

COMPETITION COMMISSION'S
MARKET INVESTIGATION INTO PRIVATE MOTOR INSURANCE

AXA UK PLC

Response to Provisional Findings

7 February 2014

1. INTRODUCTION AND EXECUTIVE SUMMARY

Introduction

- 1.1 AXA welcomes the opportunity to comment on the Competition Commission's ("**Commission**") Provisional Findings ("**PFs**"), published on 17 December 2013.
- 1.2 AXA has already responded to the Commission's Remedies Notice ("**Remedies Response**") on 17 January 2014. The purpose of this response is simply to summarise AXA's position on the PFs.
- 1.3 AXA notes that it has had sight of the Association of British Insurer's ("**ABI**") submission on the PFs. It is not always possible for trade associations to represent the views of all industry participants, therefore AXA's views on the PFs are those set out in this submission.

Overview of AXA's views on the PFs

- 1.4 AXA is pleased to see that the Commission has found "strong rivalry in the sale to consumers of basic motor insurance"¹ in the motor insurance market. This is consistent with AXA submissions throughout the market investigation process that the motor insurance market is competitive, and accordingly AXA agrees with the Commission's finding.
- 1.5 AXA is also pleased to see that the Commission has considered it necessary to discount some of its original theories of harm as a result of its market investigation. In relation to the Commission's third theory of harm, market concentration, AXA agrees with the Commission's observation of low levels of concentration in the motor insurance market (please refer to AXA Ireland's separate submission in relation to the Northern Ireland business). In relation to the Commission's fourth theory of harm, competition-softening strategies by sellers of motor insurance, AXA considers that the Commission is correct to acknowledge that there are high levels of switching in relation to the sale of basic motor insurance. However, there remain some theories of harm that the Commission has discounted which, in AXA's view, do potentially give rise to adverse effects on competition, namely the existence of narrow most-favoured nation ("**MFN**") clauses in contracts between insurers and price comparison websites ("**PCWs**") (discussed further below).

¹ Paragraph 5, Provisional Findings.

Scope of Commission's market investigation

1.6 While AXA does not intend to repeat the comments it has made in its Remedies Response, AXA would like to reiterate to the Commission its concern about the limited scope of the Commission's market investigation. As the Commission's terms of reference limit the investigation to the private motor insurance sector (excluding motorcycles) only, the Commission's provisional findings of any adverse effects on competition are consequently limited to effects on competition in the private motor insurance industry. Accordingly, any remedies that the Commission seeks to impose to resolve any perceived adverse effects on competition must be similarly limited to the private motor insurance industry. However, as raised in its Remedies Response, it is not clear to AXA how a distinction between private motor insurance and the rest of the motor insurance industry would work in practice in terms of effectively implementing any of the remedies proposed by the Commission in its Remedies Notice. AXA believes that the Commission must address this issue before there is any meaningful discussion about what remedies should be imposed to address the Commission's adverse effect on competition concerns.

2. THEORY OF HARM 1: SEPARATION OF COST LIABILITY AND COST CONTROL

2.1 AXA agrees with the Commission's provisional finding that the separation of cost liability and cost control, and the practices and conduct of some parties managing claims has created an inefficient supply chain which may give rise to adverse effects on competition. AXA believes that the separation of cost liability and cost control allows claim handlers to charge more than the cost incurred (whether it be in relation to the cost of repairs, the cost of replacement vehicle hire or not receiving the full salvage value of a written-off vehicle) which in turn can result in a high level of frictional and transaction costs. These costs are ultimately passed on to consumers in the form of higher insurance premiums to the detriment of consumers. As outlined in its Remedies Response, AXA believes that removing this separation issue should result in reduced costs for insurer, and therefore lower premiums for consumers because claim handlers will no longer have the incentive to inflate costs.

3. THEORY OF HARM 2: UNDERPROVISION OF REPAIRS

3.1 The Commission has provisionally found that there is a possible lack of quality of repairs of post-accident vehicles, resulting in an adverse effect on competition. The Commission indicates that this is occurring because insurers (and CMCs) do not monitor the quality of repairs effectively and because there are significant limitations to consumers' ability to assess the quality of repairs. The Commission is proposing compulsory audits of the quality of vehicle repairs to improve the quality of at-fault and not-at-fault vehicle repairs in its Remedies Notice.

3.2 AXA reiterates its position in its response to the MSXI Report and in its Remedies Response that the finding that there is a possible underprovision of repairs is without merit and evidentiary support.

3.3 Prior to the commissioning of the MSXI Report, the Commission's view in its working paper was that there was "no evidence of systematic underprovision of

repairs."² However, following the conclusions of the MSXI Report that the quality of repairs received by claimants post-accident was low and may not have been restored to the legal standard, the Commission's provisional finding is that there is an adverse effect on competition because the competition between repairers to obtain business from insurers is focussed towards low cost and against high quality repair (repairers are insufficiently rewarded for offering a high quality of repair) and insurers do not have the necessary incentive to ensure that claimants get the quality of service of repair to which they are entitled (i.e. reputational effects are weak).

3.4 The results of the MSXI Report are not consistent with the results of the Commission's consumer survey, where consumer satisfaction was much higher in relation to quality of repairs.³ However, the Commission claims that more weight should be attached to the evidence from expert, namely repairers and the results of the vehicle inspections, on the assumption that consumers "might not be able to assess accurately the quality of repairs."⁴ AXA has three serious concerns with the Commission placing such weight on repairers and the MSXI report:

3.4.1 First, the MSXI Report is unreliable and cannot be an accurate representation of quality of repairs. AXA reiterates its submissions in its response to the MSXI Report, in particular its concerns that the sample size was far too small to be representative of AXA's claims portfolio or the wider motor insurance market and that the sample is susceptible to bias. Even if the MSXI Report could legitimately be relied upon as evidence of a systemic underprovision of repairs (which AXA submits it cannot), it cannot be used to show that these below average repairs are caused by the fact that the claims are handled by insurers, or by the fact that repairs are conducted under arrangements agreed between repairers and insurers. Having reviewed the MSXI database and vehicle inspection documentation in the Commission's MSXI data room, AXA summarises its concerns in relation to the MSXI Report in the attached **Annex**.

3.4.2 Second, the Commission should be very cautious to rely on the views of repairers in this case as they do not come to this market investigation without their own commercial interests or agenda. Repairers have a clear incentive to indicate that the quality of repairs is adversely affected by pressure from insurers to carry out repairs cheaply in case this results in an ability to charge higher repair prices.

3.4.3 Third, the Commission has not provided any basis for why it has concluded that consumers may not be able to assess accurately the quality of repairs, and it has failed to give adequate reasons why it has discredited the results of its consumer survey in favour of the views of the repairers and the results of the MSXI report.

² Paragraph 5, Working Paper: Underprovision of Repairs.

³ See paragraph 2, Working Paper: Underprovision of Repairs, which states that the Commission's survey of non-fault claimants showed that 94 per cent of respondents felt that all of their accident damage was repaired; 88 per cent felt that the vehicle was in the same or a better condition after the accident repair compared with the condition prior to the accident; and 89 per cent were satisfied with the repair service overall (only 7 per cent said that they were dissatisfied with the repair service overall).

⁴ Paragraph 7.44, Provisional Findings.

- 3.5 The Commission has also provided no evidence for its assumption that insurers do not have the necessary incentive to ensure that claimants receive repairs to the legal standard, which is a fundamental flaw in the Commission's analysis. The ability of an insurer to facilitate quality repairs to vehicles involved in accidents is a key measure of a competent and trusted insurer. It is therefore wrong for the Commission to dismiss reputational effects as being weak without any reasons for doing so. To the contrary, insurers have every incentive to ensure that any repairs carried out under their name, whether in relation to their own customers or third parties' claims, are to a legal and safe standard as the reputational consequences of being responsible for sub-standard repairs are very real and potentially very costly. In this respect, AXA also considers it incorrect to focus on "short-term" incentives of insurers and other organisations managing claims being simply to minimise cost.
- 3.6 The Commission's proposed remedy of a quality audit in response to its provisional finding of an adverse effect on competition will impose significant costs on the industry. It is therefore essential that the basis for this finding is robust. Reliance on a sub-standard MSXI Report and repairers' anecdotes does not meet the necessary threshold to warrant regulatory intervention and additional compliance costs that will only be passed on to consumers. AXA therefore urges the Commission carefully to reconsider its provisional finding on the quality of repairs.

4. **THEORY OF HARM 4: THE SALE OF ADD-ON PRODUCTS**

- 4.1 The Commission has provisionally found that an asymmetry of information between consumers and insurers on add-on products (in the form of point of sale information and in particular, lack of clear information on certain add-on products, namely NCBs and NCB protection), and a point of sale advantage held by insurers in relation to the sale of add-ons gives rise to an adverse effect on competition because it is made difficult for consumers to identify the best value offers in the market and may lead to consumers purchasing products at an inflated price.
- 4.2 AXA submits that the Commission has not put forward any compelling evidence or analysis that there is an asymmetry of information problem in relation to add-on products. The Commission itself has recognised that its customer survey of motor insurance policyholders to assess customers' perceived level of undertaking of a selection of add-ons may be susceptible to response bias given the very small response rate (5%).⁵
- 4.3 AXA is also not convinced that the Commission has clearly demonstrated that insurers have a point of sale advantage in the sale of add-ons. Furthermore, the Commission has provided no analysis to support its conclusion that a perceived point of sale advantage results in adverse effects on competition.
- 4.4 AXA awaits the outcome of further work by the Commission to ascertain the level of detriment caused by the alleged asymmetry of information between consumers and insurers and point of sale advantage held by insurers in relation to add-on products, in particular, how these features of the sector impact private motor insurance premiums.

⁵ See footnote 10, page 8-15, Provisional Findings.

5. THEORY OF HARM 5: PCWS AND MFN CLAUSES

Wide MFNs

- 5.1 AXA agrees with the Commission's provisional finding that the use of wide MFN clauses by PCWs in contracts between PCWs and insurers give rise to adverse competitive effects, in particular reduce entry, innovation and competition between PCWs. AXA also agrees with the Commission's provisional finding that wide MFNs can result in, and likely already have resulted in, higher premiums for consumers.⁶
- 5.2 The growing use of PCWs by consumers has led to a rise in their importance. It is therefore important for AXA to be listed on all four main PCWs. Accordingly, opting not to deal with PCWs or being forced to delist from a PCW because of disagreement on commercial terms is not a viable option for insurers. Insurers therefore have limited ability to constrain the pricing of fees or to refuse MFNs. Accordingly, AXA agrees that wide MFNs should no longer feature in contracts between PCWs and insurers. Please refer to AXA's Remedies Response for AXA's views on the appropriate remedy to remove wide MFNs.

Narrow MFNs

- 5.3 In relation to narrow MFNs, the Commission's provisional finding is that, on balance, these MFNs do not give rise to an adverse effect on competition. AXA disagrees with this provisional findings and wishes to reiterate its points made in its response to the Commission's Issues Statement, in particular, that MFNs, including narrow MFNs, may reduce insurers' incentives to lower its own prices, by limiting its flexibility of pricing across its sales channels (such as its own website).

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⁶ Paragraph 9.93, Provisional Findings.

ANNEX

AXA'S OBSERVATIONS FROM MSXI DATA ROOM EXERCISE

1. INTRODUCTION

- 1.1 This annex sets out AXA's observations based on its attendance at the Commission's MSXI data room ("**data room**") on 30 and 31 January 2014. During its time in the data room, AXA carried out three main tasks:
- 1.1.1 Assessment of the MSXI vehicle inspection sheet and related repair documentation ("**Inspection Documentation**") for all inspections (104 inspections), the purpose being to assess whether the information provided in the data room reasonably supports MSXI's conclusions in relation to the number of repair defects identified.
- 1.1.2 Assessment of the Inspection Documentation for AXA inspections (*[CONFIDENTIAL TO AXA]*), the purpose being to assess whether the information provided in the data room reasonably supports MSXI's conclusions in relation to the number of repair defects identified.
- 1.1.3 Assessment of the sampling methodology adopted by the Commission and MSXI to carry out the vehicle inspections to determine whether the results from such inspections can reasonably be said to be representative of a systemic under provision of repairs.
- 1.2 For each of the tasks above, AXA summarises its key observations below.
- 1.3 For the reasons set out below, AXA maintains that the Commission should place no weight on the conclusions contained in the MSXI Report and that it would be ill-advised to use it as evidence that there is a systemic underprovision of vehicle repairs. Even if the MSXI Report were reliable and did provide an accurate representation of a problem of low quality repairs, there is nothing in the MSXI Report or Inspection Documentation which shows that the alleged underprovision of repairs was caused by the involvement of insurers or insurers' relationships with repairers. It is AXA's view that there is insufficient justification for any suggested connection. Accordingly, as explained in AXA's Remedies Response, it would be inappropriate to impose a remedy on the private motor insurance industry, and to require the private motor insurance industry, and its customers, to shoulder the costs of complying with such a remedy.
- 1.4 AXA also wishes to reiterate that while it appreciated the opportunity to have access to the Inspection Documentation and the data room, it is still unable to review its internal files in relation to those vehicles that MSXI identified as having repair defects in order to assess whether the defects existed and whether the defects were caused by AXA's involvement in arranging the repairs, which is, in AXA's view, unsatisfactory.

2. **AXA'S ASSESSMENT OF INSPECTION DOCUMENTATION FOR ALL INSPECTIONS**

Insufficient information recorded by MSXI at time of inspection

- 2.1 AXA submits that the vehicle inspection sheets, which AXA understands were intended to record MSXI's findings in relation to each vehicle inspection, were poorly completed and often contain little, or in some cases, zero information to justify the conclusion that the vehicle inspected was not repaired to pre-accident condition ("PAC"). In this regard, in seven cases¹ out of the total cases for which vehicles were deemed to not have been returned to their PAC, it was not possible for AXA to verify the conclusions in the MSXI Report as the underlying documentation (whether it be the vehicle inspect report or the photographs) was either inadequate or non-existent, and therefore could not reasonably support the MSXI Report's conclusions that the repairs were defective.

MSXI Report includes cases unrelated to repair

- 2.2 AXA considers that four cases² were wrongly included in the MSXI Report because they are irrelevant to the subject of post-accident repair quality as no repairs were actually carried out. Rather than repairs, these cases involved dealings either on a total loss basis or cash in lieu basis where the quality of subsequent repairs, or a failure to carry out any repairs, could have had nothing to do with the insurer. Accordingly, these four cases should not be considered as part of the MSXI Report.

MSXI Report incorrectly identifies repair defects

- 2.3 In two cases,³ AXA has concluded that the MSXI Report wrongly concluded the existence of a repair defect. In one of those cases,⁴ the vehicle estimation report and the Inspection Documentation did not match, and in the other case,⁵ despite a very minor issue being recorded, the vehicle inspection report said that the vehicle had been returned to PAC but the front cover sheet indicated that it had not.

Failure to provide date of accident and time lapse between repair and inspection raises doubt as to cause of any repair defects identified

- 2.4 AXA also notes that there is a significant piece of information missing in the Inspection Documentation. There is no information contained in the Inspection Documentation as to (i) the date of the accident, or (ii) the amount of time that had passed between repair and inspection. Furthermore, there is no indication from the MSXI's tender document and the Inspection Documentation that inspectors asked, or were required to ask, whether the appearance or condition of the vehicle could be due to the amount of time that has lapsed between the repair and the inspection, or due to other incidents or occurrences since the accident.

¹ Case NAF0378; R0173 (AXA); R0114; R0129; R0136; R0166; NAF0305.

² Case R0264.

³ Case R0265; R0116.

⁴ Case R0265.

⁵ Case R0116.

- 2.5 AXA believes that this is a serious flaw in the inspection process as it raises doubts as to whether the alleged repair defects are in fact caused by the original repair job. If this information (date of accident and/or amount of time between the repair and inspection) is in fact available, this information should be provided to interested parties such as AXA. AXA sees no reason why this information should be withheld on confidentiality grounds.

Nothing in the Inspection Documentation proves a causal link between repair defects and insurer

- 2.6 AXA has seen nothing in the Inspection Documentation that demonstrates a causal link between the repair defect and the fact that the repair was connected with or arranged by an insurer.
- 2.7 Based on the information available in the data room, AXA notes that in seven of the cases identified in the MSXI Report as not having been returned to PAC ("**non-PAC cases**"), the repairer was actually chosen by the vehicle owner. In these cases, the insurer would have had limited (if any) influence over the repairers but still these repairs were found to be defective by MSXI. This suggests that the reason for repair defects is not in any way attributable to the involvement of insurers and rather suggests that the problem lies with the repairers themselves.
- 2.8 Furthermore, when assessing the nature of the repair defects identified where insurers have arranged the repairs, the evidence in the Inspection Documentation does not support the repairers' statements and the Commission's conclusion that repair defects are a result of the time pressures and cost constraints imposed by insurers. In none of the non-PAC cases did AXA's engineers find any evidence that the quality of the repair was due to anything other than the repairer's own poor practice. On the contrary, the assessment by AXA's engineers of the Audatex timings indicated that there was sufficient time for the repairers to complete the relevant repair task in a proficient manner. Defects such as over-spraying, not removing items prior to spraying, and poor panel alignment cannot be attributed to pressure from insurers when the time allowed in the agreed estimate represented the industry standard for doing the work in a way that avoids defects.
- 2.9 AXA is surprised that no steps were taken during the vehicle inspection process to establish whether the defective repairs identified were indirectly caused by the involvement of insurers. Furthermore, there appears to have been no consideration of the terms under which the repairer willingly agreed to accept work from the insurer. AXA believes it is not possible for the Commission to reach a robust conclusion on the reasons for repair defects without such information. AXA believes that, as a part of the vehicle inspections, there should have at least been follow up interviews with repairers to view records to understand whether there was any particular reason for the defective repairs. Instead, the Commission unjustifiably has placed significant weight on informal and unspecific feedback from repairers (feedback which is not credible given repairers' interest in complaining about cost pressures when this could result an increase in the amount they can charge for repairs).

Concluding comments on assessment of all inspections

- 2.10 Once the flawed inspections (that cannot be relied upon for the numerous reasons explained above) are discounted, AXA concludes that out of 104 inspections, there were only 25 inspections where it appears reasonable for MSXI have to found a repair defect. This is compared to the 45 originally identified in the MSXI Report.
- 2.11 However, in respect of those 25 cases, there is still vital information missing which prevents AXA from verifying whether there were in fact defective repairs in relation to these 25 vehicles, in particular, the date of the accident, the amount of time that had passed between the repair and inspection and any evidence that the inspector considered that the appearance or condition of the vehicle could be due to the amount of time that has lapsed since the repair and the inspection. AXA therefore maintains that for these reasons, and the reasons discussed below in relation to the sampling methodology, the conclusions in the MSXI Report are not robust and therefore should not be relied upon as evidence to support a systemic underprovision of vehicles repairs, let alone any underprovision that is caused by private motor insurers.

3. AXA'S ASSESSMENT OF THE INSPECTION DOCUMENTATION FOR AXA INSPECTIONS

3.1 [CONFIDENTIAL TO AXA]

4. AXA'S ASSESSMENT OF THE SAMPLING METHODOLOGY

- 4.1 AXA's first concern about the Commission and MSXI's sampling methodology is that those 650 people that agreed to allow their vehicle to be examined were taken from an already small and selected pool of 1500 participants who had completed the Commission's not-at-fault ("NAF") consumer survey ("NAF survey"). Whilst the methodology to select the 1500 may be acceptable, AXA is concerned that the significant reduction of the sample size based on the response to only one question introduces the possibility of selection bias because the sample has not been generated in a random manner and the integrity of the initial NAF survey sample has been compromised. In short, the 650 sample group is unreliable.
- 4.2 AXA is also concerned that from an already potentially bias selection, the sample size was further reduced to only 104 cases once MSXI contacted participants seeking permission to inspect their vehicles. Furthermore, for 504 out of 546 declined cases, no reason was recorded for declining. Only 36 cases had a decline reason recorded.⁶ This raises further concern about the sampling as there is no way to rule out (by reviewing the reasons for declining) that the sample is not bias or unrepresentative.
- 4.3 A further unknown is that it is not clear to AXA how the 270 "captured" cases (Stage 1), for which repair documentation was available, was narrowed down to only 77 cases (the number of vehicles that AXA believes were ultimately inspected), and similarly, how the 90 "non-captured" cases (Stage 2), for which repair documentation was available, was narrowed down to only 27 cases (the number of vehicles that were

⁶ In all but two cases, the reason given was that there was "no estimate". In the absence of any explanation, AXA can only assume that the reason of "no estimate" means that the claimant or the insurer was unable to find a repair estimate which MSXI could rely upon to establish the PAC.

ultimately inspected). AXA needs to understand what this selection process was in order to understand whether the results of the inspection are representative or not.⁷

- 4.4 Moreover, AXA noted from reviewing the MSXI database, which contained a number of questions from the NAF survey, that in many aspects the distribution of responses to questions within the inspected cases was not representative of the distribution of answers to the same questions in the 650 cases from which the inspected cases were drawn. This in itself points to an unrepresentative and biased sampling methodology. AXA believes that the database available in the data room should be made available to insurers for more detailed analysis. The fact that the Commission has heavily redacted the MSXI database means that the database can be released without confidentiality concerns.
- 4.5 AXA therefore concludes that the sample size of 104 inspections is not only too small (particularly compared to the number of NAF repairs, of which AXA alone has conducted repairs for 17,883 vehicles each), but the process for narrowing down the sample size is unclear and potentially flawed. Accordingly, AXA submits that it is unsafe for the Commission to place so much weight on the MSXI Report as the basis for concluding that there is an adverse effect of competition arising out of low quality repairs.

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⁷ AXA notes that the MSXI tender document refers to a request from the Commission to have 100 cases inspected. The Commission's invitation to tender was not made available in the data room, however it appears that the intention was always to limit the size of the review to around 100 inspections. The MSXI tender document is not clear as to how those vehicles inspected were ultimately selected and AXA would like to know if the approach was that once approximately 100 "yes" responses were received, the process came to a stop. On a related note, AXA requests that the Commission provide its invitation to tender document to interested parties.



Competition Commission
Victoria House
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7th February 2014

Re: Competition Commission Market Investigation into Private Motor Insurance

To whom it may concern

I am responding on behalf of AXA Insurance Limited to the provisional findings and remedies reports issued by you on the 17th December 2013 following the extensive period of investigation and the large amount of information that was considered.

We have reviewed the provisional findings report and would support the Commission's provisional findings, particularly in relation to ToH3 market concentration. We have previously indicated that we support the remedies that have been proposed for the UK insurance market and we would also agree that the proposed remedies should reduce costs and improve customer service.

We will be reviewing our existing processes in the context of the proposed remedies in order to identify appropriate actions and solutions that will be beneficial to our customers.

Yours sincerely

Steven Jackson
Head of Compliance