Helphire Group plc

Response to Provisional Findings Report

1 Core aims of this response

1.1 To help the Commission achieve a rational, robust and consumer-oriented outcome.

1.2 To draw the Commission's attention to critical distortions in its data and its application, so as to inform the Commission's further findings as to the real (and negligible) cost of subrogation.[1]

1.3 To demonstrate the clear and substantial value of credit hire to consumers (as against its actual and minimal cost) as that model is currently operated.

1.4 To reinforce the need to maintain, rather than undermine, market safeguards that help preserve the fragile balance of power between consumers and insurers.

2 Introduction

2.1 This submission sets out Helphire's response to the Competition Commission's (**Commission**'s) provisional findings report dated 19 December 2013 (the **Provisional Findings**).

2.2 Helphire has, as part of its response to the Commission's Notice of Possible Remedies (the **Remedies**), already questioned the timetable set by the Commission for responses. Helphire considers that requiring comments in respect of the Remedies significantly in advance of comments on the Provisional Findings upon which the Remedies are based, compromises the potential effectiveness of the process.

2.3 At the same time, Helphire acknowledges the Commission's desire to receive further feedback on the issues raised in the Provisional Findings, and that no decision has so far been taken on the Remedies. Helphire appreciates that the Commission may have limited discretion as regards timings given the statutory deadline imposed on it.

2.4 As part of this response, Helphire wishes to raise substantive concerns with various important conclusions drawn by the Commission in the Provisional Findings, which Helphire believes undermines the relevance and proportionality of certain Remedies.

2.5 Helphire is confident that once this information is drawn to the Commission's attention, the Commission will not hesitate to revisit the Provisional Findings and Remedies as regards the separation of cost liability and cost control. Helphire reiterates its commitment to working with the Commission in developing its conclusions and proposals in this area.

2.6 It is Helphire's view that there is no adverse effect on competition (**AEC**) to address in the private motor insurance (**PMI**) market, at least as regards the separation of cost liability and cost control. Therefore, no Remedies are required concerning this aspect of the Commission's investigation.

2.7 The main purpose of this response is to explain why this is the case and why the associated Remedies are ineffective, far more onerous and invasive than necessary and liable to create unintended adverse effects for consumers which will outweigh any perceived benefit.

[1] Based on Helphire's calculations, the cost of credit hire per policy is <£1 (significantly). In fact, if the Commission were to factor in credit hire specific benefits – for example, recovery of policy excess and protection of NCB – the consumer is, in fact, economically better off under the credit hire model. This is without taking into account the more fundamental benefits of credit hire.

2.8 While Helphire is concerned at the approach adopted by the Commission in respect of the Provisional Findings, and the evidence that the Commission appears to be relying on to support the Remedies, it believes that the best way of ensuring an effective and proportionate outcome is to work with the Commission pro-actively and to challenge assumptions, evidence and conclusions where relevant.

2.9 As set out in previous submissions to the Commission, the PMI investigation was prompted by a pronounced and relatively rapid rise in PMI premiums. Helphire and other non-insurer parties have maintained consistently, and with strong justification, that this rise was not attributable to credit hire, not least because credit hire revenues actually declined over that period; equally, over the last year, PMI premiums have dropped at record rates despite the continued presence of credit hire.

2.10 Although only a snapshot of a limited number of premiums, according to the AA British Insurance Premium Index:

> *Over the last three months of 2013, the AA's Shoparound quote…fell by a further 4.6%. And at 14.1% over the year this is the biggest annual fall ever recorded by the Index*.[2]

2.11 It follows that despite certain costs associated with credit hire, their impact on PMI premiums is, at worst and as this response intends to show in more detail, negligible.[3]

2.12 At the same time, credit hire addresses a critical consumer need; however, the benefits embodied by credit hire operators (**CHO**s) and, indeed, claims management companies (**CMC**s), go considerably deeper than the provision of temporary replacement vehicles (**TRV**s) and other services by such providers. In particular, it is generally accepted that their presence has incentivised insurers to provide improved quality services to non-fault claimants (if only to avoid third party intervention)[4], including, for instance, a like-for-like replacement car in many cases.

2.13 Put simply, CHOs and CMCs addressed the needs of the consumer when the insurance industry failed to do so, and has since left the insurance industry with no option but to improve its offering. It is therefore vital that the Commission does not pursue Remedies that allow insurers to compromise the credit hire or claims management proposition, particularly on the basis of negligible and disputed cost savings.

2.14 Notwithstanding any dispute as to the cost of credit hire, even if one accepts the Commission's figures, the associated cost per policy is small (£6-£8). Indeed, according to Helphire's own analysis, explained in **section 4** below, the actual figure is inconsequential (at <£1 per policy, which figure also excludes the significant added-value represented by credit hire). **Annex 1** of this response calculates the actual cost of credit hire as against the alternative proposed by the Commission - direct hire. Indeed, taking into account credit hire-specific benefits that can be quantified in a relatively straightforward manner, such as recovery of policy excess and protection of NCB, the consumer is economically better off under the credit hire model.

2.15 Given the obvious benefits of credit hire to consumers (which, as we have shown in our response to the Remedies, cannot be duplicated reliably through ceding greater control over the management of the claim to the fault insurer or requiring consumers to self insure regardless of fault), it is highly prudent, if not essential, that further consumer testing is undertaken to assess actual credit hire costs against the value attributed by consumers to credit hire and consumers' understanding of the risks they could face without it.

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[2] http://www.theaa.com/newsroom/bipi/201401-bipi.pdf

[3] Helphire can only conclude that the impact of credit hire fees on premiums has been exaggerated to the Commission. This has led the Commission to the view that those that stand to gain the most as a result of radical changes to the separation of cost liability and cost control, namely insurers, have little power, make less profit and present no risk to consumer welfare if greater control over the management of claims is placed in their hands. This position is not credible as this response will show.

[4] See, for example, paragraph 42 of the Summary of the Provisional Findings Report.

3 Executive Summary

3.1 Helphire acknowledges that certain elements of the Provisional Findings, namely:

3.1.1 those that may facilitate developments around greater transparency for consumers for the purchase and use of PMI and associated products; and

3.1.2 those that might support continued improvements to the PMI industry's General Terms of Agreement (**GTA**),

have the potential to improve consumer welfare without creating undesirable side effects.

3.2 At the same time, Helphire considers that the Commission has not shown to the requisite standard of proof that an AEC has arisen as regards any theory of harm relating to the separation of cost liability and cost control or, further, that the possible legislative Remedies affecting credit hire operators (**CHO**s) would be proportionate.

3.3 Helphire's concerns are described in more detail in **section 4** below; however, in particular:

General concerns

3.3.1 Helphire considers that the Commission has not yet evidenced how those features of the PMI market that the Commission has described as giving rise to an AEC have actually manifested themselves in consumer harm.

As indicated in **section 2.10** above, actual trends in the availability and pricing of PMI do not support any Provisional Findings of an AEC.

3.3.2 The Commission's guidance indicates that it will apply a 'balance of probabilities' test in proving an AEC; in other words, the Commission is required to demonstrate that, on the balance of probabilities, an AEC has arisen. Although, therefore, the CC has some discretion in determining an AEC, its evaluation of the relevant evidence must meet the appropriate civil standard.

3.3.3 The Competition Appeal Tribunal has sought to delineate this standard as follows:

> *"[It is a] common sense proposition that, within a wide margin of appreciation, the depth and sophistication of analysis called for in relation to any particular relevant aspect of the inquiry needs to be tailored to the importance or gravity of the issue within the general context of the Commission's task"*[5]

3.3.4 Helphire does not consider that the Commission has met this standard, particularly in light of the data that Helphire proposes to outline in this response. There is no credible link between those features of the market investigated by the Commission and identified as giving rise to an AEC, at least as regards the separation of cost liability and cost control, and any rise in the cost of PMI.

No material link between the cost of subrogation and premiums

3.3.5 Rather than being able to demonstrate a clear and tangible AEC, the Commission has undertaken a superficial or highly theoretical economic analysis linking credit hire costs to premiums, which is not sustainable.

3.3.6 In doing so, in addition to the points raised in this response, it has overlooked the published work of Professor Paul Fenn, Dr Dev Vencappa and colleagues (the same group that advised the Government on the effects of changes in funding of Personal Injury litigation). Through an examination of the profitability of insurers, the research undertaken by these economists demonstrated that competition in PMI has, in fact, declined over time and that the persistence of profit in insurers demonstrates that competition is not as strong as it should be given the

[5] Barclays Bank plc v Competition Commission [2009] CAT 27, paragraph 21

number of participants. This casts material doubt on the Commission's proposition that the purported AEC affects premiums in the way its theory would suggest. This is explained in more detail in Helphire's analysis of Appendix 6.4 and 6.5 of the Provisional Findings (Please see **sections 4.11** to **4.20** below).

3.3.7 In Helphire's view, it is absolutely critical that the Commission demonstrates the link between the AEC (or its features) and any rise in the cost of PMI to the balance of probabilities given the radical and adverse impact of the Remedies relating to the separation of cost liability and cost control.

Concerns as to the calculation of costs (overestimation of credit hire; artificially low direct hire)

3.3.8 Helphire considers that the Provisional Findings are, as regards the separation of cost liability and cost control, theoretical, predicated on assumption and anecdotal evidence and rely on a flawed assessment of costs. For example, as regards credit hire rates alone (we address direct hire later):

Helphire considers that Table 6 of Appendix 6.1 of the Provisional Findings is comprised of materially overestimated credit hire rates (which the Commission is using to establish the magnitude of the AEC as regards the separation of cost liability and cost control). In particular, in Table 6 and in the calculation of the estimate of the overall AEC, the Commission has used an 'overall credit hire daily rate'. This rate is derived by taking the credit hire revenue for CHOs and dividing it by the number of hire days. This measure should not be used for a number of reasons:

(i) It includes non-GTA[6] rates paid by non-insurers that cannot possibly add to the AEC to the consumer.

(ii) It includes non GTA insurers that could, if they wished, join the GTA and pay a lower rate.

(iii) It includes cases that insurers, deliberately or as a result of inefficiency or inertia, have allowed to leave the GTA and so incur a higher rate.

(iv) It includes avoidable late payment penalties. It is not credible to penalise CHOs (as a result of an inflated AEC) as a result of insurer indolence or inertia. In the case of any valid challenge to the claim or rates etc, the 'clock' resets so no penalty is levied. This is insurer inefficiency, and is not caused by the non-fault claim *per se*.

3.3.9 Taking this type of distortion into account, the Provisional Findings fail to demonstrate a balanced and comprehensive comparison of credit hire and direct hire costs and do not address the actual counterfactual, which is the impact on consumers of no mobility solution or a highly compromised one post-accident.

3.3.10 Indeed, for the purposes of establishing a solid base for any associated Remedies, the Provisional Findings also underestimate the inherent conflict of interest between at-fault insurers and non-fault consumers.

3.3.11 The Remedies concerning cost liability and cost control remove or undermine consumers' legal rights in favour of allowing insurers to strip out certain costs, but without any clear commitment to provide an alternative service that, in consumers' circumstances post-accident, will be adequate.

3.3.12 Helphire notes that the Commission records the potential for a diminution of service, but it does not clearly or comprehensively attempt to assess the worth of the benefits derived by consumers as a result of credit hire,

[6] General Terms of Agreement

namely, the provision of an effective and comprehensive solution (which goes beyond the availability of a car) at a time when consumers are most vulnerable.

3.3.13 Helphire is concerned that the Commission undervalues the support provided by CHOs to consumers in the determination of liability. The Commission accepts that if the third party insurer has any doubt as to liability, it will not provide mobility or repair services. to the affected consumer. The Commission further accepts that CHOs make their own liability assessment and spend considerable resource in so doing. It follows that not only will CHOs provide services when third party insurers will not, CHOs will subsequently support their customer's view of liability in all subsequent interactions with the third party insurer.

3.3.14 It is clear from the Commission's observations that it questions the added-value offered by the CHO in connection with the provision of a mobility solution and so allocates little weight to such additional support.[7] However, the beneficial effects of the CHO's service for the innocent consumer are far wider than that the Commission's approach permits. The recovery of the consumer's insurance excess, their insurance premiums in the future and their NCB may all be at risk without the intervention of the CHO. Therefore, while, numerically, the number of liability disputes are small (circa 25% of claims) the effects on individual consumers are large and the Commission should calculate this effect and take it into consideration within the purported AEC.

3.3.15 Helphire is concerned that the Commission's seemingly unbalanced assessment (and, at various stages throughout section 6 and Appendix 6 of the Provisional Findings, its wide ranging redactions of underlying cost and other data) means that it is impossible to establish the merit of the Provisional Findings or the proportionality of any associated remedies.

3.3.16 To this end, Helphire will request, in separate correspondence with the Commission, access to some of the data, which it considers will help it improve the Commission's understanding of this issue. There are so many questions over the provenance and validity of the purported AEC (as this response will explain), it is critical that the Commission engages with Helphire further and in-depth. The request to be made by Helphire is central to the issues that the Commission has provisionally determined in a manner which is strongly adverse to Helphire's interests and those of consumers.

3.3.17 The Commission has proposed Remedies which will drastically and adversely affect Helphire's business. In the circumstances, it is essential as a matter of procedural fairness that Helphire should be granted access to the data requested so as to enable it to fully address the Provisional Findings. Helphire considers that this demonstrates a sufficient interest to justify the request for access to the data

4 Separation of Cost Liability and Cost Control (Theory of Harm 1)

4.1 The Commission's conclusion - that AECs have arisen as a result of the separation of cost liability and cost control – is not substantiated in the Provisional Findings.

4.2 The Commission argues that CHOs and other intermediaries charge fault insurers more than the cost incurred in the provision of replacement cars and, in turn, compete via referral fees to obtain work from insurers.[8]

4.3 Helphire rejects the implications drawn by the Commission from this statement. Charges levied by CHOs and other operators reflect a range of costs, which have not been fully factored into the Commission's calculations. Helphire does not inflate its

[7] Paragraph 6.78 of the Provisional Findings
[8] Paragraph 43 of the Summary of the Provisional Findings

margins, and would be surprised if other CHOs did - given the mechanisms available to insurers to challenge excessive cost. Any review of the accounts of CHOs will reveal that profits are, if anything, marginal, rather than excessive.

4.4 Credit hire rates are higher than direct hire rates; however, the difference is, in reality, by no means as significant as the Commission currently believes. In any event, the two serve a different purpose. To compare them and infer that credit hire rates are excessive because they are higher than direct hire rates is not sustainable. Such a proposition is based on a theory that frictional costs can be eliminated entirely from the PMI market without harmful consumer effects arising.

4.5 Moreover, such a theory creates risks in circumstances where the non-fault claimant is seeking to exert their legal rights against the fault insurer, whose objective is to limit liability and costs. The Provisional Findings Report considers this perspective,[9] but it does not lend it sufficient weight and wrongly reverts back to comparing credit hire and direct hire costs.

The cost of separation

4.6 The Provisional Findings attempt to quantify the cost to consumers of those AECs surrounding the separation of cost liability and cost control.

4.7 The Commission estimates that the total impact of separation on fault insurers' costs is £249 million.[10] This figure is based, in part, on the assumption that the average cost of a replacement car provided on credit hire is approximately £640 more expensive (for each of the 301,000 credit hires in 2012 as estimated by the Commission) than in the absence of separation (where the car is provided on a direct hire basis by or on behalf of the fault insurer).

4.8 This estimate results in a cost of £193 million (total credit hire cost over direct hire cost), which when combined with the estimated cost of credit repair (£51 million) and write-offs (£6 million), gives an estimated figure of £249 million.

4.9 If, according to the Commission, this figure is adjusted to reflect revenue earned by PMI providers (through referral fees etc) which amounts to *"somewhat less than £104 million"*[11], this results in:

> *"a net adverse effect on consumers of between £150 million and £200 million per year."*[12]

4.10 The Commission surmises that since the estimated gross written premium across the UK PMI market is approximately £11 billion (across 25 million policies), this net adverse effect corresponds to 1.3 to 1.8 per cent of the average premium, or about £6 to £8 per motor insurance policy.[13]

Why the cost of separation is inflated

A. General observations regarding Appendix 6.4 and 6.5

4.11 These Appendices represent the core justification for the AEC in the absence of any empirical or tangible evidence that there is any effect on PMI premiums as a result of the separation of cost liability and cost control. They comprise, to all intents and purposes, an entirely theoretical model and purport to demonstrate the 'likely' effects of changes in revenue and costs and the pass through of each independently.

4.12 In its model, the Commission has made a number of simplifying assumptions. One of these is that the role of large brokers is ignored.[14] The Commission claims that higher

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[9] See, for example, paragraph 6.17 of the Summary of the Provisional Findings
[10] Paragraph 6.72 (Table 6.3) of the Provisional Findings
[11] Paragraph 6.74 of the Provisional Findings.
[12] In giving the range of £150 - £200 million, the Provisional Findings do not offer any clear, evidence-backed explanation as to why, with regard to the passing on of any benefit to consumers, the figure of £104 million should be reduced by up to £55 million (thus resulting in a £200 million cost as opposed to a £145 million cost to consumers).
[13] Paragraph 51 of the Summary of the Provisional Findings
[14] Paragraph 18 of Appendix 6.4 of the Provisional Findings

costs and revenues will affect premiums so the brokers can, to all intents and purposes, be treated as insurers. This, in our view, is not the case.

4.13 Large brokers, some with their own brand and brand loyalty from customers, receive 'net rated' products to which they can add their own commission, or no commission at all, or sell at a net loss. This they do because they earn other income streams from the sale of 'add ons', premium finance, legal expenses insurance cover, breakdown cover, even home insurance.

4.14 The Commission asserts that the costs associated with separation are spread equally over claims as all motorists have an equal chance of being the victim of a non-fault accident insured by an entity that is able to 'earn a rent' from the claim.

4.15 Brokers are assessed by insurers according to the loss-ratio of the 'account'. And the rates offered to that broker depend upon volume and loss ratio. As all claims are affected equally by the costs and the broker retains all of the revenue then the 'rent earning' activities are encouraged in a Malthusian sense. If insurer A decides that this activity is detrimental, it may choose to increase rates, the only effect being that their products slide "down the screen" and another insurer's product is sold. So the pass through of revenue could be far more for brokers than it is for insurers.

4.16 In Paragraph 5.7 of the Provisional Findings, the Commission posits that the PMI market is fragmented amongst a large number of PMI providers, inferring that competition in the PMI market place is strong. It notes that the Herfindahl-Hirschman index is less that 1,000.

4.17 However, other evidence would suggest that the competition in the PMI market is declining over time as the number of motor insurers declines (for example, Diacon & Vencappa, 'Profit Persistency in the UK Motor Insurance Markets', November 2011):

> *"Thus all three markets [PMI, motorcycle and fleet insurance] appear to lack the intensity of competition to prevent profits persisting from one-year to the next (the short-run measure) or to equalise long-run equilibrium profits. The results suggest that the UK motor insurance industry markets may not be quite as competitive as is commonly believed, and a handful of firms in each market appear able to generate significant positive long-run equilibrium profits over-and-above the norm."*[15]

4.18 Also, the persistency of profit demonstrated in this paper suggests that competition in the market is not working as it should (contrary to the views expressed by the Commission in Paragraph 26 of Appendix 6.4). Research into the so called 'insurance cycle' (Fenn & Vencappa, 2012) shows: first, that the reason for the rapid rise in premiums that started the OFT and then the Commission's investigation could not possibly be associated with separation; second, that underwriting profits associated with even one player in the market have the potential to result in lower premiums.[16]

4.19 The Appendices treat the differential in cost reduction through intervention as 'not significant' and focus on revenue and the overall theoretical increase in costs. The Commission does not then go on to discuss the synergistic effects of cost reduction through intervention coupled with revenue generation.

4.20 As we have highlighted to the Commission previously, insurers with high customer intimacy - the 'direct insurers' - are in a far better position to intervene, and minimise costs, and to maximise revenue. This must mean that they will earn greater profit than the industry underwriting profit and this will pull through into lower premiums. As these are some of the strongest insurers these profits will translate into larger market share and benefit to consumers of lower premiums and runs counter to the Commission's conclusions that cost will pass through more certainly than revenue.

[15] Page 14
[16] "Cycles in motor insurance underwriting profits: Time series and dynamic panel data results", Nottingham University Business School, page 22

Specific concerns around costs

4.21 Aside from the highly marginal impact of the purported AEC in the context of individual PMI premiums (only £6 **-** £8 relying on Commission estimates), Helphire considers that the costs of separation are inflated to a material degree in any event and would dispute them for the following reasons:

4.21.1 The AEC is calculated by the Commission by reference to the size of PMI Market as derived from the GWP figures provided by the ten largest motor insurers, giving an estimated total market size in 2012 of £10.7 billion,[17] which the Commission then approximates to £11 billion in the Provisional Findings.

In turn, the Commission estimates a net adverse effect on consumers of between £150 million and £200 million per year. Since the estimated GWP across the industry is, according to the Commission, around £11 billion, this net effect corresponds to 1.3 to 1.8 per cent of the average premium, or about £6 to £8 per motor insurance policy.

At the same time, the Commission excludes commercial insurance, and the effects on commercial insurance. According to the Commission, the size of the AEC is calculated by reference to non-fault claims generated by the largest insurers. Specifically, in Paragraph 5 of Appendix 6.6, the Commission states that "*We estimated the total number of credit hires in 2012 by grossing up figures for the non-fault insurers and brokers in our sample for those providers' shares of supply".*

However, it essential to take into account the fact that PMI providers do not bear anything like the totality of these claims. Vehicles driven by the negligent party will be a mixture of commercial vehicles and private vehicles. If the negligent party is a commercial entity, the cost (that part of the AEC) will be borne by the commercial insurer.

The major insurers Aviva, RSA, Zurich, Ageas etc have very large commercial businesses. The excesses will often be high with the claims being paid not by the insurer, but by the business being insured. Moreover, many large corporates and public bodies self-insure (their cover is provided internally and independently of any insurer and therefore has no relevance to PMI premiums). This cannot possibly pass through to the consumer as part of the AEC as proposed by the Commission. All the credit hires and repairs resulting from accidents where the third party has a commercial insurance policy must be excluded from the total.

To further inform the Commission's assessment of this issue, the following points are relevant:

(i) According to the ABI, there were 23.3 million private cars, 0.6 million motorcycles and 3.7 million commercial vehicles insured in 2012.[18]

(ii) It follows that with 27 million (four or more wheelers and excluding motorcycles), this means that 13.7 per cent of not-at-fault claimants can be attributed to commercially insured vehicles.

(iii) It is Helphire's understanding that commercial vehicles have different (higher) accident rates (owing to higher mileages) so the 13.7 per cent estimate is likely to be a conservative one.

Indeed, if the Commission were to take the ABI number for commercial insured vehicles (3.7 million) and subtract this from data published by the Society of Motor Manufacturers and Traders in respect of commercial vehicles on the road (4.279 million), this

[17] Paragraph 2.11 of the Provisional Findings

[18] Please see **Annex 2** for a copy of the ABI report.

suggests that just under 600,000 vehicles are not insured in the traditional manner (self-insured etc).

This increases the percentage from 13.7 per cent to 15.5 per cent in terms of the proportion of cost that should be deducted from the proposed AEC.

In other words, the Commission cannot disregard the fact that approximately at least 13.7 percent, if not 15.5 per cent, of accidents (and, by correlation, the same percentage of the estimated 301,000 credit hires) involve commercially insured/self-insured vehicles, where the impact of the accident and claim will not be felt in respect of PMI premiums.

It follows that as a result of this feature alone, the credit hire 'bill' to PMI providers (and, indirectly, consumers) is significantly less than £193 million (the estimated total cost of replacement cars under credit hire). Please see **Annex 1** for the more detailed calculation.

4.21.2 The Commission overestimates credit hire replacement vehicle costs for the reasons set out in **section 3.3.8** above.

4.21.3 The Commission underestimates or disregards altogether relevant direct hire replacement vehicle costs (and any potential subsidy by credit hire of direct hire rates). In particular:

(i) Helphire considers that the sample of direct hire rates used by the Commission to calculate average daily rates relies on a narrow sample of the three largest insurers[19], who are likely to be able elicit lower rates from providers than smaller PMI providers or the market as a whole.

The three largest insurers are not identified but given that one company, Enterprise is the direct hire vehicle supplier for Aviva, RSA, Direct Line Group, AXA, LV=, Ageas, Esure and 80 per cent of Admiral and Zurich (in other words, most of the top 10 insurers)[20] it is reasonable to assume that Enterprise's rates have a material influence.

Direct hire is a very low margin product for hire companies; however, its pricing cannot be assessed in isolation.

[✂, *including reference to Annex 4, also* ✂]

It follows, as indicated above, that the daily rates used by the Commission for the purposes of comparison with credit hire rates are likely to be disproportionately low and not truly representative of direct hire rates across the market, thus giving rise to a distorted (excessive) multiple (2.5x). It also follows that absent credit hire these rates would rise.

Helphire has, using its own data estimated the rate at which direct hire might be offered in the market place. [✂]

(ii) For many of the Remedies proposed by the Commission to be effective in the long term, the rates for direct hire have to stay at these low levels. [✂]

[✂*, including reference to Annex 5, also* ✂]

(iii) The genesis of direct hire rates is obscure. Helphire cannot assess how these rates came to be quoted by the Commission. It is possible that they could contain an element of 'replacement vehicle' rates. These are very low rates of hire that are paid out

[19] Paragraph 32(c) of Appendix 6.1 of the Provisional Findings
[20] Please see **Annex 3** of this response which, based on Helphire's best estimates, indicates the provider of direct hire (DH) solutions to the relevant PMI provider.

following a claim on a replacement vehicle policy. [✄*, including further reference to Annex 4, also* ✄]

[✄]Also, Helphire does not know – based on the data reported in the Provisional Findings - what is included in these 'direct hire' rates, for example, whether they include:

a) delivery and collection;

b) CDW;

c) fuel surcharges etc,

so Helphire and other interested third parties are entirely unable to assess whether such direct hire rates can be compared directly with credit hire rates.

At the same time, Helphire would like to remind the Commission that there is evidence - freely available - on direct hire rates. These are the rates of hire that are offered to non-fault accident victims by third party insurers during intervention activity. Some of these rates are shown in **Annex 6**. All of these rates are higher than the rates quoted in the Commission's findings, which again serves to narrow the differential between credit hire and direct hire rates and thus reduce the magnitude of the disputed AEC.

(iv) By way of a final observation on direct hire rates themselves, Helphire believes that VAT has been wrongly omitted from direct hire rates used in comparison with credit hire rates (which do include VAT), which in turn may have reduced direct hire rates disproportionately and inaccurately (as against credit hire equivalents). This feature must be corrected to allow for a more representative comparison.

In Helphire's view, while it appreciates the challenges faced by the Commission in conducting comparisons, given that the Commission is seeking to undertake a market-wide assessment and in view of the absolutely critical nature of the outcome of the research, it is essential that a wider, more representative sample is used to ensure a true reflection of direct hire rates. Helphire looks forward to assisting the Commission with its analysis on this issue.

(v) Helphire believes the GTA plays a very important role in the Commission's assessment. In this regard, it is not clear – notwithstanding the presence and clear benefit of the GTA - why the Commission, in coming to its conclusion as to the average cost difference of credit hire over direct hire (£640), places greatest reliance on the multiple (2.5x) of the overall credit hire daily rate over the average insurer (three largest insurers') direct hire rates (see Table 6 of Appendix 6.1).

Given the market prevalence of the GTA[21], it is extraordinary that the Commission has refrained from using the lower multiple (2.1x) of the GTA rate over the average insurer rate, which would result in a lower cost differential.

This multiple would be even lower if the CC had distinguished those credit hire claims settled promptly within the GTA (thus benefitting from early settlement discounts and avoiding late

[21] Nine of the ten largest insurers sub-scribe to the GTA and the Credit Hire Organisation estimates that approximately 80 per cent of credit hire and credit repair claims are settled under the GTA.

payment charges), which arguably reflects the GTA's ultimate purpose.[22]

Helphire would be happy to provide further information to the Commission to re-emphasise the point and show a comparison of credit hire rates received by Helphire where the PMI provider settles promptly within the terms of the GTA against those claims falling outside of the GTA.

(vi) Helphire would further urge the Commission – in conducting its comparison of credit hire and direct hire costs - to assess whether credit hire rates evaluated by the Commission include charges for value-added or non-standard items, that are not similarly reflected in direct hire rates, for example: vehicle specification features, higher risk drivers and other highly significant value added features, for example:

Example – The wider credit hire benefit to consumers

Helphire calculates that the average insurance excess from an online search is around £250.

The Commission calculates that there are 301,000 non-fault claims. The consumer survey of claimants considered to be 100% not at fault for the accident as confirmed by the at-fault insurer showed that in 23% of cases the customer did not regain their excess.

This means a real potential harm to the consumer of £17.3 million per annum in non-recovered excess.

It is clear from the survey that if a CHO or CMC is involved, the excess is recovered. There is, therefore, a net benefit to the consumer of the recovery of the excess that would not otherwise be recovered.

Helphire assists 90,000+ claimants each year. So the net benefit to the consumer from Helphire's activities alone can be calculated at over £5 million per year; the benefit to the consumer as a result of activities CHOs as a whole in this area must be in the order of £20 million. This should be taken account of (deducted from) the relevant AEC.

Added to that benefit should also be the effect of not compromising the consumer's NCB. Following a similar rationale, this amounts to another £20 million.

This illustrates how the wider benefits of credit hire, which insurers would have little incentive to replicate, are considerable.

Arguably, in this area alone, the purported AEC ought to be reduced by a figure approximating to £40 million to take account of the positive effects of liability support and excess recovery.

To this, further value should be attributed to the very significant proportion of the 25% of claims where liability is disputed, or not admitted. As previously mentioned, CHOs and CMCs support the liability position of the client successfully when the third party insurer would, left to its own devices, not have admitted liability.

It is Helphire's understanding that the cost of these additional items is not included in direct hire rates.

[22] According to the Credit Hire Organisation, about 77 per cent of credit hire and credit repair claims are settled under the GTA. The remaining cases are either handled outside the GTA from the outset, or are handled initially within the GTA but then ‘fall out’. The latter, which are naturally more costly, are settled through negotiation and, often, litigation.

(vii) [✂]

[✂]

(viii) Helphire would also draw the Commission's attention to the fact that it has not been demonstrated that credit hire durations are in any way excessive. The Commission accepts that there are good reasons why, on occasion, credit hire durations may be longer (for example, to address more complex or severe accidents, heavier impact crashes etc). The Commission argues that because there are possible explanations either way, it did not take into account the longer hire duration in estimating the extra cost of credit hire.

At the same time, Helphire has undertaken an analysis of its hire durations when it controls the repair, as against when the consumer's own insurer handles the repair. According to Helphire's research, it performs consistently better than the insurer-managed repairs - by three days. In this instance, third party insurers get the benefit of this through decreased hire durations. This is likely to read across all credit repair activities and, as result, the Commission should consider this trend (and reduce the credit repair dis-benefit to take this into account).

If the Commission works on the basis of 85,000 repair claims, each with an average duration of a hire is 17 days, and an average bill of £1085, the saving of three days is equivalent to £16.3 million for the third party insurer.

4.21.4 The Commission has not assessed how the General terms of Agreement (GTA) is evolving and becoming more efficient in resolving credit hire claims more cost-effectively over time (thus reducing credit hire and other costs significantly) since the 2012 base point adopted by the Commission for its review.

It is Helphire's experience that significant efficiency improvements in the management of claims under the GTA (and contained in new 'protocols' within the GTA) have reduced frictional costs significantly since 2012. If it would help the Commission, Helphire would be pleased to provide an illustration which tracks improved performance in this area from 2012 through to Q1 2014.

4.22 The Provisional Findings also highlight the Commission's continuing refusal to acknowledge the differing legal bases upon which credit hire and direct hire arrangements operate (and the resultant impact on costs).

The payment of hire charges by the fault insurer is not a matter of 'supply and demand'. The fault insurer has no contractual relationship with the relevant consumer. It is a claim by an innocent party for the loss of use of his or her vehicle.

Repeated court decisions at the highest level have confirmed the reasonableness of credit hire services and well as the fact that the correct measure of loss is the 'basic hire rate' or 'spot rate' (in other words, a retail hire rate), which is in fact higher than credit hire rates under the GTA.

In any event, direct hire rates arise in situations where the fault insurer has accepted liability; this is not necessarily the case where credit hire is concerned, which will involve a wider range of complex and disputed cases.

While the Commission has acknowledged this difference in the Provisional Findings, it has not afforded the difference significant weight, not has it made any real attempt to quantify costs (and effect more balanced comparisons) between different categories of claim.

Conclusions on the cost of separation

4.23 Taking the above points into account, it is very likely that the excess cost per claim attributed by the Commission to credit hire (£640), which underpins much of the Commission's market wide cost calculation, is exaggerated to a very significant degree

– in part, as a result of overestimated credit hire costs and, in part, as a result of underestimated or discounted direct hire costs (which, in any event, are likely to have been skewed to unsustainably low levels). With this in mind, Helphire would strongly urge the Commission to revisit its cost calculations.

4.24 Indeed, in the Commission's consumer survey (figure 4.34 of the Provisional Findings), 58 per cent of consumers just accepted their renewal. PCWs argue, with some justification, that customers will invariably get a better deal through using them and can usually save a minimum of £100. Comparing this wasted cost to the disputed AEC, it would deliver a far better outcome for consumers, if they were encouraged to compare quotes before renewing each year.

5 Quality of service

5.1 Helphire believes that in trying to deliver solutions that are intended to achieve cost savings for insurers, the Commission has overlooked the importance of protecting the correct level of services that consumers are entitled to under English law.

5.2 For example, the Commission notes in the Provisional Findings Report that:

> *"The results of our review of a sample of 100 electronic call records showed that a lower proportion of claimants whose claims were managed by fault insurers (70 per cent) than of claimants whose claims were managed by non-fault insurers or CMC/CHCs (92 per cent) received a replacement car similar to their own, also suggesting that quality of replacement car received my be lower for claims managed by fault insurers"*

This evidence, which demonstrates clear differences in quality of service, appears to have been disregarded by the Commission. These differences demonstrate a clear tendency towards sub-standard solutions when claims are handled by fault insurers.

The Commission should not ignore such important differences in consumers' claims experiences – depending on who provides the service - without undertaking much more extensive research. Part of this research should have looked at the cost of fault insurers providing the same quality of service as CHOs or other CMCs.

5.3 It follows that any solution that would compromise any competitive pressure exerted by CHOs and other claims management companies would be likely to exacerbate adverse impacts on quality. With this in mind, it is of particular concern that the Commission appears to assume a more benign counterfactual than that which past insurer behaviour suggests would prevail were access to CHOs compromised.

5.4 Notwithstanding the Commission's tendency to compare credit hire and direct hire (at least from a cost perspective), if access to credit hire were compromised, it would not necessarily be replaced with direct hire arrangements by insurers (at least as regards any equivalent solution to that presented by credit hire that recognises the consumer's legal entitlement).

5.5 The situation that would be likely to prevail would, at best, comprise a solution that would be significantly compromised in terms of quality and convenience[23] or charged at a significantly greater cost to consumers. At worst, vulnerable consumers would be left without any reasonable solution.

5.6 The Commission has indicated that, in such circumstances, a consumer could revert to a CHO or CMC but such action depends on the continued ability of CHOs etc to operate along current lines. In the event that consumers began to suffer as a result of insurer abuse, an alternative remedy would not necessarily be available.

5.7 As Helphire has stated previously, the Commission cannot evaluate any Remedy by applying a basic comparison of credit hire and direct hire costs.

5.8 In the absence of a viable credit hire solution, a reasonable extrapolation of the direct hire model might also be to consider how insurers currently take advantage of direct

[23] Paragraphs 3.73 and 6.37 of the Provisional Findings acknowledge this point but insufficient weight is given to it in the remainder of the report given its potential for an adverse consumer outcome

hire rates in the context of courtesy cars that sold to policyholders as add-ons or as part of any premium. Not only do these courtesy vehicles fail to reflect a consumer's legal entitlement in the even of a non-fault claim, market research indicates that they are often provided at a significant cost.

5.9 Helphire is concerned that the Commission assessment of the evidence before it is too selective and prompts concerns of bias. By way of example (taking into account differences in the quality of TRV services depending on whether the service is provided by the fault insurer or a third party), in paragraph 27 of Appendix 6.1 of the Provisional Findings, the Commission records:

> *"27. The difference between the average credit hire and direct hire duration could in principle be due to:*
>
> *(a) the mix of claims, ie with replacement cars for more complex claims, which require longer repair periods, being provided under credit hire;*
>
> *(b) the underprovision of replacement car services under a direct hire agreement in relation to duration (though we have not found any evidence to support this view); and/or*
>
> *(c) unnecessarily lengthening credit hire durations (eg by disproportionately booking in cars for repair on Fridays or returning them on Mondays, or by extending repair durations)."*

The Commission records - against the reason set out in sub-paragraph (b) - that it has not found any evidence of underprovision in the context of direct hire; however, it does not make the same qualification in respect of sub-paragraph (c) – and instead refers to '*unnecessarily lengthening credit hire durations*', which implies overprovision despite the fact that the Commission's consumer research does not support this view. For example:

In its Working Paper 'Theory of harm 1: Analysis of the results of the non-fault survey in relation to overprovision', the Commission records the following statistics, which demonstrate no trend towards overprovision irrespective of service provider:[24]

"TABLE 8 Length of time respondent had access to TRV

	per cent		
	All	*Captured*	*NF [Non Fault]*
Longer than needed	*4*	*3*	*3*
The right amount of time	*87*	*87*	*88*
Shorter than needed	*9*	*9*	*8*
Don't know	*1*	*1*	*1*
Base (weighted)	*1,194*	*346*	*644*

Source: CC survey"

Even if one considers Table 21 of Appendix 6.5 of the Provisional Findings, there is no credible evidence of overprovision when the TRV is provided by a CMC. According to that data:

[24] Table 8, paragraph 29, page 10 of the relevant working paper. The Commission seeks to amalgamate these figures partially in Table 12, paragraph 31, page 11 of the working paper *'Theory of harm 2: Analysis of the results of the non-fault survey in relation to underprovision'* and, in doing so, obliterates the very negligible number of those who have had their TRV for too long.

"TABLE 21 Length of time had access to replacement car, analysed by who managed claim

Per cent				
	All	*At-fault*	*Non-fault*	*CMC*
A longer time than needed	*3*	*3*	*1*	*6*
As long as needed	*88*	*88*	*90*	*87*
A shorter time than needed	*9*	*9*	*9*	*7*
Base (weighted)	*1,181*	*341*	*482*	*170*

Source: CC motor insurance Non-fault Survey, question D23

According to this data, there is an inconsequential difference in the level of overprovision by CMCs, which is balanced by a similar difference in underprovision by fault insurers (as against CMCs).

Helphire would also draw the Commission attention to the points outlined in **section 4.21.3(viii)** above as regards cost.

Referral fees

5.10 The Commission's recognition that referral fees (and other similar income received by insurers) reduce the premiums and therefore offset the higher premiums attributable to higher subrogated costs also associated with the separation of cost liability and cost control is welcome.[25]

5.11 In any event, notwithstanding the Commission's attempt to quantify these costs, the Provisional Findings imply that the Commission is working on the assumption that costs associated with referral fees (and their related impact, if any, on premiums) can be eliminated. The Commission attributes a net dis-benefit to consumers of approximately £150 million per year (as adjusted for referral fee and other income) to Theory of Harm 1

5.12 The Commission's counterfactual fails to consider the efficiency of this revenue model (and its effectiveness in ensuring consumers receive the service to which they are entitled) as against other forms of marketing, the cost and efficiency of which is not explored in the Provisional Findings. The result is an entirely one-sided and artificial assessment.

5.13 In any event, when considering referral fees, which are intrinsic to credit hire operations, in the context of the AEC (as adjusted by the factors set out in this submission), it is clear that referral fees do not contribute to the AEC, not are they an inefficient means of marketing.

6 Conclusions

6.1 The real cost of credit hire, and subrogation generally, is negligible.

6.2 Helphire considers that critical distortions in the Commission's data and how that data has been applied risk jeopardising a business model (credit hire) that clearly works in the consumer's best interests.

6.3 Helphire considers that this response and the evidence provided must merit further detailed consideration and dialogue with the Commission to ensure that an accurate, proportionate and, above all, consumer friendly outcome is achieved. It looks forward to working with the Commission on this issue.

[25] Paragraph 6.64 of the Provisional Findings

Annex 1

Table 6.3	Replacement car		Repair		Write-off		Total cost increase
	£ p claim	No '000s	£ p claim	No '000s	£ p claim	No '000s	
Credit hire/repair	640	301	324	85	125	21	
Non fault Ins			95	240	53	64	
	193		50		6		249

Effect of commercial insurance bearing the cost

Table 6.3	Replacement car		Repair		Write-off		Total cost increase
	£ p claim	No '000s	£ p claim	No '000s	£ p claim	No '000s	
Credit hire/repair	640	255.85	324	72.25	125	17.85	
Non fault Ins			95	204	53	54.4	
	164		43		5		212

Effect of using the wrong credit hire rate and not adding VAT to the direct hire rate

We have demonstrated clearly that the overall credit hire daily rate cannot be used. The appropriate rate has to be the GTA rate as this is what is available. In addition we cannot even derive the £445 figure from the Commission's calculation. £1085 is 2.43 times £445, not 2.5 times.
Applying the correct multiple gives a direct hire bill of £517.
We have also been privy to a letter from the Commission where it accepts that VAT has not been added to the direct hire rate in this calculation, when VAT is in the credit hire rate. This would increase the direct hire bill to £620 and the disbenefit £465.

Table 6.3	Replacement car		Repair		Write-off		Total cost increase
	£ p claim	No '000s	£ p claim	No '000s	£ p claim	No '000s	

Credit hire/repair	465	240.8	324	68	125	16.8	
Non fault Ins			95	192	53	51.2	
	112		40		5		157

Effect of direct hire being at sustainable rates

Taking our own marginal profitability on hires in isolation we have calculated that to be sustainable the direct hire rates would have to increase, on average by, £6 a day. On Helphire's direct rates this is a 23% increase. Applying this to the Commissions Direct hire rate this increases it to £547 and decreases the effect to £538. Adding VAT (see above) increases the sustainable rate to £656.40 and reduces the difference to £445.

Table 6.3	Replacement car		Repair		Write-off		Total cost increase
	£ p claim	No '000s	£ p claim	No '000s	£ p claim	No '000s	
Credit hire/repair	445	217.4725	324	61.4125	125	15.1725	
Non fault Ins			95	173.4	53	46.24	
	97		36		4		**137**

With the revenue at £104m and the disbenefit £137m the difference is £33m add to this the benefits to the consumer of £40m through recovery of excess and protection of NCB the consumer is better off with the position as it is right now

Annex 2

Association of British Insurers – UK Insurance Key Facts – September 2013

Available at:

https://www.abi.org.uk/~/media/Files/Documents/Publications/Public/2013/industry%20data/UK%20Insurance%20Key%20Facts%202013.ashx

Annex 3

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Annex 4

[✂]

Annex 5

[✂]

Annex 6

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