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Dear Sir

Private Motor Insurance Market Investigation (“Investigation”)

I am writing following publication of your Annotated Issues Statement and your subsequent and associated working papers regarding your Investigation.

My two written submissions to the OFT and my written submissions to you of 15 October 2012 and 9 January 2013 also refer.

As the Director General of the trade body representing the interests of the majority of credit hire operators in the UK, The Credit Hire Organisation Limited (“The CHO”), I am focused on considering your Theories of Harm 1 and 2 as regards the provision of Temporary Replacement Vehicles (“TRV’s”).

1. Theories of Harm 1 and 2

- 1.1 At the hearing held on 17 July 2013 the Chairman opened proceedings by asking those present to comment on the work you had undertaken so far and particularly as to whether we felt you “have things right and are addressing the right issues”.
- 1.2 We were clearly thankful for the opportunity to narrate our concerns then and, now that we have had the opportunity to review your detailed working papers, grateful for the opportunity to document the more material issues where we continue to urge the



Competition Commission ("the CC") to continue to develop their thinking in certain crucial ways.

- 1.3 The CHO notes the CC does not yet appear to have defined the specific market that is being investigated and that the CC is yet to identify whether consumer harm is occurring. It is of concern to The CHO that certain critical aspects of the mechanisms by which consumers get access to TRV's and at fault insurers compensate for the associated costs seem to have had limited, if any, work performed on them (based on the content of the published working papers). It is also of concern to The CHO that the CC has so far made no comment as to their views on those, and other certain key aspects. The CHO has maintained and repeats its view that credit hire enhances consumer welfare.
- 1.4 The CHO refers most materially to the fact that the process whereby an insurer is faced with a credit hire charge is as a consequence of a consumer having chosen to exercise his or her rights at law; rights that have been enshrined in UK law for centuries.
- 1.5 It is a material omission of the work undertaken by the CC so far that you do not appear to have balanced your assessment of costs nor made any comment on the importance and value of protecting consumers' legal rights. It is also unclear to The CHO how a consumer's right to bring a tort claim can be included in any definition of a "market" linked to the supply of private motor insurance. The legal system reaffirms the common law rights of consumers in our courts daily. Having considered the transcript of your hearing with a number of insurers, it appears that the CC is being lobbied by insurers to consider the removal of these rights in a stroke.
- 1.6 Omitting to make comment on how the CC views the legal environment and the consumer protection it has for centuries afforded prior to publishing its provisional findings, and therefore preventing the CC from hearing reasoned argument on the subject, is of major concern to The CHO.
- 1.7 Of similar concern is your decision to use terms such as "overcosted". In spite of referring to the term in a footnote as not being pejorative (and The CHO maintains it is being used in a pejorative fashion for reasons explained in 1.8 below) the word clearly does punctuate the working papers in a way that can also only be perceived as such. Of course, the terms overcosted and overprovision have become the bywords of your report and yet there is also no analysis of whether, or how, consumer harm arises from any alleged overcosting or overprovision.
- 1.8 The adoption of the phrase "overcosted" and the link the CC makes to the underlying costs incurred by credit hire operators contributing to credit hire costs being "more expensive" (the correct phrase that you should have used) is erroneous. I will expand on this below – see 1.15.



- 1.9 The final linkage in the debate about the provision of TRV's being "overcosted" is another area where you appear not to have created a work project or offered any commentary and is of concern to The CHO to the extent that it suggests a lack of neutrality in your understanding. I expand on this below (1.10).
- 1.10 All of your work on costings (as incurred by insurers) compares the independent costs of credit hire to those costs that could be incurred by insurers should they put in place a direct supply arrangement. It cannot be controversial that the costs of credit hire measured on a claim by claim basis are greater than the costs that an insurer *could* incur if they choose to compete to capture the claim and provide the replacement car themselves. As The CHO has repeatedly outlined, insurers are extremely efficient in implementing low cost solutions, most notably because of the low costs they can negotiate from certain suppliers in exchange for them giving that supplier large volumes of work (even though that work will be of very low margin for the supplier, he may have strategic reasons for wanting to win it).
- 1.11 It seems disingenuous to compare the costs of credit hire only to those volume-led lower costs and then to use the pejorative phrase "overcosted" to describe credit hire costs. A material justification of the reasonableness of credit hire costs exists but has not been examined by the CC as outlined in 1.12 below.
- 1.12 As the CHO has previously articulated to the CC, the UK car rental market is extremely competitive and creates the competitive market pricing tensions from which credit hire companies set their prices (and from which discounts are also then normally offered under the GTA or otherwise). Despite The CHO urging you to consider credit hire charges in this competitive context it has not featured in any of your working papers or questions. As a related observation, the CC has also not addressed the issues that have impacted the relationship between credit hire rates and the conventional daily hire market or the accuracy of the perception of the economic pricing differences, the reality being clearer after the exposure of the fraud perpetrated and perpetuated by Autofocus not least. The limitation of the scope of your work in these regards and your commentary that describes credit hire as overcosted is, we believe, a failure to properly address the full dynamic of the legal process of the provision and costing of TRV's and the protection that that process affords to both insurers and consumers.
- 1.13 The CHO postulates that had your work focused at all on comparing the costs claimed by consumers as a result of using credit hire you would have concluded that they fall within the range of rates available to consumers within the UK rental market and as such cannot be described as "overcosted". The CHO urges the CC to undertake a work effort on these issues to help balance its analysis and to publish its findings prior to issuing preliminary findings and associated remedies, if any. This will enable all parties to assess where the CC sits as regards consumer protection and the appropriateness of credit hire charges falling within basic hire rates (and lower in many cases as a result of the GTA or otherwise).



- 1.14 As an aside the CHO would recommend that the CC reflects on the issues that drove the Investigation into private motor insurance in the first place, given the recent data on how premiums have fallen over the last 12-24 months against a backcloth of improving motor insurer profitability. It is hard to imagine a case that motor premiums have had to increase as a result of credit hire costs when the bill for mobility equates to around 4% of total motor claims costs and where premiums are now falling; considerably more material forces are at play in the private motor insurance market which seems to be performing competitively and cyclically as it always has in the UK.
- 1.15 I mentioned earlier (1.8) that I would return to the linkage you have created between the supposed “overcosted” nature of credit hire costs and the costs incurred by credit hire operators; notably referral fees and frictional costs.
- 1.16 This linkage, as narrated to you at the hearing on 17 July, is materially flawed and The CHO is concerned that it is being made to enable the CC to be drawn to the same conclusion that was reached by HM Government on the role of referral fees on Personal Injury claims. There appears to be no factual evidence before you to support an argument that if credit hire operators incurred lower (or zero) referral fees that the costs of credit hire would reduce. The CHO takes comfort that the Chairman did recognise at the hearing that a unilateral change in the current TRV supply chain would have one or more reactions elsewhere in that same supply chain. The CHO would like to take the opportunity to remind the CC of that observation and the negative impact on consumer welfare should the ability to pay referral fees be threatened.
- 1.17 The interpretation by the CC of the dynamic of credit hire costs is perhaps a consequence of the lack of work (or comment) on the actual linkage of credit hire costs to the costs borne by consumers when renting a car in the UK car rental market. The recoverable costs of credit hire are unconnected to the level of referral fees paid. Furthermore most referral fees are paid to insurers and therefore, The CHO suggests, help reduce insurers’ costs and therefore should allow insurers to offset any potential premium impacts. Any potential recommendation that they be banned would have no demonstrable benefit in bringing the per claim cost of a TRV down. Mention was also made at the hearing that you appear to have also failed to perform any work on quantifying the positive value that the existence of referral fees contributes in extending the opportunity for a consumer to gain access to justice. To the extent that certain entities in the supply chain might advocate a ban on referral fees, the extrapolation of that would, we suggest, result in fewer consumers being made aware of their rights to a replacement vehicle (consumer harm). You have made no comment on the dynamic of referral fees and how they serve to protect the consumer although we note that representatives of other businesses (brokers for example), who have also appeared before the CC, endorsed this point.
- 1.18 The last issue relating to the costs of credit hire concerns the GTA.



- 1.19 It must be stressed that whilst people can describe GTA rates as day rates for hire, they are more than that. They are discounted rates that offer the opportunity for bulk settlement of potentially disputed claims without the costs of litigation also being incurred. This was an issue conceded by the ABI, on behalf of insurers, to the OFT many years ago.
- 1.20 In order to submit claims under the GTA, CHC's have to pass an independent audit of their claim processes. You have been made aware that the level of adherence to the GTA processes by CHC's is extremely high.
- 1.21 The majority of the UK insurance market supports the GTA but in doing so that does not prevent them from entering into bilateral arrangements with CHC's where further operational efficiencies and cost benefits may be derived.
- 1.22 Frictional costs will always exist in a market that does not grant exclusive control to the at fault insurer, a move that, the CHO contends, would lead to consumer harm. Not at fault consumers are entitled to claim non fault status and CHC's facilitate that process after performing a rapid, skilled and detailed assessment. It is generally the case that the main frictional cost in managing a claim arises from an insurer delaying their concession on liability which then drives a delay in claim settlement removing the opportunity for the insurer to benefit from a prompt settlement discount (under the GTA or a bilateral agreement) with the consequence that the insurer then also incurs litigation costs. These frictional costs do not "inflate" the cost of a credit hire transaction (which is controlled via the competitive market forces described in 1.13 above) but they do increase the costs incurred by a CHC, they usually massively inconvenience the consumer and will increase avoidable costs incurred by insurers. They do not serve to explain the difference between a credit hire cost and a direct hire cost to an insurer; these are driven by different issues as explained. It might have been beneficial for the CC to have done some analytical work to see if it is actually insurer behaviour that creates these frictional costs. Your survey sample comprised a 12-month period of closed claims. It might have been helpful to compare the total costs incurred by insurers in closing those claims (including litigation costs paid) to the minimum amount they could have closed the claim for in the first instance had they acted promptly, conceded liability promptly and paid promptly or indeed to identify claims which had not closed in that period and asked why that was the case.
- 1.23 At the hearing, we also confirmed to you that in cases where the not at fault driver is provided with a car that is of a higher standard than his damaged car, the amount claimed will always reflect a value as if the car provided was no better than the car to which he is legally entitled (CHC's may provide such vehicles for rental fleet optimisation purposes). The CHO makes this observation because the survey data published by the CC, and the conclusions the CC seeks to impute from consumers that a percentage of them might have accepted a car of lower quality, did not balance those findings for this issue.



1.24 The CHO urges the CC to undertake more work on the dynamic of credit hire costs and to consider publishing its findings separately and definitely prior to issuing its provisional findings. It appears to The CHO that the protection of the consumer's legal rights are potentially at risk as a consequence of the analytical comparison you have adopted in comparing credit hire to direct hire and incorrectly attributing costs (referral fees / frictional costs) as explaining the difference. They do not, and consumer protection is at risk.

2. Use of Survey Data

2.1 The survey was undertaken with the best of intentions. However, The CHO has concerns over the small data sizes and the analysis of the data that has been used to arrive at conclusions that are not supportable.

2.2 The CHO does not intend to critique all aspects of the survey however there are certain elements that do require a comment.

2.3 The CHO notes that from insurer data of 262,000 settled claims only 80,000 claims had sufficient data to identify the non fault party and just 1,500 people were contacted to comprise the survey. The population of claims surveyed is not therefore extracted from the population of consumers who received a TRV, but arguably from a population who had been exposed to the insurer's best interests as opposed to the consumer's pure and independent best interests. This therefore may have influenced the answers received to the survey questions.

2.4 We note that the survey corroborates a concern that the consumer receives a service that not only falls below his legal entitlement when the at fault insurer controls the claim but appears to be delivered in a manner which ignores the regulatory controls established to protect the consumer in these circumstances. For example, there is a significant statistical difference such that only 29% of people advised by the fault insurer were made aware they could have the vehicle repaired at a garage of their choice. The inference is that 71% of consumers were not made aware. Equally the survey showed that where the at fault insurer controlled the claim (remembering that these were closed claims where liability has, by definition, been admitted) an alarming number of consumers were not advised and/or did not recover their policy excess. From an extrapolation of the data you compiled, this looks like consumers suffered a direct cost of c. £15 million ($262,000 \times 28\% \times$ an assumed excess average of £250). This is deeply concerning and adds weight to The CHO's assertion that insurers have minimum incentive to provide an unbiased service to uninformed non fault parties. Regulatory obligations managed by the FCA and applicable to all of those involved in managing general insurance claims are there to ensure that they 'Treat Customers Fairly'. If this statistic is correct, treating customers fairly seems to be demonstrably absent from the communication and TRV strategy of insurers.



- 2.5 The CHO notes from the survey that the CC places emphasis on the fact that 41% of people who claim to have known the cost of their replacement vehicle would have been content with a lower quality vehicle. We do not understand how the survey data could support such a conclusion as the only “cost” that the consumer might have been aware of would have been the basic hire rate appearing on the face of the rental agreement with the credit hire operator. The consumer would be oblivious to the fact that the majority of hire claims are settled under the GTA (or bilateral agreements) at lower rates. To seemingly conclude that a credit hire transaction creates an excessive outcome for (a minority of) recipients is, we feel, incapable of being drawn.
- 2.6 Given the emphasis placed on part of the survey data it is notable that the survey did not seek to question consumers in order to solicit a view from a non insurer perspective. For example, whilst the survey concludes that only 24% of people claim to have been made aware of all of their legal rights (an alarmingly low number that again raises the issue of the CC ensuring consumer rights are protected) this fell to an unpublished number when the at fault insurer controlled the claim. Whilst The CHO does not believe that any consumer is readily capable of understanding **all** of his legal rights (putting doubt over the question that was posed in the first instance) it strikes us that you did not ask a balancing question of those that did not know their rights. For example, a question along the lines of “Now that we have explained your legal rights would you have demanded a better car than the one you received?” The CHO has concerns that the conclusions you appear to be seeking to draw from the survey: are not balanced; are derived from extremely small sample sizes; and, focus too subjectively on minority outcomes - for example quoting 41 % said they would rather than 59% said they would not.
- 3.0 Hire lengths
- 3.1 The CHO hopes that since the hearing with the CC, the panel is better able to understand the myriad of reasons why rental lengths under credit hire agreements might be greater than under direct hire arrangements and that a direct mathematical comparison between the two (as they come from different populations) cannot provide the basis for concluding credit hire lengths are excessive. The CHO would request that the CC clarifies its understanding on this matter and considers the adequacy of the data that was used to drive the conclusions it appears to have reached prior to issuing its provisional findings.
- 3.2 In paragraph 50 of your working papers relating to overcosting and overprovision, you correctly identify a number of key reasons why credit hire periods will be longer than direct hire periods and yet you continue to draw pejorative conclusions that the longer credit hire period results in an “overcosted” provision of service. Given the underlying reasons explicitly set out and accepted by you there, The CHO does not comprehend how you can draw the conclusions you appear to have
- 4.0 Insurer motivations



- 4.1 The CHO maintains that there is already a healthy competitive market for the supply of TRV's. Insurers can provide direct supply to the extent that they invest in processes, especially when as many as 80% of those surveyed first reported their involvement in an accident to their own insurer.
- 4.2 In a period where motor insurance premiums have fallen, insurer profitability has increased and the majority of consumers already notify insurers of their involvement in an accident it seems odd to support an argument for market change without there being a clearly defined AEC in a properly defined market. We do not believe the case to have been made out for such market change from a review of the working papers and express concern at the apparent lobbying power of the insurance industry in a process where the case for and benefits to a consumer of any change is not in evidence.
- 4.3 The CHO reaffirms the fact that the survey data shows clearly that at fault insurers do not treat non-fault parties fairly, yet the CC has made no material comment on this issue.
- 4.4 The CHO maintains that the primary reason at fault insurers provide a TRV by direct hire is solely as a result of the existence of the credit hire industry. Any enforced changes to limit a service that reduces the ability and legal entitlement of the consumer to get access to a TRV in an independently advised manner will ultimately reduce the at fault insurers' incentive to provide direct hire TRV's. The consumer will be the ultimate loser.
- 4.5 No link has been established between the cost of credit hire, the counterfactual and the impact on motor insurance premiums at all.
- 4.6 The CHO has advised the CC that insurers have entered into bilateral arrangements whereby both insurers agree not to advise their customers of their non fault rights following an accident in circumstances where the at fault party is insured by the other insurer to the bilateral agreement. This behaviour is deeply concerning and despite alerting the CC to this apparent erosion of consumer rights this questionable practice does not appear to have been investigated or commented on by the CC. The practice demonstrates the need for tension to maintain consumers' legal rights and not preference the insurers' objective of profit maximisation.
5. Summary
 - 5.1 The CC has not defined the market in which it may have identified an AEC and it does not appear to have ascertained that consumer welfare is being impacted adversely by current market dynamics. The CHO maintains that the market for TRV provision is extremely competitive and provides consumer welfare.
 - 5.2 The CHO is concerned that the CC has made no comment on the sanctity of protecting the legal rights of consumers.



- 5.3 The CC's working papers, and specifically the descriptions of an "overcosted" credit hire provision presents a one sided, negative, unrepresentative and unfair view of credit hire. The dynamic and competitive nature of the UK rental market objectively and independently protects the costs that insurers incur under credit hire arrangements and from which material discounts are also normally offered for settlement thereby avoiding expensive litigation. ***The CHO restates the contention that credit hire is the reason that direct hire exists and that consumer interests are protected.*** To compare credit hire costs only against a counterfactual of direct hire costs is a flawed and inappropriate hypothesis, and to reiterate, direct hire would not exist without the counterbalancing tension of credit hire. But irrespective of that, with 80% of consumers already reporting claims to insurers, they already have the mechanism to provide a cheaper direct hire service directly to their policyholders without regulatory intervention.
- 5.4 The CHO's perception of the CC's Annotated Issues Statement, which links referral fees and frictional costs as being the reason that credit hire costs are greater than the costs insurers could incur is flawed and also ignores the fact that the majority of referral fees paid are received by insurers and therefore they are able to offset any unproven premium impact supposedly incurred as a result of credit hire.
- 5.5 Finally, The CHO requests the opportunity for its retained economist to meet with the CC and, in particular, its senior economic adviser and inquiry director, to present and discuss some of their economic thinking on points raised in this submission and in particular on the impact of credit hire on consumer welfare (which has to be maintained) to assist the CC with what The CHO contends are significant gaps in its work efforts so far.

Yours faithfully,

M J Andrews
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