Competition Commission (CC)- Private Motor Insurance Market Investigation

Response of Acromas Holdings Limited to Notice of Possible Remedies

This response is submitted by the Acromas Group. It should be read in conjunction with Acromas' response to the CC's provisional findings (particularly as regards the issue of "narrow" MFNs, where Acromas does not agree with the CC's provisional findings and therefore considers that the CC should impose a remedy which prohibits all MFN clauses.

Given the time constraints, and the complexity of the CC's remedies proposals, it has not been possible for Acromas to provide a comprehensive response to all of the questions which the CC has raised. Acromas may comment in further detail on the remedies options proposed by the CC in its response to provisional findings due by 7 February and would also welcome the opportunity to discuss these issues with the CC at the hearing.

Remedy A: Measures to improve claimants' understanding of their legal entitlements

Issues for comment A

Acromas supports this informational remedy. More detailed comments are set out below.

1 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) What information should be provided to consumers?

The information provided should comprise a summary of the policyholder's legal entitlements under their own insurance policy and their entitlements arising under tort law.

Acromas agrees with the CC that the information should cover the issues set out in paragraph 18 of the Remedies Notice, i.e:

- what happens when a claimant is at fault or not at fault and what the basic legal entitlements are in each case (in relation to both repairs and replacement cars);
- whether a claimant claiming under their own insurance policy would have to pay an excess and/or would lose any NCB and how these can be recovered;
- when a claimant is entitled to choose their own repairer and whether this affects their liability to pay an excess; and
- what a claimant's contractual rights are if the claimant is unsatisfied with the repairs carried out.

These statements need to be simple enough to be understandable but detailed enough to provide sufficient information to inform claimants of their rights.

(b) When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?

This information should be provided at FNOL. Acromas considers that providing the information with annual insurance policies would risk overloading the customer with information, at a time when he or she is unlikely to be focussed on the issue.

It is particularly important that the communication with the claimant at FNOL is concise and the content is readily comprehensible, in order to reduce the risk of consumer confusion.

In order to prevent customer confusion, Acromas believes this information would be better communicated verbally to customers (which is Acromas' current practice) rather than in writing. This would speed up the process for the customer who will not want to wait for the delivery a document after a loss has occurred. Acromas would suggest that the insurer be required to provide a written summary of the information by e-mail, on request.

(c) Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?

Acromas supports this proposal. Its preference would be for the general statement of consumer rights to form the basis of the verbal communication with customers following FNOL. A standardised approach would also improve the chances of successful implementation by organisations with whom the customer does not have a pre-existing relationship, such as CHOs.

In Acromas' view, the GTA's Technical Committee would be better placed than the ABI to prepare such a statement, since it includes representatives from CHOs as well as insurers.

(d) Would this remedy give rise to distortions or have any other unintended consequences?

No, but there is a risk that providing too much information at FNOL on the claimant's legal rights may risk confusing the customer. The communication must be clear and brief.

(e) What circumvention risks would this remedy pose and how could these be addressed?

A standard statement of a claimant's rights under tort law would help to minimise the risk of circumvention. It would then be for insurers/brokers to provide the claimant with details of their entitlement under their policy.

(f) How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?

Acromas believes the FCA would be best placed to monitor implementation of this remedy as it supervises insurers, brokers and PCWs.

(g) How much would it cost to implement this remedy?

Currently Acromas has no basis on which to estimate the likely costs of the remedy proposed. However, Acromas suggests that where the information is communicated verbally at FNOL, the costs would be minimal.

(h) Is there any reason why this remedy should not be implemented through an enforcement order?

No.

(i) Is this remedy more likely to be effective in combination with other remedies than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?

Acromas thinks this remedy could be implemented effectively on a stand-alone basis but would also be effective in conjunction with Remedy 2A.

(j) Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?

Acromas would not be in favour of the proposal in paragraph 20 of making a recommendation that a small number of questions on the legal entitlements of at-fault and non-fault claimants in relation to insurance claims following an accident should be included in the driving theory test. Acromas believes that there are more important matters for new drivers to learn and it is unlikely many people would remember the details years later in any case.

Theory of harm 1: Separation of cost liability and cost control

Issues for comment 1

2 **Views are invited as to:**

(a) Whether the possible remedies under ToH1 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

(b) Whether the possible remedies under ToH1 should be implemented by the CC through an enforcement order or whether the CC should make recommendations to the Government (for example, the Ministry of Justice), regulators or other public bodies to implement the remedies.

Acromas has significant doubts as to whether Remedy 1A or Remedy 1B would be effective in addressing the AEC identified by the CC under ToH1 (i.e. capable of effective implementation, monitoring and enforcement). In particular:

- Acromas agrees with the preliminary view expressed by the CC in paragraph 33 of the Notice that Remedy 1A could not be implemented without a change of law, given that it would affect the rights that non-fault claimants currently have under tort law. This remedy would require a recommendation to Government for legislative change.

- Acromas also agrees with the preliminary view expressed by the CC that the variants of Remedy 1B set out in 39 and 40 of the Notice could similarly not be implemented without a change of law, given that these would affect the rights that non-fault claimants currently have under tort law. The CC would therefore need to make a recommendation to Government for legislative change, meaning that the remedies could not be implemented in a timely manner. It is also not clear how these remedy options could be implemented on a practical level. On that basis, these remedy options should be rejected. Removing the choice from the claimant and requiring them to take the services offered by the at-fault insurer would also lead to serious consumer detriment in practice.

- Acromas also considers that the variant of Remedy 1B set out in paragraph 38 of the Notice would not be effective in addressing the AEC identified by the CC in relation to ToH1, on the basis that the non-fault claimant would be assessing the different offers on the basis of service, rather than price. On that basis, this remedy option should be rejected.

- It is possible that the variant of Remedy 1B set out in paragraph 41 might be capable of implementation by way of an enforcement order made under Schedule 8 of the Enterprise Act 2002 (the **Act**) directed at non-fault insurer or CMC handling the FNOL process. This would require them to notify the at-fault insurer and provide it with the option of providing an equivalent replacement car to the non-fault claimant. Failure to comply with these requirements would place the non-fault insurer or CMC in breach of the provisions of the Order. However, Acromas doubts whether the CC would have the power under Schedule 8 of the Act to go as far as to regulate the amount *recoverable* by the non-fault claimant (or the non-fault insurer or CMC managing the claim on their behalf) under tort law for the supply of the replacement car.

- Even if the remedy option in paragraph 41 were capable of being implemented by the CC by way of an enforcement order, Acromas has serious doubts as to whether it would be capable of effective implementation on a practical level. In particular:

    - In Acromas' view, the operation and implications of this option would not be at all clear to claimants (particularly in the immediate aftermath of an accident) and would be likely to result in significant confusion in practice.

    - This option would also have a significant adverse effect on the experience of non-fault claimants, particularly in circumstances where the claimant has an immobile vehicle. In these circumstances, there is a risk that claimants would not receive a replacement vehicle in a timely manner (particularly if the non-fault insurer or CMC is obliged to wait for the at-fault insurer to exercise the option to provide a replacement vehicle). This would result in significant consumer detriment (under-provision) in practice – see Acromas' comments below in relation to relevant customer benefits (**RCBs**).

    - It also raises the prospect of increasing frictional costs in circumstances where an at-fault insurer elects to intervene shortly before the expiry of the "waiting period". Other hire scenarios are also

likely to lead to increased frictional costs and litigation due to the complexity of this remedy.

- Moreover, Acromas believes that Remedy 1A and Remedy 1B would be likely to result in the elimination of the credit hire industry (or, at the very least, a significant shift from a credit hire to a direct hire model and a serious risk of under-provision in relation to the provision of replacement cars to non-fault claimants following FNOL). In Acromas' view, Remedies 1A and 1B would eliminate RCBs (including higher quality of service) which result from the separation of cost liability and cost control.

- Acromas believes that Remedies 1C, 1D(b), 1E(b), 1F and 1G would, in combination, be effective in addressing the AEC provisionally identified by the CC in relation to ToH1 and would also be proportionate (i.e. no more onerous than necessary to address the AEC resulting from the separation of cost liability and cost control). These remedies would also preserve the RCBs referred to above by controlling the cost to at-fault insurers of subrogated claims for the provision of replacement cars to non-fault claimants, whilst ensuring that claimants continue to benefit from a vehicle that meets their needs (either via a credit hire or a direct hire arrangement). For that reason, Acromas would support this package of remedies (subject to the points expressed in this response, particularly as regards the application of Remedy 1D(b) to credit repair).

- Should the CC ultimately conclude, notwithstanding the arguments set out in this response, that Remedy 1A or (a variant of) Remedy 1B would be effective in addressing the AEC that it has identified in relation to ToH1, Acromas considers the package of remedies (i.e. Remedies 1C, 1D(b), 1E(b), 1F and 1G, in combination) would be less onerous and should therefore be accepted by the CC on proportionality grounds.

Remedy 1A: First party insurance for replacement cars

Issues for comment 1A

3 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) What aspects of the law would need to be changed?

Acromas agrees with the preliminary view expressed by the CC in paragraph 33 of the Notice that Remedy 1A could not be implemented without a change of law, given that it would remove the non-fault claimant's right to choose the service provided and therefore affect the rights that non-fault claimants currently have under tort law. It would require a recommendation to Government for legislative change, meaning that the remedies could not be implemented in a timely manner.

There are doubts as regards the scope and practicability of such a recommendation, taking into account the Road Traffic Act 1988 and the EU Directive. By not electing to purchase the hire car add on, the claimant would, under this remedy, have to waive their right to recover the cost of supply of an alternative vehicle and bear this loss themselves. Also, if a non-fault claimant has an insurance policy and elects not to use it and pays for their own hire and repair, they would have to waive their rights in order to recover the hire cost, despite this being a valid loss under current law.

(b) How should policyholders be given a choice as to the extent of replacement car cover?

Acromas does not believe it would be appropriate (as is suggested under Remedy 1A) to oblige policyholders, at the time they purchase their PMI policy, to choose the level of cover they might require in the event of an accident. Acromas believes that a non-fault claimant should (in line with their current entitlement under tort law) be free to make that choice following an accident, bearing in mind that their needs may be different at that time. Otherwise, there is a serious risk of consumer detriment.

(c) To what extent would the need for consumers to pay a premium for replacement car cover be offset by the effect on premiums of the overall reduction in replacement car costs that would occur as a result of this remedy?

Acromas is not currently in a position to assess this but its view is that Remedy 1A would not be capable of effective implementation.

(d) How might this remedy affect NCBs and the premiums of non-fault claimants? Would non-fault claimants have to pay an excess when provided with a replacement car under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?

Remedy 1A may affect NCBs. At present, a claimant may lose their NCB if a full recovery is not made from the at-fault insurer. Remedy 1A would mean that full recovery would not be possible in a non-fault claim if a replacement car is hired, so it seems likely that the claimant would lose their NCB. Insurers may choose to approach this issue in different ways, which could introduce complexity for consumers in practice.

Remedy 1A would also give rise to uncertainties in practice regarding the issue of excesses. In particular:

- A non-fault claimant may have to pay an excess when provided with a replacement vehicle under their own policy. If so, the claimant would be at risk of having to pay two excesses for many claims.

- If there is no separate excess for the replacement vehicle, it is not clear whether this would be treated as an uninsured loss which should be recoverable from the at-fault insurer. If it is not recoverable, there is a complex question as to how the excess should be apportioned between the repair and hire section, which would be confusing for customers and may result in increased frictional costs.

(e) How would this remedy affect the credit hire and direct hire activities of vehicle hire companies? How might the quality of service in the provision of replacement cars be affected if replacement car provision is contractually specified in motor insurance policies?

Acromas believes Remedy 1A would result in the elimination of the credit hire industry. Indeed, the CC implicitly recognises this risk at paragraph 32 of the Remedies Notice, where it refers to the move away from credit hire in favour of direct hire.

In Acromas' view, this would result in a diminution of the quality of service in the provision of replacement cars, even if this is provided by the non-fault claimant's insurer (as opposed to the at-fault insurer under a direct hire model). Acromas believes that a non-fault claimant should (in line with their current entitlement under tort law) be

free to make that choice following an accident, because their needs may have changed. Moreover, the interests of the non-fault claimant and his/her insurer will not necessarily be aligned in these circumstances: there would no longer be an incentive for the insurer of a personal car to get their policyholder into a hire car quickly. At present, the structure of the market means that non-fault claimants get very prompt service.

(f) Would it be likely that the non-fault insurer providing the replacement car would also handle the repair of the non-fault claimant's vehicle? What would be the consequences of this? Would complexities and costs arise if the replacement car is provided by the non-fault insurer and the repair is carried out by a different service provider?

The non-fault insurer would be likely to also handle the repair in practice as they would seek to actively control hire durations and hire costs.

Complexities and costs are likely to arise if the replacement vehicle is provided by the non-fault insurer and the repair is carried out by a different service provider, given the need for close co-ordination between the repair and hire section. There is a risk that insurers would prioritise the repair of cars with an associated hire over those with no hire.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

As noted above, Acromas believes Remedy 1A would result in the elimination of the credit hire industry and that this would result in the loss of RCBs which result from the separation of cost liability and cost control.

In addition, premiums would vary if Remedy 1A were to be implemented. Worse drivers would tend to pay less for car insurance and better drivers would pay more. This is because the cost of the hire car would be transferred from the at-fault policyholder, where they currently reside, to the non-fault insurer.

Remedy 1A only extends to private car insurance and would therefore result in a considerable cost shift from commercial to private motor insurance customers. In particular:

- If a private car is hit by a commercial vehicle, the hire costs would go against the personal insurance.

- If the accident is the other way round, the commercial driver will not have given up his rights under tort law and so will continue to be able to recover hire costs from the personal insurer. In both cases the personal insurer pays.

For the same reason, costs are also likely to be transferred from insurers of overseas vehicles to those of UK vehicles.

(h) How long would it take to implement this remedy? What administrative changes would need to be made?

This remedy would need to take the form of a recommendation to Government for legislative change. It is not clear how long it would take to implement this remedy and, for that reason, Acromas does not consider that it would be effective.

(i) Would this remedy need any supporting measures? If so, what are those measures?

No. In Acromas' view this remedy should not be adopted.

Remedy 1B: At-fault insurers to be given the first option to handle non-fault claims

Issues for comment 1B

4 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) Which of the variants in paragraphs 38 and 39 are likely to be most effective:

(i) If the non-fault claimant retains the right to choose who handles the claim, what incentive would they have to choose to have claims handled by the at-fault insurer? Would this remedy favour larger insurers with stronger brands?

Acromas does not believe the variant outlined in paragraph 38 would be effective in addressing the AEC identified by the CC. This is because the non-fault claimant would be assessing the different offers on the basis of service, as opposed to price.

(ii) If the at-fault insurer is able to capture the claim should it wish to do so, what incentive would the at-fault insurer have to provide the standard of service to which the non-fault claimant is entitled? What measures need to be put in place to safeguard against this risk (see, for example, Remedy 2A)?

Acromas does not consider the variant outlined in paragraph 39 would be capable of implementation by way of enforcement order as it would remove the non-fault claimant's right to choose the service provided. It therefore risks being ineffective for the same reason as set out in relation to Remedy 1A (i.e. it would not be capable of sufficiently timely or certain implementation following a recommendation to the Government to introduce primary legislation).

Removing the choice from the claimant and forcing them to take the services offered by the at-fault insurer is also likely to lead to serious consumer detriment in practice. This variant of Remedy 1B would result in a serious risk of under-provision to the non-fault claimant: the at-fault insurer would be incentivised to minimise the cost of the claim rather than focus on service quality (or ensure that the non-fault claimant receives the standard of service to which they are entitled under tort law). Acromas does not believe combining this variant with Remedy 2A would prevent under-provision from arising in relation to repairs.

(b) What are the implications of the non-fault claimant having the right to choose an alternative service provider?

See above: Acromas does not believe the variant of Remedy 1B outlined in paragraph 38 would be effective in addressing the AEC identified by the CC. It should therefore be rejected.

It is possible that the variant set out in paragraph 41 could be implemented by the CC by way of an enforcement order made under Schedule 8 of the Act directed at non-fault insurer or CMC handling the FNOL process, requiring them to notify the at-fault insurer and provide them with the option to provide an equivalent replacement car to the non-fault claimant. Failure to comply with these requirements would place the non-fault insurer or CMC in breach of the provisions of the Order. However, Acromas doubts whether the CC would have the power under Schedule 8 of the Act to go as far as to regulate the amount *recoverable* by the non-fault claimant (or the non-fault insurer or CMC managing the claim on their behalf) under tort law for the supply of the replacement car. The courts will remain the ultimate arbiter of any disputes, including (for example) whether the offer by the at-fault insurer was made “in time”.

Even if the remedy option in paragraph 41 *were* capable of being implemented by the CC by way of an enforcement order, Acromas has serious doubts as to whether it would be capable of effective implementation on a practical level. In particular:

- In Acromas' view, the operation and implications of this option would not be at all clear to claimants (particularly in the immediate aftermath of an accident) and would be likely to result in significant confusion in practice.

- It would be necessary to agree upon a standard format for the notification which is given at FNOL to the at-fault insurer (including, in the absence of an industry portal, whether notifications would be made via designated email drop points at each insurer). The timescales for the at-fault insurer to respond with a counter-offer or confirmation of no interest would also need to be very short. In addition, the at-fault insurer would need to be incentivised to provide the hire vehicle on a timely basis and clarity on the at-fault insurer's obligation to deliver and collect vehicles (for example, whether this would extend to any UK mainland address).

- This option would have a significant adverse effect on the experience of non-fault claimants, particularly in circumstances where the claimant has an immobile vehicle. In these circumstances, there is a risk that claimants would not receive a replacement vehicle in a timely manner (particularly if the non-fault insurer or CMC is obliged to wait for the at-fault insurer to exercise the option to provide a replacement vehicle). This is linked to the point made below in relation to relevant customer benefits (**RCBs**).

- It also raises the prospect of increasing frictional costs in the event of inevitable differences of opinion. For example, in circumstances where an at-fault insurer elects to intervene 10 minutes before the expiry of the "waiting period", the not at fault insurer may not receive the message. Other hire scenarios are also likely to lead to increased frictional costs and litigation due to the complexity of this remedy. Costs will be further increased where the remedy requires immobile customers to wait for an at-fault insurer to respond.

(c) To what extent might this remedy inconvenience non-fault claimants, for example if they have to wait for the at-fault insurer to make contact? How long should the fault insurer be given to contact the non-fault claimant?

See above. Acromas thinks this remedy would inconvenience non-fault claimants in practice if they are obliged to wait even for a short period of time for the at-fault insurer to make contact. Any delay would cause consumer detriment and prevent claimants from being provided with a like-for-like replacement car in a timely manner, in line with their entitlement under tort law.

The operation of Remedy 1B would also create significant confusion as consumers will be uncertain of their rights in the period immediately following an accident that is not their fault.

(d) Should non-fault claimants who make the first notification of loss to their own insurer, broker or CMC have to wait for an offer from the at-fault insurer before deciding who to appoint to handle the claim even if they want their own insurer or CMC to do so?

No – Acromas thinks this remedy would inconvenience non-fault claimants if they are obliged to wait even for a short period of time for the at-fault insurer to make contact. That is particularly the case if the claimant's vehicle is immobile.

(e) Are there any advantages or disadvantages to the variant applying this only to replacement cars (see paragraphs 40 and 41) compared with applying this to both replacement cars and repairs? What might be the consequences of a replacement car being provided by the at-fault insurer but the repair being managed by the non-fault insurer?

Applying the remedy to repairs would risk under-provision. Acromas does not believe combining this variant with Remedy 2A would be effective in preventing under-provision from arising in practice in relation to repairs.

The customer experience would also be worse where the at-fault insurer is providing the hire and the non-fault insurer is performing the repair. The at-fault insurer will be incentivised to shorten the period of hire in order to reduce costs. It is not clear how non-fault claimants would be protected from such pressure.

It is also unclear how parts delays would be handled if a vehicle is already booked in for repair.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

Acromas believes that Remedy 1B would be likely to result in the elimination of the credit hire industry (or, at the very least, a significant shift from credit hire to direct hire and a serious risk of under-provision in relation to the provision of replacement cars to non-fault claimants following FNOL). In Acromas' view, Remedy 1B would therefore result in the elimination of RCBs which result from the AEC which the CC has identified in relation to ToH1 (i.e. the separation of cost liability and cost control).

This remedy would not apply to split liability cases. There would therefore need to be clear and consistently applied criteria for determining a non-fault claim across the industry, otherwise there is a strong risk that an increase in disputes will occur as

FNOL functions attempt to avoid the remedy by deciding that a claim is split liability. This would result in an increase in frictional costs.

It is also not clear how Remedy 1B would apply where a claim that is initially thought to be split liability is a non-fault case.

As with Remedy 1A, unless fleet and commercial vehicles are subject to the changes, costs will be transferred into the PMI market.

(g) How might this remedy be circumvented? How could this circumvention be avoided?

Opportunities will arise to circumvent this remedy if the drafting of the order or the legislation do not comprehensively tackle the scenarios that will arise in practice. This supports Acromas' position that this an overly complex and costly remedy, even where the CC can overcome the other difficulties Acromas has pointed out.

(h) How should insurers, brokers and CMCs be monitored to ensure that claimants are properly informed of their rights when making the first notification of loss? How should non-fault insurers and CMCs be monitored to ensure that the at-fault insurer is informed of the claim? Who should undertake this monitoring? What additional costs would arise as a result of monitoring?

Remedy 1B would require significant ongoing monitoring to ensure that claimants are properly informed of their rights when making the first notification of loss. It may be difficult to monitor compliance.

(i) How long would it take to implement this remedy? What administrative or legal changes would need to be made?

The timeframe for implementing Remedy 1B is unclear. As noted above, legislative change would be required for the remedy options set out in paragraphs 39 and 40. Acromas also has doubts as to whether the option set out in paragraph 41 would be capable of being implemented effectively by way of an enforcement order.

Remedy 1C: Measures to control the cost of providing a replacement car to non-fault claimants

Issues for comment 1C

5 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) What would be the most effective way of implementing this type of remedy? Possible ways could be an enforcement order made by the CC, an undertaking to replace the GTA, or (in relation to the hire costs of TRVs subject to dispute) a recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars.

In principle, Remedy 1C should be capable of effective implementation, on the basis that:

- it could be implemented by way of an enforcement order made under Schedule 8 of the Act (as opposed to a recommendation to Government for legislative change);

- it should be effective in controlling the cost of subrogated claims for the provision of replacement cars to non-fault claimants. Subject to the comments made below, Acromas believes it should be possible to devise a mechanism for a cap on daily hire rates, although the design of this aspect of Remedy 1C will require careful consideration in order to ensure in practice that any cap is set at a level which enables credit hire companies to continue to provide non-fault claimants with a replacement car that meets their needs, whilst at the same time earning a reasonable rate of return.

Acromas would support any solution to improve the management of credit hire claims and reduce frictional costs (for example, by introducing an online portal similar to the claims portal operated by the Ministry of Justice – see http://www.claimsportal.org.uk/en/). There may be scope for this remedy to build on the work that has already been done in this area by the GTA's Technical Committee.

Acromas looks forward to discussing with the CC how this remedy might be implemented at the remedies hearing.

(b) Which parties should be covered by this remedy?

Remedy 1C would need to apply to all insurers, brokers, CMCs and CHCs engaged in credit hire activities.

(c) What is the appropriate time period in which repairs should commence once a replacement car has been provided? How should the hire period be monitored and by whom?

The guidance proposed on the duration of hire periods would specify the appropriate time period within which the repair should commence.

Acromas considers a good starting point to be current GTA guidance which states that hire starts when there is a need, and prescribes the points at which the credit hire organisation should monitor the garages progress. Putting in place a rigid formula will take away the benefit of the current system, which recognises that customer need can differ case by case, and lead to customer detriment. Acromas does not think additional monitoring is required. The court can perform this function and take a view on whether the hire durations are reasonable based on the circumstances of the case. There is no need to have a set formula in place.

(d) What is the most appropriate mechanism for setting hire rates for replacement cars? Who should determine the hire rates?

In the time available, Acromas has not been able to conclude what the most appropriate mechanism would be for setting hire rates for replacement cars.

Acromas would support the appointment of an independent expert (such as an accountancy firm or economics consultancy) to propose a framework for the calculation of the cap on daily hire rates.

Whichever mechanism is used for these purposes would need to:

- ensure that the basket of hire rates that is used for these purposes is genuinely representative of the market rate and would not enable the major vehicle rental providers to manipulate or otherwise distort the data set in order to gain a competitive advantage; and

- consider how extraneous factors (such as geographical differences in hire rates and seasonal fluctuations in demand) are built into the methodology used to calculate the average retail hire rate.

It is, however, not clear to us that the CC would have the power under Schedule 8 of the Act to go as far as to regulate the amount *recoverable* by the non-fault claimant (or the non-fault insurer or CMC managing the claim on their behalf) under tort law for the supply of the replacement car. Acromas looks forward to discussing this in further detail with the CC at the hearing.

If the court remains the ultimate arbiter of the amount *recoverable* by the non-fault claimant under tort law for the supply of the replacement car, then Acromas would support a recommendation for judicial guidance on the level of hire costs recoverable from at-fault insurers by non-fault insurers and other providers of replacement cars so that this can be taken into account by the independent expert in finalising the framework for the calculation of the cap on daily hire rates.

(e) What administrative costs should be allowed? At what level should administrative costs be capped?

The allowance for administration costs should be set at a level that enables credit hire companies to earn a reasonable rate of return and continue to provide non-fault claimants with a replacement car that meets their needs.

(f) Is it practicable for the relevant documentation to be exchanged through a web portal rather than in paper form?

In principle, Acromas would support the development of a web portal (similar to the portal that is administered by the Ministry of Justice for PI claims). There would, however, be costs associated with developing, maintaining and building interfaces to the portal.

(g) What costs would the measures in this remedy entail?

The remedy would entail some cost: mainly the appointment of an independent expert to calculate the cap on daily hire.

(h) Would this remedy give rise to distortions or have any other unintended consequences?

This remedy may increase the risk of litigation (and increase frictional costs) if there is a delay between a new vehicle being released and the independent body settling a rate.

(i) To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?

Acromas is not currently in a position to determine whether there are significant circumvention risks associated with this remedy.

Remedy 1D: Measures to control non-fault repair costs

Issues for comment 1D

6 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) What would be the most effective way of implementing this remedy?

Acromas does not believe that Remedy 1D(a) is capable of effective implementation due to circumvention risk (see below).

Acromas has some comments (below) on whether Remedy 1D(b) could be implemented by way of an enforcement order.

(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Acromas believes Remedy 1D(a) could easily be circumvented by insurers vertically integrating with repairers. However, Acromas thinks Remedy 1D(b) would be effective in preventing subrogated claims for repair costs being marked up and reducing frictional costs associated with repair claims.

Regarding Remedy 1D(a)

(c) How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?

In order to prevent repairers from inflating the wholesale prices they charge to non-fault insurers, a ban on referral fees (Remedy 1G) would be required. However, as noted above, Acromas does not believe Remedy 1D(a) would be effective in addressing the AEC identified by the CC given the obvious circumvention risk.

(d) Could this remedy be circumvented by insurers vertically integrating with repairers?

Yes, Acromas considers there is a serious risk of circumvention in circumstances where the non-fault insurer is vertically integrated with repairers (i.e. owns its own network). This could not be overcome by combining Remedy 1(a) with a prohibition on referral fees (Remedy 1G).

For that reason, Acromas does not consider Remedy 1D(a) would be effective in addressing the AEC identified by the CC.

Regarding Remedy 1D(b)

(e) Is it practicable to set standardized costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?

Although not straightforward, Acromas considers it should be possible in principle to set standardised costs for all aspects of repairs in subrogated claims, using cost estimation systems to provide the necessary inputs.

There must, however, be some doubt as to whether this remedy would be capable of being implemented by way of an enforcement order. Paragraph 8 of Schedule 8 of the Act empowers the CC to "…*regulate the prices to be charged for any goods or services*…" to which an AEC relates. Although the CC indicates that the system of standardised costs would provide "…*a form of price control*…", this is not a price control in the classic sense, i.e. a cap on the price that can be charged for the provision of a service (such as the provision of repair services, for example). It is therefore arguable that the CC would *not* have the power under Schedule 8 of the Act to introduce an enforcement order regulating the amount of repair costs recoverable under tort law. Acromas looks forward to discussing this in further detail with the CC at the hearing.

Even if the court does remain the ultimate arbiter of the amount of repair costs recoverable under tort law in these circumstances, it is possible that the methodology proposed by the CC on standardised costs would be persuasive in the event of litigation to establish the reasonable cost of repairs.

If implemented, it would be essential to ensure that Remedy 1D(b) applies to credit repair companies as well as to insurers and brokers. If this were not the case, insurers and brokers would simply move to credit repair for non-fault claims and therefore secure a higher cost recovery, thereby circumventing Remedy 1D(b).

(f) What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?

At this stage, Acromas is not in a position to comment on what the appropriate benchmarks would be for the inputs into the price control. Acromas looks forward to discussing these issues in more detail with the CC at the hearing.

(g) What would be the costs of implementing this arrangement?

This arrangement would entail some cost: the model for the price control would need to be developed and reviewed/updated periodically by an independent body (see below).

(h) How would monitoring of this remedy work?

This remedy could be monitored by an independent body, which could be the same entity which is responsible for administering the cap on daily hire rates.

This body could be required to report to the FCA on a periodic basis.

(i) What would be the most appropriate organization to review the inputs into the price control on a regular basis?

See above: this could be the same entity which is responsible for administering the cap on daily hire rates.

(j) What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?

This remedy would operate in conjunction with Remedy 2A (to the extent the CC finds in its final report that there is an adverse effect on competition in relation to ToH 2).

Remedy 1E: Measures to control non-fault write-off costs

Issues for comment 1E

7 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

Acromas' view is that both remedy options would be effective in addressing the AEC identified by the CC and ensuring that claims costs reflect actual salvage proceeds. However, Remedy 1E(b) would be more proportionate, as it would be less onerous and would be easier to implement on a practical level.

Regarding Remedy 1E(a)

(b) Would at-fault insurers be likely to take up the option of handling the salvage?

It would be complex to implement Remedy 1E(a) from an operational perspective: under this proposal, the at-fault insurer would receive the vehicle and would recover the salvage value. This would entail additional administration costs and might therefore increase costs claims costs (or at least off-set the cost reductions which Remedy 1E(a) is intended to produce).

Acromas thinks it is unlikely, therefore, that at-fault insurers would take up the option of handling the salvage.

(c) At what point in the claims process should at-fault insurers be given this option?

See above.

Regarding Remedy 1E(b)

(d) What impact would this remedy have on salvage companies? To what extent would this proposal reduce the incentives for insurers to get the best salvage value from salvage companies?

Acromas is not well-placed to comment on the impact which this remedy would have on salvage companies. However, Acromas considers this proposal would be effective in ensuring that claims costs reflect actual salvage proceeds.

In Acromas' view, this remedy would be easier to implement on a practical level and would entail less cost, as it would not require the at-fault insurer to take delivery of the vehicle. It would therefore be less onerous than Remedy 1E(a).

(e) What administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?

Acromas is not well placed at present to gauge the level of administrative costs which the adjustment mechanism would entail.

Remedy 1F: Improved mitigation in relation to the provision of replacement cars to non-fault claimants

Issues for comment 1F

8 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) Could this remedy operate on a stand-alone basis?

This remedy could operate on a stand-alone basis.

(b) Which other remedies would benefit from this remedy as a supporting measure?

Remedy 1C would benefit from this remedy as a supporting measure.

(c) What questions should the non-fault insurer or CMC ask non-fault claimants in order to assess the need for a replacement car, the appropriate type of replacement car and to demonstrate that the provision of a replacement car had been appropriately mitigated? Should the cover provided by the claimant's own insurance policy be considered in assessing the claimant's need: for example, if the claimant's own policy included provision of a replacement car in the event of an at-fault claim, would that be sufficient evidence of need for a replacement car in the event of a non-fault accident?

Acromas thinks the following questions would be appropriate:

- What are your main uses for your vehicle?
- Do you have access to another vehicle that fulfils the same requirements?
- If so, is this alternate vehicle available when you require it?

- Will it inconvenience other users of the vehicle?

- Do you feel safe driving the alternate car? (This may be the case, for example, if the car is an automatic in circumstances where the claimant's own vehicle is a manual.)

(d) Would the right of the at-fault insurer to challenge the non-fault insurer or CMC and to see the 'mitigation declaration' and call record be sufficient for this remedy to be self-enforcing without additional monitoring? Would giving the at-fault insurer access to the non-fault insurer's or CMC's call records give rise to any data protection issues?

Yes, Acromas believes that the right of the at-fault insurer to see the revised 'mitigation declaration' would be sufficient for these purposes.

Acromas does not believe it would be necessary or proportionate to provide call records to the at-fault insurer. The GTA already requires a signed mitigation statement to be provided.

Acromas anticipates that this would reduce frictional costs (in combination with the other remedies).

(e) How much would it cost to implement this remedy?

It should not be particularly costly to implement this remedy.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

No.

Remedy 1G: Prohibition of referral fees

Issues for comment 1G

9 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) Could this remedy operate on a stand-alone basis?

No – Acromas considers this remedy should apply as a supporting measure to Remedies 1C, 1D(b), 1E(b) and 1F.

(b) Would remedies 1A to 1F benefit from a prohibition of referral fees as a supportive measure? Or would remedies 1A to 1F have the effect of reducing referral fees in any event?

See above: Acromas would support the implementation of Remedy 1G as a supporting measure to remedies 1C, 1D(b), 1E(b) and 1F. Remedy 1G would support the effectiveness of these measures and would help to eliminate any risk of circumvention through the use of referral fees.

For example, a prohibition on referral fees would act as a supporting measure by preventing independent garages/bodyshops from inflating the cost of carrying out the

repair in circumstances where: (i) they receive a referral fee; and (ii) this is not covered by Remedy 1D(b). A ban on referral fees in this context would address the risk of over-costing of the repair service. Credit Hire Companies offer referral fees to garages based on the vehicle type and the duration of the repair (the longer the duration the larger the fee). By banning referral fees, the garage is no longer incentivised to artificially extend the duration of the repair, thus improving customer service and reducing hire costs.

(c) What would be the impact on premiums if referral fee were prohibited?

Acromas is not in a position to estimate what the impact of a prohibition on referral fees would be on premium levels.

(d) Would this remedy give to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?

(e) Given the time constraints on the response to the CC's remedies notice, Acromas has not been able to come to a firm view on this question.

(f) What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (e.g. discounts) having the same effect as referral fees be prevented?

It should be possible to include language in the Order (for example, "…*measures having equivalent effect*…" or similar) to address the risk of circumvention.

(g) How could this remedy best be monitored and what costs would be incurred in doing so?

Acromas is not in a position to comment at present at how this remedy could best be monitored, although the FCA might be well-placed to do so.

ToH1: Remedies that the CC are minded not to consider further

10 **First party motor insurance**

11 **Prohibition of credit hire**

Issues for comment 1H

12 **The CC invites views on these two possible remedies which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found in relation to ToH1. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.**

Acromas agree that these remedies are not required.

Theory of harm 2: Possible under-provision of service to those involved in accidents

Remedy 2A: Compulsory audits of the quality of vehicle repairs

Issues for comment 2A

13 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

Acromas is currently preparing its response to the CC's provisional findings. It does not agree with the AEC which the CC has provisionally identified in relation to ToH2 (i.e. the possible under-provision of service to those involved in accidents). In particular, Acromas does not agree that insurers and CMCs fail to monitor the quality of repairs effectively or that there are significant limitations to consumers' ability to assess the quality of repairs. The CC's provisional findings are based largely on the MSXI survey report, which appears to based on a small sample size of vehicles used. Acromas does not, therefore, accept that Remedy 2A is required.

Acromas nevertheless has the following comments on Remedy 2A:

(a) What costs would be involved in auditing the quality of repairs?

Acromas contends that a system of independent audits would be onerous and expensive, and ultimately would feed through to higher premiums for consumers.

Acromas' own existing engineering inspections of repairs guarantees an extremely low [✂] rate of rectification and it therefore believes further inspections are unnecessary.

(b) How frequently should audits of repair quality be undertaken?

If required, Acromas does not consider audits of repair quality would need to be carried out on a frequent basis in order for this to be effective in addressing any AEC which the CC may identify in its final report.

(c) Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to standardized and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?

If required, audits of repair quality could be undertaken by insurers and CMCs and subject to periodic audit by an independent body.

Acromas does not have any views at present on how the independent body should be funded.

(d) If the results of repair quality audits were to be published, who should collate the results? Should be results be categorized by repairer or insurer?

Acromas does not have any views at present on how the repair quality audits should be published, and by whom. The FCA may be an appropriate body.

(e) **If audits are carried out by insurers, how would consistent standards be achieved?**

If required, audits of repair quality could be undertaken by insurers and CMCs and subject to periodic audit by an independent body.

(f) **If this remedy were to be implemented through expanding the scope of PAS 125 and the scope of audits undertaken in relation to PAS 125, is it necessary for PAS 125 accreditation to be made mandatory for all repairers undertaking insurance-related work?**

It is not clear whether the best way to implement this remedy would be by expanding the scope of PAS 125.

(g) **Would this remedy give rise to distortions or have any other unintended consequences?**

No, but Acromas does not believe it is necessary.

(h) **Whether this remedy is best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedy, and if so who that party should be.**

If required, this remedy could be introduced through an enforcement order.

(i) **Whether this remedy is likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.**

If required, this remedy might work in conjunction with Remedy A (although Acromas would argue that Remedy A is sufficient to address any AEC which the CC may identify in its final report).

ToH 2: Remedies that CC are minded not to consider further

Issues for comment 2C

14 **The CC invites views on this possible remedy which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 2. Where parties are of the view that this remedy could be effective, they are asked to submit evidence to support their views.**

Acromas agrees that these remedies are not required.

Theory of harm 4: Add-ons

ToH 4: Remedies that CC are minded to consider further:

(a) 4A: Provision of all add-on pricing from insurers to PCWs;

(b) 4B: Transparent information concerning NCB; and

(c) 4C: Clearer descriptions of add-ons.

Issues for comment 4

15 **Views are invited as to:**

(a) whether the possible remedies under ToH 4 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found; and

(b) whether the possible remedies under ToH 4 are best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedies, and if so who that party should be.

Acromas supports remedies 4A, 4B and 4C in principle: customers should be able to analyse the full cost of cover on PCWs, including add-ons.

Acromas considers that the CC should make recommendations to the FCA to implement these remedies. The FCA would be best placed to address these issues given its recent work on add-ons across all lines of insurance.

Remedy 4A: Provision of all add-on pricing from insurers to PCWs

Issues for comment 4A

16 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) Should PCWs be required to enable consumers to compare the policies offered by different insurers including all add-ons on their websites or are they sufficiently incentivized to do so without such a requirement?

Acromas supports this information being made available on PCWs. PCWs should be required to enable customers to compare the policies offered by different insurers including all add-ons on their websites.

(b) Should the remedy be extended to brokers?

Yes.

(c) Should the remedy apply to all add-ons?

The remedy should apply to the most common add-ons.

(d) How long would it take for insurers to prepare the pricing information to pass to PCWs and for PCWs to alter the design of their websites to accommodate this change?

Acromas possesses this data but is not in a position to comment on other insurance providers.

The length of time required for adoption will ultimately depend on how the PCWs require the data to be provided to them. PCWs are therefore probably best placed to answer this question, as this is work to be done by them, but also by all the providers on their site (they will work at the pace of the slowest). PCWs will have experience of implementing changes to the quote processes previously.

(e) How much would it cost to make these changes?

Acromas does not believe it would be particularly costly to implement these changes.

(f) What circumvention risks would this remedy pose and how could these be mitigated?

Acromas does not anticipate any significant circumvention risks.

(g) Would this remedy give rise to distortions or have any other unintended consequences?

No.

Remedy 4B: Transparent information concerning no-claims bonus

Issues for comment 4B

17 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) Is it necessary for consumers to be given the NCB scales both when choosing whether to take out NCB protection and when receiving their policy quotation?

Acromas has doubts as to whether this remedy would be effective in addressing the lack of transparency which the CC has identified regarding NCB scales and the difference between NCBs and NCB protection. In particular:

- It is not clear to us that requiring the disclosure of NCB scales would materially assist consumers in evaluating the protection on offer. There is a risk that publication of the scales, coupled with the statement proposed in paragraph 91(b) of the Notice (making it clear that the premium may increase), may confuse consumers at the point at which they are choosing whether to take out NCB protection by overloading them with information rather than assisting them to make an informed decision.

- An alternative approach would be to require insurers to publish NCB scales on their website and provide customers with an option to access these (for example, by including a link to the insurer's website) when they are choosing whether to take out NCB protection. This could be coupled with a requirement for brokers, insurers and PCWs to provide a clear and concise explanation of

the consequences of making a claim if the customer elects to take out NCB protection.

- It would be quite complex and costly to implement this remedy in a uniform manner, particularly for brokers. That is because each insurer on the broker's panel will have different NCB scales, and some of these may be based on the risk profile of the applicant and may therefore not be uniform. [✂].

(b) What wording could best be used to help consumers that NCB protection does not prevent premiums rising following an accident?

Acromas would be happy to discuss this with the CC at the hearing. The form of words would need to be simple to understand and written in Plain English.

(c) Are there any obstacles to effective implementation of this remedy?

Please see Acromas' comments above.

(d) How long would it take for insurers to prepare the NCB scales?

Please see Acromas' comments above in relation to the costs associated with implementing the remedy. Acromas is not well placed to comment on the length of time it would take other insurers to prepare their NCB scales.

(e) What circumvention risks would this remedy pose and how could these be mitigated?

Acromas does not anticipate any significant circumvention risks but would emphasise that transparency on price must be implemented with transparency on cover. If this is not the case, providers will have an incentive to make the products as cheap as possible by removing benefits and increasing excesses/co-pays (as the example in paragraph 18(a) below shows).

(f) Would this remedy give rise to distortions or have any other unintended consequences?

No.

Remedy 4C: Clearer descriptions of add-ons

Issues for comment 4C

18 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) What are the key aspects of each add-on product that need to be explained in such descriptions and how should the quality of these descriptions best be established?

Acromas supports Remedy 4C. It would help customers shopping on PCWs to differentiate in terms of the cover offered as this information is not currently available. Given PCWs allow customers to compare prices including motor legal add-on, differences in cover ought to be clearer on the results pages.

The need for this remedy can be illustrated by way of an example regarding breakdown cover: The AA currently offers its full service breakdown cover to customers buying motor insurance on PCWs. The cover from other providers can be very different, but all are represented by a single green tick on the PCW results page. For example, One Call Insurance's breakdown incurs a £20 compulsory excess in addition to any age of vehicle excess, plus £3 per mile outside of a 10 mile radius and permits only two call outs per year. It is provided by garage agents, not dedicated patrols. These are scarcely comparable products. It is also likely that any attempt to put more responsibility on the PCWs to give consumers more information will lead not only to better customer outcomes, but also remove some of the focus purely on the price of cover, and instead emphasise the importance of the quality of the product.

(b) How should these descriptions be provided to consumers—for example, in the insurance policy documentation, on insurers' websites or on PCWs?

Acromas agrees with providing details on all three. For the reasons outlined in 17(e) and 18(a) above, Acromas believes that the full detail should be provided, otherwise insurers may strip the products to make them appear cheaper.

(c) How would this remedy best be monitored—both for initial approval of descriptions and ongoing approval?

This remedy could be monitored by the FCA.

Theory of harm 5: Most favoured nation clauses in PCW and insurer contracts

I. Summary

1 Acromas agrees with the CC's proposed ban on wide MFN clauses.

2 Acromas intends to contest the CC's Provisional Finding that there is no adverse effect on competition (**AEC**) in respect of narrow MFNs. In particular, Acromas considers the CC has provided insufficient reasoning to support its findings that:

(a) the anticompetitive effects of narrow MFNs are "*limited*"; and

(b) narrow MFNs "*may be necessary for PCWs to survive as they both provide credibility to PCWs and prevent free-riding by motor insurance providers*".

3 If the CC ultimately finds an AEC in respect of narrow MFNs, it follows that a ban on all MFNs would be the appropriate remedy. However, even if the CC only finds an AEC in respect of wide MFNs, Acromas considers that:

(a) applying a wide MFN remedy, without a narrow MFN remedy, would be ineffective; and

(b) banning both wide and narrow MFNs is no more onerous than banning only wide MFNs. It is also preferable because prohibiting narrow MFNs is more meritorious (a consideration set out in the CC's Guidelines on Market Investigations (**CC3**), paragraph 343), leads to more beneficial effects (CC3, paragraph 351) and creates opportunities for new and innovative competitors (CC3 paragraph 353).

II. Acromas strongly agrees with the CC's proposed ban on wide MFN clauses

4 Acromas agrees with the CC's proposal to prohibit wide MFN clauses. It agrees with the CC's analysis that wide MFNs are anticompetitive, protect the market power of the incumbent PCWs and restrict price competition across other distribution channels for insurance products.

III. Acromas strongly contests the CC's Provisional Findings in respect of narrow MFNs

5 Acromas disagrees with the CC's findings that narrow MFNs do not give rise to an AEC. It intends to contest this conclusion in detail in its response to the Provisional Findings. It sets out some of its reasoning below, without prejudice to its forthcoming response to the Provisional Findings.

The anticompetitive effects of narrow MFNs are greater than the CC has concluded

6 Acromas notes the CC's finding that the anticompetitive effects of narrow MFNs are "*limited*" (paragraph 9.92 of the PFs). Acromas considers this conclusion is inadequate for the reasons set out below.

7 Narrow MFNs cause direct and quantifiable harm to "brand loyal consumers". These customers never search on a PCW, preferring instead to go direct to their regular insurance provider. In the absence of the narrow MFN, the insurance provider would be

free to reward these customers for their loyalty by passing on some of the fee it would have paid to (and the frictional costs of dealing with[1]) the PCW.

8 The CC has underestimated the impact of this harm. It is felt not only by Acromas' direct customers (many of whom are elderly), but also by many other insurance providers. Some of the areas in which Acromas considers the CC's reasoning to be inadequate are:

(a) the CC provides insufficient reasoning for its conclusion that only "*a small number of brands [redacted] appear to have characteristics which mean they could be affected by narrow MFN clauses*";

(b) the CC's reasoning is apparently static – i.e. it does not account for the fact that other providers could fall into this category in future. Indeed, it is likely that relatively few insurers currently fall into this category precisely because, as a result of MFNs, their own websites can never be the cheapest distribution channel. If insurers had the freedom to set their direct prices independently they would have a greater incentive to innovate on their own websites; and

(c) the CC's reflection at A9 para 29 that "*It is not clear why* [a dual branding strategy] *is not available to other brands*" fails to recognise that brands like those of Acromas create their brand strength through offering multiple products (breakdown, driving tuition, holidays etc). It is through this lifetime customer journey that brand loyal customers are created. A newly created brand, offering insurance to similar demographics, would not attract the brand loyal customers referred to above, who still lose out as a result of narrow MFNs.

9 Parts of the CC's reasoning contradicts recent competition law developments in both the UK and Europe.

In the absence of narrow MFNs, other (more efficient) mechanisms would deal with free-riding and credibility

10 Acromas notes the CC's finding that narrow MFNs "*may be necessary for PCWs to survive as they both provide credibility to PCWs and prevent free-riding by motor insurance providers*". Acromas does not believe the CC has provided sufficient reasoning to support this statement.

11 Appendix A9-(3) does not give adequate consideration to the alternative mechanisms (such as quote poaching clauses) which would become more prevalent in the event of a prohibition on narrow MFNs. Acromas provides more detail on this point, below.

12 The CC's reasoning on "credibility" (also referred to as "truthfulness") as being necessary to ensure the survival of PCWs is wholly inadequate. In particular:

(a) the CC appears to have taken the PCWs' assertions at paragraph 9.70 at face value, without adequately testing them;

(b) the only reason the CC provides for its conclusion on credibility is a comparison with the position in Italy, yet:

(i) the CC provides no analysis of whether competitive conditions in Italy are comparable to those in the UK (and Acromas intends to demonstrate that they are not);

[1] Many insurance providers, [✂] .

(ii) the CC itself acknowledges that the absence of narrow MFNs is only one of many potential reasons identified by the Italian authority for the failure of PCWs to penetrate the market; and

(iii) the Italian analysis is of a market in which PCWs had failed to develop. By contrast, in the UK the CC has already found (at paragraph 9.24) that the PCWs have a degree of market power. As Acromas has previously submitted, but which does not appear to have been addressed in the Provisional Findings, this position was arrived at without the benefit of MFNs.

(c) only one of the four PCWs actually advertises that the customer cannot buy cheaper through the direct channel, which suggests they do not consider this to be particularly important[2]. The CC's finding also seems at odds with their equivalent conclusions in relation to wide MFNs, at paragraphs 9.81-2 of the PFs (e.g. "*The fact that it does not prominently advertise the existence of the MFNs ('never knowingly undersold') does not seem consistent with this motivation.*")

The CC should therefore find an AEC in respect of all MFNs

13 Acromas therefore considers that the CC ought also to find an AEC in respect of own-website MFNs and, as a result, the proposal to prohibit wide MFNs should be extended to also cover narrow MFNs.

Remedy 5A: Prohibition on wide MFN clauses

Issues for comment 5A

14 **Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:**

(a) How would this remedy be best specified? Would the prohibition be best described in relation to all MFN clauses except those in relation to insurers' own websites?

For the reasons set out above, Acromas is firmly of the view that a prohibition on all MFNs, including narrow MFNs, is the only effective remedy.

(b) Could this remedy take effect immediately (or within a short period to remove the clauses) or would an adjustment period be required?

Acromas sees no reason why a ban on MFNs (both wide and narrow) could not be put into effect very quickly, with a small change to relevant contracts between insurance providers and PCWs.

(c) What circumvention risks would this remedy pose and how could these be mitigated?

[2] Confused clearly states "*Remember, buying direct is not necessarily cheaper – you get the same deal or better with Confused.com.*" Equivalent statements from Go Compare, Moneysupermarket and Comparethemarket do not make this claim, focussing instead on the fact that they do not impose charges on the customer and use can save them time.

Even if the CC only finds an AEC in respect of wide MFNs, applying a wide MFN remedy, without a narrow MFN remedy, would be ineffective

Where the CC only finds an AEC in respect of wide MFNs, prohibiting wide MFNs without prohibiting narrow MFNs would still not be an effective remedy. This is because, as the CC itself observes in paragraph 352(a) of CC3, "*A remedy may result in unintended distortions to market outcomes.*"

Insurance providers (including those in the Acromas group) have been able to resist own-website MFNs, to a large degree, due to the uncertainty that exists over their treatment under competition law. In the event that the CC were to prohibit only wide MFNs, PCWs would perceive this as having "blessed" narrow MFNs and, through the exercise of their bargaining power, such clauses would proliferate much more widely than is currently the case.

At paragraph 348 of its CC3 Guidelines, the CC notes it "*will pay particular regard to the impact of remedies on customers*", yet the CC has not examined the consequences of such a distortion. The end result is that the insurer's own price would be the same as the least competitive PCW. This may lead to the unintended consequence of insurance providers charging the same price through all PCWs, so that the narrow MFN clause becomes a de facto wide MFN clause.

Furthermore, Acromas has concerns about the practical difficulty of implementing a partial ban on MFNs. This would require a clear and precise definition of what is, and is not, permitted. A ban that is restricted to wide MFN clauses, unless very carefully drafted, still allows the PCW to use circumvention measures such as restrictions on pricing through other non-PCW distribution channels, including emerging channels such as social media (see further below).

(d) In addition to threatening to delist an insurer, what other actions could a PCW take that might have the same effect as a wide MFN? How could the risk of a PCW taking these actions be effectively mitigated?

For the reasons set out above, Acromas' view is that by only choosing to ban wide MFNs, the CC would be effectively "blessing" narrow MFNs, which could ultimately lead to the same effects as a wide MFN.

(e) Would this remedy give rise to distortions or have any other unintended consequences?

Even if the CC only finds an AEC in respect of wide MFNs, banning both wide and narrow MFNs is more proportionate than banning only wide MFNs

The CC's CC3 Guidelines state at paragraph 342 that "*In considering the reasonableness of different remedy options the CC will have regard to their proportionality.*"

Paragraph 343 of those same Guidelines continues that "*The CC's assessment of proportionality … often depends on what other remedy options are also being considered.*" Then (at paragraph 344) a "*proportionate remedy is one that … is the least onerous if there is a choice between several effective measures.*"

In paragraph 102 of its Remedies Notice, the CC concludes "… *it would be disproportionate to prohibit all MFNs if the prohibition only of "wide" MFN clauses were to be considered an effective remedy because the former would clearly be*

more onerous." Acromas disagrees with this statement for the reasons discussed in more detail below, i.e.:

- prohibiting all MFNs is no more onerous than prohibiting only wide MFNs; and

- prohibiting all MFNs is preferable because the alternatives that would emerge are able to resolve the PCWs' concerns (on credibility and free-riding), while also avoiding harm to the brand loyal customer. These alternatives are more meritorious (CC3, paragraph 343), lead to more beneficial effects (CC3, paragraph 351) and creates opportunities for new and innovative competitors (CC 353).

Prohibiting all MFNs is no more onerous than prohibiting only wide MFNs

Acromas considers that, were the CC to prohibit narrow MFNs, the PCWs could easily negotiate alternative arrangements (such as quote poaching clauses).

Indeed, insurers that deal with PCWs under a MFN clause [✂] already have the ability to do this (both technically and legally), allowing them to distinguish brand loyal customers from those that have previously searched on a PCW. Accordingly, in the event of a prohibition on narrow MFNs, this alternative solution would emerge, quickly, efficiently and at minimal cost.

[✂] .

All that is required for this system to operate is a single database, populated by the insurance provider. When a customer requests a quote (whether direct or through a PCW), the insurance provider would check the database and:

- if this constitutes the first point of contact for the customer in question, the insurance provider would record that quote on the database, along with the identity of the customer; and

- if it does not constitute the first point of contact, the insurance provider would return an identical quote to the customer through this latest channel.

This allows the insurance provider and the PCW to ensure that:

- where the PCW is the first point of contact for the customer, the insurance provider will pay a commission to the PCW; and

- where the insurance provider is the first point of contact for the customer, the insurance provider can reflect the requirement to pay the PCW's commission (in the event the sale is completed via the PCW) by increasing the price displayed on the PCW, if required.

Prohibiting all MFNs is preferable because it resolves the PCWs' concerns on credibility and free-riding, while also avoiding harm to the brand loyal customer

Prohibiting all MFNs is preferable to only prohibiting wide MFNs, because it resolves the PCWs' concerns on credibility and free-riding, while also avoiding

harm to the brand loyal customer. Below, Acromas deals with each of these points in turn.

As a result, prohibiting narrow MFNs is more meritorious (CC3, paragraph 343), leads to more beneficial effects (CC3, paragraph 351) and creates opportunities for new and innovative competitors (CC3 paragraph 353).

(a) Credibility

As set out in section III, above, Acromas intends to contest the CC's finding that the credibility condition is necessary for the survival of PCWs.

Regardless, however, in the situation described above, the credibility criteria would still be satisfied: customers that use the comparison services of a PCW will not be able to obtain a cheaper price through the direct channel. Only those that never use the PCW would benefit from the lower price (if available).

In any event, were the CC to prohibit narrow MFNs, PCWs would still be free to use their market power to force insurance providers to agree not to advertise themselves as "no more expensive" (or "cheaper", in certain circumstances) than the PCW.

(b) Free riding

At paragraph 9.78 the CC accepts that quote poaching offers a solution to the free rider concern: "… *the alternative charging model and quote poaching clauses may provide a less restrictive mechanism for PCWs to overcome the problems of free-riding by insurers and consumers*."

Acromas agrees with this conclusion. In the scenario outlined above, as with the narrow MFN, customers which benefit from the PCW's services cannot also benefit from a cheaper price direct.

(c) Avoiding harm to the brand loyal consumer

This solution is more efficient because it directly addresses consumer preferences. Unlike under a narrow MFN, brand loyal customers are not penalised for choosing not to use a PCW. (Narrow MFNs, by contrast, effectively lead these customers to cross subsidise those that shop on PCWs.)

Other unintended consequences

In respect of unintended consequences, in choosing to prohibit only wide MFNs, the CC is placing considerable reliance on competition between PCWs leading to lower premiums. As well as the scenarios identified above and in Acromas' previous submissions, other adverse (and unintended) scenarios are conceivable. One example might be a surge in media costs, thereby driving up PCWs' costs of advertising and, in turn, CPAs.

ToH 5: Remedies that CC are minded not to consider further

Issues for comment 5B

15 **The CC invites views on the possible remedy in paragraph 102 which we are not minded to consider further and on any other possible remedies that we have not included in this Notice which interested parties consider may be effective in addressing the AEC we have provisionally found under ToH 5. Where parties are of the view that these remedies could be effective, they are asked to submit evidence to support their views.**

Please see above.

Relevant customer benefits

Issues for comment 6

16 **Views are invited on the nature, scale and likelihood of any relevant customer benefits within the meaning of the Act and on the impact of any possible remedies on any such benefits.**

Acromas reminds the CC that it may also have regard to the effects of any remedial action on any RCBs within the meaning of section 134(8) of the Act arising from a feature or features of the market giving rise to the AEC. The RCBs must comprise one or more of: lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services.

Acromas considers that Remedy 1A and Remedy 1B would be likely to result in the elimination of the credit hire industry (or, at the very least, a significant shift from a credit hire to a direct hire model and a serious risk of under-provision in relation to the provision of replacement cars to non-fault claimants following FNOL). Remedies 1A and 1B would therefore deprive customers of higher quality services and a greater choice of services regarding the provision of a replacement vehicle, which result from the separation of cost liability and cost control and, in particular, the credit hire model. Remedies 1C-1G for the reasons explained in those sections above are much more likely to preserve this option for motor insurance customers