

# **BGL Group Limited**

## **Response to Provisional Findings Report**

### **Introduction**

BGL sets out below its detailed response to the points raised in the Competition Commission's Provisional Findings Report. We have tried, once again, to provide as much detail and analysis as possible to assist the Competition Commission in its work. Of necessity, our responses are sometimes technical and follow the format of the Provisional Findings Report. Once again, however, we think it is valuable for us to précis our detailed responses with a brief outline of our position.

We have tried, throughout this process, to remain focused on the private motor insurance consumer. Across BGL we interface with the PMI consumer at a number of touch points and in each our business model and approach is designed to ensure consumers obtain maximum value at the best available prices.

In this regard we welcome the elements of the Provisional Findings Report which focus on the provision of greater visibility and transparency to the consumer whether in relation to consumer rights or product coverage. Whilst we consider that these objectives need to be balanced with accessible and understandable consumer journeys, we are whole heartedly supportive of measures to ensure greater information is provided to each customer.

Again, we are in favour of any initiative that is targeted at improving the quality of consumer outcomes. Accordingly, measures targeted at improving and maintaining the quality of repairs are supported by us even where this would necessitate increased regulation.

However, we are concerned at the potential for the appropriate perspective and context within this market to be lost. The Competition Commission has found evidence of high levels of competition in relation to the pricing of policies and the provision of related services. This highly competitive market has arisen owing to the balance of power that exists between the various market participants. This balance has evolved over time and is the result of significant investment and a clear dedication to improved consumer outcomes on the part of businesses such as BGL. This approach has been taken in the face of open challenge by large (and collectively dominant) market participants. [X]

Returning to the focus on the consumer, the potential improvements referenced above need to be balanced against the elements of the Provisional Findings Report which are likely to lead to significantly greater consumer detriment. These include the following:-

1. Measures aimed at restricting consumer choice in relation to provision of replacement vehicles and/or repairs;
2. Measures potentially restricting the ability of PCW's to negotiate optimum prices for their consumers;
3. Measures likely to force the innocent non-fault consumer to accept a service from the at-fault insurer despite the evident conflict of interest and with the express intention of cost reduction.

### **1. Executive Summary**

- 1.1 BGL welcomes the opportunity to comment on the Competition Commission's (**CC's**) provisional findings as set out in its report published on 19 December 2013 (the **Provisional Findings** and **Provisional Findings Report** respectively).
- 1.2 This submission follows BGL's response to the CC's Notice of Possible Remedies (**Possible Remedies**) submitted previously in accordance with the CC's deadline. BGL will look to develop further in this submission some of the points outlined in its previous responses. However, it remains BGL's view that the CC's approach, involving the determination of potential remedies ahead of concluding the process of evidence gathering and analysis, will impair the quality and cogency of the CC's conclusions.

- 1.3 More importantly, in this submission, BGL wishes to draw the CC's attention to a number of critical issues, which fundamentally undermine important conclusions drawn by the CC in respect of the UK's private motor insurance (**PMI**) market. This, in turn, challenges the need, relevance, proportionality and consequences of certain remedies contemplated by the CC.
- 1.4 The issues raised by BGL in this response are, where they contradict or qualify the Provisional Findings, supported by empirical data and independent research. By way example there is the theory of market power that the CC has (we say erroneously) constructed around price comparison sites (**PCWs**). This theory has been adopted to support the CC's view that wide MFN's have an adverse effect on competition (AEC). However, we would make the following points:
- 1.4.1 The CC appears to be relying on a finding of market power on the part of PCWs to justify concerns outlined in the Provisional Findings Report regarding the use of wide MFNs and, in coming to its view on market power, the CC places heavy emphasis on each individual PCW comprising an exclusive means of access to a significant group of consumers. The CC refers to this as 'single-homing'. The CC states in Paragraph 9.9 of the Provisional Findings Report:
- "9.9... the degree to which a PCW can provide exclusive access to a subset of retail consumers is a source of market power."*
- 1.4.2 Paragraph 9.10 of the Provisional Findings Report observes that the degree to which customers 'single-home' or 'multi-home' (i.e. compare across more than one platform or channel) is an *"important determinant of competition"*. Paragraph 9.11 goes on to state:
- "(a) The CC consumer survey estimated that 33.5 per cent of consumers who use PCWs use only one PCW. This percentage amounts to 450,000 customers for the smallest of the 'big four' PCWs.*
- (b) According to the CC consumer survey, consumers on average searched on 2.2 PCWs the last time they shopped around for motor insurance."*
- 1.4.3 Paragraph 9.12 concludes:
- "At 30 per cent single-homing, the fact that any one of the big four PCWs might provide exclusive access to around 8 per cent of PCW shoppers [assuming single homing rates are equal between the four large PCWs] is a material source of power"*
- 1.4.4 The first observation that BGL would make as regards the CC's findings is that the CC concedes that most consumers search on more than one PCW (the CC average being 2.2). However, it is not at all clear from the Provisional Findings Report, its Appendices or the Working Papers (including the IFF 'Consumer Survey') how this average of 2.2 consumers is compiled and would respectfully request that the CC identify its research and findings clearly in this area for further analysis.
- 1.4.5 Secondly, the CC's suggestion that eight per cent of PCW shoppers can only be accessed through a single PCW presupposes, without any supporting evidence, that those consumers purchase PMI in a complete vacuum, relying exclusively on the relevant PCW for their PMI requirements and without paying any attention to extraneous advertising, marketing or other sales approaches. This is simply not credible (not least because of the substantial sums that major insurers spend on advertising); indeed, it is not actually demonstrated by the CC's research, which does not specifically ask the question about single-homing. In any event, being the primary means with which to access eight per cent of consumers does not, based on any relevant competition principles, confer market power.

- 1.4.6 Thirdly, if single-homing were anti-competitive in its own right, we do not understand why this would be an issue only for PCW's. [X]<sup>1</sup>.
- 1.4.7 Fourthly, the comparison drawn by the CC between PCWs and other multi-sided platforms, such as smartphones (for example, in paragraph 9.10 of the Provisional Findings Report), is misguided and implies the consumer is locked into a service (or strongly incentivised to use only that service) when the reality is quite different. The CC notes in its 'Working Paper: Theory of harm 3: Horizontal concentration in PCWs' that switching between PCWs takes five to ten minutes.<sup>2</sup> This is an entirely different proposition to a consumer spending hundreds (if not thousands) of pounds on a smartphone with an operating system to accommodate a different range of apps. Consumers are not locked into any particular PCW in any way, whether contractually or economically, nor (as demonstrated above) does their use of multiple PCWs imply that they consider they are. The collective and individual popularity of PCWs depends on their ability to provide a useful, trusted and appealing service to consumers, which can be contested at any time by any other provider or channel.
- 1.4.8 Finally, and most importantly, aside from BGL's concerns as to the CC's approach to market definition, which is dealt with later in this response, the CC's findings on single-homing should be discredited for the following reasons:
- (i) Recent independent market research (taken from a larger sample of consumers than the CC's IFF survey<sup>3</sup>) materially contradicts the CC's conclusions as to single-homing rates. In particular, extensive consumer research conducted on behalf of Consumer Futures (forming part of the Citizens Advice service from April 2014) records that:  
*"There is little evidence of loyalty – no consumer said that they used a particular site 'out of habit' for example, and there was often hesitation as they named the ones they had used. Consumers told us they simply used sites that come to mind when they start to shop around or research a purchase"*<sup>4</sup>
  - (ii) More specifically, evidence gathered in the Consumer Futures' Report reveals a very high incidence of multi-homing:  
*"Indeed, most (83 per cent) PCW users visit more than one site in the comparison process. Their main reasons for using multiple sites are to make sure they get the best deal (61 per cent) or to compare or verify the comparison results (42 per cent). The comparison process often also continues offline, for instance with phone calls to current or alternative suppliers."*<sup>5</sup>
  - (iii) This research evidences not only a much higher incidence of multi-homing (83% as against the CC's 66.5%<sup>6</sup>), it also highlights the willingness on the part of consumers to use offline channels to compare PMI products alongside online methods (as noted in **section 1.4.6** above). This tendency is reflected in specific consumer survey

<sup>1</sup> [X]

<sup>2</sup> Paragraph 89 of the Working Paper states: *"The cost of searching for a PMI policy is reduced by PCWs but consumers still invest time (typically around 5 to 10 minutes) in finding a PCW and entering their details."*

<sup>3</sup> 2,000 individual telephone surveys, together with 197 hall tests and 63 face-to-face interviews comprising the Consumer Futures' research (as against 1,500 telephone interviews for the CC's IFF research)

<sup>4</sup> Consumer Futures: Price comparison websites: consumer perceptions and experiences – A report by RS Consulting for Consumer Futures, published 22 July 2013 (**Consumer Futures' Report**), page 18

<sup>5</sup> Consumer Futures' Report, page iii. Annex 1 of this response reproduces data from the graph on page 33 of the Consumer Futures' Report which records the number of PCWs visited by consumers when comparing online.

<sup>6</sup> Which, in fact, halves the number of, captive consumers to any PCW.

responses (an extract of which is reproduced in **Annex 2** of this response).

- 1.4.9 It follows that to suggest that a large group of consumers is entirely captive to an individual PCW (and that this confers market power on that PCW, which in turn should justify constraints on its normal trading relationships) is wholly unsupported by recent, independent and extensive consumer research. The continuing investment by existing and new PCWs will (unless unreasonably constrained by the CC) mean that improved consumer journeys and brand recognition drives more of this behaviour.
- 1.5 Other examples are provided throughout this response. Taking this evidence into account, not to mention the apparent bias in favour of insurer data shown by the Provisional Findings (which this response will demonstrate), BGL's view is that there are no AECs as regards at least several of the CC's theories of harm, including the separation of cost liability and cost control and the potential adverse effects of wide MFNs.
- 1.6 BGL has a real concern that the Provisional Findings and Possible Remedies risk returning the PMI market to a situation where insurers are encouraged to increase profit margins at the expense of essential consumer services and engage in pricing practices that clearly have the potential to exploit large groups of consumers.

## **2 Background to the CC's investigation**

- 2.1 By its nature, each individual investigation conducted by the CC represents a snapshot of the market concerned; however, BGL would caution that it is not rational for the CC to disregard significant market improvements (for example, record drops in premiums<sup>7</sup>) occurring after any initial point of reference in the CC's investigation. The CC's failure to take proper account of these developments or features (or to dismiss their value) also undermines its Provisional Findings because such conduct implies that the Provisional Findings are not anchored to a realistic AEC; rather they are designed to support remedies which favour the commercial objectives of the most influential stakeholder group participating in the process (insurers).
- 2.2 Similarly, while BGL understands that the CC should not rely exclusively on historical evidence as a proxy for future predictions, it is also unwise to ignore past trends and behavioural patterns as indicators for future conduct. This may relate to the development of the credit hire and claims management industry as a response to an unmet consumer need for proper mobility and repair solutions in the event of an accident where they were not at fault, as well as the emergence of PCWs. As regards this latter point, BGL's PCW, Comparethemarket.com, has become popular with consumers because its business model is focused on providing consumers with an easy way to find the best deals in one place and to drive competitive pricing in the sector. According to a leading market commentator:
- "For consumers, the aggregators have driven down prices and opened up a complex market to greater levels of transparency."*<sup>8</sup>
- 2.3 This has prompted a strong reaction on the part of insurers, as highlighted by insurer consultancy, Towers Watson:

*"Focusing on the period 2002 and subsequent, the conclusion is obvious and rather damning – aggregators have encouraged greater price competition without gaining much profitability themselves...Aggregators cost the UK insurance industry £1 billion in unnecessary price competition, last year...What*

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<sup>7</sup> The AA has recently reported a record (14.1%) fall in British motor insurance premiums (for the year ended 31 December 2013), which tracks a consistent and dramatic decline in PMI premiums since at least July 2012. Source: AA British Insurance Premium Index Quarter 4 2013 - <http://www.theaa.com/newsroom/bipi/201401-bipi.pdf>

<sup>8</sup> Beachcroft: Learning to live with the aggregator, 2010, page 3 - <http://www.dacbeachcroft.com/documents/thoughtleadership/dac-beachcroft-thought-leadership-learning-to-live-with-the-aggregator>

*is most worrying though is that the last 10 years should have been extremely profitable [for insurers] with inflation steady at around 2%...As Ted Kelly, CEO of Liberty Mutual, recently noted 'we've had no inflation for 10 to 12 years, any idiot can make money in personal motor.' Where this might have been true for the US motor market, where aggregators have been completely unsuccessful (and it is better for everyone if they stay that way), it has certainly not been true for the UK motor market'*<sup>9</sup>

- 2.4 Notwithstanding any concerns raised by insurers as to the impact of PCWs on their profitability, BGL would challenge any finding on the part of the CC that insurers are not highly profitable (and, as a result, do not themselves occupy a position of market power, which far eclipses that of PCWs). According to research conducted by Thompsons (a more detailed extract of which is reproduced in **Annex 4** of this response).<sup>10</sup>

*"The major car insurance companies are making huge profits that they could use to reduce premiums for drivers... The facts show the car insurance companies are making big and growing profits, and they are putting paying dividends to their shareholders ahead of reducing premiums. One major car insurer is making a £245m dividend payment for 2012, which could have funded an £81 premium reduction for each and every one of its three million customers... They will present themselves as objective and concerned about motorists when in fact insurance companies are about maximising profits and do that by paying out as little as possible and charging as much as they can in premiums. It is absurd to suggest insurers are on the side of the motorist any more than big oil companies are"*

- 2.5 In any event, in taking, as its starting point, the operation and functionality of the PMI market at a specific and recent point (primarily 2012), the CC risks paying insufficient regard to the challenges and risks that have been overcome in establishing the more competitive (albeit imperfect) PMI market that we see today. The history of the PMI market (by which we mean the entire operation of that market for the majority of its existence) has been characterised by three key issues:
- 2.5.1 The vast gap in knowledge, access, and expertise between PMI providers and consumers.
  - 2.5.2 The cumbersome nature of the PMI application process in terms of volume of information required from consumers, the complexity of legal language and jargon used and the time investment required meant that few consumers could access multiple PMI providers. Accordingly, consumers were unable to make informed assessments of market prices and there were significant barriers to switching between providers.
  - 2.5.3 A limited number of PMI providers existed and these were dominated by large institutions. The individual and collective market power of these institutions represented a significant barrier to new entrants. This challenge was (and continues to be) exacerbated by the fact that these PMI providers act in concert using the ABI.
- 2.6 The current "strong rivalry" evidenced in the PMI market is a position to which the majority of major PMI providers (by volume) have been brought unwillingly and reluctantly<sup>11</sup>. The structure of these large incumbents, the approach adopted by them and their vested interests have not changed significantly; nor has the introduction of successive regulatory regimes had a significant impact on improving the operation of the PMI market. If anything, it could be argued that the imposition of a regulatory regime across financial services (being largely "one size fits all") represents an additional barrier to entry.

<sup>9</sup> Towers Watson: 'Why aren't we making money...', December 2010', page 2

<sup>10</sup> Analysis reveals car insurance companies are making huge profits and could reduce premiums - 20 May 2013

<sup>11</sup> Ibid

- 2.7 Some key changes which are relatively recent when viewed against the history of this market have transformed the operation of the PMI market as follows:
- 2.7.1 The information and knowledge asymmetry between PMI providers and the consumer owing to the complexity of the product and the consumer's legal rights has been balanced by improved consumer representation at each stage of the PMI transaction.
- In relation to the claims process: brokers, claims management companies, legal representatives, claims services providers (e.g. hire and repair companies) and even not at fault insurers have sought to offer services to consumers targeted at ensuring that those consumers receive the compensation, restitution or indemnification to which they are entitled at law and/or contractually. The volume and sustainability of new market entrants in PMI has undergone a positive step-change as a result of the investment and integrity of PCWs. The reaction of the established market participants was not to embrace this additional transparency, visibility and consumer choice. [✂]
- 2.8 In failing to place appropriate emphasis on this historical context in the Provisional Findings Report, the CC is assuming that the benefits currently derived by consumers from the presence of non-insurer service providers in the PMI market (whether PCWs, credit hire operators or claims management companies) can be preserved or replaced with no ill-effects, by granting those parties with the greatest incentive to compromise or eliminate those services more control over the sales and supply chain. This is of very considerable concern, particularly when the financial impact of any AEC shown by the CC to justify its Possible Remedies is marginal and, potentially, exaggerated. **Section [5]** of this response analyses this issue in more detail.
- 2.9 Given the potential magnitude but fragility of the benefits delivered to consumers by non-insurer service providers, it is of great concern to us that the Remedies Notice and the Provisional Findings appear targeted at returning the PMI market to one characterised by greater consumer detriment arising from the restriction of consumer access to services which ensure consumers receive their entitlements, or even the reduction or eradication of those entitlements themselves.
- 2.10 The stated objective, against which such action is set, is a reduction of costs for a limited number of market participants. Even if this cost reduction became manifest (about which we have serious doubts as evidenced in **section [5]** below), we have seen no mention of how, it is possible to ensure that consumers will benefit.
- 2.11 The conclusion that any such lower costs will translate into lower PMI premiums has no basis either in the structural approach to pricing in the PMI sector or historical fact. This outcome is still less likely as result of conclusions drawn elsewhere in the Provisional Findings. The potential weakening of the position of PCWs both in terms of limiting current consumer propositions and weakening future investment must have a detrimental impact on competition. This will compound the anti-competitive impacts of the proposed margin shift towards the largest insurers.
- 2.12 Against these uncertain benefits the adverse consumer consequences in respect of PMI (and, in practice, other insurance products where competition is less intense) will be considerable, and exceptionally difficult to unravel.
- 2.13 BGL fully appreciates that the CC is still consulting on its Possible Remedies and that no final position has been taken; however, it urges the CC, in the strongest possible terms, to revisit its evidence, its conclusions and possible remedies taking into account this submission and previous BGL feedback.
- 2.14 Notwithstanding BGL's concerns, BGL acknowledges that certain elements of the Provisional Findings and the Notice of Possible Remedies – such as those surrounding enhanced transparency for consumers and the possibility of enhanced industry regulation through a transformed General Terms of Agreement (**GTA**) - have potential merit and the capacity to deliver consumer good. BGL looks forward to working pro-actively with the CC on these issues.

### 3 Specific Considerations

- 3.1 While supporting the CC's position on certain areas (such as those which would lead to enhanced transparency for consumers, the benefits of a transformed and enhanced GTA and the benign impact of narrow MFNs), BGL disagrees strongly with the Provisional Findings in a number of other areas.
- 3.2 These are summarised below and developed further in **section 4 to 7** of this submission. In particular:
- 3.2.1 In assessing whether certain features of the PMI market give rise to an adverse effect on competition (**AEC**), BGL considers that the CC has failed to evidence how those features have, in reality, manifested themselves in any harm to consumers whatsoever.<sup>12</sup>
- 3.2.2 Actual market outcomes do not support Provisional Findings of any AEC. The standard of proof - for establishing an AEC to the balance of probabilities - is not discharged, particularly in view of the highly invasive nature of certain remedies proposed by the CC concerning cost separation and cost control and wide MFNs.<sup>13</sup>
- 3.2.3 There is simply no credible or sustainable correlation between the features identified by the CC as giving rise to AECs and any increase in premiums or other consumer detriment.
- 3.2.4 On the contrary, a worrying number of the Provisional Findings are highly theoretical and sensitive to a range of untested or flawed assumptions (including on market definition and market power in the price comparison space); moreover, they rely on a deeply one-sided assessment of costs, at the expense of a thorough and empirical analysis. Our specific concerns relating to the CC's analysis of the costs surrounding the separation of cost liability and cost control are set out in **section 5** below.
- 3.2.5 As regards establishing a solid base for any associated remedies, the Provisional Findings underestimate the inherent conflict of interest between at-fault insurers and non-fault consumers.
- 3.2.6 Indeed, the remedies suggest a willingness on the part of the CC to sacrifice consumers' fundamental legal rights and their ability to elicit the most competitive PMI deals in order to deliver cost savings to certain insurers that will, based on their historic and anticipated behaviour, only serve to improve their margins.
- 3.2.7 Further, the Provisional Findings Report only attempts to quantify the cost to consumers of one of the several AECs identified; namely, that concerning the separation of cost liability and cost control.
- The CC makes no attempt, for example, to quantify the impact of wide MFNs on premiums; it is, in fact, impossible to determine – partly as a result of the CC's extensive redaction of all financial data from Annex D of Appendix 9.3 of the Provisional Findings Report – whether wide MFNs have any real impact on premiums at all.<sup>14</sup> [X]. Furthermore, even if the impact on CPA was in fact,

<sup>12</sup> In addition to the continued reduction in premiums reported by the AA (see **footnote 5** above), **Annex 3**, which reproduces data from a recent study conducted by leading financial sector data provider, Defaqto ('A review of the motor insurance market – May 2012') - highlights the continued trend towards increased competition and choice in PMI for UK consumers.

<sup>13</sup> The CC has stated in its own guidance that it will apply a 'balance of probabilities' threshold in proving an AEC. It follows that although the CC has a margin of appreciation in determining an AEC, it must nevertheless be satisfied that its testing and analysis of the relevant evidence meets the appropriate civil standards. According to the Competition Appeal Tribunal, 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"* - *Barclays Bank plc v Competition Commission* [2009] CAT 27, para. 21

<sup>14</sup> The CC notes in paragraph 15 of Annex D that *"Although there is still a difference between the commission fees charged, this is relatively small (on average £0.78) and is even less on two*

£0.78 as the CC suggests, this would represent only 0.17% of the average motor insurance premium.

In any event, the Provisional Findings fail to compare whether there is any pattern in price differentials in respect of the same risk (i.e. an individual with the same requirements for cover) for a policy sold through a PCW (whether subject to a narrow or a wide MFN) as against an equivalent policy sold in respect of an insurance brand that is not subject to an MFN (i.e. one sold only directly by the relevant insurer). Moreover, when considering the impact of MFNs on CPAs and, if at all, premiums, the CC should give equal consideration to other factors such as volumes, conversion rates and the respective negotiating positions of different parties.

- 3.2.8 The CC asserts adverse effects in respect of other features of the PMI market (relying primarily on limited and, in some instances, entirely inconsistent or disputed anecdotal evidence, rather than empirical data) however, the impacts of such features are not, in any event, quantified in any clear or reasoned manner.

For example, in paragraphs 9.55 to 9.57 of the Provisional Findings Report the CC lends excessive weight to the part played by wide MFNs to the decision by Covea SGAM to refrain from entering the PCW space in 2012. The CC observes:

*"Covea SGAM's consultants concluded as follows:*

*Unless the [Covea SGAM] team can demonstrate tangible reasons that differentiate the business model from the existing players therefore allowing them to consistently beat the average over an extended period, then we see the downside risks as too high to justify the significant investment required to launch a full scale aggregator into the UK.*

*In other words, the difficulty of launching with a differentiated offering, as identified in our analysis in paragraphs 9.32 to 9.36 above, seems to have been the limitation on entry.*

*Covea SGAM informed us that the existence of MFNs prevented it from differentiating itself with a low-premium entry strategy. The entry strategy evaluated by Covea SGAM was entirely based on competing on marketing, not price. On this basis, Covea SGAM considered the venture too risky"*

In this instance, BGL would dispute that the presence of MFNs motivated Covea's decision not to enter the PCW space; this is a convenient justification and not supported by any specific data in the relevant consultants' report. Indeed, at the time of Covea's announced decision in 2012, other reasons were reported for its decision, ranging from the fact that its PCW proposition did not fit with its core business to signs of a potential return to underwriting profit (suggesting a better return on investment elsewhere).<sup>15</sup>

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*of the PCWs. This shows that once bargaining power among the largest insurers is accounted for, the difference in commission fees between insurers with wide and narrow MFN clauses is much smaller".*

<sup>15</sup> <http://www.postonline.co.uk/post/analysis/2190766/expert-analysis-the-return-of-motor-madness>; [http://media.igo4limited.co.uk/pricecompwatch/July\\_2012.pdf](http://media.igo4limited.co.uk/pricecompwatch/July_2012.pdf)

[Insurance Times, 3/11/11](#)

A spokesman said: "In response to speculation regarding the launch of our new price comparison site, I would like to clarify that we have reviewed our launch schedule following valuable discussions with consumers and our insurance partners.

"It was clear during our exploratory meetings with both consumers and partners, they did not want another 'me too' aggregator, but one which brought real differentiation to the market.



- 3.2.9 It follows that aside from the relatively marginal (and disputed) impact of the separation of cost control and cost liability on premiums (representing, according to the CC's figures, only between 1.3 and 1.8 per cent of the average premium or £6 to £8 per policy<sup>16</sup>), the CC has not published a similar analysis in respect of any other AEC; instead relying on theory and supporting evidence which is, at best, anecdotal.
- 3.2.10 Amongst other concerns, this approach renders it impossible to undertake a detailed analysis of the substance of the Provisional Findings (at least as regards other alleged AECs) or the proportionality of any associated remedies.

#### **4 CC's general approach to market definition**

- 4.1 The CC states in the Provisional Findings that *"We decided that PCWs constitute a distinct market whose geographic scope is the UK in its entirety"*<sup>17</sup>.
- 4.2 The CC elaborates briefly on this proposed market definition in the Provisional Findings Report. However, the Provisional Findings Report represents the first point in the investigation at which the CC raises the prospect that PCWs constitute a distinct market (presumably for the distribution of PMI although this is not explicit), as opposed to being one of a number of channels through which insurers can advertise, and consumers can access, PMI.
- 4.3 Indeed, in its working paper on PCWs,<sup>18</sup> the CC does not indicate, at any stage, that it regards PCWs as a distinct market; rather it focuses on PCWs as a sales channel for PMI. Further, while acknowledging that PCWs have *"some bargaining power"*,<sup>19</sup> the working paper acknowledges the competitive constraints placed on PCWs and avoids any mention of market power.
- 4.4 BGL has concerns as to the treatment of market definition for PCWs in the Provisional Findings Report, which does not accord with the facts or our experience. However, of equal concern is the fact that the CC's current approach would appear entirely inconsistent with previous decisional practice.
- 4.5 It is BGL's understanding that the CC would normally carry out a detailed analysis and consultation on market definition (whether as part of any detailed issues statement or working paper<sup>20</sup>) prior to this late stage of the CC's investigation. Throughout this

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"This is something we also believe in and the decision to review our launch timetable is a strategic one which will allow further developments of our offering in order to present the market and our partners with a truly enhanced proposition.

"We do not wish to rush to market at the expense of our customers and business partners with an offering that lacks innovation and market differentiation. We believe that by reviewing our launch timetable we will be able to come to market with an enhanced proposition that will benefit both consumers and our insurance partners".

#### Insurance Times 3/7/12:

"Cov  a had planned to launch an aggregator later this year, but as Bardet [new CEO] reveals in our interview, the company has decided to pull the plug. "It was a new project and they decided not to do it," he says simply.

<sup>16</sup> Aside from failing to place this relatively modest cost in the context of the size of the PMI market as a whole (£11 billion), the CC (while acknowledging the potential for a diminution of service) fails to offer any financial assessment of the value of the benefits derived by consumers as a result of the availability of swift and comprehensive mobility and repair solutions offered by credit hire operators and claims management companies

<sup>17</sup> Paragraph 34 of the Summary of the Provisional Findings Report

<sup>18</sup> Theory of Harm 3: Horizontal concentration in PCWs

<sup>19</sup> Ibid, paragraph 10

<sup>20</sup> This observation applies equally to PMI itself, which the CC has similarly identified as a distinct market with little opportunity for prior consultation

market investigation, BGL has sought to engage proactively with the CC to provide insight and evidence not only in relation to BGL's participation in the PMI market but also its experience of other market participants and, more generally, the operation of the PMI market over time. At no stage has the CC suggested to BGL that PCWs might comprise a distinct market, and so has given no opportunity for BGL to address this fundamental finding, whether through evidence or discussion, prior to the publication of the Provisional Findings Report. Given the fundamental nature of the CC's conclusion and how this relates to the Possible Remedies, BGL considers the omission of any consultation or clear and cogent analysis on market definition in the context of PCWs is flawed, unsubstantiated and unfair.

- 4.6 BGL's major concern is that the Possible Remedies proposed by the CC in respect of PCWs, namely, those relating to wide MFNs, rely (in part) on the CC being able to demonstrate that PCWs have some degree of market power which enables PCWs to impose widespread MFNs and, according to the CC, distort competition.<sup>21</sup> This leads BGL to a conclusion that the CC's findings in respect of market definition (at least as regards defining PCWs as a distinct market, which is artificially narrow and inadequately reasoned) has been designed to accommodate the Possible Remedy regarding wide MFNs, rather than comprising a properly conceived and evidenced market analysis.
- 4.7 As well as calling into question the robustness of the CC's analysis, the CC's approach gives rise to a very serious question of procedural fairness, which is exacerbated given the potential seriousness of certain remedies that the CC has proposed as they would apply to PCWs.
- 4.8 According to guidance on market investigations published by the CC, although not an end in itself, market definition comprises one of three pillars (or 'basic issues') against which the CC makes its AEC assessment.<sup>22</sup> The CC advises that its analyses of market definition, market characteristics and market features do not need to be conducted in distinct chronological stages; however, it is both unprecedented and unsustainable to suggest that the CC has discharged its duty in coming to any AEC conclusion without it having consulted on and published detailed views on the parameters of the affected market beforehand, which it has not done as regards PCWs.
- 4.9 Further commentary as regards the CC's approach to market definition as regards PCWs is set out in **section 7** below.

## **5 Separation of Cost Liability and Cost Control (Theory of Harm 1)**

- 5.1 CC has arrived at a conclusion in relation to Theory of Harm 1 that the separation of cost liability and cost control, together with practices by insurers and third party service providers give rise to adverse effects on competition. In order to arrive at this overall conclusion, and in relation to some of the CC's specific findings and assumptions, our view is that the CC has:
  - 5.1.1 Disregarded the detriment born by the non-fault consumer in the event of an accident.
  - 5.1.2 Relied on an incomplete and over-simplified analysis of the cost impact, both of existing market practices and those that would result from imposition of the Potential Remedies; and failed to outline if, and to the extent that any cost savings can be achieved, how this will benefit consumers.
- 5.2 The CC's analysis does not attempt to suggest (nor could it) that the separation of cost liability and cost control is detrimental to the consumer accessing replacement vehicle or repair services. The CC's analysis is not based on any finding of overprovision in relation to temporary replacement vehicles or repairs, only one of cost. It follows from

<sup>21</sup> Although the CC qualifies its findings in paragraph 9.20 of the Provisional Findings Report and suggests that some market power resides with insurers (or, at least, that not 'all of it is with PCWs').

<sup>22</sup> CC3 (Revised) - Guidelines for market investigations: Their role, procedures, assessment and remedies, paragraph 94.

this analysis that any material cost savings can only accrue as a result of either a reduction in the margins available for some or all market participants, or by reducing the level of provision available to consumers.

### ***Quantifying consumers' legal rights***

- 5.3 Conspicuous by its omission from the CC's analysis, is the impact on consumers of the loss of certain of their fundamental legal rights and entitlements.
- 5.4 The current position is that the innocent not at fault consumer is entitled to be restored to the position he/she would have been in had it not been for the occurrence of the incident of which they were the victim. In restoring themselves to this position the non-fault consumer is entitled to engage a third party of his/her choosing subject to the overriding obligation to mitigate any loss.
- 5.5 Without any analysis or even evidence gathering as to the impact this would have on consumers, both the Provisional Findings and each of the Possible Remedies considered by the CC have as their basis the legal and/or actual loss of these consumer rights.

### ***Credit hire rates v Direct hire rates***

- 5.6 It is inevitable that credit hire rates will be higher than direct rates; however, for the CC to compare the two and imply that because the former is higher than the latter it is somehow excessive or inefficient is incorrect. This does not support the CC's finding of an AEC in relation to the separation of cost liability and cost control.
- 5.7 Credit hire and direct hire arise in different situations. Credit hire is designed to reflect a consumer's legal entitlement based on an assessment of need and liability by a third party provider (and an assumption of risk on its part) combined with the provision of a variety of value-added services that the third party provider may afford the consumer (and thus relieve the at fault insurer of needing to provide) in helping to manage the claim, replacement vehicle and repair; direct hire arises where the insurer has accepted liability and has pre-arranged a replacement vehicle at a heavily discounted rate. It is not clear that the CC's analysis has recognised this difference. It is also not clear from the CC's workings whether account is taken of those organisations who self-insure (which should alleviate the impact of any credit hire claims on PMI premiums) or the extent to which service providers offer lower rates to insurers for direct hire business in return for more credit hire referrals.<sup>23</sup>
- 5.8 More generally, the CC's approach relies on the theory that frictional costs can be removed from the supply chain without giving rise to adverse consumer effects, which is not a credible proposition where one party (the non-fault consumer) is seeking to exert their rights against another (the at-fault insurer) whose aim is to achieve the lowest cost outcome, potentially at the expense of the non-fault consumer.
- 5.9 Admittedly, the Provisional Findings Report begins this analysis;<sup>24</sup> however, it does not progress its findings sufficiently and always reverts back, in BGL's view, to an artificial comparison of credit hire and direct hire costs, and which inflates the former giving rise to an exaggerated AEC.

### ***Quality of service***

- 5.10 BGL is particularly concerned that in its focus on delivering solutions that achieve cost reductions for insurers, the CC is lending insufficient weight to safeguarding the correct quality of services that consumers receive (or would potentially receive). For example, the Table 6.1<sup>25</sup> of the Provisional Findings Report records that eight percentage points'

<sup>23</sup> BGL would also invite the CC to explain why it has, in its Provisional Findings Report (Table 6, Appendix 6.1), increased the multiple of the average credit hire bill/rate over the average direct hire bill/rate from 2x to 2.5x (as against its findings in Table 5 of its Working Paper: Overcosting and overprovision of TRVs). This would seem to inflate the AEC without any explanation as to why the Table 6 data is more robust.

<sup>24</sup> See, for example, paragraph 6.17 of the Summary of the Provisional Findings Report

<sup>25</sup> Table 6.1: Non-fault claimants' experience of replacement cars, analysed by who managed the claim

more consumers surveyed felt that their replacement car fell 'slightly' or 'well' short of their needs when the solution was managed by the at-fault insurer as opposed to a CMC (19 per cent as against 11 per cent); whereas six per cent agree points more consumers felt that the CMC solution met their needs. The Provisional Findings Report also observes 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 [their legal entitlement], also suggesting that quality of replacement car received may be lower for claims managed by fault insurers"*<sup>26</sup>

However, this evidence, which shows a statistically significant difference in treatment, appears to be completely undervalued by the CC, and is lost amongst other commentary which obscures critical differences in claims experience and which, in summary, the CC (wrongly) refers to as being "small".<sup>27</sup> These differences are not "small", particularly when they are considered against the very modest impact of the cost of subrogation on each policy.

These differences, although seemingly marginal in some cases, reveal a definite trend towards sub-standard solutions when claims are handled by at-fault insurers (notwithstanding the current competitive pressure that credit hire operators and claims management companies are currently able to exert to encourage at-fault insurers to provide a higher quality service).

- 5.11 It follows that any solution that would compromise this competitive pressure would be likely to exacerbate adverse impacts on quality. It is a very real concern that the Provisional Findings appear to assume, albeit with some reservation, a far more benign outcome than that which history suggests would prevail in reality were access to credit hire or other claims management services compromised.
- 5.12 In other words, the actual alternative to credit hire is not direct hire (in terms of the provision by insurers of any equivalent solution that recognises the consumer's legal entitlement), it is 'no hire' or, at least, a solution that is significantly compromised in terms of quality and convenience<sup>28</sup> or is charged at an additional and significantly higher cost (than credit hire) to consumers.
- 5.13 The CC cannot assess any proposed solution by applying a basic comparison of credit hire and direct hire costs. In the absence of a viable credit hire solution, a logical extension of the direct hire model is to consider how insurers currently take advantage of direct hire rates in the context of courtesy cars that they make available to policyholders, which may be purchased as an add-on, and how these costs would be included in premiums (assuming the at-fault insurer was willing to offer any solution in the first place). These courtesy vehicles, which invariably comprise small 'class A vehicles' and which will potentially fall far short of a non-fault consumer's legal entitlement, are often provided at significant multiples of the cost that the CC attributes to Theory of Harm 1.<sup>29</sup>
- 5.14 According to data provider 'Defaqto' the quality and availability of replacement car cover raises a number of concerns (even in circumstances where an insurer is providing a solution to its own insured):

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<sup>26</sup> Provisional Findings Report

<sup>27</sup> Paragraph 6.75 of the Provisional Findings Report

<sup>28</sup> Paragraphs 3.73 and 6.37 of the Provisional Findings Report acknowledge this point but insufficient weight is given to it in the remainder of the report given its potential for an adverse consumer outcome

<sup>29</sup> According to recent sample online research, Liverpool Victoria charges £14.90 extra for a courtesy car; Diamond charges £29.99; Chaucer Direct charges £20 per year (and £35 per year for enhanced hire car, which again may fall short of the consumer's legal entitlement); and Co-operative charges £15 per year (for its enhanced courtesy car option). These are the charges that should be considered against the theoretical cost of credit hire (estimated by the CC at between £6 and £8 per policy)

*"The type of courtesy car provided [by insurers] varies between policies. However, the majority of cars provided are a small hatchback type car. Over a third of policies in 2012 still do not specify in their policy wordings the type of courtesy car they provide. A consumer who purchases a policy which does not state the type of courtesy car provided may find that the car may not be adequate for their needs; for example, a policyholder with a large family who requires a car with seven seats.*

*Although the majority of policies include cover for a courtesy car, this is not always guaranteed and a number of policies [48% in 2012] state that a car is 'subject to availability'. The number of policies that provide a courtesy car on this basis has started to increase over the period analysed [2008 to 2012]"<sup>30</sup>*

- 5.15 Finally, it is important to re-emphasise that a non-fault claimant has no control over who the at-fault driver has selected as their insurer who, under the CC's Possible Remedies, could be entitled to handle the claim. This means that a careless driver, with numerous at-fault claims against him, might be obliged to seek out the lowest quality/cheapest PMI provider, who in turn would have the right to manage a much more careful/selective driver's non-fault claim. A careful driver, on the other hand, might normally choose to pay an additional premium for a policy from a highly reputable insurance company with a well known brand who the careful driver has confidence will manage his claim appropriately and sympathetically. If, however, all claims are managed by the at-fault insurer then the careful driver may well take the view that because, in the event of an accident (which they are unlikely to have caused), their claim will not be managed by their chosen insurer, there is little point in paying any more than the absolute minimum for a standard policy. It follows that the Possible Remedies may themselves lead to unwelcome market distortions.

#### **Referral fees**

- 5.16 As regards referral fees, we welcome the CC's acknowledgement that referral fees (and other similar income received by insurers) reduce the premiums charged by insurers and therefore partially offset the higher premiums attributable to higher subrogated costs also associated with the separation of cost liability and cost control.<sup>31</sup>
- 5.17 At the same time, we note the CC's efforts at attempting to quantify this revenue stream, although the management costs (£27 million) which are deducted from it (see Table 6.4 of the Provisional Findings Report), which represent over 20 per cent of total referral fee revenues to insurers and brokers (and which serve to dilute the degree to which it offsets the higher subrogated costs), are not explained or justified. Indeed, as the management fees arguably represent a cost saving to PMI providers, BGL would query why their value is not be added to the referral fee income figure (to further off-set the cost of subrogation to PMI providers and thus reduce the AEC).
- 5.18 In any event, notwithstanding the CC's attempt to quantify these costs, the Provisional Findings imply that the CC is working on the assumption that costs associated with referral fees (and their related impact, if any, on premiums) can be eliminated. The CC attributes a net incremental cost to consumers of approximately £150 million per year (as adjusted for referral fee and other income) to Theory of Harm 1.
- 5.19 The CC's theory 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.

#### **Quality of repairs**

- 5.20 The CC posits - in Paragraph 58 of the Provisional Findings Report - that the PMI market is not working well in the context of car repairs, in part, because competition between repairers to obtain business from insurers is focused on low cost rather than high quality of repair; and because insurers do not have the necessary incentive to ensure that claimants get the quality of service on repair to which they are entitled. The

<sup>30</sup> Defaqto 'A review of the motor insurance market – May 2012', pages 43 and 44

<sup>31</sup> Paragraph 6,64 of the Provisional Findings Report

CC indicates that insurers and CMCs do not monitor effectively the quality of repairs; and there are significant limitations to claimants' ability to assess the quality of car repairs. The CC argues that the combination of these two features gives rise to an AEC.

- 5.21 BGL acknowledges the CC's concern, although it would argue that in its capacity as a CMC, it applies the most rigorous standards to ensure consumers receive their legal entitlement both in terms of replacement vehicles and quality of repairs.
- 5.22 BGL's main observation, however, is that the MSX International research (as set out in the MSXI Report<sup>32</sup> which has informed the CC's Provisional Findings in this area is confusing or flawed in a number of respects, for example:
- 5.22.1 it relies on markedly different sample sizes when conducting comparisons between different service providers - those where the at-fault party's insurer had captured the claim (77 vehicles) as against those managed by the not-at-fault party's insurer (27 vehicles) – which strongly risks distorting findings and comparisons between the quality of repairs carried out by these different groups;
  - 5.22.2 it does not appear to consider (or distinguish clearly between) the quality of repairs managed by more specific (sub)groups of service providers within the supply chain (i.e. insurer-approved repairers, insurer-owned repairers, independent CMCs/credit repairers etc)<sup>33</sup> each of which are likely to be subject to different motivations around quality and cost etc (to see whether those with the greatest incentive and opportunity to reduce cost do so at the expense of repair quality);
  - 5.22.3 it makes no attempt to allocate or apportion the categories or 'reasons' for any vehicle not being returned in its pre-accident value (PAV) between the different service provider groups, so it is impossible to apportion or come to any view as to the respective gravity of any residual defects (e.g. paint finishing v bent chassis etc) depending on which service provider group carried out the repair;
  - 5.22.4 its research, which looks into whether persisting faults (those which are highlighted to the service provider following any initial repair) are rectified, makes no attempt to distinguish between the behaviour (remedial actions taken or not as the case may be) by the different service provider groups (and thus, while identifying that consumer detriment exists, is of no value in attributing responsibility); and
  - 5.22.5 when reporting information as to standards of repair (depending on who takes the decision as to who carries out the repair), the MSXI Report fails to explain what it means by 'decision' (because, in the relevant circumstances, the not-at-fault customer always has the final say). More importantly, the report aggregates all data as regards the quality of repairs where 'options are provided' or the 'choice is made' by 'insurers or CMCs' (without displaying which of the two groups delivers better results in terms of achieving PAV-quality repairs).
- 5.23 In light of the above flaws, the only vaguely credible data arising from the MSXI Report is that close to half of all vehicles returned to the not-at-fault party were returned in a substandard condition (by reference to the PAV). Moreover, until such time as a similarly sized/representative sample can be provided by reference to not-at-fault party insurer (or, indeed, other third party) managed claims, it is impossible to conclude that such a trend applies across the board as opposed to being more prevalent in the context of at-fault party insurer managed repairs.
- 5.24 In BGL's view, the MSXI Report represents only a partially completed study. Given the importance of the findings of this research – in terms of informing any wider understanding of underprovision or overprovision (or costing) of services in the PMI

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<sup>32</sup> Working Paper; MSXI vehicle inspection report

<sup>33</sup> In this regard, it seems to depart from the categories of service provider (ie insurer v CMC) identified in the Annotated Issues Statement

sector – the CC should require MSXI to undertake further and more detailed analysis and reporting (reflecting the factors set out above). Otherwise, the MXSI Report and any conclusions from it are compromised.

- 5.25 Put simply, the MSXI Report, as part of the Stage 1 review, revealed deeply worrying evidence of systemic underprovision of repairs where such repairs were managed by those insurers with the greatest incentive to avoid or reduce cost.
- 5.26 At the same time, for the reasons already set out above, Stage 2 of the MXSI Report cannot be relied on to support the CC's supplementary view<sup>34</sup> that concerns as to quality are prevalent across the industry as a whole and therefore the only variable is cost (and so the only focus should be overcosting). In this regard, the MXSI Report is far too opaque or generalised (and in relation to Stage 2, the sample is disproportionately small).
- 5.27 Clearly, at this point, it is impossible to dismiss potential variables in the quality of service based on who provides that service. Service quality is clearly an issue that needs to be addressed by certain providers; however, it is also obvious that further work needs to be undertaken (and a clearer and more objective and proportionate presentation of findings needs to be given) concerning the relative performance of different service provider groups.
- 5.28 The MSXI Report is not, at this stage at least, sufficiently robust to justify any decision on the CC's part to focus on cost or overcosting, as opposed to quality. The MSXI report should not lead to any conclusion that the quality of repairs (and potentially of other services, including TRVs) is uniform (irrespective of whether or not it satisfies the innocent party's legal entitlement) and thus cost is the only issue.

## **6 Add-ons**

- 6.1 BGL notes the CC's findings that different levels of information are provided by different insurers in respect of insurance add-ons and that, overall, the CC considers that the information provided is insufficient for consumers to make informed purchasing decisions. BGL also notes the CC's suggestion that this issue may be more acute in the context of certain products, such as NCB/NCD and NCB/NCD protection, where there is a possible misunderstanding on the part of consumers as to how such products work.
- 6.2 BGL acknowledges the CC's concern that insurers may have a point-of-sale advantage when selling add-ons because of the time a consumer might need to compare the combined price of basic motor insurance policies and add-ons across different providers.
- 6.3 While BGL appreciates these findings, BGL consider that PCWs or, at least, Comparethemarket.com already provides consumers with a balanced level of accurate product information, for example:
  - 6.3.1 information relating to the level of key cover items included/available in each product within a Price Presentation Page (PPS); and
  - 6.3.2 further information on the features and benefits of each policy on a 'Bridging Page'.
- 6.4 BGL would argue that Comparethemarket.com is unique amongst the major PCWs in that it ensures that all consumers who buy a policy through its platform see the more detailed information found on the Bridging Page before clicking to the insurer's website in order to purchase cover.
- 6.5 At the same time, BGL considers that it is important that the CC does not place a disproportionate responsibility in terms of delivering greater information on PMI add-ons on PCWs. Compelling PCWs to provide further detailed information on add-on pricing would put the onus on PCWs, when the AECs identified by the CC can only be addressed through significant input and change on the part of insurers. This is

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<sup>34</sup> See, for example, Annotated Issues Statement, paragraph 27

particularly important given that PCWs do not share in the income generated by the sale of add-ons.

- 6.6 If PCWs were to be required to provide more detailed information, it would be necessary to create a much greater level of standardisation of add-ons than is currently in place. The CC would need to consider whether the advantages in terms of greater transparency would be off-set by greater product homogenisation. For example, cover levels within add-ons, consumer eligibility for each add-on and the consumer's needs would require careful consideration to avoid presenting superfluous and overly lengthy information that would only serve to confuse consumers and discourage them from comparing PMI products through a process that has delivered better pricing and become helpful and familiar to them.
- 6.7 In this regard, it is not clear from the Provisional Findings Report the extent to which consumer feedback has been sought and evaluated. Different consumers will be interested in different add-on products. While this could, to some extent, be mitigated by inviting consumers to specify which add-ons are of interest, this still puts the onus on PCWs to summarise to consumers what each add-on should include, particularly when such products are not controlled by PCWs. Such an exercise is not easily achieved using a static web-page, hence these add-ons are sold more successfully to customers who complete their insurance purchase offline rather than online.
- 6.8 Taking these considerations into account, perhaps the most straightforward way to introduce this layer of additional information would be to present consumers with either basic or bundled pricing and then provide easy to use filter functionality to give them the ability to add or remove add-ons that they do not need or want.
- 6.9 If the CC wished to undertake more research in this regard, then the selection of appropriate add-ons to include would need very careful consideration, with PCWs working with insurers to better understand consumer attitude towards each add-on.
- 6.10 As, as far as BGL is aware, PCWs are not currently engaged in the sale of, or income generated from, add-ons. It follows that PCWs would need insurers to provide information relating to the penetration levels of each product for each customer segment. This approach would allow PCWs to understand the desirability/price elasticity of each product and would provide an opportunity to present add-ons in a way that is more targeted and useful than would otherwise be the case.
- 6.11 Displaying all add-ons to all consumers for all insurers would present major operational and presentational challenges for PCWs. In many respects, it would severely compromise an online comparison journey that consumers have, based on continual development, found appealing and simple to use. Clearly, a priority should be to avoid any unintended adverse consequences, which could manifest themselves in fewer consumers using PCWs and saving money on PMI (together with higher cost and less satisfactory alternative search mechanisms).
- 6.12 In any event, a move to greater product standardisation and the presentation of more information on PCWs would necessitate very significant changes in how PCWs operate, which calls into question the proportionality of such a development. PCWs would, in addition to developing standard parameters for the relevant products with many different insurers, need to re-develop the customer journey to accommodate the inclusion of this information, possibly through some or all of the following: dynamic display; additions to the question set; revised PPSs with much more detailed filtering options; enhanced help text; and new bridging pages.
- 6.13 At the same time, without some form of standardisation of add-ons, insurers would be able to manipulate their total policy costs to appear cheaper, for example, by reducing cover levels of the relevant add-ons. This could lead to the add-ons effectively becoming worthless as product propositions, but with lower costs, which is not in line with the spirit of what the CC appears to be trying to achieve.
- 6.14 There is also a risk that insurers would seek to use these developments to increase direct business, by offering higher pricing on add-ons purchased through PCWs compared to their direct offerings. Accordingly, the contractual arrangements between



insurers and PCWs would need to be reviewed before any remedy of this sort was implemented to mitigate this unintended consequence.

- 6.15 BGL shares the CC's view that more can be done to improve the provision of general product information to consumers; however, Comparethemarket.com is already working effectively to improve this situation, while retaining an exceptionally user friendly customer experience. Ultimately, the amount of information required will differ for each consumer, and any increase in information provision needs to consider this. Put simply, if too much/too detailed information is provided, many consumers will be overwhelmed and this may cause them to exit the process without purchasing.
- 6.16 The insurer should, at all times, remain responsible for ensuring that consumers understand the scope and cover of their policy and any add-ons purchased. This should be reflected in insurer website information and policy documentation.

## **7 PCWs and wide MFNs**

### **PCWs**

- 7.1 The CC's approach to market definition, particularly as regards PCWs, which has prompted certain concerns on the part of the CC and proposed remedies (including the prohibition of wide most favoured nation or 'wide MFN' clauses) is inadequately developed, unsupported by economic analysis and unreflective of the various alternative mediums through which PMI or other financial services products are actually advertised and distributed.
- 7.2 The idea that PCWs comprise a distinct market is not an issue on which the CC has previously invited comments and represents an irregular and unhelpful development in the process of this investigation.
- 7.3 In addition, the basis upon which the CC has concluded that PCWs are able to exercise market power is simply not credible. The CC's logic is highly theoretical, reliant on assumption and examples drawn from multi-sided platforms with entirely different characteristics to PCWs and, in fact, contradicted by other evidence adduced by the CC in its Provisional Findings. Indeed, paragraph 9.16 of the Provisional Findings Report concedes that not all brands list on all PCWs and some do not list on any PCWs at all:

*"A small number of brands choose not to list on PCWs at all but instead to sell through their own direct channels of course this small number" includes the largest market player responsible for a market share in excess of double that of any PCW. This statement suggests listing on a PCW as an alternative to direct channels whereas it is in fact an additional channel.*

- 7.4 Further, the CC's focus on 'new' PMI business in the context of PCWs misses, entirely, the most significant feature of the UK PMI market with the potential to restrict or distort competition. This is the incumbency advantage enjoyed by PMI providers in respect of automatic 'renewals', which results in consumers paying significantly higher prices than they need to for car insurance because they are rolled-over into a renewed policy (often at a higher premium to those that are available to new customers) despite having made no claim in the interim.
- 7.5 As already highlighted in **section 1.4** above, the CC's conclusion that a 'a significant degree of single-homing' on the part of consumers confers some degree of market power on PCWs (thus obliging insurers to multi-home on all or most PCWs) is an entirely artificial construct. For example:
  - 7.5.1 The analysis does not recognise the ease with which consumers can and do switch between PCWs; nor does it recognise the alternative mediums through which insurers can reach and influence consumers (whether through online, television or print media or affinity or broker relationships). [§<]
  - 7.5.2 There are no technological or cost barriers to inhibit a consumer from using multiple PCWs (and for the CC to propose any solution based on the assumption that there is, acts as a strong disincentive on innovation in the PMI space). In this regard, the CC has made certain critical observations that do not

reflect its previously published research. Although it suggests that some consumers do not shop around between different PCWs (albeit a figure of eight per cent is still quite marginal), this is contradicted by the CC's recently published working paper (Horizontal concentration in PCWs), which states at paragraph 7 of the paper:

*"The direct impact of advertising campaigns and promotions appears to have been driven by consumer behaviour as many consumers have shown little loyalty to a particular PCW and have tended to compare policies on multiple websites and alternative channels, e.g. on PMI providers' own websites and by telephone."*<sup>35</sup>

- 7.5.3 Further, while some consumers may have a preference for particular PCWs (which is the fundamental point of any company's investment in its customer proposition), evidence adduced by the CC in the Provisional Findings Report itself indicates that consumers do not, in fact, 'single home'. Paragraph 2.29 of the Provisional Findings Report quotes a Datamonitor survey which found that:

*"...in 2012, Comparethemarket.com was the most popular PCW for customers purchasing motor insurance, with 67 percent of those customers who purchased through a PCW having searched using Comparethemarket.com. The other three large PCWs had lower but roughly similar levels of usage (Confused.com: 49 per cent; Gocompare.com: 43 per cent; and Moneysupermarket.com: 48 per cent)..."*

If the respective percentages of these parties are aggregated (which does not even take into account searches conducted through other PCWs or platforms), it suggests that consumers refer to several PCWs when searching for PMI, and do not 'single home'.

- 7.6 Finally, BGL is concerned that in arriving at notional 'market' shares of PCWs, the CC appears willing to i) attribute shares to PCWs despite the ultimate sale being concluded through other channels; and ii) in the context of renewals, exclude these sales on one hand when trying to distinguish 'new business', and yet be willing to allow insurers to attribute renewal sales to PCWs (in terms of PCW 'market' shares) even where the policy has been renewed for successive years with only the original contact coming through the PCW. This approach appears highly inconsistent and, amongst other concerns, prone to distorting (upwards) the proportion of sales accounted for by PCWs.
- 7.7 In BGL's view any suggestion that PCWs comprise a distinct (multi-sided) market for the supply or advertising of PMI and that, as a result of 'single-homing' on the part of consumers, have market power, is simply not sustainable.
- 7.8 It is a real concern that the CC has departed from a more balanced view, which not only recognises the ability of consumers to switch between platforms and mediums, but also the need for PCWs to offer a wide range of choice and the resultant ability for insurers to withdraw PMI brands and products at their discretion.

#### **Wide MFNs**

- 7.9 The Provisional Findings assume that consumers pay higher prices as a result of wide MFNs; however, the CC has failed to adduce any evidence to support this (and, in this regard, we would draw the CC's attention to our evidence below against a market where premiums have, since 2012, come down significantly). Put simply, record drops in average premiums over the last 18 months have not been prevented or otherwise adversely affected as a result of the presence of wide (or narrow) MFNs; on the contrary, MFNs have helped deliver the most competitive pricing to the widest group of consumers.

<sup>35</sup> BGL would also draw the CC's attention to the fact that, notwithstanding the CC's suggestion in paragraph 9.23 of the Provisional Findings Report that the need for high levels of mass [television] advertising limits any potential entry or expansion constraints on larger PCWs, recent DataMonitor research 'Price comparison sites lose the X factor in advertising (2013)' reveals that significant television advertising spend is becoming less effective and therefore more effective and innovative ways need to be found to reach consumers.

- 7.10 The CC's concerns in respect of wide MFNs are predicated on a finding of market power. As indicated above, the CC refers to the market power of PCWs, which allows PCWs to negotiate effective MFN clauses. This represents a subtle but unjustified/unexplained move from referring to PCWs as having only 'some bargaining power' (as per the CC's Annotated Issues Statement); the latter being supported by the lack of any real increase in Cost Per Acquisition fees (CPAs)<sup>36</sup>, the fact that consumers shop around and the availability of alternative distribution channels.
- 7.11 The CC has grouped MFNs into only two groups (narrow, which only restrict PMI providers from offering the same policy cheaper directly; and wide, which comprises all other types of MFN). This approach fails to recognise all the different possible permutations associated with different MFNs. Indeed, the CC does not explain clearly why it has moved from its original position of assessing 'own-website MFNs', 'online sales MFNs' and 'all sales MFNs' to one where it has focused on narrow (own-website MFNs) and wide MFNs (MFNs affecting other channels).
- 7.12 Although, positively, the CC indicates that narrow MFNs are unlikely to be problematic and important to supporting the business model of PCWs (which are acknowledged as pro-competitive), it has not at this stage demonstrated any material link between wide MFNs and the harm (ultimately higher premiums) the CC attaches to them.
- 7.13 The CC's concerns appear largely theoretical, albeit it states that it has evidence as to wide MFNs deterring market entry. This evidence is, at best, anecdotal and is not clearly linked to any in-depth analysis of PCWs or MFNs.
- 7.14 In summary, MFNs (whether wide or narrow) do not comprise a unique category of agreements or restrictions that need to be isolated and specifically regulated. If the CC adopts this approach, then it runs entirely against the principle that agreements should be assessed on the basis of their economic effects, taking into account the circumstances and characteristics of the parties and markets involved, rather than on a per se prohibition basis.
- 7.15 It is critical that MFNs (whether wide or narrow) are seen for what they are; a type of vertical restraint that should be analysed using an effects-based approach, taking into account their appreciability, anti-competitive effects, pro-competitive justifications and efficiencies on a case-by-case basis. Any retrograde step towards prohibiting wide-MFNs purely because they are wide MFNs is not a sustainable proposition.
- 7.16 This is particularly so as wide-MFNs, as a vertical restraint, are less restrictive than other commonly exempted or exemptible restraints, such as exclusivity provisions (the treatment of which under UK and EU competition law is largely benign, except where one or more of the parties involved occupies a dominant market position). Indeed, the CC's proposal to ban wide MFNs per se means that such clauses will be treated more harshly than established hard-core restrictions (such as resale price maintenance etc), which is extraordinary given the positive treatment of such clauses historically.

***Neutral or beneficial effects of wide MFNs***

- 7.17 As indicated above, there is no evidence to support any correlation between the presence of MFNs (whether narrow or wide) in contracts between insurers, brokers and PCWs and higher premiums paid by consumers.
- 7.18 At the same time, such clauses support a distribution model (PCWs) which the CC acknowledges is pro-competitive.<sup>37</sup> In particular, the CC has observed that the absence of (at least narrow) MFNs undermines the consumer search experience and, as a result, the expansion of PCWs, which are critical to delivering greater choice and better pricing to consumers.
- 7.19 Any balanced analysis of the effects of wide MFNs in the context of UK PMI premiums should, as starting point, recognise the following:

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<sup>36</sup> See **section 3.2.7** above

<sup>37</sup> Paragraph 9.7 of the provisional Findings Report

- 7.19.1 The CC has identified that despite the presence of wide and narrow MFNs “CPA fees have risen only slightly during recent years, at near or below the rate of general inflation”
- 7.19.2 The AA has, again despite the presence of wide and narrow MFNs, recently reported a record (14.1%) fall in British motor insurance premiums (for the year ended 31 December 2013)<sup>38</sup>
- 7.19.3 According to research carried out earlier this year by the European Commission on the subject of price comparison tools:  
*"Finding the best price remains the number one reason for consumers using CTs [comparison tools], with many of them using price comparison websites as an information source to find the best deal even if making the final purchase offline"*<sup>39</sup>
- 7.19.4 The same research highlights the need for PCWs to be able to engender trust amongst consumers and reports the following:  
*"...in a consumer market study on e-commerce conducted in 2011 on behalf of the European Commission only 10% of the consumers who said they did not use price comparison websites cited lack of trust as the reason. However the same study revealed that one in eight respondents felt that they had been misled by price comparison websites. In most of the cases, the reason was that they went on to find a cheaper price elsewhere, while in other cases the price indicated on the price comparison website did not correspond to the price on the seller's website. Such discrepancies, if not adequately addressed, risk further confusing and misleading consumers and undermining their overall trust in CTs"*<sup>40</sup>
- 7.19.5 These conclusions reflect, in part, recent UK research, which develops our understanding of consumers' motivation for using PCWs:<sup>41</sup>  
*"The research confirms that PCWs are a popular choice for consumers:*
  - *56 per cent declared they have used a PCW in the last two years*
  - *52 per cent switched or purchased directly through a PCW.**The research found that consumers use PCWs to:*
  - *bargain hunt to get the best deal (85 per cent)*
  - *compare prices (83 per cent)*
  - *save money (79 per cent)*
  - *identify providers 69 (per cent)*
  - *to switch (67 per cent) either through the PCW or directly with the supplier*
  - *52 per cent declared they have used PCWs to switch providers or purchase products."*

The same research underlines the importance that consumers attach to PCWs to deliver the most competitive deals.

*"It is evident from the findings that PCWs enjoy a high level of consumer trust and satisfaction. For example, 73 per cent of those using PCWs describe them as 'fairly' reliable, while 52 per cent rate them as 'useful' in helping to find a good deal."*

It follows that although it is exceptionally difficult, from a consumer protection perspective, for PCWs to guarantee to consumers that they are getting the best deals available in the market, the above research suggests that consumers have a definite expectation that they will receive a competitive deal via a PCW. This expectation is valuable to any successful PCW's business model and has to be supported by the consumer's experience through that PCW if that value is to be sustained.

<sup>38</sup> See footnote 5

<sup>39</sup> Comparison Tools - Report from the Multi-Stakeholder Dialogue, 18-19 March 2013, page 26

<sup>40</sup> Ibid, page 18

<sup>41</sup> Consumer Futures' Report, page 4

7.19.6 With this in mind, it is naïve for the CC observe that because leading PCWs do not actively market the existence of wide MFN clauses (delivering best prices) to consumers, such clauses are not critical to the growth or success of PCWs; on the contrary, this approach overlooks a critical issue, which is the importance of each consumer's actual experience of using an individual PCW and the PCW's ability to deliver truly competitive pricing.

7.19.7 This principle is reflected clearly in Comparethemarket.com's homepage (albeit without explicit reference to any MFN):

*"We'll compare the best rates from our panel of insurers to take the strain off you – which could help you save a bundle. So stay in control of your search for the best deals for a range of policies to cover your pet, vehicle, home, life or holiday."*

#### **The structure/drafting of Wide MFNs**

7.20 The Provisional Findings Report continues to disregard the flexibility that wide MFNs allow insurers to offer a marginally differentiated product at cheaper prices through alternative channels.

7.21 Admittedly, Appendix 9.3 (Annex G) of the Provisional Findings Report does summarise and (without detailed or robust justification) dismiss the strategies open to insurers and other platforms to circumvent wide MFNs; however, given the potential consequences of the CC's Possible Remedies, it is material omission on the part of the CC to fail to explore these mechanisms in greater detail. Instead, the CC would appear willing rely on limited anecdotal evidence from insurers, and places undue weight on the purported ability of wide MFNs to inhibit innovation.

7.22 By way of example, the CC notes in paragraphs 52 and 53 of Annex 9.3 of the Provisional Findings Report that:

*"We considered...that a common route to establishing a new competitor in a market is to arrive as a low-cost alternative to the incumbents, and we noted that wide MFN clauses preclude this entry strategy."*

*We have received direct evidence that entry has been deterred in this way in the past. Covea SGAM, which was considering a launch of a new PCW, stated that it considered that MFN clauses prevented a new entrant from differentiating itself in the market through the offer of cheaper insurance premiums. It ought to be possible to achieve this through offering discounted commission fees to insurance providers, but the existence of MFN clauses prevented this."*

7.23 However, aside from the fact that no evidence is adduced to demonstrate how the relevant MFNs precluded entry (upon a proper examination of their actual scope), the Provisional Findings Report indicates that the concerns raised by the consultants working for COVEA SGAM centred only on its proposed PCW model being able to "differentiate [its] business model from the existing players". This exercise would involve the consideration of a range of different issues not simply any perceived (and unfounded) difficulty in delivering the most competitive pricing. To suggest that any company with moderate resources and a strong customer proposition could not enter the PCW market as a result of the existence of wide MFNs is not sustainable.

7.24 As we have stated in our previous submissions, even widely drafted MFNs allow insurers and third party distribution channels the opportunity to innovate and offer cheaper pricing if there is a genuine appetite to do so, for example by:

7.24.1 developing different question sets (to those developed/posed by the PCW covered by the MFN) to elicit a different risk/consumer preference profile;

7.24.2 offering different product features or value-added services;

7.24.3 offering a non-PMI product related incentives;

7.24.4 offering cash-back, although this may be restricted by some MFNs;

7.24.5 running a multi-brand strategy, offering different brands and/or cover levels and different pricing through different channels.

7.25 These mechanisms have been inadequately assessed by the CC and wrongly dismissed. For example, the extent of the CC's analysis of the development of different question sets is as follows:

*"PCWs state that the MFN clauses apply to consumers with identical risk profiles. Therefore, PCWs could set different question sets on their websites to circumvent the MFN clauses. We have seen evidence that PCWs seek to minimize the price differences with other PCWs so it seems unlikely that this would provide a significant difference in the prices between PCWs and thus may be an ineffective strategy."*<sup>42</sup>

7.26 This justification is inadequate, illogical and excessively blunt. It runs counter to the objective of wide MFNs which is to elicit best pricing through a particular channel, rather than to coordinate pricing. Moreover, it anticipates radical differences in the question sets established by different platforms, when minor refinements would deliver the same outcome as regards the ability to step-over any MFN.

7.27 It is simply not credible for the CC to assert that: i) PCWs seek to minimise price differences when their objective, certainly Comparethemarket.com's objective, is to deliver the best pricing to its customers; or that ii) a platform or insurer with a genuine

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<sup>42</sup> Paragraph 27, Appendix 9.3 of the Provisional Findings Report  
[Insurance Times 13/9/12](#)

"New aggregator jumps ahead of pack on day after launch

Google's new motor insurance price comparison service has become the second most visible aggregator in its second day of operation.

According to digital marketing firm Greenlight, Google's motor aggregator commanded a 75% share of the online advertising 'voice' on 11 September.

It was second only to Gocompare, which commanded an 88% share, and ahead of other big-name aggregators such as Comparethemarket (fourth place), Moneysupermarket (seventh place) and Confused (ninth place).

Google's new service provides motor quotes from about 120 insurers. The search company had been expected to launch into insurance price comparison after buying aggregator BeatThatQuote in 2011 for £37.7m.

Greenlight said Google's launch would be seen by many as "Google's most aggressive move to date as it continues its foray into the financial services arena".

Greenlight chief operating officer Andreas Poulos said rivals would "no doubt be rattled, and with good reason" by Google's motor comparison debut.

Google's 75% visibility figure equates to the new car comparison service being visible for at least 500,000 relevant UK searches per month from this point, Greenlight said. As such, Greenlight forecasts that Google will "almost certainly" be the second most visible motor aggregator for the rest of September.

Poulos said: "Whilst Google has given itself immense visibility, that is not to say it is not providing a great service. In particular, our sample noted how quick the quotation process was - nicely in keeping with Google's traditional process of making speedy data delivery central to how it build products."

However, he added: "Only time will tell if consumers see value in this service, and to what degree it changes their research and buying behaviours."

desire to innovate and deliver quotes based on, say, improved anti-fraud measures would not, of itself, avoid the ambit of a wide MFN.

- 7.28 As previously communicated to the CC, none of the above mechanisms require sophisticated processes or significant investment.
- 7.29 The reason that insurers and certain platforms choose not to adopt these mechanisms is:
- 7.29.1 as regards insurers, a general unwillingness to innovate or invest in a stronger consumer proposition, as well as a desire to drive down CPAs to improve their margins, which will be achieved by insurers threatening to increase premiums selectively on certain platforms unless those platforms are willing to concede an increasing proportion of their CPAs to those insurers; and
- 7.29.2 as regards other platforms, an uncertain and, in fact, entirely speculative focus on price competition at the expense of all other means of innovation, as well as a willingness to dilute their long-term customer proposition as long as, crucially, more successful PCWs are forced to do the same.
- Concerning this latter point, the removal of wide-MFNs will, in fact, inhibit price competition on PCWs. This is because no PCW will have any confidence that in return for sharing its CPA with the insurer (or offering any other cost-saving innovation), the insurer will reflect its savings (on CPAs or otherwise) in reduced premiums displayed on that PCW.
- 7.30 The unintended consequences of removing wide MFNs might be illustrated in greater detail as follows:
- 7.30.1 Insurance pricing is, by its nature, highly complex; insurers typically use detailed algorithms to calculate price, based on a wealth of historical and behavioural customer information.
- 7.30.2 The distribution channel can affect a number of inputs into this price calculation, for example, CPAs cannot be considered without also taking into account factors such as fraud, add-on take-up and price elasticity. It is not possible, therefore, to conclude that a PCW offering the lowest CPA will (or should) receive the cheapest customer price.
- 7.30.3 The example below illustrates how this information asymmetry gives rise to an unintended consequence:
- (i) PCW A and PCW B have both negotiated a CPA of £50 with Insurer C; Insurer C currently offers identical prices via both channels. Consider two scenarios:
- (a) PCW A would like to offer cheaper prices to consumers, so negotiates a £5 discount on premiums in return for a reduced CPA of £48.50.
- (b) PCW B implements bespoke anti-fraud technology that is expected to deliver less risky/more profitable business to Insurer C. The cost of this technology is equivalent to £2.50 per policy sold. In return, Insurer C agrees to discount the premiums on PCW B by £5.
- (ii) Both scenarios seem reasonable and appear to result in the same desirable outcome for the consumer. However, there is a fundamental problem of information asymmetry with each scenario:
- (a) In the first scenario, PCW B does not know whether a CPA-led discount has actually been agreed between PCW A and Insurer C (and PCW A does not know whether the CPA-led discount is actually reflected in end-pricing given the complexity of Insurer C's pricing).
- (b) In the second scenario, PCW A does not know whether an anti-fraud system has been developed by PCW B and, if so, how much of a pricing discount this has generated (and PCW B does not know whether its anti-fraud investment is actually reflected in end-pricing given the complexity of Insurer C's pricing).

- (iii) Insurer C, on the other hand, has perfect information about the relative CPA, price, performance and profitability of policies sold via each PCW and will use this information to exploit the respective investments of both PCWs and consumer behaviour, taking advantage of its ability to raise relative prices elsewhere rather than to offer lower prices on the platform actually offering the incentive.
- 7.30.4 Insurer C will inevitably use behavioural information about PCWs to optimize its prices. For example:
  - (i) PCW A may have developed a reputation amongst consumers for the most competitive pricing (perhaps as a result of wide MFNs) and such customers are, therefore, likely to exhibit lower price elasticity characteristics than those of PCW B ; in other words, if the CC's research is to be relied on, PCW A's customers may tend to be more loyal and less likely to visit multiple PCWs.
  - (ii) Irrespective of PCW A's intent, or the interests of its customers, Insurer C would consider it 'optimal' to offer a higher price via PCW A than via PCW B (regardless of the above-mentioned CPA-led incentive offered by PCW A) to take advantage of PCW A's reputation and customers.
  - (iii) Owing to the noted information asymmetry, PCW A will not know the source of competitive disadvantage, and may be coerced by Insurer C into offering a further CPA discount to Insurer C in return for more competitive pricing. Similar concessions may be sought from PCW B.
- 7.30.5 Insurer C will have a number of options open to it; most importantly however, it is not obligated to lower the price offered via PCW A, but may instead raise the price offered via PCW B (who similarly would not have the information necessary to assess whether the prices offered through it are, in fact, discounted to reflect its investment in anti-fraud technology), or vice versa.
- 7.30.6 Insurer C (particularly if it has a strong brand) is able, without the constraint of a wide MFN, to increase prices selectively to the disadvantage of consumers.
- 7.31 Taking these considerations into account, there are three adverse consequences associated with a blanket ban on wide MFN clauses, which the CC has not explored sufficiently in the Provisional Findings Report:
  - 7.31.1 The removal of a PCW's ability to source the most competitive deals for consumers; replaced with a scenario where insurers can selectively increase prices to maximise profits (and with impunity because PCWs may be prevented from ceasing contractual relations with them as a result of underperformance).
  - 7.31.2 An overall reduction in competition in PMI and in innovation, as the CPA-discounts demanded by the most powerful insurer incumbents (against the threat of selective price increases) will have to be subsidised by:
    - (i) increased CPAs from smaller/less well established rivals in the PMI space, which will discourage new entry and expansion; and
    - (ii) less overall investment in the customer proposition (and both PMI and other less developed markets).
  - 7.31.3 Greater uncertainty amongst consumers as to whether they are getting the best deal and a reversion to a position where customers will have to spend time and effort to check numerous distribution channels to ensure they are getting a competitive deal.
- 7.32 In summary, notwithstanding our serious concerns as to many elements of the CC's analysis itself, we believe that any blanket prohibition of wide MFNs will have an adverse impact on PMI pricing as far as consumers are concerned.
- 7.33 In our view, in adopting its present approach, the CC is, to all intents and purposes, seeking to prohibit a contractual restriction that does not exist. At the same time, the danger associated with such a prohibition is that it will be so widely drafted that it would, in fact, undermine the ability of any PCW to elicit competitive pricing, greater



innovation or enhanced customer service from its insurer panel. This will not operate in the best interests of consumers.

## Annex 1

### (Reproduced data from Consumer Futures' Report)

Consumer Futures' Report, page 33 (Graph): "Number of PCWs used before making a decision"

No. of PCWs used	% of consumers
One	16%
Two or More	
Two to Three	57%
Four to Five	17%
More than Five	9%
Don't know	1%

*"For the majority (61 per cent) of consumers, the main reason for using multiple sites is to make sure they get the best deal. Around two fifths (42 per cent) do this in order to compare or verify the comparison results. Only a few (five per cent) say they use more than one PCW because they don't trust the sites."*

## Annex 2

### (Extract from Consumer Futures' Report)

Consumer Futures' Report, page 52:

"For most consumers, the verifying and cross-checking undertaken is not borne out of a feeling that providers [PCWs] are wilfully trying to mislead them, but an instinctive belief that the sheer volume of information online makes fact-checking necessary. For example, each site may have a slightly different selection of providers and associated deals, and some sites may have more recent information than others. By casting their search nets a little more widely, they can feel confident that they haven't missed the best deals.

*'I wouldn't doubt anything, but then again I probably would check other sites to see if they have similar options. Usually I trust it.'*

Midlands, SEG C1, 18-29, non-user of PCWs

*'If I am looking for car insurance I will look at three or four different comparison sites. You might get the same best one on a couple, but the other couple might give you a different one.'*

North East, SEG E, 60-74, light internet user

Once they have drawn up a shortlist of attractive offers from the PCWs consulted, many consumers carry out further checks offline, often keeping paper notes of their inquiries. They either telephone the providers, or visit these providers' websites to ensure that the deal they saw on a PCW is still available, and that they have understood it correctly."

### Annex 3

#### (Reproduced data from Defaqto 'A review of the motor insurance market – May 2012' Report)

Page 3, Continued growth in providers and product numbers:

*"The size of the [UK] comprehensive private car insurance market offers consumers a multitude of choice: and it continues to grow year on year. As it stands the market shows no sign of bucking that trend just yet, with the current number of providers and policies available in the market showing a growth just shy of 12% and 7% respectively since 2008."*

Size of Comprehensive Motor Insurance Market			
Comprehensive Motor Insurance	2008	2012	Increase (%)
Number of Providers	139	155	11.5
Number of Products	209	223	7

Source: Defaqto Matrix

*The distribution of comprehensive car insurance products shows that the direct market has increased its share, by product numbers, to just over two thirds. Distribution of products through brokers reached a plateau in 2009 and has decreased to just under a third of all products available. Products that are exclusively distributed through the aggregator market have remained consistent.*

Provider distribution in comprehensive car insurance products 2008 – 2012 (%)

Distribution channel	2008	2009	2010	2011	2012
Aggregator	1%	1%	1%	1%	1%
Broker	41%	43%	39%	32%	32%
Direct	58%	56%	60%	67%	67%

Source: Defaqto Matrix"

## Annex 2

### (Extract from Thompsons' research)

*"The key findings of the Thompsons analysis are:*

- *Market leader **Direct Line**, which owns the Churchill brand, saw profits from car insurance rise last year to £262m (2011: £255m). It will be paying £101m in dividends to shareholders on June 11 – **equivalent to £25 per policy holder**.*
- ***Admiral** made a profit from the UK car insurance market of £372.8m in 2012 - a 19% increase on the previous year. Its UK car insurance profits were actually higher than Admiral's overall profit, due to losses in overseas markets. Admiral increased its total dividend pay-out to shareholders by 20% to £245m – **equivalent to £81 per customer**.*
- ***AVIVA** does not give a separate profit figure for car insurance, but its 2012 annual report says: "Personal motor premiums increased by 3% to £1,164 million (2011 £1,126m) and we have nearly 2.5 million personal motor customers, an increase of over 250,000 since the start of 2012. We continue to deliver good profitability in personal (motor insurance) lines."*
- ***AXA UK & Ireland**, part of the global French-owned group, does not publish separate accounts, but it issued a statement on 21 February saying: "Motor profitability improved in 2012, thanks to pricing and risk selection actions." It said it expects 'improved results in 2013'. AXA has been particularly active in lobbying the Government for reforms to deter claims.*
- ***Liverpool Victoria**, the fifth largest car insurer, saw its profits rise 11% in 2012 to £29.5m (2011: £26.5m)."*

*Source: Thompsons Solicitors LLP*