

CMA MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

AGEAS UK COMMENTS ON THE DRAFT ORDER  
CIRCULATED FOR CONSULTATION ON 7 JANUARY 2015

This paper sets out the comments of Ageas UK<sup>1</sup> on the draft Order that was circulated by the CMA for comment on 7 January 2015.

**A. OBLIGATION TO PROVIDE INFORMATION ABOUT NCB PROTECTION**

**1 INTRODUCTION**

- 1.1 Ageas UK is fully supportive of measures which improve consumers' understanding of the products that they buy. It therefore supports the principle that, where consumers are given the option to buy NCB protection, they should know what NCB protection is and how much they are paying for it.
- 1.1 However, whilst Ageas UK supports the CMA's efforts to help consumers better understand NCB protection, it continues to harbour considerable doubts as to whether aspects of the CMA's proposed remedy (as described in the final report and now reflected in the draft Order) will in fact bring about benefits to consumers. In some respects, the extra information that will be provided to consumers will be of relatively little benefit and could risk being outweighed by the considerable implementation costs. Notwithstanding its reservations, Ageas UK is keen to assist the CMA in achieving an outcome that is favourable to the consumer.
- 1.2 Broadly speaking, and subject to a few specific comments set out below, Ageas UK considers that the draft Order appropriately reflects the remedy that the CMA outlined in its report. Ageas UK's main reservations relate to the CMA's proposed implementation timetable and other timing considerations relating to the remedy. Ageas UK is aware that these concerns are shared across the industry. It urges the CMA to engage with the appropriate stakeholders (including the software houses that will play a crucial role in the implementation process), take into account the views that are expressed and amend the timing aspects to ensure that full and proper implementation is achievable.
- 1.3 The statutory deadline for making the Order is 24 March 2015. However, Ageas UK notes from the published transcript of the CMA's meeting with BIBA and the ABI on 21 January 2015 that the CMA is proposing to make the Order by 1 March 2015. Given the outstanding difficulties with the proposed measures, rather than seeking to make the Order "early", Ageas UK would strongly encourage the CMA to make full use of the time available to it, to ensure that the Order best achieves the objectives of the remedy.

**2 TIMING CONSIDERATIONS**

**The implementation process – what is involved?**

- 2.1 The CMA should not underestimate the scale of change that will be required in order to implement the proposed remedy.

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<sup>1</sup> In this submission, references to "Ageas UK" mean Ageas (UK) Limited and, where applicable, its subsidiaries, excluding Tesco Underwriting Limited. Tesco Underwriting Limited is a joint arrangement with Tesco Bank and its views do not form part of this response.

- 2.2 The proposed remedy will require insurers (and/or, as the case may be, brokers) to generate and disseminate tables of average NCB discounts, amend their systems so that they can present to consumers the implied cost of NCB protection, produce step-back tables along the lines prescribed by the remedy, make various wording changes to their websites and other communications (such as policy documentation and call scripts) and implement appropriate training for staff on the new procedures.
- 2.3 [Confidential]. The key milestones in the implementation process are likely to be:
- 2.3.1 **Confirming the technical requirements/specifications of the remedy so that these can be conveyed to the software houses that will need to make the necessary software changes.** The remedy raises a number of complex scoping issues, ie to establish precisely how it can be implemented in practice. Further, many aspects of the arrangements will require agreement between insurers and brokers – for example, it may well be the case that brokers seek to achieve consistency over aspects of the remedy across their panel of insurers, both in terms of the technical aspects of the arrangements and the content of the information that will be provided to consumers. This implies a potentially large number of bilateral negotiations between different parties in the insurance industry, before technical specifications can be presented to software houses for the requisite development work.
- 2.3.2 **Development work by software houses.** Implementation of the remedy will require significant changes to the software systems that insurers and brokers currently use. To take an obvious example: where a consumer asks for a quote, parties' systems do not currently generate premiums with and without NCB protection – changes will therefore need to be made so that two premiums are automatically generated. Insurers' systems will also need to be amended such that they can capture NCB discounts, which will feed into the tables of average discounts that they are required to produce.<sup>2</sup>
- 2.3.3 **Testing.** It goes without saying that, once the software houses have made the requisite changes, the new systems will need to be subjected to thorough testing before they can "go live". In particular, due to the scale of the system changes being implemented, rigorous regression testing will be required to ensure that there are no unintended effects on other parts of the system.
- 2.3.4 **Roll-out.** Alongside the steps described above, insurers and brokers will also have to ensure that staff are trained to handle the new requirements and that appropriate changes are made to websites, policy documentation and call scripts.
- 2.4 Ageas UK is aware that others in the industry (including the ABI) are encouraging the CMA to engage with the relevant software houses (principally [confidential], [confidential] and [confidential]) and [confidential] to discuss the likely timeframe for the software development work that will be required to implement the remedy. Ageas UK wholeheartedly supports that suggestion.
- 2.5 However, in addition to the software development work, Ageas UK urges the CMA not to underestimate the additional steps that will be required – in particular, the time that will be needed to confirm the technical specifications of the remedy and, once the technical changes have been made by the software houses, the time that will be needed to test the new systems and then roll them out.

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<sup>2</sup> [Confidential].

2.6 In Ageas UK's view, for the insurance industry, these proposed changes are unprecedented in their complexity. It is therefore difficult (and potentially misleading) to draw direct comparisons with other changes that insurers have been required to implement. However, by way of indication:

2.6.1 **"Gender" project.** Insurers were fairly recently required to change their rates and rules (but, unlike the current Order, not their policy documentation) to comply with EU rules that prevented insurers taking a policyholder's gender into account when calculating their motor insurance premium:

- Ageas began work on the technical requirements and specifications needed to implement this change in [confidential].
- Development work by the software houses started in [confidential].
- The changes were rolled out [confidential].

So, in all, a period of [confidential] was required to implement the changes. As noted above, these changes related to rates and rules only. The current proposed Order will require a change to the structure of the product which is likely to be a complex and time consuming piece of work. Furthermore, additional documentation will need to be produced. In Ageas UK's experience, software houses require a longer lead time to carry out development work that includes documentation changes.

2.6.2 **Consumer Insurance (Disclosure and Representations) Act 2012.** The Consumer Insurance (Disclosure and Representations) Act required some changes to existing documentation, but no new documentation was required. This is in contrast to the position under the current Order, which will require the production of new documentation. In addition, software houses were able to "stagger" their work, so that they were not carrying out development work for a large number of insurers simultaneously. Overall, Ageas UK considers that implementing the Order will be considerably more complex than implementing the Act. Nevertheless, implementing the Act took some considerable time:

- Ageas began work on the technical requirements and specifications needed to implement this change in [confidential].
- Developments work by the software houses started in [confidential].
- The changes were rolled out by [confidential].

So again, in all, a period of [confidential] was required to implement the changes.

2.7 As noted above, the current changes are considerably more complex than either of the changes described above and will require significant amounts of work in terms of defining the technical requirements and specifications. In addition, it is likely that software houses will be carrying out development work for multiple insurers at the same time. Ageas UK has started to engage with software houses on the issue. Initial feedback is that it will take software houses around 18 months to carry out the necessary development work.

2.8 In light of Ageas UK's previous experiences at implementing changes, it anticipates that it could take around two years to implement the Order, bearing in mind the work that will need to be done either side of the software development work.

- 2.9 The CMA is no doubt keen to ensure that the implementation deadline for the remedy is realistically achievable (but without, of course, being unduly long). Ageas UK supports that proposition. Ageas UK would urge the CMA to extend the deadline to a date that NCB Providers would anticipate with some confidence being able to meet. In this regard, it is worth noting that:
- 2.9.1 **Material aspects of the remedy are outside of the control of any individual insurer or broker.** As explained above, there will need to be commercial agreements between insurers and brokers regarding how aspects of the remedy will be implemented. Potentially more significantly, insurers and brokers are unable to control how long software houses will take to complete the required software development.
  - 2.9.2 **Recognising that the changes are complex and that they will involve significant changes to the systems that insurers and brokers use, it may well be the case that delays arise during the development, testing or roll-out stages of the remedy.** Whilst it is of course impossible to predict whether any issues will arise, the implementation timetable should allow sufficient flexibility for potential delays that are outside of the parties' control.
  - 2.9.3 **Whilst much of the development work that the software houses will carry out will be common across all insurers and brokers that use their systems, there will inevitably be aspects of their work that will need to be specific to each insurer or broker.** It is very possible that software houses will need to implement "queuing systems" for the work. The deadline should allow for this possibility. It would be unfortunate if development work was completed for some parties too late for them to be able to implement the remedy by the prescribed deadline.
  - 2.9.4 **The CMA should assume that parties and/or software houses will only start to take meaningful steps to implement the Order once the final Order has been made.** Until such time as the Order has been made, it is entirely appropriate for parties to work on the basis that the precise scope of the remedy is yet to be finalised and may change. Whilst many parties (including Ageas UK) will be starting to consider implementation now, the CMA should not factor that in to the timetable. In any event, it may well be the case that the software houses are unwilling to carry out any work relating to the remedy until the final Order has been made.
  - 2.9.5 **The ultimate risk of setting an unachievable deadline is that insurers and brokers might be forced not to offer NCB protection as an option, at least until they are able to do so in compliance with the terms of the Order. Ageas UK respectfully submits that it would be better to err on the side of caution and allow a longer implementation deadline than risk reducing consumer choice by forcing parties temporarily to suspend offering NCB protection.**
- 2.10 At this stage (and largely for the reasons set out above), Ageas UK is unable to give a firm indication of how long it will take to implement the remedy. However, subject to the outcome of the CMA's discussions with the software houses, Ageas UK believes that an implementation date of no earlier than March 2017 would be reasonable and appropriate. (As mentioned above, one of Ageas UK's major IT providers has indicated that the development work alone on this project would be likely to take 18 months.)

#### **Average NCB discount tables**

- 2.11 Aside from the complexities already outlined above, Ageas UK wishes to draw the CMA's attention to the following points:

2.11.1 **As currently proposed, there will be a retrospective element to the remedy, which could cause significant implementation challenges for insurers, because they will not have collected the requisite data (for 2014 or, possibly, 2015) for the average NCB discount tables.** If the NCB remedy is implemented according to the timetable currently being proposed by the CMA, insurers will be required to produce NCB discount tables using data for 2014. When the policies were sold in 2014, insurers were not anticipating this remedy. They would therefore need to extract the necessary data retrospectively and try to retro-fit their systems accordingly. Ageas UK is working hard to establish what challenges it faces in this regard, but it anticipates that insurers generally will face considerable difficulties to achieve this. Indeed, the same could be said for data relating to policies written in 2015, since insurers are not yet capturing the information required to produce the average discount tables. With these points in mind Ageas UK feels it would be more appropriate for the first tables to relate to 2016 data.

2.11.2 **It is unreasonable to expect tables of average NCB discounts to be provided to consumers by 1 February each year – 1 April would be a more appropriate date.** At this stage, Ageas UK does not (and, it assumes, other insurers do not) know precisely how long it will take to generate each table of average NCB discounts (and, indeed, this is something that the CMA should explore with the software houses – albeit recognising that the steps needed to produce and disseminate the tables extend far beyond the work conducted by the software houses). What is clear, however, is that work cannot start on generating each table until the first working day in January. That will potentially leave only four weeks to generate (and, as appropriate, audit/test) the tables, disseminate them throughout the business and to brokers, update call scripts and make the requisite changes to websites and other written materials.

2.12 Ageas UK suggests that the tables should be made available to consumers by 1 April each year. That would give parties sufficient time to make the necessary arrangements and would allow flexibility for modest (unavoidable) delays. Recognising that the tables of average discounts are intended to be, at best, indicative for consumers, Ageas UK considers that 1 April would be a more reasonable date.

#### **Application of the deadlines during renewal offer periods**

2.13 In many cases, particularly with regard to renewals, an insurer or broker will make an offer to a consumer that remains “open” for several weeks. For example, if a consumer’s insurance policy comes up for renewal on 1 February, it will usually be contacted by its insurer or broker several weeks in advance (say in late December or early January) with a renewal offer.

2.14 It will need to be made clear in the Order (or the Explanatory Note) how the various deadlines will apply in such circumstances. In particular:

2.14.1 Will the initial implementation deadline (which is currently proposed to be 1 September 2015) apply only to renewal offers that are made (ie posted or sent by email) on or after that date? If that were the case, the remedy would not apply to a consumer whose policy comes up for renewal on, say, 1 October 2015 but who receives their renewal letter/email in, say, August 2015. The alternative approach would be to require that the remedy applies to that consumer, because their policy comes up for renewal after the implementation date of the remedy. However, that would in effect require insurers to implement the remedy by the time that they first contacted the consumer with a renewal offer (which, in the example above, would bring forward the implementation date to August). It is important that the CMA does

not in effect bring forward the effective implementation date, inadvertently or otherwise.

- 2.14.2 The same issue arises with regard to making available the tables of average NCB discounts by a certain date each year (currently proposed to be 1 February 2015). The CMA will need to clarify how this will apply in circumstances where consumers are contacted with a renewal offer before the relevant date, for a policy that is coming up for renewal after the relevant date. Again, it is important that the CMA does not in effect bring forward the effective date by which the annual tables must be made available, inadvertently or otherwise.
- 2.15 The points made in the previous paragraph apply equally to new business. For example (and using the proposed deadline in the CMA's draft Order), will a consumer who, in January 2016 obtains an offer online for a policy that starts in February, need to be presented with the average NCB table for 2015 or 2016? What would the position be if the customer decided not to make a purchase in January, but instead "saved" the quote, and then retrieved it and bought cover in February 2016? Again, the CMA needs to make clear how such nuances should be dealt with (principally to ensure a level playing field between insurers/brokers) and needs to guard against in effect bringing forward the deadlines under the Order.
- 2.16 Ageas UK suggests that the most appropriate way of dealing with this issue in the Order would be as follows:
- 2.16.1 the new rules should apply only to NCB protection offers (either for new business or on renewal) that are (first) issued after the implementation date (ie 1 September 2015 under the current proposals); and
- 2.16.2 in each subsequent year, the new average NCB tables should only need to be made available in relation to NCB protection offers (either for new business or on renewal) that are (first) issued after the relevant changeover date (ie 1 February under the current proposals).

### **Step-back tables**

- 2.17 Ageas UK is pleased that the CMA appears to be envisaging some flexibility in the presentation of the step-back tables by allowing them to be adapted to the terms and conditions of the NCB Protection Offer.
- 2.18 [Confidential]. Ageas UK would welcome confirmation from the CMA that it will be receptive to parties presenting to it draft versions of their proposed tables, ie so that the CMA can informally confirm that the tables are within the spirit and intent of the Order which, of course, would be Ageas UK's intention.

### **Compliance statements**

- 2.19 Ageas UK wonders whether it would be prudent to have a gap between the date by which the average NCB discount tables must be updated and the date by which the compliance statement must be submitted. As currently proposed, the deadline for both is 1 February. However, as a purely practical matter, if an NCB provider chose not to update their tables until 31 January (or indeed if they were for some reason unable to update it until then), they would find it very difficult then to submit a compliance statement (which would need to attach the average NCB discounts table for the forthcoming year), which would need to be signed by an appropriately senior member of management, by the same date. Ageas UK sees no reason why the deadline for submitting the compliance statement should not be put back to, say, one month after the date by which the tables of average NCB discounts need to be updated.



- 2.20 It will be important that the CMA recognises that the compliance statements can relate only to matters that are within the relevant party's knowledge and control. Where, for example, a broker confirms in the compliance statement that it has complied with the Order, this cannot be taken to mean that the broker warrants the accuracy of data that has been provided to it by insurers (such as the average NCB discounts tables). Ageas UK would welcome the CMA clarifying this point in the Explanatory Note.

#### **NCB Protection Statements**

- 2.21 Like others in the industry, Ageas UK believes that it would be helpful if the Order were to permit some flexibility in the wording of the NCB Protection statements.
- 2.22 Ageas UK is concerned that the prescribed wording is unnecessarily complicated and will not assist consumer understanding of the effect that NCB protection will have on the cost of their insurance premium. Allowing PMI providers to tailor the wording would enable them to ensure that information is provided to customers in a way that is suitable for the product being offered and is in line with the PMI provider's own "house style".
- 2.23 Ageas UK would also welcome clarification from the CMA on whether the Order allows PMI providers to display the NCB Protection Statement in a way that is consistent with the customer "journey" with the PMI provider in question.

#### **FCA in best position to monitor compliance**

- 2.24 The draft Order provides for very little engagement between PMI providers and the regulator (the CMA) with regard to the proposed NCB protection remedy. Indeed, the Order provides simply for PMI providers to submit an annual compliance statement to the CMA.
- 2.25 However, in order for the Order to work effectively in practice, it is likely that PMI providers will from time to time want to engage with the regulator on aspects of the arrangements. For example, the draft Order allows some flexibility in terms of how aspects of the Order are implemented (for example, with regard to how step-back tables are presented) and, as explained above, there are other aspects of the arrangements where greater flexibility would be appropriate.
- 2.26 It can only be right that PMI providers may want to engage with the regulator to discuss (and seek comfort on) whether their proposed approach complies with the Order. Permitting engagement along these lines must be a more appropriate approach than relying on the much blunter instrument of taking enforcement action against any suspected breaches.
- 2.27 In Ageas UK's view, the FCA would be in the best position to monitor compliance with the Order and to lead on any engagement with PMI providers regarding its operation. PMI providers are regulated by the FCA, they make regular representations to the FCA in any event and, accordingly, they have an ongoing relationship with it. By contrast, the CMA tends, quite rightly, to adopt a "one-stop" approach that is not necessarily well suited to ongoing monitoring and engagement.

#### **Definition of PMI broker**

- 2.28 Ageas UK notes that ABI's observation that the definition of PMI Brokers is not fully compliant with the definition of insurance intermediaries from the Insurance Mediation Directive (IMD). The IMD's definition is slightly wider than the definition provided in the Order in that brokers also conclude contracts of insurance. This is an important part of the definition of a broker which is not included in the definition contained within the Order. Ageas UK supports that

ABI's suggestion that the definition of PMI Broker in the Order should be amended so that it is more in line with the IMD.

## **B. PROHIBITION ON WIDE MFN CLAUSES AND EQUIVALENT BEHAVIOUR**

- 1.1 Whilst Ageas UK supports the role played by PCWs in the PMI sector, it has strongly supported a ban on wide MFNs. As such, it welcomes the provisions of the Order that prohibit wide MFN clauses.
- 1.2 Ageas UK fully supports the prohibition of "equivalent behaviours", which seeks to ensure that practices having the same effect as wide MFNs will also be caught by the Order. However, it considers that further guidance from the CMA as to the types of behaviour that will be regarded as "equivalent behaviours" would be useful in due course.
- 1.3 Ageas UK would encourage the CMA to clarify the meaning of footnote 5 of the Explanatory Note. The Order provides that the prohibition on MFN clauses does not apply to an agreement that prevents a PMI Provider from offering or inviting the purchase of a PMI Product more cheaply on its "Own Website". Paragraph 46 of the Explanatory Note makes clear that a PCW cannot restrict a PMI Provider's pricing on, inter alia, "sales through an independent social media platform (such as Facebook, Google+, LinkedIn and Twitter)"<sup>5</sup>. Footnote 5 states "*This applies where the social media platform provides a personal quote to customers.*" For the avoidance of doubt, Ageas UK assumes that this is intended to mean "*This applies even where the social media platform provides a personal quote to customers*". It should be grateful if the CMA would clarify this in the Explanatory Note.
- 1.4 It would be helpful if the CMA could confirm that all submissions that are made to it regarding delisting decisions will be kept confidential.