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February 6, 2015

Alistair Thompson  
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Competition and Markets Authority  
Victoria House  
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London  
WC1B 4AD

Re: Private Motor Insurance Market Investigation – Draft Final Order

Dear Alistair,

This letter contains representations submitted on behalf of Google in response to the CMA's consultation on the draft Final Order (the "Order") and accompanying explanatory note (the "Explanatory Note") in the Private Motor Insurance Market Investigation. Google has two comments, both concerning the remedies in relation to no claims bonus ("NCB") protection.

**A. Article 3.4 - Ambiguity over PCW Information Requirements**

The CMA's Final Report concluded that private motor insurance providers ("PMI Providers") should be required to give consumers certain prescribed information at the time of purchasing NCB protection. Separately, and in addition, PMI Providers and price comparison websites ("PCWs") will be required to display consumer warnings in the form of specified

statements at the point of purchase.<sup>1</sup> These decisions are implemented by Article 3 of the draft Order. Specifically:

- Under Article 3.1 PMI Providers are required to provide the information prescribed in Schedule 2 to the Order (“NCB Protection Information”) and to display the NCB Protection Statement set out in Schedule 1a when making an NCB Protection Offer.
- Under Article 3.2, PCWs are required to display the NCB Protection Statement set out in Schedule 1b when giving access to an NCB Protection Offer made by a PMI Provider.
- Article 3.4 requires the NCB Protection Information and NCB Protection Statements to be displayed clearly and prominently.

There is ambiguity in Article 3.4 as to the obligations on PCWs. Article 3.4(b) refers only to the “*information*” that must be provided by a PCW, without further explanation. As drafted, Article 3.4(b) could be read to imply greater information requirements on PCWs than stipulated in the Final Report and required under Article 3.2 of the draft Order. The same ambiguity appears in the Explanatory Note. We understand that “*information*” in this context is in fact limited to the NCB Protection Statement contained in Schedule 1b. PCWs are not in a position to provide the information set out in Schedule 2. PCWs do not have the authority to make an NCB Offer to consumers and, in any event, the relevant information is held by the insurer, not the PCW.

In order to remove this ambiguity, Google submits that Article 3.4(b) (and relevant parts of the Explanatory Note) should refer specifically to the Schedule 1b NCB Protection Statement, rather than using the generic term “*information*.”

## **B. Article 3.5 – Alternative Information**

Article 3.5 provides that if a PMI Provider is prohibited by any regulatory rule or enactment from giving the relevant NCB Protection Statement or the NCB Protection Information, it may apply to the CMA to provide Alternative Information. There is no principled reason why this provision should not also extend to PCWs. If it becomes unlawful by virtue of financial services regulation (or otherwise) for PMI providers to display an NCB Protection Statement in the form currently specified, the same restriction could apply equally to PCWs. Article 3.5 should therefore be extended to include PCWs.

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<sup>1</sup> The Final Report, paragraph 3.13.

We enclose a mark-up of the draft Order and Explanatory Note, implementing these suggested amendments. If you have any questions on the matters set out in this letter or the enclosed mark-up, please do not hesitate to contact us.

Sincerely,

Paul Gilbert

Enclosure

## **PRIVATE MOTOR INSURANCE MARKET**

### **INVESTIGATION DRAFT ORDER – CONSULTATION**

#### **The Private Motor Insurance Market Investigation Order 2015**

[\[Amendments Proposed by Google\]](#)

#### **Background**

1. On 28 September 2012, the Office of Fair Trading, in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act), referred the supply or acquisition of private motor insurance (PMI) and related goods and services in the UK to the Competition Commission (CC) for investigation and report (the market investigation).
2. The CC investigated the matters referred to it pursuant to sections 131 and 133 of the Act and, on 1 April 2014, the remaining functions of the CC in relation to the market investigation were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order).
3. The CMA concluded (a) in accordance with section 134(1) of the Act that there are features of the markets for the supply or acquisition of PMI and related goods and services in the UK which, either alone or in combination, prevent, restrict or distort competition; and (b) in accordance with section 134(2) of the Act, that there are adverse effects on competition (AECs). The CMA published its findings in a report under section 136 of the Act entitled *Private motor insurance market investigation: Final report* published on 24 September 2014 (the Report).



4. The CMA considered, in accordance with section 134(4) of the Act, (a) whether action should be taken by it for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; (b) whether it should recommend the taking of action by others for the purpose of remedying, mitigating or preventing the AECs or any detrimental effect on consumers; and (c) in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.
5. In the Report, the CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the AECs that it found arising from the following features:
  - (a) information asymmetries between private motor insurers and consumers in relation to the sale of no-claims bonus protection insurance; and
  - (b) wide most-favoured-nation clauses in contracts between providers of PMI and price comparison websites.
6. In accordance with section 165 and paragraph 2(1)(a) of Schedule 10 of the Act, the CMA hereby gives notice of its intention to make an Order on the terms attached to this Notice (the Draft Order) and invites representations on the Draft Order from any interested person in writing by 5.00pm on 6 February 2015.
7. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the Draft Order is expected to operate.

# The Order

## Reference and power

The CMA makes this Order in performance of its duty under section 138 and in exercise of the powers conferred by sections 86(1) to (5) and 87 (each applicable by virtue of section 164), 161(1), (3) and (4) and paragraphs 2 to 6, 10, 17 to 19, 21 and 22 of Schedule 8 to the Act, for the purpose of remedying, mitigating or preventing the adverse effects on competition and any detrimental effects on consumers so far as they have resulted, or may be expected to result, from the adverse effects on competition as identified in the report of the CMA entitled *Private motor insurance market investigation: Final report* and published on 24 September 2014.

## Part 1

### 1. General – title, commencement and scope

- 1.1 This Order may be cited as ‘The Private Motor Insurance Market Investigation Order 2015’. This Order shall come into force on [1 March] 2015 except:
- (a) Article 3, which shall come into force on [1 September] 2015; and
  - (b) Articles 4 and 5, which shall come into force on [1 April] 2015.
- 1.2 This Order applies to the supply or acquisition of PMI and related goods and services in the UK.
- 1.3 Provisions of this Order apply to PMI Providers and PCWs. This Order shall continue in force until such time as it is varied or revoked under the Act. The variation or revocation of this Order shall not affect the validity or enforceability of any rights or obligations that arose prior to such variation or revocation.

### 2. Interpretation

- 2.1 In this Order:

**Act** means the Enterprise Act 2002.

**Alternative Information** means the information to be provided by a PMI Provider or a PCW in the circumstances contemplated by Article 3.5, which must comprise the relevant NCB Protection Statement or NCB Protection Information (as the case may be) amended to the minimum extent necessary to avoid a breach of any regulatory rule or enactment.

<b>Annual PCW Compliance Statement</b>	means a statement containing the information set out in Article 7.3 to be submitted by a Designated PCW to the CMA pursuant to Article 7.2 in the form prescribed in Schedule 4.
<b>Annual PMI Compliance Statement</b>	means a statement containing the information set out in Article 6.3 to be submitted by a PMI Provider to the CMA pursuant to Article 6.1 in the form prescribed in Schedule 3.
<b>Average NCB Discount</b>	means the average (mean) NCB Discount calculated in accordance with paragraph 4 of Schedule 2.
<b>Claim</b>	means any event that is relevant to the Step-back Formula.
<b>CMA</b>	means the Competition and Markets Authority.
<b>Designated PCW</b>	means a PCW, or a group of interconnected bodies corporate comprising multiple PCWs, that in the previous calendar year has provided PMI Providers in aggregate with 300,000 PMI Product sales or more. A PCW, and a group of interconnected bodies corporate comprising multiple PCWs, ceases to be a Designated PCW when the number of PMI Product sales provided to PMI Providers in aggregate in the previous calendar year falls below 300,000 PMI Product sales.
<b>Equivalent Behaviour</b>	means any behaviour implemented by a Designated PCW which falls within the definition of Article 5.1.
<b>FCA</b>	means the Financial Conduct Authority.
<b>Implied Price of NCB Protection</b>	means a price to be calculated by all PMI Providers when making an NCB Protection Offer, and that demonstrates the difference in the retail price between the PMI Product which is the subject of the NCB Protection Offer (including, as applicable, any add-on products selected) with, and without, NCB Protection.
<b>NCB Discount</b>	means ‘no claims bonus discount’, and is a discount that is incorporated by a PMI Insurer into the price of a PMI

Product, that is determined by the PMI Insurer and that reflects the NCB Years.

**NCB Protection**

means an additional option to a PMI Product sold by a PMI Provider which, in the event of a Claim (or possibly more than one Claim), will within certain limits protect the purchaser's NCB Years.

**NCB Protection Information**

means the information a PMI Provider is required to give, or make available, when making an NCB Protection Offer and is prescribed in Schedule 2.

**NCB Protection Offer**

means an offer or invitation to purchase NCB Protection, made orally or in writing by a PMI Provider.

**NCB Protection Statement**

means the Schedule 1a NCB Protection Statement or the Schedule 1b NCB Protection Statement, as the case may be ~~the information a PMI Provider or a PCW is required to give, or make available, when making or providing access to an NCB Protection Offer and is prescribed in Schedule 1.~~

**NCB Years**

means the number of years during which a person purchasing a PMI Product is deemed, for the purposes of the calculation of the NCB Discount, not to have made a Claim.

**Own Website**

means a website where a PMI Provider offers and supplies its PMI Products directly to consumers.

**PCW**

means a price comparison website, and the owner, operator or host of such a website, that provides comparisons between, and access to, PMI Products.

**PMI Broker**

means a person who is an insurance intermediary who supplies, arranges or administers PMI Products.

**PMI Insurer**

means an insurer who is authorised, under section 31 of the Financial Services and Markets Act 2000, to effect and carry out PMI Products and who supplies PMI Products in the United Kingdom.



<b>PMI Product</b>	means a private motor insurance contract that covers risks relating to the use of a privately-owned motor car (excluding motorcycles), in the UK and which satisfies the requirements of section 145 of the Road Traffic Act 1988.
<b>PMI Provider</b>	means a PMI Broker, a PMI Insurer, and a group of interconnected bodies corporate comprising multiple PMI Brokers, PMI Insurers, or both.
<b>Quarterly PCW Compliance Statement</b>	means a statement containing the information set out in Article 7.3 to be submitted by Designated PCWs to the CMA pursuant to Article 7.1 in the form prescribed in Schedule 4.
<b><u>Schedule 1a NCB Protection Statement</u></b>	<u>means the statement that a PMI Provider is required to give or make available pursuant to Article 3.1, when making an NCB Protection Offer and is prescribed in Schedule 1a.</u>
<b><u>Schedule 1b NCB Protection Statement</u></b>	<u>means the statement that a PCW is required to give or make available pursuant to Article 3.2, when providing access to an NCB Protection Offer and is prescribed in Schedule 1b.</u>
<b>Step-back Formula</b>	means a formula applied by a PMI Insurer for determining whether the number of NCB Years that will be offered on renewal is reduced as the result of one or more Claims made within a period of time specified by the PMI Insurer, calculated separately: <ul style="list-style-type: none"> <li>(a) with NCB Protection; and</li> <li>(b) with no NCB Protection.</li> </ul>
<b>Wide MFN Clause</b>	means a restriction that falls within the prohibition set out in Article 4.1 but that does not fall within the exception to that prohibition set out in Article 4.2.

2.2 In this Order any reference to:

- (a) 'month' means calendar month;
- (b) 'oral' or 'orally' relates to the transmission of information or the completion of a process made orally including in person or by

telephone;

- (c) a '**person**' includes any individual, firm, partnership, body corporate or association;
- (d) '**written**' or '**in writing**' includes the transmission of information or the conclusion of a process made on, by, or through the internet or by a postal service; and
- (e) a government department or non-departmental public body or organisation or person or place or thing includes a reference to its successor in title.

- 2.3 The headings used in this Order are for convenience and have no legal effect.
- 2.4 References to any statute or statutory provisions shall be construed as references to that statute or statutory provision as amended, re-enacted or modified, whether by statute or otherwise.
- 2.5 The Interpretation Act 1978 applies to this Order except where words and expressions are expressly defined.

## Part 2

### Information Requirements

#### 3. Obligation to provide information about NCB Protection

- 3.1 When a PMI Provider makes an NCB Protection Offer, the PMI Provider must, at the time of making the NCB Protection Offer, ensure that the Schedule 1a NCB Protection Statement and the NCB Protection Information in Schedules ~~1a and 2~~ are provided clearly and prominently.
- 3.2 When a PCW provides access to an NCB Protection Offer, the PCW must at the time of providing access to the NCB Protection Offer, ensure that the Schedule 1b NCB Protection Statement ~~in Schedule 1b~~ is provided clearly and prominently.
- 3.3 Where a PMI Provider has given the NCB Protection Information orally to a purchaser of NCB Protection, it must, following acceptance of the NCB Protection Offer by the purchaser, provide the purchaser with the NCB Protection Information in writing with the policy documents.
- 3.4 In this Article 'prominently' means providing the requisite information: (i) in a manner that ensures, so far as reasonably practicable, that when the prospective purchaser assesses the NCB Protection Offer as a whole, it is reasonable to expect that the prospective purchaser's attention will be drawn to the information, or (ii) no less prominently than other information provided contemporaneously in relation to the PMI Product. Moreover, in:
- (a) Article 3.1, when the Schedule 1a NCB Protection Statement and the NCB Protection Information is given orally, 'prominently' means the information must be given the same emphasis as PMI Products and add-on products being described and offered in the rest of the conversation; and
- (b) Article 3.2, 'prominently' means that:
- (i) a prominent link to the ~~information~~ Schedule 1b NCB Protection Statement must be provided by the PCW; and
- (ii) the ~~information~~ Schedule 1b NCB Protection Statement provided through that link must be clear and prominent.
- 3.5 If a PMI Provider or a PCW is prohibited, by any regulatory rule or

enactment, from giving the relevant NCB Protection Statement or the NCB Protection Information it must:

- (a) provide the Alternative Information;
- (b) notify the CMA of the Alternative Information it is providing;
- (c) identify the regulatory rule or enactment which prohibits giving the NCB Protection Statement or the NCB Protection Information; and
- (d) set out the reasons for providing the Alternative Information, and

may apply for a direction from the CMA (pursuant to Article 8) on the contents of the particular Alternative Information it must give.

## **Part 3**

### **Prohibition on Wide MFN Clauses and Equivalent Behaviour**

#### **4. Prohibition on Wide MFN Clauses**

- 4.1 A PCW and PMI Provider must not enter into, or perform, an agreement containing a restriction on a PMI Provider from offering or inviting the purchase of a PMI Product through any other sales channel at a lower price than the price made available for that PMI Product through the PCW.
- 4.2 The prohibition in Article 4.1 does not apply to an agreement containing a restriction on a PMI Provider from offering or inviting the purchase of a PMI Product on the PMI Provider's Own Website at a lower price than the price made available through the PCW for that PMI Product.

#### **5. Prohibition on Equivalent Behaviour**

- 5.1 A Designated PCW must not engage in any course of action (including entering into contractual terms or engaging in unilateral conduct) which has the object of replicating any of the anti-competitive effects of a Wide MFN Clause (Equivalent Behaviour).

## **Part 4**

### **6. Monitoring and compliance – PMI Providers**

- 6.1 A PMI Provider must on an annual basis submit an Annual PMI Compliance Statement to the CMA, in the form prescribed in Schedule 3, and containing:
- (a) a statement that the PMI Provider has complied with the terms of the Order; and
  - (b) copies of the tables of Average NCB Discounts, prescribed in paragraph 1(b) of Schedule 2.
- 6.2 The first Annual PMI Compliance Statement is to be provided to the CMA by 1 September 2015.
- 6.3 Each subsequent Annual Compliance Statement is to be provided to the CMA by 1 February in each year.
- 6.4 A PMI Provider must ensure that any Annual Compliance Statement is signed by the Chief Executive Officer, the Managing Director or any Director responsible for PMI Products.

### **7. Monitoring and compliance – PCWs**

- 7.1 A Designated PCW must submit a Quarterly PCW Compliance Statement to the CMA in relation to the relevant report period:
- on [15 July 2015, 15 October 2015, 15 January 2016, 15 April 2016, 15 July 2016, 17 October 2016 and 16 January 2017] (each a ‘Quarterly PCW Compliance Statement’).
- 7.2 A Designated PCW must submit an Annual PCW Compliance Statement to the CMA by [1 February 2018 and 1 February 2019] in relation to the relevant report period (each an ‘Annual PCW Compliance Statement’).
- 7.3 Subject to Article 7.4, a Quarterly PCW Compliance Statement and an Annual PCW Compliance Statement must:
- (a) state that the Designated PCW has not engaged in Equivalent Behaviour during the report period;
  - (b) list each delisting in the report period and specify:
    - (i) the period of the delisting;



- (ii) the identity of the PMI Provider delisted and affected products;
- (iii) the nature of the delisting; and
- (iv) the reason for the delisting.

7.4 Any Annual PCW Compliance Statement and Quarterly PCW Compliance Statement must be submitted in the form and with the content specified in the template statement set out in Schedule 4.

7.5 A Designated PCW must ensure that any Annual PCW Compliance Statement and any Quarterly PCW Compliance Statement is signed by the Chief Executive Officer or the Managing Director of the Designated PCW or, if the Designated PCW does not have a Chief Executive Officer nor a Managing Director, by two directors of the Designated PCW.

7.6 PCWs must calculate by 1 February of each year the number of PMI Product sales provided by them individually to PMI Providers in aggregate in the previous calendar year and must immediately notify the CMA when they reach, exceed, or as compared to the calendar year immediately prior to the previous calendar year, no longer exceed 300,000 PMI Product sales.

7.7 In this Article:

- (a) 'period of delisting' means the date the delisting took place and, if the delisting has ended, the duration of the delisting;
- (b) 'delisting' means any action taken to remove, or conceal the position of, a PMI Product from a PCW, 'delist' and 'delisting' are to be construed accordingly;
- (c) 'nature of delisting' means specifying the main actions taken to 'delist' a PMI Product;
- (d) 'reason for delisting' includes, if given, the main reason(s) provided to the PMI Provider;
- (e) 'report period' is:
  - (i) for the first Quarterly PCW Compliance Statement, the period from [1 April 2015 to 30 June 2015];
  - (ii) for subsequent Quarterly PCW Compliance Statements, the three months period following the previous report period; and

(iii) for Annual PCW Compliance Statements, the previous calendar year.

## **Part 5**

### **8. Directions by the CMA as to compliance**

8.1 The CMA may give directions falling within Article 8.2 to:

- (a) a person specified in the directions; or
- (b) a holder for the time being of an office so specified in any body of persons whether incorporated or unincorporated.

8.2 Directions fall within this paragraph if they are directions:

- (a) to take such actions as may be specified or described in the directions for the purpose of carrying out, or ensuring compliance with, this Order; or
- (b) to do, or refrain from doing, anything so specified or described which the person might be required by this Order to do or refrain from doing.

8.3 In Article 8.2 above, 'actions' includes steps to introduce and maintain arrangements to ensure that any director, employee or agent of a PCW or PMI Provider carries out, or secures compliance with, this Order.

8.4 The CMA may vary or revoke any directions so given.

## **Part 6**

### **9. Supply of information to the CMA**

- 9.1 Any person to whom this Order applies is required to provide any information and documents required by the CMA for the purposes of enabling the CMA to monitor the carrying out of this Order or any provisions of this Order and/or to review the effectiveness of the operation of this Order, or any provision of this Order.
- 9.2 Any person to whom this Order applies may be required by the CMA to keep and produce those records specified in writing by the CMA that relate to the operation of any provisions of this Order.
- 9.3 Any person to whom this Order applies and whom the CMA believes to have information which may be relevant to the monitoring or the review of the operation of any provisions of this Order may be required by the CMA to attend and provide such information in person.
- 9.4 Subject always to Part 9 of the Act, the CMA may publish any information or documents that it has received in connection with the monitoring or the review of this Order or any provisions of this Order for the purpose of assisting the CMA in the discharge of its functions under or in connection with this Order.

## **Schedule 1a – NCB Protection Statement to be provided by PMI Providers**

1. The NCB Protection Statement which must be provided under Article 3.1 at the time of a written NCB Protection Offer is the following text, in writing:
  - (a) 'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'; and
  - (b) 'No claims bonus protection allows you to make one or more claims before your number of no claims bonus years falls. Please see the step-back procedures for details.'
2. The NCB Protection Statement which must be provided under Article 3.1 at the time of an oral NCB Protection Offer is the following text, orally:

'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'
3. The details of the 'step-back procedures' referred to in paragraph 1(b) of this Schedule must include a clear description of the Step-back Formula for that PMI Product and must be provided:
  - (a) when the NCB Protection Offer is made on a website or by email, by providing a link, displayed prominently, leading to the description of the 'Step-back Formula'; or
  - (b) when the NCB Protection Offer is made by postal service, by providing a clear and prominent reference to the Step-back Formula, and enclosing with the NCB Protection Offer a description of the Step-back Formula.
4. In the NCB Protection Statement set out in paragraphs 1 and 2 of this Schedule, the terms 'no claims bonus', 'no claims bonus protection' and 'no claims bonus years' can be replaced with 'no claims discount', 'no claim discount protection' and 'no claims discount years', respectively or similar expressions, as applicable, in order accurately to reflect how the PMI Provider describes the NCB Discount and NCB Protection in the marketing and policy documentation for that PMI Product.

## **Schedule 1b – NCB Protection Statement to be provided by PCWs**

1. The NCB Protection Statement which must be provided under Article 3.2 is the following text:
  - (a) 'No claims bonus protection varies between insurers but in general it allows you to make one or more claims before your number of no claims bonus years falls (further information will be provided when you select a policy and proceed with the purchase of the policy on the insurer's website).'
  - (b) 'No claims bonus protection does not protect the overall price of your insurance policy. The price of your insurance policy may increase following an accident even if you were not at fault.'
2. In the NCB Protection Statement set out in paragraph 1 of this Schedule, the terms 'no claims bonus', 'no claims bonus protection' and 'no claims bonus years' can be replaced with 'no claims discount', 'no claims discount protection' and 'no claims discount years', respectively or similar expressions, as applicable, in order to accurately reflect how the PCW describes the NCB Discount and NCB Protection on its website.



## **Schedule 2 – NCB Protection Information to be provided by PMI Providers**

1. The NCB Protection Information which must be provided under Article 3.1 at the time of a written NCB Protection Offer is:

(a) the following text, in writing:

‘[You are considering whether to purchase] NCB protection. This [would increase] your premium by [amount]. You have a current NCB of [number] years. The tables below show: (i) the average NCB discount awarded to [our] motor insurance policyholders last year according to their number of NCB years; and (ii) what would happen to your NCB years if you were to make one or more claims in the next 12 months with and without this protection.’

For the purposes of this paragraph, the word [amount] is to be replaced with the Implied Price of NCB Protection; the word [number] is to be replaced by the number of NCB Years that the PMI Provider is including in the NCB Protection Offer; the word [our] may be replaced with the name of the PMI Insurer; and, the words [You are considering whether to purchase] may be replaced with [This quote includes] and the words [would increase] replaced with [increases].

(b) A table showing:

- (i) in one column all the different NCB Years for which an NCB Discount applies to the PMI Product; and
- (ii) in an associated column the Average NCB Discount associated with each number of NCB Years for which an NCB Discount applies to the PMI Product.

(c) A second table showing, for the number of NCB Years in the NCB Protection Offer, in one column without NCB Protection and in another column with NCB Protection, the Step-back Formula in NCB Years that would be applied at next renewal in the event of a Claim or multiple Claims.

2. The NCB Protection Information which must be provided under Article 3.1 at the time of an oral NCB Protection Offer is the following:

(a) the Implied Price of NCB Protection;

- (b) the number of NCB Years offered in the NCB Protection Offer;
  - (c) the Average NCB Discount for that number of NCB Years; and
  - (d) the number of Claims that a customer can make within the Step-back Formula for the PMI Product before the number of NCB Years would be affected, depending on whether the customer purchases NCB Protection or not.
3. The NCB Protection Information which must be provided under Article 3.3, after an oral NCB Protection Offer has been accepted, is the following:
- (a) The text set out in paragraph 1(a) of this Schedule with the following amendments:
    - (i) the words [You are considering whether to purchase] are to be replaced by [You have purchased] and the words [would increase] by [has increased];
    - (ii) the word [amount] is to be replaced with the Implied Price of NCB Protection; and
    - (iii) the word [number] is to be replaced by the number of NCB Years that are included in the NCB Protection Offer.
  - (b) the tables described in paragraphs 1(b) and 1(c) of this Schedule.
4. The Average NCB Discount to be provided with the NCB Protection Information prescribed by Schedule 2 is, subject to paragraph 5, to be calculated as the mean NCB Discount for that number of NCB Years applied by the PMI Insurer in the calendar year that concluded more than one month prior to the NCB Protection Offer, either:
- (a) across all PMI Products supplied (directly or indirectly) by the PMI Insurer who is effecting the PMI Product to which the NCB Protection Offer relates; or
  - (b) across a smaller sub-set of PMI Products which includes the PMI Product to which the NCB Protection Offer relates, and which more accurately reflects the Average NCB Discount for the PMI Product to which the NCB Protection Offer relates.
5. Where the PMI Insurer to which the PMI Product relates supplied PMI Products for less than six months of the applicable calendar year, the Average NCB Discount is to be calculated as a reasonable estimate of the mean NCB

Discount to be applied to that PMI Product, for that number of NCB Years, in a calendar year.

6. In the NCB Protection Information set out in paragraphs 1 to 3 of this Schedule, the terms 'NCB', 'no claims bonus' and others terms including 'NCB' can be replaced with 'NCD' or 'no claims discount', respectively or similar expressions, as applicable, in order to accurately reflect how the PMI Provider describes the NCB Discount and NCB Protection in the marketing and policy documentation for that PMI Product.

### **Schedule 3 – Template PMI Compliance Statement**

#### **Annual PMI Compliance Statement for [insert name of PMI Provider(s)]**

[I/We], [insert name(s)], confirm on behalf of [insert name of PMI Provider(s)] that during the report period [insert calendar year prior to this Annual PMI Compliance Statement], [insert name(s) of PMI Provider(s)] [has][have] complied with The Private Motor Insurance Order 2015 (the Order).

The Average NCB Discount[s] [PMI Provider(s)] [is or are] displaying to consumers, from [1 February] [insert year of this Annual PMI Compliance Statement], in its NCB Protection Information [is or are] listed in Annex 1.

FOR AND ON BEHALF OF [NAME OF PMI PROVIDER(S)]

Signature: .....

Name: .....

Title: .....

#### **Annex 1: Average NCB Discount[s]**

**PMI Insurer: [Insert name, or if appropriate relevant sub-set]**

##### **Table of Average NCB Discount**

[Insert the table[s] of Average NCB Discount prescribed by paragraph 1(b) of Schedule 2 to the Order and required to be provided to prospective purchasers of a PMI Product from 1 February in the year of the Annual PMI Compliance Statement]

**[Repeat as appropriate for each PMI Insurer and sub-set of PMI Products if appropriate]**

## **Schedule 4 – Template PCW Compliance Statement**

### **[Annual/Quarterly] PCW Compliance Statement for [insert name of Designated PCW(s)]**

[I/We], [insert name(s)], confirm on behalf of [insert name of Designated PCW(s)] that during the report period [insert relevant report period] (the Report Period), [insert name(s) of Designated PCW(s)] [has][have] complied with The Private Motor Insurance Order 2015 (the Order) and [has][have] not engaged in Equivalent Behaviour.

Each delisting by [insert name(s) of Designated PCW(s)] during the Report Period to remove or conceal the position of a PMI Product on its website are listed in Annex 1.

Words used in this statement have the meanings given by the Order, unless otherwise stated.

FOR AND ON BEHALF OF [NAME OF DESIGNATED PCW(S)]

Signature: .....

Name: .....

Title: .....

**Annex 1**

**Table 1 – Delisting by [insert name of PCW]**

Period of the delisting	Identity of the PMI Provider delisted	Nature of the delisting	Reason for the delisting
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[insert delisting during the report period]

**[Repeat as appropriate for each PCW]**



**PRIVATE MOTOR INSURANCE MARKET**

**INVESTIGATION Draft Explanatory Note –**

**Consultation**

**The Private Motor Insurance Market Investigation Order  
2015**

*This note is not a part of the  
Order*

[\[Amendments Proposed by Google\]](#)

**Introduction**

1. The Competition and Markets Authority (CMA) published its findings in a report under section 136 of the Enterprise Act 2002 (the Act) entitled *Private motor insurance market investigation: Final Report* on 24 September 2014 (the Report).
2. The Report set out the CMA's findings that there are features of the market for Private Motor Insurance (PMI) which alone or in combination adversely affect competition.
3. The CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the adverse effects on competition that it found arising from the following features:
  - (a) information asymmetries between motor insurers and consumers in relation to the sale of no claims bonus protection insurance; and
  - (b) wide most-favoured nation clauses in contracts between the providers of PMI and price comparison websites.
4. The Private Motor Insurance Market Investigation Order 2015 (the Order) gives effect to these remedies. Different articles in the Order will come into

force on different days. Unless otherwise stated, it is not intended that there should be any further transitional period in relation to any of the provisions contained within the Order.

### **Possible consequences of not complying with the Order**

5. Section 167 of the Act places a duty on any person to whom the Order applies to comply with it. Any person who suffers loss or damage due to a breach of this duty may bring an action.
6. The CMA has power under the Order to give directions, including directions to a person in their capacity as an office holder, for the purpose of carrying out, or ensuring compliance with, the Order.
7. Section 167 of the Act also provides that the CMA can seek to enforce the Order by civil proceedings for an injunction or for any other appropriate relief or remedy.

### **Review of the Order**

8. The CMA has a duty under section 162 of the Act to monitor the operation of the Order. This includes a duty to consider, from time to time, whether the Order should be varied or revoked in the light of a change of circumstances. PMI Providers and PCWs may apply for a variation or cancellation of all or part of the Order on the basis of a change of circumstances, or recommend that the CMA reviews the need for the Order or part of it.

### **Status of this Explanatory Note**

9. Nothing in this Explanatory Note is legally binding. In the event of a conflict between this Explanatory Note and any provision of the Order, the Order shall prevail.

### **Structure of the Order**

10. The Order is divided into six parts and has four Schedules:
  - (a) Part 1 contains general provisions, which include specifying when the Order comes into force, the scope of the Order and definitions that are used throughout the Order (and which are also used in this Explanatory Note).
  - (b) Part 2 requires PMI Providers ~~and PCWs~~ to give the information in Schedules 1a, ~~1b~~ and 2, and PCWs to give the statement in Schedule 1b, about NCB Protection when making, or providing access to, an NCB

Protection Offer.

- (c) Part 3 prohibits PCWs and PMI Providers from entering into or performing agreements containing Wide MFN Clauses and prohibits Designated PCWs from engaging in Equivalent Behaviour.
- (d) Part 4 contains an obligation on PMI Providers and Designated PCWs to produce compliance statements and submit them to the CMA.
- (e) Part 5 contains provisions allowing the CMA to give directions as to compliance with the Order.
- (f) Part 6 relates to the provision of information to the CMA for the purposes of monitoring compliance with the Order and reviewing its operation.
- (g) Schedules 1a and 1b contain the NCB Protection Statement that PMI Providers and PCWs, respectively, are required to provide under Part 2.
- (h) Schedule 2 contains the NCB Protection Information that PMI Providers are required to provide under Part 2.
- (i) Schedule 3 contains a template compliance statement to be submitted by PMI Providers on an annual basis.
- (j) Schedule 4 contains a template compliance statement to be submitted by a Designated PCW, on a quarterly or annual basis.

### ***Part 1 – General and Interpretation***

- 11. Article 1 provides that the Order applies to any PMI Provider and any PCW in relation to the provision of PMI and related goods and services in the UK. It provides that the Order shall come into force on different dates as follows:
  - (a) Parts 1, and 4 to 6 will come into force on [1 March 2015];
  - (b) Part 2 (Information requirements) will come into force on [1 September] 2015; and
  - (c) Part 3 (Prohibitions on Wide MFN Clauses and Equivalent Behaviour) will come into force on [1 April] 2015.
- 12. Article 2 includes definitions of various terms used in the Order, some of which were not defined in the Report. A key definition is PMI Provider, which means a 'PMI Broker', a 'PMI Insurer', and a group of interconnected bodies corporate comprising multiple PMI Brokers, PMI Insurers, or both. They have a consumer-facing relationship and are required by the Order to give the NCB

Protection Information and [Schedule 1a](#) NCB Protection Statement when making an NCB Protection Offer. For the purposes of the Order:

- (a) PMI Broker means a person with a consumer-facing relationship who is an insurance intermediary, and who supplies, arranges or administers PMI Products. For the avoidance of doubt the term does not include a PCW, nor does it include a person who provides advice on one or more PMI Products or on other insurance products but does not supply, arrange or administer the PMI Product. It follows that only where a person supplies, arranges or administers PMI Products will that person fall within the meaning of PMI Broker and, therefore, be a PMI Provider and subject to the requirement to give the prospective customer the NCB Protection Information and [the Schedule 1a](#) NCB Protection Statement under Article 3.
- (b) PMI Insurer means an insurer who is authorised to effect and carry out PMI Products and who supplies PMI Products in the United Kingdom.

## ***Part 2 – Information requirements***

- 13. The aim of Article 3 is to ensure that PCWs and PMI Providers give consumers more transparent information about NCB Protection, including information assisting consumers to assess the value of NCB Protection at the point they consider purchasing it, ie at the time a PMI Provider makes, or a PCW provides access to an NCB Protection Offer in relation to a PMI Product. An NCB Protection Offer, from a PMI Provider or made available through a PCW, is an offer or invitation to purchase NCB Protection, made orally or in writing, as an additional option to a PMI Product. When the PMI Product is being purchased on a PMI Provider's Own Website, an NCB Protection Offer is made when the prospective purchaser, having selected NCB Protection in order to include it with the PMI Product (or having failed to deselect NCB Protection), is provided with a quote.
- 14. Where multiple PMI Products (rather than a PMI Product) are being offered, such as through a PMI Broker, the NCB Protection Offer is made at the time a PMI Product is selected by a prospective purchaser. On a PCW, the NCB Protection Offer will generally be made accessible when the option to include NCB Protection is offered to the consumer, and the [Schedule 1b](#) NCB Statement must be made available at that time.
- 15. If a quote is given for a future date (eg through a renewal invitation made by post), the Order applies as at the date of the applicable quote (ie the date of the renewal letter) and the information to be given is that which is correct at

the time the quote is provided. If, therefore, a renewal offer or invitation includes NCB Protection, this will amount to an NCB Protection Offer. Conversely, if a renewal offer or invitation does not include NCB Protection and a prospective customer is required to make separate arrangements with the PMI Insurer to purchase NCB Protection, an NCB Protection Offer would only be made when the prospective customer subsequently requests information concerning NCB Protection from the PMI Insurer.

16. For the avoidance of doubt, where NCB protection is integral to the PMI Product in question, ie it is not an optional feature of the PMI Product that can be added or removed, by its nature the NCB protection does not fall within the definition of NCB Protection and so it is outside of the scope of Article 3 of the Order.
17. Schedules 1a, 1b and 2 set out the NCB Protection Statement<sup>s</sup> and the NCB Protection Information to be provided by PMI Providers and/or PCWs for this purpose. For the avoidance of doubt, the Order does not prevent PCWs or PMI Providers from giving further information on NCB Protection, to the extent that doing so does not undermine the aim of Article 3.

*Obligation to provide the NCB Protection Statement and the NCB Protection Information*

18. The Schedule 1a NCB Protection Statement must be provided:  
  
~~(a)~~ by a PMI Provider pursuant to Article 3.1 ~~and Schedule 1a~~, when an NCB Protection Offer is made by the PMI Provider (even if the Schedule 1b NCB Protection Statement has previously been given by a PCW pursuant to Article 3.2); ~~and~~.
- ~~19. (b)~~ The Schedule 1b NCB Protection Statement must be provided by a PCW pursuant to Article 3.2 ~~and Schedule 1b~~, when the PCW is providing access to an NCB Protection Offer.
- ~~19~~20. Article 3.1 also provides that the NCB Protection Information must be provided by the PMI Provider at the time of making the NCB Protection Offer. Schedule 2 specifies that the NCB Protection Information must contain:
  - (a) the information set out in paragraph 1 when the NCB Protection Offer is made in writing on the PMI Provider's Own Website, or in another written form whether sent electronically or by a postal service;<sup>1</sup> or
  - (b) the information set out in paragraph 2 when the NCB Protection Offer is

made orally (for instance by telesales or in a branch).

~~20~~21. Article 3.3 provides that when the PMI Provider has given the NCB Protection Information orally (for instance, when the PMI Product has been purchased by telesales), the NCB Protection Information set out in paragraph 1 of Schedule 2 must be sent to the purchaser in writing with the policy documents, as required under section 8(1) of The Financial Services (Distance Marketing) Regulations 2004.

~~21~~22. Articles ~~3.1 and 3.2~~ provides that the Schedule 1a NCB Protection Statement (and NCB Protection Information) must be provided clearly and prominently by PMI Providers ~~and PCWs~~ at the same time as making ~~or providing access to~~ the NCB Protection Offer. Article 3.2 provides that the Schedule 1b NCB Protection Statement must be provided clearly and prominently by PCWs at the same time as providing access to the NCB Protection Offer.

23. Article 3.4 defines prominently to mean that, when assessing, as a whole, the NCB Protection Offer, the relevant NCB Protection Statements and the NCB Protection Information are provided with sufficient prominence so that prospective purchasers' attention can reasonably be expected to be drawn to it, or at least that the relevant NCB Protection Statements and the NCB Protection Information are no less prominent than other similar information provided contemporaneously in relation to the PMI Product.

22. In the case of PMI Providers, ~~We~~ we would expect this to be achieved, for instance, by setting out the Schedule 1a NCB Protection Statement and NCB Protection Information on the same webpage as the NCB Protection Offer, or by opening a pop-up window containing the Schedule 1a NCB Protection Statement and NCB Protection Information.

~~23.~~ When the NCB Protection Offer is made in writing, this means that the text and tables should be displayed in a clear and legible manner, using an appropriate font size.

23. In the case of PCWs, we would expect the Schedule 1b NCB Protection Statement to be provided through a prominent link leading to the Schedule 1b NCB Protection Statement.

24. When the PMI Product is being purchased orally (eg by telesales or in a branch), the NCB Protection Offer is made by the PMI Provider asking whether the prospective purchaser wishes to include NCB Protection in the PMI Product for an additional premium, in some cases this may be triggered



at the request of prospective purchaser. The [Schedule 1a](#) NCB Protection Statement and NCB Protection Information must be given clearly and prominently at the time NCB Protection Offer is made. The information must be provided prominently and in a similar manner to the other information relevant to the PMI Product and other add-on insurance products being described and offered in the rest of the conversation. It should be delivered at a similar time, pace and tone of voice, and should be given an appropriate weight.

25. When the PMI Product is being purchased by email or by a postal service (eg a renewal), an NCB Protection Offer is made when the quote for a PMI Product is sent to the prospective purchaser that includes NCB Protection as an option. In this case, the [Schedule 1a](#) NCB Protection Statement and NCB Protection Information must be provided clearly and prominently in the email or letter.

#### *Possible conflict with regulatory rule or enactment*

26. The Report noted that, due to its standardised nature, the NCB Protection Statements [s](#) may not be accurate for all PMI Products and that, in certain circumstances, a PCW or a PMI Provider may believe it could not truthfully make such statement. An inaccurate statement might breach a PMI Provider's obligation under ICOBS Rule 3.1.8 to take reasonable steps to communicate information to customers in a way that is clear, fair and not misleading.<sup>2</sup> For example, the NCB Protection Statements [s](#) might be inaccurate in the case of NCB Protection which guarantees that a PMI Product's premium would not increase as a direct result of a Claim.
27. Article 3.5 provides that, if a PMI Provider [or a PCW](#) is prohibited, by any regulatory rule or enactment (such as ICOBS Rule 3.1.8.), from giving the [relevant](#) NCB Protection Statement or NCB Protection Information, the PMI Provider [or PCW](#) will provide [s](#) at the time of [giving or providing access to](#) the NCB Protection Offer [s](#) the Alternative Information. The Alternative Information is the [relevant](#) NCB Protection Statement or NCB Protection Information amended to the minimum extent necessary to avoid a breach of any rule or enactment. The CMA considers such cases will be rare but, if they were to arise, the PMI Provider [or PCW](#) may apply for a direction from the CMA (under Article 8 of the Order) and must notify the CMA of the Alternative Information it is providing, identify the regulatory rule or enactment which prohibits it giving the standard information, and set out its reasons for providing the Alternative Information.

#### *NCB Protection Statement*

28. Schedule 1a sets out the Schedule 1a NCB Protection Statement that must be provided at the time of the NCB Protection Offer by a PMI Provider, either in writing (paragraph 1) or orally (paragraph 2).
29. When the NCB Protection Offer is made on the PMI Provider's Own Website or by email, the second paragraph of the Schedule 1a NCB Protection Statement ~~set out in Schedule 1a~~ (paragraph 1(b) – referring to step-back procedures) must contain a link, displayed prominently, leading to a clear description of the Step-back Formula for that PMI Product. This description should briefly explain quantitatively the consequences that a Claim and, if different, multiple Claims in the relevant time frame will have on the NCB Discount, specifying the benefit of NCB Protection within the context of the relevant PMI Product. When the NCB Protection Offer is made by a postal service, the second paragraph of the Schedule 1a NCB Protection Statement ~~set out in Schedule 1a~~ (paragraph 1(b) – referring to Step-back procedures) must contain a clear reference to the document (including page and/or paragraph number) where the information can be found, which might be within the policy document itself. Such document must be enclosed with the NCB Protection Offer.
30. Schedule 1b sets out the Schedule 1b NCB Protection Statement that must be provided by a PCW when it provides access to an NCB Protection Offer.
31. Paragraph 4 of the Schedule 1a NCB Protection Statement and paragraph 2 of the Schedule 1b NCB Protection Statement provide that, in the text of the NCB Protection Statements, the terms 'no claims bonus' (and the acronym 'NCB') can be replaced by other similar terms, such as 'no claims discount' (and the acronym 'NCD') when the PMI Provider or PCW uses these other terms in its marketing and policy documents (or other materials) for that PMI Product to describe ~~its~~ the NCB Discount and NCB Protection policy. Within this context, the PMI Provider or PCW may decide to use or not use acronyms (provided that acronyms are clearly defined) and to capitalise or not these terms in the written NCB Protection Statements.

#### *NCB Protection Information*

32. Paragraph 1 of Schedule 2 sets out the NCB Protection Information that must be provided in writing pursuant to Articles 3.1 and 3.3, which included the Implied Price of NCB Protection and two generic tables that will need to be prepared by PMI Insurers and provided to prospective purchasers of the PMI Product and to PMI Brokers supplying, arranging or administering the PMI

Product (together with the other terms and conditions relating to the PMI Product).

33. For the avoidance of doubt, the Implied Price of NCB Protection is to be calculated by all PMI Providers (ie PMI Brokers and PMI Insurers), when making an NCB Protection Offer. It must reflect the difference in the retail price between the PMI Product which is the subject of the NCB Protection Offer (including, as applicable, any add-on products selected) with, and without, NCB Protection. The Implied Price of NCB Protection is, therefore, particular to a given PMI Product offered by that PMI Provider, and does not take into account the price of any other PMI Products that may or may not include NCB Protection.
34. Paragraph 1(b) of Schedule 2 prescribes the information that must be included in a table concerning an NCB Protection Offer. Although the exact format (eg font type, colour schemes, spacing) is a matter for PMI Providers, we expect the table to be structured as Table 1 below. **Table 1**

Number of years No Claims Bonus	Average NCB Discount in [year]
One year NCB	4%
Two years NCB	9%
Three years NCB	18%
Four years NCB	29%
Five years NCB	38%
Six years NCB	44%
Seven years NCB	49%
Eight years NCB	53%
Nine years or more NCB	59%

35. Illustrative figures have been used in Table 1. PMI Providers shall adapt Table 1 to the terms and conditions of an NCB Protection Offer, by:
- (a) including in the left-hand column (under 'Number of years No Claims Bonus') each relevant level of NCB Years for the PMI Product (or range of NCB Years, eg 'Zero to two years NCB'; 'Nine years or more NCB'), and adding or removing rows as appropriate; and
  - (b) including in the right-hand column, the Average NCB Discount associated with each level of NCB Years, rounded to the nearest whole percentage.
36. Paragraph 1(c) of Schedule 2 prescribes the information that must be included in a second table concerning an NCB Protection Offer. Again, although the exact format (eg font type, colour schemes, spacing) is a matter for PMI Providers, we expect the table to be structured as Table 2 below.

**Table 2**

	No Claims Bonus at next renewal date <u>without</u> NCB protection			No Claims Bonus at next renewal date <u>with</u> NCB protection		
Number of years No Claims Bonus at this renewal	1 claim in next 12 months	2 claims in next 12 months	3 claims in next 12 months	1 claim in next 12 months	2 claims in next 12 months	3 claims in next 12 months
Three years NCB	One year	Nil	Nil	Three years	One year	Nil

37. Illustrative figures have been used in Table 2. PMI Providers shall adapt Table 2 to the terms and conditions of an NCB Protection Offer, by:
- (a) including in the second row the relevant number of Claims within the relevant time frame, adding or removing columns as appropriate; and
  - (b) including in the third row the number of NCB Years at the date of purchase of the NCB Protection and the number of NCB Years at the next date of purchase of NCB Protection.
38. Paragraphs 2 and 3 of Schedule 2 set out the NCB Protection Information that must be provided when (a) the NCB Protection Offer is made orally and (b) following acceptance of an oral NCB Protection Offer, respectively.
39. Paragraph 4 of Schedule 2 describes how the Average NCB Discount is to be calculated. It is the discount to the price of the PMI Product that the PMI Insurer typically makes to customers (directly or indirectly via a PMI Broker) holding the same number of NCB Years as the prospective customer holds. It may be calculated in the following two ways, at the PMI Insurer's option:
- (a) calculated across all PMI Products supplied by the PMI Insurer (including those supplied directly or indirectly via a PMI Broker); or
  - (b) calculated across a smaller subset of PMI Products, for instance, across different types of PMI Product; across different brands; across different sales channels; or some other sub-set.

It is calculated as the average (mean) percentage of all historic actual NCB Discounts awarded in the relevant calculation period by the PMI Insurer for all the PMI Products or the relevant sub-set of PMI Products for that level of NCB Years.

40. For the avoidance of doubt, the Average NCB Discount is calculated based on the amount the PMI Insurer has discounted the PMI Products or relevant subset of PMI Products. The Average NCB Discount is not always based on the final price paid for the PMI Product since, in the case of sales made through a PMI Broker, the PMI Insurer may not know the final price paid for the PMI Product. The intention of the Report is for the Average NCB Discount to be an illustrative historical figure, rather than the actual NCB Discount the consumer will individually receive. It is not based on notional figures held on the PMI Insurer's internal systems, nor on a sample or basket of products. As identified in paragraph 17 above the Order does not prevent PMI Providers from providing further information, such as the actual NCB Discount a prospective purchaser will receive.

41. In order to comply with Schedule 2, the PMI Insurer must calculate by 1 February each year the Average NCB Discount (in relation to all its PMI Products or to a subset of PMI Products for any given number of NCB Years) that it and PMI Brokers who sell its products, will use to make NCB Protection Offers from 1 February of that year to 31 January of the following year. In practice, this will allow PMI Insurers one month to calculate the average NCB Discount applicable from the end of the previous calendar year. For NCB Protection Offers made between [1 September] 2015 and 1 February 2016, PMI Insurers must use the Average NCB discount calculated on the basis of PMI Products supplied in the calendar year 2014.
42. Pursuant to paragraph 5 of Schedule 2, if the PMI Insurer to which the PMI Product relates supplied PMI Products in the previous calculation period for less than six months, the Average NCB Discount must be a reasonable estimate of the NCB Discount to be applied to that PMI Product, for the applicable number of NCB Years. For instance, if a new PMI Insurer entered the market on or after 1 July 2015, when determining the Average NCB Discount that it must include in the NCB Protection Information for offers made as from 1 February 2016, the PMI Insurer must use a reasonable estimate of the average NCB Discount which it will apply from 1 February 2016 to 31 January 2017 to that number of NCB Years PMI Products. If the PMI Insurer supplied PMI Products for more than six months in the previous calculation period the Average NCB Discount must be determined from the actual PMI Products supplied during that period.
43. Paragraph 5 of Schedule 2 provides that, in the text and tables of the NCB Protection Information, the terms 'no claims bonus' (and the acronym 'NCB'), as well as other terms which include 'NCB' (for instance 'NCB years') can be replaced by other similar terms, such as 'no claims discount' (and the acronym 'NCD') when the PMI Provider uses these other terms in its marketing and policy documents for that PMI Product to describe its NCB Discount and NCB Protection policy. Within this context, the PMI Provider may decide to use or not acronyms (provided that acronyms are clearly defined) in the written NCB Protection Statement.

#### *Provision of information from insurers to brokers*

44. PMI Insurers who distribute PMI Products through PMI Brokers will need to provide, in a timely and appropriate manner, these PMI Brokers with the Average NCB Discount to allow them to provide the NCB Protection Statement and NCB Protection Offer pursuant to Articles 3.1 and 3.3. In practice, this will mean PMI Insurers must provide either the average NCB Discount across all sales of PMI Products (ie across all sales channels), or

the average NCB Discount across a smaller subset of PMI Products (in accordance with paragraph 4 of Schedule 2 and paragraphs 39 to 41 above).

### ***Part 3 – Prohibitions on Wide MFN Clauses and Equivalent Behaviour***

#### ***Prohibition on Wide MFN Clauses***

45. The aim of Article 4.1 is to prohibit PCWs and PMI Providers from entering or performing an agreement<sup>3</sup> where the PMI Provider agrees not to offer a PMI Product at a lower price on any other sales channel. These restrictions were defined as MFN clauses in the Report. Article 4.2 provides that the prohibition in Article 4.1 does not apply to agreements which restrict prices on the PMI Provider's Own Website only (defined in the Report as narrow MFN clauses). An agreement that contains an MFN clause that is not a narrow MFN clause is one that contains a Wide MFN Clause.
46. The exception set out in Article 4.2 only applies to the PMI Provider's Own Website<sup>4</sup>. As a consequence, the Order prohibits any agreement containing a contractual restriction on the PMI Provider's ability to set lower prices, compared with the prices advertised on the counterparty's website, on other distribution channels, including (without being limited to):
- (a) telesales;
  - (b) sales through an independent social media platform (such as Facebook, Google+, LinkedIn and Twitter)<sup>5</sup>;
  - (c) sales in a branch;
  - (d) sales through a broker or, in the case of PMI Providers who are brokers, sales through any other broker; and
  - (e) sales through any other PCW.

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<sup>3</sup> Agreement has the same meaning as in section 129 of the Enterprise Act 2002 and means 'any agreement or arrangement, in whatever way and whatever form it is made, and whether it is, or is intended to be, legally enforceable or not'.

<sup>4</sup> A website where a PMI Provider offers or supplies its PMI products directly to a consumer, ie a quote is accessible without the intervention of an intermediary such as a PCW linking to a personalised quote.

<sup>5</sup> This applies where the social media platform provides a personalised quote to customers (see footnote 4).



47. Parties to existing agreements which contain a Wide MFN Clause prohibited under Article 4.1 must terminate or in practice amend such agreements in order to remove the Wide MFN Clause before [1 April 2015].

#### *Prohibition on Equivalent Behaviour*

48. The Report recognises that the prohibition on Wide MFN Clauses, by itself, might not comprehensively and effectively address the adverse effect on competition identified in the Report if PCWs could circumvent it by entering into contractual terms or engaging in unilateral behaviour which has the object of replicating the anti-competitive effects of Wide MFN Clauses. This could be the case, for example, where a PCW uses any market power in relation to PMI Providers derived from the number of customers that use only one PCW to compare the prices of PMI Products (described in the Report as 'single-homers'). The Report notes this possibility where a PCW or a group of interconnected bodies corporate comprising multiple PCWs has, in the previous calendar year, provided PMI Providers in aggregate with 300,000 PMI Product sales or more (Designated PCWs).<sup>6</sup> The aim of Article 5.1 is therefore to prohibit such behaviour that has the object of replicating the anti-competitive effects of Wide MFN Clauses (Equivalent Behaviour).
49. By way of further illustration, PCWs engaging in Equivalent Behaviour could effectively replicate the effects of Wide MFN Clauses by applying pressure to the PMI Provider to adhere to the principles of a Wide MFN Clause. This pressure could consist in actions leading, directly or indirectly, to a reduction in PMI Product sales for a specific PMI Provider.
50. The Report identified a non-exhaustive variety of ways a PCW might engage in unilateral behaviour that could have the object of replicating the anti-competitive effects of Wide MFN Clauses, for example, by:
- (a) delisting, or threatening to delist, a PMI Provider;
  - (b) offering less favourable commission terms;
  - (c) offering less favourable contractual terms;

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<sup>6</sup> Article 2.1 provides that all PCWs must calculate by 1 February of each year the number of PMI Product sales provided by them to PMI Providers in aggregate in the previous calendar year. In practice, this will allow one month to calculate the number of PMI Product sales provided by them in the previous calendar year. For the purpose of the period before 1 February 2016, PCWs who, in the previous calendar year, have provided 300,000 PMI Product sales or more to PMI Providers in aggregate should notify the CMA on [1 April 2015].

- (d) imposing unreasonable burdens on a PMI Provider when implementing IT changes (such as through delays); and
  - (e) reduction in timeliness, cost, or quality of market intelligence.
- 51. Delisting is any action taken to remove or conceal the position of a PMI Provider from a PCW. This would happen, for example, if search results for a PMI Provider were treated differently from other PMI Providers, or if a 'filter' was applied to the results of price comparisons of PMI Products without explanation provided to prospective purchasers, creating a comparison which is not purely based on price alone.
- 52. Such unilateral behaviour could have the object of replicating the anti-competitive effects of Wide MFN Clauses whether it affects one or more PMI Products sold by the PMI Provider or other non-PMI products sold by the PMI Provider through that PCW (eg delisting a PMI Provider's home insurance products). The Report also notes that certain unilateral behaviour by a PCW that falls within the above list set out in paragraph 50 above, or any other form of unilateral behaviour that could constitute an Equivalent Behaviour, may however have legitimate justification, other than to have the object of replicating the anti-competitive effects of Wide MFN Clauses. For instance, a PCW might decide to delist a PMI Provider for legitimate business or administrative reasons such as:
  - (a) poor performance issues by a PMI Provider;
  - (b) poor performance issues by a PCW (eg inability to invest in a suitable IT platform); or
  - (c) bona fide dispute over another contractual term.
- 53. In order to assess compliance with Article 5.1, it will be necessary to assess on a case-by-case basis whether the applicable behaviour by the PCW has the object of replicating the anti-competitive effects of Wide MFN Clauses. Factual evidence that may support such a finding would include:
  - (a) whether the PMI Provider is being priced/ranked differently on other PCWs;
  - (b) whether the PCW has raised the issue of differential pricing in discussions with the PMI Provider, or vice-versa;
  - (c) whether the PCW's behaviour is only (or mainly) being applied to PMI Providers who are offering lower prices on other channels (ie poor IT lead

times is a specific issue to these PMI Providers, rather than an issue to all PMI Providers in general); and

(d) the absence of a legitimate justification for such behaviour.

54. The CMA may publish guidance on Equivalent Behaviour. It may also give directions pursuant to Article 8 of the Order. Within this context, it will consider requests for guidance and/or directions from PCWs and from PMI Providers who believe they are affected by Equivalent Behaviour.
55. The prohibition on Equivalent Behaviour shall come into force on [1 April 2015] as regards Designated PCWs.

#### ***Part 4 – Monitoring and compliance***

56. Article 6 requires PMI Providers to submit annual compliance statements, which must include:
  - (a) a statement that the PMI Provider has complied with the terms of the Order; and
  - (b) the tables of Average NCB Discounts calculated pursuant to paragraph 4 of Schedule 2, that the PMI Provider will use in NCB Protection Offers made in the 12-month period starting with 1 February in the year the Annual PMI Compliance Statement is made.
57. Subject to Article 6.2, the compliance statements are to be produced and supplied in the form prescribed in Schedule 3 to the CMA annually by 1 February. The compliance statement must present tables of Average NCB Discounts for each PMI Insurer and subset in the format and with the content prescribed in paragraph 1(b) of Schedule 2 and further described in paragraphs 34 and 35 above.
58. For example, the Annual PMI Compliance Statement submitted on 1 February 2017 will show for each PMI Insurer or subset of PMI Products that the PMI Provider supplies, for each relevant number of NCB Years, the mean NCB Discount actually awarded by the PMI Insurer on those PMI Products in the calendar year 2016. This is the same as the information provided to consumers in the NCB Protection Information pursuant to paragraph 1(b) of Schedule 2.
59. Article 6.2 makes alternative provision for the first compliance statement, which is to be provided on [1 September] 2015 and which must include, for each PMI Insurer's PMI Products or subset of PMI Products, the table(s) of

Average NCB Discount(s), calculated pursuant to paragraph 4 of Schedule 2, that the PMI Provider will use in NCB Protection Offers made from 1 September 2015 to 31 January 2016. The effect of this Article is to require PMI Providers to provide to the CMA on 1 September 2015 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 that they have complied with the terms of the Order in preparing such Average NCB Discounts.

60. Article 7 requires Designated PCWs to submit to the CMA seven quarterly and two annual compliance statements, which must include:
- (a) a statement that the Designated PCW has not engaged in Equivalent Behaviour. A Designated PCW means a PCW, or a group of interconnected bodies corporate comprising multiple PCWs, which in the previous calendar year has provided PMI Providers in aggregate with 300,000 PMI Product sales or more. Article 7.6 require PCWs to calculate by 1 February in each year this number of PMI Product sales and to notify the CMA if they qualify or (compared with the previous calendar year) no longer qualify as a Designated PCW. This number is calculated taking account of sales of PMI Products as defined in the Order. Sales of products which are not a PMI Product are not included in the calculation. The sale of a PMI Product including an add-on product such as NCB Protection, or breakdown cover, are to be counted as one sale of a PMI Product; and
  - (b) a list of each delisting (as described in paragraph 51 above) which occurred in the report period. Delisting includes a delisting made at the request of the PMI Provider. For the avoidance of doubt, while the Annual and Quarterly PCW Compliance Statements prescribe certain information to be provided on delisting which has occurred, the prohibition on Equivalent Behaviour is not limited to delisting and includes any behaviour, whether contractual or unilateral, which has the object of replicating the anti-competitive effects of Wide MFN Clauses.
61. Compliance statements must be submitted to the CMA by Designated PCWs, in the form specified in the template statement set out in Schedule 4, as follows:

	<b>Date of submission to the CMA</b>	<b>Reporting period</b>
First Quarterly Compliance Statement	15 July 2015	1 April – 30 June 2015
Second Quarterly Compliance Statement	15 October 2015	1 July – 30 September 2015
Third Quarterly Compliance Statement	15 January 2016	1 October – 31 December 2015
Fourth Quarterly Compliance Statement	15 April 2016	1 January – 31 March 2016
Fifth Quarterly Compliance Statement	15 July 2016	1 April – 30 June 2016
Sixth Quarterly Compliance Statement	17 October 2016	1 July – 30 September 2016
Seventh Quarterly Compliance Statement	16 January 2017	1 October – 31 December 2016
First Annual Compliance Statement	1 February 2018	1 January – 31 December 2017
Second Annual Compliance Statement	1 February 2019	1 January – 31 December 2018

***Part 5 – Directions by the CMA as to compliance***

62. Article 8 provides that the CMA may give directions as to compliance with the Order.

***Part 6 – Supply of information to the CMA***

63. Article 9 provides for any person to whom this Order applies to provide information required by the CMA to allow it to monitor and review compliance with and operation of the Order.