

Project Officer  
Private Motor Insurance market investigation  
Competition and Markets Authority  
Victoria House  
Southampton Row  
London  
WC1B 4AD

6 February 2015

Dear Sirs

**CMA: Private Motor Insurance market investigation**

We refer to the CMA's Notice of intention to make an Order under section 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Order published on 7 January 2015.

This is CISGIL's response to the CMA's invitation, contained in the above Notice, to make written representations on the proposed Order. CISGIL welcomes that opportunity.

In summary the representations fall into three separate categories:

- (a) firstly, CISGIL found the opportunity to engage in the informal consultation on the draft PMI Order very helpful. Whilst the documents issued as part of the formal consultation have answered a number of the issues that were raised by CISGIL there are some that remain. CISGIL therefore takes this opportunity to pursue some of those outstanding points;
- (b) secondly, CISGIL has considered the transcript of the hearing with the ABI and BIBA held on 21 January 2015. Both the ABI and BIBA raised concerns with the proposed implementation date (1 September 2015) for Article 3 of the Order. BIBA considered that 16 months is required and the ABI mentioned a period of 6 months up to 18 months. CISGIL has, following further internal consideration of the implementation of the proposed Order, [REDACTED], despite CISGIL's best efforts, are likely to mean that CISGIL is unable to achieve full implementation by 1 September 2015. CISGIL explains the facts and suggests a number of options by way of a solution; and
- (c) thirdly, CISGIL requests clarification on the interpretation of Article 4.2. It is important to CISGIL that the CMA takes a position on the issue raised as otherwise CISGIL fears that PCWs will stifle the ability of PMI Providers to compete with PCWs beyond what is intended by allowing narrow MFNs.

If it would assist the CMA, CISGIL would be happy to expand upon any of the points raised in this letter.

**1 CISGIL repeats submissions made to the CMA during the informal consultation**

- 1.1 **Prohibition on equivalent behaviour (Article 5.1):** this prohibits PCWs from engaging in equivalent behaviour which has the **object** of replicating any of the anti-competitive effects of a Wide MFN Clause (emphasis added). CISGIL is concerned that by limiting the prohibition to conduct whose object is to replicate anti-competitive effects that it will not prohibit conduct which the PCWs can show has a laudable object whilst producing significant anti-competitive effects on the market. CISGIL suggests that the text be amended to say "which has the object or effect of replicating any of the anti-competitive effects of a Wide MFN Clause".

1.2 **Monitoring of PMI Providers (Article 6):** PMI Providers are required to submit annual compliance statements to the CMA (Part 4, Article 6). CISGIL maintains its view that, given the FCA's statutory functions, it would be more appropriate for the statement to be sent to the FCA. This view was also expressed by the ABI and BIBA at the hearing on 21 January 2015.

1.3 **Monitoring of PCWs (Article 6):** CISGIL understands that PCWs are required to provide monitoring information until 2019, whereas the reporting obligation on PMI Providers has no end date. However, the obligations on the PCWs are open-ended. CISGIL considers that the obligation on PCWs to report will ensure that compliance with that obligation is rigorously maintained. In the absence of self-reporting the burden of monitoring will pass to the PMI Providers. CISGIL considers therefore that the reporting requirements for PCWs should continue as long as the prohibition remains. Alternatively CISGIL requests that the CMA explains why it is taking a different approach as between PCWs and PMI Providers.

## 2 **Article 3 and the implementation date of 1 September 2015**

2.1 The current terms of the Order state, and CISGIL understands, that:

(a) **Article 3** (Obligation to provide information about NCB Protection) shall come into force on 1 September 2015; and

(b) **Article 6** requires CISGIL to submit an Annual PMI Compliance Statement to the CMA, with the first such Statement being due by 1 September 2015.

2.2 CISGIL is committed to compliance with the Order. However, having considered implementation of the Order internally, [REDACTED], despite CISGIL's best efforts, are likely, given the current terms of the Order and the status of those matters, to mean that CISGIL is unable to achieve full implementation by 1 September 2015. This is something that CISGIL regrets but is committed to finding a workable and proportionate solution. [REDACTED].

2.3 CISGIL sets out below its current understanding of the issues it faces. If anything changes, which cannot be ruled out given the complex and unpredictable nature of IT system change, CISGIL will of course inform the CMA.

2.4 [REDACTED]

2.5 [REDACTED]

2.6 [REDACTED]

2.7 [REDACTED]

2.8 [REDACTED]

2.9 [REDACTED]

2.10 [REDACTED]

2.11 [REDACTED]

2.12 [REDACTED]

2.13 [REDACTED]

2.14 [REDACTED]

2.15 [REDACTED]

- 2.16 [REDACTED]
- 2.17 [REDACTED]
- 2.18 [REDACTED]
- 2.19 [REDACTED]
- 2.20 [REDACTED]
- 2.21 [REDACTED]
- 2.22 [REDACTED]
- 2.23 [REDACTED]

#### Article 6.2 – first Annual PMI Compliance Statement

- 2.24 CISGIL notes that the first Annual PMI Compliance Statement is to be provided by 1 September 2015 in the form prescribed in Schedule 3. Schedule 3 refers to "the report period [insert calendar year prior to this Annual PMI Compliance Statement]". CISGIL is not clear whether the date that should be referred to in this Article is in fact 1 September 2016 or whether it is intended that a Statement does have to be filed by 1 September 2015? If it is the latter, CISGIL asks that the CMA reconsiders whether the form of Statement set out at Schedule 3 is appropriate in those circumstances.

#### 3 Interpretation of Article 4.2

- 3.1 The Order is clear that its aim (Article 4.1) is to "prohibit PCWs and PMI Providers from entering or performing an agreement where the PMI Provider agrees not to offer a PMI Product at a lower **price on any other sales channel.**"<sup>1</sup>
- 3.2 It is still however accepted that a PCW may enter into narrow MFNs with PMI Providers. Therefore PMI Providers can still be prohibited by a PCW from offering a PMI Product on its own website "***at a lower price than the price made available through the PCW for that PMI Product.***"
- 3.3 CISGIL seeks further clarification from the CMA on the position with regards to CISGIL making marketing offers through its own website that are not part of the price for the PMI Product but provide our members and customers with value added offers such as vouchers for products from the wider Co-operative Group e.g. Food which, if redeemed, have a monetary equivalent of £x.
- 3.4 These offers would be available exclusively to customers who approach CISGIL's own website but would not be available to customers who approach CISGIL via a PCW. So, for example, a customer approaching CISGIL's website direct could be offered a PMI Product with the added incentive that if the customer bought PMI direct the customer would receive food/gift vouchers from CISGIL. The customer would first have to pay to CISGIL the quoted price for the PMI Product. The price of the PMI Product would be no lower than the price at which the PCW offered the same PMI Product. The difference being that the PCW would not have the food/gift voucher offer.
- 3.5 CISGIL would like to be able to make those marketing offers which are only equivalent to certain offers made by PCWs and CISGIL believes, on its reading of narrow MFNs that it should be able to. However at least one PCW is insisting that marketing offers of the nature described would, unless the same offers are made available to PCWs, offend against narrow MFNs. Unless the CMA is willing to clarify the position, i.e. that "price" for the purpose of Article 4.2 does not include linked marketing offers such as that described, then PCWs will insist that those marketing offers must be made available to a

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<sup>1</sup> Paragraph 45 Draft Explanatory Notes.

PCW's customer also. If that is the case then the economics of such an offer become untenable as not only would CISGIL have to pay the PCW for each customer accessing CISGIL's website through the PCW but in addition that customer would be able to access the marketing offer. This effectively prevents CISGIL from making those offers on its own website and therefore deprives CISGIL of another facet of competition. CISGIL would strongly encourage the CMA to make the position clear in the Draft Explanatory Notes.

Yours faithfully

James Hillon

Products, Pricing and Propositions Director