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# JOINT RESPONSE SUBMISSION:

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## PRIVATE MOTOR INSURANCE: RESPONSE TO NOTICE OF PROVISIONAL FINDINGS

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### **Background:**

This response reflects the collective representations of two companies:

- Direct Accident Management, a reputable Claims Management Company (CMC) and credit hire company representing 15-20% of the credit vehicle hire UK market and c.50% of the impecunious UK vehicle hire market.
- Exchange Insurance Services, a reputable Commercial Insurance Brokering company who having operated in the sector for over 20 years, have vigorously campaigned for tighter regulation and recognition of CMCs that help serve ill equipped customers in liaising with large insurance companies.

Additionally, in preparation to this response, the companies have solicited extensively the views of 21 geographically dispersed reputable claims management companies, law practices, car hire firms and Insurance Brokers, collectively employing c.4115 people in England and Wales.

### **Key Points:**

- The Group emphatically endorse the provisional findings by the Commission with respect to information asymmetries and anti-competitive distortions in the market arising from referral fees, MFN Clauses, PCW practices, add-ons.
- However, with respect to the potential AEC arising from the separation of control and liability we feel the findings fail to fundamentally appreciate counter balancing factors relating to the current law which recognise the freedom of choice of claimants and their right of control. A significant negative externality will arise from the separation of control and cost as we believe that the claimant's fundamental rights currently enshrined in law will be compromised, disproportionately affecting representation for impecunious or otherwise disadvantaged consumers. Paradoxically, such a measure will only magnify frictional and transactional costs and further disadvantage claimants who already struggle hugely with insurers with respect to handling and the payment of claims.
- Our key assertion, based on our empirical evidence of operating within the market for over 30 years, is that the principle of separation of cost and liability is not the source of significant anti-competitive distortions in the market. Overwhelmingly the excessive transactional and frictional costs are caused by inefficiencies and ineffectiveness within large insurance companies to process claims which manifest themselves in greater costs suffered by all parties. This is empirically validated by debtor days, response times and widely cited in Court cases and by CMCs, smaller insurances companies and vehicle hire companies.

## INTRODUCTION AND EXECUTIVE SUMMARY

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Whilst the group largely concurs with the Competition Commission's provisional findings published on 17th December 2013, which had provisionally found an adverse effect on competition (AEC) within the private motor insurance industry, the Group feels that the Commission has failed to identify a material anti-competitive factor, namely the gross inefficiencies arising from the ability of Insurance companies to process claims and appreciate a potential negative abrogation in the rights of claimants.

Specifically, in relation to the provisional findings we feel that fundamentally:

- We agree with the Competition Commission's provisional findings with respect to asymmetrical information provided to consumers and its providers given the current existence of add-ons, referral fees and practices of MFN wide clauses with respect to PCWs. Our response to the potential remedies in our submission dated 17<sup>th</sup> January encourages implementation on a stand-alone basis given the beneficial competitive impact they will have on motor insurance costs and the augmented benefits to the consumer.
- However, the Competition Commission provisional findings relating to distortions in competition in the market arising from the separation of liability and control are fundamentally flawed, failing to recognise a negative externality arising from the conclusions of its findings: the abrogation of the rights of clients in terms of freedom of choice and costs which is currently enshrined in law.
- We thus feel the proposed findings and their consequences relating to enabling at fault insurers being able to handle non fault claims will only amplify these excessive frictional costs and further severely disadvantage claimants who are ill equipped (by virtues of language, money or circumstance) to deal with large insurance companies are non-material and fail to address the fundamental issue.
- Specifically, we feel the Competition Commission fail to comprehend the current appalling experience most consumers suffer at the hands of insurers following a road traffic accident even when they are represented by highly competent and qualified lawyers and CMCs. In our collective empirical experience of 35 years of operating in this sector, payment of repairs by insurance companies in admitted claims takes an average of ten months and for hire charges over twelve months.
- Rather than the issue of separation of cost and liability the distortions of competition arise materially from the incompetence and inefficiencies of large insurance companies whom themselves structurally buffer excessive frictional and transaction costs. Namely, through the time taken by them to pay action and settle cases. For instance, the average debtor days are one year for companies such as Direct Accident who work solely on behalf of non-fault victims. Postal response delays of up to nine months have been often experienced with at fault insurers. Delay in virtually every case results in significant costs to the insurer both in terms of repairs, car hire and a lack of client retention. Excessive costs can significantly be cut by measures that facilitate the insurance industry to deal with matters competently and efficiently.
- We would also question the materiality of these findings and hence proposed remedies which fail to recognise that claims where liability is established from inception relates to a small minority of instances. In the collective 35 year's empirical experience of operating in this sector, these remedies at best relate to 10% of all claims. In the vast majority (90%) of incidents when a motor accident arises there is little clarity in terms of which party is liable in the first instance and at fault insurers are reluctant to concede liability.<sup>1</sup>

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<sup>1</sup> There are three fundamental reasons why liability is not established in the vast majority of cases: following an accident most people are traumatised and suffer emotional displacement to varying degrees; conceding liability on car repairs also implies conceding liability for personal injuries and there are very subjective authentic but differing accounts of the rationale of an accident

## SEPERATION OF NON FAULT DRIVER CLAIM CONTROL AND MANAGEMENT OF AT FAULT DRIVER COSTS

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We feel that the Commission's provisional findings with respect to an AEC arising from the separation of cost and control (and inter alia the provisional remedies) is flawed and at best, incomplete.

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MATERIALLY, THE GROSS INEFFICIENCIES OF FRICTIONAL AND  
TRANSACTIONAL COSTS ARISING WITHIN THE SUPPLY CHAIN LIE IN THE  
INSURANCE COMPANIES FAILURES IN PROCESSING CLAIMS EFFICIENTLY  
AND COMPETENTLY.

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- These are manifested in significant delays in response times and settling cases. Currently, even in admitted cases, claimants who are represented by competent lawyers and CMCs experience significant delays in response times and in settling their cases. It is the experience of this group that in 85% of cases, court proceedings are issued to enforce payment by insurance companies who sometimes can take up to 9 months in terms of backlog in even opening the post. For example, in several cases in the Liverpool County Court, Direct Line has admitted to postal delays of up to 9 months whereby post is ignored. Inevitably, this had led to a huge number of case proceedings against insurers who themselves fail to attend Court, and only take action when bailiffs are instructed to enforce debt.
- Insurers will not speak to third parties unless they have had details from their own insured and often this can take a considerable period of time. At fault drivers are rarely keen to notify their insurers or give full details of what happened. The Competition Commission should also examine the response time of insurers to third party enquiries as it is our experience that telephone answering can take up to an hour before even speaking to anyone. Even then they have little interest until they have heard from their own client.
- These costs are compounded in the majority of cases where the at fault insurer regularly disputes the liability in terms of quantum or nature and the claims made through lawyers are challenged four or five times over a period of months rendering unrepresented claimants helpless. Even when liability is established, the actual amount is disputed. Some insurers are more sympathetic than others to non-fault claimants but the average motorist has no way of knowing who they are until it is too late. Often big brand names are more aggressive with claimants than small ones. Some major insurers actually charge for incoming calls and waits to be answered occur daily – a 30 minutes delay time being commonly experienced.
- As another example of inflated costs within the supply chain, Armstrongs and Direct Accident, who provide replacement cars, employ in excess of fifty people to chase outstanding repair invoices. This is in addition to the normal fee earners who chase the outstanding repair invoices on a regular basis. The fact is that insurers take on average ten months to pay repair invoices where liability is not in dispute.

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THE LACK OF SEPERATION OF LIABLITY AND CONTROL IS  
FUNDAMENTALLY ENSHRINED IN ENGLISH LAW TO ENABLE FREEDOM  
OF CHOICE AND ENSURE ACCESS TO JUSTICE FOR BONA FIDE CLAIMANTS

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- The Commission fail to appreciate the asymmetry in terms of interest between a not at fault claimant and an insurer who is attempting to settle the claim for their policy holder directly. Indeed the current law, which is designed to protect claimants and enable their freedom of choice, recognize the necessity for an equal access to justice and the use of experts equipped to represent ill-equipped, inexperienced and emotionally displaced individuals. The Transport Select Committee noted in their recent report relating to whiplash claims when commenting on raising the threshold of the small claims track limit, (which we believe is akin to the effects of enabling at fault insurers manage costs), *“We believe that access to justice is likely to be impaired, particularly for people who do not feel confident to represent themselves in what will seem to some to be a complex and intimidating process. Insurers will use legal professionals to contest claims, which will add to this problem”* ( paragraph 50).
- If at-fault insurers are given the opportunity (at any stage of the process for whatever element of the claim) to control the claim, taking away the claimants right to freedom of choice, then a fundamental principle of English law and access to justice will be compromised in lieu of attempting to redress distortions in the market.
- The negative externality arising from redressing separation and control disproportionately affects impecunious claimants and/or those whom are not equipped (by virtue of language or learning difficulties, understanding of procedure) to make representations themselves. In some areas, for instance, 90% of claimants are from ethnic groups who do not have English as their first language. Given their language barrier they will be significantly disadvantaged in their ability to proceed with a claim as they will require translation and other ancillary services.

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## FINDINGS RELATING TO CONTROL NON-FAULT REPAIR, WRITE OFF COSTS AND COMPULSORY AUDIT OF QUALITY OF VEHICLE REPAIRS

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- The Group agree with the provisional findings of distorted competition between repairers, insurance companies and claim managers with respect to sub-optimal monitoring of the effectiveness of the quality of repairs and the significant limitations to claimants' ability to assess the quality of car repairs.
- The group has regularly experienced practices of some insurers that cause repair standards to be put at risk in order to drive down costs. Accident victims should have the security that their vehicle is repaired to a proper standard and not compromised in order to achieve costs savings, as highlighted in the Channel 4 Dispatches program on 7/1/13.
- Equally, our collective 30 years of operating in the industry show that frequently insurers tie up with approved repairers. By way of illustration of the malpractice we would like to highlight the case of Royal Sun Alliance, who were found guilty by the Court of Appeal of inflating the cost of repairs in order to recover higher fees from other insurers.
- The cost of car insurance is increased by the insurer's inability to pay write-offs of a non-fault victim's vehicle quickly. In our collective experience, the average write-off takes approximately sixty to seventy days to be paid by the insurers. This inevitably results in a significant increase in the length of car hire. However, if insurers were to pay the pre-accident value quickly upon receipt of a reputable engineer's report, the cost of car hire would fall significantly both in terms of rate and period.
- The Group also concur with the Competition Commission's findings in the monitoring of repairs. However, in our experience, the quality of repairs provided by the insurer is often poor. This is largely attributable to the fact that the insurance company employs an in-house assessor to visit the repairers. Given cost considerations, a poor hourly rate is imposed upon the repairer with an insufficient number of work hours to complete the repair being also imposed on the repairers. This inevitably leads to the repairer having to cut corners resulting in repairs that are less than satisfactory. This is validated by evidence from repairers who carry out large volume insurance contracts who consistently report minimal profits with massive overheads and/or losses being incurred.
- We agree with the Competition Commission's requirement that a client/consumer has a right to be serviced with proper repairs to a decent standard. This will inevitably result in increased hourly rates (to ensure that high quality staff are attracted and retained) and increased repair periods.
- The insurance industry constantly worries about a lack of customer retention and incurs significant costs in re-attracting consumers who change insurer. If they improved on the quality of repairs to a good standard they will ultimately tackle this issue and yield significant savings resulting in ultimately beneficial reductions in premiums to consumers. In other words, it is the opinion of this Group that if the insurance industry treated their existing and potential customers fairly then they will not have to expend significant sums of money in trying to replace customers by attempting to attract new customers!!

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## FINDINGS WITH RESPECT TO ADD-ONS

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- The Group agrees with the provisional findings relating to information asymmetries between motor insurers and consumers with respect to the sale of add-ons; and that these render a point-of-sale advantage to motor insurers when selling add-ons.
- Our experience echoes the provisional conclusion that the distortions in competition arise as it is more difficult for consumers to identify the best-value offers in the market and do lead to consumers purchasing products at an inflated price.
- In fact, we have found the existence of add-ons to be a cynical way of inflating costs of motor insurance premiums. We particularly, draw the Commission's attention to the Financial Conduct Authority's Thematic Review on Motor Legal Expenses Insurance of June 2013, which highlights the ways in which some firms have "automatically bundled to the core motor policy, increasing the total premium by, say, £50 to £60." Page 17, section 3.23. That is to say, insurers lead the customers to believe that they need to have these add-ons at a cost of £50-60 when in fact the true value of the add-on is 50p at the most. We recommend the Competition Commission reference the aforementioned Thematic Review as proof of the practices that some insurers engage in.

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## FINDINGS WITH RESPECT TO PCWS AND MFN CLAUSES

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- The Group's experience concurs with the provisional findings with respect to wide most favoured nation clauses between motor insurance providers and price comparison websites (PCWs), resulting in distorted competition between PCWs who are less incentivised to innovate and hence reduce consumer motor insurance premiums.
- We have found that these clauses do prevent insurers from offering a cheaper price to consumers through another website, as well as preventing insurers from rewarding safer and honest customers. However the Competition Commission should be aware of the anti-competitive possibility of insurance companies offering a lower price through one PCW over another in order to push the other PCW out of business, resulting in only a couple of sites (perhaps an oligopolistic structure) and the resulting less pressure on pricing.
- Also, in our collective experience, we would like to highlight the fact that this issue does not only relate to a comparison on price but also on clauses within the product. For example, Aviva and Direct Line are not on PCW as they argue that on a strictly price basis their products will come out very unfairly but their products in terms of add-ons and customer service are far superior.
- PCW sites are paid commission by insurance companies and with the larger insurance companies these commissions may influence matters adding significantly to premiums. Standardising commissions with no hidden over-riders paid by insurers may offer a level playing field with consequent greater competition and a beneficial effect to customers.
- The Commission should also look into the wide range of commissions paid by Insurance Companies to different distribution channels. The same policy from the same insurer can vary in commission paid from 5% to 30% or more if overrides are included. This is clearly anti-competitive.

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## SUBMISSION GROUP

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Company	Location	FTE
Direct Accident Management Ltd	Ormskirk	350
Exchange Insurance Services Ltd	Liverpool	25