

DIRECT LINE INSURANCE GROUP PLC

PRIVATE MOTOR INSURANCE MARKET INVESTIGATION - REMEDY IMPLEMENTATION

RESPONSE TO COMPETITION AND MARKET AUTHORITY'S FORMAL CONSULTATION ON DRAFT ORDER AND EXPLANATORY NOTE

1. Introduction

- 1.1 Direct Line Insurance Group plc (**DLG**) welcomes the opportunity to provide further comments as part of the formal consultation on the Competition and Market Authority's (**CMA**) Remedies Order (**Order**) and Explanatory note (**Explanatory Note**). DLG has already provided the CMA with high level comments on both the Order and Explanatory Note in response to the CMA's previous informal consultation.¹
- 1.2 DLG is pleased that the CMA has taken on board a number of DLG's comments, and that these have been reflected in the revised versions of the Order and Explanatory Note. However, there are certain comments which DLG would like to reiterate to the CMA, given the significant effect that the Order and Explanatory Note will have on DLG's business, and to ensure DLG can guarantee compliance with the Order.
- 1.3 DLG has also provided some additional drafting comments on both the Order and the Explanatory Note and these are provided by way of a mark-up to the text of both the Order (Annex 1) and the Explanatory Note (Annex 2). Unless stated otherwise, all defined terms in this document are taken from the Order.

2. Article 3: Obligation to provide information about NCB protection

Requirement to provide Step-back Formula

- 2.1 The CMA currently requires insurers to provide the following information on their Step-back Formula:
- (a) details on their step-back procedures and Step-back Formula as part of the NCB Protection Statement to be provided when making an NCB Protection Offer. This is set out in Schedule 1a of the Order;² and
 - (b) a separate table including the Step-back Formula in NCB years (i.e. that would be applied at the next renewal in the event of a claim) as part of the NCB Protection Information to be provided when making an NCB Protection Offer. This is set out in Schedule 2 of the Order.³
- 2.2 [**CONFIDENTIAL**] Therefore, DLG believes this requirement is duplicative and potentially confusing for customers. The CMA's requirement to provide some of the same information twice during the customer journey, but in a different way, may therefore confuse customers. The CMA's objective is to increase the transparency of information around NCB Protection 'to allow customers to understand and assess better the costs and benefits of taking out this product.'⁴ DLG believes this objective could be sufficiently met by requiring insurers to provide their Step-back Formula as part of the NCB Protection Statement, but removing the requirement to provide a customer specific Step-back Formula in NCB Years in the table as part of the NCB Protection Information. Instead, a link

¹ See DLG's Response to the CMA's Informal Consultation on Draft Order and Explanatory Note, 10 December 2014.

² Paragraph 3(a) of Schedule 1a.

³ Paragraph 1(c) of Schedule 2.

⁴ Paragraph 11.5 of the CMA's Final Report.

or pop-up to the same Step-back Formula from the NCB Protection Offer could be provided with the NCB Protection Information as, either way, a standard table (as opposed to one modified for each customer) will cover both requirements of the step-back table and the Step-back Formula. This would have the added benefit of reducing implementation costs and complexity.

Requirement to provide NCB Protection Information ‘clearly and prominently’

- 2.3 Article 3.1 and 3.2 of the Order require PMI Providers to provide the NCB Protection Statement and NCB Protection Information ‘clearly and prominently’. In the Explanatory Note⁵ the CMA clarifies that this means ‘with sufficient prominence so that prospective purchasers’ attention can reasonably be expected to be drawn to it, or at least...no less prominent’ than other similar information provided in relation to the PMI Product. DLG believes the inclusion of the additional wording in the second clause ‘or at least...no less prominent’ is superfluous. The first clause is sufficient to achieve the CMA’s objective and, in addition, is out-come focused rather than prescriptive, which, is how DLG would expect the CMA to approach the requirements for implementation. This point is discussed further in paragraph 4.1. below.

Provision of PMI Products for less than 6 months

- 2.4 The CMA currently allows for the NCB Discount to be calculated as a ‘reasonable estimate’ of the mean NCB Discount where the PMI Product is supplied for less than six months.⁶ DLG believes this provision should be extended to enable insurers to report on a shorter period [CONFIDENTIAL] As discussed in section 8 below, this would also reduce the risk of potential conflict with the Insurance Conduct of Business Sourcebook (ICOBS) requirements for insurers to be ‘clear, fair and not misleading’.⁷

3. Article 3: Calculation of Average NCB Discount

- 3.1 Following a discussion with the CMA,⁸ DLG has considered the points raised with the CMA in relation to the calculation of Average NCB Discounts. The CMA has also provided some helpful clarification in the Explanatory Note⁹ of how the Average NCB Discount is to be calculated, including the recognition that the Average NCB Discount is not always based on the ‘final price paid’ for the PMI Product. The CMA cites the example of sales made through PMI Brokers, but the final price may also change due to a number of other reasons, including steps taken to protect customers from excessive volatility year on year. DLG therefore understands, based on the CMA’s reference to discounts ‘applied by the PMI Insurer’¹⁰ that in calculating the Average NCB Discount, the original input should be applied.

4. Article 3: technical implementation

- 4.1 DLG notes the CMA’s recognition of an outcome based approach to ensure the NCB Protection Information is provided with sufficient prominence by providing an example of how insurers could achieve this, i.e. either by setting out the information on the same webpage or by opening a pop-up window.¹¹ However, the CMA should not be specifying the mechanism by which insurers should provide the information. The appropriate mechanism for implementation will differ depending on the consumer channel, and will evolve with technology. For example, on mobile phones or tablets the appropriate mechanism may be neither a pop-up nor a link. The CMA’s focus must therefore be on the outcome of the requirements under the Order, and not the mechanism.

⁵ Paragraph 21 of Explanatory Note.

⁶ Paragraph 5 of Schedule 2 of the Order.

⁷ ICOBS Rule 3.1.8.

⁸ See comments of Gus Park in CMA Notes of a Joint Hearing with ABI and BIBA, Wednesday 21 January 2015, p42.

⁹ Paragraphs 39 – 41 of the Explanatory Note.

¹⁰ Paragraph 4 of Schedule 2 of the Order.

¹¹ Paragraph 22 of Explanatory Note.

5. Article 5: Equivalent Behaviour clause

- 5.1 DLG is disappointed the CMA has not widened Article 5 to allow for Equivalent Behaviour which has either the object or effect of Wide MFNs, in particular given the CMA currently refers to conduct “which has the object of replicating any of the anti-competitive effects of a Wide MFN...” As DLG has emphasised before, the CMA’s intended self-certification process for PCWs may be open to abuse if PCWs try to argue that the ‘object’ of their behaviour is different to that of a Wide MFN. In addition, given the existing commercial relationships between insurers and PCWs, it is not sufficient or appropriate to rely on insurers contacting the CMA if they suspect a PCW is non-compliant.
- 5.2 DLG understands the CMA is concerned that by including ‘effect’ this could catch some behaviour which may potentially have an anti-competitive effect, but had a pro-competitive object in another area.¹² In order to deal with this concern, DLG proposes narrowing the scope of ‘effect’ so that it only catches behaviour which has the object of replicating any of the anti-competitive effects of a Wide MFN, or has the effect of preventing an insurer from offering a lower price on a different PCW. We therefore suggest the wording in the Order and Explanatory Note is amended to reflect this.
- 5.3 DLG also believes that the list of ‘factual evidence’¹³ supporting a finding that a PCW has engaged in Equivalent Behaviour should not be limited to the four examples listed, and must allow for any other situations where a PCW engages in Equivalent Behaviour. DLG has marked up the text of both the Order (Annex 1) and the Explanatory Note (Annex 2) to reflect these comments.

6. Article 6: Monitoring and compliance: timeframe for implementation

- 6.1 DLG is pleased that the CMA has amended the Order to allow for a Managing Director or any Director responsible for PMI Products to sign the compliance statement, instead of the CEO. However, DLG has some concerns regarding the CMA’s proposed timing for implementation of the requirements under the Order.
- 6.2 PMI Providers are currently required to provide their first compliance statement to the CMA by 1 September 2015.¹⁴ In effect this requires all PMI Providers to submit, by that date, a copy of the Average NCB Discount(s) they will subsequently present to consumers when making NCB Protection Offers until 31 January 2016, and, where relevant, declare they have complied with the terms of the Order in preparing these discounts.¹⁵ DLG notes that certain PMI Providers have already expressed concern that the CMA’s current time period is unrealistic, and that in practice implementation is likely to take up to 16 months. This is due to the complexities from a broker perspective of implementing the required amendments and the need for considerable changes from software houses.¹⁶
- 6.3 While direct insurers do not face the same implementation complexities as brokers, different insurers have different internal systems which will affect their timeframes for implementation. The timescales set by the CMA [CONFIDENTIAL]. If the CMA’s proposals were limited to providing a standard table only, rather than also a table modified specifically for each customer, DLG [CONFIDENTIAL]. However, changes that require dynamic linkages to underlying prices and policies, i.e. to provide details on how the step-back rules apply to an individual customer, [CONFIDENTIAL]

¹² See comments of Colin Garland in CMA Notes of a Joint Hearing with ABI and BIBA, Wednesday 21 January 2015, p34.

¹³ Paragraph 53 of the Explanatory Note.

¹⁴ Article 6.2 of the Order.

¹⁵ Paragraph 59 of the Explanatory Note.

¹⁶ See comments of BIBA and Swinton in CMA Notes of a Joint Hearing with ABI and BIBA, Wednesday 21 January 2015.

7. Schedule 3 – Template PMI Compliance Statement

- 7.1 The CMA currently states that the relevant report period for the Annual PMI Compliance Statement (the **Compliance Statement**) is the ‘calendar year’ prior to the statement being given. DLG is therefore unclear how the drafting of the first Compliance Statement would work, given that different articles of the Order will come into force on different dates. The wording of the first Compliance Statement needs to reflect this. Also relevant to note is that Article 6.2 requires the first Compliance Statement to be provided ‘by’ 1 September 2015, which would allow PMI Providers to provide it before this date.
- 7.2 The subsequent Compliance Statement, due 1 February 2016, would also not cover the whole of 2015. The template Compliance Statement therefore needs to be amended to allow for these different reporting periods. DLG has provided suggested amendments as to how this could be achieved by way of mark-up to the text of the Order (Annex 1). The alternative option is for the CMA to dispense with the requirement for a Compliance Statement ‘by’ 1 September 2015, and require only the publication of the Average NCB Discount table.

8. Potential conflict with ICOBS requirements

- 8.1 As DLG has stated in a previous submission,¹⁷ the CMA’s proposals lead to a situation of dual regulation for one part of DLG’s business. The extent to which this leads to a situation of direct conflict remains to be seen. However, DLG may be put in a position where its obligations under ICOBS come into conflict with the CMA’s requirements under the Order if DLG is forced to provide information which is confusing and misleading to customers and which, in the absence of the Order, DLG would therefore change. If that conflict becomes unworkable, DLG would expect to make use of the Alternative Information provision under Article 3.5 of the Order.
- 8.2 DLG considers there to be two particular areas of risk:
- (a) *Increase in premiums following an accident:* As DLG has already explained to the CMA, the statement ‘The price of your insurance policy may increase following an accident even if you were not at fault’ implies causation i.e. that as a result of a non-fault accident a customer’s premium may rise. If a PMI Provider does not apply this type of rating factor, they may consider it to be misleading to include that sentence. The CMA has suggested insurers deal with this issue by adding a further clarificatory statement to the effect that their policy does not apply a rating factor of this type.¹⁸ DLG does not consider this to be an effective solution, as it involves providing additional information to correct an inaccurate statement that DLG is compelled to provide. Clearly, the most effective solution would be to not provide the inaccurate statement in the first place and so if this issue were to arise, DLG would expect to make use of the Alternative Information provision.
 - (b) *NCB scale disclosure:* The extent to which DLG expects to use Alternative Information in relation to NCB scale disclosure depends on the drafting of the final Order. If it is sufficiently flexible, for example by allowing insurers to change the way the NCB Discount is calculated following a material change in pricing structure, then it is less likely DLG will need to use Alternative Information. However, if the CMA is overly prescriptive in its requirements, this will increase the risk of conflict with ICOBS and therefore the need to provide consumers with Alternative Information.

6 February 2015

¹⁷ See DLG’s Response to the CMA’s Provisional Decision on Remedies, para 4.4

¹⁸ See comments of James Hampson, in CMA Notes of a Joint Hearing with ABI and BIBA, Wednesday 21 January 2015, p22.