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Private Motor Insurance market investigation
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Response to the Possible Remedies under Rule 11 (of the Competition Commission rules of procedure) in relation to the Private Motor Insurance Market Investigation

Submitted by



Email to: pmi@cc.gsi.gov.uk:

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PRIVATE MOTOR INSURANCE MARKET INVESTIGATION

Overview

1. The National Association of Bodyshops is the leading not-for-profit trade association representing the UK body repair sector
2. The accident repair market has suffered a significant reduction in the number of service providers operating within the sector over a prolonged period. The estimated number of individual shops now operating across the sector (including small one to two person operations to larger repair groups) is circa 2,500 outlets, down from c20,000 in 1972. A similar trend has appeared across the developed world
3. This reduction is a result of a number of contributing factors including efficiencies required by the insurance industry, a reduction in claims frequency and less overall demand that have consolidated these reductions within the sector. While the body repair industry has been exposed to the pressures of contraction, it has been necessary to redress the oversupply that has evolved as the market has matured
4. NAB has already supplied evidence to the Office of Fair Trading and would ask that the material already submitted be considered within this investigation
5. NAB has concerns that the industry may not be able to meet consumer needs in the future owing to unsustainable levels of return on investment
6. NAB calls for a sustainable supply chain that is able to address the future needs of consumers and therefore supports the Competition Commission during its investigation into the sector
7. Whilst acknowledging that the current scope of the CC investigation is restricted to the private car insurance market, NAB contends analysis of a separate motor insurance entity is fundamentally flawed (outlined in NAB's "*Response to the Statement of Issues relating to the Competition Commission Private Motor Insurance Market Investigation*")
8. NAB believes that the scope of the CC inquiry must be extended to consider the handling of Commercial, Fleet and Motorcycle Insurance claims costs (approximately 25% of the overall claims market) to avoid unintended consequences arising from the inquiry. Claims arising from the various market segments have a legally interconnected relationship through the subrogation process under ToH 1; they may, if treated separately, present unintended legal and commercial outcomes relating to either first or third party claims in any of the CC's proposed possible remedies
9. In considering possible remedies, NAB believes that the whole claims market must, because of the nature of the legal structure underpinning the current subrogation system, be considered and should therefore include **all** aspects of the motor insurance supply chain such as those services provided by the following (but not exhaustive) market related participants:
 - i) First party accident management companies
 - ii) Non-approved bodyshops
 - iii) Recovery operators/agents
 - iv) Glass, windscreen, tyre, exhaust and component suppliers
 - v) Salvage operators

- vi) Insurer owned bodyshops (VAT evasion as outlined in NAB's ("Response to the Annotated Issues Statement of the 5th of July & Working Papers relating to the Competition Commission Private Motor Insurance Market Investigation")
- vii) Solicitors

10. NAB responses are restricted to only those aspects of possible remedies where it feels able to provide clarity / comment

11. NAB has provided an Appendix with this response outlining our continuing concerns about aspects of CC's current investigations which, we believe, fail to address previously identified consumer detriment and which will, if left unresolved, continue to contribute to future consumer detriment and market abuse / dysfunction once this investigation has been completed.

21 [Page 4] Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What information should be provided to consumers?

NAB Response: Plain English, transparent, jargon free, and most important, honest guidance that clarifies consumers' rights following an accident including (from a body repair perspective):

- i) Explanation of insurance terminology eg Indemnity, subrogation, diminution, excess, betterment, treatment of VAT
- ii) Issues relating to use of intermediaries eg loss of rights in the event of failure by an intermediary
- iii) What to do in the event of an accident
- iv) The right to have their car repaired at a bodyshop of choice, without hindrance or additional financial hardship

(b) When is this information best provided to consumers—with annual insurance policies, at the first notification of loss, or at some other point? Should this information be available on insurers' websites?

NAB Response: Through insurance policies at inception and renewal, at the time of first notification of loss and through insurer, broker and PCW websites. Information should be available in consumer friendly formats eg FAQs and the use of pop-ups on websites to warn of consequences if consumers adjust policy price/service level parameters.

(c) Would it be more effective for consumers to be provided with a general statement of consumers' rights prepared and periodically updated by a body such as the Association of British Insurers or are there any examples of existing best practice in relation to information given to consumers by insurers?

NAB Response: Not the ABI. NAB suggests Consumers Association, Financial Conduct Authority, PCWs together with insurer, broker and body repairer websites are the most recognised outlets by consumers. We suggest that any wording should be subject to overview by the FCA or an Independent Adjudicator (See Independent Lead Body below*) and to rigorous follow up and review.

(d) Would this remedy give rise to distortions or have any other unintended consequences?

NAB Response: We believe that consumers buy mainly on price and will remain largely impervious to any terms and conditions or advice provided at point of sale.

(e) What circumvention risks would this remedy pose and how could these be addressed?

NAB Response: Some insurers already use methods to circumvent custom and practice relating to consumers' rights in order to "steer" policyholders towards required outcomes:

- i) Policy wording that requires consumers to use an approved repairer
- ii) Use of incentives (or disincentives) eg differential excesses to use an approved repairer, restrictive policy conditions relating to transfer of insurance cover for courtesy cars, delayed authorisation of repairs in non-approved repairers, insistence on using only PAS125 shops, consumers being asked to pay the difference between approved and non-approved terms when choosing a non-approved repairer
- iii) Misleading consumers with regards to the quality of repairs, repair guarantees and the provision of temporary replacement vehicles, should they wish to use a repairer of their own choosing
- iv) Providing too much (or too little) information at a time of distress and asking policyholder to agree to terms they may not understand
- v) Cash in lieu settlements that entrap consumers into accepting reduced cash payments thus saving insurers VAT that would occur if a repair had been undertaken

We suggest that any wording should be subject to overview by the FCA or an Independent Adjudicator (See Independent Lead Body below*) and to rigorous follow up and review.

(f) How would this remedy best be monitored, particularly in relation to a statement of rights at the first notification of loss?

NAB Response: We suggest that any wording and consumer complaints should be subject to overview by FCA or Independent Adjudicator (See Independent Lead Body below*).

(g) How much would it cost to implement this remedy?

NAB Response: We suggest that the remedy could be introduced without additional cost if implemented by the FCA or Independent Adjudicator (See Independent Lead Body below*).

(h) Is there any reason why this remedy should not be implemented through an enforcement order?

NAB Response: Because of the legal complexities of the subrogation system, we suggest that any remedies should be considered within the context of the current legal framework particularly in light of the recent *Coles v Hetherton* appeal verdict. We suggest that the enforcement order may be underpinned by the FCA or Independent Adjudicator (See Independent Lead Body below*).

(i) Is this remedy more likely to be effective in combination with other remedies than alone and, if so, which combinations of remedy options would be likely to be effective in addressing the AECs that we have provisionally found?

NAB Response: Yes. See Independent Lead Body below*.

(j) Would the additional measure set out in paragraph 20 be likely to be effective in enhancing consumers' understanding of their legal entitlements?

NAB Response: We suggest this measure would be an excellent starting point for consumer awareness.

[28] Page 6 Views are invited as to:

(a) Whether the possible remedies under ToH 1 are likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

NAB Response: NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under subrogated claims.

(b) Whether the possible remedies under ToH 1 should be implemented by the CC through an enforcement order or whether the CC should make recommendations to the Government (for example, the Ministry of Justice), regulators or other public bodies to implement the remedies.

NAB Response: As at [21h] we suggest that any proposed remedies should be considered within the context of the current legal framework particularly in light of the recent *Coles v Hetherington* appeal verdict.

[34] Page 7 Issues for comment 1A

(g) Would this remedy give rise to distortions or have any other unintended consequences?

NAB Response: Repairers have contractual obligations to courtesy car suppliers that can extend to 2 years or more. Any immediate change to the current model would have significant financial consequences for repairers including the displacement of non-productive staff.

We also have concerns that insurers may try to pass the financial burden of providing like-for-like replacement vehicles onto repairers through contract service level agreements (as currently with the cost of first party courtesy cars) without adequate remuneration.

NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

[43] Page 9 Issues for comment 1B

(b) To what extent might this remedy inconvenience non-fault claimants, for example if they have to wait for the at-fault insurer to make contact? How long should the fault insurer be given to contact the non-fault claimant?

NAB Response: This would have the potential to delay the claim/repair process and is likely to add costs and reduce service to the non-fault claimant. This suggested remedy also carries the risk that at-fault insurers would seek to offer cash-in-lieu settlements as a way of suppressing claim costs. This has the potential that non-fault claimant could be enticed into accepting cash and be left with a potentially unsafe damaged vehicle, and insufficient funds to have that vehicle repair safely. It could also place other road users at risk.

(f) Would this remedy give rise to distortions or have any other unintended consequences?

NAB Response: If extended to repairs, NAB suggests these proposals are tantamount to consumer steering and fly in the face of consumers having the right to choose their own repairer. The owner of a recently purchased new car may want to have it repaired by a manufacturer approved bodyshop. These proposed measures could either circumvent this choice or cause unnecessary friction or concern.

NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

(g) How might this remedy be circumvented? How could this circumvention be avoided?

NAB Response: Circumvention can be avoided by having an Independent Lead Body* to oversee all aspects of conduct within the sector.

[47] Page 11 *We are mindful that the OFT provisionally found that a number of provisions of the GTA may have had the effect of preventing, restricting or distorting competition but the case was closed in 2007 as it was not considered an administrative priority. Our current view is that the measures set out in paragraph 45(b) would not cause competition concerns because they propose that daily hire rates would be set by an independent body, rather than through collective agreement between motor insurance providers and credit hire organizations as under the GTA.*

NAB Response: NAB suggests that problems associated with the insurance industry's previous GTA included:

- i) The terms were not independently arrived at
- ii) They were not universally accepted/applied by the insurance industry
- iii) They were not universally accepted/applied by the Credit Hire/Repair sector
- iv) There appeared to be no provision for regular review
- v) Consumers were not part of the drafting process

We believe that any proposed measures of this nature need to be established and universally applied across the entire motor claims sector by an Independent Lead Body* .

[48] Page 10 Issues for comment 1C

(h) Would this remedy give rise to distortions or have any other unintended consequences?

NAB Response: NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

(i) To what extent is there a risk that this remedy could be circumvented by the evolution of new business models that are not subject to it? How could this risk be avoided?

NAB Response: We suggest the following risks at 48c apply to this proposed remedy:

- i) Delays in repair authorisation
- ii) Delays caused by parts/materials availability
- iii) Delays at times of peak demand (eg weather related repair volumes)
- iv) Delays in establishing fault
- v) Delays in dealing with total loss cases

[55] Page 13 Issues for comment 1D

55. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What would be the most effective way of implementing this remedy?

NAB Response: Through the establishment of an Independent Lead Body*

(b) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

NAB Response: NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market abuse and dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

Regarding Remedy 1D(a)

(c) How could repairers be prevented from inflating the wholesale prices they charge to non-fault insurers and passing excess profit to non-fault insurers through referral fees, discounts or other payments?

NAB Response: Through the establishment of an Independent Lead Body*

(d) Could this remedy be circumvented by insurers vertically integrating with repairers?

Regarding Remedy 1D(b)

NAB Response: Possibly, but hitherto the conduct between insurers has not been undertaken in a transparent, ethical and morally acceptable way. Furthermore, CMCs and first party accident management companies have operated outside codes of conduct and general terms of agreement established by ABI and hence any agreements have fallen into disrepair.

(e) Is it practicable to set standardized costs for all aspects of repairs in subrogated claims? If not, what are the potential problems?

NAB Response: Yes, but the terms and operational criteria/standards would need to set by an Independent Lead Body* to avoid competing commercial forces that operate within the car insurance sector and the conflicting market pressures and abuse operating outside the scope of this investigation. They should also be reviewed regularly to take account of changing market conditions.

The following potential issues exist:

- i) Bodyshop capability
- ii) Bodyshop scale
- iii) Variable bodyshop overhead costs
- iv) Mix, volume and damage severity of available repair work
- v) Geographic location of bodyshop
- vi) Logistics cost (distance travelled to support insurers' customer bases and service level agreements)
- vii) Non-productive support costs (variable costs of serving insurers' differing customer profiles/service level criteria)
- viii) Incomplete repair data and repair methods
- ix) Inflationary price pressures
- x) Changes in vehicle technology
- xi) Absence of a satisfactory repair standard applied across the entire industry
- xii) Variable standards in the supply of non-oe parts
- xiii) Because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process
- xiv) Confidence/trust in the standardized cost data provider
- xv) Potential distortion of competition between parts and materials suppliers if standardised prices are enforced

(f) What are appropriate benchmarks for inputs into the price control? To what extent are cost estimation systems helpful? What other indices would need to be used?

NAB Response: Cost estimation systems are merely calculators. The data and costs they use should be verified by an Independent Lead Body* (not by an insurer or vehicle manufacturer who have opposing commercial interests and whose databases are wholly incomplete and often deliver conflicting repair times and methods). Standardised data would provide a level playing from which computer systems providers could compete.

(g) What would be the costs of implementing this arrangement

NAB Response: See Independent Lead Body* below

(h) How would monitoring of this remedy work?

NAB Response: See Independent Lead Body* below

(i) What would be the most appropriate organization to review the inputs into the price control on a regular basis?

NAB Response: See Independent Lead Body* below

(j) What measures would be required to ensure that the price control arrangements would not have adverse consequences for the quality of repairs?

NAB Response: See Independent Lead Body* below

[57] Issues for comment 1E Page 14

57. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) Would either variant of this remedy give rise to distortions or have any other unintended consequences?

NAB Response: NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

NAB reiterates the concerns outlined in its “*Response to the Annotated Issues Statement of the 5th of July & Working Papers relating to the Competition Commission Private Motor Insurance Market Investigation*” relating to consumer detriment arising from the unregulated handling and subsequent sale and release of salvage back into the market.

NAB proposes this detriment can be addressed by determining and auditing standards relating to salvage disposal and the inspection / recertification of rebuilt vehicle write-offs. See Independent Lead Body* below

[64] Issues for comment 1G Page 16

64. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(d) Would this remedy give rise to distortions or have any other unintended consequences? In particular, would a prohibition on referral fees create a greater incentive for insurers to vertically integrate?

NAB Response: NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the

insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

(e) What circumvention risks would this remedy pose and how could these be mitigated? In particular, how could other monetary transfers (eg discounts) having the same effect as referral fees be prevented?

NAB Response: Circumvention can be avoided by having an Independent Lead Body* to oversee all aspects of conduct within the sector.

(f) How could this remedy best be monitored and what costs would be incurred in doing so?

See Independent Lead Body* below

[78] Issues for comment 2A Page 18

78. Views are invited on the effectiveness and proportionality of this remedy and, in particular, on the following:

(a) What costs would be involved in auditing the quality of repairs?

NAB Response: See Independent Lead Body* below

(b) How frequently should audits of repair quality be undertaken?

NAB Response: See Independent Lead Body* below

(c) Should audits of repair quality be undertaken by insurers and CMCs or an independent body? Is it necessary for the audits to be standardized and be performed by an independent body for the results to be comparable and credible? How would an independent body be funded?

NAB Response: See Independent Lead Body* below

NAB suggests that insurers and CMCs have hitherto failed to provide adequate levels of post repair audits and thus indemnity validation. They lack independence and are driven by their own commercial requirements. Many also lack the engineering capability and capacity to undertake the service.

(d) If the results of repair quality audits were to be published, who should collate the results? Should the results be categorized by repairer or insurer?

NAB Response: NAB suggests both should be publicised by an Independent Lead Body* (see below) to promote improved consumer confidence in the sector and competition between insurers, CMC's and repairers.

(e) If audits are carried out by insurers, how would consistent standards be achieved?

NAB Response: See Independent Lead Body* below.

Most insurance companies have downsized their engineering capacities and some of the smaller insurers have outsourced engineering to third party operators. To provide the same levels of auditing by all insurers would be costly to reintroduce and

would be inefficient as multiple operators use overlapping services provided by the same repair outlets.

(f) If this remedy were to be implemented through expanding the scope of PAS 125 and the scope of audits undertaken in relation to PAS 125, is it necessary for PAS 125 accreditation to be made mandatory for all repairers undertaking insurance-related work?

NAB Response: Most likely, otherwise some repairers would gain a commercial advantage through not having to carry out work to the industry standard. This in turn could lead to consumer detriment through repairers operating outside a regulated environment. However, NAB has real concern about the desirability of a commercial monopoly being considered as a part of any remedy (see Appendix – iii) Supplier monopolies – Page 15).

(g) Would this remedy give rise to distortions or have any other unintended consequences?

Yes; those repairers purchasing salvage for repair would need to be covered by the remedy to ensure repairs to all seriously damaged vehicles are covered.

Diminution claims may increase in the short term as a result of post repair audits.

NAB suggests that because of the legal complexities of the current subrogation system, addressing remedies in a disconnected manner will lead to further market dysfunction. We have argued throughout that the treatment of private motorists (consumers) out of context with other road users (also consumers of the insurance claims system) will bring about unintended behavioural consequences under the subrogated claims process.

(h) Whether this remedy is best made by the CC through an enforcement order or whether the CC should make recommendations to another party to implement the remedy, and if so who that party should be.

NAB Response: See Independent Lead Body* below.

(i) Whether this remedy is likely to be more effective in combination with other remedies than alone and, if so, what particular combinations of remedy options would be likely to be effective in addressing the AEC we have provisionally found.

NAB Response: See Independent Lead Body* below.

[81] Theory of Harm 3: Market concentration or horizontal effects Page 19

81. We have provisionally found that there is no AEC arising from market concentration or horizontal effects causing there to be too few providers in the relevant markets. Accordingly we have not considered remedies in relation to ToH 3.

NAB Response: There are fundamental dangers in cross-linking the establishment and delivery of data and standards through commercial monopolies as proposed within some of the possible remedies outlined above:

- i) Audatex has suffered several major systems failures in recent times which have caused major disruption and potential for consumer detriment through delayed repair authorisations
- ii) All current databases are incomplete, inconsistent and require numerous workarounds

- iii) Thatcham repair methods currently provide <50% model coverage – insurers use Thatcham as a check and balance against costs rather than providing a fully comprehensive data service
- iv) Repair methods produced by Thatcham do not automatically correlate with manufacturer and AZT data found in Audatex
- v) The reliance on BSi as a standard setter and monopoly auditor presents conflicted pricing and service delivery

NAB proposes that standards and data within the sector should be verified by a wholly independent organisation that cannot be conflicted by any of the stakeholders: See Independent Lead Body* below. We suggest that this body would lead to a narrowing of the conflicts between insurers and repairers that currently arise around safe repair processes and cost control through repair authorisation.

Conclusion

Throughout our various submissions, NAB has promoted the vision of a pan-industry adjudicator – a watchdog, (similar to that appointed for the supermarket sector) to address our specific market concerns, to oversee any outcomes of the CC investigation and to prevent future insurance market dysfunction.

Having considered the proposed remedies outlined above, we wholeheartedly believe that desired outcomes can be best delivered through the establishment of a pan-industry adjudicator or Independent Lead Body* as outlined below.

***Independent Lead Body**

NAB suggests consideration be given to an Independent Lead Body is necessary to uphold legal, ethical and moral behaviour in the sector and to avoid the need for unintended and potentially costly consequences arising from radical changes to current legislation.

NAB's vision is that such an Independent Lead Body would:

- i) Have a representative Board covering key interested stakeholders including consumer representation
- ii) Accredit participants involved in the Vehicle Insurance Claims Supply Chain process against well-developed standards that meet the ongoing needs of the chain and its consumers
- iii) Have a responsibility to take-up with third parties any issues that restrict the ability of the chain to execute duties or perform services on behalf of consumers
- iv) Maintain a high public profile to gain consumer awareness and confidence

The mission of the Independent Lead Body could be:

“The Independent Lead Body for the UK Motor Insurance Claims Supply Chain will strive to ensure consumers pay the lowest price for motor insurance while safeguarding indemnity.”

From the body repair sector perspective the mission could provide consumers with:

- i) A choice of high quality vehicle body repairers capable of repairing vehicles to a safe and warranted standard
- ii) Their chosen repairer having readily available access to technical information to ensure that vehicles can be repaired to a safe, quality assured standard
- iii) Their insurers and others involved in the Motor Insurance Claims process having confidence that the repairs they are funding will be carried out to a safe, quality assured standard

From the body repair perspective the role of the Independent Lead Body would be to:

- i) Improve consumer awareness in respect of their rights following an accident and in areas of vehicle safety and customer satisfaction following repairs
- ii) Provide conciliation and arbitration for consumer complaints
- iii) Provide public assurance through published audit results and analysis of consumer complaints data
- iv) Provide a repair warranty to underpin indemnity
- v) Establish a clear definition “Vehicle Roadworthiness” to provide a benchmark from which indemnity can be determined
- vi) Work with UK and EC authorities on competition, compliance and regulation matters
- vii) Define and review UK Body Repair Industry Standards including frequency of post repair inspections
- viii) Mandate and police UK Body Repair Industry Standards and post repair inspections
- ix) Set salvage disposal criteria and standards and supervise inspection / certification of re-built write-offs
- x) Review Supply Chain contracts and service level agreements to ensure they are being fairly and ethically applied
- xi) Act as conciliator and arbitrator for supply chain issues
- xii) Become an independent verifier of standardised repair methods, times and data
- xiii) Define repair equipment
- xiv) Verify training in the standards and competency testing
- xv) Review future technical materials and repair research

Outside the scope of body repair, there are many other benefits the Lead Body could offer particularly overseeing the remedies / outcomes of this investigation outlined throughout NAB’s submission.

The Independent Lead Body could be funded by

- i) Verifying repair methods, times and data
- ii) Verifying repair methodology for manufacturers on a per model basis
- iii) Administering and policing the industry standard
- iv) Verifying training and competency testing
- v) Inspection / recertification of rebuilt write-offs
- vi) Providing an indemnity warranty
- vii) Providing conciliation / arbitration service
- viii) Contributions from stakeholders

NAB would be most willing to collaborate proactively with all stakeholders to further scope the required operating and funding criteria to help refine the above proposals.

14 January 2014
Appendix

(incorporating NAB response to the CC's Provisional findings report and Appendices & Glossary)

NAB wishes to record its concern relating to the restricted parameters of the CC investigation and consequential impact on the private motor insurance market. We argue that the scope of the CC inquiry must be extended to consider the handling of Commercial, Fleet and Motorcycle Insurance claims costs (approximately 25% of the overall claims market) to avoid unintended consequences arising from the inquiry. Claims arising from the various motor insurance market and related segments have a legally interconnected relationship through the subrogation process under ToH 1; they may, if treated separately, present unintended legal and commercial outcomes relating to either first or third party claims in future CC remedies and therefore contribute towards consumer detriment in the private motor insurance sector.

NAB therefore suggests that, arising from this incongruity, the content of CC's "*Provisional findings report and Appendices & Glossary*" and "*Possible Remedies under Rule 11 of the Competition Commission Rules of Procedure*" is fundamentally flawed.

Further, it follows that the publication of possible remedies without first considering responses to *Provisional findings report and Appendices & Glossary* together with analysis of the *MSXi survey material* is wholly premature and suggests that outcomes are being considered by CC before stakeholders have had the opportunity to respond.

Finally NAB wishes to record those matters that we believe are unanswered or unresolved by this investigation.

This Appendix will also represent NAB's formal response to the CC's *Provisional findings report and Appendices & Glossary*.

Matters left unresolved by the “Provisional findings report and Appendices & Glossary”

While NAB has previously raised the following matters through its CC submissions, we believe they have been left largely unresolved by the “Provisional findings report and Appendices & Glossary”. We assume that this is either because the CC has questioned their relevance to the scope of the inquiry or because we failed to persuade CC of their contextual validity.

NAB believes it has a duty to repeat our concerns relating to how these matters, if left unaddressed, will continue to contribute to market abuse, distortion and therefore dysfunction, thus continuing to promote consumer detriment:

i) Damage Parameters – a clear definition of roadworthiness required

Comments from insurers and repairers following the publication of the MSXi post repair inspection survey have underscored NAB’s assertion that there is no definitive base-line from which to establish if; either a replacement vehicle is required, or vehicle reinstatement has been achieved ie the base from which consumer detriment can be measured.

NAB contends this loophole must first be addressed to help narrow opinion before remedies relating to the underprovision of repairs can be resolved.

ii) Incompleteness and Inconsistency of repair data

In pursuit of the requirement to improve detriment brought about by the underprovision of repairs, NAB makes the following observations:

NAB suggests manufacturer repair methods may differ substantially from Thatcham methods depending on the make, model and accident damage severity of a vehicle under repair. NAB awaits the results arising from the analysis of MSXi’s inspections to provide clarity on this point.

NAB contends the depth and scope of model data covered by Thatcham is incomplete and that Thatcham is not currently resourced to provide comprehensive make and model coverage. In our view, the gap in data supply will only widen as vehicles become more technically complex and makes, models and variants proliferate.

iii) Supplier monopolies

Throughout the “Provisional findings report and Appendices & Glossary” and Notice of Possible Remedies under Rule 11 of the Competition Commission Rules of Procedure reference has been made to the following organisations:

- a) Audatex
- b) Thatcham
- c) BSi

NAB contends these organisations have been largely appointed by the insurance industry as monopoly agents. The reliance on one client can result in intentional and unintentional bias due to the commercial pressures to conform to that client’s interests. We submit that, as unchallenged monopolies, these organisations have become contributors to friction, dysfunctional behaviour and unrestrained cost within the sector

To underline our assertions, NAB asks CC to consider the following:

- a) Why are repair times and methods data incomplete and conflicting?
- b) Why do repair times for identical vehicle model platforms within different but related car manufacturer brands differ substantially (eg VW, SEAT, Skoda)?
- c) Why do insurers choose to specify vehicle manufacturers' repair times over Thatcham repair times, but often favour Thatcham repair methods over manufacturers' repair methods?
- d) How do Thatcham methods correlate with vehicle manufacturers' repair times and vice versa?
- e) Why do all paint manufacturers increase their prices beyond inflation and at the same time as each other?
- f) Why has the stigma over the use of non-oe parts remained unresolved?
- g) Why has the industry's repair specification failed to deliver repair quality?
- h) Why has the industry's repair specification not been adopted by all insurers?

We suggest that if the above insurer-backed monopolies are to be considered by CC as a part of any remedy, their output, pricing and conduct must be held to account by an independent body otherwise market dysfunction and consumer detriment will continue unabated.

iv) Issues relating to concentration of supply chain

NAB suggests that CC has dismissed too lightly the part played by insurers and CMCs in current supply chain concentration. We feel that such interference adds cost and friction to the repair process while stifling innovation.

v) Exaggerated or fraudulent claims made by consumers

NAB suggests CC has taken no account of the part consumers play in inflating insurance claims. This we believe to be a significant contributor to prices all consumers pay for insurance whether as a result of exaggerated injury claims or asking for previous damage to be considered as part of an insurance claim.

NAB understands that some aspects of consumer fraud are being addressed through other channels, but we feel this investigation provides an opportunity to address these matters inclusively as part of proposed remedies.

vi) Avoidance of VAT within insurer owned bodyshops

NAB contests CC has failed to take into consideration the avoidance of paying VAT by insurer owned bodyshops in providing financial detriment to all consumers (whether or not they are motorists).

Certain insurers are exploiting a VAT tax loophole which not only impacts on NAB members' ability to be competitive, but also impacts upon other insurers whose lack of scale prevents them from operating their own workshops.

vii) Cross subsidy of first and third party claims

NAB is not aware that CC has undertaken a thorough investigation into the part played by CMCs / accident management companies. NAB is concerned that these companies appear to facilitate the cross-subsidy of first party repair costs through third party repair costs. NAB is also concerned that the role of intermediaries such as Sherwood Compliance in this process, has not been fully investigated.

viii) Cash in lieu of repairs

NAB has seen no evidence that suggests CC has investigated cash in lieu settlements.

ix) Perceived diminution in vehicle value

While diminution has been touched upon as part of the MSXi investigation, NAB believes the CC investigation has remained silent on this subject and therefore offered no remedy to consumers for loss in vehicle value following repairs.

x) Loss of consumer rights under the policyholders protection legislation

NAB suggests CC has failed to take account of the shortfall in policyholder protection (policyholder protection legislation) when consumers are introduced to CMCs / accident management companies by insurers.

xi) Repair Warranties

NAB contends that CC has accepted, without apparent validation, the promises made to consumers under the proliferation of warranties promoted by insurers and CMCs. NAB is concerned that these warranties are mis-sold and that the benefit to consumers and protection offered may not be as comprehensive as consumers and the CC have been led to believe

xii) Unfair practices to effect consumer steerage

NAB has previously outlined what it considers are unfair practices by which insurers and CMCs “steer” consumer behaviour at the time of insurance purchase and at FNOL, notably:

- a) Policy wording that requires consumers to use an approved repairer
- b) Use of incentives (or disincentives) eg differential excesses to use an approved repairer, restrictive policy conditions relating to transfer of insurance cover for courtesy cars, delayed authorisation of repairs in non-approved repairers, insistence on using only PAS125 shops, consumers being asked to pay the difference between approved and non-approved terms when choosing a non-approved repairer
- c) Misleading consumers about repair quality, repair guarantees and the provision of temporary replacement vehicles, should they wish to use a repairer of their own choice
- d) Providing too much/too little information at a time of distress and asking consumers to agree to terms they may not understand

NAB suggests CC has not fully embraced the potential friction and consumer detriment arising from this behaviour.

xiii) Total losses

NAB suggests that its evidence and concerns about consumer detriment arising from total loss procedures has been overlooked by CC in favour of more simplistic commercially-based possible remedies. NAB asserts that the higher prices currently being paid for salvage represent a wholly distorted salvage market that encourages corrupt and criminal behaviour which is, in itself, detrimental to all consumers.

xiv) Approved repairer models

NAB accepts that CC has recognised, but has not fully embraced as part of its possible remedies, our evidence highlighting the part played by approved repairer commercial terms and service level agreements in the underprovision of repairs.

Further, NAB recognises that CC wishes to initiate downward price pressure on third party repair costs.

NAB cautions that should any corrections to third party repair costs be introduced without corresponding re-alignment of first party repair costs, then the consumer risk identified within our previous assertion ...

“there is significant risk to consumers if the repair sector does not have sufficient revenue to reinvest in training, skills and equipment, to meet the advancing needs of modern vehicle repair”

...will be fully realised.

14 January 2014