Winn Group – Responses to Competition and Markets Authority Private Motor Insurance Market Investigation (Response to notice of further consultation on Remedy 1c)

31 July 2014

For the ease of reference and reply we use the paragraphs used in the notice for response.

I start with a general and obvious observation that it would be perverse for a customer who receives a hire only service be charged more than a customer who receives a full credit hire services (incorporating risk loading, better delivery and collection arrangements, insurance protection against the risk of losing, deferment of payment, assistance in recovery of the claim and assessment of their claim etc). Regulation should avoid perverse outcomes wherever practicable. One simple submission is that it would be perverse and anticompetitive to limit the charges to credit hire providers such that their costs could be less than a retail rate for straight hire.

The proposal would be even more perverse if insurers are able to recover reasonable retail rates and credit hire companies and others are not. This is anticompetitive. Proposal would obviously drive most credit hire providers to provide a lesser service to the customer i.e. straight hire service and leave them to pick up the pieces with regards to recovery. Most credit hire companies (which you will see from their published accounts) do not make significant profits and would not have the ability to absorb significant reductions in their charges for credit hire. Thus the majority would have to move to a straight hire arrangement whereby the client is left to pick up the pieces and proceed himself. This will happen as there is no other logical action for the credit hire companies. What other area of business would someone agree to provide significantly greater levels of service and product for less than providing half the service or product? It doesn't make economic sense.

The outcome for the customer will thus be a return to straight hire whereby they are at risk if they don't recover the charges and have to pursue the charges themselves. As everyone is aware insurers raise very technical arguments in relation to hire and the change in the market would lead to clear access to justice issues. In the reasonably orderly market which exists at present credit hire companies obtain the evidence needed by insurers to agree and settle claims. This would be replaced by disorder, confusion and difficulties in the market as clients have to pursue their own hire.

In relation to the specific points raised I would reply as follows:-

13.

I agree that the powers under schedule 8 of the Enterprise Act 2002 could not be applied in this way.

14.

The proposal in paragraphs 2.62 and 2.63 appear to be presented by one party on a self interest basis. It appears to be a case of regulate all the others but don't regulate us insurers. The proposal is anticompetitive and would be in danger of limiting provision of the service to a few large insurers with a poor track record for service.

The paragraphs are not particularly clear and there is no detail.

In my submission the proposals fall foul of your powers under the Enterprise Act as they have the following effect upon Tort law:-

- The Court of Appeal have decided that impecunious victims should receive all credit hire services and the full cost of those services is recoverable. Restricting the costs that the credit hire company can charge the client is just a backdoor way of preventing that customer from accessing his rights. The same is the case for pecunious clients where at present they can recover a reasonable rate on the retail rates available. A limitation on the amount charged by credit hire companies is simply a backdoor way of bypassing Tort law. The conflict between Tort law and the regulation will still be in play. The law is very clear what can be recovered under a Tort case and it would be a clear conflict with the regulations. Assuming that there would be a reduction in the rate compared to retail rates or impecunious credit hire rates, the business model of those involved would have to change so that they separate the hire from the recovery and other services. i.e. one provider provides the straight hire, another provider provides at a cost the recovery, another provider provides the credit etc. This would have a serious detrimental affect on the customer and level of service with no consequent reduction in costs. The potential is that the poor customer faces a lot of additional charges he didn't have before and is left high and dry by a hire company who say 'we will provide you with a car but we can't do any of the other services for you because it is not economic'.

15.

Passing business from the credit hire companies to a few large insurers in a monopolistic manner is to do the exact opposite of what the Competition Commission should be doing. Many non fault insurers provide credit hire services and there is a charge for the replacement vehicle provided. To leave insurers out of the regulations or allow them to duck out would be anticompetitive and against the customers' interests. There is also access to justice issues as it would effectively force customers to use the solicitors of their insurance company as this would be the only way they could get a cost effective non fault service. This would be in breach of the European Regulations concerning access to a solicitor of choice. Forcing clients to use a particular insurer for his credit hire and thus his particular solicitor raises anticompetitive issues and access to justice issues in addition to the breaches of European Regulations concerning access to solicitors of choice. It would force customers to claim on their insurance which would be in breach of the law.

17.

(a) I think it would be near impossible to clearly define a set of circumstances (which was not open to avoidance) to which the remedy should apply. On looking at it if a definition is applied it would be likely to be perverse because it is likely to result in the potential for the credit hire provider to obtain less than a hire provider for the same vehicle whilst doing a lot more and taking a lot more risk. The same principal applies to why the Competition Commission wouldn't normally limit hire charges i.e. if it is applied to credit hire charges the supply drops dramatically and people don't get the service they are legally entitled to. It must be born in mind throughout this review that the Courts only allow recovery of 'reasonable rates' for credit hire. Imposing anything else is by legal definition an 'unreasonable rate'. Should the Competition Commission be enforcing an 'unreasonable rate'.

(b) This would not be fair or reasonable. Our experience is that the independent CHO's provide a better quality of service to customers than the insurer led services. Forcing customers to use non fault insurers' services by allowing them to make a reasonable recovery of rates whilst denying all others a reasonable recovery of rates is in principal wrong. It is anticompetitive and will lead to a monopolistic situation. It is a breach of the law in that it discriminates against a class of providers and in favour of another class of providers. It forces people to use their insurer which can have affects on their excess, no claims bonus and other impacts not in the customers' interests. It forces

customers to use the insurers' choice of solicitor which is against European Regulations on choice of solicitor. It is hard to believe that the Competition Commission would bring in such a provision given its obvious anticompetitive nature.

It is highly likely that if such an anticompetitive proposal was pushed forwards current providers would seek to avoid such a clearly unfair provision and reposition themselves as providers of insurance services. This would push up costs in the industry and deteriorate the service to customers.

18.

(a) This would force hire providers to have no contractual arrangement with a credit provider but to provide the client with a list of credit providers to go to. I.e. it would involve additional cost in the process, a worse service for the customer and no saving.

(b) The market would split with the various services being provided separately and in a messy, additional costs manner.

There is likely to be a whole range of additional costs and complexity as test cases are taken over a period of years and Courts are clogged up with what exactly is an 'arrangement with another entity' and what is not. What is caught by this provision and what is not? Please bear in mind that on the figures quoted in the discussion document the vast majority of CHO's have no doubt whatsoever that they will have to adopt a different model to remain in business should the proposed reductions in charges occur. Thus they have to split and disintegrate the service.

It is perverse if the result of helping a customer recover costs from an at fault driver is a factor which reduces the amount which a hire company can charge rather than increases it. you must see how perverse this is i.e. if you were looking at a supermarket whereby one was selling a tin of beans and the other was selling two tins of beans it is the equivalent of forcing the seller of two tins of beans to sell it cheaper than one tin of beans. It is perverse and will lead to massive anti-avoidance. As with supermarkets, any supermarket would simply stop selling two tins of beans together and sell one tin of beans – that is what will happen with regards to hire. The result will be massive increased costs to the customer and he will have to access his additional services separately. There will be increased Court time and costs where the client is not aided in the recovery of the costs of hire.

19.

Why would you not expect non fault claimants to hire a vehicle if these changes came in? They undoubtedly would be forced to. Credit hire providers would change their model to become straight hire companies and may agree on a straight hire agreement and simply not enforce the hire agreement against the customer whilst they await the customer making his own claim for recovery. They could then ask the customer to pass the invoice to his solicitor to make the claim or to his insurer or to make the claim himself. There is already discussion amongst CHOs indicating that the best option would simply be to undertake a straight hire and leave the client to sort it out himself with the explanation 'The Competition Commission have decided you have to submit the claim yourself'.

20.

No they wouldn't. Courts are bound by the 'law'. The law states clearly what can be recovered against an impecunious client and a pecunious client. There is no legal basis for them taking into account a rate which has been imposed upon a separate set of suppliers, effectively excluding them from the market. What legal

basis could there possibly be for a judge to ignore the case law and law in his decision on rates involving subrogated claims?

It seems to have been forgotten that the main reason that this review is taking place was because a number of insurers were obtaining non fault credit hire services from a credit hire company and were marking up the rate that they claimed against another insurance company.

It would be perverse if these situations which caused the particular political interest in the issue were excluded from regulation.

21.

(a) No – The reason is given above.

(b) Yes, it would cause distortion. It would be perverse and anticompetitive if a provider of base hire with no additional services was able to charge more than a provider of hire who is willing to wait a considerable period for payment, takes the risk, provides an insurance cover against risk, provides assistance with recovery etc. Such a perverse decision would be open to judicial review and challenge. It would drive the market to provide less for customers rather than more and would have an anticompetitive affect on the market.

(c) No – The anticompetitive nature of the provisions would drive providers to split the services and force them to be provided in a less efficient manner and at higher costs. This perversely would drive up the cost of hire and increase satellite litigation.

(d) Yes – As above – It would be anticompetitive practice against the CHC/CMC and in favour of non fault insurer providers and give them a monopoly of the market.

(e) No they wouldn't – There is no legal basis for them ignoring the law and imposing a different set of rates. The law is the law. The CMA either cap the rates for insurers as well or don't. The Courts have no option but to enforce the law as it is, not as the CMA may like it to be.

(f) As this remedy would destroy most of the competition for credit hire services, insurers would fill the void and provide non fault replacement vehicles claimable against other insurers and increase their volumes. It is my view that the credit hire companies provide these services at a more cost effective rate and a better service than non fault insurers do. The market would be forced into the hands of the few large insurers with negative impacts, i.e. forcing customers to have less choice and use the non fault insurer where they would not wish to do so. There is a raft of case law that ensures that customers do not have to use their insurer and should have freedom of choice. The remedy would go in direct conflict with UK case law and practice in relation to customer choice. I can't see any benefit in forcing anticompetitive monopolistic practices on the customer. Non fault insurers have a greater capacity to be able to capture more non fault work and thus it is likely that through their higher administrative costs, lack of competition in the market (if competition was removed) and dominant position they will push up the costs of vehicle provision and potentially the volumes, increasing the burden on insurance policy buyers.

(g) Yes – It will drive credit hire providers to provide straight hire and withdraw the other services which were an added extra. It is unlikely that these providers will reduce their charges as they will remain on the retail rate and thus recoverable at straight hire rates. The consequences are obvious – The customer will receive a worse service, not receiving all of the additional benefits and receiving a disjointed service. Costs are unlikely to be saved and are likely to be increased for the poor victim,

i.e. he may have to pay for the funding of the charges, recovery of the charges and legal costs. This will have big impacts on Court time as it is likely that as victims attend Court on their own to be faced by well paid and trained insurance lawyers they will struggle with the process and complex law in this area and will either suffer losses as a result or at the very least suffer a bad experience. Many of these cases coming to Court will increase Court costs and Court time and the judiciary are already complaining that the volume of self represented claimants is at an all time high and causing the Court service immeasurable additional costs as a result of other regulatory change. The level of service in the industry is likely to decline. At present, most credit hire providers work to the law which has been set after many years of arguing and is now in a relatively benign state. Introduction of fresh regulations will inevitably cause immeasurable levels of increased legal argument and test cases. At a time where finally the credit hire law has settled after 15 years and hundreds of millions of pounds spent in litigation, it would in our submission be perverse to change the regulations and open up a whole new raft of legal challenges and costs.

22. Proportionality

Given the amounts identified to be at stake, it has to be asked whether messing with an efficient legal system and service delivery is worthwhile. It should be borne in mind that much of the additional cost referred to relates to provision of the full credit hire services, i.e. risk/delay/risk of non payment/legal assistance/administrative assistance etc. These costs aren't really an additional cost – They are part of the costs which a pecunious customer is able to recover as long as they are on the range of retails rates and costs which an impecunious customer is entitled to recover providing they are within credit hire retail rates.

There is clear access to justice issues as many non fault claimants will be left without access to a temporary replacement vehicle or will have to hire a vehicle and take the risk, cost and legal difficulties of recovering this themselves. Such action by the Competition Commission would be in direct contradiction to the current law. The judiciary already take the view that this is a bit of a back door way of changing the law in this area and that if the government wish to change the law it should go through the proper Parliamentary process as an Act of Parliament. Any attempt to introduce regulations will lead to increased litigation and confusion. The only way it can properly be done is if there is a Parliamentary Act which changes the 'law'. The attempt to bring in a regulation to restrict the amount a credit hire provider can charge in order to get round the current law seems fraught with difficulty. The question will still have to be asked, what takes priority, the 'law' as Parliament has enacted and the High Court judges have decided over decades or a 'new regulation' which contradicts the law of the land.

23.

Not pursing Remedy 1C would seems sensible given the alternative.

(a) If negotiating is part of a trade deal I don't think anyone sees any issues with mitigation declaration statements or an online portal to deliver quicker and cheaper administration of claims.

CHOs remain open to the idea that if there are reductions in costs which can be achieved and are proved then this can be taken into account in their negotiations on any future GTA rate.

Care is needed with bilateral agreements. It is one of the perverse effects of the Competitions Commission review that many of the parties who were in discussions to complete bilateral agreements withdrew from them awaiting the Competition Commission review. There is a move on many different areas of expenditure/cost for CHOs and insurers to agree specific arrangements whereby the CHO gets paid more quickly and with less argument on many issues and in return the insurer receives a lower price. The trend towards bilateral agreements will continue I am sure as

soon as Remedy 1C is removed from the table and costs reductions will occur. There is a real opportunity in relation to the development of a portal for everyone to be a winner if insurers reduce the level of arguments in return for lower charges. However, this is something to be developed between the parties. What CHOs don't want is enforced lower payments which give the insurers no incentive to reduce the administrative and argumentative burdens. Taking regulatory intervention off the table will allow more of the CHOs and insurers to negotiate settlements which reduce administrative/argumentative/legal costs and in return reduce rates.

(b) Frictional costs. If you would like to see some examples of files where we have to do a considerable amount of work to deal with all of the questions raised by third party insurers, we are happy to provide examples.

It would help if non fault claimants' insurers would agree to add the temporary replacement vehicle cover onto the client's insurance without additional costs. There would have to be rules brought in around this, i.e. that it was automatically applied. It would also need to cover the current legal situation whereby the client is entitled to an excess of £0 on a hire vehicle under current case law. If this were done it would be a considerable saving for the insurance industry as a whole.