

COMPETITION COMMISSION'S
MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

AXA UK PLC - Response to Remedies Notice

17 January 2014

1. INTRODUCTION AND EXECUTIVE SUMMARY

- 1.1 AXA welcomes the opportunity to comment on the Competition Commission's ("**Commission**") Remedies Notice ("**Notice**"), published on 17 December 2013.
- 1.2 Before commenting on the Notice itself, AXA makes the following general observations about the process adopted by the Commission in this investigation. Given the period for responding to the Notice has fallen over the Christmas holiday season (during which there have inevitably been numerous staff absences), AXA has had insufficient time to consider fully the complex set of remedies proposed by the Commission. AXA also notes the unusual requirement in this case to respond to the Notice before it has had a chance to form a complete view on and comment upon the Commission's Provisional Findings.
- 1.3 Taking these factors into account, this submission summarises AXA's initial views on the various remedies proposed and focuses on the remedies which AXA believes will address the Commission's concerns in the most effective, proportionate and reasonable manner. As explained below, however, the Commission still has a long way to go before any remedies can be considered fit for purpose and sufficiently workable before being implemented. As the short response timeframe has not allowed AXA time to develop alternative solutions to the Commission's "adverse effects on competition" ("**AEC**") concerns, AXA's submission is limited to those remedies proposed in the Notice. Accordingly, AXA reserves its right to comment further on the remedies (or propose new remedies) in separate supplementary submissions, as appropriate.
- 1.4 AXA wishes to make it clear that the lack of any express statement on certain remedies proposed should not be taken as agreement or disagreement by AXA with such remedies. Moreover, the fact of AXA providing feedback on remedy proposals should not be viewed as acceptance of the Commission's Provisional Findings. AXA's views on the Provisional Findings will be made in a separate submission to the Commission, due 7 February 2013.
- 1.5 AXA notes that it has had sight of the Association of British Insurer's ("**ABI**") submission on the Remedies Notice. It is not always possible for trade associations to represent the views of all industry participants, therefore AXA's own views are set out in this submission.
- 1.6 In this submission, AXA addresses the following key points:
- 1.6.1 AXA believes that for the remedies to be entirely effective, the remedies must apply to the whole of the motor insurance industry, and not just the private motor insurance ("**PMI**") industry. AXA notes that the Commission's terms of reference are more limited in that they only apply to private motor insurance

and exclude commercial lines policies and motorcycles, but AXA believes that failure to apply the remedies across the industry will undermine the effectiveness of the remedies proposed and result in numerous unintended adverse consequences. Even if the remedies were not to be extended to the whole motor insurance industry, it is not clear how the Commission is envisaging the remedies to be applied. For example, the Commission needs to explain whether it intends the remedies to apply (in so far as they relate to post accident rights and conduct) to accidents involving PMI vehicles (excluding motorcycles) only.

1.6.2 AXA submits its preferred remedies in relation to each of the Commission's theories of harm as follows:

- (a) AXA considers that the AECs found in respect of Theory of Harm 1 sit at the core of the Commission's concerns that inflated costs and frictional costs are harming consumers. AXA strongly believes that by implementing Remedy 1A, which would require a driver to have first party insurance to be entitled to a replacement vehicle (and, in the absence of such cover, to no longer have any right to seek damages for such costs), the opportunity to charge excessive prices and instances of insurers and/or claims management companies ("**CMCs**") and credit hire companies ("**CHCs**") disputing the cost of a replacement vehicle, which ultimately results in increased costs that are passed on to consumers, would be removed.

To be entirely effective, this remedy would need to be supported by Remedy 1D (measures to control non-fault repair costs), Remedy 1E (measures to control non-fault write-off costs) and Remedy 1G (prohibition of referral fees). AXA explains in further detail below why this combination of remedies is AXA's preferred solution, and why it best resolves the Commission's AEC concerns.

AXA would have serious concerns if the Commission were to adopt any of the other remedies proposed in relation to Theory of Harm 1 as these remedies would not, in AXA's view, resolve the AECs identified by the Commission and would entail greater risk of unintended consequences. AXA therefore urges the Commission to move forward with developing AXA's preferred remedies, even if this approach is not favoured by all stakeholders, in particular those whose business model might be undermined as a result.

- (b) In relation to Theory of Harm 2, putting aside AXA's view that the Commission's provisional finding of possible underprovision of repairs is unfounded, AXA believes that the existing audit system under PAS 125 and AXA's own desire to ensure a high standard of repair is being maintained by its repairers is sufficient and that the introduction of a new audit process simply represents an additional and unnecessary cost that will be passed on to the consumer.
- (c) In relation to Theory of Harm 4, AXA believes that the existing regulatory and enforcement powers held by the FCA are sufficient to

address the Commission's concerns in relation to add-ons. If the Commission was to remain of the view that more had to be done to remedy its concerns, AXA believes that the existing FCA mechanisms could be further enhanced and adapted, and that this would represent a more proportionate solution than introducing new requirements via an enforcement order.

- (d) In relation to Theory of Harm 5, AXA supports the prohibition on wide most favoured nation ("**MFN**") and believes this measure will encourage greater price competition between PCWs.

1.6.3 Finally, AXA provides more detailed feedback on each of the remedies proposed in the Notice, including providing responses to some of the Commission's questions in the Notice, in the attached **Annex**.

2. **SCOPE OF INVESTIGATION AND IMPLICATIONS FOR REMEDIES**

- 2.1 AXA believes that there is no benefit in limiting the remedies to just the PMI industry. In order for the remedies to be effective, they must be extended to all other areas of the motor industry, including vehicles insured under commercial lines policies and motorcycles. Remedies that apply only to PMI ("**PMI Remedies**") will generate confusion amongst consumers about their entitlements and obligations in the event of an accident, which is entirely at odds with what the Commission's proposed remedies are trying to achieve (see in particular the proposals to increase consumer awareness of their legal entitlements in Remedy A). There is also a significant risk that partial implementation of remedies will simply transfer the issues experienced in the PMI sector to other areas of motor insurance. For example, if credit hire companies are prevented from charging excessive prices for replacement vehicle hire in the PMI sector, an unintended consequence may be that credit hire companies look to recover losses elsewhere, such as in relation to commercial vehicles or motorcycles.
- 2.2 AXA notes, however, that the Commission's terms of reference are confined to the supply or acquisition of private motor insurance and related goods or services in the UK, and excludes commercial vehicles and motorcycles. It is therefore unclear to AXA how the Commission proposes to implement fully effective remedies to address the identified AECs if the Commission's remedies only applied to PMI vehicles (excluding motorcycles).
- 2.3 It may be helpful to consider a number of different accident scenarios to understand how the remedies would work in practice. For example, while the PMI remedies would seem to clearly apply in relation to an accident where both the at-fault and non-fault party are insured under PMI policies, it is not clear whether or how the PMI remedies would apply in the following accident scenarios:
 - 2.3.1 The at-fault and non-fault party are insured under a PMI policy but one of the parties was driving a vehicle out of scope, such as a motorcycle.
 - 2.3.2 The at-fault party is insured under a PMI policy but the non-fault party is not (i.e. it is insured under a commercial lines policy or is uninsured).

- 2.3.3 The non-fault party is insured under a PMI policy but the at-fault party is not (i.e. it is insured under a commercial lines policy or is uninsured).
- 2.3.4 One party is insured under a PMI policy but the other party is excluded from the requirement of third party insurance under section 144 of the Road Traffic Act 1988 ("**RTA**") (e.g. where a sum of money is deposited with the Attorney General, or the vehicle is owned by a health service body or police authority).
- 2.3.5 The non-fault party is insured under a PMI policy but the at-fault party is insured by non-motor insurance (e.g. liability section of Motor Trades, Public Liability or Product Liability).
- 2.3.6 Neither party is insured under PMI policies but claims relate to vehicle repair and replacement.
- 2.4 There is an additional layer of complexity in that any legislative changes that need to be made to implement the remedies will need somehow to carefully differentiate carefully the rights and obligations of customers depending on the type of insurance held or the type of vehicle used. Claims management practices would also need to be updated, as it would be essential that the type of insurance is identified up front before any actions could be taken.
- 2.5 AXA's support for certain remedies as outlined in this submission is strictly on the basis that the remedy must be applied across the motor insurance sector, not just to PMI industry. AXA maintains that not only will the partial implementation of the remedies result in confusion for the consumer, the remedies will be unworkable and the objectives that the Commission is seeking to achieve will not be realised.

3. **AXA'S PREFERRED REMEDIES**

- 3.1 AXA's preferred remedies as proposed in the Notice are set out below in relation to each of the Commission's theory of harm. Please refer to the attached **Annex** for AXA's more detailed feedback on the proposed remedies.

Theory of Harm 1 – Separation of cost liability and cost control

- 3.2 The Commission has proposed seven remedies to address its concerns that the current separation of cost liability and cost control results in AECs, which could be used as a standalone or combined solution.
- 3.3 AXA has a strong preference for Remedy 1A, which would introduce a requirement that replacement vehicles be insured on a first party basis and would remove any entitlement to recover the costs of a replacement vehicle. A key benefit of this remedy is that it would remove entirely the Commission's concern regarding separation of cost liability and cost control for replacement vehicles. This remedy would also likely result in the removal of costs inflation, a concern identified by the Commission, which is currently borne by at fault insurers and consumers, given that:

- 3.3.1 vehicles would be supplied under direct rates rather than credit rates, resulting in potential cost savings;¹ and
- 3.3.2 frictional and litigation costs would also be reduced, because there could no longer be disputes between insurers, CMCs and CHCs about the reasonable cost of replacement vehicles as policy holders would only be entitled to a replacement vehicle via its own insurer.
- 3.4 A full costing analysis will have to be undertaken, however, according to AXA's preliminary calculations, assuming this remedy were applied across the whole of the motor insurance industry, insurance customers would also benefit from a reduction in replacement vehicle costs in the form of lower premiums.
- 3.5 A positive side effect of this remedy is that the service-level experienced by customers is also likely to be enhanced as the customer will be serviced by its own insurance company. Customers would also be relieved from having to deal with the complications and administrative frustrations associated with dealing with other insurers and CMCs. Additionally, in relation to credit hire, customers would no longer face complex credit arrangements and be potentially liable for the payment of hire charges.
- 3.6 While Remedy 1A would mean that some consumers would no longer be entitled to a replacement vehicle (which they would otherwise be entitled to under tort law), it would be the consumer's choice as to whether it wanted and needed replacement vehicle cover. Because the consumer would be entitled to choose its level of cover for replacement vehicles, this should also have an impact on the level of premium the customer will pay. So long as the implications of opting out of replacement vehicle cover are made clear to consumers, AXA supports this proposal.
- 3.7 AXA wishes to emphasise that it is essential for the success of this remedy that claimants no longer have a legal entitlement to recover costs of a replacement vehicle (or loss of use) as a head of damage in civil claims and, as a consequence, that any insurer providing first party cover would not be able to recover those costs from the at-fault insurer by way of subrogation. If the right to seek damages remained, whether exercised by the claimant or the subrogating insurer in the claimant's name, the very issue the remedy is intended to fix, the separation of cost liability and cost control, would not be resolved.
- 3.8 The risk of increased costs would remain arising from credit hirer activity (providing services to consumers who did not opt for the first party replacement vehicle cover) or non-fault providers increasing costs submitted to the at-fault insurer when submitting subrogated claims. Customers might not consider it necessary to "opt in" to receive

¹ Based on the Commission's findings in paragraph 6.14(a) of its Provisional Findings that the average replacement vehicle cost when there was separation between cost liability and cost control (approximately £1,400) was significantly higher when compared with captured claims (approximately £480) and where the non-fault and at-fault driver has the same insurer (approximately £370), potential cost savings could amount to approximately £1000. Based on the Commission's findings in paragraph 6.14(b) of its Provisional Findings that the average duration of credit hire (incurred on most claims where there is separation) is longer (by about 3.7 days, or 31%) compared with the average duration of a direct hire (incurred when the claim is captured and there is no separation, or where there is a bilateral agreement between the at-fault insurer and the non-fault insurer), this would also likely result in cost savings due to shorter hire periods.

cover for a replacement vehicle if, following an accident where they are the non-fault party, they would be entitled to a replacement vehicle from a credit hirer who would operate under the customer's remaining civil right to seek damages. One might expect there to be active briefing by the credit hire industry against the value of the cover; indeed it might be hard to justify the value of the first party cover at all, if in fact there was a right to damages and the availability of a replacement vehicle under credit hire arrangements following an accident.

- 3.9 Furthermore, in light of the recent Court of Appeal judgment *Coles v Hetherton*, where the effect of the Court's decision is to allow claimants (via their insurers) to recover replacement vehicle and repair costs above actual cost, intervention by the Commission and government will be required to put a stop to this practice, which is ultimately to the detriment of consumers.
- 3.10 While Remedy 1A is AXA's preferred solution, this remedy will not work as a standalone remedy. To address fully the opportunities to charge excessive prices in the provision of replacement vehicles and repairs that are ultimately passed on to consumers, AXA believes it is necessary to support Remedy 1A with the following supplementary remedies:
- 3.10.1 Remedy 1D - measures to control non-fault repair costs. Like the provision of replacement vehicles, the Commission has identified that the cost of repairs can often be inflated when invoicing an at-fault insurer, which can result in these additional costs being passed on to consumers in higher premiums. The measures proposed in Remedy 1D aim to prevent this type of behaviour by suggesting wholesale or standardised cost approaches. Although AXA is still undecided as to whether wholesale or standardised costs is more workable, this proposal is AXA's preferred means of reducing the costs associated with the separation of cost liability and cost control in relation to repairs (compared to, for example the options proposed in Remedy 1B). However there remain a number of issues that need to be considered when developing the details of this remedy, for example, how to prevent circumvention of the remedy by repairers introducing annual retrospective rebates and through vertical integration of insurance and repair businesses. See the attached **Annex** for AXA's more detailed comments on this remedy.
- 3.10.2 Remedy 1E - measures to control non-fault write-off costs. AXA's view is that the at-fault insurer should be allowed to handle the salvage of non-fault vehicle write-offs in non-captured claims. From an operational point of view, rather than making adjustments to the estimated salvage value, AXA believes it would be preferable that the pre-accident value of the vehicle has been agreed with the claimant by the non-fault insurer before at-fault insurers are given this option. Importantly, this will limit the opportunity for the non-fault insurer to inflate its net claims against the at-fault insurer which will again help reduce costs associated with separation of cost liability and cost control concerns.
- 3.10.3 Remedy 1G - prohibition of referral fees. This measure is again necessary to help reduce costs associated with separation of cost liability and cost control. Even if Remedy 1A is implemented, Remedy 1G will still be necessary to support Remedy 1D in respect of repairs. AXA notes that this is not an

adequate remedy on its own as while it helps to reduce costs, it does not directly address the separation of cost liability and cost control. Moreover, there would have to be clarity around how the prohibition of referral fees is linked to a mechanism to reduce costs. A parallel can be drawn with personal injury reform where in addition to a ban on referral fees, reductions on recoverable costs were needed to ensure costs were reduced as opposed to increasing the profit margins of those who previously paid referral fees.

- 3.11 In relation to Remedies 1B, 1C, and 1F, AXA does not consider that these remedies satisfactorily address the Commission's concerns in relation to the first theory of harm. These remedies are, however, briefly addressed in the attached **Annex**.

Theory of Harm 2 – Quality of repairs

- 3.12 In its Provisional Findings, the Commission has found that there is a possible underprovision of repair service to parties involved in accidents. The Commission indicates that this is occurring because insurers (and CMCs) do not monitor the quality of repairs effectively and because there are significant limitations to consumers' ability to assess the quality of repairs. The Commission proposes compulsory audits of the quality of vehicle repairs to improve the quality of at-fault and non-fault vehicle repairs.
- 3.13 As AXA has already explained in its submission on the MSXI report, and as AXA will explain in greater detail in response to the Commission's Provisional Findings, AXA considers that the finding that there is a possible under provision of repairs is without merit and evidentiary support. However, even if there is merit to such a finding, AXA does not consider the audit remedy to be effective or proportionate, given that there is already a system for auditing repairs through PAS 125 (which is in transition to a British Standard). AXA believes that an additional audit process would simply impose unnecessary additional costs on the industry that will ultimately be passed on to the detriment of consumers.

Theory of Harm 4 – Add-ons

- 3.14 The Commission has proposed three remedies to address the perceived distortions to competition in PMI caused by information asymmetries between motor insurers and customers, and motor insurers' point-of-sale advantage in relation to the sale of add-ons. Specifically, the Commission proposes the provision of all add-on pricing from insurers to PCWs, further transparency of information concerning NCBs and clearer descriptions of add-ons.
- 3.15 AXA strongly believes that the best way to address the Commission's concerns is through the existing mechanisms of the FCA. The FCA already has in place sufficient regulatory and enforcement powers that can be exercised in the event of non-compliance. Regulatory principles require that the least intrusive approach be adopted to achieve the Commission's objectives - to impose enforcement orders would contravene this principle as the FCA's powers are sufficient to address the Commission's concerns. If the existing FCA framework is not able to accommodate certain remedies in its current form (for example, requiring pricing information for add-on products to be provided to PCWs), the Commission should first discuss with

the FCA how the existing FCA mechanisms can be further enhanced and amended to achieve the Commission's objectives.

Theory of Harm 5 – Wide MFN clauses

- 3.16 To address its provisional finding that "wide" MFN clauses between PCWs and insurers restrict competition amongst PCWs (and therefore reducing competition on the price of private motor insurance), the Commission is proposing that "wide" MFN clauses between PCWs and insurers be prohibited.
- 3.17 AXA supports the proposal to prohibit the use of wide MFNs and believes this measure will encourage greater competition between PCWs. However, it will be necessary to give further consideration to how conduct having the equivalent effect as a wide MFN, such as threats to delist insurers from a PCWs site, can be prevented and monitored. Absent such a mechanism, the benefits of banning wide MFNs may be significantly dampened. AXA also notes that a possible consequence of increased competition is further consolidation in the PCW industry. However, any material proposals for consolidation can be reviewed by the OFT under its merger review powers.

17 January 2014

ANNEX

AXA'S VIEWS ON SPECIFIC REMEDIES PROPOSED IN THE REMEDIES NOTICE

Remedy	General comment	Response to specific Commission questions
<i>Remedy A: Measures to improve claimants' understanding of their legal entitlements</i>		
1.	<p>Remedy A: Measures to improve claimants' understanding of their legal entitlements following an accident</p> <ul style="list-style-type: none"> • <i>AXA does not support this remedy as no clear need for such a remedy has been identified:</i> AXA supports strong communication between insurers and its policyholders as it ensures that expectations are managed during the claims process. However, in AXA's experience, insurers are typically good at handling claims and informing their customers of what they are entitled to under both tort law and their own insurance policy and therefore does not believe that the Commission has identified a clear need for additional information at the point of sale stage. • <i>There is a case for additional information for third party claimants:</i> While AXA believes policyholders receive sufficient information regarding their legal entitlements at the point of sale stage, AXA considers that what is lacking is a clear statement to not-at-fault claimants regarding their entitlements and obligations at the claim stage. AXA feels strongly that any additional information provided to not-at-fault 	<p>(h) Is there any reason why this remedy should not be implemented through an enforcement order?</p> <p>AXA considers that there are already powers that the FCA can use if certain insurers are not providing adequate information to consumers. Accordingly, an enforcement order would not be appropriate or proportionate. However, CMCs are not regulated by the FCA so it may be appropriate for an enforcement order to require CMCs to provide a statement of claimants' entitlements and obligations.</p> <p>Moreover, AXA does not believe additional information at the point of sale stage will be effective because customers are already informed of their rights and entitlements in the policy documentation at the point of sale stage, and it is not clear whether policyholders read this documentation in its entirety.</p>

Remedy		General comment	Response to specific Commission questions
		claimants must include information about the claimant's entitlements <i>and</i> obligations (including reflecting the remedies proposed and implemented). In particular, AXA is concerned that CMCs and CHO's are not fully advising their customers of their duty to mitigate their losses. AXA suggests that a generic statement should be provided to all claimants at the point of claim and the Ministry of Justice ("MOJ") in conjunction with the ABI propose some wording to be considered by the Commission and that the MOJ retains the ongoing obligation of revising the statement should circumstances change.	
<i>Theory of harm 1: Separation of cost liability and cost control</i>			
2.	Remedy 1A: First party insurance for replacement vehicles	<ul style="list-style-type: none"> AXA supports first party insurance for replacement vehicles: where the replacement vehicle is not arranged by the same insurer that is obliged to cover the cost, the cost of replacement vehicles is often inflated and therefore customers end up having to pay for this in the form of higher premiums. AXA strongly believes that this remedy appropriately addresses separation of cost liability and cost control concerns, which will in turn remove the opportunity for parties to invoice inflated costs to at-fault insurers. 	<p>(a) What aspects of the law would need to be changed?</p> <p>This remedy would require the removal of the right under tort law to claim replacement vehicle, or loss of use, costs.</p> <p>(b) How should policyholders be given a choice as to the extent of replacement car cover?</p> <p>The choice should be offered during the sales process. There must be a clear explanation of what the consequences are if the customer chooses not to receive replacement vehicle cover under the insurance policy (i.e. if they choose not to receive cover under the insurance policy, they have no separate remedy in tort law to recover the costs of a replacement</p>

Remedy	General comment	Response to specific Commission questions
	<ul style="list-style-type: none"> • <i>Subrogation must be prohibited:</i> in order for this remedy to be effective, AXA maintains that for this remedy to be effective, claimants must no longer have a legal entitlement (other than under a contract of insurance) to recover costs of a replacement vehicle (or loss of use) as a head of damage in civil claims and, as a consequence, that any insurer providing first party cover would not be able to recover those costs from the at-fault insurer by way of subrogation. If, the right to seek damages remained, whether exercised by the claimant or the subrogating insurer in the claimant's name, the very issue the remedy is intended to fix, the separation of cost liability and cost control, would not be resolved. The risk of increased costs would remain arising from credit hirer activity (providing to consumers who did not opt for the first party cover) or not-at-fault providers increasing costs submitted to the at-fault insurer when submitting subrogated claims. 	<p>vehicle).</p> <p>(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?</p> <p>Based on AXA's preliminary assessment, AXA would expect customers to benefit in the form of lower premiums as a result of the reduction in replacement vehicle costs by introducing first party insurance for replacement vehicles.</p> <p>AXA also expects that this remedy would bring down the overall cost of vehicle replacement as replacement vehicles would be provided according to the level of cover chosen by the customer. There would also likely be a reduction in frictional and litigation costs as there would be fewer disputes between insurers, CMCs or CHCs regarding the reasonableness of replacement vehicle hire costs.</p> <p>(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 vehicle under their own policy? If so, would this be treated as an uninsured loss which should be recoverable from the at-fault insurer?</p> <p>AXA believes that it will be a commercial decision as to whether insurers decide to waive excess charges where non-fault claimants choose to take up their entitlement to a replacement vehicle under its policy. In relation to NCBs, AXA would expect that once the repair cost or pre-accident value had been recovered (i.e. the claimant was confirmed as the non-fault party), the NCB would be reinstated (this assumes that where a party claims use of a replacement vehicle, there</p>

Remedy	General comment	Response to specific Commission questions
		<p>will be repairs that need to be carried out or the vehicle is a write-off).</p> <p>(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?</p> <p>AXA would expect there to be a move away from credit hire to direct hire with a consequent significant reduction in the costs of providing replacement vehicles and removal of frictional costs. AXA believes that service is likely to be enhanced because customers will be looked after by their own insurer and that insurer will control the cost and duration of replacement vehicle provision. Customers would no longer have to deal with the complications and administrative frustrations associated with dealing with other insurers and CMCs. Additionally, in relation to credit hire, customers would no longer face complex credit arrangements and be potentially liable for the payment of hire charges.</p> <p>(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?</p> <p>AXA believes that most insurers handling the replacement vehicle cover would also prefer to handle the repair cover and that this would be the position in virtually all cases as the insurer will want to control both service and repair/hire cost. In the unlikely event that were not the case there would need to be transparency around the costs recovered for the repairs to ensure that the insurer controlling the repairs is not attempting to recover some of the cost of the replacement vehicle cover in the cost</p>

Remedy	General comment	Response to specific Commission questions
		<p>of repairs.</p> <p>To ensure repair costs are not inflated, please refer to AXA's comments on Remedy 1D (of which AXA is supportive).</p> <p>(g) Would this remedy give rise to distortions or have any other unintended consequences?</p> <p>This remedy would remove insurers' revenue stream that is received from referral fees from CHCs.</p> <p>AXA has considered the possibility that in the rare circumstance where the replacement vehicle hire and the repairs are being managed by two different insurers/CMCs, there may be an incentive for the party handling the repairs to delay the repair job so that the party handling the replacement vehicle hire incurs greater costs. However, AXA thinks the risk of this is low, given more often than not it will be the same insurer handling the replacement vehicle cover and the repairs, and because there will be very minimal opportunity in practice for an insurer to prioritise certain vehicle repairs within a certain repair garage. Reputational and brand issues are also likely to discourage insurers from providing poor service.</p> <p>(h) How long would it take to implement this remedy? What administrative changes would need to be made?</p> <p>AXA anticipates that from an operational point of view, the changes could be implemented relatively quickly (approximately 6 months). However, this remedy would require a law change removing the entitlement of not-at-fault claimants for a replacement vehicle under tort law (and hence the absence of subrogation) and therefore timing would depend on the parliamentary timetable.</p>

Remedy		General comment	Response to specific Commission questions
			<p>(i) Would this remedy need any supporting measures? If so, what are those measures?</p> <p>AXA believes this remedy would need to be supported by Remedy 1D, 1E and 1G, as discussed below.</p>
3.	Remedy 1B: At-fault insurers to be given the first option to handle either the whole of non-fault claims (replacement vehicle plus repair) or the replacement vehicle part of a non-fault claim	<ul style="list-style-type: none"> AXA does not support this remedy as all variations of this remedy are likely to result in undue delay to the customer's claims process: AXA's key concern with this proposal is that giving the option to at-fault insurers to handle a claim (whether both replacement vehicles and/or repairs) is likely to cause undue delay to the claimant progressing its claim. Even if at-fault insurers were given a very limited period within which to opt to handle a claim (e.g. 24 hours rather than the 3 days currently proposed by the Commission), this would still result in a significant impediment to customer service and experience. AXA also believes there would be practical challenges in monitoring and enforcing the notification of claims with at-fault insurers. In addition many consumers would find it unacceptable having to deal with an insurer to which no premium had been paid and even possibly one the consumer had left due to dissatisfaction. 	<p>(a)(i) If the non-fault insurer 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?</p> <p>As suggested in paragraph 38 of the Notice, AXA does not believe that non-fault claimants will have any incentive to choose an at-fault insurer to handle its claim because their decision will not be made on cost. Giving the option to the non-fault claimant therefore does nothing to address the separation of cost liability/control issue.</p> <p>(a)(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?</p> <p>AXA maintains that its policy is to treat third party captured repairs with a high level of service. It is possible that some at-fault insurers may prioritise its own customers' claims which may delay the non-fault claimant's repairs, however, as suggested above, AXA believes there is very minimal opportunity in practice for an insurer to prioritise certain vehicle repairs.</p>

Remedy		General comment	Response to specific Commission questions
4.	Remedy 1C: measures to control the cost of providing a replacement vehicle to non-fault claimants	<ul style="list-style-type: none"> AXA does not support this remedy as it is too similar to the existing GTA framework, which is ineffective: AXA considers that this proposal is too similar to the existing GTA and believes that more fundamental changes are necessary to address the separation of cost liability/control concern. This is certainly not a remedy in and of itself. As discussed above, AXA believes Remedy 1A is a more preferable measure as it directly addresses the Commission's separation of cost liability and cost control concerns. 	
5.	Remedy 1D: measures to control non-fault repair costs	<ul style="list-style-type: none"> AXA supports the proposal to implement measures to control non-fault repair costs: AXA believes that by only allowing non-fault insurers to pass on wholesale or standardised costs of repairs to the at-fault insurer would avoid costs being marked up and would reduce the frictional costs associated with repair claims. In conjunction with Remedy 1A, this remedy would restore the market to a position where insurers focus on reducing claims costs for both at-fault and non-fault claims, rather than a focus on exploiting cost separation/cost liability situations. 	<p>(a) What would be the most effective way of implementing this remedy?</p> <p>In light of the recent Court of Appeal judgment <i>Coles v Hetherton</i>, where the effect of the Court's decision is to allow claimants (via their insurers) to recover replacement vehicle and repair costs above actual cost, intervention by the Government and/or the Commission (for example, via an enforcement order enforced by the FCA) will be required to put a stop to this practice, which is ultimately to the detriment of consumers.</p> <p>(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?</p> <p>AXA believes there is still more work to be done to understand whether the wholesale or standardised cost approach would be the most effective way to reduce costs associated with situations where the insurer that has liability for a claim is different from the insurer that has control of a</p>

Remedy	General comment	Response to specific Commission questions
		<p>claim.</p> <p>AXA's initial view is that standardised costs may not be a flexible enough approach to take into account particular repair requirements. For example, any standardised costs would have to take into account significant regional variations on labour rates, otherwise this could result in repairers being left with a shortfall or windfall. Also, parts pricing depends on manufacturers and therefore prices for the same part for different cars can vary widely.</p> <p>In relation to wholesale costs, it is unclear how "wholesale costs" would be defined. AXA would need to better understand what the Commission intends by the term "wholesale costs" before it can assess whether the remedy can be workable and effective.</p> <p>This remedy will require a greater level of transparency and agreement between multiple stakeholders in the private motor industry. Further work is necessary to establish how this remedy will be audited and funded.</p> <p>(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?</p> <p>As explained below, AXA considers it necessary to prohibit referral fees, and also discounts and commissions not passed on to the at-fault insurer – this will prevent this practice occurring. Further consideration will need to be given on how certain practices, such as discounts and annual retrospective rebates paid to non-fault insurers are passed on and effectively monitored and enforced.</p> <p>(d) Could this remedy be circumvented by insurers vertically</p>

Remedy		General comment	Response to specific Commission questions
			<p>integrating with repairers?</p> <p>This is a possibility, however, AXA would expect any vertical integration to result in increased efficiencies so their cost of repairs should represent at least the average cost of repair. However, further consideration will need to be given as to how any circumvention could be monitored and enforced. AXA would suggest that the FCA could be engaged to assist with monitoring and guidance.</p>
6.	Remedy 1E: measures to control non-fault write-off costs	<ul style="list-style-type: none"> AXA supports this remedy as it will reduce costs associated with the separation of cost liability and cost control: AXA supports the proposal that at-fault insurers would have the option to handle the salvage of non-fault vehicle write-offs. However, to ensure that claims costs reflect actual salvage proceeds (so that higher than necessary claims against at-fault insurers are avoided), AXA believes it is important that the pre-accident value of the vehicle is first agreed with the claimant by the non-fault insurer or CMC before at-fault insurers are given this option. This will limit the opportunity for the non-fault insurer to inflate its net claims against the at-fault insurer which will again help reduce costs associated with separation of cost liability and cost control concerns. 	<p>(a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?</p> <p>While AXA supports pre-agreement of the pre-accident value by the non-fault insurer and claimant, it remains a possibility that the non-fault insurer could penalise the at-fault insurer by agreeing a higher pre-accident value. While the non-fault insurer would not generate revenue from this practice, it would allow them to increase customer satisfaction at the expense of the at-fault insurer. It would remain open to the at-fault insurer to dispute that the amount paid in settlement of the total loss claim was reasonable.</p> <p>(b) Regarding Remedy 1E(a), would at-fault insurers be likely to take up the option of handling the salvage?</p> <p>AXA believes at-fault insurers will likely take up this option as it means they can control the costs of the salvage. If the non-fault insurer causes a delay in agreeing the pre-accident value of the vehicle with the claimant this may lead to the at-fault insurer incurring additional storage costs but this is unlikely to discourage at-fault insurers from taking charge of the salvage and controlling costs. AXA would suggest that insurers could uplift the salvage to free and safe storage with its own provider even whilst the total loss claim is being discussed. The non-fault insurer should be required to notify the at-fault insurer and allow uplift within a</p>

Remedy		General comment	Response to specific Commission questions
			<p>set number of days after which the non-fault insurer would remain responsible where in default (on a strict basis) for the excess storage prior to uplift.</p> <p>(e) Regarding Remedy 1E(b), what administrative costs would the adjustment mechanism have? What evidence would need to be provided to verify the salvage proceeds (and any referral fee)?</p> <p>AXA considers the adjustment mechanism option as undesirable because it creates an additional administrative burden and cost.</p>
7.	Remedy 1F: improved mitigation in relation to the provision of replacement cars to non-fault claimants	<ul style="list-style-type: none"> AXA does not support this remedy as mitigation statements already exist under the GTA and have proven to be ineffective: AXA is concerned that this remedy alone does not go far enough to reduce costs of replacement vehicle hire. This remedy exists under the GTA and has been unsuccessful in reducing costs as it is difficult to monitor and enforce. AXA prefers Remedy 1A, which directly and effectively addresses the issue of separation of cost liability and cost control as well as offers an opportunity to reduce the actual cost of replacement vehicle hire depending on the level of cover chosen by the customer. 	
8.	Remedy 1G: prohibition of referral fees	<ul style="list-style-type: none"> AXA supports the prohibition of referral fees as a means of supporting its other preferred remedies: as explained above, for Remedy 1D to be effective, referral 	<p>(a) Could this remedy operate on a stand-alone basis?</p> <p>This remedy only addresses the costs associated with separation of cost liability and cost control, therefore it also needs to be adopted in</p>

Remedy		General comment	Response to specific Commission questions
		fees must be prohibited to ensure that additional costs are not passed on to at-fault insurers.	<p>conjunction with Remedy 1A (which directly addresses this issue by requiring first party insurance for replacement vehicle cover). The removal of referral fees will not by itself reduce replacement vehicle costs which are symptomatic of the separation of cost control and liability.</p> <p>(d) Would this remedy give rise 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?</p> <p>It needs to be considered how to ensure that daily rates for replacement vehicles do not increase as a result of the prohibition; or how the removal of referral fee payment does not increase profits from current levels of fees which may be an inducement to vertical integration .</p>
Theory of harm 2: Quality of repairs			
9.	Remedy 2A: compulsory audits of the quality of vehicle repairs	<ul style="list-style-type: none"> AXA does not support this remedy as no clear problem with the quality of repairs has been demonstrated by the Commission: AXA maintains that any additional audit requirements is inappropriate as the Commission has failed to demonstrate that (i) there is a problem with the quality of repairs arranged by insurers and (ii) the existing PAS 125 in addition to other controls and audits operated by insurers, is not sufficient to ensure quality of repairs. Although PAS 125 does not necessarily assess the completed repair, it does allow access to the vehicle during the 	<p>(a) What costs would be involved in auditing the quality of repairs?</p> <p>It is difficult to quantify the cost of a quality audit but it is clear that any additional requirement will be passed on to the detriment of consumers. The cost is likely to be higher if an independent body is commissioned to carry out the audits. If the Commission proposes to introduce measures which have the effect of increasing costs for consumers, there must be unequivocal evidence of a problem, which is not the case here.</p> <p>(c) Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to be standardised and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?</p>

Remedy		General comment	Response to specific Commission questions
		repair process and therefore provides data on the compliance of the repair with the assessment of data and job plan derived from an estimating system.	Quality of repairs is of utmost importance to AXA, not only from a reputational point of view but primarily from a safety point of view. For this reason, AXA already carries out its own internal audits. AXA sees no additional benefit from commissioning a centralised quality audit process, only additional cost.
Theory of harm 4: Add-ons			
10.	Remedy 4A: provision of all add-on pricing from insurers to PCWs	<ul style="list-style-type: none"> AXA does not support this remedy as it would provide PCWs with add-on pricing information in the absence of regulation: AXA does not think it is necessary to compel insurers to provide add-on pricing information to PCWs as AXA is prepared to provide this information absent any legal requirement to do so. 	<p>(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 incentivised to do so without such a requirement?</p> <p>AXA does not think it is necessary to require PCWs to publish add-on pricing information on their websites because the PCWs' business model means that they are already sufficiently incentivised to do so.</p>
11.	Remedy 4B: transparent information concerning NCB	<ul style="list-style-type: none"> AXA does not support this remedy as the FCA has sufficient regulatory powers to (i) require the provision of clear and transparent information on no claims bonuses ("NCBs"); and (ii) make improvements to the provision of information on NCBs to consumers if deemed necessary: if concerns regarding lack of transparency of NCB scales and the lack of clarity on the difference between NCB and NCB protection are well-founded, AXA believes the FCA already has sufficient powers to require insurers to provide more information and/or clearer 	<p>(c) Are there any obstacles to effective implementation of this remedy?</p> <p>AXA considers that the Commission should discuss with the FCA how best to make improvements to the existing information provided on NCBs, given the FCA already has the regulatory powers to require such improvements.</p>

Remedy		General comment	Response to specific Commission questions
		statements at different stages of the process.	
12.	Remedy 4C: clearer descriptions of add-ons	<ul style="list-style-type: none"> AXA does not support this remedy as the FCA has sufficient regulatory powers to (i) require the provision of clear descriptions of add-ons; and (ii) make improvements to the descriptions of add-ons if deemed necessary: as with Remedy 4C above, AXA believes the FCA already has sufficient powers to require insurers to provide more information and/or clearer statements at different stages of the process. 	<p>(c) How would this remedy best be monitored – both for initial approval of descriptions and ongoing approval?</p> <p>AXA considers that the FCA already has the regulatory powers to promote effective competition by addresses problems with the flow of information between market participants.</p>
Theory of harm 5: Prohibition on wide MFNs and insurer contracts			
13.	Remedy 5A: prohibition on wide MFNs	<ul style="list-style-type: none"> AXA supports this remedy as it believes this measure will encourage greater competition between PCWs: AXA also considers it could also create greater competition between direct providers and PCWs. 	<p>(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?</p> <p>AXA's preference would be for the wide MFNs to be rendered unenforceable to avoid having to enter into new contracts / revise existing contracts.</p> <p>(b) Could this remedy take effect immediately (or within a short period to remove the clauses) or would an adjustment period be required?</p> <p>As above, if wide MFNs are unenforceable then there would be no need to remove clauses from the relevant contracts and therefore this remedy could take effect immediately.</p>

Remedy		General comment	Response to specific Commission questions
			<p>(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?</p> <p>It will be necessary to give further consideration to how conduct having the equivalent effect as a wide MFN, such as threats to delist insurers from a PCWs site, can be prevented and monitored. Absent such a mechanism, the benefits of banning wide MFNs may be significantly dampened.</p> <p>(e) Would this remedy give rise to distortions or have any other unintended consequences?</p> <p>A possible consequence of increased competition might be increased market concentration through consolidation (and therefore reduced competition) in what is already a highly concentrated PCW industry. AXA assumes that any such consolidation would be reviewable under the UK's merger regime.</p>



Competition Commission
Victoria House
Southampton Row
London
WC1B4AD
United Kingdom

17th January 2014

Re: Competition Commission Market Investigation into Private Motor Insurance

To whom it may concern

I am responding on behalf of AXA Insurance Limited to the provisional findings report issued by you on the 17th December 2013 following the extensive period of investigation and the large amount of information that was considered.

We have reviewed the provisional findings report and support the remedies that have been proposed for the UK insurance market. We would also agree that the proposed remedies should reduce costs and improve customer service.

We will now be commencing a review of our existing processes in the context of the proposed remedies in order to identify appropriate actions and solutions that will be beneficial to our customers.

Yours sincerely

Steven Jackson
Head of Compliance