This came to the fore at a period of rapidly

increasing premiums with insurers blaming the credit hire and accident management industry for the increases. At the time Helphire (amongst others) pointed out a number of salient facts;

- a. The increases were exaggerated as the figures were for quotations, not premiums paid
- b. The scale of our industry is such that it could not have had a measurable effect
- c. That as premiums increased the number, price and duration of credit hires was falling, in the growth phase of the industry premiums actually fell so the industry has been counter-cyclical to premiums which suggests there is no effect
- d. The real reason for the rise was the insurance cycle and the loss of investment income that necessitated a market correction
- e. That once the market went through a short phase of higher premiums it would naturally correct itself and premiums would fall
- f. That there were no 'super profits' in the accident management industry and the insurance industry through sophisticated supply chain management receive the majority of the profit. The Competition Commission clearly recognises this fact (annotated issues statement paragraph 18) This in turn allows them to offer competitive premiums (Vencappa, 2011). To the extent that one insurer is less able than another to access both the income and the significant cost-savings resulting from out-sourcing non-fault claims then they have to find efficiencies elsewhere or lose market share. This is simply competition doing what it should. Delivering value to the consumer.

The Commission will note that premiums are now rapidly declining. We find the insurer's explanation that this is due to the reduced cost of PI claims without credibility. This cannot yet have washed through into settlements and reducing premiums in anticipation of a claims spend outcome that is uncertain would be gambling on a massive scale. This is purely the effect of competition as referred to in 'f' above.

There is no empirical evidence that the accident management industry adversely affects consumers interests through increased premiums (others agree. See Broker hearing transcript P11 lines 5 to 10). There have been theoretical studies that look at the profitability of insurance companies (Vencappa S. D., 2011) and the relationship between claims costs and premiums (Vencappa P. F., 2012). These suggest that the motor insurance market does not behave as competitively as it should given the number of players and that the level of competition in the market has declined over time, this causes premiums to be higher than they ought to be. There is a long-term relationship between claims costs and premiums, but the responses to claims costs decreasing feed through slowly as rates are based upon anticipated claims costs. A surplus achieved by an individual firm does result in lower premiums. Taken together this implies that any general increase in premiums owing to CMC behaviours is counter-balanced by the pricing of individual firms. It also suggests that any overall reduction in claims costs will eventually reflect in premiums. However the small scale of the accident management industry and the minimal reduction in real costs means that any reduction would be imperceptible.

What is absolutely certain and incontrovertible is that the interests of innocent victims on non-fault accidents were disregarded by the insurance industry until the advent of credit hire and that if the third party insurers get control of claims this will result in direct, and immediate reduction in service to these victims. The possibility that the 'victim' could be forced into the hands of the 'wrongdoer'

with inevitable conflict of interest that arises through the 'wrongdoer's' desire to cut costs accompanied by the power the insurance industry has when compared to the individual 'victim' is the real threat and moral hazard. Given that the small claims limit for non-PI work has risen to £10,000 (so will cover almost all TRV claims) and the scarcity of any LEI cover for small claims the leverage that the insurance industry can exert if it controls the costs has increased. The 'victim' would, for all practical purposes, be left defenceless in most cases.

Real harm to the consumer does exist and is revealed by the Not-at-fault survey. The survey was conducted from a sample of 262,000 closed claims considered to be 100% non-fault accidents. Leaving aside that this is a skewed sample (only closed cases when the problematic cases will be open) in 23% of the cases the excess was not recovered. If is 100% non-fault then 100% of the excess should have been repaid. At an average value for the excess of (say) £200 just in this sample alone consumers lost £10.5m. This is no theoretical harm, these customers lost real money. If there are around 600,000 non-fault accidents a year then consumers are deprived of £27.6m per annum.

2. The comparison between direct hire and credit hire is not valid

The Commission compares the cost of direct hire to credit hire. This is simply not a valid comparison as has no meaning in the context of this inquiry. The reasons being;

- a. The CC has treated the payment of hire charges by the third party insurer as though this was a matter of 'supply and demand'. The third party insurer has no contractual connection with the claimant, this is an 'uninsured loss'. It is a claim by an innocent motorist for the loss of use of his vehicle and numerous House of Lords and High Court decisions have repeatedly confirmed that the use of credit hire services is reasonable and the correct measure of loss is the 'Basic Hire Rate' (essentially a retail hire rate). It is simply wrong thinking to compare credit hire to direct hire. The comparison should be between credit hire, and basic hire rates. The rates set by the GTA are (as acknowledged by insurers) less than the Basic Hire rates. So insurers are, by and large, actually **reducing** their claims costs through the credit hire industry as they are less than the client is entitled to claim. In addition they gain a raft of advantages
 - a. Free monitoring of repair periods
 - b. Requests for payments made in a prescribed format
 - c. Restrictions on the type of vehicle provided and the length of hire
- b. If the client's own insurer were to pay for the TRV and/or the repair then the cost of recovering the outlay from the negligent party should be factored into the comparison. We are given to believe that the time taken to recover outlay between insurers is around 180 days, not significantly different from Helphire's own recovery profile. It follows that the frictional cost of collection would be broadly similar.
- c. Liability is not immediately accepted by the third party insurer in most cases. To make a valid comparison the occasions where liability is found against the claimant, and the cost of determining liability have to be accounted for. These costs are in the credit hire and credit repair rates and do not go away in whatever counter-factual is proposed
- d. The Commission compares the average cost of a directly-sourced vehicle purchased in bulk, by an insurer with buying power to the cost of a credit hire vehicle. However, the direct

vehicle cost includes a proportion of cases where a car is supplied on 'replacement vehicle' policy or where the hire period is otherwise limited to 7 or 14 days, making the direct comparison invalid (also see 'e' below) as the period on the directly sourced vehicle is artificially low.

- e. The population of accidents for fault and non-fault scenarios is different. This has a number of effects that again make direct comparison invidious. e.g. The assertion that repair (and hence hire) durations are longer in non-fault than fault accidents and that this represents 'over-provision' is plain wrong. The more accurate comparison is of non-fault accidents where the repair is handled by the client's own insurer, or through credit repair. These are drawn from the same population and the only variable is who does the repair. The client's insurer does not stand to gain from a longer repair cycle period, the credit hirer would seem to from the increased duration of hire and that is what the Commission intimates. **Yet in every case the average hire period of the credit repairer is less than if the client's own insurer facilitates the repair.** Credit hire companies cannot recover unjustified hire periods, and are required by the GTA to monitor repairs and justify hire periods

3. Cost control by third parties

TOH 1 postulates that the third party has little control over the cost of a TRV and that this Moral Hazard leads to over-costing. The reality is that this purported over-costing is restricted by three layers of control (broker hearing transcript P 58 lines 11 onwards). .

- a. The cost of a TRV is restricted to the commercially available hire rate to the customer save in those few cases where the customer is 'impecunious'. In the vast majority of those cases the CHO takes no advantage and the rate charged is unchanged
- b. The ABI GTA sets rates for hire that are
 - generally below the hire rate available to the customer
 - include a number of obligations that are onerous, and costly to the CHO but which benefit the insurer
 - include insurance, delivery and collection and additional drivers
 - set below market rates for additional items (high-risk drivers, automatics, sat-nav, tow bars)
- c. Most insurers have bilateral protocols with larger CHO's that reduce rates even further and reduce frictional costs.

4. Relevant Customer Benefits

The theoretical harm posed by our industry, if it exists at all, is tiny. It should be balanced against the undoubted, and obvious benefits that our industry provides to innocent victims of non-fault accidents and the inevitable threat to victims if they are forced into being beholden to their opponents for repair and hire services with the obvious and serious conflict of interest that entails.(see broker hearing p12 lines 12-17, p 15 lines 1-12, P 53 lines 18-22, P 62 22-26 and 63 1 - 18).

- a. Before the advent of the credit hire/repair industry the innocent victim of a non-fault accident had no advocate and no access to justice. Replacement vehicles were unheard of, excesses were not recovered. The mind-set of insurers has not really changed (broker transcript P 19 20-25), without our industry championing the rights of the consumer there is ample evidence that those rights will be abrogated (Not-at-fault survey P 90, ToH 2:underprovision of TRV's) Particularly revealing is the comment of Sabre insurance in their response to the Commission's issues statement *"Insurers will always seek to minimise payments to third party claimants within the constraints of civil law"*. This is a reminder of just what insurers are about, keeping claims costs down to benefit their stakeholders. Consumers are simply not equipped to insist on their rights in this complex arena. This is no criticism of insurers, but the consumer needs support to assert their rights, it cannot be left to the insurance industry to resolve its own internal conflict of interest
- b. Liability was accepted by the client's insurer routinely despite the client's position. There was no route for the average client to pursue his rights and the insurers exhorted clients "not to admit liability". Leaving innocent motorists with a claim on their policy and damage to their NCB and a higher premium next year. The number of motorists apparently admitting liability at the scene is high (survey p 21) yet liability admission by insurers is far lower as they want to reserve their position and try to minimise the cost of the claim
- c. Non-fault victims now have an industry with aligned interests, prepared to stand up to insurers and pursue their rights. Mobility is provided, risk is reduced (but not eliminated, as the customer assumes liability for charges and obligations to pursue the claim)

Bibliography

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Vencappa, P. F. (2012). The motor insurance underwriting cycle - deja vu? *34th UK Insurance Economist's Conference* (p. 9). Nottingham: Nottingham University Business School.

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Other observations on the working papers

1) Not-at-fault survey

- a) **Data selection** - Getting the right representative sample is fundamental to achieving a statistically valid outcome. The sample selection The selection in this survey is questionable for a number of reasons
 - i) Only settled cases are included. These, by their nature, have had all issues resolved (liability, need for the TRV etc). Thus complicated cases are under-represented in the sample. cases where the CMC's really add value to the customer by supporting their rights.
 - ii) Of the 262,000 only 80,000 or so had sufficient information to be useful in conducting the survey, this is a matter of some concern. These are the customers of insurance companies, they must surely have complete and accurate records of their policy-holders. There is no way of telling what this self-selection of records has done to the sample and the effects thereof
- b) **Balance of the survey** We have to question how even-handed the construction, execution and analysis of the survey has been. Some examples
 - i) The question asked on page 95 "Given the cost, in hindsight would you have been content with....". This is not only clearly a loaded question, the consumer could not have been aware of the cost, all that is on the hire agreement is the full commercial rate, not the rate charged to the insurer. Even so, only 41% would have been happy with a lower specification vehicle. What would the response have been if the question reflected the reality. "You are, by law, entitled to a replacement vehicle equivalent to your own subject only to your need. If the at-fault insurer has to pay a daily rate slightly less than you yourself could hire one for, but above the rate they would pay if buying in bulk, would you be happy to accept a lower specification vehicle to save them money in the expectation that average motor premiums will fall" What would the response have been?
 - ii) Both the vehicle supplied by the at-fault insurer and the repairs were less satisfactory than if the services were provided by a CMC or the client's own insurer. Yet this is barely referred to in the analysis or conclusions. The Toh2:Underprovision of TRV's is clear that At-fault insurers under-provide vehicles and yet the Commission thinks this is perfectly reasonable because the consumers seem happy with the car provided. This has to be viewed in the context of the consumer's knowledge of their rights.[X<]
 - iii) The fact that the excess was not recovered by customers when it was their legal right having been 100% not-at-fault has not been picked up by an inquiry looking at harm to consumers.
 - iv) The fact that having knowledge of their legal rights influences the outcome and who explains those rights is not highlighted in the analysis.
 - v) The duration of the repairs (and therefore the hire) is not significantly different in the survey (P6), the commission has had the reasons for NF hire durations being apparently longer that fault explained a number of times. Yet the commission persists in asserting that credit hire durations are longer and this is a factor in the alleged 'over-costing'
 - vi) On page 30 the likelihood of the under 55's to make a PI claim (83%) was compared with that of the over 55's (69%). The conclusion that most would draw immediately is that

younger people are more avaricious and want the cash. Yet the real driver is that the under 55's are, statistically, more likely to have a severe impact accident (p 69 3.105) and this is used to explain the difference in the length of repair (P69), but not the difference in propensity to claim and the statistic on severity and age band is not shown on page 23 whereas men-v-women, C2DE's-v-ABC1's and geographical comparisons were made

- vii) In asking the question "Did the vehicle provided meet your needs" the answer would obviously be affected by the level of awareness of their rights. If they thought they were only entitled to a courtesy car, that would have to do. In considering cost, a subsidiary question was asked "in hindsight, knowing the cost, could you have made do with...". For balance a question such as "Legally you are entitled to be put back in the position you were before the accident, knowing that, in hindsight, were you happy with the vehicle provided" should have been posed, the result would have been different.

2) Statistical analysis of claims costs

- i) **Balance of the survey** The basis of the survey is, in and of itself, instructive. It looks purely at the cost of the services provided. Would it not be equally important to examine the appropriateness and quality of the services provided? There is, as outlined earlier no contractual link between the at-fault insurer and the not-at-fault victim; the at-fault insurer has no right, nor any obligation to provide the services. It does have the obligation to meet the cost of those services. So there is a 'moral hazard' equal and opposite to that postulated by ToH 1. That is the hazard of services being underprovided by the At-fault insurer as they have no obligation to meet the customer's legitimate expectations save that imposed by common law and the customer is in no position to insist on their rights. This is discussed in ToH2:Underprovision of TRV's (see below) .[X<]

It would, we imagine, be perfectly feasible for the Commission to have compared the customer's own vehicle with that provided. The results would have been instructive. Looking at the not-at-fault survey again (P88) only 46% of people carrier users were provided with a people carrier. Who buys or drives a people carrier if they don't need to carry people?

3) ToH2 Underprovision of TRV's

- a) **Balance of the report.** We find that, in certain respects, the balance of the report is again one-sided. In paragraph 7 the suggestion is made that "*identifying and meeting a customer's needs may be conducted more effectively by fault insurers*". There is no evidence or logic underpinning this statement. There is ample evidence in the not-at-fault survey that the awareness of legal rights is a key factor in not-at-fault consumer's getting what they are entitled to. At fault insurers are significantly less likely to appraise customers of those rights (not-at-fault survey P 40). It cannot be argued that a customer aware that they are entitled to a like for like vehicle is more likely to be happy with a lower quality replacement than one who is not aware. So the whole basis for the assertion is that if the customer isn't told of his

entitlement then there is every chance he will be prepared to settle for a lower quality TRV and this is entirely borne out by the examination of the call records and it is acknowledged later in the report that fault insurers will, and do, underprovide TRV's

4) ToH 1:Overcosting and overprovision of TRV's

- a) Full report.** This report does not suggest that the non-fault claimant is over-provided in terms of their legal entitlement. The TRV is not a higher grade than the customer is entitled to, it is not provided where there is no need, it is (generally) provided for the right period of time. The 'harm' that the Commission alludes to is that credit hire costs more than direct hire. It does. The commission could have saved time and money by asking both sides in the argument to confirm that. The point we make repeatedly is that this is the wrong comparison. This is a claim for 'loss of use' and the value of that claim is the cost that the victim reasonably incurs to mitigate the loss of use and this is restricted to (in the main) the retail rate of hire. Through Credit Hire the insurers pay less than the retail rate.

Commissions to referrers of business do not, and cannot result in increased costs to at-fault insurers because the price is not set by CHO's, it is set by the daily rental market. Most of the profit in the process does not go to CHO's, it goes to insurers and brokers through commissions and supports lower premiums.

There is an opportunity to reduce costs without affecting either the rights of the customer or the service provided. This is in frictional costs. The commission has identified significant frictional costs that could, with co-operation on both sides, be all but eliminated.

- b) Para 20** we do not believe that this paragraph is correct. As a major provider of Replacement Vehicle Policies in general the car provided is not 'like-for-like' is a 'class A' or 'Class B' vehicle. It is indeed provided by the 'direct hire' provider and for a limited period (7 or 14 days) which is one reason direct hire durations appear to be lower than credit hire durations (cf para 22).
- c) Para 23.** It appears that a customer is informed of the right to a like for like vehicle or shunted into a courtesy car or direct hire (where a lower quality TRV is likely to be provided) according to the identity of the third party insurer, for the benefit of both insurers irrespective of the customer's requirements. This, to us, is an issue of Treating Customers Fairly and does not fit well with insurers FCA obligations.
- d) Para 49** we have explained why credit hire durations might appear to be longer than direct hire and will not repeat here. But the paragraph does reveal other probable causes. Direct hires have a lower likelihood of being three weeks or more. There are two reasons for this.
- i)** Long hire periods often result when the client's vehicle is off the road but third party insurer refuses to admit liability and the client is either TPFT or cannot afford the excess to have the car repaired. These cannot occur in direct hire because the at-fault insurer has accepted liability
 - ii)** The at-fault insurer may curtail the period of hire leaving the client without a vehicle at all having to 'make do'.

- e) **Para 66** We do not accept that the duplication of administrative costs is material. Most of the burden is borne by the CHO, little if any by the at-fault insurer
 - i) Assessment of circumstances. Insurer has to do this in any case to establish their view of the accident
 - ii) Roadworthiness - done by the engineer in a report paid for by the CHO and provided to the at-fault insurer
 - iii) Beyond economic repair - done by the engineer and subject to rules of the GTA
 - iv) Monitor repair. The at-fault insurer just does not do this. They get the repair log from the CHO and receive regular updates
- f) **Frictional costs** The commission should realise that some of these costs will persist in any counterfactual where the services to the not-at-fault customer are provided by anyone other than the at-fault insurer. They are not the preserve of CMC's and CHO's. Insurers who recover costs from each other face the same challenges and so this should be taken into account. By outsourcing non-fault claims to CMC's insurers benefit from commissions and the cost of recovery is effectively borne by the at-fault party's insurer.
- g) **Para 89** there should be no comparison between the savings in challenging and LPP's, they are not connected. In challenging a hire, the insurer does not incur an LPP unless the challenge is spurious.
- h) **Bad debt provision** like frictional costs, bad debt will still be incurred in most counterfactuals. TRV's will be provided in circumstances where they cannot be recovered.
- i) **Para 128** we simply do to recognise these assertions. The monitoring is entirely passive. The At-fault insurer is the recipient of the estimate and the final invoice, they simply compare one with the other (sometimes using third party validation services) . The communication on repair progress is one way, CMC to insurer. The CMC has to validate any parts delays.