



Private Motor Insurance Market Investigation

Response to Provisional Findings

Royal & Sun Alliance Insurance Plc

Chapters

- A. Executive Summary
- B. Theory of Harm 2: Possible underprovision of service to those involved in accidents
- C. Other Provisional Findings

Confidential Annex

- 1. *'Comments on MSXI report and inspection data'*

A. **Executive Summary**

- A.1 Royal & Sun Alliance Insurance Plc ("RSA") welcomes the Competition Commission's ("CC") work on the private motor insurance ("PMI") market investigation to date and we look forward to working with the CC in the next phase of the investigation with a view to developing lasting and comprehensive market solutions in consultation with both the Financial Conduct Authority ("FCA") and customers.
- A.2 RSA broadly supports the CC's Provisional Findings ("PFs"). We agree with the CC's continued focus on TOH1 and the issues surrounding credit hire and repair and we consider these are the key issues for the PMI market and ultimately for customers.
- A.3 RSA has advocated the need for market reform from the outset to address those aspects of the market that have not been working well for customers.
- A.4 As we have reiterated throughout this investigation, RSA would like to see the following outcomes arising from the market investigation to the ultimate benefit of customers:
- (i) Protection of the NAF customer's right to full rectification;
 - (ii) Maintenance and enhancement of the customer experience, including the speed of claim, and reduction in the scope for disputes;
 - (iii) Closer alignment of the incentives of the party controlling costs (i.e. the procurer of services) with the party ultimately responsible for paying for those services (i.e. the AF insurer); and
 - (iv) A reduction in overall costs, whilst protecting and strengthening incentives on insurers to operate as efficiently as possible, to ensure that savings can be passed through to customers in the form of lower premiums.
- A.5 The main focus of RSA's overall response at this stage in the investigation is therefore on the remedies proposed by the CC in its 'Notice of Possible Remedies' ("Remedies Notice"). We have submitted our response to that Notice to the CC separately.
- A.6 As regards the PFs themselves, the principal focus of our response is on TOH2, where we have significant concerns both around the CC's provisional findings on this theory of harm and on the related AEC, as well as on the evidence that the CC has relied on to reach its provisional conclusions.

TOH2

- A.7 Our response to TOH2 is contained in Chapter B below. This chapter demonstrates that the CC has found no evidence of sub-standard repair quality or corner-cutting, or of insurers being incentivised to reduce quality. As RSA's own repair practices and lifetime repair guarantees evidence, customer service is one of the key differentiators in a highly competitive market and no insurer can afford to be seen to offer sub-standard service or repair quality. Hence, as the CC partially recognises, reputational effects are highly significant.
- A.8 Chapter B also demonstrates not only that the CC's customer satisfaction evidence contradicts the MSXI report, which is the only evidence relied on by the CC to substantiate its finding of an AEC under TOH2, but that there are a number of serious concerns with the MSXI report itself. These include the sample selection process and the inspection methodology and are such that we do not consider there to be any basis for the CC to rely on the report as evidence of an AEC in respect of the underprovision of repairs. In addition,

as we have submitted in our response to the Remedies Notice, the CC's proposed remedy to this theory of harm risks increasing costs, which will therefore result in higher premiums.

- A.9 Accordingly, RSA strongly opposes the provisional finding of an AEC in relation to the quality of repair and submits that the CC should dismiss TOH2 in its entirety as a theory of harm when it makes its Final Report.

Other provisional findings

- A.10 Our comments on the remainder of the PFs (including in relation to TOH1, TOH3, TOH4 and TOH5) are consolidated together in Chapter C below.
- A.11 As regards TOH1, the CC's findings broadly reflect the submissions made by RSA and the industry throughout the investigation.
- A.12 We disagree with some elements of the way in which the CC has presented its provisional findings in respect of TOH1, with our primary concern relating to the 'leakage' that arises where NAF margins are captured by non-insurer third parties (this being the source of the £150-200 million consumer detriment the CC estimates).
- A.13 That said, we consider that the CC's focus should now be on developing a comprehensive package of those remedies suggested by the CC to address TOH1. As set out in our response to the Remedies Notice, we are broadly comfortable that a number of the CC's proposed remedies are likely, if appropriately revised, to address the issues under TOH1.
- A.14 Finally, RSA agrees there is no AEC under TOH3 and we also broadly agree with the CC's findings on TOH4 and TOH5, where we have commented further in our response to the Remedies Notice.

B. TOH2: Possible underprovision of service to those involved in accidents

- B.1 The CC provisionally concludes that there is an AEC in relation to a combination of two features of PMI:
- (a) Insurers and CMCs do not effectively monitor the quality of repairs (with insurers, claims controllers and repairers being insufficiently incentivised to ensure that claimants get the quality of repair service to which they are entitled); and
 - (b) There are significant limitations to a claimant's ability to assess the quality of car repairs.
- B.2 RSA strongly opposes the provisional finding of an AEC in relation to the quality of repair.
- B.3 We note that the CC's initial investigation found no evidence of systematic underprovision of repairs¹. However, the CC subsequently commissioned MSXI to carry out an independent assessment of repair quality to help the CC investigate this further. The MSXI report is therefore the only evidence relied on by the CC to substantiate its finding of an AEC under TOH2.
- B.4 We have a number of serious concerns regarding the MSXI report, including the sample selection process and the inspection methodology such that we do not consider there to be any basis for the CC to rely on the report as evidence of an AEC in respect of the underprovision of repairs.
- B.5 We note at the outset that the CC itself accepts that the sample size from which the MSXI Report is drawn is "*small and not representative*"². In addition, as the CC notes, "*it would not be appropriate to take the MSXI inspections to be a representative sample of non-fault repairs as a whole*"³. However, these serious short-comings, whilst recognised, do not appear to have been sufficiently taken into consideration by the CC in the PFs.
- B.6 Moreover, we have a number of other serious concerns with the CC's provisional findings on TOH2.

No evidence of sub-standard repair quality or corner-cutting

- B.7 First, we reject any assertions made in the PFs that insurer-managed repairs are sub-standard or that corners are cut. In particular, we strongly disagree with the submissions made by repairers⁴ that the repair quality of insurer-managed repairs was often poor.
- B.8 RSA continues to believe that there is no evidence of sub-standard repair quality or of any systematic 'underprovision' of repair services. For its own part, RSA ensures that all its approved network repairers carry out repairs to a high standard, in respect both of repairs to its own customers' vehicles and those of third parties where RSA is the AF insurer and has captured the repair element of the NAF claim. For insurers to do otherwise would risk negative reputation effects, as the CC itself recognises⁵. However, the CC appears later to brush over these negative effects when concluding at paragraph 7.55 that insurers do not have the necessary incentive to ensure that claimants get the quality of service to which

¹ We agree with this finding – see below. We also agree that repair quality does not differ significantly depending on who handled the claim, as the CC's survey evidence demonstrates. In addition, we agree with the CC's conclusion that there is no evidence of systematic underprovision for TRVs and write-offs.

² CC's Provisional Findings (December 2013), paragraph 7.38.

³ *Ibid*, paragraph 7.32.

⁴ *Ibid*, paragraphs 7.23 *et seq*.

⁵ *Ibid*, paragraph 7.13.

they are entitled. We disagree - customer service is one of the key differentiators in a highly competitive market and is crucial to retaining customers. No insurer can afford to be seen to offer sub-standard service or repair quality. As a result, RSA considers that reputational effects are strong and operate as a powerful incentive on insurers to offer all customers the level of service to which they are entitled.

- B.9 Indeed, RSA is sufficiently confident in the quality of repairs conducted at any of its approved network repairers that all repairs and/or replacements, including paint, bodywork and parts carry a lifetime guarantee against poor workmanship or faulty manufacture of materials⁶.

No evidence of insurers being incentivised to reduce quality

- B.10 Second, we reject the inference the CC draws that insurers are incentivised to keep their costs as low as possible which could lead to 'corner cutting' in the repairs they approve⁷.
- B.11 The CC's assertion that insurers are not sufficiently incentivised to provide a high quality of repair service is not supported by market evidence which shows a high degree of competition in the industry and customer switching. This is reflected in the CC not finding any AEC in relation to TOH3 (see also paragraph B.8 above).
- B.12 The CC found that most insurer audits of repairs focussed on controlling costs, rather than on ensuring a high quality of repairs, with a focus on whether a repair was acceptable rather than on whether the repair met the legal entitlement to return the vehicle to its pre-accident condition⁸.
- B.13 RSA notes that all insurers take significant steps to safeguard the quality of repairs by using appropriate checks and quality monitoring processes for their own-managed repairs. RSA, for example, takes significant steps to ensure that repairs carried out within our repair network are carried out to the highest standard. All of RSA's authorised repairers are either PAS125 accredited or are working towards that standard and authorised repairers are required to gain PAS125 accreditation status in order to renew their contracts with RSAAR⁹.

Customer satisfaction evidence contradicts MSXI report

- B.14 Third, there are clear contradictions between the evidence received from consumers and additional evidence of customer satisfaction, on the one hand, and the findings of the MSXI report on the other.
- B.15 As the CC recognises, evidence from consumers who responded to the CC's survey did not in itself suggest that insurers generally failed to provide NAF claimants with the quality of service to which they were legally entitled – in fact this evidence demonstrated the opposite. Furthermore, other evidence relating to consumers' experience of repairs, including the GIMRA survey and data from repairers and insurers themselves, also showed a very high level of customer satisfaction with insurer-managed repairs¹⁰.
- B.16 We do not accept that this evidence can be dismissed summarily as the CC appears to do in paragraphs 7.20-7.21 of the PFs.

⁶ The Guarantee covers the cost of rectifying any work necessary to correct body and paint defects which may arise as the result of defective workmanship or materials.

⁷ CC's Provisional Findings (December 2013), paragraph 7.23 and paragraphs 7.12 *et seq.*

⁸ *Ibid*, paragraph 7.27 and footnote 11.

⁹ Please see RSA's response to Question 13 of the CC's Motor Vehicle Hire and Repair Questions for Insurers (May 2013).

¹⁰ CC's Provisional Findings (December 2013), paragraphs 7.17-7.19.

Detailed comments on the MSXI report

- B.17 Fourth, RSA does not believe that the repair inspections presented in the MSXI report provide a sound evidential basis for the CC's provisional findings.
- B.18 It should be noted at the outset that there is a discrepancy between the MSXI inspections that the CC has attributed to repairs managed by RSA and the MSXI report¹¹. RSA cannot account for this discrepancy based on the information provided by the CC.
- B.19 Consequently, it is not clear which of the repairs that the CC identifies as being managed by RSA were actually included within the MSXI report, or how those repairs were selected for inclusion. Coupled with the range of factual errors discussed below, this discrepancy casts doubt on the reliability and accuracy of the work undertaken by MSXI and the CC in respect of the NAF repair inspection process.
- B.20 RSA's ability to use the CC data room to review the evidential basis for the MSXI report and findings is limited by the unexplained discrepancies between the results presented by MSXI and the data provided by the CC in the data room. Nonetheless, based on its review of the materials contained in the data room, RSA believes that the findings of the MSXI report are vitiated by the following factors:
- (i) The process by which the CC identified the 360 repairs for potential inclusion in the MSXI inspection process is highly likely to have produced an unrepresentative sample, biased towards consumers that have received substandard repairs.

The CC provided MSXI with contact details for 360 policyholders, surveyed by IFF, that had agreed to be contacted to arrange a vehicle inspection. It is reasonable to believe that those policyholders who were unhappy with the quality of their vehicle repair would be more inclined to make their vehicles available for inspection than those who were satisfied with the repair received.

The CC notes this criticism without comment in its PFs¹². In RSA's view, it is not acceptable for the CC to ignore such a serious methodological flaw in the sample selection process, particularly as the CC's and OFT's jointly produced good practice guidance on the design and presentation of consumer survey evidence specifically states that:

"Careful consideration should be given to avoiding sampling bias or non-response bias that leads to an unplanned excessive participation in the survey of a type of consumer ... with a systematically different view"¹³.

Although this guidance was designed to help interested parties in a merger inquiry to submit consumer survey evidence, it is clear that both the CC and OFT will endeavour also to follow the same guidance¹⁴. There is no reason to consider that customer surveys commissioned by the competition authorities in market investigations would be subject to different rules.

¹¹ Please see further Section 3 of Confidential Annex 1: '*Comments on MSXI report and inspection data*'.

¹² CC's Provisional Findings (December 2013), Annex 7.4, paragraph 4.

¹³ OFT 1230/CC2com1, paragraph 3.10.

¹⁴ *Ibid*, paragraph 1.15.

- (ii) The materials contained in the data room provide very little information on how MSXI went about narrowing down the sample of 360 repairs provided to it by the CC¹⁵.

The bullet point list of factors that MSXI intended to consider, set out in MSXI's tender response document, are very broad and general. As a result, it has not been possible for RSA to determine whether MSXI in fact obtained a representative sample of repairs managed by insurers. Given the vital importance of sample selection to the design of any reliable survey, this is a significant omission.

Further, the CC/OFT guidance on consumer surveys states that a reliable survey should:

- *"set out clearly the population of interest*
- *draw upon existing research evidence to demonstrate the characteristics of consumers with regard to which a sample should be representative*
- *document how the sample matches the population with regard to those characteristics¹⁶."*

This guidance also stipulates that:

"If the behaviours and attitudes of interest in the population are expected to vary systematically with certain characteristics, then the sample selected should have broadly the same composition by these characteristics as does the population¹⁷."

The MSXI tender document contained in the data room indicates that MSXI intended to undertake two types of filtering: first, to identify 100 vehicles that it felt would represent the average range of repairs seen in the industry; and second to identify vehicles for which it would be best able to assess the quality of repairs. There was no explanation given as to the methodology for selecting the 100 'average range of repairs'.

Moreover, the suitability of MSXI's second filter is questionable. In order to produce a representative sample, a survey sample should, as stated in the CC/OFT's survey guidance, reflect the population being surveyed, not the ability of the surveying party to make observations. This second filter may explain the unusual geographic distribution of inspections undertaken by MSXI. The MSXI report shows that 20% of inspections related to repairs undertaken in Wales (which accounts for around 5% of the UK population), while Greater London (around 13% of the UK population) accounted for only 4% of MSXI's sample and the West Midlands (9% of the UK population) was not represented at all¹⁸.

¹⁵ For example, we note that MSXI made contact in Stage 1 with 95 owners out of the 360, completing inspections on 77 cars. In Stage 2, the database was only 90, with contact made with 51 owners and inspections completed on only 27 cars. This gives a total number of inspections of only 104 cars. The precise basis for the filtering is not clear from the published MSXI report or from the information contained in the data room.

¹⁶ OFT 1230/CC2com1, paragraph 2.8.

¹⁷ *Ibid*, paragraph 2.7.

¹⁸ MSXI Report, page 14. Population statistics based on ONS data at NUTS 1 region level.

Again, the issue of sample selection by reference to MSXI's ability to assess repair quality has previously been brought to the attention of the CC, which notes the point without comment in the PFs¹⁹.

- (iii) Unsurprisingly, given the above, there are indications that the sample of repairs inspected by MSXI is not representative.

Most seriously, the sample that the CC considers to have been managed by RSA appears to contain an unrepresentatively high proportion of repairs at non-recommended garages (i.e. repairs which are not managed by RSA but are instead carried out in garages where RSA is unable to verify, monitor or influence repair quality).

As many as 45% of the sample of repairs attributed to RSA that were reviewed by MSXI appear to have been undertaken by a non-recommended garage at the request of the customer. By way of comparison, over 90% of repairs managed by RSA are handled through approved network repairers²⁰.

Repairs undertaken at independent garages at the customer's request (i.e. outside the insurer approved network) cannot be considered a source of evidence on the incentives of repairers under the existing legal framework for subrogation. In other words, the data room inspection materials attributed to RSA indicate that the vehicles inspected are not representative of the NAF repair process of the industry generally and are also not reflective of repairs performed to the standard mandated by insurers.

- (iv) RSA fundamentally disagrees with the inspection standards applied by MSXI.

A review of the hardcopy inspection reports provided in the CC data room suggests that the inspections were highly subjective, with no evidence of any attempt by MSXI to standardise (or even establish) repair standards.

The standard adopted by MSXI's inspectors was unduly high; in the absence of any meaningful evidence of vehicles' actual PAC, inspectors appear to have assessed vehicles against the standard of original manufacture. This is clearly an unrealistic standard for the assessment of used vehicles (particularly those that have covered significant mileage) - it is not generally possible to repair a vehicle that has suffered non-trivial accident damage sufficiently that there is no evidence that a repair has taken place.

Moreover, this is also a far higher standard than would permit recovery in law²¹. Under the current legal standard, the NAF driver's losses (in terms of the diminution in the pre-accident value of the vehicle) would be assessed as the reasonable costs of repair to return the vehicle to its pre-accident condition (assessed on the basis of its pre-accident value). Repair to any higher standard could therefore be regarded as unreasonable and the costs of doing so would almost certainly not be recoverable from the AF insurer.

For these reasons, RSA submits that MSXI should have assessed vehicles against the criterion of whether the repair affected the vehicle's resale value. Based on the hard copy inspection reports reviewed by RSA, the majority of vehicles repaired within RSA's repair network and found by MSXI not to be in PAC did not exhibit

¹⁹ CC's Provisional Findings (December 2013), Annex 7.4, paragraph 5.

²⁰ RSA's Response to CC's Questions for RSA Repair Subsidiary – RSAAR (April 2013), paragraph 1.7.

²¹ *Coles and Others v Hetherton and Others* [2013] EWCA Civ 1704.

repair deficiencies that would have been identified in a dealership pre-sale inspection or would have affected resale value.

- (v) Finally, a detailed review of the repairs within the MSXI inspection sample attributed by the CC to RSA has identified a number of factual errors.

These include a failure to identify cash-in-lieu settlements; instances in which RSA strongly suspects that policyholders have made their own choice of repairer not being identified as such; and cases of repair management being allocated to the wrong insurer.

Errors within the inspection reports with regard to the cases attributed to RSA by the CC are further elaborated on, with examples, in the attached Annex to this response²². These cast serious doubts on the reliability of the MSXI inspection survey more generally, as well as on the MSXI and CC sample selection process.

- B.21 In summary, the MSXI Report patently does not provide a robust evidential basis for the CC's provisional finding on TOH2. While noting the CC's expression of caution regarding the findings of this study²³, we would go further and strongly assert that it cannot be used to draw any reliable conclusions and must not stand as the only evidence of an AEC.

²² Confidential Annex 1: '*Comments on MSXI report and inspection data*'.

²³ CC's Provisional Findings (December 2013), paragraphs 7.40 and 7.42.

C. Other Provisional Findings

Theory of Harm 1: Separation of cost liability and cost control

- C.1 On TOH1, the CC provisionally concludes that there is an AEC in relation to a combination of two features of PMI:
- (a) Separation – that the insurer liable for the NAF driver's claim, i.e. the insurer to the AF driver, is often not the party controlling the costs; and
 - (b) Various practices and conduct of the other parties managing such NAF drivers' claims which (i) were focused on earning a rent from control of claims rather than competing on the merits and (ii) gave rise to an inefficient supply chain involving excessive frictional costs and transactional costs.
- C.2 The CC's findings on TOH1 broadly reflect what RSA and the industry have submitted throughout the investigation. The CC's focus should therefore now be on developing a comprehensive package of remedies from those it has already suggested to address TOH1. In the interests of completeness, we set out below some comments on the CC's detailed commentary in respect of TOH1 in the PFs.
- C.3 As we have submitted previously²⁴, our primary concern is not with the existence of NAF margins per se, but with 'leakage' that arises where those margins are captured by non-insurers that do not underwrite PMI policies. This is the source of the consumer detriment identified in RSA's previous submissions²⁵, and, as explained below, corresponds to the £150-200 million consumer detriment estimated by the CC.
- C.4 The CC has found that consumers are harmed by the separation of cost liability and cost control in respect of subrogated claims under the current framework. The CC establishes this AEC via two distinct (but complementary) mechanisms:
- (i) First, the CC argues that the cost of reasonable margins on subrogated claims is fully passed on to consumers via premiums, but that the benefit of these margins is only partially passed on to consumers via premiums. This first TOH1 AEC mechanism derives entirely from a theoretical economic model (set out at Annex 6.4 to the PFs) and the CC does not attempt to quantify its impact.

RSA does not accept this mechanism. As set out in our previous submissions²⁶, RSA's view is that insurers' costs and revenues relating to NAF margins are both passed through to consumers such that, absent non-insurer intervention, there is no net impact on consumers. The CC's finding would suggest that reasonable margins on subrogated claims generate consumer detriment in themselves, irrespective of whether they are generated by insurers or non-insurers.

Based on its provisional finding that the costs of NAF overcosting are fully passed through to PMI premiums while the associated revenues are passed through less

²⁴ See, for example, paragraphs 1.15 – 1.20 of RSA's Response to the CC's Issues Statement (January 2013); paragraphs B.4(iii) and B.5 of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013) and Annex I to that response, RBB Economics Paper, '*PMI Market Investigation: economic analysis of mark-ups on subrogated NAF claims*' (September 2013), section 4.

²⁵ See, for example, Section 6 of RSA's Overview Submission to the OFT (February 2012) and Section B of RSA's Response to the CC's Annotated Issues Statement (September 2013).

²⁶ See, for example, paragraphs 1.4 and 1.15 of RSA's Response to the CC's Issues Statement (February 2013) and paragraphs A.12 and B.3 of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013).

than fully, the CC concludes that overcosting on subrogated NAF claims will have a negative net impact on consumers. However, the CC does not seek to quantify the value of the consumer harm resulting from differences in pass-through rates or the extent to which there are any.

Significantly, RSA notes that this first AEC mechanism rests entirely upon a single assumption within the CC's theoretical model: namely that an insurer's ability to generate a reasonable mark-up on subrogated claims is related to its 'strength' in the market for selling PMI policies to consumers²⁷.

The CC makes no attempt to investigate the validity of this critical assumption, however, and offers no evidence in support of its assertion. Since the CC's first mechanism for the TOH1 AEC rests entirely upon this assumption, obliquely referred to in three sentences within the 710 pages of PFs and annexes, RSA finds it remarkable that the CC has not sought to provide any evidential support for this point.

There is no reason to believe that a firm's ability/willingness to generate reasonable mark-ups in its subrogation process, which depends upon its business model and interpretation of the legal framework for subrogation, is related to the strength of its position in the PMI market. RSA therefore submits that the CC's provisional finding that NAF mark-ups give rise to a per se AEC, irrespective of whether generated by insurers or non-insurers, is entirely unsound.

- (ii) Second, the CC quantifies the value of subrogated claim mark-ups paid out by insurers and those received by insurers, and finds that insurers' payments to CMCs/CHCs in respect of NAF claims exceed payments to insurers in respect of those claims by c.£150-200 million per annum. This quantification is completely distinct from the CC's first AEC mechanism.

The CC attributes the harm quantified under this second TOH1 AEC mechanism to 'frictional costs' arising from administrative relationships between insurers and CMCs/CHCs. The CC's finding that payments out of the insurance industry exceed payments back into the industry by £150-200 million per annum is attributed to "*inefficiencies associated with separation*", with "*the bulk*" of the lost revenues relating to TRVs²⁸.

While not acknowledged as such by the CC, this second AEC mechanism is conceptually similar to the 'leakage' argument set out in previous RSA submissions²⁹. RSA has argued that consumers face higher PMI premiums when non-insurers are able to interpose themselves in the NAF claim process and capture the available NAF margin; that the value of such harm is around £105 - £190 million per annum³⁰; and that the majority of that harm arises in respect of TRV provision. While the CC finds that non-insurers are not able to extract super-normal profits from their intervention in the NAF claims process³¹, the additional costs of the

²⁷ CC's Provisional Findings (December 2013), Annex 6.4, paragraphs 32(b) and 33.

²⁸ *Ibid*, paragraph 6.82.

²⁹ See, for example, Section 6 of RSA's Overview Submission to the OFT (February 2012), paragraphs 1.15 – 1.20 of RSA's Response to the CC's Issues Statement (January 2013); paragraphs B.4- B.5 of RSA's Response to the CC's Annotated Issues Statement and Working Papers (September 2013) and Annex I to that response, RBB Economics Paper, '*PMI Market Investigation: economic analysis of mark-ups on subrogated NAF claims*', section 4.

³⁰ Please see paragraph A.9 of RSA's response to the CC's Annotated Issues Statement and Working Papers (September 2013).

³¹ CC's Provisional Findings (December 2013), paragraph 6.17.

CMC/CHC process identified by the CC nonetheless constitute leakage outside the industry that serves to raise PMI premiums.

- C.5 While RSA broadly agrees with the CC's finding on the consumer detriment arising under TOH1, RSA considers that the issue identified by the CC does not reflect an inherent failure in the legal framework for subrogation or an industry-wide problem requiring regulatory intervention.
- C.6 Rather, this consumer detriment identified by the CC reflects inefficiency in some industry participants' business models where CMCs/CHCs become involved in NAF claims. RSA's model for NAF repairs does not allow the involvement of third parties to extract or erode value from the insurance industry. The RSAAR model, the validity of which was recently confirmed by the Court of Appeal³², ensures that NAF margins remain within the industry.
- C.7 Arguably, the NAF claim arrangements observed over recent years (the period on which the CC's market investigation has focused) represent a transitional stage as the industry awaited the outcome of the *Coles v Hetherton*³³ litigation.
- C.8 We note that the Court of Appeal handed down its judgment in this case on 20 December 2013³⁴, dismissing the appeal in its entirety. As the CC will be aware, this was a test case which sought to clarify the basis upon which insurers can recover damages under the principle of subrogation from the AF insurer.
- C.9 The Court of Appeal upheld the Commercial Court's earlier finding that the correct approach was that insurers could recover the 'reasonable' cost of repair to the policyholder, even if this was higher than the actual costs paid to the repairing garage. This is because the basis for the claim in respect of repairs is the 'diminution in value' of the vehicle at the time of the accident and 'reasonable costs' are a way of ascertaining that diminution in value.

Theory of Harm 3: Market concentration or horizontal effects

- C.10 On TOH3, the CC provisionally finds no AEC.
- C.11 RSA has consistently stressed that the UK PMI market is highly competitive. RSA is wholly in agreement that there is no AEC under this theory of harm.

Theories of Harm 4 and 5: Add-ons and MFNs in PCW and insurer contracts

- C.12 On TOH4, the CC provisionally concludes that there is an AEC in relation to a combination of two features of PMI:
- (a) Information asymmetries between motor insurers and consumers in relation to the sale of add-ons; and
 - (b) The point of sale advantage held by motor insurers when selling add-ons.
- C.13 On TOH5, the CC provisionally concludes that there is an AEC in relation to wide MFN clauses in contracts between motor insurer providers and PCWs, and practices having equivalent effect where a PCW takes advantage of single-homing to prevent a provider of motor insurance and PCWs from competing on price.

³² *Coles and Others v Hetherton and Others* [2013] EWCA Civ 1704.

³³ *Ibid.*

³⁴ *Ibid.* We note that the CC makes a number of references to the earlier High Court judgment – see CC's Provisional Findings (December 2013), paragraphs 43, 3.11, 6.6, 6.9, 6.23, 6.87, 6.89, 6.92 and 10.8.

C.14 RSA broadly agrees with the CC's findings on TOH4 and TOH5. Any specific comments we have on these two theories of harm are contained in our response to the Remedies Notice³⁵.



Neville Howe

General Counsel, UK & Western Europe

³⁵ See RSA's response to the CC's Remedies Notice (January 2014), page 18.