

**CIS GENERAL INSURANCE LIMITED**

**Market Investigation into Private Motor Insurance**

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**Response to the  
Provisional Findings Report**

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**7 February 2014**

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## CIS GENERAL INSURANCE LIMITED

### MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

#### RESPONSE TO THE PROVISIONAL FINDINGS REPORT

#### 1 INTRODUCTION

- 1.1 This Response is made by CIS General Insurance Limited ("**CISGIL**"). It contains CISGIL's observations on the Provisional Findings Report and accompanying appendices (the "**Report**") published by the Competition Commission ("**the Commission**") on 17 December 2013.
- 1.2 CISGIL welcomes this opportunity to comment on the Report and has already provided its separate observations on the Commission's Notice of Possible Remedies (the "**Notice**"). This Response should be read together with CISGIL's response to the Notice, dated 17 January 2014.
- 1.3 CISGIL has already provided extensive comments on the market features that the Commission is investigating under various theories of harm.<sup>1</sup> In this response CISGIL provides its observations on the specific adverse effects on competition ("**AEC**") that the Commission has provisionally identified and also on its provisional findings that certain market features do not lead to an AEC. CISGIL does not, in this Response, comment in detail on every market feature identified in the Report. The absence of observations by CISGIL on any points raised in the Report should not be taken to represent either CISGIL's agreement or disagreement on these other points and CISGIL reserves the right to comment further in response to any additional questions raised, or working papers published, by the Commission, and specifically at the response hearing scheduled for 26 February 2014.
- 1.4 CISGIL looks forward to continuing to assist the Commission throughout the remainder of its market investigation and looks forward to exploring these points at the hearing with the Inquiry Group scheduled for 26 February 2014.

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<sup>1</sup> See: CISGIL Response to the Issues Statement (14 January 2013); Transcript and Summary of Bilateral Hearing with CISGIL held on 19 July 2013; CISGIL Response to the Annotated Issues Statement and Working Papers (9 September 2013); and CISGIL's Observations on the MSX International Vehicle Inspection Programme Report (18 November 2013).

## 2 EXECUTIVE SUMMARY

- 2.1 CISGIL is committed to ensuring that the interests of Co-operative members and its customers more generally are protected, that consumers receive their legal entitlements and a high level of service, and that the market for private motor insurance operates efficiently, effectively and fairly. There is no obvious reason why a properly functioning market, that operates in the best interests of consumers, could not be one in which the behaviour of all insurers corresponds to that of CISGIL currently.
- 2.2 There is much in the Report which CISGIL supports and agrees with. However, there are a number of aspects of the Commission's provisional findings with which CISGIL does not agree.
- 2.3 In relation to Theory of Harm 1 ("**ToH1**") (separation of cost liability and cost control), CISGIL fully endorses the Commission's provisional findings that separation of cost liability and cost control leads to an adverse effect on competition ("**AEC**") and considerable consumer detriment. CISGIL agrees that the market features identified by the Commission have led to persistent market failure, to increased costs borne by fault insurers and to higher premiums for consumers. However, CISGIL remains concerned that the Commission has not identified, taken account of or sought to quantify the AEC *between* insurers arising from the fact that some (but not all) insurers engage in the practices identified as giving rise to an AEC (such as, when representing a non-fault customer, receiving referral fees from credit hire companies ("**CHCs**"), inflating repair costs and not passing on discounts and rebates in subrogation). Whilst all insurers face higher claims costs, this results in only some insurers receiving additional revenues, so providing them with an advantage in competing with insurers (such as CISGIL) that do not engage in such practices and which, when insuring the fault party, accordingly suffer the effects of these practices and which, when insuring the non-fault party, do not enjoy any offsetting increase in revenue from, for example, receipt of referral fees or retention of discounts and rebates.
- 2.4 In relation to Theory of Harm 2 ("**ToH2**") (information asymmetry leading to under-provision), CISGIL is committed to protecting the interests of Co-operative members, its customers and consumers more generally, including ensuring that consumers receive their legal entitlements and the highest level of service including repairs. CISGIL therefore supports any remedy that will ensure a greater focus on the quality of repairs and incentivise insurers, claims management companies ("**CMCs**"), repairers and others to ensure the quality of repairs meets the standard required to satisfy the legal and contractual entitlements of non-fault and fault parties alike. CISGIL does, however, have a number of concerns about the nature of the evidence on which the Commission is basing its provisional finding of an AEC, in particular the MSXI Vehicle Inspection

Programme Report, especially given that the introduction of the proposed remedy would likely lead to significant cost and expense for insurers and repairers (which would ultimately be passed on to consumers through higher premiums) and delays to the repair process.

- 2.5 CISGIL has no observations to make in respect of Theory of Harm 3 (market concentration).
- 2.6 In relation to Theory of Harm 4 ("**ToH4**") (sale of add-on insurance products), CISGIL supports the Commission's views that customers should be provided with clear information about add-on products at the point of sale and be able to easily compare add-ons across providers and furthermore be able to compare the full motor insurance product (i.e. inclusive of add-ons) between providers. CISGIL considers that it provides clear information about the add-on products it offers when these are sold through direct channels, which enables customers to compare its products with those of other providers. CISGIL considers that where customers use price comparison websites ("**PCWs**") to compare prices, there could be some under-provision of information, leading to consumer harm. CISGIL agrees with the Commission's statement that it is particularly difficult to quantify the extent of customer detriment (if any) arising from information asymmetries between motor insurers and consumers, and the point-of sale advantage held by motor insurers. CISGIL supports the Commission's intention to undertake further work to understand this and considers that further work is needed before a sustainable finding of an AEC can be made.
- 2.7 In relation to Theory of Harm 5 ("**ToH5**") (most favoured nation ("**MFN**") clauses), CISGIL fully endorses the Commission's provisional finding that 'wide' MFN clauses imposed by PCWs lead to an AEC and consumer detriment. However, CISGIL does not share the Commission's provisional finding that 'narrow' MFNs do not lead to an AEC: CISGIL considers that all forms of MFN clause are inherently problematic as they inhibit insurance providers from differentiating (particularly by price) between distribution channels (both direct channels and PCWs) and between different PCWs to provide a wide range of offerings to customers. Narrow MFN clauses prevent an insurer from offering a lower premium on its own direct sales website, even though the risks incurred (for example, from fraud) might be able to be identified more precisely on the insurer's own website, leading to a lower premium. Retaining narrow MFNs would also facilitate circumvention of any prohibition of wide MFN clauses. Narrow MFN clauses limit competition and innovation, leading to an AEC; they should, therefore, also be prohibited.

### 3 THEORY OF HARM 1: SEPARATION OF COST LIABILITY AND COST CONTROL

- 3.1 CISGIL fully endorses and welcomes the Commission's provisional findings in respect of ToH1 that the separation of cost liability and cost control leads to an AEC and considerable consumer detriment.

#### General observations

- 3.2 CISGIL does not repeat its previous extensive submissions on ToH1 here,<sup>2</sup> which demonstrate that competition in the market for private motor insurance is prevented, restricted and/or distorted by market features that enable some participants to generate excessive revenues through the control of a non-fault claim in a manner which renders the processing of such claims inefficient and needlessly and excessively costly for the fault party and its insurer.
- 3.3 CISGIL agrees with and supports the Commission's provisional findings that:
- (a) the market failures arising from the separation of cost liability and cost control enable certain market participants to generate excessive revenues as a result of controlling a non-fault claim, which leads to increased costs for fault insurers and a failure to compete on price and service quality;
  - (b) the higher costs passed on to fault insurers in subrogation are reflected in higher premiums charged to motorists, which has led to an overall increase in premiums;
  - (c) these practices have no countervailing benefits for consumers or any other efficiencies; and
  - (d) the effects of these practices are greatest in the provision of replacement vehicles, due to the prevalence of credit hire (although these practices also lead to excessive costs in relation to repairs and write-offs).
- 3.4 CISGIL therefore agrees that the market for private motor insurance is not a well-functioning market. In part, this is due to the inevitable inefficiency arising from the ability of the party managing the claim to subrogate 'reasonable' costs regardless of whether they have in fact been incurred (as very recently confirmed by the Court of Appeal in *Coles v. Hetherington*):<sup>3</sup> a broad range of costs that can be accepted as 'reasonable' and therefore recoverable. This provides insurers, brokers, CMCs and others handling non-fault claims with the ability and incentive to engage in rent-seeking

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<sup>2</sup> See CISGIL Response to Issues Statement (14 January 2013), paras. 4.1 to 4.39 and CISGIL Response to the Annotated Issues Statement and Working Papers (9 September 2013), paras. 3.1 to 3.30.

<sup>3</sup> *Coles v. Hetherington* [2013] EWCA Civ 1704.

activities that increase replacement vehicle and repair costs and reduce salvage returns, leading to an overall increase in costs for the fault insurer. The apparent consequences of jurisprudence with regard to tortious damages must be addressed in any remedy that is intended to control this adverse market feature.

- 3.5 CISGIL supports any remedy (or remedies) that would remove the ability and/or incentive of market participants (in particular insurers, brokers, CMCs, and others handling non-fault claims) to engage in practices that (i) enable them to increase costs, recover excessive revenues and generate excessive rents from their control of (any part of) a non-fault claim and (ii) are not a necessary component of a properly functioning market that enables non-fault claimants to exercise their legal rights and receive their legal entitlements efficiently and in a timely fashion.<sup>4</sup>

#### **AEC in relation to repairs and vehicle write-offs**

- 3.6 The Commission has observed that the AEC is most pronounced in respect of temporary replacement vehicles. CISGIL agrees with this and with the finding that the over-costing and over-provision is greatest when a CHC is involved, due to the default provision of a like-for-like vehicle, the provision of credit and significantly higher daily hire rates, which in turn inevitably lead to disputes, frictional costs and delayed settlement of claims.
- 3.7 However, the effects of the separation of cost liability and cost control in respect of repairs and write-offs should not be ignored or discounted on the basis that they are 'smaller'. The costs of replacement vehicles, repairs and write-offs are each higher than they would be in the counterfactual of an efficient market. Each adverse effect requires remedy irrespective of its relative 'size' in absolute terms.
- 3.8 Organisations providing credit repairs have an incentive to engage in practices which lead to over-provisioning (for example the use of OEM parts, or the replacement of parts that could be repaired). They also charge excessive hourly labour rates (of up to £38 and £40 per hour) compared to those for insurer managed repairs (typically between £25 and £28 per hour). As the Commission identifies, credit repair increases the cost to fault insurers by an average of about £325 per repair. These practices generate additional excessive revenues, for example through rebates or discounts which are not passed on in subrogation, but are retained by the insurers, brokers, CMCs and CHCs who engage in such practices. As is the case for replacement vehicles, these practices are a deliberate attempt to earn a rent from the control of the claim, rather than an attempt to compete on the underlying merits of efficient and timely satisfaction of the non-fault party's claim in a manner which meets the legal rights (in

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<sup>4</sup> See CISGIL's Response to the Notice of Possible Remedies (17 January 2014), paras 4.1 - 4.70.

tort law) of that party. This inevitably leads to significant inefficiency and over-costing, to the detriment of consumers.

- 3.9 If the Commission were to remedy only the AEC in relation to replacement vehicles, it is inevitable that the harmful practices undertaken in respect of credit repair, which also generate unnecessary and excessive revenues for CMCs and CHCs and impose excessive costs on insurers, will persist. The Commission should therefore ensure that any remedy (or remedies) remove the ability and/or incentive of market participants to engage in any practices (whether relating to replacement vehicles, credit repair or write-offs) that enable them to increase costs, recover excessive revenues and generate excessive rents from the control of a non-fault claim.

**The Commission has underestimated the detriment arising from the harmful practices identified by it**

- 3.10 CISGIL is concerned that the Commission has also underestimated the excessive costs being imposed on fault insurers as a result of these practices and therefore the overall net adverse effect on consumers.
- 3.11 The Commission has provisionally concluded that there is a net adverse effect on consumers of between £150 million and £200 million per year. CISGIL considers that the overall consumer detriment is likely to be higher than the £6 to £8 average per motor insurance policy that the Commission has identified.
- 3.12 As CISGIL has previously stated, it estimates that, for its own business, these practices increase repair costs by an average of £340 per claim (as compared to captured third party repairs carried out by its approved repairer network) and replacement vehicle costs by an average of £702 per claim (as compared to direct hire). Therefore, CISGIL estimates that credit repair and credit hire increase its premiums by an average of approximately £22 (including related frictional costs) and £19 (excluding frictional costs). This increase is considerably greater than the average increase identified by the Commission; this reflects the fact that CISGIL does not generate any excess revenue when handling non-fault claims.

**Adverse effect on competition between different insurers**

- 3.13 CISGIL remains concerned that the Commission has not taken any, or any adequate, account of the distortions of competition between insurers that arise from the separation of cost control and cost liability. As well as preventing, restricting or distorting competition generally in the market for private motor insurance (by raising costs overall for all insurers), the harmful market features identified by the Commission adversely



affect competition between individual insurers. This is a further basis for finding an AEC under ToH1.

- 3.14 As the Commission has identified, many insurers also generate revenues from the harmful practices identified by it when they manage a non-fault claim; however, not all insurers engage in such practices (notably, CISGIL does not) and others do so to varying degrees. This means that some, but not all insurers are able to offset part of the increase in claims costs that they face, thereby increasing profits (or reducing losses) and, where the insurer chooses to release some, or all, of this benefit to consumers, enabling premiums to be priced more competitively than rivals that do not generate such revenues (or do so to a lesser extent) – the decision to release benefit in this way will, clearly, be a judgment on the part of the insurer as to whether profit surrendered in consequence will be more than recouped through incremental 'new' business attracted by the availability of lower premiums than its competitors.
- 3.15 Therefore, the net harm to individual insurers (and therefore their ability to compete profitably) arising from the practices identified by the Commission, and the delta from an efficient market, will vary considerably depending on the extent to which individual insurers engage in those practices.
- 3.16 Insurers that generate additional revenues from practices such as referral fees and subrogating repair costs at a level higher than the actual net costs incurred are clearly at a competitive advantage. These insurers implement a business model that is designed to cause commercial harm to their competitors, especially those who do not engage in such practices, or do so to a lesser degree. The extent of the advantage, and consequently the distortions and net harm that results, will vary depending on the individual practices of each insurer.
- 3.17 As the Commission is aware, as an ethical and consumer-focused insurer, CISGIL does not engage in these practices directly and, in particular, it does not receive referral fees. CISGIL competes fairly and looks to minimise costs, whether representing a non-fault or fault party; this is often to its commercial detriment as it cannot operate – to the same extent as many other insurers – as profitably and competitively in a market where other insurers are unfairly engaging in practices that both raise rivals' claims costs and provide them with excessive 'rents'. As the Commission has identified, these practices impose excessive costs, and are inefficient, unfair and distort competition, resulting in an AEC and considerable consumer detriment.
- 3.18 Clearly, the harm to CISGIL (and other insurers that also do not inflate subrogated costs) is more significant than for those insurers that are generating excessive revenues. If all insurers were prevented from engaging in these practices, there would be no ability or incentive to generate additional revenues to offset the increased claims

costs (which would then fall in any event, since a proportion of such costs are generated by other insurers). Creating a level playing field, in which none of these practices is permitted, is the only way in which the AEC and consumer detriment can be remedied, leading to lower claims costs and ultimately lower premiums.

- 3.19 CISGIL accordingly considers that the Commission should also consider the distortion to competition between insurers, which will very naturally impact consumers, when assessing the AEC, and ensure that this is addressed by any remedies that it considers.

**Quality and service: assertions made by CHCs and CMCs do not support a continuation of practices that lead to an AEC and consumer detriment**

- 3.20 CHCs and CMCs have made assertions to the Commission that any increased costs as a result of credit hire are (a) a result of the better or additional services they provide compared with insurers (both fault and non-fault) and (b) an inevitable feature of the market, given the higher costs they have to bear when supplying vehicles on a credit hire basis that are not present when a vehicle is provided on a direct hire basis (for example, referral fees, acquisition fees, multiple frictional costs, costs for finance, claims that are written-off in whole or part and payment delays). CHCs and CMCs further assert that, without the availability of credit hire and credit repair, the legal entitlements of consumers (as regards replacement vehicles and repairs) would not be adequately met by insurers.
- 3.21 CISGIL does not agree with these assertions, which are self-serving and seek to perpetuate features of a dysfunctional market in which unnecessary costs are borne by insurers and motorists, without any countervailing benefit for non-fault motorists.
- 3.22 CISGIL acknowledges that credit hire historically arose because in certain circumstances, motorists found themselves immobile following a non-fault accident. However, CISGIL maintains that the use of credit, in the current market circumstances, is an unnecessary feature of the market, both in respect of repairs and replacement vehicles:
- (a) in respect of repairs, where a non-fault claim is 'captured' by the fault insurer, the motorist's vehicle is fully repaired, satisfying in full the motorist's legal entitlement. Where the non-fault claim is handled by the customer's own insurer, the majority of insurers do not make referrals to CMCs and manage the repair aspect of non-fault claims themselves, without using credit repair, in order to maximise their customer's 'claims experience': the limited number of insurers that do make such referrals (and only one of the ten largest, Admiral, does so) do so to generate referral fee income and capture part of the

unjustified rents and excessive profits generated by the CHCs and CMCs which manage credit repairs; and

- (b) as regards replacement vehicles, although credit hire may fulfil a need in certain circumstances, it is a wholly inefficient model that allows excessive costs to be unnecessarily incurred and needs to be changed. Where a non-fault claim is 'captured' by the fault insurer, a replacement vehicle, appropriate to the claimant's mobility needs, is provided by that insurer on a direct hire basis satisfying in full the motorist's legal entitlement and at a much lower cost than credit hire. Where capture does not take place, credit hire is presently being used to fulfil the replacement vehicle need in certain circumstances, but at a much higher cost and in an inefficient way. Remedy 1A, incorporating the variation proposed by CISGIL, would ensure that customers' legal entitlements are met on a much more efficient basis for the industry as a whole.

3.23 CMCs and CHCs are therefore providing a 'service' (i.e. credit hire and credit repair) that is both unnecessary and inefficient, in that it could be provided by others at a considerably lower cost without any detriment to the non-fault claimant. Whilst any change to the current regime would require CMCs and CHCs to change their business model, there is no prospect (as asserted by the Credit Hire Organisation) of "Insurance companies... easily [bullying] motorists into believing they are not entitled to [a replacement vehicle] [and that] if these reforms go ahead, we're going to be back to the situation we were in 20 years ago when accident victims were forced to take the bus."<sup>5</sup> Motorists are well aware of their legal rights (and remedies proposed by the Commission would reinforce this) and there is no realistic prospect of such a scenario arising. It is plainly not permissible to maintain features of a market that are to the detriment of consumers to allow certain market participants to continue exploiting business models that are anti-competitive.

3.24 CISGIL therefore supports the Commission's proposed Remedy 1A which, with CISGIL's proposed variation, would remove the need for credit hire. Although the remedy would need CMCs and CHCs to change their current business model, this would not damage the overall business of CMCs or CHCs, but would promote greater competition as they would compete to supply the replacement vehicle needs of insurers on a direct hire basis. This competition would not be based on the level of referral fees they could offer, but on quality and price, so enhancing overall efficiency and consumer benefits.

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<sup>5</sup> See <http://www.bbc.co.uk/news/business-25403673>. See also *Financial Times*, *Car hire groups warn of 'dangerous' regulatory crackdown* (17 December 2013), at <http://www.ft.com/cms/s/0/fd580534-66ed-11e3-a5f9-00144feabdc0.html#axzz2rooMeu00>.

### **Vertical integration**

- 3.25 The Commission has made no provisional finding in relation to vertical relationships or the consequences of vertical integration. However, CISGIL is concerned that vertical integration, especially where there is separation of cost liability and cost control, can lead to effective competition being prevented, restricted or distorted (and even more markedly and to a greater extent than where there is no vertical integration), thereby causing harm to consumers and an AEC.
- 3.26 In the current market structure for handling non-fault claims, vertical integration (e.g. because an insurer or CMC owns a network of repairers) facilitates integrated groups to engage in behaviour that harms both other (fault) insurers and consumers. Some insurers (including, but not only, integrated insurer/repairer groups) have the ability and incentive to allocate inappropriately costs and revenues between their various businesses so as to maximise profits and increase rival insurers' costs. In addition, in a vertically integrated group an insurer can control the behaviour of its integrated repairer, enabling it to generate and retain additional revenues.
- 3.27 As a result, any efficiencies of vertical integration and relationships with suppliers of inputs (such as paint, parts, glass and repair cost estimation systems), including rebates and discounts, are not being passed on to fault insurers, enabling the integrated groups to generate and retain excessive revenues.
- 3.28 CISGIL therefore considers that it will be important for the Commission to take into account the impact of vertical integration when determining how to remedy, mitigate or prevent the AEC identified under ToH1; any remedy should not be capable of circumvention by those companies that are vertically integrated.

## **4 THEORY OF HARM 2: POSSIBLE UNDERPROVISION OF SERVICES TO THOSE INVOLVED IN ACCIDENTS**

- 4.1 CISGIL is committed to protecting the interests of Co-operative members, its customers and consumers more generally, including in ensuring that, in the event of a claim (whether fault or non-fault) consumers receive their legal entitlements and the highest level of service, including repairs.

### **Replacement vehicles and write-offs**

- 4.2 CISGIL welcomes the Commission's provisional finding that there is no under-provision of temporary replacement vehicles following an accident or in handling write-offs and vehicle salvage.

## Vehicle repairs

- 4.3 CISGIL is also supportive of the Commission's objective of ensuring a high quality of vehicle repairs, through a greater focus on the quality of repairs and incentivising insurers, brokers, CMCs, repairers and others to ensure the quality of repairs meets the standard required to satisfy the legal and contractual entitlements of non-fault, and fault, parties alike.
- 4.4 CISGIL is, nevertheless, surprised that the Commission has provisionally found that an AEC arises from an information asymmetry in respect of vehicle repairs. Based on its own experience, CISGIL does not agree with the provisional finding that there is necessarily an under-provision due to many non-fault claimants receiving a quality of repair that is below the legal standard and to insurers not monitoring effectively the quality of those repairs. In particular, CISGIL has concerns about the nature of the evidence on which the Commission has based this particular provisional finding.
- 4.5 The Commission has based its provisional finding of an AEC on (a) consumer perceptions of repair quality, (b) evidence from insurers and others that manage claims, (c) evidence from repairers and (d) the MSXI Vehicle Inspection Programme Report. The Commission concludes that more weight should be given to evidence from experts (i.e. from repairers and from the results of the vehicle inspections) than to evidence from consumers, since consumers might not be able to assess accurately the quality of repairs. Whilst this is not in itself objectionable, the 'expert' evidence of repairers and MSXI does not, viewed objectively, support the finding of an AEC.
- 4.6 In relation to the evidence of repairers, it is to be expected that repairers will be slow to admit to carrying out substandard repairs (which is likely to be reputationally damaging) and they have clearly been paid by an insurer (or other party managing a claim) for discharging a contractual obligation to repair completely a vehicle in accordance with industry standards (or similar). Repairers clearly have commercial concerns over pricing and this may have influenced their evidence to the Commission, with a view to the investigation resulting in an outcome that would allow them to increase their prices to insurers. In turn, this raises concerns as to the objectivity and reliability of repairers' evidence on repair quality.
- 4.7 CISGIL has already commented on the MSXI Vehicle Inspection Programme Report.<sup>6</sup> The sample of vehicles inspected was small and unlikely to be representative of the general population of non-fault claims: the Commission has accepted this. Therefore, the MSXI report is at best anecdotal and should not be given greater weight than that conventionally and appropriately attributed to anecdotal evidence.

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<sup>6</sup> See CISGIL's Observations on the MSX International Vehicle Inspection Programme Report (18 November 2013).

4.8 Having attended the data room,<sup>7</sup> CISGIL makes the following further observations in relation to the methodology and results of the MSXI inspection programme, which cast further and considerable doubt on the extent to which weight should be attached to its results, particularly in the light of the OFT and Commission's own guidance on survey evidence:<sup>8</sup>

- (a) the Commission's instructions to MSXI inevitably meant that the survey could not be either random or representative. Whilst the selection criteria adopted by MSXI to identify those vehicles which would be assessed from the sample available were no doubt well intentioned, MSXI could only inspect the vehicles of those owners who were willing and/or able to take part in the programme and the respective insurers were able to provide the required engineering/repair documentation. The programme did not identify the features of the broader vehicle population required to construct a representative sample (e.g. by vehicle age, geography, fault status of claim, identity of party managing or undertaking the repair, or type of repair). For that reason, by its very construction, the sample was not and could not be either random or representative;
- (b) the inspection criteria that MSXI applied did not amount to a full audit of repair quality but merely a visual examination. The results of the programme would have been more meaningful had the criteria reflected a quality audit (as the Commission now proposes under Remedy 2A);
- (c) a review of the engineer's report for each of the vehicles assessed by MSXI as not being returned in pre-accident condition, revealed that the majority of faults identified by MSXI would, in CISGIL's opinion, have been visible to the average consumer had they looked carefully at the area of repair. CISGIL therefore questions whether the consumers in these cases really were unable to assess the quality of the repair (which seems to be based on an assumption by the Commission that motorists cannot assess repairs) and were dissatisfied with it, particularly in view of the clear results of both the Commission's own survey and GIMRA's surveys to the contrary;
- (d) MSXI's brief was to assess the quality of repairs for private vehicles. The vehicles selected for inspection by MSXI included two commercial vehicles and

<sup>7</sup> CISGIL attended the data room on Friday 17 January 2014.

<sup>8</sup> See OFT and Competition Commission, *Good practice in the design and presentation of consumer survey evidence in merger inquiries* (March 2011). Whilst this is directed at merger inquiries, its key features are equally relevant to market investigations, in particular its "good practice principles" of: transparency of objectives, representativeness of sample, soundness of method and full disclosure of results (section 2). Of particular relevance is the importance that a survey be representative of the whole population and the observation that "evidence that does not conform to general principles of good consumer survey research practice will tend to be given less weight than that which does" (point 1.9).

one motorbike – and these three vehicles were deemed not to have been repaired to pre accident condition, hence distorting that number. These vehicles should have been excluded from the findings as the Commission's market investigation is limited to private motor insurance (i.e. insurance for private vehicles);

- (e) most vehicles were inspected some time after the repair was concluded. Indeed, a number of vehicles inspected by MSXI had accrued significant mileage since the repairs were undertaken (one vehicle had covered an additional 37,000 miles and another 20,000 miles in the period between repair and inspection). This significant additional mileage should have been reflected in MSXI's findings as inevitably the vehicles would have revealed some 'wear and tear' in this period, and at worst, may have even been involved in another accident; there is no record of MSXI establishing with customers whether the vehicles had been involved in any subsequent accidents (however minor). If MSXI had undertaken inspections of repairs on current claims (as opposed to on settled claims between March 2012 and March 2013) this issue could have been overcome, i.e. by inspecting the vehicle before it was returned to the customer. Therefore, MSXI's review is unreliable on this basis alone;
- (f) two of the vehicles that were considered by MSXI not to have been repaired to pre-accident condition were in fact claims where a cash-in-lieu settlement was agreed and therefore no repairs were undertaken to the vehicles. These vehicles should have been excluded from the findings;
- (g) one vehicle was repaired by the claimant's friend and not a repairer. Therefore, this vehicle should not have formed part of the sample; and
- (h) in the case of another vehicle, the claimant paid for and fitted a replacement headlamp, but did not have the bodywork repaired. No attempt had been made, therefore, to return the vehicle to its pre-accident condition and this vehicle should also have been omitted from MSXI's findings.

4.9 CISGIL also examined the engineer's reports for the two vehicle repairs managed by it. According to MSXI, one of these vehicles was returned in pre-accident condition and the other was not. For the vehicle considered by MSXI as not having been returned in pre-accident condition, the main reason for MSXI's finding was that, due to poor fitment, there was a gap between the rear bumper and the rear side panel. The main repair to the driver's side panel was, however, considered by MSXI to be commercially acceptable. Since the vehicle had been repaired, it had travelled a further 12,000 miles, which raises the possibility of both panel movement due to wear and tear and/or a further accident. In addition it had also seemingly had a tow bar fitted (there was



nothing on the repair documentation to suggest that a tow bar was to be removed and replaced as part of the initial repair estimate): the installation and use of a tow bar since the repair could have easily accounted for the gap between the bumper and the rear side panel. Therefore, the apparent 'defect' identified by MSXI was not necessarily the result of poor quality repairs following the original accident.

- 4.10 As set out in its Response to the Notice of Possible Remedies,<sup>9</sup> CISGIL would be supportive of remedies that ensured a uniformly high quality of repairs through accreditation schemes (such as compliance with a revised PAS 125 standard) and audits of repairs, provided that this could be implemented in an effective manner and without imposing unnecessary costs on insurers, repairers or motorists. However, the Commission has not quantified the consumer detriment arising from the AEC it has provisionally identified. In the absence of this quantification, and with concerns about the quality of the evidence on which the Commission is basing its AEC, whilst CISGIL would support a remedy that protected and enhanced consumer interests, the Commission should not implement a remedy that is based upon insufficient evidence and/or that may have disproportionate effects.

## **5 THEORY OF HARM 3: MARKET CONCENTRATION**

- 5.1 CISGIL does not have any observations in relation to ToH3, except as regards the market power of PCWs, which is addressed below in respect of ToH5.

## **6 THEORY OF HARM 4: BARRIERS TO SWITCHING AND SALE OF ADD-ON INSURANCE PRODUCTS**

### **Barriers to switching insurer**

- 6.1 CISGIL welcomes the Commission's provisional finding that it has identified no concerns in relation to possible barriers to consumers switching insurer.

### **Sale of add-on insurance products: general observations**

- 6.2 CISGIL supports the Commission's position that customers should be provided with clear information about add-on products at the point of sale and should be able to easily compare add-on products across providers. Furthermore, customers should be able to easily compare the full motor insurance product (i.e. inclusive of add-ons) between providers at point of sale, both from a price and cover perspective.
- 6.3 The Commission has provisionally concluded that two features relating to the sale of add-on products have, in combination, an AEC (notably information asymmetries between motor insurers and consumers and the point-of-sale advantage held by motor

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<sup>9</sup> See CISGIL's Response to the Notice of Possible Remedies (17 January 2014), paras. 5.1 to 5.19.



insurers) because these features make it more difficult for consumers to identify the best-value offers in the market and may lead to consumers purchasing products at an inflated price.

- 6.4 CISGIL agrees with the Commission's statement that it is particularly difficult to quantify the extent of customer detriment (if any) arising out of these features and supports the Commission's intention to undertake further work to identify and understand any detriment and considers that further work will need to be undertaken before a sustainable finding of an AEC can be made.
- 6.5 CISGIL sells a range of add-on products, all of which are sold on an opt-in basis. As a responsible insurer, CISGIL is committed to ensuring that consumers receive appropriate information on the products that it sells to Co-operative Group members and other customers. Following the Financial Conduct Authority's ("FCA") investigation into private motor legal expenses insurance (which found that better customer information was required and sales should preferably be on an 'opt-in' basis),<sup>10</sup> CISGIL reviewed all information provided to its motor insurance customers and made various revisions: CISGIL therefore considers that it generally provides clear information at the point of sale about the add-on products it offers, to allow customers to compare CISGIL's products with those of other providers and make an informed choice.
- 6.6 CISGIL is not in a position to comment in detail on the extent to which other insurer's policy information meets consumers' needs, but CISGIL believes that further evidence is required in addition to the limited and somewhat anecdotal evidence (including in Appendix 8.1) currently being relied upon by the Commission in order to support and sustain a finding of an AEC on the basis of insufficient information being provided to consumers. In particular, it is generally not clear on what basis (and against what standard) it is considered that information is considered to be insufficient.
- 6.7 CISGIL agrees that when customers use PCWs to compare add-on products there may be under-provision of information on the PCW site itself. This is in part due to the variable pricing of some add-ons (due either to pricing being risk-based or because the level of cover provided by a particular add on differs between providers). It is also in part due to the failure of PCWs to display the information, because the functionality of PCWs' websites does not enable them to display full add-on pricing (and other product-related information) and quotes are always ranked in order of the price of the basic policy. However, as the Commission itself acknowledges, insurers provide information on their own websites following a 'click through' from the PCW's site, so facilitating full information provision and comparison at that point.

<sup>10</sup> Financial Conduct Authority, Motor Legal Expenses Insurance (MLEI): Report on the thematic project (TR 13/1), June 2013. See <http://www.fca.org.uk/news/tr13-1-motor-legal-expenses-insurance>. The FCA has also identified the difficulty of assessing the profitability of add-ons when conducting its thematic study into MLEI (para. 34).

- 6.8 The Commission's further work in this area needs to take into account, should a finding of an AEC be made in its final report, whether (a) any remedies would be proportionate when considered relative to the level of customer detriment found, and (b) the potential impact on customers of the proposed remedies, such as any increased costs being passed on to customers in the form of higher premiums.
- 6.9 In addition, it is important that the information provided to customers, and the way it is provided, is appropriate and not complex. There needs to be a balance between the information being concise at the same time as being sufficiently comprehensive (to avoid so-called 'information overload', which may already be an issue), which would potentially lead to consumers not reading the information provided. Customers should always have the option to access more detailed information if they wish, and be able to access the full detail of the add-on cover (including policy documents) in an easily explained way at the point of purchase (for example, by ensuring that this information is readily accessible via the company website). It is also important to take into account the differing levels of cover provided by the main motor product, in conjunction with the cover provided by add-ons.
- 6.10 CISGIL does, however, fully support any initiatives to ensure customers have a clearer understanding of add-on products and that work to identify what these might be can most effectively be undertaken by the FCA, which is already conducting a study into the way general insurance add-ons are sold and whether competition is effective in the market, the results of which will undoubtedly have a positive influence on the way in which add-ons are described and sold. That said, should an AEC be identified, CISGIL does not in principle object to either Remedy 4A (provision of add-on information by insurers to PCWs) or Remedy 4C (clearer descriptions of add-on products) and refers the Commission to its Response to the Notice.<sup>11</sup>
- 6.11 The Commission has listed the low loss ratios of add-on products as one of the factors informing its provisional finding that features of the sale of add-on products lead to an AEC. Although CISGIL acknowledges that the loss ratios for certain add-ons appear to be low this is not indicative of prices above a competitive level. This is because the expense ratio for add-ons is likely to be higher than for a basic motor insurance policy. Furthermore these products are only supplied as add-ons to the main motor insurance product. The market for private motor insurance is extremely competitive, hence any profits are used to ensure overall competitive market prices to customers. CISGIL therefore does not believe that the apparent low loss ratio of certain add-on products is indicative of or contributes to any AEC.

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<sup>11</sup> See CISGIL's Response to the Notice of Possible Remedies (17 January 2014), paras. 6.4 to 6.12 (in respect of Remedy 4A) and 6.17 to 6.20 (in respect of Remedy 4C).

### **Sale of add-on products: NCB protection**

- 6.12 CISGIL agrees with the Commission's observation that it is more difficult for customers to understand and compare no claims bonus ("**NCB**") protection between providers because of the complex nature of the product. CISGIL supports the principle that customers must be provided with clear information on the extent of benefits and limitations of the cover at the point of purchase in order that an informed decision on value can be made.
- 6.13 CISGIL also supports the proposal that all insurers should include a clear statement in the description of NCB protection information that (a) NCB protection protects the discount given for claims free years and not the absolute level of premium and (b) consequently, a policyholder's premium may increase following a claim for an accident (including one for which the policyholder was not at fault) notwithstanding the possession of NCB protection cover. CISGIL is therefore in favour of the part of Remedy 4B that would require such information to be provided.
- 6.14 As CISGIL has outlined in its Response to the Notice of Possible Remedies, NCB scales have developed in complexity over the years such that the scale no longer considers claim free years in isolation from other underwriting factors. Instead the calculation of the level of discount applicable for each customer now interacts with a number of other risk factors. This means that publishing NCB scales in the traditional sense (i.e. percentage discount for each claims free year) is more likely to confuse consumers than inform them, as the number of such years is not in itself the sole determinant of the discount.
- 6.15 A number of insurers already appear to have moved towards this multi-risk factor approach to underwriting (see Appendix 8.1, paragraph 57). **Indeed, CISGIL is itself moving towards a more complex approach to pricing, which will more accurately reflect the risk profile of an individual customer, and therefore is considering ceasing to publish its NCB scale at some point during the forthcoming year for the reasons appearing in the preceding paragraph.** However, other information on the NCB given to a customer and the impact on the premium in the event of a claim could be provided in another way (e.g. in relation to the premium charged at renewal).

## **7 THEORY OF HARM 5: VERTICAL RELATIONSHIPS AND VERTICAL INTEGRATION**

- 7.1 In its Annotated Issues Statement, the Commission indicated that it was investigating a number of issues, including vertical relationships between different parties in the supply chain (in particular those insurers with repairers and paint suppliers) and MFN clauses. CISGIL welcomes the Commission's provisional finding that 'wide' MFNs lead to an

AEC, but is disappointed that it has not provisionally found that an AEC arises as a result of either 'narrow' MFNs or other vertical relationships.

**MFN clauses: general observations**

- 7.2 CISGIL welcomes the Commission's provisional finding that the practice of PCWs requiring 'wide' MFN clauses from insurers and brokers as a condition of their listing on the relevant PCW restricts, prevents and distorts competition, leads to consumer detriment and causes an AEC. CISGIL has therefore indicated that in principle it supports the Commission's proposal that 'wide' MFN clauses should be prohibited.<sup>12</sup>
- 7.3 CISGIL does not agree with the provisional finding that 'narrow' MFNs do not lead to an AEC: narrow MFNs also restrict, prevent and distort competition leading to an AEC. The impact on competition does not in CISGIL's view depend on whether the MFN is 'wide' or 'narrow'. For that reason, CISGIL remains of the view that the use of all MFNs by PCWs, both 'wide' and 'narrow', should be prohibited.
- 7.4 CISGIL agrees that PCWs have undoubted benefits for consumers and have increased competition between insurers: they offer a level of transparency and assistance to customers wishing to purchase motor insurance that would otherwise only be available at considerable cost, time and effort on behalf of the consumer. PCWs allow customers to consider like for like products and make an informed choice as to which policy best meets their requirements. Without PCWs, consumers would have to rely on the suppliers of individual products or brokers. The ability to access, view and compare a number of premiums simultaneously is a clear benefit to consumers.
- 7.5 PCWs also play a vital role in insurers' access to consumers. As the Commission has found, a significant proportion of new business sales originate from PCWs.<sup>13</sup> However, as competition between PCWs has increased, so has the use of MFNs: this is a clear example of the market power enjoyed by PCWs. MFNs are not, in CISGIL's view, necessary to achieve the undoubted consumer benefits that PCWs offer.
- 7.6 It is also doubtful that any type of MFN ('wide' or 'narrow') has the claimed benefit of reducing a customer's need to 'shop around': the Report itself confirms that the majority of consumers will consult multiple sites notwithstanding the existence of MFNs. The Commission may have found that there is a degree of 'single-homing' by customers, but CISGIL believes that (which follows the independent advice given to customers shopping for motor insurance) some customers 'multi-home' i.e. they look at multiple sources for pricing information before deciding to purchase motor insurance. Customers will use a number of PCWs as research tools (which will usually involve

<sup>12</sup> See CISGIL's Response to Notice of Possible Remedies (17 January 2014).

<sup>13</sup> Provisional Findings, para. 9.4.

'clicking through' to insurers' websites), as well as looking at the websites of individual insurers and potentially contacting direct insurers for a quote. This 'multi-homing' approach of customers appears to undermine the 'best price' promise and comfort that the existence of MFNs is purported to provide. There is no evidence that MFNs improve consumers' search experience or that they ultimately reduce search costs for consumers.

- 7.7 CISGIL does not agree with the Commission's provisional finding that MFNs have different impacts on competition depending on whether they are 'narrow' or 'wide'. Narrow MFNs not only lead to anti-competitive effects in their own right but will also, if the Commission's proposed Remedy 5A is implemented, become a way of circumventing the prohibition on 'wide' MFNs.

**MFN clauses: anti-competitive effects of 'narrow' MFNs**

- 7.8 The Commission considers that narrow MFNs can lead to a substantial softening of price competition and 'network effects' (by imposing a 'floor price') but only for those brands which are listed on PCWs and on a strong direct sales channel, and in circumstances where the insurer wishes to maintain competitiveness against PCW channels. The Commission found that the number of brands falling within this category was small and therefore concluded that narrow MFNs would not substantially decrease competition between PCWs. CISGIL would suggest that irrespective of whether competition between the direct channel and the PCW is materially significant, the presence of the narrow MFN will lead to anti-competitive effects.
- 7.9 CISGIL considers that narrow MFNs prevent, restrict and distort competition, to the detriment of consumers. They are anti-competitive for a number of reasons:
- (a) narrow MFNs limit and prevent price competition by the insurer, which cannot offer a lower premium when it sells directly, despite a directly sold policy potentially having lower incremental distribution costs (as the insurer will not have to bear a commission fee of up to approximately £45 for a direct sale) and likely a lower risk profile (as the insurer can apply its own, more stringent underwriting and anti-fraud measures). These cost advantages cannot be passed on to consumers due to the narrow MFN;
  - (b) narrow MFNs remove insurers' incentives to invest in their direct sales channels. There is a considerable disincentive to an insurer reducing (or keeping low existing) premiums on direct sales, as this must be matched by a reduction in premiums on sales via PCWs. There is no incentive to reduce the price or improve the quality of insurance products, or to innovate to reduce risk and fraud in the sale process;

- (c) narrow MFNs are inefficient. As the Commission observes, the existence of MFNs has led to some insurers adopting a strategy of different brands and/or products on direct channels from those available on PCWs. At least some insurers (including CISGIL, with its PCW-only ecoinsurance product) adopt a strategy of maintaining different brands or products for direct channels from those listed on PCWs to obtain some pricing "freedom" from MFN clauses. Maintaining separate brands increases the costs of insurers, either in terms of marketing costs to promote the different brands or in terms of internal management costs to maintain, monitor and analyse the performance of the separate products. These costs are ultimately borne by the consumer in the form of higher premiums. The existence of different brands on PCWs and on direct channels will also lead to customer confusion; and
- (d) narrow MFNs demonstrate the market power of PCWs and enable PCWs to charge supra-competitive commission fees.

- 7.10 CISGIL would also refer to recent cases involving MFNs, which highlight the harmful effect of both wide *and* narrow MFNs. In particular, in its response to Amazon's decision to remove MFNs from its "Amazon Marketplace" contracts,<sup>14</sup> the OFT stated that: "*Such policies may raise online platform fees, curtail the entry of potential entrants, and directly affect the prices which sellers set on platforms (including their own websites), resulting in higher prices to consumers*".<sup>15</sup> The OFT was therefore clearly concerned about the restrictive effects of both wide *and* narrow MFNs on price competition.
- 7.11 CISGIL does not accept that narrow MFNs are necessary for PCWs to survive: in making such an argument, PCWs are effectively arguing that they should be exempt from competition law, which is manifestly unsustainable.
- 7.12 PCWs successfully entered the market, and were able to expand their business, without MFNs. MFN clauses have been introduced as the market power of PCWs has increased and are therefore not necessary for the survival of PCWs (it is notable that brokers have never had MFN clauses in their contracts with insurers, yet effectively fulfil a similar role of identifying the most appropriate policy for their customers).

<sup>14</sup> The OFT closed its investigation into Amazon's price parity policy, which restricted its sellers from offering lower prices on other online sales channels, following Amazon's decision to end its Marketplace price parity policy in the European Union. In particular, Amazon informed the OFT that, it would: (i) discontinue enforcement of contractual price parity obligations as to all European Union Marketplace sellers; (ii) remove the Marketplace price parity policy clauses from all current versions of Amazon's click-through agreements across the European Union; and (iii) notify all other current European Union Marketplace sellers on individually negotiated agreements that it had ceased enforcement of the price parity obligations with the intention of removing the provisions from those agreements when they are next renewed.

<sup>15</sup> See <http://www.of.gov.uk/news-and-updates/press/2013/60-13#Uh-ZCcu9KSM>, "OFT welcomes Amazon's decision to end price parity policy."

- 7.13 As noted above, consumers are generally unaware of the existence of MFN clauses and some tend to adopt a multi-home strategy in their searches for motor insurance in any event. Without MFNs, consumers will simply continue to 'shop around' and PCWs will have to compete on the same basis as companies operating in other channels (e.g. brokers) and other forms of distributor in other markets. PCWs are, in effect, brokers: brokers are able to compete effectively and profitably on the appropriate metrics of price, quality and innovation without the type of price protection afforded to PCWs through MFN clauses. There is no apparent reason why PCWs should legally be shielded from price competition, given their ubiquity, concentration and market power.
- 7.14 Whilst narrow MFNs provide a degree of 'price reassurance' to consumers, this is not a justification for contractual provisions that limit price competition. Therefore, whilst the removal of narrow MFNs would necessitate change to PCWs' existing business models, this not a reason to support the continuation of clauses that, through network effects, prevent price competition and innovation in the production and distribution of motor insurance and would, in other circumstances be regarded as a form of illegal price fixing. PCWs are well able to adapt to changing market circumstances, including to avoid the risk of free-riding by motor insurance providers (e.g. through the wider use of audit rights and more effective use of 'poaching clauses,' which require the insurer to pay the applicable commission to a PCW if a customer uses the PCW to identify the insurer, before purchasing directly.

**'Narrow' MFNs would facilitate circumvention of any prohibition on 'wide' MFNs**

- 7.15 The Commission's current proposal is that only 'wide' MFNs should be prohibited. Whilst, in theory, this should lead to more price competition between PCWs in the advertising and sale of private motor insurance and also to more price competition in the commissions charged by PCWs to insurers, this will not be the case if narrow MFNs continue to be used by PCWs.
- 7.16 With the abolition of 'wide' MFNs, an insurer can in theory agree different premiums with different PCWs. However, it is to be expected that PCWs will retain existing narrow MFNs and seek to impose them on insurers with whom they do not presently have narrow MFNs. If a narrow MFN remains, the insurer will still be constrained from advertising on its own direct website a premium lower than the highest price agreed with a PCW, in order not to undercut that PCW, such that the insurer's directly offered price could be no lower than the highest price it offers on any PCW. In response and in order to be able to offer a consistent offering across all PCWs and direct sites, insurers are likely to adopt a single premium across all platforms (i.e. PCWs and their own website/telephone sales channels) to avoid both technical issues and customer confusion that would otherwise arise.



7.17 This can be demonstrated by the following:

- (a) whilst the Commission has identified that some customers 'single-home', CISGIL's experience (which follows the independent advice given to customers shopping for motor insurance) is that some customers look at multiple sources for pricing information before deciding to purchase motor insurance: they will use a number of PCWs as research tools (which will usually involve 'clicking through' to insurers' websites), as well as looking at the websites of individual insurers and potentially contacting direct insurers for a quote;
- (b) having undertaken this research, these customers will then make their choice from whom and by which route to purchase their policy. This may involve the customer revisiting a previously obtained quote, whether directly on the insurer's website or by clicking-through from a PCW to the insurer's website. In doing so, the customer will expect to see (on the insurer's website) a price which is no higher than the one advertised on the PCW. This may not necessarily be the case, given the network of narrow MFNs, unless the insurer has a common price across all platforms;
- (c) if the insurer were to display on its own website the actual (lower) premium offered on other PCWs, this would under-cut the highest priced PCW; however, customers would then see a different price on the (lower price) PCWs than that to which they would view upon clicking-through on the direct site. This would be both technically complex to manage and will lead to customer dissatisfaction and confusion. The only way for an insurer to avoid this is to offer the same premium through all PCWs.

7.18 A further concern to CISGIL is that, as part of the Co-operative Group, a member-owned and driven organisation, members should be entitled to assume that they will receive the best price by coming to CISGIL directly. The continuation of 'narrow' MFNs would prevent CISGIL from offering this price to members, unless it charges members the same premium as offered on the highest priced PCW, which will lead to uniform pricing across all PCWs.

7.19 The continued existence of narrow MFNs would therefore permit the circumvention of a prohibition on wide MFNs and prevent insurers from being able to set independently their own direct prices and also from innovating in their direct sales proposition. This would perpetuate the AEC that Remedy 5A is intended to prevent, thus rendering Remedy 5A ineffective. The existence of 'narrow' MFNs will not, therefore, lead to more price competition.



### **Vertical relationships**

- 7.20 The Commission has provisionally found that vertical relationships between insurers and other parties in the supply chain do not lead to an AEC. CISGIL is disappointed and surprised at this provisional finding: it considers that various vertical relationships (through both ownership links and contract) considered by the Commission do prevent, restrict or distort competition, leading to higher repair costs.
- 7.21 In particular, CISGIL has continuing concerns in respect of non-foreclosure effects of:
- (a) arrangements between insurers and paint manufacturers, which the Commission finds often involves the payment of referral fees and/or rebates and results in repairers facing higher paint costs;
  - (b) arrangements between insurers and repairers, both through contractual relationships and ownership links, which allow the manipulation of repair prices, through the use of rebates, discounts and differential pricing.
- 7.22 The Commission is referred to CISGIL's earlier submissions on these aspects of ToH5.<sup>16</sup> It is notable that these relationships are used to exploit the separation of cost liability and cost control examined under ToH1 and which the Commission has correctly provisionally identified as leading to an AEC. For this reason also, it is submitted that the Commission should find these market features to give rise to an AEC and be prohibited or effectively controlled in order to prevent the continued subrogation of excessive repair costs to fault insurers.

**7 February 2014**

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<sup>16</sup> See CISGIL's Response to Issues Statement (14 January 2013), paras. 4.81 to 4.85 and CISGIL's Response to Annotated Issues Statement (9 September 2013), paras. 7.5, 7.6 and 7.18 to 7.22.