NON-CONFIDENTIAL VERSION

CIS GENERAL INSURANCE LIMITED

Market Investigation into Private Motor Insurance

Response to the
Notice of Possible Remedies

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CIS GENERAL INSURANCE LIMITED

MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

RESPONSE TO THE NOTICE OF POSSIBLE REMEDIES

1 INTRODUCTION

1.1 This Response is made by CIS General Insurance Limited ("**CISGIL**"). It contains CISGIL's observations on the Notice of Possible Remedies (the "**Notice**") published by the Competition Commission ("**the Commission**") on 17 December 2013.

1.2 CISGIL welcomes this opportunity to comment on the Notice and intends to provide separate observations on the Commission's Provisional Findings Report (the "**Report**") in due course. CISGIL looks forward to continuing to assist the Commission throughout the remainder of its market investigation.

1.3 In this response CISGIL has concentrated on providing its observations on the specific remedies that have been identified by the Commission as ones that it is minded to consider adopting to remedy, mitigate or prevent an adverse effect on competition ("**AEC**") provisionally identified by it. Where appropriate, constructive suggestions are provided as to how a particular remedy could be improved to remove an AEC provisionally identified. In some instances, we explain why we consider that a particular remedy is, in practice, not capable of being implemented effectively and efficiently, is otherwise unworkable or unnecessary, and/or would have unintended consequences. In some further instances, we propose alternative remedies that we consider would be more proportionate and effective in remedying, mitigating or preventing an AEC provisionally identified by the Commission.

2 EXECUTIVE SUMMARY

2.1 CISGIL is committed to ensuring that the interests of its customers are protected, that consumers generally receive their legal entitlements and a high level of service, and that the market for private motor insurance operates efficiently, effectively and fairly. CISGIL therefore supports and welcomes many of the Commission's findings in the Report and considers that there is merit in exploring further most of the possible remedies contained in the Notice. However, CISGIL considers that some of the proposed remedies would not only have unintended consequences, but are incapable of being implemented effectively to address the provisional AEC, and these should not be considered further by the Commission.

2.2 In view of CISGIL's commitment to protecting the interests of Co-operative members, our customers and consumers generally, CISGIL supports the Commission's proposal that motorists be provided with clearer information on their legal entitlements following an accident or other claim event (Remedy A).

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 AEC and considerable consumer detriment. It considers that an appropriate combination of remedies to remedy and prevent that AEC are Remedies 1A, 1D (albeit with significant modification), 1E and 1G. We do not support the other proposed remedies and also observe that, given that implementation of Remedy 1A will require primary legislation, this must be combined with other remedies, whether on a short-term basis (pending new legislation) or to support new legislation, should this be enacted in due course. Remedies 1A and 1B are aimed at directly addressing the separation of cost liability and cost control. CISGIL welcomes the opportunity that Remedy 1A will also provide to strengthen links between the customer and their insurer. Conversely, we are concerned that, amongst other practical difficulties, Remedy 1B could result in a customer not being able to choose to have their claim managed by their own insurer.

2.4 In relation to Theory of Harm 2 ("**ToH2**") (information asymmetry leading to under-provision), CISGIL does not, at this stage, accept the Commission's provisional findings that there necessarily is an AEC as result of under-provision of quality of repairs. We will provide our observations on this provisional finding in responding to the Report. However, were such an AEC to be confirmed, CISGIL is broadly in agreement that Remedy 2A would improve the quality of vehicle repairs.

2.5 In relation to Theory of Harm 4 ("**ToH4**") (sale of add-on insurance products), CISGIL supports the Commission's preliminary finding that customers should be provided with clear information about add-on products at the point of sale and that customers should be able to easily compare add-ons across 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, and therefore does not, at this stage, accept the Commission's provisional finding that there is necessarily an AEC as result of under-provision of information in respect of such sales. However, where customers use price comparison websites ("**PCWs**") to compare prices, CISGIL considers that there could be some under-provision of information. We will provide our observations on this provisional finding in responding to the Report. Were such an AEC to be confirmed, CISGIL considers that Remedies 4A and 4C could ensure that customers would receive additional information, albeit that there remain practical and technical difficulties in determining how

information can be provided effectively and how consumers would be able to compare offers from different insurers on PCWs. For these remedies to be effective, it will also be necessary for PCWs to be required to display the additional add-on pricing information provided to them by insurers and brokers. Regarding Remedy 4B, CISGIL supports the Commission's proposal that, in respect of no claims bonus ("**NCB**") protection, all insurers should make clear to customers that the premium may increase following a not at fault claim – i.e. that NCB protection does not extend to protection of the underlying premium itself. However, we do not support the proposal that NCB scales should be made available to customers. These scales have developed in complexity in recent years, such that the number of claims free years of a customer now interacts with a number of other risk factors. This means that publishing NCB scales in the traditional sense becomes impossible.

2.6 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 price comparison websites ("**PCWs**") lead to an AEC and consumer detriment. Whilst Remedy 5A would remove such clauses, it will be necessary to also address other features of PCWs and the motor insurance markets that would nevertheless limit the effectiveness of this remedy, which include prohibition of all MFN clauses in order to prevent circumvention of a prohibition only of 'wide' MFN clauses. Furthermore, CISGIL does not share the Commission's provisional finding that 'narrow' MFNs do not lead to an AEC: we will provide our observations on this provisional finding in responding to the Report. Such clauses do limit competition and innovation, and should also be prohibited through the implementation of Remedy 5B. .

3 REMEDY A: MEASURES TO IMPROVE CONSUMERS' UNDERSTANDING OF THEIR LEGAL ENTITLEMENTS IN THE EVENT OF A CLAIM

3.1 CISGIL fully supports the general principle that consumers are entitled to know and receive their legal entitlement both under tort law and under their own motor insurance policies. We are, therefore, supportive of Remedy A and in favour of greater transparency and provision of information to consumers about their legal entitlements in the event of an accident or other claim event.

3.2 However, CISGIL is concerned that the volume of information being provided to customers (including as a result of existing regulatory requirements and this and other remedies proposed by the Commission) should not lead to 'information overload': there are concerns about the extent to which policyholders actually read the information provided to them. Therefore, the emphasis of Remedy A should be on the provision of clearer information, rather than necessarily the provision of more information.

Consideration will need to be given to what information should be provided and in what format.

3.3 The coverage, and therefore the contractual rights provided to an insured will vary according to the type of insurance cover purchased and also from insurer to insurer. From the perspective of non-fault parties, their legal entitlements under tort law are intricate and to some extent remain open to interpretation. Therefore, the exact extent and format of this further information needs to be carefully considered and the remedy implemented in an appropriate fashion. We consider that, in order to ensure a consistent and standard approach across the industry, it may be necessary for the Commission to adopt an enforcement order that specifies the information to be provided, the format in which it is to be provided and the time at which it is to be provided.

3.4 Given the lead times inherent in revising and printing policy documents (which insurers typically undertake annually), it will be necessary to afford insurers and others some time to implement Remedy A. The implementation of Remedy A will also need to take account of other remedies (notably Remedy 1A) that would affect and change motorists' existing legal entitlements. This period will also need to be sufficient to allow for compliance with regulatory obligations and for 'focus group' testing of proposed wording to ensure it best meets consumers' needs and will be effective.

Information to be provided in respect of entitlement under tort law

3.5 CISGIL believes that, if Remedy A is to be effective, the information provided on legal entitlements under tort law and the language used to impart that information should be standardised across all insurers and (where this is provided at first notification of loss ("**FNOL**")) all other parties managing the claim, for example, brokers, claims management companies and solicitors. This could be specified by the Commission or another regulatory body (such as the Financial Conduct Authority ("**FCA**")). Trade associations (such as the Association of British Insurers ("**ABI**")) would have a role to play in developing a specification of information to be provided, but do not have enforcement powers. This should cover provision of information both in writing, by telephone and on websites.

3.6 Given differences in the different legal jurisdictions of the United Kingdom, it may be necessary for different statements to be provided in England and Wales, Scotland and Northern Ireland, albeit with a standard format for the provision of the information.

3.7 The wording would have to be clear, consistent and not allow for any adaptation, expansion or interpretation by the party providing the information. It would need to cover, in particular: entitlement to a temporary replacement vehicle, including the duty

of mitigation; the entitlement to and quality of repairs, including the right to choose repairer and any guarantee or warranty arrangements; rights in respect of death, personal injury and other property damage; and rights to recover other losses. The information to be provided would need to be updated periodically and take account of any changes in legal entitlement arising from both the Commission's remedies (as implemented), other changes in legislation and developments in case law.

3.8 The information on a motorist's legal entitlements under tort law should be provided (a) on the websites of insurance providers – such that it is easily accessible when buying on-line, (b) as part of the information pack when a customer purchases a policy and (c) at FNOL. However to provide this information as part of a telephone sales process is likely to lead to 'information overload', due to the quantity of other information that needs to be provided; information on legal entitlements under tort law is not a differentiator between motor insurance products. The information could usefully also be displayed on other relevant websites, for example CMC, credit hire company ("**CHC**") and trade association websites. It will be necessary to have standardised scripts for use at FNOL, to ensure that all customers receive the same, complete and clear information at the point when they most need it.

Information to be provided in respect of entitlement under an insurance policy

3.9 Information on legal entitlement under a consumer's own policy will depend upon the terms of the policy, the nature of the coverage and any 'add-ons' (whether included in the basic policy or purchased separately). Therefore, it may be more difficult to reach a form of standardised wording applicable to all motor insurance policies. In addition, this information is already provided by insurers in accordance with existing regulatory requirements. It should also be noted that insurers are already required to provide this information at the point of sale in accordance with various FCA rules.

3.10 Information on legal rights under the insurance policy is provided as part of the policy documentation and (where the insurer is handling its own customer's claim) should also be provided at FNOL. Where the claim is not being handled by the claimant's own insurer (for example because a non-fault claimant has decided to use a CMC or has been 'captured' by the fault insurer), it will be necessary for the claimant to be informed that he or she should contact their own insurer in order to be informed of the position under their own policy, for example in respect of entitlement to a replacement vehicle under their own policy and any implications for the payment of an excess or any NCB entitlement. Information should be provided in writing; at FNOL this could be provided by email or post. It will also be necessary to have standardised scripts for use at FNOL.

Inclusion in the driving theory test of questions on legal rights in the event of an accident

3.11 CISGIL does not support the Commission's suggestion that a small number of questions on the legal entitlements of fault and non-fault claimants in relation to insurance claims following an accident should be included in the driving theory test.

3.12 The driving theory test is not designed as an informational test and we are not aware of questions on similar subjects: it is designed to test a driver's competence to drive and his or her understanding of road traffic law, predominantly from a road safety perspective. Such questions would therefore be inappropriate. It is also doubtful if this test would assist in a motorist's understanding of his or her entitlements in the event of an accident, which could occur some years later.

4 THEORY OF HARM 1: SEPARATION OF COST LIABILITY AND COST CONTROL

Overview

4.1 CISGIL fully endorses 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. We remain concerned that the Commission has underestimated the likely extent of the detriment and has also not adequately taken account of the distortions of competition between insurers, given that the net cost to insurers of the practices identified by the Commission vary considerably between insurers, depending on the extent to which an insurer generates revenues from, inter alia, referral fees and subrogating repair costs at a level higher than the actual net costs incurred by it. CISGIL will address these issues in its response to the Report.

4.2 In identifying remedies that are appropriate to address the AEC provisionally found as a result of the separation of cost liability and cost control, CISGIL considers that, in order to be effective, any remedy (or remedies) must remove the ability and/or incentive of market participants (in particular insurers, brokers, CMCs, CHCs and repairers) to engage in practices that (i) enable them to increase and recover excessive revenues and generate rents from their control 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. In addition, remedies must protect consumers' interests, including in maintaining mobility following an accident and in having their vehicles repaired promptly and properly, and not delay the claims process.

4.3 CISGIL considers that Remedies 1A, 1D (albeit with significant modification), 1E and 1G could, with appropriate revisions and if implemented satisfactorily, represent an

appropriate combination of remedies to remedy, mitigate and prevent the AEC provisionally identified by the Commission.

4.4 CISGIL considers that Remedies 1B, 1C and 1F are either unnecessary (if the proposed package of remedies identified above is implemented) or incapable of remedying the provisionally identified AEC. Therefore, we submit that these remedies should not be considered further.

4.5 It is notable that each of the remedies proposed under ToH1 has implications for the wider motor insurance market, including insurance of motorcycles, commercial and heavy goods vehicles, passenger transport vehicles and vehicles that are exempt from insurance under the Road Traffic Acts. These must be taken into account in any remedy design, in order to ensure that consumers receive their legal rights and there are no other distortions of competition.

4.6 CISGIL agrees with the Commission's proposal that it should not consider further implementation of a system of first party insurance. As regards the proposal not to consider further a remedy that would prohibit credit hire, we consider that this would be effective in controlling replacement vehicle costs, but would be rendered unnecessary if Remedy 1A were to be implemented.

Remedies CISGIL considers as being suitable to remedy, mitigate or prevent the AEC provisionally identified as arising from the separation of cost liability and cost control

Remedy 1A: First party insurance for temporary replacement vehicles

4.7 CISGIL in principle supports Remedy 1A, which would require temporary replacement vehicles, but not repairs, to be insured on a first party basis. Remedy 1A would remove a tortfeasor's liability for damage caused by his or her negligence and place responsibility for insuring against such damage on the innocent motorist. Although an unusual example of first party liability this would be efficient when the insurance industry and motorist population are considered as a whole, given the considerable cost savings that will be made. It would also strengthen the links between the customer and the company that they have chosen to provide their insurance cover. Remedy 1A would, however, lead to insurance costs being transferred from the negligent motorist (and his insurer) to the innocent motorist (and his insurer), and thereby have differential effects on both individual motorists and (depending on the risk profile of their book) individual insurers.

4.8 Not only would Remedy 1A lead to lower replacement vehicle costs for insurers overall, it would remove the need for credit hire. This would ensure that replacement vehicles

are provided on a direct hire basis, the rates for which are (as the Commission has found) considerably below those for credit hire. The remedy would also remove frictional costs and reduce claims administration costs. Quality of service would not be affected (and could perhaps in some cases be increased), as insurers would be providing services to their own customers and be keen to ensure that the customers' business is retained at renewal. This would also be more efficient and promote greater competition between vehicle providers. The remedy would also promote greater competition between CHCs, as they would, in future, compete to supply the replacement vehicle needs of insurers. 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.

4.9 Although there would be some other costs for insurers, including insurance for a hire vehicle and any collision damage waiver, both of which would (presumably) no longer be recoverable from the fault insurer, these would be less than the excessive costs identified by the Commission.

4.10 We would also expect that this remedy would lead to first party insurers obtaining control over repairs, which whilst reducing costs of monitoring repairs (which are inherent when different companies are responsible for the replacement vehicle and the repairs), would likely prevent capture of non-fault claimants: it will be necessary to ensure that this does not lead to increased repair costs through the imposition of other remedies being considered by the Commission.

4.11 As the Commission itself recognises, this remedy will require significant revisions to the existing legislative framework for motor insurance. Therefore, there can be no certainty either that HM Government would accept a recommendation to implement Remedy 1A or that, even if it were so minded, this would be implemented quickly, given that a General Election must be held no later than May 2015 and it will be necessary to find parliamentary time. For this, and other reasons, Remedy 1A cannot be implemented in isolation from other remedies. However, the Road Traffic Act 1988 and the EU Directive 2009/103/EC relating to insurance against civil liability in respect of the use of motor vehicles and the enforcement of the obligation to insure against such liability do not appear to constitute obstacles to the implementation of this remedy.

4.12 The Commission proposes that policyholders should be provided by their own insurer with a temporary replacement vehicle in the event of an accident, whether the policyholder is at fault or not. Non-fault claimants would not be allowed to recover the costs of the replacement car from the fault insurer and therefore there would be no subrogation of the costs involved. Under the proposals, policyholders would have the ability to choose the level of replacement vehicle cover that they would receive,

including the option to 'opt out' by not having any such cover (so effectively 'self-insuring'), in return for a lower premium.

4.13 At the present time, the innocent motorist is entitled to a replacement vehicle where reasonable need can be established. This would be removed by Remedy 1A. Whilst allowing consumers to opt out of replacement vehicle cover may address the AEC, this would create a potentially significant consumer detriment: consumers without replacement vehicle cover would, in the event of an accident, have a choice only between no vehicle or bearing the cost of a replacement vehicle themselves (with no possibility of recovering those costs).

4.14 Therefore, we propose that a variation of this remedy should be considered, whereby a minimum level of replacement vehicle cover is made mandatory in all insurance policies, for example a 'Group A' vehicle such as a Ford Ka or Fiat 500. This would also have the advantage of spreading the cost amongst a wider population, resulting in a lower unit cost to be incorporated into product pricing. Cover would also need to extend to all accidents, regardless of fault: this would be necessary in order to avoid customer disputes where liability is uncertain at FNOL, or liability is ultimately split. CISGIL suggests that cover could be further extended to all situations where a customer is able to claim under their policy and may require a replacement vehicle, including when a vehicle is stolen, is under repair or is a total loss.

4.15 A baseline level of compulsory cover would not only ensure that consumers' legal entitlements under tort law would be met, but could also be introduced without significant increases in the cost of premiums as the cost of providing the replacement vehicles would be spread across the entirety of the policyholder base and would be low.

4.16 Remedy 1A, whether as proposed by the Commission or the variant proposed by CISGIL, would mean that customers would make a choice about the level of replacement vehicle provision they require at the point of sale: customers would have the option of purchasing top-up cover, for example a like-for-like replacement vehicle, for an additional premium. It will be important to ensure that, as part of the sales process, customers are able to make informed decisions and understand the consequences of their decisions about the level of cover purchased by them.

4.17 CISGIL acknowledges that, even with its proposed variation to Remedy 1A, non-fault claimants that have a need for a vehicle that is bigger than the basic provision – for example a larger family – would be disadvantaged compared to the existing model, unless they opt to pay an additional premium to receive a larger vehicle or a like-for-like vehicle. CISGIL believes, however, that the removal of excess costs from the market, which will result in a reduction in premiums for all motorists, outweighs this disadvantage.

4.18 It will also be necessary to consider carefully the impact on a customer's claims record and any no claims bonus to which he or she may be entitled, as well as any excess that may be payable, should a claim be made under a first party policy. At present, this issue does not arise and a motorist should not, were Remedy 1A to be implemented, be required to bear such costs, including the risk of a claims loading on future premiums. Therefore, it would appear to be necessary to specify that for non-fault claims no excess would be payable and (like as at present for a glass claim) a claim does not affect the motorist's claims record or adversely influence any no claims discount. Where an insurer provides a replacement vehicle and meets the costs of repair or write-off for fault or split liability claims, there would – as at present and depending on the insurer's own commercial decision – in principle be an impact on the customer's no claims bonus. Of course, this would have some impact on insurers' costs.

4.19 At present, vehicle hire duration for non-fault claims is unlimited and only linked to the time the claimant's vehicle is off the road. CISGIL considers that the maximum duration of replacement vehicle provision should not be specified (for example, two weeks where the vehicle is repaired or four weeks for a write-off) given that hire periods will vary from claim to claim, and regardless of liability. However, it will be important for the remedy to be effective, for it to be stated that the hire duration for non-fault claims is not unlimited. Without this safeguard, a non-fault claimant whose vehicle is written-off would be able to retain the hire car indefinitely until his or her demand for payment of the pre-accident value of the vehicle is satisfied, irrespective of whether or not this is justified. However, the overriding principle, if this remedy were to be implemented, should be that the customer would be entitled to and receive a replacement vehicle for the appropriate amount of time needed and no more.

4.20 Mandatory replacement vehicle cover may also have real consumer benefits for fault motorists. At present policyholders with only third party or third party fire and theft cover have no entitlement to a replacement vehicle (even a courtesy car) in the event of a fault accident (and also in the event of theft or vandalism). Even motorists with fully-comprehensive cover are not entitled to a courtesy car in the event of vehicle theft or a total loss following a fault accident, unless an 'enhanced courtesy car' policy has been taken out for an additional premium. Mandatory cover would therefore provide, at low cost, additional replacement vehicle cover and simplify the provision of replacement vehicle cover at the point of sale.

4.21 CISGIL considers that Remedy 1A would not result in any adverse effects on CMCs or CHCs. Almost all providers of credit hire vehicles are also significant providers of replacement vehicles on a direct hire basis, e.g. to insurers, using the same vehicle fleet. Some are also active in retail or fleet rentals. Given the continued need for replacement vehicles, CHCs would therefore continue to have demand for their

vehicles, albeit on a different basis. They would, therefore, be able to restructure their businesses to meet the significant direct hire needs of insurers. There is unlikely to be a significant difference between the margins CHCs earn on credit hire and direct hire, despite considerable differences in daily hire rates. The nature of vehicles provided would likely change: we would expect more vehicles in lower classes to be provided, as consumers may choose not to purchase like-for-like vehicle cover; however, this would be because of vehicles more accurately reflecting motorists' actual reasonable needs for mobility and avoiding the current manifest over-provision resulting from like-for-like replacement being the 'default' provision rather than, as is the correct legal position, an upper bound.

4.22 Subrogation will not be necessary where mandatory cover is included in a policy; insurers will each bear the costs of providing replacement vehicles to their own policyholders, in return for an appropriate premium. This will eliminate frictional costs completely and lead to lower administrative costs, including those incurred by insurers in attempting to capture claims. It will also eliminate other costs associated with managing and negotiating subrogated claims regarding the cost of replacement vehicle provision.

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

4.23 The Commission proposes that this remedy would prevent subrogated claims for repair costs being artificially marked up, at the same time as reducing the frictional costs associated with repair claims. CISGIL believes that neither proposed Remedy 1D(a) nor proposed Remedy 1D(b) would be an effective means of remedying the provisionally identified AEC, as regards excessive non-fault repair costs. CISGIL therefore proposes an alternative remedy, which it considers would be both effective and proportionate; this is set out below.

Remedy 1D(a): subrogation of wholesale repair costs

4.24 Through Remedy 1D(a), it is proposed that non-fault insurers would be required to pass on to fault insurers the 'wholesale' price they pay to repairers, plus an administration charge.

4.25 We consider that this remedy would not be effective: it provides no incentive for insurers to drive down the costs of non-fault repairs, as the Commission itself recognises, and does not provide fault insurers with any further means to challenge excessive repair costs. This would remain the case, even if this were to be combined with a remedy prohibiting referral fees (Remedy 1G), as many non-fault repairs are undertaken without a referral fee being paid, for example when an insurer manages its own customer's claim and the repair is undertaken by a repair subsidiary or a member of its repair

network. In addition, it is not obvious what the 'wholesale' price of a repair would be and that this 'wholesale' price would not be susceptible to manipulation (which would undermine its effectiveness).

4.26 Remedy 1D(a) would simply continue the existing unsatisfactory and inefficient situation in which subrogated repair costs are inflated and discounts, rebates etc. are not passed on. It would also permit insurers and CMCs to maintain different rates for fault and non-fault claims and as there is no definition of 'wholesale price' insurers will still have an incentive to inflate the costs they recover through subrogation.

Remedy 1D(b): 'standardised' repair costs

4.27 Through Remedy 1D(b), it is envisaged that excessive repair costs would be controlled through the application of 'standardised' repair costs that would be recoverable in a subrogated claim.

4.28 As a matter of principle, CISGIL considers that the imposition of price controls would be inappropriate in addressing an AEC and that remedies should, so far as possible, replicate a market that operates efficiently and effectively, by removing or at least constraining the ability and incentive to increase and recover excessive repair costs, but without determining the actual prices charged.

4.29 We also consider that Remedy 1D(b) is unworkable and unduly complex due to the multiple variables that exist for repair costs, such that no repair is 'standardised' (for example, Thatcham's escribe platform has 400 vehicle repair ranges and 1.5 million separate repair options). Whilst there is, through the use of repair estimation systems and the development of repair procedures by organisations such as Thatcham and vehicle manufacturers, a degree of standardisation on matters such as the time a repair should take, parts required and the volume of paint required (and thus the number of 'input units' required), there is no standardisation on the cost or value of each unit and it is not obvious how this could be achieved, particularly for labour rates, which vary considerably by region and for some specialised repairs, and parts, which vary in nature and price between manufacturers (both OEM and non-OEM). Repair costs also vary depending on the extent and severity of damage. Standardised costs would also need to be reviewed and revised regularly, as labour, parts and paint costs, as well as vehicle technology and design and repair techniques, change over time and are (other than labour) not within the control of either insurers or repairers; this will add complexity and cost to the implementation of the remedy, rendering it disproportionate.

4.30 It is also not clear which organisation would set, monitor or revise the 'standardised' costs, the manner in which this would be undertaken, or who would meet the costs incurred: any increased costs to repairers, insurers or CMCs would ultimately be borne

by consumers. Whilst affording transparency of repair costs, standardisation would eliminate competition between repairers (which would all charge the standardised cost), remove incentives to investment, efficiency and innovation, and therefore inevitably distort competition in the repair market.

An alternative remedy: non-discrimination and pass-through of rebates, discounts etc.

4.31 CISGIL considers that the only way in which non-fault repair costs can be effectively controlled is to introduce a mandatory prohibition of discrimination or differentiation between the repair rates charged for fault and non-fault repairs. This is, in effect, the position under existing bilateral agreements between insurers and CISGIL would suggest that Remedy 1D be structured in a way that gives effect to the principles of bilateral agreements, but across the market and in a way that applies to all insurers without the need to negotiate such agreements. The remedy should also permit market participants to enter into such agreements on a commercial basis, should they wish to do so.

4.32 We would expect that this requirement would need to be imposed on both repairers (since they charge for the repairs), but also on the party managing the repair, such as an insurer or CMC (since they have the ability and incentive to demand different repair rates). This could be supported by obligations on insurers not to inform repairers of the status of the repair, i.e. fault or non-fault; the status of the claimant is not a factor that should affect the way in which the repair is managed or priced. Insurers, brokers, CMCs and repairers (including vertically integrated groups) could also be required to make a declaration that this obligation had been complied with.

4.33 The sum that can be subrogated would then be the actual repair cost incurred, including any off-invoice discounts, rebates or fees paid to the party managing the non-fault claim.

4.34 For Remedy 1D to be effective, it would also be necessary to impose stricter mitigation requirements, to limit the unnecessary use of credit repair, which would further control repair costs. In particular, credit repair should not be available when a party has fully comprehensive insurance: in these circumstances, repairs can be undertaken by the claimant's own insurer, with any excess that is not waived being recovered as an uninsured loss.

4.35 It would also be necessary to put in place measures to prevent vertically integrated groups (which own a repairer) from artificially increasing repair costs and recouping excess profits through dividends, intra-group loans or other arrangements. Such anti-circumvention measures could include requiring subsidiaries of integrated companies to deal on an arm's length basis or by implementing transfer pricing controls. In the case of

regulated companies, this could be imposed and monitored by the FCA. The Prudential Regulation Authority may also have a role to play in ensuring that insurers do not incur losses by artificially increasing fault repair costs and then using intra-group transfers to recapitalise those losses.

4.36 It is acknowledged that insurers (and CMCs) often require their repairers to provide retrospective discounts and rebates and some also have discount or rebate arrangements with input suppliers, in particular for paint. Whilst this may create some additional administrative work to reconcile subrogated claims costs when the non-fault insurer (or other party managing a claim) receives retrospective rebates or discounts, this can be easily avoided by insurers (and others) moving away from the use of off-invoice discount and rebate arrangements for labour, paint, parts and other inputs and instead using on-invoice discounts that can easily be identified and applied in subrogation. All financial and non-financial incentives, whether direct or indirect, should be required to be dealt with in this way. Where an insurer or CMC chooses not to do so, it should bear its own costs of reconciliation.

4.37 This remedy would require implementation by enforcement order: given the number and identity of parties involved, seeking undertakings would seem impracticable, if not impossible to achieve. Such an order would require adequate monitoring and reporting obligations to be designed. These could include certification of compliance as well as audits of contractual arrangements between insurers and their repair networks to ensure discriminatory rates were not being applied and that information on the insurance status of a repair was not provided.

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

4.38 To remedy the provisional AEC arising from separation of cost liability and cost control, the Commission proposes that subrogated claims costs should reflect the actual salvage proceeds received by the insurer, CMC or other party managing the claim. Whilst CISGIL supports the Commission's objective of reducing costs incurred by fault insurers following a total loss or write-off, CISGIL does not support Remedy 1E(a), but does in principle support Remedy 1E(b).

Remedy 1E(a): option for fault insurers to handle salvage of non-fault vehicles

4.39 CISGIL does not support a remedy that would require, or provide an option for, fault insurers to handle the non-fault vehicle salvage process (Remedy 1E(a)).

4.40 Remedy 1E(a) is unlikely to be effective, as it would introduce extra costs and liabilities for the fault insurer, so increasing overall claims costs. If the remedy is provided as an

option to fault insurers, it is unlikely that insurers would take advantage of the option, to avoid such costs. For example:

(a) where a total loss claim decision takes an extended period of time to resolve or where there is outstanding finance on a vehicle (in which case ownership of the vehicle salvage is with the finance company and the vehicle must remain in storage until the issue of finance is resolved), the fault insurer would incur significant salvage storage costs (often in excess of £20 per day);

(b) there would also be additional costs arising from, and delays to the claim due to the physical transfer of the vehicle, the legal transfer of vehicle ownership, including the transfer of keys and (if relevant) personalised registrations from one owner to another;

(c) there are also likely to be issues for claimants as a result of the transfer, including recovery of personal effects from written-off vehicles. These issues with liability for and recovery of storage and other inherited costs will lead to further disputes and frictional costs; and

(d) additional costs would also be incurred where a written-off vehicle must be scrapped (Category A or B), as such vehicles are considered to be hazardous waste and require licences to be transported and handled.

4.41 Additional regulatory and compliance difficulties would also arise from the fault insurer taking over a salvage claim, including:

(a) under the Road Vehicles (Registration and Licensing) Regulations 2002: at present, the insurer handling the salvage - i.e. the not at fault insurer in this instance - is required to notify DVLA and ensure that the registration certificate for the vehicle (Form V5C) is surrendered or destroyed. The notification is carried out via the Motor Insurers Anti-Fraud and Theft Register ("**MIAFTR**") database. The MIAFTR database requires that the vehicle's details are entered onto the database when the vehicle is declared a total loss and not when the claim has been paid. If Remedy 1E(a) were to be adopted, as the Regulations give this responsibility to the disposing insurer, this would delay uploading the details on MIAFTR until the fault insurer had agreed to take over the disposal of the salvage. This increases the risk of fraud and/or, for example, the not at fault insurer settling the claim without knowing whether the vehicle had been a previous total loss, or previously scrapped. Hence, this would need to be addressed if this remedy were to be adopted;

(b) continuous registration requirements, given that this remedy could lead to several changes of ownership before a vehicle is scrapped and deregistered; and

(c) under VAT law, where a vehicle is VAT qualifying the salvage value must be declared to HMRC.

4.42 Finally, we assume that the remedy would not apply where the claimant chooses to retain the written-off vehicle, as in this situation the vehicle is not scrapped and ownership is not transferred.

Remedy 1E(b): use of actual salvage proceeds to settle subrogated write-off claims

4.43 Remedy 1E(b) would require all insurers to use actual salvage proceeds (including any referral fee, if not prohibited) in settling subrogated claims and is therefore an attractive remedy which CISGIL supports. Indeed, most insurers already apply this procedure for settling salvage claims.

4.44 However, for this remedy to be effective, insurers (as well as CMCs and others handling a claim) would need to account not only for the actual salvage proceeds, but also any referral fee, rebates or discounts received by them, which the party handling the claim must account for to the fault insurer. Therefore, the concept of 'actual salvage proceeds' will need to be defined carefully, to avoid possible circumvention.

4.45 In constructing an effective remedy, it would be necessary to prevent any delay to the final subrogation of the claim, which would otherwise be possible if (as is often the case) it takes time to determine the actual salvage value. Therefore, we would suggest that, to enable the claim to be subrogated promptly, this can - if necessary - be on the basis of an estimated salvage value being used and, if necessary, any balancing payment being made once the actual salvage proceeds have been received.

4.46 This remedy would need to be imposed by way of an enforcement order, given that it will apply to both regulated entities (e.g. insurers) and non-regulated entities (e.g. CMCs, repairers and salvage companies). The enforcement order could also require relevant entities to make compliance declarations.

Remedy 1G: Prohibition of referral fees

4.47 CISGIL supports a prohibition of referral fees as proposed by the Commission. Remedy 1G would support the effectiveness of Remedies 1A (as revised), 1D (as revised), and 1E(b). Although these remedies may reduce the incentives to pay and receive referral fees, they will not eliminate the ability or incentive of different parties to

pay and receive referral fees as a result of the separation of cost liability and cost control. Therefore, CISGIL favours an outright prohibition on the payment and receipt of referral fees in connection with non-fault claims, whether for temporary replacement vehicles, repairs or salvage, although Remedy 1G in isolation will not remedy the provisionally identified AEC and must be combined with other remedies.

4.48 The payment and receipt of referral fees is one of the practices which the Commission identifies as increasing subrogated claims costs for fault insurers. Therefore, prohibiting referral fees would remove unnecessary costs that are ultimately borne by fault insurers and customers through higher premiums. It would also result in parties handling claims (including insurers, brokers, CMCs, CHCs and repairers) competing on price and quality, which would clearly be both efficient and in consumers' interests.

4.49 This remedy would need to be imposed by an enforcement order, given that it will apply to both regulated entities (e.g. insurers and solicitors) and non-regulated entities (e.g. CMCs, CHOs and repairers). In order to be effective, the prohibition would have to be monitored; this monitoring role could be undertaken by the FCA but this could only extend to companies regulated by it (notably, insurers and brokers) and to companies that are not regulated, for example CHCs, CHOs, repairers and salvage companies. Therefore, monitoring would appear to need to be undertaken by the CMA, as successor authority to the OFT. Measures would also need to be adopted to prevent the prohibition being circumvented by vertically integrated companies, as well as circumvention arising from other transactions which would have a similar financial effect to referral fees, such as discounted rates, rebates and profit-sharing models.

Remedies that CISGIL considers to be unnecessary or unworkable

4.50 CISGIL considers that some of the remedies proposed by the Commission to remedy the AEC provisionally identified as resulting from the separation of cost liability and cost control are either unnecessary and/or unworkable.

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

4.51 Remedy 1B, in theory, appears to be the most obvious remedy to address the provisional AEC identified under ToH1. This would give a formal basis to the process known as 'third party capture' and lead to a significant reduction in insurers' costs. If the option is exercised, it would give the fault insurer control over the claim and thereby enable that insurer to supply the replacement vehicle directly at direct hire rates rather than credit hire rates. If the remedy also extended to repair, it would avoid both inflated subrogated repair costs and also credit repair. This would, if effective, also eliminate frictional costs and reduce litigation. CISGIL is concerned, however, that this remedy

could lead to customers not being able to have their claim dealt with by the company that they have chosen to insure with and could reduce the incentive for insurers to compete on quality and service standards. In addition, for a number of reasons, CISGIL considers that Remedy 1B is a not practicable solution, has a number of unintended negative consequences and is unlikely to be effective in reducing claims costs, not least because a majority of non-fault claimants would choose to remain with their own insurer or CMC.

4.52 The proposed remedy envisages the fault insurer being given a period of time in which, having been contacted by the non-fault insurer (or CMC or other party managing the claim from FNOL), to make an offer to the non-fault claimant to provide a replacement vehicle and/or manage the repairs. This will inevitably disrupt and introduce significant delays in the claims journey for non-fault customers, which would not be a desirable or proportionate outcome; it could, for example, delay the provision of a replacement vehicle when the claimant's vehicle is damaged and not roadworthy. CISGIL envisages that this would lead to consumer dissatisfaction which would be directed towards the non-fault insurer or other party to whom FNOL was made.

4.53 The remedy would also introduce practicable difficulties for insurers (and therefore for claimants) in cases where liability is uncertain or split. Potential fault insurers would be required to make a quick and uninformed decision on whether to accept a claim without the benefit of any detailed evidence, which can only be gathered once investigations have commenced. In CISGIL's experience, in [✂] of cases liability is either unclear or considered to be split at FNOL (due to incomplete information), despite liability for the majority of these cases being ultimately decided as the claims journey progresses. There would also be difficulties for insurers in identifying fraudulent claims in this limited time period. This means that an insurer would, in many cases, be unable to make a decision on whether to take over the claim at FNOL, leading to vehicle provision reverting to the non-fault insurer, broker, CMC or CHO and thus a continuation of the AEC provisionally identified by the Commission. (It is notable that, at present, CHOs will only offer a vehicle on credit hire terms where it is agreed or virtually certain that the claim is non-fault: fault insurers are likely to take the same approach, to avoid incurring irrecoverable costs should their customer ultimately not be at fault.) Therefore, Remedy 1B could be effective only where the fault insurer is able to make an immediate decision on liability: where it cannot do so, vehicle provision will revert to the non-fault insurer, broker, CMC or CHO, leading to a continuation of the AEC provisionally identified by the Commission.

4.54 Allowing a non-fault claimant to elect whether to have their own insurer, broker or CMC handle the claim instead of the fault insurer will inevitably lead to a 'bidding war' between the parties and consequently over-provision to the non-fault claimant. This is

because the claimant's own insurer (or broker, CMC etc.) will offer a 'like for like' replacement vehicle in order to maintain control over the claim, even if a smaller vehicle would be appropriate for the claimant's needs, and therefore satisfy the duty of mitigation. This will maintain the existing unsatisfactory market position, and Remedy 1B would therefore not remedy, mitigate or prevent the AEC provisionally identified.

4.55 Conversely, requiring a non-fault customer to accept that the fault insurer will manage the claim and provide services such as a replacement vehicle and repairs could conceivably lead to under-provision; the fault insurer may have no incentive to meet the claimant's legal entitlements, but only to minimise the cost of the claim. CISGIL is concerned that by 'handing' a non-fault customer to the fault insurer, it effectively loses control of the customer journey which may lead to customer dissatisfaction.

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

4.56 Remedy 1C would effectively replace and reform the General Terms of Agreement ("**GTA**") and would consist of three elements:

(a) guidance on the duration hire periods for replacement cars;

(b) a cap on daily hire rates for each category of replacement car; and

(c) an allowance for administrative costs.

4.57 The Commission is also recommending the use of an online portal for the exchange of documentation. Whilst CISGIL agrees that the use of online portals is an effective and efficient means to managing insurance claims, Remedy 1C would be ineffective.

4.58 In principle, CISGIL is broadly supportive of a measure that would make compulsory (and therefore applicable to all claims) compliance with principles that will reduce claims costs. The ineffectiveness of the current GTA is principally due to its voluntary nature and also the various ways in which a claim can 'fall out' of the GTA (which leads to higher costs).

4.59 However, whilst the proposed Remedy 1C would aim at reducing vehicle costs and frictional costs, CISGIL considers that it cannot be practicably implemented and would not achieve the desired outcome of addressing the AEC provisionally identified by the Commission. Remedy 1C would also be unnecessary if the Commission was to adopt Remedy 1A (as revised).

4.60 As regards guidance on hire durations for replacement cars, these inevitably vary significantly from claim to claim. In order for such guidance to be meaningful, hire periods would have to be standardised, which is not practicable given the significant

variations from claim to claim, including rates, duration and mobility need. It is therefore questionable whether such guidance would have any meaningful use. It is also not clear how any fixed or recommended hire period could be satisfactorily monitored and enforced, especially where there are legitimate reasons for exceeding the hire duration. It is also unclear which organisation would be responsible for setting 'guideline' hire durations and providing such guidance.

4.61 As regards the proposal for maximum daily rates, CISGIL would observe that price control remedies are, in principle, unattractive and intrusive and should be adopted only as a 'remedy of last resort'. Therefore, any price control measure, such as a cap on daily hire rates, is an unattractive remedy as it unavoidably interferes with and overrides existing market dynamics. The cap, as CISGIL has previously observed in relation to the GTA,[1] would also become the effective default rate that would be charged by all CHOs. CISGIL also questions how a cap for each category of replacement car would be set given the complex and multiple variables that exist. The same observations arise in respect of the proposal for an allowance for administrative costs, which - as cost of business - should properly be recovered through hire rates. Any set rates would also need to permit a discount for prompt payment.

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

4.62 If Remedy 1A is implemented, Remedy 1F will not be required. However, if Remedy 1A (as revised) is not implemented (or there is a delay in implementation), improved mitigation in relation to the provision of replacement cars to non-fault claimants will be necessary in order to avoid over-provision as a result of non-fault claimants failing to mitigate their loss by receiving a vehicle that meets their reasonable mobility needs, but no more.

4.63 Therefore, CISGIL supports measures that reduce over-provision and ensure the correct application of the duty to mitigate. However, Remedy 1F is unlikely to achieve this objective and may well increase disputes and frictional costs, despite the intention to achieve the opposite. Indeed, as proposed, the remedy would not change the current situation: mitigation statements already exist but are rarely specific to the claimant's actual circumstances or requirements and the routine response is the stated need for a like for like vehicle. The statements are generally completed as an afterthought rather than a robust means of assessing whether there is actual reasonable need for the class of vehicle provided.

[1] CISGIL response to the Annotated Issues Statement and Working Papers, paragraph 3.24.

4.64 Whilst consumers may have a better understanding of their legal entitlement if Remedy A is implemented, they are unlikely to mitigate their loss in the absence of an effective deterrent being applied in the event of over-provision. In addition, as at present, the parties handling a non-fault claim (e.g. insurers, brokers, CHOs and CMCs) will continue to have significant incentives to promote the provision of like-for-like replacement vehicles by interpreting entitlement differently and encouraging claims for such vehicles.

4.65 Increasing the number of questions and allowing the fault insurer access to, and to review, call records in the event of a dispute (where available), would also only lead to further disputes and create additional frictional costs.

Remedies that the Commission is not minded to consider further

4.66 CISGIL has also considered the remedies under ToH1 that the Commission has indicated it is not minded to consider further.

First party motor insurance

4.67 Whilst the introduction of a first party non-fault insurance model (without the right of subrogation) would reduce vehicle hire and repair costs and eliminate frictional costs, CISGIL agrees with the Commission's conclusion that this remedy would be outside the scope of the present inquiry, which has not considered at all the possibility of first party insurance. The introduction of such a model would recast the entire motor insurance industry, from *inter alia* an underwriting, claims management and consumer interest perspective. This remedy would therefore be extremely complicated to implement and it would also be necessary to avoid adversely affecting liability and claims for other third party damage, including personal injury and property damage.

4.68 This remedy would require extensive consultation, primary legislation and an extended implementation period to enable the insurance and related industries sufficient time to reorganise and address the new issues that they would face. It would therefore be ineffective in remedying, mitigating or preventing promptly the AEC provisionally identified in respect of ToH1.

Prohibition of credit hire

4.69 The Commission has provisionally indicated that it is not minded to consider further a prohibition of credit hire. CISGIL considers that the availability of credit for replacement vehicles is a direct cause of the AEC provisionally identified by the Commission: it disagrees with the Commission's view that the cost of credit *per se* is not a main factor behind the higher costs that are identified as resulting in the provisionally identified

AEC. Credit hire is a direct consequence of the separation of cost liability and cost control.

4.70 A prohibition on credit hire would be the preferred and most effective means of ensuring that excessive vehicle hire costs are removed from the market. However, if implemented in the form suggested by CISGIL, Remedy 1A would remove the need for credit hire.

5 THEORY OF HARM 2: POSSIBLE UNDERPROVISION OF SERVICES TO THOSE INVOLVED IN ACCIDENTS

5.1 CISGIL is surprised that the Commission has provisionally found that an AEC arises from an information asymmetry in respect of vehicle repairs and does not, based on our own experience, at the present time share 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 insurers not monitoring effectively the quality of those repairs.

5.2 CISGIL will provide its observations on this provisional finding in its subsequent response to the Report, but for the purposes of responding to the Notice has considered below the remedy proposed by the Commission.

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

5.3 CISGIL does not, at the present time, agree that there is an AEC in relation to vehicle repairs. However, were such an AEC to be confirmed, it acknowledges that proposed Remedy 2A would be the only remedy capable of addressing that provisional AEC.

5.4 On this basis, CISGIL would support the Commission's proposal of compulsory audits in order to ensure that there is greater focus on the quality of a repair and to incentivise insurers and others to increase the quality of repairs, but considers that there are a number of matters that would require consideration in order for it to be an effective remedy whilst also avoiding unnecessary cost and expense to insurers and repairers (which would ultimately be passed on to consumers through higher premiums) and delays to the repair process.

5.5 It is not obvious from the Commission's proposal for Remedy 2A to what standard repairs would be assessed. This would need to be capable of objective application and assessment. Whilst, in law, a claimant is entitled to have her or his vehicle restored to its pre-accident condition (as a proxy for the diminution in value suffered as a result of the accident), this is not always easy to apply, identify or achieve, particularly with older vehicles or those with significant damage.

5.6 We would suggest that these audits could be assessed against a revised PAS 125 standard. It would be necessary to identify an organisation that is independent and could determine the appropriate standard: although funded by motor insurers, Thatcham is independent and has the necessary expertise (and indeed is a world leader) in vehicle repair to undertake this role. Audits could be undertaken as part of existing PAS 125 standard audits, both when repairers are first accredited and thereafter are audited to verify continued compliance. All members of CISGIL's approved repairer network are required to have (or be working towards) PAS 125 accreditation. CISGIL believes that the majority of ABI members also either mandate PAS 125 accreditation or require evidence that their approved repairers are working towards PAS 125 accreditation. As part of the remedy, PAS 125 accreditation could be made compulsory, with accreditation to be achieved within a set period of time of 12 to 24 months.

5.7 The PAS 125 is an official British Standards Institution ("**BSI**") technical repair specification for the bodyshop industry. It is presently in transition to becoming a British Standard, BS 10125, during 2014. It currently specifies the processes and procedures that repairers must follow for the safe repair of vehicles, and could be amended to introduce a greater emphasis on quality of repair and overall quality of service (or customer experience). PAS 125 accredited repairers are entitled to use the BSI 'kitemark'.

5.8 PAS 125 accredited repairers are already subject to six monthly unannounced audits by BSI and annual announced audits by CARSQA, a motor industry certification body. CISGIL understands that the Retail Motor Industry Federation also has plans to conduct repairer audits. These audits are principally focused on whether repairers are achieving safe and technically sound repairs applying the PAS 125 processes and procedures, but could, in CISGIL's view, be easily adapted to include quality measures by assessing the quality of a repair and the overall 'customer experience'. However, it may also be necessary to set up a specialist body to undertake such repair audits.

5.9 CISGIL understands that there are currently around 1,800 unannounced PAS 125 audits annually. These audits could be adapted to also include a post-repair vehicle inspection against specified quality standards. The audits would also be conducted independently which, in CISGIL's view, is essential if the audits and results are to be consistent and impartial. Independent assessment will also be essential in the case of vertically integrated groups.

5.10 CISGIL agrees that monitoring should be periodic. It will be necessary to determine how repairers will be selected for audit, which - unless all repairers are to be audited every

year - would need to be weighted according to size and the number of vehicle repairs inspected would need to be statistically relevant.

5.11 Audits must be conducted independently, particularly if the results are to be used to rank either repairers or claims managers (insurers, brokers, CMCs etc.) in some form of 'league table'. It is notable that rankings or league tables could only work if every repairer were to be audited on a regular basis and these audits were also representative of every insurer, CMC etc., given that most repairers undertake work for multiple insurers (it is notable that because insurers tend to use the same repairers in any area, this may make it difficult to distinguish between insurers). It would also be necessary to identify whether an insurer-managed repair is undertaken by an approved repairer, since insurers have little or no control over unapproved repairers selected by their customers.

5.12 This solution would not, however, address audits of repairers who are not adhering to PAS 125 but who are carrying out accident repairs for insurers and CMCs. Further work should be undertaken by the Commission and the BSI to understand how these repairers might be brought into the audit scheme; one possibility would be for all insurers and CMCs to mandate that repairers wishing to carry out accident repairs on their behalf are PAS 125 accredited.

5.13 One consequence of post-repair audits is that audits may cause delay to the return of the vehicle to the customer, which would disadvantage the customer and probably increase the period for which a courtesy or hire car is required, so increasing insurers' costs. If the audit is to be undertaken at a later date then the scheduling of the audit will cause inconvenience to consumers and will inevitably reflect 'wear and tear' to the vehicle and at worst, another accident in the meantime.

5.14 The up-front costs of establishing the audit mechanism and the cost of the additional post-repair audits, plus on-going reporting and monitoring, as well as maintaining any 'league tables' are likely to be significant. There are also likely to be 'indirect' costs associated with longer repair times, notably extended duration of replacement vehicle provision. CISGIL currently pays [✂] to independent engineers per physical inspection of a vehicle. It is likely that a post-repair audit would cost a similar amount and this cost will have to be met. Where quality audits are undertaken as part of a general PAS 125 audit, there will also be additional costs, as the audit will take longer. If insurers are to bear these costs (whether directly or in subrogation from non-fault insurers and CMCs) then this will likely result in higher premiums to consumers. If, alternatively, these costs are borne by repairers, they will be passed on to both insurers (for insurance work) and consumers (for non-insurance work). Ultimately, any increased costs would be borne by the consumer.

5.15 The Commission also proposes some form of ranking or rating of insurers and CMCs according to their quality repair records. CISGIL's view is that rankings or league tables are often overly complicated and the audit results would need to be both comprehensive and statistically relevant if they could be relied upon. CISGIL is therefore not presently in favour of such league tables, given the very large number of insurers, repairers and CMCs involved in the vehicle repair process.

5.16 In view of the lack of quantification of any consumer detriment (on which the Commission intends to undertake further work) and indeed uncertainty as to its existence, as well as limited information on the costs of any audits, CISGIL is presently unable to determine whether Remedy 2A would be proportionate.

Remedies the Commission is minded not to consider further

Consumer right to an independent expert assessment of repairs

5.17 The Commission has indicated that it is minded not to consider further a remedy that would give consumers the right to have their repairs assessed by independent experts at no cost if there is a problem with the repair.

5.18 CISGIL agrees with this conclusion, for the reasons given by the Commission. In addition, it is notable that consumers already have the right to request that their insurer re-inspect a repair and rectify any defects. Many consumers exercise this right. Providing an additional automatic right to an independent expert assessment would not enhance consumers' rights and, as the Commission identifies, lead to requests on a random basis and the unnecessary incurring of additional costs. Furthermore, this remedy would not address the provisional finding that consumers are unable to assess accurately the quality of repairs, whereas Remedy 2A (as amended as described above) would address this finding by incentivising higher repair standards across the industry.

6 THEORY OF HARM 4: ADD-ON INSURANCE PRODUCTS

6.1 CISGIL supports the Commission's preliminary finding that customers should be provided with clear information about add-on products at the point of sale and that customers should be able to easily compare add-ons across providers. CISGIL considered that it provides clear information about the add-on products when these are sold through direct channels, which enables customers to compare its products with those of other providers, and therefore does not, at this stage, share the Commission's provisional finding that there necessarily is an AEC as result of under-provision of information. However, where customers are using PCWs to compare the prices of add-on products, CISGIL considers that there could be some under-provision of information.

CISGIL will provide its observations on this provisional finding in the response to the Report.

6.2 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. Therefore, in principle, it supports proposed Remedy 4A (although it is concerned that this could impose costs on insurers and PCWs and have certain negative unintended consequences) and Remedy 4C.

6.3 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 becomes impossible. [✂]. CISGIL is however committed to providing a clear explanation of NCB and NCB protection. In particular CISGIL believes that customers need a clear explanation that the NCB protection product only provides protection for the premium attributable to their individual claim free record and does not protect them from any other factors that might lead to increases in the underlying risk premium. Therefore, CISGIL supports Remedy 4B in part only.

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

6.4 In principle, CISGIL agrees that insurers should provide all add-on pricing information to PCWs. However, whilst CISGIL supports the sentiment of the proposed remedy it has concerns that the implementation of the remedy may have unintended consequences.

6.5 At present, the functionality of PCWs websites does not enable them to display full add-on pricing, and quotes are always ranked in order of the price of the basic policy. To display full add-on pricing and rankings, PCWs will need to redesign their websites and develop the new operating systems necessary to support this. This will inevitably lead to development, implementation and management costs which will likely be passed on to insurers through higher CPA fees. PCWs would likely also seek to recover an additional commission for the sale of add-ons, leading to higher overall commission costs, which would ultimately be borne by customers.

6.6 In turn, insurers will seek to recover these increased commission costs from consumers, through higher premiums. Insurers will also likely need to revise their systems to provide additional real-time and customer specific pricing information to PCWs, particularly for those products which are priced according to risk, notably NCB protection.

6.7 In order to be an effective remedy there would need to be a requirement for PCWs to display the add-on pricing information supplied by insurers and brokers and in a manner that facilitated comparison between different offers. If PCWs were not so obligated and so could choose whether or not to display the information, it is likely that PCWs would not do so, in order to avoid extensive implementation costs.

6.8 CISGIL is further concerned that even if all add-on pricing information is provided on PCWs it would not make it any easier (and in fact, potentially more complicated) for consumers to compare add-on products across providers. Add-ons are not standardised products: the pricing and level of cover provided by add-ons is variable. For example, there are multiple courtesy car cover products set at differing price points for a range of different circumstances.

6.9 Even if the pricing information for an add-on is displayed on a PCW, CISGIL is concerned that consumers would not be able to identify or understand the exact level of cover at the prices quoted. CISGIL believes that an unintended consequence of this remedy would inevitably be the standardisation of add-on products, in order to facilitate comparison, leading to a reduction of competition, innovation and consumer choice: such standardisation was observed with the establishment of PCWs, which now distribute 'stripped down' basic policies, in part necessitating the sale of add-ons in order to enable consumers to be fully protected against all risks. Any difficulties in comparing add-on products across PCWs may also lead to consumers ceasing to use PCWs to facilitate their searches for motor insurance products.

6.10 There is also an obvious circumvention risk with this remedy. Rather than selling add-ons at point of sale, insurers may move to a model where they actively sell add-ons once the policy term has commenced; this could be either shortly after the sale of the basic policy, or at renewal. Insurers may well also seek to increase the proportion of business sold directly, rather than through PCWs, so diminishing the use and attractiveness of PCWs.

6.11 CISGIL considers that if implemented, this remedy should apply equally to brokers, which also sell both motor insurance and add-ons via PCWs. The pricing information to be provided by insurers and brokers could be limited to the main add-on products rather than all add-on products, provided that there could be an agreement as to what the main add-on products are.

6.12 CISGIL would expect this remedy to be implemented by way of enforcement order. Alternatively, if PCWs were to be regulated, by recommendation to the FCA for it to take action under its regulatory powers.

Remedy 4B: Transparent information concerning NCB protection

6.13 CISGIL is in favour of the Commission's proposal that all insurers should include a clear statement in the description of NCB protection stating that a policyholder's premium may increase following a claim for an accident for which that policyholder was not at fault even when a policyholder had NCB protection. This remedy should also apply to brokers. However, further work needs to be conducted by the Commission, FCA, insurers, brokers and consumer groups to design the appropriate form of wording so that it is meaningful, easy for consumers to understand, and not unnecessarily complex. This wording would need to be standard across all insurers and brokers. This part of Remedy 4B could be imposed by order or by recommendation to the FCA.

6.14 The Commission also proposes that all insurers should make available to consumers details of the NCB scales both when consumers are choosing whether to take out NCB protection and also when receiving a policy quotation. CISGIL does not support this part of Remedy 4B.

6.15 As noted in paragraph 6.3 above, the pricing of risk is increasingly more complex, so that a customer's NCB is no longer based upon claim free years in isolation from risk factors. As a result, publishing NCB scales in the traditional sense is becoming impossible [✂]. CISGIL is however committed to providing a clear explanation of NCB and NCB protection. In particular CISGIL believes that customers need a clear explanation that the NCB protection product only provides protection for the premium attributable to their individual claim free record and does not protect them from any other factors that might lead to increases in the underlying risk premium. CISGIL does not therefore support the Commission's proposal that NCB scales must be made available to consumers.

6.16 CISGIL does support the underlying principle that customers must be provided with clear information on the benefits and limitations of NCB protection at the point of purchase in order that an informed decision on value can be made. It therefore would support a remedy requiring this information is provided but which also recognises that the absolute impact in terms of monetary value could not be provided. This may mean that the benefit would need to be illustrative in nature.

Remedy 4C: Clearer descriptions of add-ons

6.17 CISGIL supports fully any remedy that will lead to greater transparency in the provision of information to consumers and enhance consumers' understanding of add-on products. CISGIL broadly agrees with the Commission's proposal that clearer descriptions of add-on products should be provided. CISGIL does not, however, believe that meeting Plain English standards is necessarily the only means by which this can be

achieved and does not support a remedy that would require descriptions of add-ons (or any other product) to be pre-approved.

6.18 CISGIL agrees that it is important to ensure that the information provided is easy for consumers to understand, is not unnecessarily complex and is of use to them. Further work should be undertaken with insurers, consumer groups and the FCA to assess what relevant information should be included and the format of any such information so that the remedy is structured in the most effective and 'consumer-friendly' way. For example, CISGIL would support a solution in which full information is available to the customer, but the information is provided in graduated levels of detail. This should reflect modern consumers' approaches to receiving information, including (for many younger customers) through videos and infograms, as well as 'click throughs' or pop-ups that reveal further detail. Insurers should, however, retain flexibility over the exact content and display of this information.

6.19 In CISGIL's experience, customers often suffer from 'information overload' and do not want to and do not read detailed information. Therefore, concise summaries of key features should be considered as sufficient, provided that additional detail is available for those customers who do wish to read it.

6.20 CISGIL considers that this remedy would be best implemented and monitored by the FCA. The FCA is conducting its own market study into general insurance add-on products, and could play a key role in issuing guidance on the quality of descriptions and for monitoring on-going compliance. It is notable that its market study into motor legal expenses insurance has already led to many insurers (including CISGIL) enhancing the quality and clarity of information that they provide for all add-on products.

7 THEORY OF HARM 5: MOST FAVOURED NATION CLAUSES IN PCW CONTRACTS WITH INSURERS

7.1 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 therefore in principle supports the Commission's proposal that 'wide' MFN clauses should be prohibited. However, CISGIL does not agree with the provisional finding that 'narrow' MFNs do not lead to an AEC. CISGIL remains of the view that all MFNs, both 'wide' and 'narrow', produce anti-competitive effects and therefore considers that the use of all forms of MFN clause by PCWs should be prohibited: it will address this issue in its response to the Report.

Remedy 5A: Prohibition on 'wide' MFN clauses

7.2 CISGIL welcomes the proposal to prohibit 'wide' MFNs and considers that it would be most effective to impose this prohibition by way of an enforcement order. It will be necessary to define appropriately what clauses are permitted, taking into account any possible circumvention techniques, such as prohibiting insurers from using 'cashback' sites or free gifts with direct sales, as well as selective quoting and ranking policies to disadvantage insurers which sell products directly.

7.3 CISGIL agrees that the prohibition on 'wide' MFNs will 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.

7.4 However, CISGIL is concerned that a prohibition of only 'wide' MFNs will lead to unintended consequences for the sale of insurance by both PCWs and direct sales channels (such as insurers' own websites). With the abolition of 'wide' MFNs, an insurer can in theory agree different premiums with different PCWs. However, the insurer will still be constrained not to advertise on its own direct website a premium lower than the highest price agreed with a PCW, in order not to undercut that PCW. 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. This requiring the insurer's directly offered price to be no lower than the highest price it offers on any PCW. 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, PCWs and their own website.

7.5 This will be necessary in order to avoid both technical issues and customer confusion that would otherwise arise, as 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.

7.6 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.

7.7 [✂].

7.8 The implementation costs surrounding the prohibition of 'wide' MFNs will also be significant. Insurers will have to agree individual arrangements with PCWs, which will require the development of sophisticated systems to monitor and identify where sales have originated from and consequently which pricing point is applicable to individual quotes and to which PCW the insurer is required to pay a commission.

7.9 If only 'wide' MFNs are prohibited and 'narrow' MFNs remain in the market, this will lead to:

(a) all PCWs maintaining or introducing narrow MFNs with all insurers to eliminate price competition not only with an insurer's direct sales proposition but also between PCWs; and

(b) more insurers adopting a strategy of maintaining different brands or products for its 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 cost 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 direct channels could also lead to customer

confusion (especially where this is combined with Remedy 4A and the provision of add-on pricing information).

7.10 CISGIL believes that all MFNs should be prohibited as a matter of principle, and that, in addition, there would be unintended negative consequences from prohibiting only wide MFNs, which would enable PCWs to evade the effect of Remedy 5A. Therefore, CISGIL considers that it is both necessary and practicable to prohibit all MFNs and measures of equivalent effect.

Remedies the Commission is not minded to consider further

Prohibition of all MFN clauses

7.11 As noted CISGIL considers that 'narrow' MFNs also lead to an AEC and should be prohibited. As explained above, 'narrow' MFNs should in any event be prohibited, as their existence undermines the effectiveness of Remedy 5A.

7.12 Therefore, the prohibition of all MFN clauses would be a reasonable and practicable way of addressing those detrimental effects. It is acknowledged that this would require PCWs to change their existing business model, which they can clearly do, so maintaining their beneficial aspects for consumers. PCWs are, in effect, brokers: brokers are able to compete effectively and profitably 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.

17 January 2014