

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Summary of response hearing with Helphire held on 14 March 2014

1. Helphire said it firmly believed that there were flaws in the Competition Commission's (CC's) calculations concerning its provisional findings on whether there was an adverse effect on competition (AEC) in relation to theory of harm 1. Helphire explained that it was difficult to provide comments on the CC's proposed remedies (notwithstanding Helphire's view that the relevant remedies proposed by the CC were disproportionate) when it considered that the very existence of the relevant AEC was doubtful.
2. Helphire re-emphasised that there were significant benefits in credit hire. It further considered that the cost attributable to the separation of cost liability and cost control was, in reality, much lower than the CC had estimated. Helphire summarised why it considered this to be the case.
3. In Helphire's view, certain of the remedies that the CC was proposing, in particular, remedies 1A and 1G, which Helphire said the CC had been encouraged to pursue by large insurers, would not address the AEC, were one to exist. Helphire considered that these remedies would in fact deliver a far worse outcome for consumers. The remedies would also undermine the credit hire model that was currently in place, which had developed over 22 years to protect consumers. Helphire also thought that some of the remedies would distort the market in favour of insurers and certain car hire providers.
4. Helphire acknowledged that certain aspects of the credit hire model could be improved, and that this was already happening, with Helphire being at the forefront to drive such improvements. Helphire explained that proportionate, practical and effective industry measures were already being taken to reduce frictional costs, and this trend was accelerating. Helphire cautioned against the adoption of other measures that might damage the existing credit hire model, by allowing insurers to reduce or avoid critical service provision at the consumer's time of need, increase premiums and extract more profit from the consumer.
5. As regards the possibility of a no-fault insurance model, Helphire explained that there was a significant body of evidence from other 'tort based' jurisdictions which showed that where a tort-based system was replaced by a 'no

fault' insurance model, premiums rose significantly. Helphire offered to share this evidence with the CC. It highlighted the example of US states with no-fault insurance systems resulting in higher premiums for drivers, but also explained the flaws of other jurisdictions, such as Spain, where the domestic legal system failed to provide adequate access to justice for drivers affected by accidents (such drivers being left with little if any recourse in practice).

6. Helphire emphasised that tort was corrective justice. It considered that moving away from tort to a fully insured 'no-fault' system had adverse consequences. It suggested that the CC should examine the 'Rand report' which detailed the effect of such a move on certain states in the USA where premiums increased by 20% to 30% as a result of such a change. Helphire considered that European experience showed that the UK market worked efficiently in terms of insurance premiums. Helphire further considered there to be evidence that replacement vehicles were not readily available in France or Spain because the relevant legal system did not support this and was therefore (compared with the UK) inefficient. From Helphire's experience in Spain, it noted that cases could take years to progress and that in Spain legal costs could not be recouped.
7. Helphire commented on the erratum issued by the CC in respect of VAT issues. Helphire believed that there was still further work to be done by the CC. It considered that such further work would demonstrate that even when allowing for any VAT adjustment, the AEC had been calculated to be significantly higher than it should be. By way of example, Helphire explained that in calculating the AEC in the private motor insurance (PMI) market, the CC had allocated the cost of all credit hires to the AEC when, in fact, the research that Helphire had itself conducted indicated that maybe more than 15% of the vehicles that were insured were under commercial policies. Helphire considered that this cost should be discounted from the AEC as it would not affect PMI premiums paid by private individuals.
8. Helphire also explained why it considered that the direct rates that had been given to the CC in advance of it publishing its provisional findings might be artificially low and unsustainable. Helphire explained that certain large players might be engaging in predatory pricing, using profit generated abroad and from other activities such as vehicle sales to subsidise very low rental prices in order to capture market share and to force other players out of the vehicle hire sector in the short term but with the view to raising prices in the longer term. Helphire thought that direct hire rates were not sustainable at the levels that had been submitted to the CC, and that those rates constituted predatory pricing. Should competition decrease, particularly in the credit hire sector, those prices would rise.

9. Helphire believed that it was dangerous for the CC to address any AEC that might arise as a result of the separation of cost liability and cost control, by putting non-fault drivers in the hands of the at-fault insurers. Helphire noted that the value of separation had been independently recognised by numerous cases in the courts as a mechanism to address the imbalance of power between motorists and insurance companies.
10. Helphire observed that the Ministry of Justice had expressed concerns as to the concentration of power in the hands of insurers following the ban on referral fees. Helphire considered that insurers were starting to have complete control over the consumer in terms of claims.
11. Helphire noted that one key difference between direct hire and credit hire was that under the direct hire model the party at fault had accepted liability and was therefore going to pay the claim, whereas credit hire operators had to assess and handle a claim, and take a commercial risk. There was a big difference in timing as compared with personal injury claims. Whereas credit hire companies might only get an hour or two to decide on liability, a personal injury claim could be pursued years after the accident.
12. Helphire noted that there were a variety of additional costs that were associated with credit hire, which were not covered in the direct hire model, and that were managed very efficiently by credit hire operators. For instance, this included capturing the customer; explaining the process to the customer; assessing liability; organising replacement vehicle delivery and customer car collection and putting the same into effect; checking the customer's details and insurance; arranging for vehicle inspection by the engineer; notifying the at-fault insurer; managing the repair process; updating the insurer and investigating and explaining delays; getting the customer signed up to the appropriate documentation and mitigation statement; and pursuing payment.
13. Helphire said that if the CC restricted or banned referral fees, then other models would emerge which would be controlled by insurers where the value was obtained, and if rights of subrogation were maintained, then they would achieve some value through that subrogation process.
14. Helphire considered that the scale of marketing expenditure needed if referral fees were banned would be quite significant for the credit hire industry, and that direct marketing was virtually impossible and highly inefficient. A further risk that concerned Helphire was that if a different form of advertising were pursued (above-the-line television advertising), this would mean that spend would be drained out of the PMI supply chain, whereas currently, it was captured within referral fees and thereby going back into the system which Helphire considered offset the detriment. Helphire further considered that

insurers would still want the same level of return from the supply chain such that if parties were to engage in above-the-line advertising, this would potentially exaggerate the current AEC finding.

15. Helphire said that the real value of the credit hire industry to the consumer was that it supported their position on liability and allowed liability to be determined. If that was taken away, insurers had very little interest in determining liability, and consumers would be disadvantaged. Another example cited by Helphire as regards the benefit of credit hire related to improved recovery of the innocent motorist's insurance 'excess'.
16. The CC invited Helphire to elaborate on its comments about the changes in the market that some participants were pursuing to reduce costs. Helphire explained that bilateral agreements between credit hire operators and insurers – which offer reduced rates in return for greater certainty of payment and payment on time – were becoming increasingly prevalent and were effective in reducing friction between insurers and credit hire operators. Helphire explained that a significant and increasing proportion of its business was being conducted pursuant to these agreements. Indeed, the majority of Helphire's business was now conducted under such protocols. Helphire explained that bilateral agreements did not erode any of the consumer's rights and that the rates charged were less than those provided for in the General Terms of Agreement. Helphire further explained that liability was codified such that the types of accident that were recognised as 'non-fault' were agreed. As a result there was no need for litigation under a bilateral agreement. Helphire urged the CC to consider this area further.
17. In conclusion Helphire urged the CC to be prepared, if the calculation of the true AEC was small, to accept that almost any remedy would be disproportionate. Such a conclusion would be very unpopular with certain sectors and Helphire wondered if 'brave' would be the right word to describe such a conclusion.