BGL Group Limited (BGL)

Response to Notice of Possible Remedies (Remedies Notice) under Rule 11 of the Competition Commission Rules and Procedure

Introduction

This response is provided on behalf of BGL and we have set out to address the proposals outlined in the Remedies Notice based on the information currently available from the Competition Commission. We will not, in this response, seek to address the Competition Commission's Provisional Findings published on 19th December 2013 directly. We will comment separately on the Competition Commission's Provisional Findings in due course.

Nothing in this response (including our constructive feedback on individual remedies) should be interpreted as BGL's agreement with or acquiescence to any of the Competition Commission's Provisional Findings or, indeed, our endorsement of any remedy (unless this view is expressed unequivocally). On the contrary, we consider significant elements of the Provisional Findings Report not to be well founded and/or not to be supported by substantive evidence, which in turn is leading to consideration of a range of remedies that, in most instances, will actually harm consumers and distort competition.

General concerns

We are concerned that the Competition Commission is inviting comments on possible remedies before giving interested parties adequate opportunity to consider and comment on the provisional findings which underpin them. We are also concerned that the approach adopted by the Competition Commission does not provide any detailed outline or examination of the impacts of each possible remedy or any in-depth evaluation as to whether the remedies are stand alone, cumulative or even mutually exclusive. In our view, this fails to maximise the value of the overall process and has the potential to result in the pursuit of unnecessary and potentially harmful remedies.

We would reiterate a previous observation that, as the process has evolved, the main objective of the Competition Commission's investigation, which is whether features of the PMI 'market' are undermining competition resulting in higher premiums for consumers, has been lost or become obscured.

Our principal observation, however, is that the majority of the possible remedies do not appear to be properly developed, well-reasoned or, crucially, quantified (in terms of costs or other adverse impacts); instead, they appear to be based on assumption rather than composite, robust empirical evidence. We have serious concerns that, in some respects, the remedies seem to disregard (or, at least, lend insufficient weight to) the potential for negative consumer consequences arising from them that could outweigh any purported benefits.

In particular:

1. All of the remedies related Theory of Harm 1 are based on the snowball effect of understandings/assumptions that are inaccurate, unsustainable and/or unsupported by evidence. This premise in fundamentally flawed in the following respects:-

    (i) neither the Competition Commission's investigation nor the OFT's previous market study has been able to establish a linear connection between such costs and consumer premiums such that this premise could be supported;

    (ii) without any method of forcing such market participants to pass the benefit of any savings to consumers, the most likely outcome must be that these businesses continue with existing practices. These include practices such as over-apportionment of expenses to PMI, failure to set

non-risk income against PMI costs and other opaque practices designed to misrepresent or obscure any empirical analysis of profitability;

(iii) such an approach ignores the basic reason for the emergence of the claims management industry and the provision of non-fault services by other market participants. These developments were necessitated by the practices of at fault insurers to fundamentally and systematically disadvantaged consumers in pursing their interest in reducing costs.

Furthermore, the calculation of 2% of average premium costs must itself be a significant overstatement of the potential saving. For most, if not all, underwriting insurers any costs savings must be set against revenues derived from non-fault activity. Accordingly, the cost saving available for distribution to consumers will largely be offset by the revenue recovery necessitated by the removal of this revenue stream.

2. In addition, those remedies relating to wide-MFNs, appear to be based on a flawed finding of 'market power' for PCWs. Without wishing to comment at this stage on the Provisional Findings, the Competition Commission appears to be suggesting a remedy based on a series of unjustified leaps, starting with an assumed (and inadequately reasoned) market definition (as regards PCWs), allocations of 'market' shares to PCWs that are not, in reality, supported by actual sales and, finally, little assessment of the actual conditions of competition in the PMI distribution space (including the presence of alternative distribution channels, recent market entry and the bargaining power of trading partners, such as insurers).

3. Whilst we acknowledge that the Competition Commission has a wide discretion in relation to remedies, the legal bases for some of its more radical remedies are questionable. We are concerned that some would require a change in primary legislation, which would seem disproportionate given the modest (and disputed) cost benefit that they might deliver (and the adverse consumer effects they might give rise to); others appear inconsistent with EU competition law (which must take precedence over UK competition law as regards the regulation of agreements with a potential EU dimension), which could potentially prevent or limit their implementation.

4. The one possible remedy that does not differentiate between market participants is that which proposes an independent body responsible for the control and assessment of elements of claims costs. Provided all market participants have access to this structure and - both in composition and accountability - this organisation is independent of any market segment, this possible remedy has the potential to both limit costs and improve quality/consumer outcomes. However, we would caution against the involvement of the Association of British Insurers (ABI) with this organisation in any way. The ABI operates as a private club in the interests of its members. It drives and, in fact, co-ordinates concerted activity involving a group of market participants who, together, dominate the UK PMI sector. The ABI has no track record of acting in the best interests of consumers or promoting competition across the market as a whole.

In summary, we consider that a number of the Competition Commission's possible remedies are problematic in terms of:

- practicality and any actual consumer benefits they might be expected to produce;
- their potential to chill competition by skewing the playing field in favour of certain market participants;
- being clearly disproportionate in substance and scope (including the required changes to primary legislation); and
- being fundamentally inconsistent with EU Competition Law.

In our view, any remedy must achieve three straightforward aims – it has to be relevant to a particular harm, it has to be practicable and it should not do more harm than good.

With one or two exceptions, the consumer harm that the Competition Commission considers has arisen from certain 'market' features has not been quantified. Indeed, the link between these features and actual consumer harm (including in terms of any adverse impact on premiums, which was the core rationale for the investigation) is not at all compelling.

1. Central to this is the assumption that measures enabling the most powerful party in the supply chain (namely insurers) to strip out further costs are, of themselves, beneficial for consumers and will inevitably translate to lower premiums.

2. This is contrary to actual market trends, which indicate that PMI premiums are influenced primarily by other factors (whether macro-economic based on investment returns or those which are already undergoing reform i.e. personal injury claims).

3. Our major concern, as regards the possible remedies, is that no attempt appears to have been made to assess their cost (not simply in terms of implementation but also, critically, in terms of quantifying their potential adverse effects on consumers). In other words, the remedies do not appear to be supported by any robust consumer cost/benefit analysis. Such a cost/benefit analysis should include, but not be limited to the following considerations:-

    - consumer access to justice;

    - the consumer's right of selection i.e. to be dealt with by the insurance company/broker they have selected

While we accept that the Competition Commission is still seeking views on these remedies, we are concerned that it appears already to be favouring certain proposals without actually demonstrating that they will be good for consumers or deliver real savings to consumers that will outweigh associated consumer harm (whether of loss of mobility, amenity, excessive cost, ability to access best pricing or a harmful encroachment of their fundamental legal rights).

Next steps

We note that the volume of evidence considered by the Competition Commission renders it difficult to meet the requirements for input by all interested parties, particularly in view of the overall statutory timetable imposed on the Competition Commission; however, given the complexity and significance of the issues at stake here, the time provided for responses in respect of the possible remedies is too short. We note, however, that the Competition Commission proposes to take into account all comments received in response to the Remedies Notice and, importantly, to consult further prior to deciding what, if any, action should be taken in relation to any of its Provisional Findings or the subsequent remedies. We appreciate this assurance notwithstanding our concerns as to the present process and look forward to the opportunity to engage with the Competition Commission both bilaterally and as part of forthcoming multilateral hearings.

As stated above, we are not proposing to respond to the Provisional Findings Report in this instance, but rather to provide an initial response to the impacts and consequences of the proposed remedies - setting out also some of the unintended consequences to enable further consideration of whether the remedies are proportionate and/or likely to have the intended impact.

We note that the Competition Commission has sought detailed input regarding the remedies in the “Issues for Comment” sections of the Remedies Notice. We have responded to these where possible, but the abbreviated time frame and the limited detail provided does not lend itself to the development of detailed operational responses, particularly around the cost, timing and legal changes required to implement a number of the remedies.

Remedy A: Measures to Improve Claimant's Understanding of their Legal Entitlements

We would be supportive of any measure or combination of measures the impact of which will be to improve consumers' knowledge and/or understanding of their legal entitlements in circumstances where they may need to access the claims process. However, we cannot see that the Competition Commission's proposal of further information provision at two stages of the process (receipt of policy documentation and first notification of loss – FNOL) will substantively contribute to an improvement in this position. In relation to this proposed remedy we would comment as follows:-

1. We do not consider that there is a direct correlation between the provision of further documentation to all customers and the desired improvement in the knowledge and/or understanding of customers at the point of claim. Our experience of financial services products suggests that the provision of additional documentation does not necessarily have that effect and this is particularly the case where the documentation in question is not pertinent to the customer at the point it is supplied. Hence, we consider that the provision of a supplementary information document at the point of sale alongside customer policy documentation is unlikely to be effective in increasing customer understanding.

2. We consider that the provision of further information at the point of claim may be marginally more effective in improving consumer understanding. However, we do not consider that this additional element of the FNOL process is either beneficial to consumers or necessary. We acknowledge that almost all claimants will face an information asymmetry when making a claim given the overwhelming gap in knowledge and understanding between the claimant and the insurer.

3. The asymmetry referenced above relates to both fault and non-fault claims. With regard to non-fault claims, the asymmetry is balanced by the claimant's access to expert, independent and highly regulated legal advice. Provided access to such advice is and remains available to consumers this balance is preserved. For customers of BGL and others to whom we provide claims services, our claimants have immediate access to expert legal advice which is provided irrespective of a customer's means. This advice, not a further written statement, is effective in rebalancing the position between the claimant and the at-fault insurer.

4. For at-fault claimants we are, again, unsure that the proposed remedy will have any or any significant impact. The first party insurer has an existing regulatory obligation to ensure that the innate conflict of interest that exists between that insurer and the at-fault claimant does not manifest itself in detriment to the at-fault claimant. We consider that these regulatory structures are the correct point to focus any improvement for the benefit of consumers.

5. Whilst for the reasons outlined above we do not consider this remedy is likely to be effective, if it is to be implemented it is most likely to have impact if the additional information is presented at the FNOL stage. Mandating the provision of further information at this point, will, of course, increase the duration of FNOL calls and therefore increase the frictional costs of providing that service. If and to the extent that such frictional costs are ultimately passed back to the consumer, this will have a detrimental impact upon premiums.

Issues for Comment

(a) What information should be provided to consumers?

We agree that the information set out in para 18, should be provided as a minimum. However, we consider that further, supplemental information might be supplied dependent on the customer's circumstances and the status of the FNOL provider.

(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?

The information can be provided as part of the annual motor policy and should also be available on insurers' and each intermediary's websites. A standard wording, prescribed by law, should be introduced to ensure that all consumers receive consistent information. Providing the information in a prescribed format by law during the FNOL call would be the most effective time to remind the consumer of his/her rights but also has the potential to increase cost in the FNOL process.

(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?

A consistent prescribed statement of consumers' rights, as prescribed by law, could be effective as long as it is produced by an independent consumer focused organization. We do not consider the ABI as a suitable independent body due to its relationship with the Insurers. This relationship would lead to a clear conflict of interest for the ABI. Equally, we see no reason why the provision of this information should be limited to "insurers". We consider CMCs and, ultimately, firms of solicitors to be distinctly better placed to provide this information.

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

This remedy could potentially give rise to distortions if the content of the information is not prescribed by law and therefore not applied consistently across all consumers. If consumers do not receive consistent information or this information replaces expert legal advice the likelihood is that consumers will suffer poorer outcomes.

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

These are dependent upon how this remedy is implemented, but provided there is a prescriptive requirement we do not consider there to be significant risk of circumvention.

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

The proposed remedy will be a legal and regulatory obligation of each service provider. All existing legal obligations are adequately monitored and we do not see a requirement for additional monitoring.

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

Each additional 1 minute in the average duration of a FNOL call adds approximately [✂] per annum to our costs providing this service. We would anticipate that these costs would be replicated across the sector.

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

An enforcement order would be one approach to ensuring compliance across the sector. However, we do not consider an enforcement order to be warranted or appropriate.

***(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?
For the reasons set out above we do not consider this remedy will be particularly effective, whether alone or in a combination with others. Moreover, remedies designed to improve consumers' understanding of their legal rights should not, regardless of their effectiveness, be seen as addressing (or in any way offsetting) the potentially serious adverse effects of other remedies proposed by the Competition Commission the impact of which would be to cede greater control of the non-fault claims process to at-fault insurers

(j) **Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?**
We do not believe that this would be effective in enhancing the consumer's understanding of his or her legal entitlements. All drivers have to achieve an agreed standard of driving to pass the driving test, but we are unaware of any evidence that a theory test has substantially enhanced the knowledge and understanding of drivers on a long-term basis.

ToH 1

Issues for comment 1

(a) Whether the possible remedies under ToH 1 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.

Please refer to our general comments in this response to each of the possible remedies under ToH 1 for our views on the effectiveness and potential consequences of these remedies. As you will see, we believe that a suitable replacement to the GTA which is open to all market participants and is independently operated and regulated could achieve a number of the objectives which the remedies in ToH 1 are seeking to achieve. Such a remedy would, in our view, be far more proportionate and would not give rise to unintended adverse consumer consequences.

(b) Whether the possible remedies under ToH 1 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.

Any replacement of the GTA would need to be independently regulated in order for it to deliver the benefits to the consumer it would be designed to provide. An existing regulatory organisation, such as the FCA, could fulfil this function with adequate funding.

Remedy 1A: First Party Insurance for Replacement Cars

This proposal, as recognised by the Competition Commission, represents a fundamental shift in customer entitlements and would require primary legislation. As such, irrespective of the impact of this potential remedy as set out below, any such remedy would be totally disproportionate to any potential perceived consumer benefit.

1. This proposed remedy would create a moral hazard that extends wider than the cost of car insurance. The current approach whereby the innocent party to a non-fault accident can expect to be restored to their pre-accident position creates a consistent incentive for drivers to drive carefully. This proposed remedy erodes that incentive by forcing innocent drivers to claim on their own policy of insurance.

2. The current incentive to drive carefully and safely and avoid accidents has consequential benefits for overall road safety including the safety of other road users

and pedestrians. In our view, it would offend public policy to implement a proposal that, in any way, eroded this position.

3. In relation to the pricing of car insurance, we consider that, to the extent consumer prices reflect claims costs and risks, the consumer would be the loser. In assessing risks, insurers are, largely, determining the prudence of their customer. The customer is able to influence that calculation by providing accurate and complete information and accordingly takes the benefit of his/her previously prudent driving record. This proposal would require insurers to make an assessment, not of the likelihood of their customer to cause an accident but, additionally, of his/her likelihood to be innocently involved in an accident. Given that no market participant would have the information or data to assess this risk or it is likely that it would be simply averaged out across all policies meaning most customers would be disadvantaged. Although we cannot be definitive as to how this proposal may operate in practice, it is highly unlikely that any savings in the cost of provision of replacement vehicles by third party insurers would outweigh the cost of provision of replacement vehicles on a first party basis when taken together with the increased premiums payable by consumers associated with the relevant service.

4. This remedy is essentially based upon balancing the additional cost for non-fault insurers against the reduced cost for at fault insurers. However, the nature of the UK PMI market is such that such a simplified equation is not representative. Models such as that operated by BGL could not take advantage of this possible remedy leaving them at a disadvantage as against insurers and thereby reducing competition in the market.

5. We also consider this remedy results in a significant and detrimental impact on the consumer experience. In this regard, the rights and entitlements of the innocent consumer appear to have become overridden by marginal and uncertain financial considerations. The customer's rights are eroded by this proposal owing to the removal of the customer's right to be held harmless from the financial impact of an accident for which the customer is not responsible. This financial impact can become manifest in a number of ways including potential loss of no claims discount (NCD or NCB), payment of an excess or even of the full cost of providing a replacement vehicle.

6. The detrimental consumer impact is not limited to the financial costs. The likely increase in premiums for insurance which provides additional first party replacement car cover will potentially render such policies unattainable for a proportion of consumers (and could lead to more instances of uninsured driving). Depending on how this remedy might be implemented by insurers, these consumers could be left without the provision of replacement cars even where they are the innocent party in any accident. The proportion of such customers that are likely to be affected and the impact to individual consumers should be taken into account in assessing this proposed remedy.

7. This proposal will also have a negative impact on competition within the private motor insurance market - both as a barrier to new entrants and as a clear additional advantage to large incumbent PMI providers, which is likely to reinforce their existing market strength and reduce competition. Such providers are able to leverage large fleet discounts meaning they are able to reduce the cost impact on themselves of the provision of first party insurance for replacement cars. Additionally, the same providers are the greatest beneficiaries of the removal of third party liability for replacement vehicles thereby widening the competitive gap between existing/large and new/small PMI providers.

Issues for comment 1A

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

We have not considered this in detail given our view of this remedy outlined above but it would involve making changes to primary legislation.

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

If they were it would be by way of a policy upgrade at the point of sale and would potentially be another way for insurers to up sell their policies to customers. In other words, consumers could, in future, be expected to pay a significant premium for a replacement car service that merely reflects their current legal entitlement. This would not seem to be in their best interest and, indeed, is unlikely to be consistent with UK consumer protection/misleading advertising laws.

(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?

The increase in consumer premiums to cover the price of replacement vehicles is highly unlikely to be outweighed by the relatively marginal credit hire cost savings that have been identified.

(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?

This change would impact how premiums are calculated. Insurers would have to re-evaluate how they price an individual risk as risks that have historically been priced on the basis of the likelihood of the policyholder having a fault accident would have to change and, instead, be assessed and priced on the basis of the policyholder having any type of accident which could lead to an increase in premiums. Consumers would also be more likely to lose their NCD/NCB because they would also need to claim under their policy for accidents that they were not responsible for, which would increase their premiums in future.

If a mechanism were introduced where any excess payable for a replacement vehicle were treated as an uninsured loss which could be recoverable from the fault insurer, there would need to be a clear and simple process agreed between insurers to facilitate the recovery of the excess on behalf of the non-fault claimant with no delay or additional cost being passed on to the non-fault claimant. There could also be unintended consequences around how excess levels were set.

(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?

If vehicles were provided as a contractual entitlement under a policy of insurance then hire companies who only provide credit hire vehicles would have to review their business models to assess if they could continue to provide the required services on a direct hire basis. Where a hire company only provides direct hire vehicles, their business model would survive the implementation of this remedy, subject to their pricing models being acceptable to first party insurers.

First party insurers would be continually looking at ways to improve their margins by reducing the cost of providing replacement vehicles and there would be ongoing procurement and supply chain management activities in order to seek to drive down the cost of providing replacement vehicles, which is likely to lead to poorer service and customer detriment.

From a consumer's perspective, as already indicated, consumers would, as part of their policy, have to buy replacement car cover – arguably for a basic vehicle that does not

necessarily reflect their needs or legal entitlement in the event of a claim (regardless of responsibility). Of course, PMI providers would most likely exploit the opportunity to offer 'premium' or 'enhanced' cover (for a better vehicle, which might or might not approximate to the consumer's current legal entitlement) but at a (significantly and disproportionately) higher cost. In this regard, it is possible to draw certain examples and inferences from the pricing of 'upgraded' or 'premium' courtesy cars (which may still fall short of a non-fault claimant's legal entitlement) that certain PMI providers offer as add-ons to their customers.

(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?

From the customer's perspective, having the repair undertaken by the same provider as the hire vehicle would result in a much better customer journey as the provision of the hire vehicle can be clearly aligned to the commencement of the repairs.

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

See the various consequences we have referred to above. In addition, the separation of the replacement vehicle and the repairs could result in some fault insurers de-prioritising the repairs they need to complete as they know the non-fault insurer is having to pay a daily rate for the replacement vehicle and by delaying the repairs, this could damage their competitors' loss ratios. In other words, rather than resolving the incentive on the part of non-fault insurers to raise at fault insurers' costs (a harm previously identified by the Competition Commission), the positions would simply be reversed, with the same potential outcomes for consumers. The consumer would clearly be the loser in this situation as their claims history would be adversely impacted and would most likely result in an increased premium and the return of their vehicle would be delayed.

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

We have not had the opportunity to consider this in detail but it would require changes to primary legislation. It would be a fundamental shift in the way the market currently operates and would, potentially, take years to implement.

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

It would require a number of supporting measures but we have not had the opportunity to consider these in light of our view of this remedy as being wholly disproportionate to its intended objectives.

Remedy 1B: At-fault Insurers to be given the First Option to Handle Non-Fault Claims

This potential remedy is based on a fundamental misconception as to the nature and /or impact of the conflict of interest that exists between the non-fault claimant and the at-fault insurer. The entire structure of the private motor insurance claims process and the participants in this area has evolved as a result of the disinclination of at-fault insurers to act promptly and comprehensively to restore non-fault claimants to their pre-accident position. Given the overwhelming disincentive that exists for at-fault insurers to revise this approach it is difficult to see any outcome other than widespread under provision.

This possible remedy, in referencing the non-fault insurer and at fault insurer, overlooks customer centric models such as that operated by BGL. In the BGL model we act at, all times, independently of the at fault insurer and the non-fault insurer, in the best interest of the consumer. In either circumstance our objective is to obtain the optimum consumer outcome ensuring that at the point of FNOL and throughout the consumer journey, the consumer's interests are protected. Requiring customers to be passed to at fault insurers would significantly erode and undermine the service provided to customers under the BGL model leaving vunerable consumers at the mercy of at fault insurers.

1. From the consumer perspective this proposal removes any element of consumer choice in relation to the fulfilment of post-accident services. This change in the basic legal rights of consumers, requiring a fundamental change in primary legislation is disproportionate to any financial benefit. It also disregards the impact upon the consumer of being trapped with an enforced service provider who has an interest only in reducing the costs and not in maintaining a level or quality of service.

2. The remedy refers to the passing of the “whole of the non-fault claim to the at-fault insurer”. This appears to leave open the potential to require the hand-off of claims that are not limited simply to replacement cars or repairs. This proposal significantly increases the potential for vulnerable consumers (for example those who have incurred a personal injury) to be subjected to resolutions that are potentially lacking in quality, integrity or independence whilst they continue to suffer from the after effects of a potentially physically and/or mentally traumatic event.

3. The scaled downed versions of this remedy, involving various options for liaison between the at-fault insurer and the FNOL provider, whilst exposing the consumer to a slightly reduced level of risk, do not reflect the reality of the consumer’s post-accident requirements. The basis of the non-fault consumer's claim is his/her need for a replacement vehicle/repairs. Invariably, that need is immediate and any delay worsens the position of the vunerable claimant.

4. This proposed remedy would also be likely to lead to the creation of a new adverse effect on competition. This would occur as a result of insurers competing to reduce their own repair costs by providing an increasingly scaled down service to non-fault customers. This would create a competitive commercial race to the bottom between insurers seeking ever lower costs by use of cheaper parts, provision of older vehicles, provision of inappropriate vehicles etc, which again would appear to be at odds with other possible remedies intended to improve the quality of service received by consumers. The burden of this activity would borne, once again, by the not at-fault consumer.

Issues for comment 1B

(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?

There is no incentive for the non-fault claimant choosing to have their hire and/or repair claim dealt with by the at-fault insurer. There is no contractual relationship between the two parties and the insurer of the at-fault party will be focused entirely on reducing the cost of the claim. This choice would lead to confusion for the non-fault claimant who would invariably expect to deal with their own insurer (or CMC) throughout the claims process

(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)?

Given the complete lack of incentive on the part of the at-fault insurer to provide the standard of service required and the potential for significant customer detriment as a result, very robust safeguards would need to be introduced to ensure that customers receive the benefits they are entitled to under their policy without delay caused in determining who will handle their claim.

Safeguards could include the implementation of a robust audit process to cover areas such as:

- Quality of repairs and assurance that they are supported by a 5 year guarantee
- Location of repairer – must be in a convenient location for the claimant (no more than 30 minutes travel time)
- Lifecyle of repairs – was the lifecycle reasonable?
- Replacement vehicle – did the customer receive one?
- Did the replacement vehicle meet the claimant's needs?
- Was the replacement vehicle provided for the duration the claim required?

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

The claimant already has the freedom to choose an alternative service provider and some claimants already choose to have their hire and/or repair claim managed by the fault insurer. The implications of choosing an alternative to the first party insurer is the risk of not receiving the levels of service that the customer is entitled to under their policy of insurance, as the fault insurer seeks to limit their costs.

(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?

This remedy would inevitably introduce a delay in the process while the claimant waits to hear from the fault insurer, having reported the claim to their insurer, as it is introducing another step in the process. The claimant could then be further inconvenienced if the fault insurer does not want to take over the management of their claim as they will have to make contact with their insurer again.

Responsiveness to the claimant's requirements to ensure their needs are met is the key focus and this remedy does not lend itself to a rapid response. Without endorsing this possible remedy in any respect, we consider that the maximum time taken to contact the non-fault claimant should be no longer than 1 hour after the fault insurer has received the notification.

(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. As far as the claimant is concerned they selected their insurer to meet their requirements when they purchased their policy with them so it is unreasonable to expect a non-fault claimant to have to wait for an offer from the at-fault insurer when they would not have to wait if their own insurer handled their claim.

(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?

We have not had the opportunity to consider this in detail.

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

There are a number of situations where we can see that the non-fault customer could suffer detriment in addition to the obvious potential to receive a poor service. For example:

- There are quite often circumstances where the fault party does not report their claim to their insurer so one has to question what would happen to the innocent non-fault customer in these circumstances. It is our experience that at-fault insurers often refuse to progress any claim or solution at the very earliest until they have received such notification from their insured (hence significant delays remain a real prospect)

- Non-fault claimants are likely to be exposed where they are involved in accidents that occur out of hours and the at-fault insurer does not have a 24/7 claims function?

- A non-fault claimant has no control over who the at-fault driver has selected as their insurer who would be entitled to handle the claim. This means that a careless driver, with numerous at-fault claims against him, might be obliged to seek out the lowest quality/cheapest PMI provider, who in turn would have the right to manage a much more careful/selective driver's non-fault claim.

In other words, the market moves from one based on a variety of variables tailored to the needs of different consumers, to one where any feature other than price becomes marginalised. This 'standardisation' will make it more difficult for certain providers to compete on the merits and could, quite feasibly, lead to market exits and an overall reduction in competition.

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

We have not had adequate opportunity to consider this.

(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?

As the majority of FNOL is now completed over the phone, the only robust mechanism to ensure that the claimant is properly informed of their rights is to audit a robust sample size of FNOL telephone calls.

The monitoring of the notification depends on the methodology used to notify the fault insurer. If an outbound telephone call is the chosen methodology, then a robust sample size of call recordings (from both parties) should be independently audited. If an electronic notification methodology is chosen (email, EDI), then these records can be stored and audited by an independent party.

Further consideration should be given to the auditing of the fault insurer’s responses to the claims notifications and whether they are meeting the timescales required. There would be additional costs associated with the implementation of this remedy including costs of increased call handling time when advising claimants of their rights, costs of call handling for at-fault insurers to manage claims of non-fault claimants, costs of any claims notification processes and systems and costs of auditing and monitoring service levels to ensure customer needs are met.

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

We have not considered this in detail however it is likely to take years given that there would need to be a change in the law.

Remedy 1C: Measures to Control the Cost of Hire Vehicles (Non-Fault Claimants)

In principle, this remedy has all of the advantages that the other proposed remedies lack. Accordingly, we would support this remedy wholeheartedly subject to the following considerations:-

1. Any replacement for the GTA would need to be accessible and capable of influence by all market participants. One of the fundamental flaws with the existing GTA arrangement is that it essentially represents the manifestation of an exclusionary consortium of insurers with aligned interests. Far from assisting in the promotion of competition for the benefit of consumers, the existing arrangement is inaccessible to a wide range of market participants. Even BGL with its [✂] private motor insurance customers is unable to participate in or influence the GTA. In order to be effective, any replacement GTA would need to be independently administered and funded. Such funding would need to be sufficient to enable thorough and comprehensive research for the purposes of rate setting, administration and adjudication of disputes.

2. A replacement GTA would also benefit from having regulatory force in order to ensure that its advantages were realised. We consider that such regulation could, with the appropriate funding, be provided by an existing regulatory organisation. Post 1st April 2014, for example, virtually all interested market participants will be regulated by the FCA. After that date, credit hire providers, as a result of the transfer of responsibility for consumer credit regulation to the FCA, will be required to be authorised by the FCA. The same is already true for PMI insurers and brokers and some other parties, for example, certain credit management companies and/or firms of solicitors.

3. One clear advantage of an alternative GTA proposal is that it will not serve to reduce competition by imposing a benefit to one existing business structure over another. Each of the other remedies differentiates between market participants in a way that an appropriately structured and operated alternative to the GTA would not. The other remedies variously discriminate between large and small providers, existing providers and new entrants, or underwriters and brokers.

4. An alternative GTA arrangement also has the benefit of being the remedy most likely to deliver a comprehensive solution provided the objectives of that solution are to regulate the costs of replacement cars and simultaneously to protect consumer interests in terms of freedom of choice, access to services and retention of their existing legal rights. Finally, an extended GTA would have the overriding advantage of being the most proportionate solution being, by comparison, relatively easy to implement as it would not require any legislative intervention meaning that implementation could be relatively straightforward and speedy.

Issues for comment 1C

(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.

See above our comments regarding the nature of any replacement to the GTA and its scope and regulation. The GTA could be developed to become an independent regulatory function which is either replaced or managed by a regulatory body (such as the FCA) and it could undertake a more prescriptive role in the determination of prices to reduce disputes (i.e. setting specific rates for credit hire vehicles as opposed to caps/indicative rates) and the mandatory auditing of repairs.

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

All parties who arrange for the provision of hire vehicles and those that pay for the hire vehicles would need to be covered by the new arrangement including insurers, CMCs, CHOs and brokers.

(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?

This is currently governed by the GTA and the repairs have to commence as soon as the repair costs of the vehicle has been estimated and the parts are available. [✂]. Under the GTA, the CHO has to undertake the following to ensure hire periods are kept to the minimum:

- CHOs will check with a garage that a repair has been authorised within 3 working days of the vehicle going in.
- CHOs will make a further check with the garage after the lesser of 5 working days or 3 working days before the hire should have ended.
- CHOs will check with the garage 3 working days before the hire should have ended.

The monitoring of the hire period should still be completed by the vehicle provider and as long as they can evidence that they have followed the process to mitigate the hire duration, then the invoice should be paid. Audits are currently carried out on CHOs to ensure that they are meeting their obligations

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

We have not had an opportunity to consider the most appropriate method of calculating hire rates but to ensure that there is no bias towards insurers or credit hire organizations, they should be set by an independent body and should be reviewed annually and amended to reflect the current market conditions.

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

We do not have visibility of the existing administrative costs of CHOs in order to be able to answer this.

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

We do not see why a portal similar to the MoJ portal could not be developed to manage credit hire arrangements and we understand that a version is already being developed by the GTA.

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

We have not considered the potential costs in detail and they would depend on the nature of the extension or replacement of the GTA.

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

There are potential unintended consequences that could arise if the daily hire rates are set at levels which are commercially unsustainable for some car hire providers which may lead to a reduction in the volume of hire vehicles available in the market if providers are forced to exit.

(j) 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?

We have not had a chance to consider how this remedy could be circumvented in detail.

Remedy 1D: Measures to Control Non-Fault Repair Costs

This proposal aims to prevent subrogated claims for repair costs being marked up or alternatively the provision of standardised (fixed) repair costs. Similarly to the remedy proposed under 1B this proposal is overly complex and differentiates between those market participants who are currently vertically integrated with a repair provider and those that are not.

- In addition to the considerations of complexity and effectiveness, this proposal also has the capacity to result in significant consumer detriment. Such detriment could take the form of increased costs as a result of reduced competition amongst repairers and/or a reduction in quality of repairs as repairers seek increased margins from fixed returns.

- Given that one element of this proposal is to standardise repair costs, by far the most comprehensive and effective method of controlling repair costs would be to extend the replacement for the GTA to cover repair costs. This would again provide a level playing field for all market participants provided it is appropriately administered and governed. This approach would also obviate all of the detailed control measures designed to attempt to ensure that the "wholesale price" was always provided from one insurer to another.

Issues for comment 1D

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

We assume that any remedy that would change the subrogation rights of a party would require changes to primary legislation.

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

Discounting services provided based on buying power is a long established way of working in procurement cycles and it helps to reduce costs for the end consumer. Removing or standardising discounts could therefore impact on claims costs and is likely to increase the overall spend and that will be passed on to the consumer in increased premiums therefore negating the intended impact of the remedy to reduce the cost to consumers.

The suggestion of standardising the price of repairs is also a concern as this could drive behaviours that are detrimental to customers as repairers look to repair vehicles for less than the standardised price in order to increase profit.

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?

All invoices presented by the repairer would need to be transparent and list line by line all of the elements of the invoice.

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

Yes, this is a potential way that the remedy could be circumvented but it is unlikely due to the availability of repairers in the market place that would be willing to vertically integrate with insurers.

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?

The setting of standardized repair costs would not be practical for the following reasons:

- Repair versus replace part strategies – how would the system account for repairing the damaged part, rather than replacing, which is usually more expensive

- Additional damage to the vehicle, which only became evident once the vehicle is stripped down. If this cannot be subrogated, would the non-fault customer have to claim for this damage under their own policy and lose their NCD/NCB and incur a higher premium?

- Safety concerns about usage of non-OEM parts

- Using Audatex or Glassmatix would give them a high level of control/ influence over the repairers and insurers

- What happens in claims that flip from fault to non fault – how would these be managed?

- Allowing the non-fault insurer to keep any balance of the cost if the repair is actually cheaper than the standardized repair cost would lead to insurers pushing their repairers to find consistent methods of repairing vehicles cheaper than the standardized costs and this could lead to sub-standard repairs which is not in the interests of the consumer (and has already been identified as a concern by the Competition Commission).

(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?

Audatex and Glassmatix would be helpful for parts pricing and the number of labour hours required to complete the repairs.

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

We have not considered the costs in detail but they would include the costs of developing the inputs in to the price control and then ongoing costs for usage (Audatex/ Glassmatix), cost of reviewing price control, staff training on new process, audit function etc.

(h) How would monitoring of this remedy work?

Audatex does have an audit function called Audaaudit and that may be a potential monitoring solution. An alternative would be to manually audit repairs that fall in to this category, but this would be a significant task and would be costly to undertake.

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

Thatcham would probably be the most appropriate organization but may be seen as an insurer friendly organization.

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

Regular detailed audits of a suitable sample size from all repairers would need to be undertaken to safeguard the quality of the repairs. Given the volume of subrogated repairs completed on an annual basis, this would be a significant task and would be costly to undertake.

Remedy 1E: Measures to Control Non-Fault Write Off Costs

Once again the most straightforward and comprehensive way of controlling any such costs would be to determine the parameters and operational requirements for agreeing such costs by reference to a replacement enhanced GTA arrangement. Although this is not an area in which we are closely involved, we cannot see that the total value of any cost savings can be sufficient to merit the imposition of an alternative structure for determining those costs. Any potential

alternative structure risks causing confusion and/or delay for consumers and again this potential detriment seems unwarranted when set against any potential upside benefits.

Issues for comment 1E

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

We are not aware of any

Regarding Remedy 1E(a)

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

This remedy is likely to lead to an increase in activity for the fault insurer. It is likely that the total loss vehicle will be at the claimant's premises or at a repair shop. The fault insurer will have to arrange for the collection of the total loss and recover it to a salvage yard. Depending on the speed of the collection, there may be reasonable storage charges which the fault insurer may incur or dispute. For these reasons, it is unlikely that the fault insurers would take up the option of handling the salvage, unless they have an interest in a salvage company.

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

It can only be done once the vehicle has been assessed and confirmed that it is a total loss.

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?

The profits of salvage companies are driven by salvage prices as their levels of profit are determined by their salvage returns. We suspect that their incentive to drive for higher salvage prices may reduce if they are passing any value that is in excess of the estimated salvage value back to the fault insurer.

(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)?

We cannot comment as we outsource this service and therefore have no visibility of these costs

Remedy 1F: Improved Mitigation to the Provision of Replacement Cars to Non-Fault Claimants

As with some of the remedies previously considered above, we are doubtful as to the capacity of this remedy to provide benefits sufficient to justify the imposition of a further increase in process together with the attendant costs. That said, the motivation of this remedy being to ensure that replacement cars are provided only where appropriate, is one which we would, of course, support. Once again this remedy is not required if there is in place a fully functioning replacement for the GTA. Guidance could be provided by the independent body responsible for setting the rates and recommended duration periods. Equally, queries or disputes could be settled by the same body.

Issues for comment 1F

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

Yes, this could operate on a standalone basis as we believe that customers should only be provided with a vehicle when they have demonstrated that they have a need.

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

This could be a supporting measure on any of the remedies relating to replacement vehicles.

(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?

The questions that should be asked include the following:

- What is the customers vehicle used for - school runs, fulfilling work requirements (e.g. carers)
- Confirmation of their weekly mileage
- Is there any other suitable vehicle available for them to use?
- Do they want a replacement vehicle?

The policy entitlement to provide a replacement vehicle in the event of a fault accident should not be considered in assessing the need for a replacement vehicle in the event of a non-fault claim. Some motor insurance policies now provide courtesy cars as a standard benefit for the consumer so the presence of this feature is not indicative of need. The courtesy vehicles included as standard are usually 'Class A' size cars and the consumer is more likely to have a need for a larger car that is similar to that of their own.

(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?

The mitigation statement is already provided to the fault insurer in the settlement pack, under the terms of the GTA and CHOs currently use this as confirmation that the customer had a need for the vehicle. Additional evidence by way of a call recording is possible, but the cost of producing and sending the call recordings could be prohibitive and may cause issues with data protection (the customer would have to give their consent to the call being shared). The GTA processes are already self-enforcing with audits built in to validate compliance and, if this remedy was part of the " New GTA" then it could be self-enforcing without any additional monitoring.

(e) How much would it cost to implement this remedy? The costs associated with this remedy could be:

- Improved phone technology (some may not call record at the moment)
- Downloading, producing and sending call recordings
- Insurer technology upgrades to allow access to call recordings
- Development of new mitigation questions and statement
- Staff training for new process

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

The implementation of this remedy may not reduce any frictional costs of dispute, it is likely to reposition frictional costs to disputes around the validity of the mitigation statement.

Remedy 1G: Prohibition of Referral Fees

This proposal which seeks to prohibit the payment of referral fees in relation to hire/repair is unlikely to achieve its objective of cost reduction. This is because the impact of such a prohibition would only be felt by market participants operating a particular business model. Far from enhancing competition amongst PMI providers this would reduce the income streams available to some PMI providers (whilst leaving others unaffected) and would also remove the capacity for the service providers (credit hire/credit repair) to share value with introducers. Referral fee incentivisation results, of course, in a highly focused customer centric approach to the provision of these services.

1. A prohibition on referral fees is likely to be ineffective to reduce costs given that referral fees currently represent an efficient and targeted method of service providers obtaining customers. Elsewhere in the sector it is clear that an alternative for customer acquisition, for example marketing or brand building, is unlikely to be as efficient and will not result in an overall cost reductions.

2. The differentiation in access to income streams between those PMI providers with vertically integrated hire/repair provision and the remainder is likely to distort competition in favour of the former group. Given the acquisition inefficiencies for hire/repair providers there is unlikely to be any overall cost saving accruing to underwriters from reduced rates. Consequently, whilst a small number of vertically integrated providers may be advantaged, the opposite cost pressure will be felt by the remaining providers meaning overall premiums are likely to increase rather than decrease.

3. Referral fees are a fundamental element of the provision of FNOL services and prohibition would likely lead to a reduction in the availability of such services. The impact for the consumer of this reduced availability will be to expose the consumer more frequently to direct interaction with the at-fault insurer. Given the conflict of interest that arises in relation to such direct interaction, the information asymmetry that exists and the financial imbalance it is highly likely that poorer consumer outcomes will follow.

4. Once again the extended alternative GTA proposal would be both more effective and comprehensive in its impact. If the objective is to reduce costs the remedies should focus on the overall amount of such costs. It is irrelevant to the effectiveness of any such remedy. The distribution of costs between the service provider and the recipient of any referral fee is not pertinent to the effectiveness of any remedy.

5. The imposition of a prohibition on referral fees would need to be accompanied by a wide ranging regulatory structure to ensure that referral fees were not paid and/or received by any market participants. The cost of setting up and administering such a structure would be wholly disproportionate to the value derived for consumers for the reasons set out above.

Issues for comment 1G

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

See our comments above regarding the effectiveness of this remedy.

(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 our general comments above on the effectiveness of these remedies

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

See our comments above on the impact on premiums.

(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?

Vertical integration is always a risk but this remedy is unlikely to lead to a major move to vertical integration across the industry. The two key reasons for this are as follows:

- there is a limited number of large scale hire providers in the market place and cost of acquisition would deter insurers

- the integration of repairers would be unlikely to provide nationwide coverage for the consumer and there would still need to be a second tier network.

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

See our general comments above.

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

We have not considered this given our views on the effectiveness of this remedy.

Remedy 2A: Possible Under Provision of Services to Those Involved in Accidents – Compulsory Audits of the Quality of Vehicle Repairs

For customers of the BGL Group we contractually require repair providers, for repairs we arrange, to comply with best practice standards in terms of the quality of repairs and the quality of parts utilised. However, we note that this may not be the case for all customers and we, therefore, broadly support the proposal to introduce compulsory audits. Once again, a fully functioning extended GTA arrangement could implement an audit scheme as one element of its coverage. This approach would have the benefit of providing assurance against quality appropriateness and cost.

Remedy 4A: Provision of Add-On Pricing from Insurers to PCWs

Within the Group we operate as both a PCW and a user of PCWs and accordingly we are acutely aware of the balance to be struck here. On the one hand, we are seeking to provide consumers with an optimum purchase journey including sufficient information to enable each customer to fully exercise a choice. To be balanced against those considerations is the requirement to ensure that the journey is usable and the customer is neither overwhelmed nor confused as a result of a surfeit of information.

1. It is important to consider the separate responsibilities of the PCW and the product provider in relation to the sale of PMI policies. Whilst on the PCW, the customer is focused on and assisted in making a like for like comparison. Once the customer is transferred to the provider site we consider that it is legitimate for that customer's purchase options to be refined and further information provided. Any provision of pricing information should not operate so as to diminish the capacity of individual product providers to differentiate themselves by reference to product, proposition or consumer experience.

2. We have a further residual concern as to the nature and potential impact of this proposal. The design of the comparethemarket.com website has been the subject of significant research, development and investment over a number of years to ensure it meets, as closely as we are able, the optimum consumer journey. Comparethemarket.com has worked extremely hard to differentiate its journey and proposition from that of its competitors and has learnt that even relatively small changes to its site can result in very different and sometimes unpredictable consumer

behaviour. Accordingly, any proposal to alter the design of the comparethemarket.com website and specifically any proposal to prescribe certain information would need to be the subject of a significant lead time to enable detailed development and testing. Furthermore, we would also need to build in sufficient flexibility to ensure that any adverse unintended customer experience consequences could be rectified.

Remedy 4B: Transparent Information Concerning No Claims Bonus

As a broker, whilst we are responsible for providing no claims bonus information to consumers and insurers alike, we do not ourselves determine no claims bonus scales. We are, accordingly, supportive of reasonable and proportionate proposals to provide greater transparency and visibility to consumers.

Remedy 4C: Clearer Descriptions of Add-Ons

Once again BGL would be supportive of any provisions that enhance clarity and transparency for consumers. We would, however, caution against the potential for over provision of information. Our understanding of consumer expectation and experience suggests that provision of a balanced level of consumer information and the facility for consumers to access information easily and straightforwardly is preferential to simply providing more information.

Remedy 5A: Prohibition on Wide MFN Clauses

In our response to the Provisional Findings Report we will address the considerations which purport to underpin this proposed remedy.

In general, we consider that so called "Wide MFNs" as well as "Narrow MFNs" are crucial to the success of PCWs and the positive customer-proposition that they represent.

In considering the proposed prohibition of Wide MFNs, it is important to revisit the actual types (or scope) of clauses in operation between comparethemarket.com (or other PCWs) and PMI product providers. None of those clauses operates to prevent any product provider from offering any price on any alternative platform.

1. [✂:
    a. ✂.
    b. ✂.
    c. ✂:
        i. ✂; and
        ii. ✂]

[✂]

Indeed, in our view, those PMI providers that have protested most vociferously against Wide MFNs are only protesting because: i) they have free-ridden on the extensive marketing investment of PCWs and are now concerned that their growth gives such entities some bargaining power in relation to fee negotiations; or ii) they would like the freedom to raise, rather than drop, prices displayed via particular PCWs which have been successful (and have a large consumer following who consider that they are going to get a good deal).

The removal of Wide MFN clauses (at least of the type described above) will not drive PMI providers to offer lower pricing on other platforms as, if this were their intended commercial objective, PMI providers would already be operating in that way. Rather, the removal of such wide-MFN clauses will enable PMI providers to increase PMI prices on comparethemarket.com and dilute its positive customer proposition, with the resultant poor consumer outcome driven by the reduced competitive pressure.

The views expressed in the preceding paragraphs are both based on the logical outcome of this possible remedy based on PMI provider interests and actual experience.

[✂.

✂.]

[The proposed remedy – to prohibit Wide MFNs - also makes it significantly less likely that the optimum consumer outcome of appropriate policies at the best prices can be achieved by a consumer [✂]. This defeats a key pro-consumer aim of PCWs ([✂]) and means that consumers will be returned to a situation where they have to undertake their own extensive research – through various mediums - to try to gauge whether they are getting a good deal. We consider that the implications for consumers will be:

d. increased search time / and the need to review different media equating to increased search costs and therefore increased overall acquisition costs borne by the consumer; and

e. diminished consumer satisfaction with PCWs eroding each PCW proposition, thereby reducing the pro-competitive benefits of PCWs – as clearly identified by the Competition Commission amongst others.

2. We would also observe that the distinction set out in this proposal between so called Wide MFNs and so called Narrow MFNs does not reflect the individually negotiated nature of the agreements in place between comparethemarket.com and its PMI product providers. [✂]

3. In our view, the remedy proposed is wholly disproportionate to mitigate any perceived issue in the operation of this element of the supply of PMI and, aside from its own substantive lack of merit, is based on an untested, unfounded and artificially narrow market definition. The assumption that PCWs operate as a distinct market within PMI is a new development introduced by the Competition Commission in the Remedies Notice without any clear justification. We intend to address this Competition Commission proposal, in more detail, in our response to the Provisional Findings Report, but we cannot at this stage see any credible basis for such a proposition.

4. In any event, we consider the remedy, in seeking to interfere with the freedom of contract of comparethemarket.com which is involved in only [✂] of PMI sales is unprecedented and potentially inconsistent with EU Competition Law as regards the regulation of agreements.

   In particular, we consider that MFNs, even if they were held to have any effect on competition (which would in itself require detailed analysis outside the scope of the Competition Commission's present investigation) and considered to fall within the scope of Article 101(1) of the Treaty on the Functioning of the EU, are permissible under Article 101(3), whether because of a lack of impact or by reason of justification or exemption (including under the vertical agreements block exemption). It follows that irrespective of the Competition Commission's inability to demonstrate any real adverse effects associated with such clauses (notwithstanding the positive benefits connected to them), it is not legally open to the Competition Commission to prohibit such clauses as part of any possible remedies in the light of Article 3(2) of the Modernisation Regulation (EU Regulation 1/2003).

5. As regards one aspect of the Competition Commission's apparent rationale for seeking to interfere with the existing trading contracts of PCWs in the expectation that such steps will promote increased competition by encouraging new PCWs to enter the market, we anticipate it will have the opposite effect. The clauses in question and, more importantly, the ability to protect a PCW's proposition such that it is able to realise upfront investment without the threat of damage from product providers, is a

fundamental consideration for any new entrant. This unwarranted and unprecedented level of regulatory constraint is likely to dissuade investment in new and existing PCWs.

6. Further, any purported anti-avoidance mechanism which restricts the ability of comparethemarket.com (or any other PCW) and each PMI provider to freely agree the duration and termination of their relationship is again unprecedented, disproportionate and represents a very basic threat to the on-going balance of influence between each individual PCW and its PMI providers.

   This is a delicate balance that ebbs and flows according to the capability of each PCW to provide a compelling consumer proposition and the strategy and capacity of each product provider. [✂]

   Accordingly, any fetter on the ability of comparethemarket.com to terminate that agreement in accordance with its terms would appear to us to be a fundamental one way shift in the balance of those negotiations. The Competition Commission might consider that - by restricting this element of the remedy to the prohibition of any threat of termination where the PMI provider is not providing best pricing to the PCW - it is addressing a very specific area of negotiation between the parties; however, such a mechanism will inevitably give rise to disputes and make it difficult for PCWs to cease partnering with underperforming PMI providers generally.

   For these reasons, and others as will be explained in our response to the Provisional Findings report, we consider the possible remedies concerning Wide MFNs to be impracticable, unlawful, disproportionate and harmful to consumers.