



Inquiry Manager
Competition Commission
Victoria House
Southampton Row
London
WC1B 4AD

9 February 2014

Dear Sirs

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

This is the response from the trade body ("The CHO") representing the interests of credit hire companies ("CHCs") in relation to the Provisional Findings ("PFs") issued by the Competition Commission ("CC") on 17 December 2013.

This response concerns itself with Theory of Harm 1 ("ToH1") with regard to the supply of Temporary Replacement Vehicles ("TRVs") and the CC's conclusion that separation of cost control and cost liability contributes to an adverse effect on competition ("AEC").

1. Gaps and Errors in the CC's Work

- 1.1. Whilst this response repeats paragraphs from the CHO's submission in relation to the Notice of Possible Remedies these comments apply materially to the Provisional Findings. The CHO disagrees with the CC's finding of an AEC in relation to the provision of temporary replacement vehicles ("TRVs"). The CHO considers that the CC has reached a mistaken conclusion due to serious mistakes and the continuation of gaps in its analysis, including those set out below.
- 1.2. First, the CC has repeatedly acknowledged that the existence of CHCs provides an incentive to fault insurers to provide TRVs under direct hire. This is correct. However, the CC has not taken this incentive effect into account in reaching its conclusion that the separation between cost liability and cost control (in combination with frictional costs) leads to an AEC.



- 1.3. This omission is highlighted in the cost benefit analysis presented in PFs which purports to show the net cost associated with the AEC. As The CHO has submitted to the CC, any cost benefit analysis should attribute benefits of direct hire to the existence of credit hire (since the latter incentivises the former) but no such benefit is included in the CC's cost benefit analysis.
- 1.4. Second, Although the CC has acknowledged that the existence of CHCs provides an incentive to fault insurers to provide TRVs under direct hire, the CC has failed to conduct any analysis of the lengths that insurers will go to avoid recognising the rights of the victims of accidents. For example, the CC has failed to analyse insurer bilateral agreements in depth (despite The CHO alerting both the OFT and the CC to the types of anticompetitive (and certainly "anti consumer") behavior that insurers adopt to minimise cost at the expense of consumer rights). Had it done so, it would have understood that they are employed by insurers to deliberately deny consumers' access to their legal entitlements. This is a huge and continuing gap in the CC's analysis given the AEC gives rise to possible remedies that shift control even more towards insurers.
- 1.5. Third, whilst the CC acknowledges that the costs of credit hire are policed by the courts' assessments of what is reasonable, the CC mistakenly appears to consider that the oversight of the courts is inadequate despite having not conducted any investigation. Again this is despite The CHO urging both the OFT and the CC to undertake further work to better understand the protection already offered to insurers as regards credit hire day rates for TRV's.
- 1.6. The CC continues to mistakenly conclude that "insurers of at fault drivers appear to find it difficult to assess the extent to which the costs claimed are reasonable and appear to exercise only limited control over the cost of these services" (PF para 1.5).
- 1.7. The CC has not performed any analysis to support this statement. It is a statement that is repeated by insurers and which the CC seems all too willing to believe and repeat without question. All of the CC's analysis has compared credit hire rates to direct hire rates. Whilst this is an understandable data comparison the CC's failure to also compare credit hire rates to those rates available to the consumer have led the CC to understand the market for the provision of TRV's from a one dimensional and arguably bias perspective.



- 1.8. The CHO has urged the OFT and the CC on many occasions to undertake a study of commercial day rates available to the consumer. The CHO has also urged both the OFT and the CC to understand the background to the effects of the Autofocus fraud on the perception of those commercial day rates. The CHO reiterates its view that it is a material omission of the CC not to have undertaken this work. If it had performed the work the CC would have found out that it is in fact easy to ascertain the reasonableness of a credit hire claim. The CC has all too willingly merely assumed (because insurers have told them) that it is not easy to ascertain whether credit hire day rates are reasonable. Furthermore had the CC undertaken any work in this regard it would have ascertained that credit hire claims are in fact reasonable, not least because CHCs take care to (and have incentives to – ie CHC's do not get paid for unreasonable claims) only make reasonable claims. This work needs to be done in order to quantify the extent of and / or existence of any AEC.
- 1.9. Fourth, the CHO previously submitted to the CC that it had failed to undertake sufficient study to understand the magnitude of the commercial and legal protection given to at fault insurers as a result of significant case law that governs the cost dynamics involved. In particular, the CC should have analysed challenged claims (post-Autofocus) as this would have demonstrated the reasonableness of CHCs' claims. This work needs to be done in order to quantify the extent of and / or existence of any AEC.
- 1.10. Fifth, It remains of concern to The CHO that the CC has still not studied this adequately and has also made elementary mistakes in relation to stating the actual position established in law. For example in para 3.18 the CC states that "the non-fault driver need only show that the rate is reasonable" – this is not the case in law and it is alarming that at this stage in the enquiry such elementary mistakes are being made.
- 1.11. Sixth, the CC's cost benefit analysis claims to identify net costs of credit hire associated with increased frictional costs compared to a world where credit hire is converted to direct hire, but this is an illusion that arises from an incomplete analysis.
- 1.12. The essence of the CC's cost benefit analysis is that the separation of cost liability and cost control combined with the frictional costs of CHCs imposes an additional cost in the supply chain. However, the CC has failed to integrate frictional costs borne by consumers in its cost benefit analysis.



- 1.13. Without CHCs acting on their behalf, consumers (victims of accidents) would need to exercise considerable effort themselves (despite a lack of knowledge and expertise) in attempting to secure TRVs under direct hire from fault insurers, who have no incentive to provide such a service (as noted above, the CC appears to acknowledge that fault insurers do not have a direct incentive to provide TRVs to the victims of accidents). The CHO set out the work the CC should do to address this issue in its response to the Annotated Issues Statement (see in particular paragraph 1.22 where we ask the CC to investigate the extent of insurer behavior (non payment of valid claims) inherently makes the claim cost increase as CHC's litigate claims that could have been settled earlier with the insurer benefitting from discounts). Again, the CC has still not conducted that work. This work needs to be done in order to quantify the extent of and / or existence of any AEC.
- 1.14. Frictional costs therefore do not disappear under a notional world of all direct hire but are rather displaced from CHCs and are privately borne by consumers instead. In practice, consumers are likely to find the frictional costs prohibitive – especially when an absence of credit hire removes insurers' incentives to provide direct hire - and be forced to do without mobility instead.
- 1.15. The above is all the more important since credit hire cases involve a higher proportion of cases in which liability is not clear, compared to direct hire cases. This inevitably means the costs of establishing liability are higher on average in credit hire cases.
- 1.16. Seventh, and at least as fundamental as any other omission in the CC's work, the CC has done (i) no analysis of what the direct hire rates submitted to it actually represent or (ii) what might happen to direct hire rates in a market where credit hire was either less prevalent or indeed prohibited. This work needs to be done in order to quantify the extent of and / or existence of any AEC.
- 1.17. The CC's figures for direct hire rates appear to be based on samples and the CC has not shown that they are representative. Furthermore, direct hire rates reflect complex commercial relationships between car hire companies and insurers and reflect a variety of strategic considerations including low direct hire rates in exchange for, inter alia, credit hire referrals (meaning that the direct hire rates identified by the CC would be higher absent credit hire) or as a means of charging consumers for other protections or add ons that are afforded by and included within the provision of credit hire. The gaps in the CC's work and consequent understanding of what is represented by headline (low) direct hire rates undermines the CCs quantification of ToH1 in the extreme and have led it to suggest disproportionate PRs.



- 1.18. Without access to the data room to ascertain what exactly insurers were asked to provide viz a viz direct hire rates and then to see the extent of the data submitted and how those data were described to the CC it is just not possible (again given the extent of the redactions in the PF's) to respond to the underlying context that is required to understand the mathematical comparison that has been performed by the CC. The CHO maintains that direct hire rates are headline rates that are offered as part of a wider business relationship between the supplier and the insurer and that these rates are not therefore comparable to credit hire rates.
- 1.19. Finally, The CHO notes that the CC has reached its AEC finding while treating consumers in aggregate and not considering costs and benefits separately for victims of accidents and tortfeasors.
- 1.20. In particular, the CC has considered the benefits of credit hire only in aggregate (concluding, wrongly, such benefits are small) but has failed to consider the benefits for victims. Considering the position of victims separately would have led the CC to recognise that its AEC finding operates against the interests of victims of accidents (since they are better off under the status quo). As such the AEC finding has a distributional aspect and cannot simply be regarded as a finding confined to the issue of economic efficiency. The CHO queries the basis on which the CC can reach an AEC finding that includes value judgments between classes of consumers.

2. Dataroom

- 2.1 The CHO also notes that it has requested access to the data room and that it will only be in a position to provide complete comments having obtained such access. The CC's findings are highly sensitive to calculation errors, inconsistencies, biases and omissions and the CHO is only in a position to comment on these once given access to the data room including full details of any data contained therein. Such access is vital for the CHO to be able to check the reliability of the CC's calculations.



3 CC's Approach to Data Collection – EG VAT

3.1 In regard to dataroom access and as a catastrophic consequence of the way the CC has conducted the enquiry, the CHO notes the very significant and basic error that the CC has seemingly made in regard to the treatment of VAT. For VAT exclusive direct hire amounts to be obtained and used as the comparator to VAT inclusive credit hire rates suggests (i) that the CC did not ask appropriate questions when collecting data; (ii) that the CC did not know or understand what data it received back in response to its questions; and (iii) suggests the CC performed no internal auditing of its own analysis. Most alarmingly the CC was unable to distinguish a 20% error in the quoted direct hire rates indicating it has not got a commercial grasp of a most basic component of costs. For the CC to then use this flawed data to justify the existence of an AEC and for it to use that flawed justification to propose possible remedies that would arguably end credit hire and make access to TRV's for consumers materially harder is alarming to say the least.

3.2 The comments made previously about the CC not understanding the more complex dynamics and underlying reasons for direct hire rates being what they are (see paras 1.16 to 1.18) are important additional threads that the CC must explore before again erroneously quantifying the supposed AEC.

4. Estimate of Credit Hire Revenues

4.1 I refer to paragraph 6.83 of the PF's. The CHO is concerned about the robustness of the figure the CC has used for credit hire revenues (£663m) to derive the higher estimate of net detriment from TRVs (£140-180m). This figure was generated by the previous CHO Director General and, I believe, involved a large degree of estimation and extrapolation and was produced as part of an exercise to show the *trend* in credit hire revenues as opposed to being a reliable quantification of it.



- 4.2 The CHO does not believe that it was shared with the CC as part of the current investigation into the Private Motor Insurance market. The CHO understands that the former Director General no longer has the supporting calculations. Furthermore, the CHO understands that the CC has not asked the former Director General about the derivation of those figures. Given that this data produces a net detriment of up to almost double that using the CC's own base case figures it is very surprising that the CC has not sought to interrogate the reliability of those estimates before seeking to rely on them. Given these factors the CHO does not think that the CC should rely on that figure, at least without substantial further work to test its robustness and explain why it yields a result that is higher by almost 90% than the base case.

5. Ongoing Dialogue with the CC

- 5.1 The CHO is available to explain the above issues in more detail at your convenience and looks forward to the round table meeting on 28 February.

Kind regards

Yours faithfully

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Director General
The CHO Limited