Project Manager

Competition and Markets Authority

Victoria House

Southampton Row

LONDON

WC1B 4AD

4th August 2014

Dear Sirs,

Competition & Markets Authority – Private Motor Insurance Inquiry

Further Consultation on Remedy 1C issued 28th July 2014

NFU Mutual Insurance Society Ltd Response

About NFU Mutual Insurance Society Ltd

The National Farmers Union Mutual Insurance Society Limited (NFU Mutual) is a composite insurer providing insurance, pension and investment products. We are a member of the Association of British Insurers (ABI).

We have a gross premium income for General Insurance in excess of £1.2billion. We have an award winning range of products and services.

NFU Mutual is a mutual company, founded in 1910. We do not have any shareholders and we do not therefore pay dividends. Our policyholders are members of the company. Members, as policyholders, are able to participate in the profitability of NFU Mutual through the 'Mutual Bonus'. This involves providing premium reduction discounts to loyal members at annual renewal of their policies.

It is very important to us that our members' rights are protected. We have therefore sought to respond to the Competition & Markets Authority (CMA) Provisional Decision on Remedies and this further consultation in a manner that balances the need to keep insurance premiums at acceptable levels with the individual rights of our members should they be involved in an accident.

Executive Summary

There is a clear AEC and a pressing need for a solution that removes costs from the claims process to addresses the AEC for the benefit of the consumer. It is essential that a viable remedy is found.

Whilst recognising the complexity of the issues facing the CMA it is disappointing that you are abandoning the remedy under 1C as proposed and inviting comment on an alternative.

It is in the best interests of both the consumer and the industry for there to be an effective cap on the costs of provision of temporary replacement vehicles and we support your continuing endeavours to achieve that end.

The alternative approach could be an effective remedy provided that the final rates implemented by the CMA are as close to the insurer direct rates as possible. The higher the level of the rates cap, the less effective the cost control becomes. There is an inherent risk that any cap might be ignored by the courts when considering the appropriate level of damages in tort as set out in the judgements in Bee-v-Jensen and Coles-v-Hetherton. If the cap is materially less than the open market day rate then we envisage a secondary industry to be established to assist non fault motorists to reclaim the gap with the potential for years of costly satellite litigation and negation of the basis for the alternative remedy.

There is no realistic prospect of the insurance industry and credit hire providers adopting the measures you have considered under 1C and incorporating them into an enhanced GTA. The GTA is a voluntary agreement with no force in law and many market participants would continue to sit outside it rendering it of limited effectiveness. In the absence of any imposed remedy backed by the force of law it is more likely that the credit hire industry will not negotiate in any meaningful way with insurers. There is little likelihood that the insurance industry will wish to create a cottage industry of bilateral arrangements. Those elements of the market that will continue to 'earn a rent' at the consumer's expense will find bilaterals of little or no interest. The 'self regulation' option has less chance of succeeding against a backdrop of the CMA effectively conceding it has no power to enforce a solution.

In the absence of effective cost control measures we envisage claims costs rising rather than falling. The enforcement of remedy A is likely to result in more consumers being drawn towards credit hire options. Support for remedy A was as a package of measures that addressed cost control. Without those associated measures remedy A creates a clear risk of increasing costs rather than reducing them as well as introducing further administrative costs to the industry in implementation and maintenance. If you are to abandon 1C altogether then we strongly urge you to consider abandoning remedy A at the same time. If it is to remain then it must include reference to the costs implications to the individual consumer, and the wider consumer interest, of their various options under their policy cover and in tort.

There is no doubt in our minds that the absence of viable cost control measures in the credit hire market will lead to an increase in credit hire costs and the value of the AEC. There is evidence that some private motor insurers are already beginning to address Coles-v-Hetherton and the absence of any CMA remedy by realigning their repair models to adopt differential pricing for fault and non fault and 'earn a rent' under subrogation.

If the CMA decides that it does not have the powers to apply an effective enforcement that will address the AEC, it should make a strong recommendation to government to introduce legislation that enables the CMA, or other regulator, to address the consumer detriment.

NFU Mutual operates with models within which the concept of 'earning a rent' on non-fault cases has no place whatsoever. We know of a number of other insurers with similar models and approaches. The accidental damage market has already started shifting towards a differential pricing model. If the CMA is unable to act to cap the costs of providing temporary replacement vehicles, we, and others who follow our approach, will have no option but to consider whether we can continue to operate outside a market where 'earning a rent' has become standard practise. Such an approach can only add to costs, for both vehicle damage and provision of temporary replacement vehicles, beyond the levels currently assumed in your calculations.

We are disadvantaged by the current operation of the market and will be additionally disadvantaged if there are no cost control measures following the conclusion of your investigation. Our members would be placed in the position of bearing a disproportionate share of the AEC in terms of premiums and to protect our members' interests we will be obliged to contemplate changing our approach.

Alternative Implementation Proposal

At paragraphs 14 to 21 you set out the alternative proposal and the following comments adopt your paragraph numbers.

14. We believe that the approach you have set out, ie transferring the cap to the level of charges between the claimant and the hire provider which in turn then caps the tortious claim, may be vulnerable to challenge on the basis that it is outside your powers, ie as with the original remedy 1C, it could be argued that it amounts to an attempt to regulate the tortious rights of the claimant by a back door route.

17. (a) We repeat the comments in our initial responses to both the Notice of possible remedies and Provisional remedies. In short the remedy must apply to all, in all jurisdictions, at all times with no exceptions. Any other outcome would not command the support of the consumer or the industry and would lead to inequitable outcomes between consumers in identical situations and distortions within the industry.

17. (b) We believe this to be another potentially significant vulnerability in the proposal. There is no comment on where the level of the cap would be set and your comments strongly imply that you

envisage a clear gap between the level of any cap and the actual value of a loss of use claim in tort. If it were possible for any party to make that gap 'earn a rent' then the remedy fails to manage cost. Clearly the amount of the gap is value that accrues to the claimant and could not be retained by a credit hire company. There appears to us to be no mechanism for preventing the pursuit of that gap claim as a separate head of damage. We believe that the pursuit of such a gap claim must be banned assuming that the proposal survives in its present form.

Further the credit hire industry responses present strong challenges to the rates evidence. To achieve any consumer benefit the rate cap needs to be set at a level which is much nearer to insurer direct hire rates than either the retail rate (Basic Hire Rate) or the current GTA rates. It is arguable that to adopt a BHR rate would leave it open to the credit hire providers to add charges that would return the true rate to the level of the GTA or even higher in the future.

To achieve the impact on the AEC you would, by definition, be increasing the size and value of that gap making it very likely that it would be subject to early challenge.

18. We repeat that the remedy should apply to any entity involved in the procurement chain. We believe that there is no place for any distinction between credit hire and other forms of provision and that the remedy should therefore also apply to insurers.

19. It is clear that this is a potential circumvention mechanism that should be subjected to the protective measures prohibiting inducement in any form by any entity in the temporary vehicle procurement chain.

21. (a) The remedy has the potential to be effective subject to surviving challenges around rate and application by the courts as part of the process for calculating losses in tort.

21. (b) The distortion between the non fault claimant and the retail customer might be reduced by the imposition of a cap but depends on how those providing a temporary replacement vehicle adjust their business models to reflect the outcome of your investigation. The number of vehicle providers who participate in both the direct retail and credit hire markets is small. There is no suggestion that we are aware of that retail rates would increase if credit hire rates were to be capped. The comments we made in our earlier submission in relation to distortion under the previous 1C still stand.

21. (c) It needs to be more widely defined to include all the potential entities that could be involved in the procurement of a temporary replacement vehicle as well as the direct provider of the vehicle. It would also be helpful for there to be a list of typical example entities to make it abundantly clear that it applies to all without exception. PMI insurers, brokers, solicitors, agents, motor manufacturers, repairers, salvage agents, CMC, legal expenses insurers, CHO, etc Not to include all entities, and especially insurers, risks criticism from the hire industry that the application is disproportionate.

21. (d) The potential for distortion is clear and would be exploited by those whose business model is predicated on taking advantage of any opportunity to 'earn a rent'. Such potential must be extinguished by any remedy. This could be achieved in part through the inclusion of insurers in the list of entities to

which this remedy must apply and could be enhanced by further work towards industry wide acceptance of best practice and/or protocols as suggested under the Fundamental Principles heading of our earlier correspondence.

21. (e) As set out above in our comments under 14. we do not see the courts necessarily accepting this as a factor that they need to take into account in assessing the loss of use claim in tort. If the courts take that view then, whatever the level of the cap, the remedy fails. The position of the judiciary can neither be guaranteed nor predicted with any certainty placing the contractual cap at the mercy of the courts. Clearly a dual rate cap approach would add complication but not beyond the ability of the courts to manage if they choose to accept the premise of the remedy as proposed.

21. (f) We see it making little difference in the short term to the level of provision of temporary replacement vehicles by non-fault insurers. That may change in future if there were to be a sea change in motor insurer attitudes to entering into market-wide agreements. If such agreements were to be based on non-fault insurers providing appropriate mobility solutions for their non fault customers, which the fault insurer then pays for, either directly or by way of subrogation, then there would be a general benefit to the consumer.

21. (g) The unintended consequences are much as for the original proposed 1C remedy.

Other aspects of Remedy 1C

22. We think it unlikely that the implementation of the remedy could lead to many more non-fault claimants being left without access to the provision of a temporary replacement vehicle.

Yours faithfully

Richard Birch FCII

Chartered Insurer

Technical Claims Manager