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**Response to the Provisional Findings relating to the Competition Commission Private Motor Insurance
Market Investigation**

Submitted by



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NAB response to CC Provisional findings report and Appendices & Glossary:

NAB Observations relating to “Responses to annotated issues statement and working papers”

NAB suggests that many of the observations and supporting documents provided by the insurance industry in their “Responses to annotated issues statement and working papers” do not materially change our view that the tripartite relationship between consumers, insurers and bodyshops is unbalanced and that consumers are suffering detriment due to the current dysfunctional nature of the insurance claims process.

It remains our opinion that this is not a sustainable position for our members or the body repair industry as an entity, or for long term consumer satisfaction.

General Observations

NAB questions whether the supporting documents provided by consultants working on behalf of DLG and RSA in their respective responses to the Competition Commission’s annotated issues statement and working papers are a reflection of the highly complex relationships within the private motor insurance sector and whether they also serve to highlight how certain insurers, through their operating scale and opportunistic intervention, have sought to dominate, exploit and defend the dysfunctional market that they have helped create?

NAB wonders if “mark-ups” obtained through the subrogation system are pass-ported through to consumers by way of premium reductions? More likely, NAB suggests they are used to enhance shareholders’ value and returns on their investment. Perhaps CC could seek clarification from insurers that “mark ups” contribute directly to premium reduction?

Would CC agree with NAB that a detailed investigation of invoices for repair work undertaken by insurer-owned bodyshops (including invoices raised by the insurer-bodyshop against its parent company) might reveal charging practices that do not reflect the cost-efficiencies claimed within the various insurer responses?

Responses provided by insurers such as Ageas, Allianz, CISGI, NFU and Zurich appear to be far more pragmatic and suggest a more principled, less frictional approach towards subrogation; this appears to also manifest in NAB members’ dealings with these insurers as part of their approved repairer networks and also as non-approved repairers.

Many of the responses by insurance companies to the “TRVs Working Paper” suggest the failure by private motor insurers to address the higher costs for credit hire, which have then been reflected in what some insurers have described as “unjustifiable referral fees” paid by credit hire companies. Has the CC received sufficient information from insurers as to the scale of insurers’ involvement with organisations such as the now defunct Drive Assist? Could CC provide NAB with assurance that all motor insurers are no longer taking referral fees from CMCs. For reasons of consumer transparency, would it be possible for CC to publish a schedule outlining which insurers previously used intermediaries, who those intermediaries were and to what extent they continue to use intermediaries, who those intermediaries are together with quantum?

Responses from insurers concerning referral fees relating to the incidence of vehicle write-offs support NAB’s Response to annotated issues statement and working paper concerning the handling and subsequent sale and release of salvage back into the market and the consequential detriment to unsuspecting consumers under “ToH 1 and 2 Vehicle Write-offs”.

Following the MSXi evidence relating to post repair sampling, NAB queries whether insurer assertions that their consumer satisfaction programmes are sufficiently robust may be now somewhat inappropriate? Could CC publish a schedule of individual insurer complaint ratios in order to determine if there is a correlation between the consumer detriment identified by MSXi and the service level agreements mandated by insurers for their approved repairers?

NAB submits that following the abandonment of “knock for knock”, insurers have behaved in an opaque manner in their dealings with each other. Their behaviour throughout this investigation has shown that they are clearly at odds with each other as well as with their suppliers and are in denial over the required remedies to the very TOH issues they have been directly responsible for creating. Their inability to co-operate together voluntarily, efficiently and coherently is acknowledged in the submission by their trade body, The ABI, which suggests under TOH-1

“10. CC intervention, as opposed to a voluntary insurer-led approach, is the only way to deliver the comprehensive and future-proofed reform of the market that is required to remove the unnecessary costs in the market and improve outcomes for consumers by way of lower motor insurance premiums.”

NAB agrees with ABI’s view that a voluntary insurer-led self-policing approach will not work and re-asserts its previous submission that “A pan-industry adjudicator – a watchdog, (similar to that recently appointed for the supermarket sector) should be appointed to address NAB’s specific market concerns, to oversee any outcomes of this investigation and to prevent future insurance market dysfunction.”

Following NAB’s review of “Responses to annotated issues statement and working papers”, we would also seek to make the following specific observations:

Response by Ageas

TOH-1 Page 2 2.4

“Ageas UK notes that, whilst the separation of cost liability and cost control may indeed lead to higher repair costs, identifying potential remedies will be a challenging task. The issues that the Competition Commission is investigating are highly complex. The insurance industry has already attempted to address certain of the issues being investigated by the Competition Commission, through initiatives such as the GTA, bilateral agreements between insurers and RIPE. However, our experience suggests that whilst such efforts have been helpful, they have not provided a fully effective solution. In Ageas UK’s experience the reasons for this include: the fact that they do not cover all insurers; the challenge of ensuring that they operate within competition law parameters; and the associated burden of administration.”

NAB suggests there are interesting parallels in the bilateral agreements entered into between insurers and repairers when compared with the above highlighted comments made by Ageas in that:

- i) Bilateral approved repairer agreements can differ, compete and sometimes conflict within a single bodyshop entity – differing service level agreement stipulations (mandating parts and materials purchase is but one example) lead to inefficiency and greater cost;
- ii) Bilateral agreements operated by insurers and intermediary management companies do not cover all repair operations; many insurance repairs are carried out in non-approved bodyshops. Bi-lateral repairer agreements therefore do not provide standard operating specifications and procedures across the body repair industry.

Clearly, as evidenced by the MSXi survey, bi-lateral agreements – be they insurer-insurer or insurer-repairer – appear to fail to provide a consistent, guaranteed outcome for consumers.

Response by Allianz

TOH-1 Page 2

“There should be no differential in the rates agreed to repair vehicles determined by whether the driver was at fault or not.”

NAB welcomes the fact that Allianz appears to recognise the current market rate paid to repairers operating within insurer approval systems is insufficient to provide for reinvestment in staff, equipment and processes which would bring benefits to consumers.

However NAB questions if this idealistic scenario would be difficult, if not impossible, to apply given that currently:

- i) bilateral approved repairer agreements apply significantly differing terms and conditions;
- ii) not all repairs are undertaken within an approved repairer environment;
- iii) how can one-off (as opposed to volume) repairs be accommodated within such a system?;
- iv) insurance company-owned bodyshops have a VAT advantage on labour sales and in the difference between cost and sale of parts and materials.

Page 2

“Ultimately smaller insurers and consumers will suffer the consequences. The former, due to smaller economies of scale, will suffer a deficit (albeit reduced) between the cost of at-fault payments and non-fault recoveries, impacting on their ability to compete.”

If the above assumption is correct, would the CC not agree with NAB that the repair industry will suffer further concentration and contraction leading to lack of competition and restricted consumer choice? NAB suggests consolidation, further vertical integration of the supply **chain and restricted choice do not provide evidence of consumer benefits.**

Response by The Association of British Insurers

TOH-1 4.

*“Any remedies should have at their heart the following principles:
o A recognition of the customer’s legal right to rectification and indemnity;
o Maintaining a good customer experience through any claim;
o Adequate control by the paying party over costs of repair and/or replacement; and
o A reduction in frictional costs of claims.”*

Would the CC not agree with NAB that the ABI’s manifesto of principles falls short of consumer requirements and that it should also embrace a clear commitment to Treating Customers Fairly including:

- i) Recalibration of repair provision in order to put consumers’ interests first and foremost
- ii) Greater transparency of consumers’ rights at point of policy purchase and their right to use a repairer of their choice at point of claim (acknowledged in the ABI submission at 17).

TOH-1 8.

“These initiatives are limited in their ability to help reduce unnecessary costs in the market because they can only go so far to address the ‘leakage’ of money to non-insurers. This is particularly the case for the GTA. While the working paper “ToH 1: Overcosting and overprovision of TRVs” recognises that the GTA allows for recovery of fees at a rate less than those that CHOs would be able to recover through the courts, it is at a rate far above that which can be achieved between insurers engaged in bilateral agreements, where the potential for cost control is substantially greater.”

NAB asks whether the ABI has carried out any research as to “leakage of money” between its members through their relationships with CHOs and AMCs?

TOH-2 13.

“The industry invests heavily through Thatcham, the motor insurers’ automotive research centre, in helping to improve overall car design and reducing the cost of repairs. Thatcham was established in 1969 and has the aim of containing or reducing the cost of motor insurance claims whilst maintaining safety standards. Thatcham’s technical repair experts produce a wealth of vehicle repair data, ranging from light structural research, to full body methods.”

NAB asks whether there is TOH arising from potential conflicted outputs from a research centre wholly owned by the insurance industry?

TOH-2 14.

“In 2007, members of the ABI were instrumental in establishing a BSI Kitemark standard for vehicle body repair. Independently audited and Kitemarked bodyshops are required to demonstrate compliance to rigorous standards, which include: the use of repair instructions; minimum equipment levels; employment of industry accredited staff; and use of appropriate parts and materials. The presence of Kitemarked shops within their repair networks gives insurers confidence in the repair process for the benefit and safety of their customers.”

NAB asks that ABI clarifies which of its members do not specify the BSI Kitemark for vehicle body repair and why?

By way of background information, some ABI Members did adopt a supportive and collegiate approach when repairers led the initiative to drive up standards in the interests of consumer safety. The catalyst for this approach was the increasingly widespread introduction of new materials in vehicle construction and a realisation that decades of under-investment in the cost-suppressed repair industry was likely to result in consumer detriment with vehicles being repaired unsafely. NAB asks whether the spirit of those ideals and high moral values has been inclusively adopted by all insurers?

TOH-2 15.

“Motor insurers have also supported Thatcham’s Parts Accreditation programme which operates to independently verify the exacting standard and quality of cosmetic, aftermarket parts, thus providing an alternative and reliable source of parts for UK repairers.”

NAB questions the value of the Thatcham Parts Accreditation programme when some ABI members and sponsors of Thatcham choose to require their approved repairers to use non-oem parts that are not covered by the Thatcham programme.

TOH-2 18

“The ability to manage costs, supervise quality, control service and deal with complaints is generally better achieved through a carefully selected and efficiently monitored repair network, and such an arrangement is likely to contribute towards a better quality and lower cost service.”

NAB suggests that the MSXi report appears to conclude that “approved repair” networks (as identified by ABI at 18) fail to supervise quality and provide a better quality service.

It is widely accepted that in any industry cost, quality and delivery for consumers are best achieved through free, deregulated markets. The current restrictive approval system used by most insurers is introspective and from the CC’s own evidence appears not to put consumers first. NAB asks whether these bilateral arrangements do deliver the consumer benefits claimed by ABI?

TOH-2 19

“Members of ABI would welcome an end to differential pricing for labour costs between at-fault and not-at-fault repair services”

NAB welcomes the fact that ABI appears to recognise the current market rate paid to repairers operating within the approval system is insufficient to provide for reinvestment in staff, equipment and processes that would bring benefits to consumers.

NAB believes that for the reasons given in the response to Allianz above, such an idealistic proposition would be difficult, if not impossible to adopt.

NAB also questions whether this represents the view of all members of ABI.

Response by Aviva

TOH-1 Summary Page 24 68

“Aviva Comment - A key point here is the fact labour costs can vary based on the rate charged and the percentage of repair vs. replace, as the competition commission has previously identified in this document. However, whilst ‘replace’ labour times are largely dictated by manufacturer timings and these are in the estimation system, ‘repair’ labour times are classified as ‘opinion times’ and are agreed between the estimator and engineer leading to potentially a greater amount of labour hours on a repair vs. a replace to ensure the vehicle is returned to pre-accident condition safely. Despite this, repair will normally always result in a cheaper overall cost as it negates the cost of a part.”

NAB does not dispute that repair over replace “will normally result in a cheaper overall cost”, NAB however believes that “a cheaper overall cost” repair method can result in potential consumer detriment through poor quality repairs and diminution in value of the repaired vehicle particularly where a party in the supply agreement can have undue influence over a repair outcome through internal commercial targets.

TOH-2 Page 7 16

“Aviva Comments - It is worth pointing out that in most cases where a repair is possible, it is better to repair rather than replace, as replacement often means cutting into the shell of the

vehicle then welding new parts in place, to repair retains the original structural integrity of the vehicle, therefore it is more likely to respond in the manner intended in any future accidents.”

Does the CC agree with NAB that “most cases” is far too broad a hypothesis; NAB also queries whether there is currently a lack of clarity in the market on scope and specification of when to repair rather than replace parts? Where an unequal commercial relationship exists, it is likely that the pre-dominant partner will enforce their view which may not then fully indemnify the consumer. Views around “possible” can also be clouded by cost (see Summary Page 24 above). The suggestion that “replacement often means cutting into the shell” ignores the fact that outer panels of a vehicle may also contribute to its overall structural integrity and may, if repaired rather than replaced, cause the vehicle to fail to perform as it should in any subsequent accident. This also applies to the use of non-oem parts that are not made to the same specification or of the same material as oem parts.

TOH-2 Page 9 22

“Aviva Comment - We feel the combination of PAS125 standards in the industry (repairers have two audits a year) and each Insurers own audit functions mitigate this risk.”

NAB asks CC to consider whether MSXi’s findings appear to illustrate that the “risk” is more significant than Aviva suggests and that adherence to the PAS125 specification (not standard) does not fully guarantee consumer indemnity. Moreover, NAB suggests that not all bodyshops have adopted the PAS125 specification nor do all insurers and accident management companies require it as part of their approved repairer arrangements.

NAB asks to what extent “mitigation” of risk takes place? If the evidence provided by MSXi suggests the current system provides limited mitigation, perhaps now is the time to look again at repair industry standards?

TOH-2 Page 16 45

“Aviva Comment - This should suggest that the involvement of brokers in managing repairs for customers does not in fact add value to the customer experience, it merely generates revenue for the broker.”

NAB suggests that insurance brokers are often more aligned to servicing consumer interests than an insurer as they often have the added interest of retaining their client’s overall portfolio of business, not simply car insurance.

NAB asks whether, for some insurers, consumers’ interests are being sacrificed in pursuit of cost and market suppression?

TOH-2 Page17 52

“Aviva Comment - Whilst our post repair audit focuses on the invoice/assessment accuracy and the parts used, we do feel repair quality is also at the forefront of our controls for two reasons; the repairer holding PAS125 has two unannounced BSI audits per year and we endorse these standards and we also deploy work in progress audits at intervals through the year. However, the comment and the link to (56) is in the context of ‘majority of insurers’, therefore we are merely making the point we do not agree from an Aviva stand-point”

As identified at Page 9. 22, PAS125 provides no guarantee of consumer indemnity.

“Aviva Comment – We feel are strong statements that if the person making them is not prepared to be named should potentially be removed.”

Does CC not agree with NAB that redaction is an essential component to protect the identity of repairers at risk of insurer reprisals?

“Aviva Comment - This section (Paragraph 65 to 76) - we feel does not fully address the problem or leading Paint brands increasing prices at similar times leading to increased 'weighted average' price on the Paint Index held in Audatex and other estimating systems pricing algorithms. This graph clearly shows this. There are no Insurer specific paint index tables (to our knowledge) which means you cannot alter rivals prices via this mechanism as there is only one industry table. The only manner to change the repair bill (paint element) is through higher or lower discounts with the repairer. Whilst Insurers would re-negotiate with repairers if Paint prices increase, the overall repairer net margin is suppressed to less than 4% on average and whilst the repairer does have a greater margin on paint, it is commonly known in the industry this helps subsidise significantly lower margins on parts and labour. Therefore any renegotiation is at the 'net expense' of the repairer and this would lead to the repairer not making suitable margin and potentially going out of business if it was to continue - the foreclosure element.”

NAB concurs with this comment. We would particularly draw attention to those elements highlighted above. They support NAB's Response to annotated issues statement and working paper “ToH 3 Horizontal concentration in repair cost estimation systems” (Page 9) that “despite the shortcomings of the current AZT paint data embedded within Audatex , it would be naïve and commercially reckless to challenge one particular aspect of the Audatex database without a thorough investigation and understanding of the entire* database and how ALL data can be subject to abuse by any dominant party or parties.”

**The UK body repair industry commissioned an independent analysis of industry estimating databases, the Estimating Accreditation and Systems Transparency (EAST) initiative, in July 2003. This study sought to understand the structure and consistency of data within Thatcham's TTS data and data used by the Audatex estimating system. While EAST successfully proved benchmark standards across TTS data, it concluded there was no common denominator from which comparison of data provided by vehicle manufacturers could be made.*

Response by CIS General Insurance

“Credit repairs lead to higher costs through the greater use of OEM parts and more frequent replacement of parts (instead of parts being repaired). The Commission identifies this practice, but concludes that it is not "unreasonable or excessive" and therefore does not represent over-provisioning. CISGIL disagrees: organisations providing credit repair have an incentive to engage in these practices, which will generate additional income for them (for example in rebates or discounts, which are then retained). This, as the Commission recognises, leads to excessive repair costs.”

NAB suggests that a greater understanding of consumer detriment identified within the MSXi report is required before conclusions can be reached about the merits of using lesser levels of OEM parts and greater levels of repair over replace techniques.

“CISGIL agrees with the Commission's findings that there is not an under-provision of repairs. The use of authorised repair networks ensures timely, consistent, high-quality, cost-effective and safe repairs, whether for fault or non-fault motorists and suggestions by some market participants (such as CMCs and repairers) to the contrary appear misplaced and self-serving.”

NAB suggests that the findings of the MSXi survey do not appear to support this assertion.

“CISGIL does not have any contractual relationships with paint providers and does not require its authorised repairers to purchase paint from a specific paint manufacturer or supplier. This is also the case for four of the other 10 largest PMI providers and also for smaller PMI providers.¹⁰⁵ Therefore, such contracts are not necessary in order for repairers or insurers to be able to procure paint on a competitive basis (indeed, absent these contracts, repairers would appear to be able to purchase paint more cheaply,¹⁰⁶ which is also CISGIL's experience). Rather than, such practices being used to allow insurers to exercise greater bargaining power than repairers could acting individually (as was asserted to the Commission by two parties, apparently leading insurers¹⁰⁷

104 Id. para. 13.), it would appear that their purpose is to allow insurers with such contracts to generate higher revenues, by subrogating an inflated repair cost (i.e. the invoiced cost, taking account of a higher 'top line' paint cost) and retaining a discount or rebate paid directly by the paint manufacturer. CISGIL considers that it is likely that the higher paint costs incurred by repairers are likely to be similar to the level of rebates earned by these insurers. Therefore, rather than generating efficiencies for either manufacturers or repairers, these arrangements are an artificial device to increase certain insurers' revenues at the expense of fault insurers (and potentially also repairers and motorists self-funding paint work).”

7.22 The fact that the benefit to those insurers may appear to be low, relative to paint and overall repair costs, at £18 per repair does not diminish the fact that there is harm to both fault insurers and, ultimately, consumers. This is exacerbated by the fact that by no means all PMI providers (including CISGIL) have such contracts, leading to a clear distortion of competition through over-costing of repairs through the exploitation of the moral hazard that arises from the separation of cost liability and cost control.”

The above observations support NAB's response to issues statement and the responses made by NAB representatives at the multi-lateral hearing with repairers.

Response by DLG

“Secondly, it is important that insurers such as DLG should not be dis-incentivised from investing in their own repair networks and earning a return on that investment. The ability to channel repair work through DLG's network of wholly-owned repairers (UKAARCs) and approved third party repairers (Tier A repairers) enables it better to control the cost of repairs and to ensure a consistently high quality service. It provides a mechanism for mitigating the separation of cost liability and cost control that is the basis of ToH 1, as the evidence shows that where customers arrange for repairs to be carried out by a garage of their own choice, the cost is often significantly higher.”

NAB has been provided with evidence that suggests DLGs wholly-owned UKAARCs operate less cost efficiently than their approved repairers even allowing for

- the VAT advantage they enjoy on labour sales and in the difference between cost and sale of parts and materials
- their ability to received certain makes of vehicle and types of repair damage (“cherry picking”)
- their ability to generate revenue from commissions, service charges and “mark ups” made at the expense of other insurers
- employee packages and benefits associated with those provided within financial services sector

TOH-1 Page 5 2.8

“DLG is pleased to see the CC’s findings (in its survey report) that the majority (89 per cent) of respondents were very or fairly satisfied with the repair service they received, with three out of five respondents being very satisfied.¹³ Providing customers with a high quality repair service is crucial to DLG’s brand equity and DLG invests heavily in its approved repair network to achieve this (e.g. DLG offers customers a five year guarantee on repairs, which is significantly longer than the warranty period offered by most non-approved repairers and indeed by most manufacturers).¹⁴ The provision of such an extensive guarantee is a clear consumer benefit, which DLG would be unable to offer if it did not have an approved repair network.”

NAB suggests that a copy of DLG’s “five year guarantee” should be made available to provide assurance that its terms are transparent and not restrictive and that it provides the added “consumer benefit” being claimed including clarification as to who ultimately bears the burden of responsibility for failure to meet the DLG five year guarantee.

NAB also suggests that CC obtains clarification from DLG in relation to the replacement of mechanical components that could be replaced under an insurance claim eg a vehicle’s engine. NAB has been informed by its members that the maximum term of DLG’s guarantee in these circumstances corresponds to that provided by the manufacturer and not beyond as has been suggested in DLG’s response.

TOH-5 Page 13 6.4

“The CC suggests in the AIS that contracts under which the insurer recommends a paint brand or manufacturer to its repair network in exchange for a per-repair referral fee, and in some cases an additional fixed fee paid by the manufacturer, reduce competition at the retail level, which may lead to higher paint costs for repairers.³² DLG is not aware of the details of other insurers’ contractual arrangements with paint manufacturers and can therefore only comment in general terms. However, as a point of principle, it would also seem relevant to consider whether the alternative brands of paint that the repairers would otherwise have purchased would match the quality of the paint being recommended by the insurer. It is in DLG’s view entirely legitimate for insurers to control the quality of paint used on repair work for which they are ultimately responsible; indeed this is essential where the insurer is also guaranteeing the repair work (as DLG does), as the insurer will then be responsible for making good any rectification claims under the guarantee.”

NAB suggests it is generally accepted within the industry that the quality of refinish paint brands used by bodyshops is broadly the same in terms of performance and durability; DLG should therefore provide supporting evidence of the work that they have carried out to ensure the paint they specify is of any better quality or value than other brands being used in the market

Response by esure

TOH-1 Page 7 3.14

“Furthermore, retaining some of the repairer rebates can also give rise to efficiencies, and therefore be pro-competitive: if non-fault insurers are able to retain a part of the cost savings from creating efficiencies from their repairer networks, they will have a greater incentive to seek those efficiencies from its repairers. However, esure considers that there is less of a pro-competitive efficiency justification for credit repairers’, CHCs’ or CMCs’ referral fee payments.”

NAB queries whether evidence has been provided to CC to demonstrate that retaining repairer rebates “gives rise to efficiencies and therefore be pro-competitive”?

Response by RSA

TOH-1 B15 Page 8

“Mark-ups are, however, only one of several contributory factors to overall repair costs. When assessing repair costs it is important that the CC also considers the absolute costs involved and not just mark-ups that are paid on individual cost elements. Consider the position of two insurers undertaking identical repairs. Insurer A operates a highly efficient repair network with an average cost of £1,300 and an average mark-up of £200 (i.e. an average cost per repair subrogated to AF insurers of £1,500). Insurer B applies no mark-up to its cost of repairs, subrogating at cost. However, if Insurer B’s repair operations are less efficient than Insurer A such that the average cost of repair is £1,500, this will result in the same ultimate cost to the AF insurer (with the additional disadvantage that technical efficiency has been harmed).”

NAB questions whether the hypothetical comparison of Insurer A versus Insurer B is somewhat misleading? Could one person’s definition of “efficiency” be another’s definition of consumer detriment in terms of repair quality, diminution in vehicle value and lower customer service?

TOH-1 B.16 Page 9

*“In other words, the CC should not lose sight of the following two points:
(i) Insurers with lower (or indeed no) mark-ups will not necessarily have the lowest total repair costs (and indeed RSA’s own experience suggests that total repair costs subrogated to it are often among the highest from those insurers who claim not to apply any mark-ups); and
(ii) Any attempt to mandate subrogation at cost is likely to reduce incentives on insurers to operate efficient repair and claims networks and may therefore have the unintended consequence of actually increasing PMI costs and hence ultimately premiums.”*

NAB asks CC whether a definition of “efficient” has been provided?

TOH-1 B.26 Page 10

“This will include the need to consider absolute overall costs as well as mark-ups – the most cost-efficient operators (i.e. those that procure repairs and TRVs at the lowest cost) are likely to have the highest mark-ups, but may well deliver lower overall repair costs than those who pass through at cost. This is because the existing legal framework incentivises insurers to pursue efficiencies, lowering overall industry costs.”

NAB questions whether “lowest cost” is a satisfactory measurement of consumer indemnity?

TOH-2 C3 Page 11

“In particular, we have seen no evidence to support a finding that customers have concerns over the quality of repairs performed in insurer-managed repair networks. For our part, repairs conducted by RSA’s authorised repair network are of high quality and deliver many additional customer benefits, including a lifetime guarantee on those repairs. This is a clear, identifiable benefit for customers choosing to make use of the RSA approved repair network and a significantly enhanced benefit to the five year warranties that were identified as ‘typical’ by the CC.”

NAB queries whether a copy of RSA’s “lifetime guarantee” has been made available to CC to provide assurance that its terms are transparent and not restrictive and that it provides the consumer “benefit” being claimed including clarification as to who ultimately bears the burden of responsibility for failure to meet the RSA Lifetime guarantee?

Response by WNS

TOH-1 Page 1 1.3

“Paragraph 4 fails to take into account the fact that the captured non-fault repairs may well relate to lower cost damage vehicles rather than prestige vehicles or vehicles with greater levels of damage. The CC has received evidence from insurers (see transcript of multi-lateral hearing with the insurers Direct Line Group, Admiral, AXA, Esure and NFUM) indicating that non-fault drivers are more willing to have their repair managed by the at-fault insurer where the damage is more minor but would rather have their own insurer deal with more substantial repairs. This issue is mentioned in passing in paragraph 4(d) but the CC states that it was not able to quantify the effect of this on average costs. [§<].”

NAB suggests that the data provided by WNS should be made available to enable validation of their assertion that the severity of damage and vehicle marque handled by CMCs and at fault insurers versus the not at fault insurers effects consumer choice.

TOH-1 Page 1 1.6

“In paragraph 14, the CC claims that the main differences between credit repairs and repairs managed by insurers are the more frequent use of OEM parts by credit repairers and a higher ratio of parts being replaced as opposed to being repaired. The CC has stated in its working paper on Theory of Harm 2 relating to the underprovision of repairs, that the use of non-OEM parts in insurer managed repairs is small. As for the contention that a higher ratio of parts are replaced by credit repairs as opposed to being repaired, the CC has provided no evidence to support such a claim. The CC needs to bear in mind that it takes much less time to replace a damaged panel than it does to repair the panel. This has an impact on the duration of any credit hire and thus the overall size of the claim.”

Does CC agree with NAB that the statement, highlighted, is an overgeneralisation and overlooks the importance of determining the required method to mitigate loss while providing indemnity? NAB would ask if there is any empirical evidence to support this? NAB submits that time taken to repair depends on the amount of repair work that needs to be undertaken and that it is necessary to consider potential consumer detriment that may arise from any decision to repair rather than replace.

“In paragraph 35(e), the CC claims that insurers and CMCs take rebates from suppliers to repair subsidiaries or approved repairers in return for requiring the use of that supplier's inputs, often resulting in higher input costs for repairers (with the likelihood of higher repair bills). As the CC states in this paragraph, the main inputs used by repairers are paint, parts and cost estimation systems. [sic] WNS does not agree with the CC's contention that taking rebates from input suppliers often results in higher input costs for repairers. It would be helpful to see the evidential basis for the CC's contention. It would also be helpful to understand whether the claimed increase in input costs was material or negligible – the information in paragraph 47 would seem to suggest that any claimed increase was likely to be negligible.”

NAB submits that the costs of paint and associated materials have increased disproportionately to other elements of the repair invoice (and significantly beyond annual rate of inflation) in recent years. NAB feels it would be helpful if CC could establish if these increases have corresponded with the incidence of CMC, AMC and PMI involvement in supply chain procurement programmes?

Footnote:

NAB continues to receive additional testimonies from members outlining what appear to be ongoing detrimental behaviour by certain insurers. Once validated, we will make this evidence available to CC.

Matters that NAB believes have been left unresolved by the “Provisional findings report and Appendices & Glossary”

While NAB has previously raised the following matters through its CC submissions, we believe they have been left largely unresolved by the “Provisional findings report and Appendices & Glossary”. We assume that this is either because the CC has questioned their relevance to the scope of the inquiry or because we failed to persuade CC of their contextual validity.

NAB believes it has a duty to repeat our concerns relating to how these matters, if left unaddressed, will continue to contribute to market abuse, distortion and therefore dysfunction, thus continuing to promote consumer detriment:

i) Damage Parameters – a clear definition of roadworthiness required

Comments from insurers and repairers following the publication of the MSXi post repair inspection survey have underscored NAB's assertion that there is no definitive base-line from which to establish if; either a replacement vehicle is required, or vehicle reinstatement has been achieved ie the base from which consumer detriment can be measured.

NAB contends this loophole must first be addressed to help narrow opinion before remedies relating to the underprovision of repairs can be resolved.

ii) Incompleteness and Inconsistency of repair data

In pursuit of the requirement to improve detriment brought about by the underprovision of repairs, NAB makes the following observations:

NAB suggests manufacturer repair methods may differ substantially from Thatcham methods depending on the make, model and accident damage severity of a vehicle under repair. NAB awaits the results arising from the analysis of MSXi's inspections to provide clarity on this point.

NAB contends the depth and scope of model data covered by Thatcham is incomplete and that Thatcham is not currently resourced to provide comprehensive make and model coverage. In our view, the gap in data supply will only widen as vehicles become more technically complex and makes, models and variants proliferate.

iii) Supplier monopolies

Throughout the “Provisional findings report and Appendices & Glossary” and Notice of Possible Remedies under Rule 11 of the Competition Commission Rules of Procedure reference has been made to the following organisations:

- a) Audatex
- b) Thatcham
- c) BSi

NAB contends these organisations have been largely appointed by the insurance industry as monopoly agents. The reliance on one client can result in intentional and unintentional bias due to the commercial pressures to conform to that client’s interests. We submit that, as unchallenged monopolies, these organisations have become contributors to friction, dysfunctional behaviour and unrestrained cost within the sector

To underline our assertions, NAB asks CC to consider the following:

- a) Why are repair times and methods data incomplete and conflicting?
- b) Why do repair times for identical vehicle model platforms within different but related car manufacturer brands differ substantially (eg VW, SEAT, Skoda)?
- c) Why do insurers choose to specify vehicle manufacturers’ repair times over Thatcham repair times, but often favour Thatcham repair methods over manufacturers’ repair methods?
- d) How do Thatcham methods correlate with vehicle manufacturers’ repair times and vice versa?
- e) Why do all paint manufacturers increase their prices beyond inflation and at the same time as each other?
- f) Why has the stigma over the use of non-oe parts remained unresolved?
- g) Why has the industry’s repair specification failed to deliver repair quality?
- h) Why has the industry’s repair specification not been adopted by all insurers?

We suggest that if the above insurer-backed monopolies are to be considered by CC as a part of any remedy, their output, pricing and conduct must be held to account by an independent body otherwise market dysfunction and consumer detriment will continue unabated.

iv) Issues relating to concentration of supply chain

NAB suggests that CC has dismissed too lightly the part played by insurers and CMCs in current supply chain concentration. We feel that such interference adds cost and friction to the repair process while stifling innovation.

v) Exaggerated or fraudulent claims made by consumers

NAB suggests CC has taken no account of the part consumers play in inflating insurance claims. This we believe to be a significant contributor to prices all consumers pay for insurance

whether as a result of exaggerated injury claims or asking for previous damage to be considered as part of an insurance claim.

NAB understands that some aspects of consumer fraud are being addressed through other channels, but we feel this investigation provides an opportunity to address these matters inclusively as part of proposed remedies.

vi) Avoidance of VAT within insurer owned bodyshops

NAB contests CC has failed to take into consideration the avoidance of paying VAT by insurer owned bodyshops in providing financial detriment to all consumers (whether or not they are motorists).

Certain insurers are exploiting a VAT tax loophole which not only impacts on NAB members' ability to be competitive, but also impacts upon other insurers whose lack of scale prevents them from operating their own workshops.

vii) Projects undertaken within insurer owned bodyshops

NAB continues to believe that a rigorous investigation of the alleged practices operating within insurer-owned bodyshops outlined in NAB's *Response to the Statement of Issues relating to the Competition Commission Private Motor Insurance Market Investigation* is required to fully understand competition issues within this sector. NAB believes these alleged practices result in market distortion and provides consumer detriment in relation to underprovision of repairs and price inflation of third party repair costs.

viii) Cross subsidy of first and third party claims

NAB is not aware that CC has undertaken a thorough investigation into the part played by CMCs / accident management companies. NAB is concerned that these companies appear to facilitate the cross-subsidy of first party repair costs through third party repair costs. NAB is also concerned that the role of intermediaries such as Sherwood Compliance in this process, has not been fully investigated.

ix) Cash in lieu of repairs

NAB Continues to believe that a thorough investigation of the effect that cash in lieu subsidies has on competition and vertical anti-competition practices within this sector.

x) Perceived diminution in vehicle value

While diminution has been touched upon as part of the MSXi investigation, NAB continues to believe that actual or perceived diminution in vehicle value has a significant impact upon consumers. NAB are concerned that without investigation insurers actions in failing to consider or compensate for such losses, has the potential to be indicative of anti-competition practices within this sector.

xi) Loss of consumer rights under the policyholders protection legislation

NAB is concerned that the shortfall in policyholder protection (policyholder protection legislation) when consumers are introduced to CMCs / accident management companies by insurers potentially benefits insurers over their consumer clients, and may represent a significant consumer detriment and potentially anti-competition practices within this sector .

xii) Repair Warranties

NAB is concerned that, the promises made to consumers under the proliferation of warranties promoted by insurers and CMCs has not been investigated or validated as part of this investigation. NAB is concerned that these warranties are mis-sold and that the benefit to consumers and protection offered may not be as comprehensive as consumers and the CC have been led to believe.

xiii) Unfair practices to effect consumer steerage

NAB has previously outlined what it considers are unfair practices by which insurers and CMCs “steer” consumer behaviour at the time of insurance purchase and at FNOL, notably:

- a) Policy wording that requires consumers to use an approved repairer
- b) Use of incentives (or disincentives) eg differential excesses to use an approved repairer, restrictive policy conditions relating to transfer of insurance cover for courtesy cars, delayed authorisation of repairs in non-approved repairers, insistence on using only PAS125 shops, consumers being asked to pay the difference between approved and non-approved terms when choosing a non-approved repairer
- c) Misleading consumers about repair quality, repair guarantees and the provision of temporary replacement vehicles, should they wish to use a repairer of their own choice
- d) Providing too much/too little information at a time of distress and asking consumers to agree to terms they may not understand NAB suggests CC has not fully embraced the potential friction and consumer detriment arising from this behaviour.

NAB is concerned that that without investigation these practices have the potential to be vertical restraints on a market and potentially indicative of anti-competition practices within this sector.

xiv) Total losses

NAB suggests that its evidence and concerns about consumer detriment arising from total loss procedures has been overlooked by CC in favour of more simplistic commercially-based possible remedies. NAB asserts that the higher prices currently being paid for salvage represent a wholly distorted salvage market that encourages corrupt and criminal behaviour which is, in itself, detrimental to all consumers.

xv) Approved repairer models

NAB accepts that CC has recognised, but has not fully embraced as part of its possible remedies, our evidence highlighting the part played by approved repairer commercial terms and service level agreements in the underprovision of repairs. Further, NAB recognises that CC wishes to initiate downward price pressure on third party repair costs.

NAB cautions that should any corrections to third party repair costs be introduced without corresponding re-alignment of first party repair costs, then the consumer risk identified within our previous assertion ...

“there is significant risk to consumers if the repair sector does not have sufficient revenue to reinvest in training, skills and equipment, to meet the advancing needs of modern vehicle repair”

will be fully realised.

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