Aviva Response to the Competition & Markets Authority Investigation into Private Motor Insurance

"Notice of further consultation on Remedy 1C"

Issue date: 4th August 2014

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1. Contact Details

This response relates to the Competition and Market Authority's (CMA) investigation into private motor insurance (PMI) and the "Notice of further consultation on Remedy 1C" published on the 28th July 2014.

If, at any stage, Aviva can assist the CMA further please feel free to contact either:

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Or

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Or

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We would be more than happy to meet with you to discuss any of our responses.

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2 Executive Summary

Aviva is concerned that any suggestion by the CMA, after this extensive investigation, that action to address the AEC you have identified may amount to no more than encouraging or recommending minor tweaks with no enforcement order or undertakings would leave the PMI market in a worse state than when the investigation commenced.

The CMA have identified a theory of harm in the separation of costs liability and control and a remedy to cap the rates combined with a portal should, subject to the detail and the rates being made clear, reduce cost and remove frictional costs.

If the CMA is minded at this late stage not to proceed with Remedy 1C then the CMA must in our view, and as set out in our reply to the provisional decision on remedies, reconsider the prohibition of referral fees as an alternative remedy in terms of hire and repair to avoid the unintended consequence of hire and repair referral fees increasing as a result of no remedy emerging that controls costs or behaviours in these areas.

3 Aviva Response to Paragraph 21

(a) This alternative approach would be an effective way in which to implement Remedy 1C?

Aviva in its response to the provisional decision on remedies agreed that the remedy needs to be mandatory for all those involved in the provision of replacement vehicles to a non-fault claimant following an accident.

This should, as identified by the CMA, apply whether the car is provided directly to the claimant by a temporary replacement provider or as a result of an insurer arranging and agreeing to pay the hire charges directly.

In terms of the issues raised in this further consultation on Remedy 1C, the question of the terminology used by the CMA and how the dual rate cap was to be applied were raised by Aviva, and we specifically stated at section 3.2.1 of our response that the wording of the enforcement order should state that any replacement vehicle provider who is either offering credit or any form of funding to a claimant or where it is arranged by an insurer should have the rate that they can charge capped.

In our view this does not in any way affect the legal entitlement of the claimant. As the individual need in all cases will be based on the expectation that they will be provided with an equivalent or similar sized replacement car (which is their legal entitlement). The claimants need is not fulfilled by having a dysfunctional market set the rate. The need is for the same mobility as enjoyed pre accident. How that mobility is funded, is very much a secondary question for the claimant. He needs a vehicle and the associated paperwork is not in the forefront of his mind. If the daily rate has been determined by the CMA it will remove one area of potential dispute and should remove the additional frictional costs that arise from disputes on liability by incentivising the at fault insurer to admit liability, to secure the lower rate and reduce the business risk to the CHO of non-payment.

It is important to emphasise that an individual's legal entitlement in terms of the lost use of their vehicle is not to be able to recover the maximum reasonable cost but to be provided with another vehicle.

If the CMA determines that the rate they can be charged by certain providers is capped, that does not affect, despite the challenge from the CHO's, the legal entitlement.

In addition, it will not affect the provision of vehicles as competition to provide services to non-fault parties will continue. Aviva does not consider that CHO's will pull out of the market because they will still make a similar margin and will know that they will be paid in cases where liability is admitted or for the periods where the admission is made.

It is already the case that many insurers have bilateral agreements in place with CHO's and all that will happen is that the fixed or average cost of those deals will reduce to reflect the reduction in the rate , as near as possible toward direct hire rates, based on the cap that they can then charge.

Aviva, therefore, fully supports the alternative approach proposed by the CMA as an effective way of implementing the cap to all non-fault hire provision. In addition, Aviva would reiterate that the correct approach should be to start with the higher rate and discount where the at-fault party admits liability early.

(b) The remedy would create distortions between the provision of temporary replacement vehicles to non-fault claimants and the provision of hire vehicles to retails customers?

Aviva does not consider that this will create any distortion. The factors that affect these markets are very different and the CMA has not set out fully what distortion risks may arise.

Most credit hire providers do not provide retail offers. Therefore, a rate cap on credit hires will not impact on any retail business and will also not affect the retail market. It is our view that it may in fact increase competition in the market as a result of setting the rate and reducing the frictional costs so that others enter the rental market and compete.

Where the provider does service, both credit and retail hires, there could be a risk the retail customers demand the capped rates, if they are aware of them. However even now there are clear differences between insurance direct hire rates, retail rates and credit hire rates and this does not create an issue. Retail rates are driven by changing demand and the add-ons required such as insurance, which are different in insurance direct and credit hires.

(c) The definition in paragraph 18 would capture effectively the provision of credit hire vehicles to non-fault claimants or whether there are any further circumvention risks from this proposed wording?

Aviva believes that the wording needs to be broader and that the words "non-fault" should be removed, as often cars are given to those who may be partially at fault. The wording needs to capture not only cars provided on credit terms but those where other forms of funding are provided including insurance cover either pre-purchased or provided free at the time the car is supplied. As an example, an insurance product may otherwise be given away that could quickly pay for the hire and then make it a subrogated claim.

It is therefore important that this is wide and clearly intended to cover everything apart from where a claimant hires the car and pays for the car from a retail provider themselves or makes a claim for loss of use instead of hiring a car.

(d) The remedy would create distortions between CHC/CMC provision and non-fault insurer provision of temporary replacement vehicles?

In our view the CMA are clearly intending the rate cap to apply to any insurer arranged hire and therefore we do not see that there is any risk of distortion and agree that it has to apply to all forms of non-fault hire provision other than as described above, where the claimant arranges and pays a retail hirer using their own funds and resources, or makes a loss of use claim.

(e) The courts would be likely to limit the sums recoverable in subrogated claims to the rate cap set by the CMA on the basis that this indicates the reasonable cost, or, if not, whether the cap for CHC/CMC provision would have to be set at a level which aligned with that currently allowed by the courts for subrogated claims for temporary replacement vehicles; and whether a dual-rate cap would create greater ambiguity for the courts in these circumstances?

If the CMA set the rates(s) to include subrogated hires and these are also notified by way of a portal then the courts should not have any role to play other than where there is a dispute on liability, duration or need as all parties who are caught by the order will have to apply the rate cap and therefore those who are providing the service have no reason to claim anything more than they can charge. The claimant's legal entitlement to an equivalent or similar sized vehicle is being met and the issue of the rate has been pre-determined by those providing the service.

It is therefore difficult to see how the courts would ever be required to limit subrogated claims to the rate cap if the order is made against all insurers.

Whilst it may be the case that the claimant has a claim for general damages for the loss of use of their vehicle and is not bound by the remedy if a claim is made in their name, it would set a clear benchmark as to what society finds acceptable and would be persuasive as to a reasonable level of award before a court. Aviva has difficulty with the concept that a claimant would want to litigate on rate when his needs have been met with the provision of a replacement car at agreed rates. Litigation on rate in such circumstances would be self seeking by others.

Any capped rate needs to be well defined in terms of any excess and/or additional charges (e.g. CDW) that are included or excluded and which can or cannot be charged in addition' so that there is less wriggle or circumvention room.

In terms of the dual rate cap it will either be one rate or the other and this is determined by the date of the admission which, as we have stated in our response, must, in our view, be recorded on a credit hire portal (please see our response 3.2.10 where we state "In our view a portal is essential") as this will then limit or remove any disputes on rate and reduce the frictional cost as intended by the CMA.

(f) Whether the remedy might be expected to lead to greater provision of temporary replacement vehicles by non-fault insurers under the terms of individuals' insurance policies, and the benefits and costs of this greater provision if it occurred?

Aviva provided the CMA with a detailed analysis of how we felt that Remedy 1A could be altered to mandate that insurers provide equivalent or similar sized replacement cars linked to a capped rate as part of 1C.

It is quite possible that insurers may increase or alter their cover for either non-fault or fault customers and the rate cap will bring certainty in terms of the rate and process for the recovery of these costs. This would be a positive effect of the remedy.

(g) Whether this alternative approach creates any other unintended consequences, costs or benefits from those already expressed?

In our view there are no additional consequences and the benefit is that remedy 1C should ultimately lead to less legal challenge, cost and friction, provided that the CMA does not raise any of the replacement vehicle arrangement costs (listed at 2.68 of the provisional remedies) to anything other than a level marginally above the direct hire rates.

The CMA has indicated that it may encourage the GTA, as a voluntary agreement, to adopt aspects of Remedy 1C. The GTA has delivered some improvement to the market, but has not been able to demonstrate any influence in controlling credit hire costs. It is a entirely voluntary agreement and any change requires both Insurers and CHC's to agree or there is no movement in positions. This inhibits change. The GTA is also voluntary in the sense that membership is not compulsory and so not all Insurers, nor CHC's are members. If the CMA fails to address the AEC, CHCs will likely view this as regulatory endorsement for their current business practices, which drive up costs for non-fault insurer to the detriment of PMI customers.

We wish to re-state that whilst we believe that a properly implemented remedy 1C, which has capped rates close to direct hire rates, can have some effect, the lack of control of other areas such as repair, total loss/salvage and the fact that referral fees are still allowed will in our opinion lead to a cost inflation in the uncontrolled areas plus increased frictional costs that will quickly erode any benefit of remedy 1C.

As a result we believe the CMA should consider how to control costs in other areas such as duration, referral fees etc. If referral fees are still paid then it's our opinion that any cost will reappear in the form of increased hire durations, increased cost/frequency of credit repair, storage, recovery and potentially into bodily injury elements of a claim.