BGL Group Limited

Private Motor Insurance Market Investigation

Response to PMI Order

1 Introduction

1.1 This document sets out BGL Group Limited's (**BGL**'s) response to the CMA's Draft Order (the **Order**) and accompanying Explanatory Note (the **Guidance**) published for consultation on 7 January 2015.

1.2 This document supplements BGL's preliminary response to the CMA's earlier informal consultation in respect of the Order. Whereas the preliminary response focused mainly on those aspects of the Order dealing with wide MFN clauses and equivalent behaviours, this response, while re-emphasising BGL's comments on this important issue, concentrates on those aspects of the Order relevant to the sale of No Claims Bonus/No Claims Discount Protection (**NCDP**) and their practical implementation.

1.3 BGL would preface its comments by reference to the fact that the CMA has, by continuing to permit the sale of NCDP, as opposed to prohibiting its sale altogether, acknowledged the desirability and positive aspects of NCDP from a consumer's perspective.

1.4 BGL also notes that the CMA is proposing to implement the Order following a lengthy market investigation and report, during which time it has consulted extensively with other regulators, such as the FCA, including on the issue of remedies. It is critical therefore that the Order dovetails with other laws and regulations applying to PMI Providers as at the date the Order enters into force.

1.5 It is not, in BGL's view, appropriate for the CMA to rely on PMI Providers themselves to adjust their compliance with the precise terms of the Order subsequently to avoid conflict with such other laws and regulations (including those enforced by the FCA), notwithstanding what the definition of 'Alternative Information' in (and Article 3.5 of) the Order, in the context of NCDP, seems to imply.

1.6 FCA rules, for example, oblige PMI Providers to treat customers fairly and not mislead them; certain aspects of the Order, if implemented, may drive conduct which conflicts with these requirements. It is crucial from a 'Better Regulation' perspective that these potentially incompatible aspects of the Order are addressed now and fully through the drafting of the Order, rather than after the event based on PMI Providers being obliged to seek *ad hoc* dispensations from the CMA, which places undue risk, uncertainty and cost on market participants.

1.7 BGL would like to meet with the CMA in the next few weeks before the Order and Guidance are finalised to discuss/explain specific amendments to them.

2 General Comments

2.1 With regard to NCDP, in BGL's view:

2.1.1 The deadline of 1 September 2015 proposed by the CMA for the entering into force of Part 2 (Information Requirements) of the Order is

unrealistic, particularly in light of the fact that those aspects of the Order, which dictate the data that is provided to customers are unclear or ambiguous.

On the basis of the present content of the Draft Order, BGL have carried out a detailed initial assessment of the time it would take for the IT and software updates and the customer journeys to be implemented. A conservative estimate is that it will take at least [✂] to ensure its processes accommodate the requirements of the Order as regards NCDP. This reflects [✂].[1]

2.1.2 While the Order aims to enhance transparency around NCDP, which is a laudable objective shared by BGL, certain aspects of the Order – as a result of the requirements imposed on PMI Providers (particularly intermediaries) to gather and present disjointed or irrelevant information – are ambiguous or will (given the drafting of certain definitions in the Order) result in misleading information being generated. In other words, certain aspects of the Order have the potential to overload customers with (heavily caveated) information of little practical use and to mislead customers. BGL concerns are set out in more detail in section 3 below.

2.1.3 The statements (warnings) that PMI Providers and PCWs are required to provide to customers as to NCDP (as set out in Schedules 1a and 1b of the Order) do not, in their current form, accurately reflect the basis on which the price of a customer's policy might change. BGL's concerns are set out in more detail in section 3 below. To address this concern, BGL has proposed alternative wording set out in section 3.20 below.

2.1.4 Certain aspects of the Guidance, for example 'Table 2', which prescribes the structure/content of each PMI Provider's illustration of their Step-back Formula, are too rigid (and risk misleading customers as to their entitlement to a certain level of NCDP). Such prescription does not allow for product differentiation or for PMI Providers to provide better information to customers in a clearer/more digestible format. The result will be greater product homogeneity and, less innovation. This will inevitably lead to less competition.

In BGL's view, each PMI Provider should be left to interpret the requirements of Paragraph 1(c) of Schedule 2 in a way that complies with the Order but allows the PMI Provider some opportunity to tailor the presentation and information to maximise efficiency and to best suit the needs of their customers. The significant advantage of the alternative table suggested by BGL in section 2.1.6 below is that it is clearer and can be offered in a largely standardised format.

2.1.5 The requirement to Provide Table 1 NCD discount rates by year is likely to confuse customers and make it difficult for them to work out the potential impact of a Step Back (as would be the case if only the information displayed in the first two columns of the table in 2.1.6 below were provided). In our example, [✂] years NCD shows as [✂] discount, whereas [✂] years would show as [✂] discount. It is therefore likely that a customer (without NCDP) would assume that, say, in the event of a claim his next year's policy would increase by 26%, based on the reduced NCD. However, in reality, where a customer (without NCDP) previously on [✂] years NCD makes a claim that reduces their NCD to [✂] years in real terms the Policy is likely to [✂ [increase by >26%]]. This does not include the impact of the claim on the customer's risk profile but is purely based on the impact of a lower level of NCD.

[1] [✂]

2.1.6 The table below is not based on any true NCD sales

Years of NCD	% discount	[✂]	COMMENT:
0	[✂]	[✂]	In isolation, a customer is likely to view the difference in percentage as the percentage rise in premium. This would be incorrect and confusing; for example [✂]
1	[✂]	[✂]	
2	[✂]	[✂]	
3	[✂]	[✂]	
4	[✂]	[✂]	
5	[✂]	[✂]	
6	[✂]	[✂]	
7	[✂]	[✂]	
8	[✂]	[✂]	
9	[✂]	[✂]	

2.2 As regards the other aspect of the Order concerning wide MFNs and the associated reporting obligations on 'Designated PCWs', BGL would repeat its concerns that the Order:

2.2.1 places an unnecessary administrative burden on PCWs; and

2.2.2 if left unchanged, risks prompting routine abuse by PMI Providers (referring an increasing range of commercial disputes to the CMA or FCA for arbitration).

2.3 The Draft Order will, if adopted in its current form, place disproportionate administrative burdens and legal risks on market participants (particularly intermediaries/brokers and PCWs). It will also result in inconsistent interpretations of the provisions of the Order and, ultimately, an adverse outcome for customers.

3 NCDP concerns

Commencement, Part 1, Art.1.1(a) - 1 September 2015 implementation deadline (for Part 2 - Information requirements)

3.1 The deadline of 1 September 2015 proposed by the CMA for the entering into force of Part 2 (Information Requirements) of the Order is [✂] given the timescales as indicated in our comment at 2.1.1. A number of features of the Order and Guidelines appear specifically tailored to the requirements/situation of 'direct insurer' PMI Providers, rather than to 'intermediary/broker' PMI Providers, although the associated obligations apply to both.

Not only are various aspects of the Order confusing for intermediaries/brokers in terms of their obligations and the type of information they will be required to provide (and how it should be calculated), such PMI Providers will have the significant additional burden of drawing information and scales from a wide range of panel insurers underwriting the intermediaries'/brokers' brands (over whom latter have limited control). These aspects are highlighted in sections 3.2 to 3.22 below

Interpretation, Part 1, Art.2

Definition of 'Alternative Information' and the requirements of Article 3.5 of the Order

3.2 The CMA's mechanism to allow PMI Providers to adjust the NCDP information that they will be obliged to provide (see the definition of 'Alternative Information' and the requirements of Art.3.5) by reference to other regulatory requirements imposed on them, should not be used as an opportunity to avoid or postpone addressing the serious conflicts and ambiguities present in the Order. Although such a mechanism is positive in principle, in that it provides for future adjustment where necessary, it should not supplant the requirement to ensure the Order's compatibility with other rules and regulations currently in force. Brokers already have a large number of reporting requirements and we are concerned by the overlap between the CMA and the FCA. We note ABI/BIBA's recommendation that the reporting obligations are handed over to the FCA to manage, given their competition remit and implementation of European regulation which could impact this Order. Please see BGL's comments in sections 1.5 and 1.6 above.

Definitions of 'NCB Discount' and 'Average NCB Discount' versus definitions of 'NCB Protection', 'Implied Price of NCB Protection' and NCB Years and potential implications

3.3 In their current format, the above definitions (and the obligations associated with them) are highly inconsistent and confusing from an 'intermediary/broker' PMI Provider perspective.

3.4 As regards 'NCB Discount' and 'Average NCB Discount' (as calculated in accordance with paragraph 4 of Schedule 2 of the Order), these definitions make reference to 'PMI Insurer'[2] data. As regards 'NCB Protection', 'Implied Price of NCB Protection' and 'NCB Years', these definitions make reference to 'PMI Provider' data (i.e intermediary/broker and insurer data). These definitions therefore give rise to the risk of inconsistent application, which is all the more pronounced as certain aspects of the definitions are inter-linked.

3.5 More importantly, the definitions do not reflect how many brokers/intermediaries operate in practice (at least as regards their own brands or those which they manage on an 'affinity' basis for non-insurers).

3.6 For example, a broker operating under a particular brand X (whether its own brand or that of an affinity partner) will seek quotes (with and/or without NCDP) from a panel of up to 30 underwriters (insurers). [✂]

3.7 Obliging the broker (PMI Provider) to offer data on NCB Discounts or Average NCB Discounts by reference to a single 'PMI Insurer' , as the Draft Order does, is not necessarily relevant to the customer, and is likely to mislead the customer. Instead, the Order should make it clear that where intermediaries/brokers own/manage the relevant brand (ie they are not simply recommending an insurer's brand), they are entitled to use blended 'NCB Discount' and 'Average NCB Discount' data and 'NCB Protection', 'Implied Price of NCB Protection' and 'NCB Years' information in each case relevant to the brand in question; not data confined to an underlying insurer (underwriter) whose identity may change year on year, although the customer stays with the same brand.

3.8 If the intermediary/broker is able to provide blended data in respect of the relevant brand which it manages (using a panel of underwriters) – rather than being obliged to provide PMI Insurer-specific data, this means that the customers will be presented with more representative information concerning Average NCB Discounts etc for that brand. Such information will also be more consistent with other information that the Order

[2] PMI Insurers are defined by reference to the authorisation granted pursuant to s31 of the Financial Services and Markets Act 2000, which would naturally exclude intermediaries/brokers engaged only in the administration/arrangement of insurance policies.

requires the intermediary/broker to provide to the customer which is defined by reference to 'PMI Provider' data (eg on 'NCB Years' etc).

3.9 In particular, BGL would recommend that in the definition of 'NCB Discount' and paragraph 4 of Schedule 2 of the Order are amended. The CMA should substitute "PMI Provider" for "PMI Insurer". It should also clarify associated Guidance, which should indicate that when providing Average NCB Discounts for customers for a particular brand, a PMI Provider (intermediary/broker) may base its calculations on data derived from a representative range of PMI Insurers used by the intermediary/broker as the underwriter for the relevant brand for the core product and the NCDP.

Definition of 'Implied Price of NCB Protection"

3.10 The definition of 'Implied Price of NCB Protection' raises similar concerns in the sense that, as drafted, it could result in intermediaries/brokers providing customers with notional prices for NCDP which are not truly representative and are misleading.

3.11 Using a similar example to that set out above, intermediaries/brokers will seek to provide the customer with the most competitive quote for brand X insurance (both with and without NCDP protection). However, although underwriter A may provide the most competitive quote for the core product with NCDP, it may not provide the most competitive quote without NCDP (indeed, it may not provide any quote at all for a policy without NCDP); underwriter B may provide the most competitive quote for brand X without NCDP protection.

3.12 Again, this underlines the need that for intermediaries/brokers operating a panel of underwriters for a particular brand, it is important to ensure that information relevant to the brand is given, rather than to one particular underwriter (as this information will simply not provide an accurate picture). In other words, if the intermediary/broker had to provide data on the 'Implied Price of NCB Protection' specific to one underwriter/insurer (as currently assumed by the Order) this will potentially give a distorted view of the cost of NCDP. The difference between the cost of underwriter A's policy under brand X with and without NCDP may be £10; however, underwriter B on the panel may be willing to offer cover without NCDP for brand X at £50 less than A's price without NCDP; hence, the implied price of NCDP should be £60, rather than £10. The Order does not currently address this issue clearly.

3.13 Further, it may well be the case (and this applies to both direct insurers and brokers/intermediaries operating a panel of underwriters) that insurer A may be willing to provide cover with NCDP at a particular price, but will only provide it without NCDP subject to other adjustments to the package, for example, a higher compulsory excess fee (eg £150 compulsory excess with NCDP; £100 compulsory excess without NCDP). It is very common for insurers to apply different levels of compulsory excess, depending on whether NCD Protection is included or not. Where this happens comparisons between such policies are at best, difficult for an average consumer and maybe misleading. For a panel scenario, this situation becomes even more complex as there are many different underwriters applying varying levels of 'compulsory excess' depending on whether the customer opts for NCDP or not. By obliging PMI Providers to provide the information in a certain way, there is a risk that customers will not be offered a true/fully competitive picture, which risks a worse outcome for customers and infringing FCA/consumer protection rules. PCWs should remain free to offer the most competitive quote.

Definition of 'Step-back Formula' and associated statements and Guidance

3.14 In line with feedback already given, the Step-back formula is, for the purposes of the Order, calculated in accordance with *'a formula applied by a PMI Insurer'*. However, if the relevant brand (and any terms concerning how the number of no claims years that will be offered on renewal is reduced as a result of a number of claims) are controlled by an intermediary/broker 'PMI Provider', then the step-back formula should be defined by reference to the PMI Provider's (as opposed to the PMI Insurer's) terms.

3.15 Further, certain aspects of the Guidance (see Table 2 on page 10 of the Guidance), which prescribes the structure/content of each PMI Provider's illustration of their Step-back Formula, are too rigid and will, in conjunction with the statements that PMI Providers and PCWs are obliged to provide (pursuant to Schedule 1a and 1b of the Order), risk misleading customers as to their entitlement to a certain level of NCDP.

3.16 As regards Table 2 (as per the current Guidance), the table only works (and then only partly) in its current format if it is personalised to the specific situation of the customer. This is contrary to the suggestion in paragraph 32 of the Guidance that the table should be 'generic'.

3.17 For example, Table 2 currently focuses on certain numbers of claims over the 'next 12 months'. This does not take account of any historic claims made by the customer at the point of sale/renewal that might eat into their allowance; nor does it address longer reference periods set out by certain PMI Providers. Providing customers with Table 2, in its current form, could feasibly mislead them as regards their entitlement to NCDP based on historic and forward-looking claims potentially affecting them.

3.18 We refer to our comment in paragraph 2.1.4. The advantages of BGL's proposed approach is that it is personalised and meaningful to the customer. However, the principle should be that provided each PMI Provider complies with the overarching requirements of the Order as regards the illustration of their Step-back Formula, the precise format of the table should permit flexibility.

3.19 With respect to the statements (warnings) reproduced in Schedules 1a, 1b and 2 of the Order, BGL considers that these statements are inaccurate and will mislead or confuse customers for the following reasons:

3.19.1 The text which reads *"The price of your insurance policy may increase following an accident even if you were not at fault"* is misleading. NCD/NCB is a no 'claims' bonus, so NCDP is not affected only by 'accidents'; it could be affected as a result of theft or other damage. The relevant text should therefore be amended to reference 'claims' rather than 'accidents'.[3]

3.19.2 The structure of the current wording of paragraphs 1(a) and 1(b) of Schedule 1a is confusing/contradictory. Paragraph 1(b) should, in any event, come before 1(a), as 1(b) attempts to explain NCDP overall, whereas 1(a) qualifies its scope.

3.19.3 Finally, the text must also recognise that a customer's entitlement to a certain level of NCDP is not determined purely on a forward looking basis (the current text does not appear to address past claims).

Indeed, putting aside the above comments, as the text of the Order and Guidance currently stands, both the statements and Table 2 would need to be personalised to the current situation of the individual customer. This would potentially increase costs and delay implementation.

With this in mind, BGL has developed an alternative statement below that more accurately reflects NCDP. BGL envisages that the statement would [✂]

Part 4, Article 6 – Monitoring of PMI Providers

3.20 As BGL has previously advised the CMA, BGL would support any initiative, for PCWs as well as PMI Providers, to limit the burden of duplication in the context of reporting, so to the extent that compliance reporting pursuant to any order can be combined with reports to the FCA, BGL would support this step.

[3] The same comments apply to identical text currently contained in Schedule 1b (paragraph 1b).

4 Wide MFN concerns

Open-ended duration of the Wide MFN prohibition does not allow for market developments

4.1 BGL would reiterate its previous comments that it does not consider that Articles 4, 5 and 7 of the Order should be implemented on an indefinite basis, even with the (remote) possibility of future review as indicated by paragraph 8 of the Guidance; such provisions should be time limited given their potential to interfere with normal commercial arrangements.

4.2 BGL reminds the CMA that the CMA has not, at any time, presented compelling evidence of the adverse effects of Wide MFNs in the PMI market, nor explained why such provisions would be caught by Article 101(1) of the Treaty on the Functioning of the European Union (**TFEU**) and, if caught, would not merit exemption. Given the grossly disproportionate nature of the remedy that the CMA proposes to implement in the context of Wide MFNs and its potential to harm the PCW model (which is acknowledged as delivering real benefits for customers), such provisions should therefore (and as an minimum precaution) be subject to a sunset clause.

4.3 Such a provision would limit the application of the purported Wide MFN remedy to not more than five years at which point its benefits and any adverse effects arising from it, as well as any market developments (including the adoption of Wide MFNs by non-PCW channels thus putting PCWs at a competitive disadvantage), can be reassessed.

Social media carve-out will undermine the value of Narrow MFNs

4.4 As regards the preservation of Narrow MFNs (which the CMA has acknowledged as enhancing competition in the PMI market), BGL considers that the CMA's definition of *"Own Website"* (which excludes *"…social media pages whether owned or operated by a third party or a PMI Provider"*) will facilitate avoidance by PMI Providers and negate Narrow MFNs.

4.5 The CMA should make it clear, as part of any eventual order, that the permissible use of social media (which could be carved out of a Narrow MFN) is confined to the use of a independent (social media) platform to process/return relevant quotes and arrange PMI.

4.6 A PMI Provider should not be entitled to circumvent a Narrow MFN simply by advertising that it can offer cheaper prices on its social media pages, or providing a link to its own website through its social media pages. The definition of *"Own Website"* should be amended accordingly.

4.7 Without clearer drafting to this effect, the value of Narrow MFNs will be severely compromised, as, for example, PMI Providers will simply invite customers to secure a cheaper deal through their Facebook page.

Draft Order fails to oblige PMI Providers to return quotes

4.8 The Draft Order fails to oblige PMI Providers that have contracted with a PCW to return quotes in response to a consumer's request. The consumer's information will be visible to the PMI Provider, so the PMI Provider might, without returning a quote to the consumer via the PCW and thus engaging any Narrow MFN, contact the consumer directly.

4.9 In this regard, the Draft Order should be amended so that PMI Providers are, during the term of any agreement with a PCW, compelled to act in good faith and return prices in response to customers' requests for quotes. If this is not implemented, PMI Providers will be able to circumvent narrow MFNs (through returning prices on a highly selective basis) and customers will, in the long-term, suffer – as the PCW proposition is marginalised.

Draft Order needs to distinguish between non-renewals and delisting

4.10 Both the Draft Order and the Guidance fail to distinguish clearly between a PCW simply electing not to renew a contract with a PMI Provider (which is entirely consistent with English law as it supports the concept of freedom of contract) and delisting that PMI Provider during the term of an existing agreement.

4.11 Unless a PCW constitutes an 'essential facility' (as that concept is understood in competition law) there should be no restriction on (or obligation to explain) any non-renewal on the part of either the PCW or the PMI Provider. Of course, delisting during the term of an agreement may be open to challenge under any subsequent order (provided the PMI Provider can point to clear and unequivocal evidence of Equivalent Behaviours).

The Guidance is too expansive in terms of indicating, so say, anti-competitive intent

4.12 The circumstances outlined by the CMA in paragraph 48 of the Guidance, which have the potential to indicate anti-competitive intent on the part of PCWs are too expansive and misguided.

4.13 This is particularly the case, for example with reference to sub-paragraph 48(i), as the CMA's remedy will prompt selective/differential pricing, so such trends will become routine market features, and cannot therefore be safely attributed to any decision to delist etc. There should be no assumption to this effect.

4.14 Indeed, the only indicators which may be reasonably reliable are those referred to in 48(ii) and (iv), and, in any case, there should be a clear (and current) nexus between the conduct complained of and the relevant delisting, otherwise spurious complaints will routinely reference past issues.

4.15 To reduce the potential for disputes and vexatious complaints, the CMA should ensure that under the terms of the eventual order, the burden of proof is on the PMI Provider (to demonstrate that it has been delisted or otherwise suffered harm as a result of resisting behaviours which have the object of replicating Wide MFN clauses).

4.16 The Draft Order refers to a prohibition on performing agreements which contain a Wide MFN clause but, is it not the case that it is the enforcement of the Wide MFN clauses and equivalent behaviour which is prohibited whereas, the remainder of the agreement remains unaffected and can be performed otherwise, this would be effective delisting.

5 Specific feedback requested by the CMA

Part 4, Article 7 – Monitoring of PCWs

5.1 The reporting requirements on Designated PCWs (which the CMA proposes to elicit on a quarterly and an annual basis) are excessively burdensome and entirely unnecessary.

5.2 The very nature of the wide-MFN remedy that the CMA proposes to apply to PCWs (and the threat of complaint) will be used routinely as a lever by PMI Providers in commercial negotiations with PCWs. Indeed, the remedy is likely to provoke frequent and spurious complaints by PMI Providers who are disgruntled with their PCW partners.

5.3 It follows that any additional self-reporting requirements on PCWs (whether annual or quarterly) will be entirely superfluous, wasting time and money. Moreover, such a requirement would run counter to the Government's Red Tape Challenge (sponsored by BIS), where the focus has been to reduce unnecessary, onerous and costly regulation.

5.4 On a separate issue, with regard to the definition of *"Designated PCW"*, how should the *"300,000 PMI Product sales"* be counted? In other words, do such sales relate exclusively to new business written by the PMI Provider as a result of the PCW referral in respect of which the PCW has received the CPA fee from the PMI Provider, or will renewals be counted?

6 Conclusions

6.1 Given the potential repercussions of the Order and the need for its adjustment/clarification, BGL would like to meet with the CMA within the next few weeks to discuss its proposed amendments.

6.2 In the meantime, BGL urges the CMA to revisit the Draft Order and Guidance to address the above points before launching its final order.

6.3 We welcome the CMA taking a look at this important area whilst appreciating this is an area that potentially confuses and misleads customers. However, we are concerned that the current Draft Order will actually lead to customers being further mislead and will not enable them to make personalised choices to suit their needs.

6.4 We urge the CMA to listen to the voices from industry that it is not possible to implement by the 1 September 2015 deadline but that should this date not move, the qualitative output that could be achieved is very likely to be impaired because there will be less time to test properly and less time to achieve the most customer friendly experience.