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Competition & Markets Authority – Private Motor Insurance Market Investigation
Zurich’s response to the provisional decision on remedies

Background

Zurich has reviewed the Competition & Markets Authority’s (CMA) provisional decision on remedies which were published on 12 June 2014.

It notes that the CMA has invited interested parties to respond to the provisional decision on remedies by 5pm on Friday 4 July 2014.

Zurich supports the CMA’s work in this area but would like to take this opportunity to comment in a number of areas and request that the CMA clarify some of its proposals regarding the remedies.

Separation of cost control and cost liability: Theory of Harm 1 (ToH1)

We note that the CMA concluded that there are adverse effects on competition due to separation of cost liability and cost control and consequently seek to introduce a package of remedies to reverse such effects.

Remedy A – measures to improve claimant’s understanding of their legal entitlements

This remedy has been designed to support the remedies outline under ToH1 to ensure customers are aware of their legal entitlements under their own insurance policy and their options when making a non-fault claim.

Zurich notes that there will be no post-claims surveys or call monitoring to ensure that all FNOL providers do actually comply with requirements. Zurich is concerned at the absence of post-claims surveys or call monitoring in relation to the FNOL process to ensure that all private motorists consistently receive the appropriate level of information in a balanced manner, particular where the FNOL provision is not within an insurer operation.

Remedy 1C and 1F – Measures to control the cost of providing a replacement car to non-fault claimants and improved mitigation

Risk of circumvention and/or distortion - Provision of replacement vehicles

Zurich notes that the remedy is not available to the insurer of an at-fault privately insured vehicle where the non-fault party is a commercial vehicle but the remedy would be available to the insurer of an at-fault commercial vehicle where the non-fault party is a privately insured vehicle. There appears to be continuing confusion/challenge over the various



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scenarios in which the remedy will apply and the scenarios given indicate potentially greater capped rate benefit for the commercial insurer rather than the private motor insurer.

The fact that a private motor insurer will not gain the benefit of a reduced cap rate if the at-fault vehicle is commercially insured appears to be confusing and inequitable when a commercial insurer will benefit if the at-fault motorist is privately insured. It would appear to make sense for the provisions to apply across private and commercial markets. This would also remove the confusion in relation to what qualifies as a commercial vehicle.

What is a commercial vehicle?

We note at paragraph 2.133 on p 2-38 of the CMA's Provisional Decision on Remedies that where an accident concerns a non-fault commercial vehicles and an at fault privately insured vehicle, the remedies will not apply.

It would be helpful for CMA to clarify what constitutes a commercial vehicle. In particular, are the following vehicles all outside of scope: taxis, private hire vehicles, vans/truck/lorries? Would the term include a passenger vehicle such as a Ford Mondeo which is being driven for business by a salesman on a fleet policy?

Speeding up liability determination - When is a Claim Notified?

The CMA addressed the need for a speedy decision on liability to reduce fictional costs. The feature of the dual cap rate includes the application of a low rate cap if the at-fault insurer accepts liability within a short period (3 days of being informed that a replacement vehicle is being provided to the non-fault claimant). If the at-fault insurer does not accept liability within the short period, a high rate cap will apply.

Zurich would welcome greater certainty on restricted notification mechanisms to prevent deliberate ploys, for example to send new claims to non-specific offices, to prevent insurers making a liability decision within 3 days. At 2.126 (p 2-36) of its report, the CMA raises the prospect of an online notification portal similar to that for personal injury but the CMA is not proposing to implement this, leaving it to the GTA Technical Committee which is already examining the issue. Zurich considers that this will be essential to control new claim notification activity.

Monitoring of Compliance and Behaviours

Zurich strongly recommends further clarity on the mechanisms for monitoring the compliance and behaviours of parties and a clear reporting and enforcement procedure with meaningful sanctions which can be imposed.

Hire Car Provision

Zurich notes that a customer remains free to source a replacement vehicle at rates that are higher than those proposed within the remedy. It will remain to be seen whether the enhanced notification to customers of their rights and obligations will be sufficient to stop this becoming a loop hole for credit hire companies seeking to secure higher average daily rates.

In our experience a high proportion of Claimants utilising a credit hire vehicle do not fully understand the nature of the credit hire agreement entered and often believe they are using a courtesy car provided by an insurer. The incentive to do so is a like for like vehicle at no cost together with an element of convenience and we are not aware that there is a high frequency of direct incentivisation to the Claimant personally. The incentive within a credit hire arrangement is largely financial in terms of the referral fee which does not go to the



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Claimant and we are concerned that models may be developed by claims management companies that enable a Claimant to source a vehicle at higher cost than the capped rates thus preserving the referral fee financial incentive whilst the Claimant still believes they are using some form of insurer courtesy vehicle.

Fraud

The demanding timeframes for liability determination (within 3 days) could encourage fraud and result in settlement of unmeritorious claims. This may be a particular risk for commercial policies given the challenges with notification.

Vehicle Repair

Zurich remains concerned that the remedies proposed do not include any provisions to address the well-publicised issues around subrogated repair costs and salvage which leaves these areas open to abuse and a means of revenue generation which will nullify the best intentions of these remedies.

Referral Fees

The continued entitlement to hire and repair related referral fees will encourage behaviours based on revenue generation rather than placing customer service and cost effective provision at the forefront of the remedies. Zurich would encourage these referral fees being banned.

The capped rate benefit will only be available where an insurer is able to make a liability decision within 3 days. It will be essential to have controlled notification procedures to facilitate clear notification to the correct insurer department. The absence of a mandatory notification and communication portal increases the likelihood that an insurer will not have a reasonable opportunity to make the liability decision within 3 days.

Those insurers most likely to be able to take advantage of the rate cap will be those with direct models and those involving intermediaries will frequently have slower notification windows thus reducing investigation time. It is clear that in terms of customer focus and centricity, we must consult policyholders before making liability decisions so as not to prejudice their positions and overall it is likely that a high proportion of claims will proceed at the higher rate due to the unrealistic liability decision making timescale and absence of mandatory communication portal.

Since there will still be a high proportion of cases proceeding at the higher rate, there will by implication, be sufficient “funding” to ensure that referral fees can still be paid and indeed it will be an incentive to slow the process down to ensure higher rates are achieved.

The Sale of add-on products and No Claims Bonuses – Theory of Harm 4 (ToH4)

The CMA concluded that there are adverse effects on competition as a result of information asymmetries particularly in the area of add-ons, specifically no-claims bonus (NCB) protection. Consequently, the CMA has decided to require insurers to inform consumers about the costs and benefits of NCB protection in a number of ways.

Implied Price and Step-back Procedures

The changes are likely to impact broker platform and software houses which are already being asked to take account of other significant market-wide initiatives such as the introduction of MyLicence and the implementation of Flood Re. We consider that the format on how to display step back procedures should be left to insurers who already have



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obligations under ICOBS which require the customer to be provided with clear information to help them make an informed decision.

Average/typical NCB discount according to number of years

Zurich is concerned that allowing each insurer to shape what its average/typical discounts are could result in different metrics being used across the industry. By its very nature, usually an average discount figure, because of the range of products and associated NCB scales underwritten by many insurers, will not be the actual discount used under a specific product, while a typical discount figure may only apply in some circumstances. Therefore comparisons between insurers will not be like-for-like and consequently such information is unlikely to be beneficial to customers. Zurich remains of the view that customers' primary concern is the net premium payable, not being supplied with a view of one (of many) elements which go to produce that final figure.

Mandatory Statements about NCB discounts

Although Zurich supports providing better information to help consumers to understand the general value of NCB protection, it considers that it is in a better position to provide appropriate language that best fits with its policies rather than employing mandatory wordings.

Zurich considers it unlikely that the use of mandatory statements will influence customers' decisions. In our experience there can be considerable difficulty in persuading customers to take the time to review the information provided.

The introduction of this remedy will increase telephone call sales and complexity with longer telephone scripts which will in turn increase handling costs.

There are uncertainties regarding the implementation time. Zurich considers that the 6 month lead time significantly underestimates the time needed by insurers, software houses and the intermediary market to update their systems.

Most Favoured Nation Clauses and Price Comparison Websites – Theory of Harm 5

The CMA found adverse effects on competition due to the existence of wide “most favoured nation” clauses (MFNs) in the agreements between Price Comparison Websites (PCW) and PMI providers.

Zurich strongly encourages the restriction on both wide and narrow MFN clauses.

There is a lack of clarity over what constitutes “equivalent behaviours” of wide MFN clauses, and Zurich notes the CMA's promise to provide guidance. However, we would like to stress that it is important that the CMA consult appropriately with the industry on its terms so as to avoid circumvention of its remedy.

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