

Inquiry Manager
Private Motor Insurance Market Investigation
The Competition Commission
Victoria House
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6th September 2013

Dear Sirs,

Re: Competition Commission Enquiry into the Private Motor Insurance Market

I write further to previous correspondence and directly to comment upon observations on your annotated statement and various working papers and transcripts issued since 5th July 2013.

Can I firstly point out that you would have any reference in your enquiry to Ai Claims Solutions PLC (Ai). Ai were acquired by Quindell Portfolio PLC during 2012 and since the commencement of your enquiry, both the branding of Ai has changed and my role, previously Chief Executive at Ai, has now become Group Chief Operating Officer of Quindell.

Whilst we would like to compliment the enquiry team on the thoroughness of the work completed to date, there are some key points which we still consider to be either misunderstood, or through the analysis, leading the enquiry to the wrong conclusions.

We will be focused on Theories of Harm 1 and 2 and particularly in the papers relating to the provision of repair and TRV as well as background papers on PMI and Claims Management.

The first area we wish to raise is with regards to the principle that flows through a number of documents where a comparison is made between credit hire and direct hire costs. Direct hire costs are actually not the actual cost of providing the service to the customer, but an artificially low cost borne out of a supply arrangement between the insurer and the supplier. Of course, via bulk buying an insurer is able to bargain for a cheaper service, and the supplier able to provide that discount due to the volume that is received through one source and efficiencies it is able to gain. The rental provider may also price on such a low margin for such service due to a broader commercial relationship with the insurer. When a consumer who is not at fault is left without the use of their vehicle, *prima facie* they can hire a replacement vehicle and recover the costs

of the same from the at fault party. The consumer is not able to bargain with the rental provider for a discount and will hire that vehicle on a daily rate. It would be more appropriate comparing credit hire charges and whether there is an over costing with the ‘basic hire rate’ available to the consumer, which has been the approach adopted in the courts, including the Court of Appeal. To arrive at a conclusion that through credit hire there is over costing is quite wrong in our opinion – Whilst we accept an insurer representing the tortfeasor would be able to procure the services more cheaply that is only possible due to their bulk buying opportunity.

In addition, a conclusion appears to have been reached suggesting that credit hire durations are longer than direct hire durations. The basis of the sampling is flawed in our opinion. Not all insurers attempt intervention and of those that do, some are better at it than others (a direct writer receives early notification of claims and can proactively intervene to offer the service, whereas a commercial/fleet or intermediary insurer will have the claim reported later and not have the same opportunity). This is important when you look at the average credit hire costs pursued against various third party insurers – Those insurers who are generally more proactive incur lower credit hire costs, than those who are not. There could be many reasons for this, including the type of risk the insurer underwrites and their own efficiencies. When applying this to your findings, we cannot see you have taken any regard of the differences between insurer models and arrived at a broad brush conclusion that ‘insurers attempt intervention’ and where they do, ‘the costs are lower’. It is simply not the case. Even those insurers who are very proactive in their attempt to intervene, will only do so in cases where they are 100% certain their policyholder is liable. Within the credit hire data you will see all cases, including marginal liability disputes, which tend to be for lengthier hire durations, thus moving the average up. Credit hire is also more likely to capture TPFT customers, who invariably will have older vehicles, leading to great proportion of total losses (with longer durations).

Linked to this point and notwithstanding what we have said above, we wish to challenge the data used to arrive at some of the conclusions when comparing credit hire to direct hire. As mentioned above, the direct hire data is not representative of the entire market as the entire market does not attempt intervention. We would suggest that less than 20% of third party non fault claims have any attempt to provide them with a replacement vehicle. As such, your comparison with credit hire data is using a population within a population, which creates a skewed result. You will have seen from your data gathering exercise that 1, there is a wide range of results when looking at claims costs, including the cost of mobility – thus averaging is

an inappropriate statistical approach and 2, the data available from insurers is unreliable. Your own sampling recognises this in that less than a third of non fault claims shared by insurers had sufficient data to allow for assessment. How can the enquiry rely on a sample within a sample and extrapolate the result to arrive at a conclusion is questionable.

Finally, on the issue of data and comparisons, it is noted that throughout you have applied ‘averages of average’, rather than ‘weight averages’. We noted this initially when being asked to confirm our own average hire period, where we did not recognise the figures presented to us. We established that you had taken our average hire period for driveable repairs, undriveable repairs and total losses and averaged the three numbers. In fact, the average hire period overall would be heavily weighted to ‘driveable repairs’, which interestingly had the very much lowest hire period – We are concerned as to why this statistical error could have occurred and indeed, when we review other papers, see that it has been used widespread. Could we understand your reasoning behind this?

In summary, we are concerned that conclusions may be reached by the enquiry around the principle of over costing, which are entirely caused by flawed statistical analysis and assumptions that data sampling is consistent with the dynamics of the market, when they are most clearly not.

The second area we wish to raise your attention to is perhaps more to do with looking ahead to what solutions you may recommend. The main thrust of your TOH 1 and 2 appeared to focus on the insurers indemnity spend for third party claims, they being higher due to a lack of control over the service provision provided to the not at fault consumer. As mentioned above, not all insurers attempt intervention, we estimate less than 20% of non-fault consumers, who have a mobility need after an accident are offered a replacement vehicle by the third party insurer. There are many reasons for this, but in particular, not all insurance policyholders report claims swiftly after an accident, especially the commercial/fleet markets. We struggle to see how the market would be able to adapt to a situation where the at fault insurer was left to provide the service, nor do we believe there would be any incentive to do so – The only reason third party insurers representing the fault party proactively provide a mobility service to not at fault consumers is to save cost; the alternative is that the consumer will use a credit hire provider. If credit hire was somehow outlawed, the at fault insurer would lose the incentive to be proactive and leave the consumer in the position they were in before the growth of the credit

hire market since the 80s, maturing post the landmark House of Lords case, *Dimond v Lovell* in 2000. To in some way shift, through legislation/regulation the service provision for the victim of a tort to those representing the wrongdoer must be inherently wrong. The consumer should have a choice as to how his own vehicle is repaired, or where he seeks mobility, so long as the costs he incurs are reasonable. To treat that accident victim unfairly, leaving him in the hands of a insurer that has a primary focus to avoid cost and is in direct conflict with his own needs can only lead to serious consumer detriment.

Another area we wish to address is an underlying principle in the papers that suggest that referral fees and/or rebates in some way increase the cost of claims. If you look at a parallel in the distribution of insurer policies – Brokers, who receive commission from insurers for placing business are competitive on price with direct writers, if not the brokers would have been obsolete some time ago. Those who share margin with referral partners do so through efficiencies gained from scale. We at Quindell do share referral fees for replacement vehicles and repairs; we are able to do so through benefiting from income generated from our supply chain. That income is generated due to bulk buying – This is not dissimilar to many other commercial arrangements, including insurance broking. If a claim was inflated, to allow for greater referral fees to be paid, the quantum of that claim would be challenged, leading to slower payment times (effecting return on capital employed and profit margin) and worse still leakage/write offs from the receivable held of the balance sheet. Those who fail to manage costs reasonably face consistent and thorough challenge. The legal principle is that you are only able to recover reasonable costs on behalf of the consumer and this very point has been contested on many occasions in the courts, including court of appeal.

The final area we wish to highlight is regarding the overall market dynamic that exists between insurers (those representing the fault party in an accident) and the credit hire operators (CHO) that represent the non fault claimant in the process. The balance is a fine one between the two parties. There is a direct conflict of interest between the at fault insurer and the claimant. The insurer on one hand wants to avoid any claims and when faced with a claim, wants to settle the same at the lowest cost possible, including preventing the providing of services to the said claimant, whether entitled to or not. The consumer, left without any representation, faced with dealing directly with the large insurers is an unfair balance. The reason the claimant market, with CHOs developed was to protect the interests and represent the consumer in pursuing such claims. We note that insurers have set out that they are here to protect society and provide

service in the consumer's hour of need; the reality is that the insurers are the risk carrier, and an investment bank, where its stakeholders are shareholders, not policyholders, and certainly not the wider society which is not contracted. It is pure fiction for insurers to suggest they are focused on the customer – their entire focus is about generating a return on the capital they generate from policy sales. If an insurer can get away with avoiding providing a service to the claimant, it will. As stated previously, the only reason an insurer seeks to be proactive, and incurs considerable costs in doing so (as borne out from some of the papers in your enquiry) is to limit its exposure to what that claimant is entitled to in common law. If this balance were upset, with claimants losing their common law rights under tort, why would those same insurers invest in proactive claims functions to provide the said service?

The GTA, whilst not perfect, is a mechanism which allows for those insurers representing the at fault party to engage with CHOs who represent the interests of the not at fault party. The balance is struck by sharing thinking, negotiating and ultimately, through mediation, reaching a compromise. That compromise, by its very nature will be imperfect, but it does balance the needs of insurers, in keeping the cost of claims down, with those of the innocent non fault victim. We note that many insurers challenge the current GTA structure, although through the GTA Technical Committee, those very insurers have every opportunity to challenge, or make representations to change.

We have said in previous communications that strengthening the GTA (perhaps by making it mandatory across the sector? It should be noted that CHOs have previously encouraged the GTA to be a contractual commitment), introducing a portal for submission and settlement of claims (rather like the MOJ Portal for Personal Injury claims) and the strengthening of the governance around the GTA Technical Committee will all serve to improve the process and remove unnecessary frictional cost.

As the commission has observed, insurers and CHOs develop bilateral arrangements to further improve efficiencies – We at Quindell have one such protocol which we call Collaboration. This allows for the insurer and CHO to 'collaborate' (work together, through a delegated authority) to reduce hire durations (aim is to get to sub 13 days) and remove friction (settlement via a bordereaux paid within 30 days). We already have 15% of our claims operating under the protocol with another 20% in workshop/contract stage and a corporate aim to have in excess of 70% of our claims managed through the mechanism. We have previously

advised of this initiative, we seek to take significant cost out of the market and demonstrates, in our opinion, what can be achieved by insurers and CHOs working together.

In conclusion, we appreciate the complexities of the market and the disparate operating models, both at insurers and CHOs make this enquiry particularly difficult, we would counsel for caution in seeking remedies which could disrupt what in reality is finely balancing the needs of all consumers, who pay premiums with those of the victims of road traffic accidents. If the conclusion is reached that change is necessary, any change needs to respect the needs of individual motorists, who have suffered a not at fault accident. Any additional control passed directly to insurers, who have a direct conflict of interest with the motorist's needs, will lead to significant consumer detriment.

I hope you find Quindell's additional contribution helpful and of course if you wish us to expand on anything further, please do not hesitate to get in touch with me directly.

Yours faithfully,

David Sandhu
Group Chief Operating Officer
Quindell Portfolio PLC