

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Summary of response hearing with Quindell Plc held on 4 March 2014

1. Quindell operated in an uninsured loss market and not a rental market as defined by the Competition Commission (CC). With regard to the theory of harm 1, Quindell argued that separation of cost liability and cost control was a benefit for consumers. There was a direct conflict of interest between the insurer that represented the person at fault and the victim of the accident.
2. Quindell challenged that there was no theory of harm 1 and that there was no adverse effect on competition (AEC) borne out of separation **and** poor behaviour and/or inefficiency. The costs that existed in the market representing those consumers against an at-fault insurer were far greater outside temporary replacement vehicles, in particular, in personal injury claims. Quindell therefore enquired as to why the proposed remedy 1A (First Party Insurance) was limited to mobility.
3. Quindell raised a query to understand the two aspects, in combination, which led to the CC's conclusion that there was an AEC. The first being separation and, in combination, factors which led to increased cost. Quindell said that there was no evidence of poor behaviour in the credit hire sector. It asked for the evidence supporting the statements criticising credit hire companies (CHCs) and their business practises. These were simply perceptions, without any evidence to support them. An example was provided regarding vehicles being booked in to repairers ahead of a weekend to gain longer hire durations, yet the CC's own data-gathering exercise had disproved this, as did independent General Terms of the Agreement (GTA) audits conducted a few years ago. Yet a proposed remedy (like 1A or 1G) would eliminate the CHC sector for no good or proportionate reason.
4. Quindell noted that an anonymous pilot audit had been undertaken into the credit hire market by an independent company specifically to consider whether there was poor behaviour or a lack of compliance with the GTA. The audits noted that CHCs were complying with the GTA and behaving properly, which Quindell believed dispelled the insurer argument that CHCs were the cause of excessive cost in the market and proved it was perception rather than reality. The insurers had decided **not** to proceed with further audits because of cost, which surprised Quindell because insurers had said they wanted more control and this audit would cost less than £100,000.

5. Direct hire was not the counterfactual to credit hire (ie equivalent alternative service), and the separation issue and alleged bad behaviour cited in unsubstantiated allegations to the CC needed to be tested. Quindell's collaboration model was all about working with the at-fault insurer to **take cost out of the market**. It was not just a direct hire service; it continued to provide the service to the consumer in exactly the same way as credit hire, but charged them (at-fault insurers) its buy-in rate for vehicle hire. Quindell then earned a fee for its service above the hire rate to cover operational cost, marketing costs and profit margin.
6. Quindell said that the time it took the at-fault insurer to look at its indemnity, liability and make it an offer on that total loss meant the average hire period for total loss was about 30 to 35 days, whereas when it carried out the intervention for the insurer, its average hire period for a total loss was 14 days. Quindell explained how its Collaboration model worked, reducing hire durations and frictional cost through employing its expertise in systems and process.
7. Quindell noted that it hired more rental cars in the UK than anybody else, including insurers, because of its very efficient relationship with its rental partners. Those insurers that Quindell did business with on credit hire benefited from its direct hire rates that it had secured with the rental companies over the years. However, the rental companies did not manage claims/loss of use processes, and the insurers tended to be quite reactionary – Quindell believed the CHCs had developed very proactive processes, that protected the consumer's interests, and they had nothing to gain from being inefficient, because if hire periods were extended, Quindell would have to bear the frictional cost (through unrecoverable hire charges). The market was continuing to evolve, and there was a fine balance between protecting consumer interests and the cost of servicing customer needs after accidents.
8. With regard to the GTA, Quindell believed that the courts had not been too generous when setting the appropriate level of hire costs, and pointed out that the GTA rate was **not** the same as the retail rate. GTA rates were roughly **30% lower** than those rates recoverable by law (ie basic hire rates).
9. Quindell also believed that insurers misrepresented mitigation, which was not the 'lowest' cost, and was the insurers' safeguard to ensure that 'no unreasonable costs' were added to a claim.
10. Quindell said that insurers would not leave the GTA if there was no alternative. There was only one major insurer that operated outside the GTA – AXA – and it had publicly stated that it was taking a stance in terms of a number of different elements of the insurance market. If insurers were to have

control of the whole process, and that was not just the costs, they could also decide on the level of service offered to those in need of mobility.

11. The challenge that Quindell saw in some of the potential remedies was that there seemed to be an acceptance that insurers would be able to make very efficient and quick decisions on liability. Quindell said that this assumption was incorrect: in its view insurers were slow and would continue to operate selectively on claims settlement and admission of liability. Quindell said that people were DNA-ingrained nowadays **not** to want to admit liability post-accident because their insurance companies advised them not to – ‘Do not admit liability at the scene of the accident’. Insurance companies would naturally want to **try to protect their own interests** before they considered making an admission of liability, because they would want to assess whether or not it was a potential fraud and, if it was a more severe accident, more material costs than mobility itself.
12. Quindell suggested that to move the marketplace into a model where insurance companies were just relied on to make those decisions would lead to a material risk of consumer detriment in that they would be unhappy with those decisions, and the consideration that the CC needed to give was: ‘Who’s going to police those decisions?’ In the current situation, where CHCs were involved produced the best outcome for insurers and consumers, and hundreds of thousands of non-fault claimants benefited each year from the free-service CHCs, especially when the insurers did not wish to accept their non-fault claim. Under the GTA and Quindell’s Collaboration model incorporating its software and processes, the cost of settlement was, in Quindell’s view, getting even more efficient.
13. Quindell said that the reason why credit hire was significant for consumers within the non-fault sector was because the at-fault insurers struggled to make decisions on liability quickly and accurately, mainly because they believed what their policyholder told them when the claim was reported without making early, appropriate enquiries. We were told that if insurers were very good at making quick liability decisions, the insurer-controlled or captured direct hire proportion of the non-fault sector would not be a low 20 to 25%, with the balance being serviced by the CHCs. To move the marketplace into a model where insurers made decisions on liability quickly and efficiently, with consumer focus, would cause a material risk to consumers being able to recover their losses, and might also lead to unintended consequences such as spurious claims, adding to insurers’ costs. Quindell was concerned about who would monitor these decisions, because at the moment the marketplace was very efficiently monitored by a number of organisations that earned income out of doing work to serve the claims, such as CHCs and legal firms. However, the CC was looking potentially to take a proportion of that sector

away through its potential remedies, which would threaten the viability of this sector serving the interests of consumers.

14. Quindell believed that referral fees were not a bad thing and occurred in many commercial businesses. It noted that CHCs did not advertise their services to the public, hence this was the right route to the consumer (when direct advertising or marketing was less efficient). Consumers recognised their legal rights, and they could choose their own repairer, or choose who should represent them to pursue a claim on their behalf.
15. Quindell added that consumers involved in non-fault accidents did not have to make an insurance claim. They had a claim in common law against the person who wronged them. But, if they went through their own insurance policy, they put at risk their no-claims discount; and they put at risk the possibility of future higher premiums, if for example, there was a bilateral arrangement between two insurers, and they decided to split liability between them. CHCs addressed these challenges, in the consumer's interest, to effect fair settlement without financial penalties on innocent claimants.
16. Whenever insurers carried out tenders, sustainability, financial stability of businesses, and customer services were just as important as referral fees.
17. Quindell noted that it was a combination of things as to why consumers chose a particular CHC based on referrals from intermediaries. There was a case in 2013 where a company called Drive Assist, which was a large CHC, worked with all the big insurance companies, but went bust, for a number of reasons. One reason may have been that its referral fees were too high against its cost base – there were some tensions there. It also held a car fleet, and therefore it had a risk around residual values of cars and the funding of the fleet. It was a nightmare, and hugely costly for the referring partners of Drive Assist to have to deal with the collapse of that business, and therefore CHC sustainability was just as important as referral fees – in fact, Quindell said it was probably more important than the referral fees. Customer service was also just as important as referral fees – Quindell noted that it won a tender from a large insurer based on service offering as well as referral fees and only after intense due diligence. The referral fees came from efficiency, or too high referral fees would risk sustainability. Often, Quindell reported that penalties would apply in contract if certain service levels were not reached.
18. Quindell said that insurers' claims processes and the notification of those claims could introduce better price competition in the market.
19. Quindell enquired as to why the CC had not provided a straight forward link between the research and the AEC calculations.