

Decision of the Competition and Markets Authority

Competition Act 1998

**Price comparison website:
use of most favoured nation clauses**

Case 50505

19 November 2020

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INTRODUCTION

- 1.1 The CMA finds that BGL (being the undertaking comprising the persons listed at paragraph 1.3 below) has infringed the prohibition imposed by section 2(1) of the Competition Act 1998 (the ‘Act’) (the ‘Chapter I prohibition’) and Article 101 of the Treaty on the Functioning of the European Union (‘Article 101 TFEU’). The CMA’s findings, and the reasons for those findings, are set out in this decision (of which Annexes A to S form part) (the ‘Decision’).
- 1.2 The CMA finds that, between 1 December 2015 and 1 December 2017 (the ‘Relevant Period’), BGL, through its operation of the price comparison website (‘PCW’) comparethemarket.com (‘CTM’), was a party to agreements with 32 home insurers that contained clauses, known as wide most favoured nation clauses (‘CTM’s wide MFNs’), which restricted the prices the home insurers were permitted to quote on PCWs. By preventing the relevant home insurers from offering lower prices on rival PCWs than on CTM, the agreements had the appreciable effect of:
- (a) preventing, restricting or distorting competition between PCWs, and
 - (b) preventing, restricting or distorting competition between home insurers competing on PCWs
- and thereby infringed the Chapter I prohibition and Article 101 TFEU (‘the Infringements’).
- 1.3 This Decision is addressed to BGL (Holdings) Limited, BGL Group Limited, BISL Limited and Compare the Market Limited as the legal entities constituting the undertaking referred to as ‘BGL’, to which the CMA has attributed joint and several liability for the Infringements. The CMA has applied rule 10(2) of the CMA Rules¹ in this case and has addressed the Decision only to BGL, and not to the home insurers that were party to the agreements with BGL containing wide MFNs.²
- 1.4 The CMA has imposed a financial penalty of £17,910,062 on BGL for the Infringements.

¹ CMA Rules

² Under Rule 10(2) of the CMA Rules, where the CMA considers that an agreement infringes the Chapter I prohibition or the prohibition in Article 101(1) TFEU, the CMA may address its infringement decision to fewer than all the persons who are or were party to that agreement.

1. SUMMARY OF THE INFRINGEMENTS

- 1.5 This Decision concerns contractual obligations, known as wide MFNs, imposed by CTM in its agreements with 32 home insurers.³ CTM's wide MFNs contractually prevented these 32 home insurers from quoting lower prices on CTM's rival PCWs than on CTM.
- 1.6 The CMA has found that CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting competition in breach of the Chapter I prohibition and Article 101 TFEU in the Relevant Period by:
- (a) Reducing price competition between PCWs (see further paragraphs 1.53 to 1.58).
 - (b) Restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power (see further paragraph 1.56).
 - (c) Reducing price competition between home insurers competing on PCWs (see further paragraphs 1.66 to 1.70).
- 1.7 CTM's network of wide MFNs meant that it was protected, as a matter of contract, from being undercut by the prices quoted by the 32 insurers on rival PCWs. This was in circumstances where the price quoted by insurers on PCWs was important both to competition between PCWs and to competition between insurers competing on PCWs.
- 1.8 The 32 insurers covered by CTM's network of wide MFNs accounted for approximately 40% of sales of home insurance made through PCWs in the Relevant Period and included some of the largest insurers. CTM had market power during the Relevant Period; its market share was over 50%, well above its nearest rivals such as MoneySuperMarket, Confused and GoCompare, and a significant proportion of consumers could only be accessed by insurers by listing on CTM.
- 1.9 CTM's wide MFNs were integral to CTM's competitive strategy, were effective in achieving its objectives and CTM behaved accordingly. CTM used wide MFNs to strengthen its competitive position by securing the lowest prices whilst also maintaining growth in the commission fees that it received from insurers. Internal documents record that CTM believed that, without wide MFNs, there would have been greater competition between

³ In this Decision, the terms insurers and providers are used interchangeably and refer to providers of home insurance products on PCWs including insurance underwriters, brokers and retail partners such as banks and utility companies.

PCWs, putting greater pressure on commission fees and reducing CTM's profits.

- 1.10 CTM made clear to the insurers the importance it placed on compliance with its wide MFNs and systematically monitored and enforced those obligations in order to secure such compliance throughout the Relevant Period. This included questioning insurers on their pricing and requiring compliance action to be taken by insurers. For example, on four of the five occasions on which relevant insurers agreed promotional deals with CTM's rivals (whereby they temporarily offered lower prices on another PCW), CTM enforced its wide MFNs. CTM also refused to remove its wide MFNs from its contracts despite numerous requests from insurers.
- 1.11 Given in particular CTM's monitoring and enforcement, and its importance as a trading partner, insurers had strong incentives to comply with CTM's wide MFNs and most insurers adopted pricing strategies that were consistent with their contractual obligations. Insurers considered they were at risk of being delisted by CTM, or at least at risk of a deterioration in their commercial relationship with CTM, if they offered lower prices on other PCWs in breach of CTM's wide MFN. Insurers variously described CTM's wide MFNs as *'ingrained'* in their pricing, *'part of the landscape'*, a *'showstopper'* or *'blocker'* to promotional deals with rival PCWs and *'tantamount to removing competition between PCWs in respect of price'*.
- 1.12 The CMA has found that CTM's network of wide MFNs had the following effects:
 - (a) The 32 insurers were contractually unable to quote lower prices on rival PCWs. If the relevant insurers reduced their prices on a rival PCW below the prices offered on CTM, they had to fund an equivalent price reduction on CTM. This reduced the insurers' incentives to lower their prices. Accordingly, several insurers refused to enter into promotional deals with CTM's rivals or adjusted their prices following enforcement action by CTM. By contrast, absent CTM's network of wide MFNs, the 32 insurers would have had a greater ability and increased incentives to compete on price by quoting different prices across PCWs. For example, they would have been able to reflect another PCW's lower commission fees in their prices on that PCW and to freely target price reductions on CTM's rival PCWs.
 - (b) CTM's rival PCWs were prevented from gaining a competitive price advantage over CTM for quotes from the 32 insurers (unless an insurer was willing to take the risk of breaching its wide MFN). CTM's rivals

therefore had reduced incentives to lower their commission fees or otherwise seek to incentivise the 32 insurers to offer them lower prices.

- (c) CTM relied primarily on its network of wide MFNs to ensure it had the lowest prices from the 32 insurers, rather than competing on the merits with other PCWs for such prices. CTM typically benefitted from any reduction in retail prices achieved by its rivals, without the need to lower its own commission fees or provide some other benefit to the insurers. In addition, CTM was able to increase its commission fees without the insurers covered by its wide MFNs being able to fully reflect that increase in the prices they quoted on CTM compared to the prices they quoted on other PCWs. By contrast, for example, absent CTM's network of wide MFNs, CTM would have had increased incentives to compete more strongly against rival PCWs to secure lower quotes from the 32 insurers, including by lowering its commission fees.
 - (d) CTM's rival PCWs were restricted in their ability to expand because they were unable to secure a price advantage over CTM from the 32 insurers. CTM was therefore able to use its network of wide MFNs to maintain or strengthen its market power.
 - (e) Because the 32 insurers competed less strongly on price, other providers were subject to less competitive pressure and therefore competition on retail prices between all insurers competing on PCWs was reduced.
- 1.13 This is likely to have resulted in less differential pricing across PCWs by insurers together with higher commission fees and consequently higher retail prices than would have been the case absent CTM's network of wide MFNs, to the detriment of consumers using PCWs to purchase their home insurance.
- 1.14 BGL has not adduced evidence that there were any pro-competitive efficiencies of its network of wide MFNs which would meet the conditions for exemption under section 9 of the Act or Article 101(3) TFEU. Nor has BGL submitted that its wide MFNs were objectively necessary such that they should not be considered to have restricted competition.
- 1.15 Accordingly, the CMA has found that CTM's wide MFNs in the agreements with each of the 32 insurers infringed the Chapter I prohibition and Article 101 TFEU.

- 1.16 The CMA has also found that BGL committed the Infringements intentionally or, at least, negligently. The CMA has imposed a penalty of £17,910,062 to reflect the seriousness of the Infringements and the need for deterrence.
- 1.17 In the remainder of this Section, the CMA summarises in more detail the CMA's findings on: (a) the market context in which CTM's network of wide MFNs operated; (b) how CTM's network of wide MFNs operated in practice; and (c) how that network appreciably restricted competition in the Relevant Period.⁴

1.A. Context in which CTM's network of wide MFNs operated

1.A.I. Price comparison services

- 1.18 PCWs are digital platforms that introduce consumers to providers of various products and provide comparison services to consumers ('PCW Services').⁵ They aggregate and display a range of quotes from providers of the products that are available to each consumer according to each consumer's search criteria and then redirect the consumer to the selected product provider's website to purchase the product. This Decision concerns PCW Services for home insurance products.
- 1.19 PCWs do not sell or resell home insurance products and do not set the prices quoted on their platforms for such products. The products available and the prices quoted are set by the insurers and the contract for home insurance is made between the insurer and the consumer, after the consumer has clicked through from the PCW to the insurer's website.
- 1.20 PCWs obtain their revenues from commission fees they charge to home insurers. The commission fee is usually paid on every consumer who clicks through from the PCW to the insurer's website and goes on to purchase home insurance from the insurer. The commission fee is generally reviewed annually.
- 1.21 In the UK, there are four main PCWs for home insurance products, CTM, MoneySuperMarket, GoCompare, and Confused ('the Big Four PCWs'). The Big Four PCWs together accounted for over 90% of home insurance

⁴ BGL disputes that its agreements with the 32 insurers infringed the Chapter I prohibition or Article 101 TFEU. BGL has made extensive representations in support of its position throughout the course of the present investigation. These are addressed in full in this Decision including, given their nature and extent, in several Annexes to this Decision. This summary does not summarise or address directly those representations.

⁵ CTM and other PCWs that enable consumers to compare financial service products, such as home insurance, are authorised and regulated by the Financial Conduct Authority.

products sold through PCWs in 2016 and 2017. CTM was by far the largest PCW for home insurance sales in 2016 and 2017, almost twice the size of its nearest rival (MoneySuperMarket) and accounted for over 50% of sales of home insurance made through PCWs. CTM had a strong market position throughout the Relevant Period such that it had market power.⁶

1.A.II. How consumers use PCWs to compare home insurance products

- 1.22 Consumers use PCWs for the convenience and time saved in searching and comparing insurance products and, crucially, prices across a large number of insurers. In the Relevant Period, more than 80% of consumers who clicked through from a PCW to an insurer's website to purchase home insurance did not use the insurers' own websites when searching for and comparing offers online.
- 1.23 Price is an important factor for consumers in comparing and purchasing home insurance products on PCWs. A consumer will typically be presented with 40-50 quotes for home insurance on each of the Big Four PCWs, ranked by price. However, in 2016, more than 70% of consumers who purchased home insurance through a PCW clicked through to and purchased from one of the top five cheapest insurers in their search results.

1.A.III. How insurers use PCWs to attract new business⁷

- 1.24 PCWs are the most important channel through which home insurers can attract those consumers who are either buying new home insurance or who want to change their existing insurer ('new business'). Sales through PCWs accounted for more than 60% of all new business sales (on and offline) in 2017.
- 1.25 Most insurers list on all four of the Big Four PCWs. Being delisted by any of the Big Four PCWs, in particular by CTM, would have a significant impact on the ability of most home insurers to acquire new business.
- 1.26 Given the importance of price to consumers when buying home insurance online, prices quoted by insurers on PCWs, which affect an insurer's relative ranking in a consumer's search results, are a particularly important driver of sales made through PCWs. Home insurers monitor how they are ranked on PCWs relative to their competitors and, where possible, seek to respond to a

⁶ Section 5 of this Decision sets out the CMA's analysis of the relevant market, namely the provision of PCW services for home insurance products in the UK. It also assesses the structure of the market including CTM's strong market position.

⁷ Sections 7.A and 7.B of this Decision sets out the CMA's assessment of the nature of competition between insurers competing on PCWs including the competitive strategies of the insurers competing on PCWs.

fall in search rankings by adjusting their pricing to make their quotes more competitive.

- 1.27 Some insurers prefer to price the same across the Big Four PCWs, often reflecting a strategy of pricing uniformly across both the PCW channel and their own online direct channels. Other insurers quote different prices across the Big Four PCWs. Such differential pricing enables insurers to flex their pricing between PCWs to reflect, for example, differences in performance (for example, customer conversion rates) or cost differences (for example, in commission fees) between PCWs. It also enables them to target price reductions on one or more of the Big Four PCWs, for example to increase sales or respond to competitive pressure from other insurers on that PCW.
- 1.28 Promotional deals with PCWs are a form of differential pricing and were an important way for insurers to compete on price during the Relevant Period and continue to be. Such deals can take various forms but typically involve an insurer agreeing to lower the prices it quotes on the PCW (or provide additional benefits, such as free legal cover or cashback) for a specific period in return for the PCW lowering its commission fee or agreeing to feature the insurer in a promotional campaign funded by the PCW during that period. The CMA's analysis of 59 promotional deals agreed in the Relevant Period and subsequently, together with other evidence, shows that these deals led to lower retail prices for consumers and an improvement in an insurer's rankings on the relevant PCW.⁸

1.A.IV. How PCWs compete to attract consumers⁹

- 1.29 A PCW's revenue depends on attracting as many consumers as possible to its platform and then matching those consumers with a broad range of competitively priced insurance products that meet each individual consumer's search requirements. The consumer can then easily go on to click through and purchase successfully from their chosen insurer, generating commission fee revenue for the PCW.
- 1.30 PCWs invest heavily in marketing and advertising to attract consumers to their platforms, as well as investing in the ease of use of their platform and the quality of price comparison available to consumers.
- 1.31 In addition, as price is an important factor for consumers when choosing which home insurance product to purchase through a PCW, PCWs'

⁸ The CMA's analysis of the role of promotional deals in reducing prices for consumers and on their effect on insurer's rankings is set out in Section 7.E of this Decision.

⁹ Section 7.C of this Decision sets out the CMA's assessment of the nature of competition between PCWs including the competitive strategies in the Relevant Period of the Big Four PCWs.

competitive strategies in the Relevant Period and since have focused on incentivising insurers to quote prices that are at least as low as those on their rivals' platforms. PCWs have particularly focused on incentivising those insurers whose products are ranked in the top five positions in a consumer's search results.

- 1.32 For two of CTM's three main rivals (MoneySuperMarket and Confused) promotional deals were in the Relevant Period, and continue to be, an important part of their competitive strategies. Promotional deals have therefore been an important aspect of competition between both insurers competing on PCWs but also between PCWs themselves.

1.B. CTM's wide MFN clauses

1.B.I. *The nature of CTM's wide MFNs*¹⁰

- 1.33 CTM's wide MFN clauses contractually prevented the 32 home insurers from quoting prices on CTM's rival PCWs that were lower than the prices they quoted on CTM. This meant that CTM was contractually protected from being undercut by the prices quoted on rival PCWs by insurers accounting for approximately 40% of sales made through PCWs in the Relevant Period. Failure to comply with CTM's wide MFN clauses was a breach of contract which could lead to enforcement action, including the possibility of being delisted by CTM from its platform.¹¹
- 1.34 CTM's wide MFNs therefore impacted directly on an important dimension of competition between PCWs and between insurers competing on PCWs. Under CTM's wide MFNs the pricing freedom of the 32 insurers was restricted as those insurers were unable to quote different prices across PCWs, including by doing promotional deals, if such pricing undercut the prices they quoted on CTM. In addition, CTM's wide MFNs prevented rival PCWs from gaining a competitive price advantage over CTM by obtaining lower quotes from the relevant insurers than those quoted on CTM, unless the relevant insurer was willing to breach its contractual obligations.

¹⁰ Section 8.A of this Decision assesses the nature of CTM's network of wide MFNs and its role in achieving CTM's competitive strategy.

¹¹ The insurers subject to CTM's wide MFN were also under a contractual obligation not to quote on their website prices that were lower than those quoted on CTM. This type of restriction is referred to in this Decision as a 'narrow MFN'. All insurers on CTM's panel have narrow MFNs in their contracts with CTM, and narrow MFNs are also extensively used by the other Big Four PCWs.

1.B.II. History of wide MFNs

- 1.35 CTM introduced wide MFNs into its contracts across all insurance products from at least 2008, shortly after Confused and GoCompare began to do so in 2006 and 2007. MoneySuperMarket has never used wide MFNs.
- 1.36 In the years prior to and during the Relevant Period, wide MFN clauses were identified several times by competition authorities in the UK and the EU as raising serious competition concerns. For example, the German competition authority found in 2013 that wide MFNs used by online travel agent HRS were illegal under Article 101 TFEU. Several other EU member states, including the UK, similarly initiated actions against wide MFNs used by online travel agents and in e-commerce, resulting in removal and, in some cases, legislation banning the use of such clauses. In addition, following a two-year investigation (the 'PMI Market Investigation'), the CMA banned the use of wide MFNs in private motor insurance ('PMI') in the UK in April 2015 (the 'PMI Order 2015'). In September 2016, the CMA launched its investigation into digital comparison tools ('the DCTs Market Study') highlighting wide MFNs as a type of practice that had raised competition concerns. The present investigation arose from the DCTs Market Study.
- 1.37 In response to these interventions, Confused and GoCompare removed wide MFNs from all their contracts across all insurance products in early 2013 and 2015 respectively. In contrast, in home insurance, CTM continued to maintain, enforce and introduce wide MFNs into new contracts throughout the Relevant Period. At the end of November 2017, two months after the launch of the present investigation, CTM ceased to enforce its wide MFNs across all remaining insurance products, including in home insurance.

1.B.III. The role of CTM's wide MFNs in its competitive strategy

- 1.38 CTM's wide MFNs were integral to its competitive strategy. CTM's commercial objective in imposing and continuing to maintain wide MFNs was the same across all insurance products, namely to strengthen its competitive position by ensuring it was not undercut by rival PCWs whilst maintaining growth in commission fees.
- 1.39 By contractually preventing the relevant insurers from quoting lower prices on its rival PCWs, CTM avoided having to invest in incentivising the relevant insurers to quote the lowest prices on its platform, for example by lowering its commission fees. It was also able to increase commission fees without being subject to the same constraints as its rivals. In particular, CTM could rely on its wide MFNs to prevent the 32 insurers from offering lower prices

on its rival PCWs or setting a higher price on CTM to reflect its higher commission fees.

- 1.40 The integral role CTM's wide MFNs played in its competitive strategy in the Relevant Period is reflected in CTM's decision to maintain its wide MFNs in home insurance after the PMI Order 2015, its systematic monitoring and enforcement of its wide MFNs, and its refusal to remove its wide MFNs from its contracts despite numerous requests from insurers.
- 1.41 Their role is also apparent from CTM's internal documents and submissions to the CMA in previous investigations. For example, internal documents considering the CMA's proposed ban on wide MFNs in the PMI Market Investigation variously record that the removal would lead to '*attempts [by insurers] to drive competition among PCWs*' and '*increased resistance to [commission fee] increases*'. CTM also recorded that it had chosen to rely on its wide MFNs and not discount its commission fees to secure the lowest prices because it did not want to start a '*discounting war*' on commission fees, reducing its profitability.

1.B.IV. Compliance by insurers with CTM's wide MFNs¹²

- 1.42 The 32 insurers had strong incentives to comply with their wide MFN obligations, not least given the importance of CTM as a source of new business and the fact that the wide MFNs were binding as matter of contract. Consistent with this, the CMA has found that there was widespread compliance by the relevant insurers with their contractual obligations.
- 1.43 Most insurers adopted pricing strategies that were consistent with their wide MFN obligations. These included factoring their wide MFN obligations into their retail pricing strategies and taking specific actions (such as adjusting their prices or rejecting promotional deal offers from rival PCWs) to comply with those obligations.
- 1.44 In addition, CTM took a range of actions in the Relevant Period to secure widespread compliance with its wide MFNs:
- (a) CTM systematically monitored insurers' prices on rival PCWs. Where it identified quotes on rival PCWs that it did not regard as compliant with its wide MFNs, CTM would make repeated and urgent requests for explanations from the insurer about the reasons for price differences and for the issue to be resolved by the insurer. BGL confirmed that

¹² Section 8.B assesses the incentives to comply with CTM's wide MFNs and compliance by insurers with their wide MFN obligations including the actions CTM took to secure widespread compliance with its wide MFNs.

'very often as a result of these informal contacts the [pricing] problem is resolved'.

- (b) Where an insurer did not resolve the pricing '*problem*', CTM escalated the issue, referring to the insurer's obligations under its wide MFN and the consequences of pricing lower on its rival PCWs. CTM took such action against both large and relatively small insurers in terms of sales through PCWs and through CTM.
- (c) CTM took enforcement action in the Relevant Period on four out of five occasions when an insurer with a wide MFN agreed a promotional deal with a rival PCW which led to a lower price on the rival platform. In the case of one large insurer, such enforcement action included requiring the insurer to entirely self-fund three price discounts with CTM in compensation for entering into a promotional deal with a rival PCW. As a result, that insurer did not enter into any further promotional deals with CTM's rivals during the Relevant Period. Another insurer removed a price increase on CTM, which it had introduced to reflect CTM's higher commission fees, and a further large insurer cut short a promotional deal with a rival PCW and adjusted its prices on CTM to ensure compliance following enforcement action.

1.C. The anti-competitive effects of CTM's network of wide MFNs

1.C.I. How the CMA has assessed the effects of CTM's network of wide MFNs

- 1.45 The CMA has compared the competitive situation in the presence of CTM's network of wide MFNs with the competitive situation that would have been likely to have prevailed in its absence. The latter is referred to as the '*counterfactual*'. The key difference between competition during the Relevant Period and in the counterfactual is that, in the counterfactual, no home insurers would have been contractually prevented from quoting lower prices on CTM's rival PCWs than on CTM.
- 1.46 The CMA summarises below: (a) how CTM's network of wide MFNs constrained the pricing behaviour of the 32 insurers; (b) how this constraint on those insurers' pricing behaviour appreciably reduced price competition between PCWs; and (c) how this constraint also appreciably reduced price competition between insurers competing on PCWs.

1.C.II. *How the relevant insurers' pricing was constrained by CTM's wide MFNs*¹³

- 1.47 Insurers use differential pricing strategies, including promotional deals, to compete on price. Most insurers were willing and, to the extent that they were able to, did engage in some form of differential pricing across PCWs including promotional deals in the Relevant Period. The majority of insurers that engaged in promotional deals viewed them as successful in increasing sales and revenues, which is supported by the CMA's own analysis of promotional deals.
- 1.48 By contractually preventing the 32 insurers from offering lower prices on CTM's rival PCWs, CTM's wide MFNs restricted their ability and reduced their incentives to compete on price by pursuing strategies that differentiated their prices across PCWs.
- 1.49 In particular, the relevant insurers could not reflect lower commission fees, higher conversion rates or other performance factors of CTM's rivals by quoting lower retail prices on those PCWs compared to the price quoted on CTM. Similarly, if such an insurer wanted to conclude a promotional deal which lowered its prices on a rival PCW below those quoted on CTM, it would have to self-fund an equivalent price decrease on CTM to comply with its wide MFN obligations. This lowered its incentive to conclude such promotional deals with CTM's rivals. As explained in paragraphs 1.53 to 1.60 below, it also lowered the incentives on CTM's rivals to enter into such deals, as they would not gain a competitive price advantage over CTM by doing so.
- 1.50 CTM's network of wide MFNs therefore directly and explicitly constrained the ability and incentives of insurers accounting for approximately 40% of sales made through PCWs in the Relevant Period to engage freely in pricing strategies that were important to both competition between insurers competing on PCWs and, as explained further below in paragraphs 1.53 to 1.65, to competition between PCWs themselves.
- 1.51 As a result, the relevant insurers engaged in less differential pricing across PCWs, including promotional deals with CTM's rivals, compared to the counterfactual.

¹³ Part 9A of this Decision sets out the CMA's assessment of the constraint imposed by CTMs wide MFNs on the 32 insurers.

1.52 The evidence obtained by the CMA shows that:

- (a) There was widespread compliance with CTM's wide MFNs as described at paragraphs 1.42 to 1.44 above. This included insurers factoring into their pricing the need to comply with CTM's wide MFN and refusing promotional deals with CTM's rivals, including several large insurers targeted by CTM's rivals for such deals, because of CTM's wide MFNs.
- (b) CTM maintained its wide MFNs throughout the Relevant Period, refused insurers' requests to remove them from contracts, and systematically monitored and enforced compliance. These actions, coupled with CTM's market power, confirmed to insurers the importance CTM placed on its wide MFNs and incentivised compliance with them.
- (c) In the Relevant Period, the 32 insurers agreed significantly fewer promotional deals compared to other insurers. After the Relevant Period, the 32 insurers agreed nearly double the number of promotional deals than they had agreed in the Relevant Period and just over double the number of such insurers agreed to such deals after the Relevant Period. This includes, for example, three large insurers, accounting for approximately 18% of sales made through PCWs in the Relevant Period, which had rejected promotional deals because of CTM's wide MFNs in the Relevant Period, agreeing such deals after the Relevant Period.

1.C.III. How CTM's network of wide MFNs reduced price competition between PCWs¹⁴

1.53 As explained in paragraphs 1.31 to 1.32 above, securing at least as low a price from insurers as their rival PCWs is a core part of the competitive strategies of each of the Big Four PCWs. In particular, in the Relevant Period, and subsequently, encouraging and incentivising insurers to engage in differential pricing was an important way in which PCWs competed against each other.

1.54 By restricting the ability of and reducing the incentives on the 32 insurers to differentiate their prices across PCWs (including by entering into promotional

¹⁴ Part 9.B of this Decision sets out the CMA's assessment of the appreciable effects on price competition between PCWs and on the ability of CTM's rivals to expand enabling CTM to maintain or strengthen its market power resulting from CTM's network of wide MFNs compared to the counterfactual.

deals with CTM's rival PCWs), CTM's network of wide MFNs reduced price competition between PCWs in the Relevant Period as compared to the counterfactual. In particular:

- (a) CTM's rivals:
 - (i) Were unable to engage in competitive pricing strategies under which the 32 insurers would price lower on their platforms than on CTM (unless an insurer was willing to breach its contractual obligations).
 - (ii) Had reduced incentives to compete for lower retail prices from the 32 insurers even if the relevant insurers would have been willing to lower their prices on the rival PCW. This was because, unless the insurer was willing to breach its contractual obligations, it would have had to offer the same lower price to CTM, thereby negating any competitive price advantage over CTM.
- (b) CTM was protected, as a matter of contract, from being undercut by the prices offered by the 32 insurers on rival PCWs. CTM typically benefitted from any reduction in the retail prices achieved by a rival PCW which would otherwise have resulted in that PCW having lower quotes on its platform than on CTM. It did not have to lower its own commission fees or provide some other benefit in order to benefit from such a reduction from the relevant insurers. This ability to 'free-ride' reduced CTM's incentive to compete on the merits with its rivals for lower retail prices, in particular by lowering its commission fees.

1.55 The effects on CTM's rivals and on CTM were mutually reinforcing. The reduced ability of, and incentives on, CTM's rivals to compete for lower retail prices in turn reduced CTM's own incentives to compete strongly on price. Similarly, the reduction in CTM's incentives to compete on the merits to secure the lowest prices from the 32 insurers, in turn reduced its rivals' incentives to compete on price. Because of this, the restrictive effects of CTM's network of wide MFNs are likely to have extended beyond insurers subject to CTM's wide MFNs, and reduced PCWs' incentives to compete for lower retail prices from all insurers.

1.56 Moreover, because rival PCWs were not able to gain a competitive price advantage over CTM for quotes from the 32 insurers their ability to expand was restricted. Rather than the competitive positions of the Big Four PCWs being determined by competition on the merits (as would have been the

case in the counterfactual), CTM was instead able to use its network of wide MFNs to maintain or strengthen its market power.

- 1.57 The CMA's finding of appreciable effects on competition between PCWs of CTM's wide MFNs is supported by the economic literature on wide MFNs. Across a range of modelling assumptions, wide MFNs have been identified as both reducing competition between PCWs, leading to higher commission fees and higher retail prices, and reducing the ability of PCWs to enter and expand by pursuing lowest price strategies by lowering commission fees.
- 1.58 The CMA summarises below the main evidence on these appreciable effects on price competition between PCWs, first in relation to the impact on CTM's rivals and then in relation to the impact on CTM itself.

1.C.III.(a). The impact on CTM's rivals' ability and incentives to compete and expand

- 1.59 The impact of CTM's network of wide MFNs on CTM's rivals is particularly demonstrated by:
- (a) The widespread compliance by the relevant insurers with their wide MFN obligations, as described in paragraphs 1.42 to 1.44 above.
 - (b) The actions CTM took to secure compliance with its wide MFNs over and above its implicit ability to secure compliance in light of its market power, as described in paragraph 1.44 above. This included taking enforcement action against two large insurers, accounting for nearly 10% of sales made through PCWs in the Relevant Period, for entering into promotional deals with its rivals.
 - (c) Specific refusals by several insurers, which accounted for approximately 18% of sales made through PCWs in the Relevant Period, to enter into promotional deals with CTM's rivals because of CTM's wide MFN.
 - (d) The nature of CTM's wide MFNs and CTM's commercial objectives in imposing its wide MFNs. BGL confirmed that its commercial objective in imposing wide MFNs was to strengthen its competitive position. As described in paragraphs 1.38 to 1.41 above, CTM considered that its wide MFNs were integral to its competitive strategy and effective in achieving its objectives. Internal CTM documents also confirm that, without wide MFNs, CTM believed that price competition between PCWs would increase, reducing its profits. In particular, it believed that its rivals would discount their commission fees, including by offering

promotional deals to selected insurers, and that insurers would respond by differentiating their prices across PCWs *'driving business to the lowest cost PCWs'*, rather than CTM.

- 1.60 The effect on CTM's rivals' ability to gain a competitive price advantage over CTM in the Relevant Period is also supported by the CMA's analysis of promotional deals. For example, since CTM stopped enforcing its wide MFNs, insurers which declined promotional deals because of CTM's wide MFNs have agreed promotional deals with CTM's rivals. Moreover, there has been an increase in the number of promotional deals available to consumers across all the main PCWs. Between December 2017 and June 2019, the Big Four PCWs agreed 38 promotional deals with 17 insurers. In contrast, in the comparable period between January 2016 and July 2017, only 26 promotional deals were agreed with 9 insurers.

1.C.III.(b). The impact on CTM's incentives to compete

- 1.61 For insurers accounting for approximately 40% of sales made through PCWs in the Relevant Period, CTM typically benefitted from any reduction in the retail prices achieved by a rival PCW, without having to lower its own commission fees or provide some other benefit to the insurer in return. This reflected CTM's objective in imposing wide MFNs as described in paragraphs 1.38 to 1.41 above and was acknowledged in its internal documents. For example, CTM's internal documents record that it had *'relied more on wide MFNs'* than *'discounting CPAs [commission fees] to gain lower prices for customers'*.
- 1.62 In addition to the widespread compliance by the 32 insurers with their contractual obligations, as described above in paragraph 1.44, CTM's systematic monitoring and various episodes of escalated enforcement action demonstrate CTM's ability to 'free ride' on its rivals' investments to secure low prices. For example, when a large insurer agreed a promotional deal with one of CTM's rivals, CTM required the insurer to agree three price discounts on CTM (including one in private motor insurance) without itself making any investment towards those discounts. On another occasion, another large insurer terminated a promotional deal early and reduced its prices on CTM at its own cost to comply with its wide MFN obligations.
- 1.63 This reduced need for CTM to compete on the merits to secure the lowest prices in the Relevant Period is also supported by the fact that CTM did not enter into any promotional deals in home insurance in the Relevant Period. By contrast, since it stopped enforcing its wide MFNs, CTM has entered into

discussions for promotional deals with several insurers and entered into at least five such deals in home insurance.

- 1.64 In addition, CTM was not subject to the same constraints as its rivals when negotiating its commission fees, which was usually done annually. If CTM increased its commission fees compared to its rivals, the relevant insurers could not respond to CTM's commission fee increase by setting a higher price on CTM than on its cheaper rivals. Instead they had to either absorb the fee increase or increase their prices across all PCWs.
- 1.65 For example, CTM took enforcement action against an insurer which tried to reflect an increase in CTM's commission fees in its prices on CTM, preventing the insurer from implementing the increase. Similarly, in the face of a proposed commission fee increase by CTM, a large insurer tried (but failed) to negotiate the removal of its wide MFN from its contract because it either had to absorb the cost of the commission fee increase or '*pass [it] onto customers across the whole market, instead of just [CTM]*'.

1.C.IV. How CTM's network of wide MFNs reduced price competition between insurers competing on PCWs

- 1.66 Retail prices are a particularly important dimension of competition between insurers competing on PCWs. When competing on retail prices, in the Relevant Period insurers adopted a variety of strategies including differential pricing, as described at paragraph 1.27 above. Promotional deals in particular were used, where possible, by insurers tactically and, as explained at paragraph 1.28 above, were effective in lowering insurers' retail prices and improving their rankings on the PCW with the promotional deal.
- 1.67 When insurers are able to engage in differential pricing, including by using promotional deals, competition on PCWs is strengthened because insurers are able to gain a competitive price advantage, putting pressure on rival insurers to respond. Therefore, the greater the ability of and incentives on insurers to differentiate their prices across PCWs, including through promotional deals, the greater the competitive pressure on prices for all insurers competing on PCWs.
- 1.68 As described in paragraphs 1.47 to 1.52 above, CTM's network of wide MFNs restricted the ability of and reduced the incentives on the 32 insurers to differentiate their prices across PCWs. These insurers therefore competed less strongly on retail prices than they would have done absent CTM's wide MFNs.

- 1.69 As a result of these effects on the ability and incentives of the 32 insurers to compete on price, competition on retail prices between all insurers was reduced. This is demonstrated, in particular, by the evidence summarised above in sections 1.C.II (paragraph 1.52), 1.C.III.(a) (paragraphs 1.59 to 1.60) and 1.C.III.(b) (paragraphs 1.62 to 1.65) . For example, one large insurer stated that because of its wide MFN it was '*restricted*' in its ability to compete against rival insurers and another similarly stated that it was also '*unable to compete*' on price on rival PCWs.
- 1.70 This evidence is further supported by the behaviour of insurers after CTM stopped enforcing its wide MFNs. More insurers have agreed promotional deals and more promotional deals have been agreed. This is the case both for insurers that had wide MFNs and those that did not have wide MFNs during the Relevant Period, demonstrating an increase in competition between all insurers since the Relevant Period. Several insurers also confirmed that they had changed their behaviour in response to changes in the competitive dynamics since removal of CTM's wide MFN.

2. FACTUAL BACKGROUND

- 2.1. This Section sets out the factual background to the CMA's finding that BGL has infringed the Chapter I prohibition and Article 101 TFEU, including:
- (a) a brief summary of the Investigation, with further details provided in Annex B;
 - (b) a description of BGL, home insurance providers, and the other PCWs relevant to the Decision;
 - (c) industry background relating to the supply of home insurance products to consumers; and
 - (d) an explanation of the agreements that are the subject of this Decision, namely agreements between CTM and 32 providers containing wide MFNs clauses.

2.A. The Investigation

- 2.2. The Investigation was opened on 26 September 2017, on the same day that the CMA published its final report following its market study into Digital Comparison Tools (the DCTs Market Study). The CMA determined that it had reasonable grounds to suspect that BGL had infringed the Chapter I prohibition or the prohibition of Article 101 TFEU, or both.
- 2.3. During the Investigation, the CMA has used a range of investigatory powers, including formal notices requesting information and documents, to obtain evidence from BGL, as well from home insurance providers and other PCWs. Given the Investigation involves specified regulated activities relating to the provision of financial services which require businesses to be authorised (or exempted) by the Financial Conduct Authority ('FCA'), the CMA has also liaised closely with the FCA during the course of the Investigation by engaging the FCA in formal concurrent review of both the Statement of Objections ('SO') and the present Decision. Annex B describes the conduct of the Investigation from its launch to the issue of this Decision, provides details of key procedural steps taken by the CMA, and explains the evidence obtained during the course of the Investigation.

2.4. The CMA has applied rule 10(2) of the CMA Rules and has addressed this Decision only to BGL, and not to the 32 home insurance providers that were party to the agreements with BGL that contained wide MFNs.¹⁵

2.B. BGL

2.5. BGL (Holdings) Limited¹⁶ is the parent company of a group of privately owned financial services companies (the 'BGL Group'). The BGL Group is active in areas across two divisions: price comparison (through CTM in the UK and LesFurets in France) and insurance distribution and outsourcing (IDO).^{17, 18}

2.6. In the UK, BISL¹⁹, a wholly owned subsidiary of BGL Group Limited²⁰, operated the CTM business during the Relevant Period.²¹ The agreements with home insurance providers containing wide MFN clauses that are the subject of this Decision were entered into by BISL. However, for ease of reference, this Decision uses 'CTM' to refer to BGL's price comparison business and refers to the wide MFN clauses as 'CTM's wide MFNs'. Since December 2017, the CTM business has been operated by Compare The Market Limited²², which was incorporated in February 2017 and registered as an authorised firm by the FCA in December 2017.²³

¹⁵ Under Rule 10(2) of the CMA Rules, where the CMA considers that an agreement infringes the Chapter I prohibition or the prohibition in Article 101(1) TFEU, the CMA may address its infringement decision to fewer than all the persons who or were party to that agreement.

¹⁶ UK Company Number: 10432465.

¹⁷ IDO comprises three insurance distribution businesses: Junction, a personal lines insurance outsourcing partnerships business; Frontline, BGL's own-brand online personal insurance business which operates under brands Budget and Dial Direct; and BeagleStreet.com, BGL's own-brand life insurance online distribution business. Through these IDO businesses, BGL offers car, home, van and life insurance, as well as a range of ancillary products, such as breakdown, legal protection and home emergency cover, without assuming underwriting risk (URN 1632, BGL's response to the section 26 notice dated 26 September 2017 ('First BGL Notice'), paragraph 2.2).

¹⁸ The CMA has not included in its assessment agreements between BISL and those home insurance providers owned or operated by the BGL Group containing a wide MFN, on the basis that BGL and those home insurance providers constitute a single economic unit and therefore such agreements are not agreements between undertakings (see further Section 4.B.).

¹⁹ UK Company Number: 3231094.

²⁰ UK Company Number: 2593690. BGL Group Limited has been wholly owned by BGL (Holdings) Limited since February 2017, when the latter was inserted in to the group structure (see: [BGL Group Limited annual accounts for the financial year ending 30 June 2017](#)).

²¹ BISL Limited is authorised and regulated by the FCA (Firm Reference Number 308896). BISL Limited currently has 23 trading / brand names registered under the same permission which allows it to carry on regulated activities using any of those trading / brand names (see the [FCA register](#)).

²² UK Company Number: 10636682. Compare The Market Limited was incorporated on 23 February 2017. It was originally incorporated as Comparethemarket (CTM) Limited and changed its name to 'Compare The Market Limited' on 15 November 2017.

²³ Compare The Market Limited is authorised and regulated by the FCA (Firm Reference Number 778488) and is currently classified by the FCA as an insurance mediation provider. It holds permissions for arranging deals in investments and making arrangements with a view to transactions in investments. It does not hold permission for dealing in investments as an agent and is therefore not authorised to sell or resell insurance. It carries on regulated activities under the trading names of 'Compare The Market Limited', 'comparethemarket.com' and

- 2.7. CTM is a PCW which matches consumers with providers of various services, aggregating and displaying a range of quotes for the products that are available to each consumer and redirecting the consumer to the provider for the fulfilment of the quote (i.e. the purchase of the product). A more detailed description of PCWs and how they operate is set out in Section 2.D below. CTM provides these services in a number of sectors including:
- (a) insurance products, including home, private motor and travel insurance;
 - (b) professional business insurance products such as public liability insurance;
 - (c) energy and utilities;
 - (d) telecoms; and
 - (e) financial products such as loans and credit cards.
- 2.8. Like other PCWs, CTM is regulated by the FCA²⁴ and provides services that enable consumers to compare home insurance (and other products and services) on its online platform and then link through to the home insurance provider, where the actual purchase takes place.²⁵ As a result of carrying out these activities, CTM does not effect or carry out contracts of insurance, but falls within the FCA's definition of an 'insurance intermediary'²⁶ engaging in insurance mediation activities.²⁷
- 2.C. Home insurance providers**
- 2.9. Home insurance providers supply home insurance to consumers. There are broadly three types of home insurance provider: (i) insurance underwriters; (ii) brokers; and (iii) retail partners.
- 2.10. Although most home insurance providers use PCWs to reach consumers, unlike PCWs, they ultimately conclude the sale of home insurance products

'comparethemarket.com'. The CMA understands that CTM did not sell or resell home insurance during the Relevant Period, despite BISL, unlike CTM, being authorised for dealing in investments as an agent (in relation to its IDO businesses).

²⁴ The Financial Services and Markets Act 2000 (FSMA) requires businesses to be authorised (or exempted) by the FCA in order to carry on certain specified regulated activities relating to the provision of financial services.

²⁵ Although referrals made by CTM may result in the sale of an insurance policy, it plays no role in the actual conclusion of the contract.

²⁶ The FCA defines an 'insurance intermediary' as a firm carrying on insurance mediation activity other than an insurer.

²⁷ FSMA, section 20.

directly with consumers and therefore must be authorised to sell or distribute insurance.²⁸

2.C.I. Underwriters

- 2.11. Insurance underwriters provide the actual insurance cover on any given insurance policy. In particular, they bear the risk and have the legal responsibility for paying claims.²⁹ In doing this, insurance underwriters can underwrite policies sold through their own brands and underwrite policies sold by other insurance providers.
- 2.12. In relation to their own brands, underwriters can make sales through PCWs, their direct channels (either online, through their own website, or offline, e.g. over the phone or in branches) or use other channels (including cashback offers and sales through social media).

2.C.II. Brokers and retail partners

- 2.13. Home insurance is also sold by brokers³⁰ and retail partners such as banks,³¹ building societies³² and utility companies,³³ among others.
- 2.14. Unlike underwriters, brokers and retail partners do not underwrite the policies they sell. Rather these businesses sell insurance by acting as intermediaries between consumers and underwriters, for instance, by finding insurance policies for consumers and advising them on the product that is best suited to their needs. Some brokers and retail partners simply sell the insurance product and transfer all post-sale servicing (including claims

²⁸ See [Financial Services and Markets Act 2000 \(Regulated Activities\) Order 2001](#) .

²⁹ FCA, Handbook: [Insurers: General](#), rule 8.1.

³⁰ CMA analysis of the Providers' Sales Dataset (Annex F). The CMA has treated the following providers as brokers: [HIP], [HIP], [HIP], [HIP] and [HIP]. [HIP] and [HIP] are the largest home insurance brokers (with about [X] active policies in 2016) followed by [HIP] (with about [X] active policies). The smallest, [HIP] and [HIP], had less than [X] active policies. Across general insurance there are potentially thousands of smaller brokers with no significant sales volumes through PCWs; for example, the British Insurance Brokers' Association has just under 2,000 members, see <https://www.biba.org.uk/about/> accessed at 10:51 on 30 July 2018. Analysis of the data supplied by five brokers found that in 2016 the top three brokers ([HIP], [HIP] and the [HIP]) covered over 80% [X] of total broker sales by volume.

³¹ The CMA has treated [HIP] as a retail partner. In relation to [HIP], the CMA understands that it underwrites home insurance policies through [HIP]. Therefore, the CMA treated [HIP] as an insurance underwriter. See URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 33, figure 22.

³² For example, the CMA understands that [HIP] offers home insurance products underwritten by the [HIP]. See URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 33, figure 22.

³³ For example, the CMA understands that, until August 2018, [HIP] offered home insurance products underwritten by [HIP]. See URN 1444B, [HIP]'s response to follow-up questions to a request for information in the DCTs Market Study dated 9 January 2017, question 2.

handling) to the underwriter; whereas others carry out some claims handling services.³⁴

2.15. Brokers and retail partners either:

- (a) rely on a panel of insurance underwriters. This is the model used by brokers such as [HIP], [HIP] and [HIP]³⁵ in the Relevant Period, or
- (b) have an agreement with just one insurance underwriter. This is the model used by retail partners such as [HIP],³⁶ [HIP]³⁷ and [HIP]³⁸

2.C.III. Home insurance providers with wide MFNs in their agreements with CTM

- 2.16. There are a significant number of home insurance providers (including underwriters, brokers, and retail partners) operating in the UK. For example, in the Relevant Period, CTM listed on its panel over 40 home insurance providers (as set out in Annex C).
- 2.17. Of particular relevance to this Decision are the 32 home insurance providers with which CTM had an agreement containing a wide MFN during the Relevant Period, set out in Table 2.1 below.

³⁴ See CMA, PMI Market Investigation: [Final report](#) dated April 2015, paragraph 2.18.

³⁵ The CMA notes that in some cases a retail partner may have an agreement with a broker such that the retail partner has access to the broker's panel of underwriters. For example, BGL told the CMA that its Junction business '*designs and creates car, home, van and life insurance products for Partner Brands through its insurance outsourcing partnerships [...]*'. For car, home and van insurance, Junction does not assume any underwriting risk; rather, Junction provides its 'Partner Brands' with a multi-channel distribution network and the necessary infrastructure to obtain quotes from its Panel Underwriters and to sell, deliver and manage their policies. See URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 2, paragraph 2.6.

³⁶ See URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 7(a).

³⁷ See URN 1444B, [HIP]'s response to follow-up questions to a request for information in the DCTs Market Study dated 9 January 2017, question 2; URN 9825, [HIP]' response to section 26 notice dated 26 July 2019.

³⁸ See URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 33, figure 22.

Table 2.1: Home insurance providers party to agreements with CTM containing wide MFNs during the Relevant Period

[HIP]	[HIP] ³⁹	[HIP]
[HIP]	[HIP]	[HIP]
[HIP] ⁴⁰	[HIP]	[HIP]
[HIP]	[HIP]	[HIP]
[HIP]	[HIP]	[HIP]
[HIP]	[HIP] ⁴¹	[HIP]
[HIP]	[HIP]	[HIP] ⁴²
[HIP]	[HIP]	[HIP]
[HIP]	[HIP] ⁴³	[HIP]
[HIP] ⁴⁴	[HIP]	[HIP] ⁴⁵
[HIP] ⁴⁶	[HIP]	

Source: CMA analysis of URN 1622, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q29 – List of HIPContacts and related information (FINAL).xlsx' URN 1632; and URNs 1785, 1790, 1793-1805, 1808-1821, 6438.2 and 6438.6, contracts submitted by BGL in response to the First BGL Notice and the Second BGL Notice dated 3 May 2018.

- 2.18. Annex C provides details of the dates and relevant clauses containing wide MFNs in each of CTM's agreements with the home insurance providers listed above.⁴⁷
- 2.19. These 32 home insurance providers varied in size in terms of sales and included some large well-known providers, such as [HIP], [HIP] and [HIP], and providers which were particularly prominent on PCWs such as [HIP] (under the brand [HIP]). Annex E sets out the share of sales made through

³⁹ [HIP] [§].

⁴⁰ [HIP] [§].

⁴¹ The agreement with [HIP] was signed [§]. [HIP] [§].

⁴² [HIP] [§].

⁴³ The agreement with [HIP] – [§].

⁴⁴ The agreement with [HIP] was signed [§]. BGL originally noted that it was 'likely to go live' in October 2017: URN 1622, BGL's response to the First BGL Notice dated 26 September 2017, question 29, document entitled 'Q29 – List of HIP Contacts and related information (FINAL).xlsx' (URN 1632, BGL's response to the First BGL notice dated 26 September 2017). [HIP] did not [§].

⁴⁵ [HIP] [§], see URN 1622, BGL's response to the First BGL Notice dated 26 September 2017, question 29, document entitled 'Q29 – List of HIP Contacts and related information (FINAL).xlsx' (URN 1632 BGL's response to the First BGL notice dated 26 September 2017).

⁴⁶ The agreement with [HIP] was [§], see URN 1820, contractual arrangement between BISL Ltd and [HIP] signed on the 2 October 2017 submitted in BGL's response to the First BGL Notice, question 29. BGL notes 'likely to go live' as November 2017. [HIP] did not begin making sales through CTM until [§].

⁴⁷ As previously noted, the CMA has applied rule 10(2) of the CMA Rules and has addressed this Decision only to BGL, and not to any of the home insurance providers that were party to the agreements with CTM that contained wide MFNs.

the Big Four PCWs and the share of sales made through CTM, respectively, in 2016 and 2017 accounted for by each of these home insurance providers.⁴⁸ These 32 home insurance providers together accounted for approximately 40% of sales of home insurance made through PCWs in both 2016 and 2017 (see further Section 8.C in particular Table 8.2 below).

2.D. PCWs

2.20. PCWs are digital platforms that serve and connect two distinct user groups:

- (a) consumers, who use PCWs: (i) to compare home insurance (and other products and services);⁴⁹ and (ii) in many cases, to link through to the home insurance provider to purchase home insurance; and
- (b) home insurance providers, which use PCWs to attract consumers so the provider can sell insurance to them, referred to in this Decision as customer introduction services.^{50 51}

2.21. The role that PCWs play is demonstrated in Figure 2.1 below.

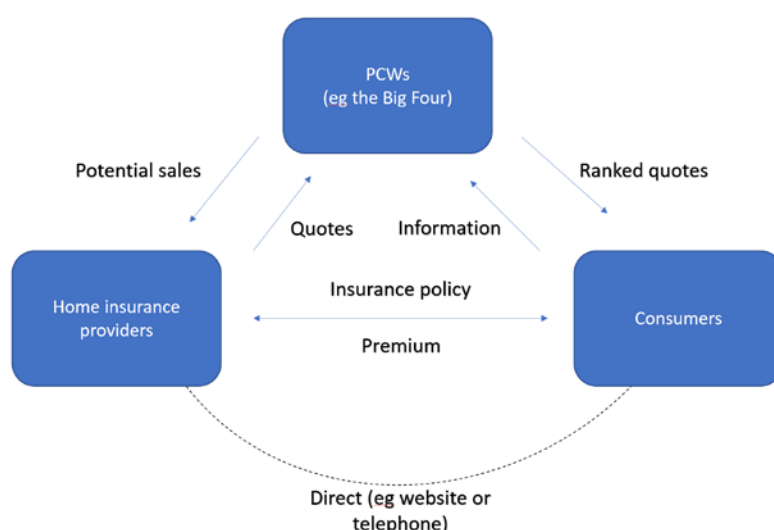
⁴⁸ In particular, Annex E sets out (i) the share of PCWs' sales covered by each home insurance provider listing on PCWs during the Relevant Period (Annex E, Tables 1 and 2); (ii) the share of CTM's sales covered by each home insurance provider listing on CTM during the Relevant Period (Annex E, Tables 3 and 4).

⁴⁹ Most PCWs operate in other sectors besides home insurance (for example, other insurance products, other financial products, and utilities).

⁵⁰ See, for example, URN 1810, BGL's response to the First BGL Notice dated 26 September 2017, question 30, document entitled 'BISL and [HIP]: General terms & conditions for the provision of services agreement (2916)'. *'The Parties wish to enter into this Agreement to provide for quotations for Insurance Provider Policies (as hereinafter defined) to be included in the tables of comparative prices for insurance policies displayed on the [CTM] Websites and for the referral of certain enquiries received by [CTM] at the [CTM] Websites to the Insurance Provider at the Insurance Providers Websites.'*

⁵¹ The CMA notes that, for the purposes of sector-specific regulation applicable to the insurance sector, PCWs must be authorised and are classed as insurance intermediaries who arrange and bring about the sale of insurance policies, and must therefore comply with any applicable regulatory obligations, irrespective of how they classify their activities. https://www.fca.org.uk/publication/finalised-guidance/fg11_17.pdf

Figure 2.1: How PCWs operate in home insurance



Source: CMA analysis.

- 2.22. PCWs do not sell or resell home insurance, nor do they set the prices quoted on their platforms for such products. A consumer seeking home insurance is required to submit certain factual information to the PCW, which is used to create a risk profile. The PCW uses that information to aggregate and display a range of quotes for the insurance products that are available to that consumer from that PCW's panel of home insurance providers.
- 2.23. When a consumer has chosen a potential product, the PCW re-directs the consumer, via a hyperlink, to the provider's website for the consumer to purchase their chosen product directly from the provider.⁵² The provider determines the retail price (i.e. the insurance premium), as well as other terms – including the specific risks that are covered by the insurance product (which are displayed to the consumer). Providers typically pay the PCWs a commission fee only if a referred consumer completes the transaction, i.e. by clicking-through to the provider's website from the PCW; calling the provider's dedicated phone number displayed on the PCW; or using the reference number of its PCW quote on the provider's direct website in order to purchase the home insurance product offered.⁵³

⁵² URN 5266A, BGL's submission ('First BGL Submission') dated 21 December 2017, Annex 1, paragraphs 1.1 to 1.3.

⁵³ The commission fee charged is ultimately the unit cost of selling policies via PCWs for providers. In some cases, PCWs set so-called 'conversion floors' whereby the commission fee that the provider pays is linked to achieving minimum sales or achieving a minimum conversion rate. This means that the 'effective commission' (i.e. the actual commission fee per sale paid by the provider) may be higher than the per unit commission fee agreed between the PCW and the provider.

2.24. In the UK, CTM, MoneySuperMarket, GoCompare, and Confused are the main PCWs operating in home insurance.⁵⁴ In this Decision, they are referred to as the Big Four PCWs.

2.E. Background on the home insurance sector in the UK

2.25. The home insurance sector in the UK is a mature, stable and largely profitable sector. After private motor insurance, home insurance is the second most widely held insurance product in the UK.⁵⁵ The 2017 Mintel Home Insurance Report estimated that the overall income from the UK sector amounted to £5.9 billion in 2016.⁵⁶ In volume terms, The Association of British Insurers ('ABI') has estimated the home insurance sector amounted to between 19.2 to 24.3 million active policies in 2017.⁵⁷

2.26. Home insurance can be split into three product types, which correspond to different consumer needs: (a) buildings only insurance; (b) contents only insurance; and (c) buildings and contents combined insurance.⁵⁸ In this Decision, the CMA has generally considered these types of home insurance collectively and refers to them as 'home insurance'. Where this is not the case the CMA refers to each of (a) and (b) as single policies and (c) as combined policies.

2.E.I. Home insurance pricing

2.27. The retail price (i.e. the insurance premium) for a home insurance policy is made up of the home insurance provider's expected cost of providing the policy, including both the expected costs of claims made under the policy and other expenses such as customer acquisition costs, plus a margin earned by the provider. As set out in the DCTs Market Study, an important factor considered by providers in setting margins is the customer's lifetime

⁵⁴ The main websites of the Big Four PCWs other than CTM are: [MoneySuperMarket](#); [GoCompare](#); and [Confused](#).

⁵⁵ URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 42.

⁵⁶ Income from gross written premiums (GWP), a measure of revenue commonly used in the insurance sector. URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 9.

⁵⁷ URN 6356, ABI's response to a follow-up questions to a request for information dated 26 April 2018, questions 1 and 2. The volume range has been computed by the CMA by applying to the 'ABI Household Premium tracker' data the ABI's best estimate of its coverage of the property insurance sector (79%). This coverage figure however, as explained in ABI's response to question 2, includes commercial property policies whereas the data the ABI collects from its associated partners only concerns domestic (personal) property policies. This provides the CMA with a lower and an upper bound for the size of home insurance business, where the upper bound is clearly an overestimate as it includes commercial property policies.

⁵⁸ For example, mortgage providers generally require mortgage-holders to have buildings insurance which helps cover the risk of losing the home to events such as flooding or fire. In contrast, contents insurance is not required and protects a consumer's property and can be extended to cover property out of the home. URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 26; and ABI, [UK Insurance and Long-Term Savings, The state of the market](#), February 2018, page 14.

value, which reflects the revenues and costs associated with a customer for the duration of the provider's relationship with that customer.⁵⁹ Figure 2.2 below shows the components of pricing for home insurance.

Figure 2.2: Components of home insurance pricing



Source: FCA, [General insurance pricing practices market study, interim report](#),⁶⁰ Figure 7

- 2.28. Many of the factors home insurance providers consider when setting prices vary by customer. Providers gather information to calculate the price quoted directly from the customer and from external sources, such as credit agencies. The FCA's general insurance pricing practices market study found that providers used a number of factors in their pricing models ranging between under 50 and over 400.⁶¹ As a result, the quotes each customer receives when searching for home insurance policies are highly individualised, based on their specific information.
- 2.29. The average retail price of combined policies fell by around 9% from 2012 to 2016, with retail prices for contents only policies falling by 3% and retail prices for buildings only policies remaining broadly stable over the same period.⁶² However, in recent years, retail prices have increased following increases in the Insurance Premium Tax and the introduction of the Flood

⁵⁹ The CMA, [DCTs Market Study: Final Report, Paper E](#) dated 26 September 2017, Appendix 3, paragraphs 16-18.

⁶⁰ The FCA's [final report in its general insurance pricing practices market study](#) was published in September 2020. The final report builds on the findings in the interim report rather than superseding them, and so the CMA continues to refer where relevant in this Decision to the interim report.

⁶¹ FCA, [General insurance pricing practices market study, interim report](#), paragraph 4.18.

⁶² URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 27. Based on information from the ABI Household Insurance Premium Tracker.

Re⁶³ scheme in April 2016.⁶⁴ For example, the rate at which Insurance Premium Tax has been levied on all general insurance products has doubled from 6% in October 2015 to 12% after its increase in June 2017.⁶⁵ According to Mintel, most providers pass on cost increases such as these to consumers.⁶⁶ In Section 5.B.II the CMA sets out evidence obtained from providers by the CMA on the pass-through of these changes.

2.E.II. New business and renewals (of existing policies)

2.30. The sale of home insurance can be broadly divided into two segments:

- (a) *New business*, which includes both those buying a new home insurance policy and customers who decide to change their home insurance provider (i.e. switchers); and
- (b) *Renewals* (of existing policies), which can be either agreed or automatic depending on whether the consumer engages with the insurance provider at the point of renewal (e.g. to negotiate for a better renewal quote) or not (i.e. the policy automatically renews).

2.31. The CMA has estimated that in recent years renewals accounted for around three-quarters (74)% and new business accounted for around a quarter (26)% of the home insurance policies in force every year.⁶⁷

2.32. While by definition a consumer will renew with their existing insurance provider, consumers have a choice of insurance providers when buying a new home insurance policy (including consumers who decide to switch from their existing provider). Therefore, the rest of this Section focuses on the sale of new business home insurance products.

⁶³ The Flood Re scheme allows consumers who live in areas where there is an elevated risk of flooding to purchase home insurance with premiums at a more affordable level. The extra insurance costs of insuring homes in areas with a high risk of flooding are funded by a levy on the insurance industry. See Department for Environment, Food & Rural Affairs, [News story: World-First Flood Re scheme open for business \(published 4 April 2016\)](#) accessed on 14 June 2018.

⁶⁴ URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 29. Based on information from the ABI Household Insurance Premium Tracker.

⁶⁵ HMRC, [Guidance: Insurance Premium Tax rates \(updated 4th August 2017\)](#), accessed on 14 June 2018.

⁶⁶ URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 29. Based on information from the ABI Household Insurance Premium Tracker.

⁶⁷ CMA analysis of the Providers' Sales Dataset (see Annex F). The CMA notes that BGL's estimate of renewals is [X], calculated [X], URN 8484.3, report attached to BGL's response to the SO ('Third Oxera Report') dated 22 February 2019, paragraph 4.65.

2.E.III. Channels for the sale of new business home insurance products

- 2.33. Home insurance providers use a variety of channels to reach consumers, including their own direct channels (e.g. their own websites, telesales or branches) and PCWs.
- 2.34. As shown in Table 2.2 below, based on data from home insurance providers, the most important channel used by providers for new business in 2016 was PCWs, which accounted for more than 50% (approximately 54%) of new business. After that, the most important channels for new business were underwriters' and brokers' direct channels, which accounted for approximately a quarter (27)% and less than 10% (8)% of sales, respectively. Retail partners⁶⁸ and other channels, including social networks, mobile apps and cashback offers, collectively accounted for approximately 10% (11)%.⁶⁹

Table 2.2: Proportion of new business by sales channel 2015 and 2016

	2015 (%)	2016 (%)
PCWs	50	54
Underwriters' direct channel	30	27
Brokers' direct channel	10	8
Retail partners' direct channel	1	1
Others	8	10
Total	100	100

Source: CMA analysis of the Providers' Sales Dataset (Annex F).

Notes: Because of the nature of the information available, the CMA was not able to properly allocate the sales of [HIP]'s [HIP]'s retail partners and therefore the relative importance of retail partners' direct channel is underestimated here. In terms of scale [HIP]'s retail partners made up [3%] of all new business underwritten by [HIP] in 2016. In addition, [HIP] and [HIP] only provided information on policies underwritten through their own brands and not any underwritten through brokers or retail partners and [HIP] did not separate sales made by its own brands and those made by its retail partners.

- 2.35. These figures are generally consistent with home insurance providers' views on the importance of PCWs⁷⁰ and new business data from

⁶⁸ Retail partners do not underwrite their own policies and can include banks, building societies and utility companies, among others, see Section 2.C.II. above.

⁶⁹ Source: CMA analysis of the Providers' Sales Dataset (See Annex F). In order to avoid the risk of double counting policies which were sold through brokers, and thereby overestimating the importance of the broker channel, the CMA excluded the sales made by brokers from the data received from underwriters. This is on the assumption that any excluded sales would have been submitted by brokers to the CMA. The CMA has cross-checked this assumption and has identified that the volume of sales achieved by underwriters through brokers and the total sales recorded by brokers are of the same order of magnitude. The CMA therefore considers this assumption to be reasonable.

⁷⁰ See Section 7.B.II below.

eBenchmarkers.⁷¹ Figure 2.3 below shows that, between 2012 and 2017, PCWs became an increasingly important channel through which home insurance providers make sales, accounting for more than 40% ([REDACTED])% of new business sales in 2012 and for more than 60% ([REDACTED])% in 2017.

Figure 2.3: Importance of PCWs as a channel for home insurance products 2012 to 2017

[REDACTED]

Source: CMA analysis of eBenchmarkers data (URN 6258 eBenchmarkers response to CMA follow-up questions dated 26 April 2018 to section 26 notice dated 14 November 2017, question 1 to question 3, annex entitled 'CMA eBenchmarkers response 080518.xlsx', and URN 6648, eBenchmarkers response to a follow-up question to a request for information, email chain between eBenchmakers and the CMA entitled 'RE: CMA request – Case 50505', dated 8 August 2018).

- 2.36. As can be seen from Table 2.2 above, the main channels involved in the supply of new business in home insurance are PCWs and the direct channels of the home insurance providers themselves.
- 2.37. The growth in importance of the Big Four PCWs in the sale of home insurance over time can be observed both in terms of (i) the volume of home insurance policies sold year by year and (ii) the revenue generated by PCWs from the provision of customer introduction services to providers in the home insurance sector. The volume of home insurance policies sold to consumers using the Big Four PCWs has increased by over 60% (69)% during the last seven years, from approximately 1.5 million in 2012 to 2.56 million policies in 2018.⁷² Separately, the revenue generated by the Big Four PCWs from the provision of customer introduction services to providers in the home insurance sector combined has also materially increased by more than 90% (93)% (from approximately £[REDACTED] million in 2012 to over £[REDACTED] million in 2018).⁷³ CTM's revenue from the home insurance sector has increased from approximately £[REDACTED] million in 2012 to approximately £[REDACTED] million in 2018.
- 2.38. Table 2.3 below shows the share of the Big Four PCWs of home insurance sales to consumers (expressed in volume percentages) made using the

⁷¹ URN 6258, eBenchmarkers' response to follow-up questions to section 26 notice dated 14 November 2017, questions 1 and 3; URN 6648, eBenchmarkers response to a follow-up question to a request for information, email chain between eBenchmakers and the CMA entitled 'RE: CMA request – Case 50505', dated 8 August 2018.

⁷² CMA analysis of the Commission Fees Dataset (Annex D).

⁷³ CMA analysis of the Commission Fees Dataset (Annex D).

PCW channel during the period from 2012 to 2018.^{74, 75} Table 2.3 shows that:

- (a) CTM achieved the highest share of volume of home insurance sales made through its platform in every year from 2012 ([REDACTED]) to 2018 ([REDACTED]). From 2014 onwards CTM's share of volume of home insurance sales made using PCWs was more than twice as large as the next largest PCW, [REDACTED].⁷⁶
- (b) CTM is the only PCW to have consistently grown its business and share of volume with its sales growing [REDACTED]% over the period 2012 to 2018. In comparison, the other Big Four PCWs all suffered a decline in their shares of volume of home insurance sales made using PCWs over the same period.

Table 2.3: PCWs' shares of volume of home insurance sales through PCWs from 2012 to 2018

<i>Shares of home insurance sales through PCWs (%)</i>							
	2012	2013	2014	2015	2016	2017	2018
CTM	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
MoneySuperMarket	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
GoCompare	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Confused	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

⁷⁴ The CMA only collected sales data from the Big Four PCWs, and so these shares do not include the volumes of any smaller PCWs. However, based on eBenchmarkers data on total volumes of home insurance sales through PCWs, the CMA estimates that in 2018 the Big Four PCWs accounted for more than 95% ([REDACTED])% of home insurance policies sold through PCWs, and so the exclusion of smaller PCWs would not make a material difference to the shares. In this Decision, for convenience the CMA generally refers to PCW market shares as a share of PCW sales rather than as a share of the Big Four PCWs' sales. Other PCWs active in the home insurance sector include uSwitch (via the white-label provider [HIP]) and Seopa operating the white label platforms Quotezone.com (in UK) and compareNI.com, a PCW which focuses on Northern Ireland. According to estimates by eBenchmarkers (covering January 2013 to March 2018), none of these PCWs achieved a significant share of PCW sales in home insurance with the Big Four PCWs covering more than 90% ([REDACTED])% of PCWs sales throughout this period which is slightly higher than the CMA's own estimate. See URN 6258, eBenchmarkers' response to follow-up questions to section 26 notice dated 14 November 2017, question 4(a).

⁷⁵ The CMA notes that the Big Four PCWs' shares of supply based on commission fee revenue do not materially differ to the shares of supply based on volume presented in Table 2.3, based on CMA analysis of the Commission Fees Dataset (Annex D).

⁷⁶ Further details of CTM's strong market position are set out in Section 5.E.

Growth compared to volume in 2012 (%)

	2012	2013	2014	2015	2016	2017	2018
CTM	-	[X]	[X]	[X]	[X]	[X]	[X]
MoneySuperMarket	-	[X]	[X]	[X]	[X]	[X]	[X]
GoCompare	-	[X]	[X]	[X]	[X]	[X]	[X]
Confused	-	[X]	[X]	[X]	[X]	[X]	[X]

Source: CMA analysis of the Commission Fees Dataset (Annex D).

- 2.39. As explained above, there are broadly three types of home insurance providers: (i) insurance underwriters; (ii) brokers; and (iii) retail partners. Providers of each type use the different channels for new business sales, as summarised below.
- 2.40. For underwriters, the importance of the different channels in terms of new business sales varies across their brands.⁷⁷ For 8 out of 14 underwriters from which the CMA received information, sales made through PCWs in 2016 made up over 50% (55)% of total new business sales, and for five of these, sales made through PCWs made up more than 70% (75)% of new business sales in 2016. For the other six underwriters from whom the CMA received information, sales made through PCWs made up between (14)% and (43)% of new business sales (with a mean of 29%) in 2016.
- 2.41. In addition, underwriters may choose to offer different brands on different channels. This is the case for two underwriters that told the CMA they have a targeted product offering: they list one (or more) low-cost brand on the PCW channel and sell higher-quality and more expensive brands only on their direct channel.⁷⁸ Annex C Table C.III lists all the brands sold through PCWs during the Relevant Period by the home insurance providers from which the CMA requested evidence for the Investigation.
- 2.42. Finally, even though underwriters differ in their brand strategies (e.g. some underwriters underwrite large numbers of policies sold by brokers or retail partners whereas others only underwrite policies for their own brands),⁷⁹

⁷⁷ CMA analysis of the Providers' Sales Dataset (Annex F). The CMA has treated the following providers in the dataset as underwriters: [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP].

⁷⁸ For instance, 'Brand X' and 'Brand Y' [X]. On the higher price sensitivity of consumers using PCWs, see, for example, URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(a) and URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(a).

⁷⁹ For example, based on the sales data they submitted, two providers, [HIP] and [HIP], only underwrite policies sold through their own brands, while another provider, [HIP], underwrites a large number of policies through retail partners and brokers. See Providers' Sales Dataset (Annex F).

most underwriters contacted by the CMA told the CMA that PCWs are a key route for them to acquire new business.^{80,81}

- 2.43. As with underwriters' own brands, brokers predominantly make new business sales under their own brands through PCWs or directly through their own direct channels (either online, through their own website, or offline, e.g. over the phone). In 2016 slightly more sales were made using brokers' direct channels than through PCWs (52% vs 47%).⁸²
- 2.44. For most retail partners for which the CMA has obtained information, PCWs are similarly an important channel for new business sales. The CMA received information relating to six retail partners⁸³ for 2016 showing that sales made through PCWs made up more than 40-50% [45]% of new business sales for four of them (including over 80% [80%] for one ([80%])).⁸⁴ One retail partner made less than 20% [20%] of its sales through PCWs and only one made no sales through PCWs and did not appear to be listed on PCWs.⁸⁵
- 2.45. Table 2.4 below shows the shares of the ten largest home insurance providers in 2016 (for insurance underwriters, only sales made through their own brands are taken into account) both in terms of shares of new business sales and shares of sales made through the Big Four PCWs.

⁸⁰ [redacted].

⁸¹ In addition, even underwriters that underwrite more policies, for example, through brokers, are likely to be reliant on PCWs as brokers are likely to also use and sell a material number of policies using PCWs (see paragraph 2.43).

⁸² Other channels, including cashback websites, made up [redacted]% of sales. Source: CMA analysis of the Providers' Sales Dataset (Annex F). The importance of PCWs as a channel varied to some extent based on the size of the broker: the top two brokers (based on all sales) made less than 30-40% [redacted]% of their new business sales through PCWs in 2016, whilst the other three brokers contacted by the CMA made over 60-70% [redacted]% of their new business sales on the PCW channel.

⁸³ These were: [HIP], [HIP], [HIP], [HIP], [HIP]'s and '[HIP]', see URN 5085, [HIP]'s response to section 26 notice dated 24 November 2017, question 24, spreadsheet entitled 'Response to CMA Submission – Q.24, Q.25' and URN 1460, [HIP]'s response to a request for information in the DCTs Market Study dated 9 January 2017, Appendix 1, tab 'New Business'.

⁸⁴ [HIP], and [HIP]. URN 5085, [HIP]'s response to section 26 notice dated 24 November 2017, question 24, spreadsheet entitled 'Response to CMA Submission – Q.24, Q.25' and URN 1460, [HIP]'s response to a request for information in the DCTs Market Study dated 9 January 2017, Appendix 1, tab 'New Business'.

⁸⁵ It is unclear exactly what the identity of this retail partner was as it is just listed by [HIP] as '[HIP]'.

Table 2.4: Top ten home insurance providers' shares by volume of total new business sales and sales made through the Big Four PCWs in 2016

Home insurance provider	Share of total new business sales by volume (%)	Home insurance provider	Share of Big Four PCW sales by volume (%)
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]
[HIP]	[REDACTED]	[HIP]	[REDACTED]

Sources: CMA analysis of the Providers' Sales Dataset (Annex F) (first and second columns from the left); CMA analysis of the Commission Fees Dataset (Annex E) (third and fourth column from the left).

Note: Providers are listed in order of size. Annex E sets out the share of PCWs' sales covered by each home insurance provider listing on PCWs during the Relevant Period for both 2017 and 2016 (Tables 1 and 2 respectively). As to the share of total new business sales by volume (column 2 above), the CMA only had data for 2016. As set out above, the CMA was not properly able to allocate [HIP]'s retail partner sales and therefore the collective sales of [HIP]'s retail partners was not included in the top ten as they were likely to relate to more than one retail partner.

2.46. As can be seen from Table 2.4, the top ten home insurance providers accounted for over 70% of new business sales in 2016. When considering the sales made based on customers introduced by the Big Four PCWs, the top ten providers' share was over 70% in 2016.⁸⁶

2.F. PCWs' agreements with home insurance providers for the provision of customer introduction services

2.47. When entering into an agreement for the provision of customer introduction services, initial negotiations between PCWs and home insurance providers are generally based on the PCW's standard set of terms and conditions, with specific terms negotiated on a partner by partner basis. The negotiation of commission fees is the most important term of the agreement and is typically structured on a 'cost-per-acquisition' (or 'CPA') basis, meaning that for every quote successfully converted to a sale, the provider pays a flat fee to the PCW.⁸⁷

⁸⁶ The equivalent figure for 2017 was around 70%. CMA analysis of the Commission Fees Dataset (Annex D).

⁸⁷ URN 1616, BGL's response to the First BGL notice dated 26 September 2017, document entitled 'CTM Commercial Handbook June 2017', pages 9 to 10; URN 1632, BGL's response to the First BGL Notice dated 26

- 2.48. These terms also cover other related payments (including terms relating to liability for payment of commission fees)⁸⁸; performance indicators and technical integration requirements on the provider and the PCW; as well as wide and narrow MFNs (see Section 2.F). Some terms are regarded by PCWs as a minimum requirement such as, in the case of CTM, narrow MFNs.⁸⁹ Some providers request PCWs to agree non-solicitation clauses, whereby the PCW is prevented from contacting consumers who have purchased through the PCW for a certain period of time.⁹⁰ BGL told the CMA that this initial negotiation process can last from four weeks to over eight months.⁹¹
- 2.49. The negotiation of the level of commission fees, and associated provisions relating to commission fees, is an important aspect of the relationship between providers and PCWs. Commission fees are typically structured on a 'cost-per-acquisition' basis, meaning that for every quote successfully converted to a sale the provider pays a flat fee to the PCW.⁹² Different levels of commission fees may be agreed depending on the volume of converted quotes achieved by the provider through the PCW (i.e. quotes that result in a sale and which therefore trigger the payment of the commission fee). Commission fee structures often also include 'conversion floor payments', which are payable if the level of converted quotes falls below an agreed level.⁹³

September 2017, questions 8 to 10; URN 4868, GoCompare's response to section 26 dated 14 November 2017, paragraphs 8.3 and 8.4.

⁸⁸ This will include provisions on the liability for commission fees in the event of policy cancellations and tagging and reporting clauses which allow PCWs to monitor commission fees owed to the PCW by the provider. A tagging clause allows the PCW to track a customer online through their IP address from the point of a quote being generated by the PCW through their customer journey to the point of a sale being concluded. Reporting clauses can vary in intensity and frequency but normally involve the provider and the PCW reporting on the number of quotes and/or corresponding sales produced in a day/week/month depending on what is agreed between the parties.

⁸⁹ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, paragraphs 9.5, 9.7. See also URN 1616, BGL's response to the First BGL notice dated 26 September 2017, document entitled 'CTM Commercial Handbook June 2017', page 9, which notes that '*narrow MFNs are paramount to the ongoing viability of the comparison model*' and that these clauses '*prevent [home insurance providers] from 'free-riding' on CTM's marketing investment*'.

⁹⁰ Such clauses do not prevent PCWs from undertaking non-targeted general marketing. Instead, they prevent a PCW through which a consumer has purchased a supplier's product from marketing its services directly to that consumer for the same product type, for a specific period (typically a year).

⁹¹ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, paragraphs 8.3.

⁹² URN 1616, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Commercial Handbook June 2017', pages 9 to 10; URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, questions 8 to 10; URN 4868, GoCompare's response to section 26 dated 14 November 2017, paragraphs 8.3 and 8.4.

⁹³ For example, where a PCW produces 1000 quotes to a provider, and the provider only managed to convert 20% of those quotes to actual sales, the PCW may require a payment to be made.

- 2.50. The renegotiation of commission fees and related terms generally occurs annually,⁹⁴ most commonly initiated by PCWs, which approach home insurance providers with an initial offer of a revised (typically higher) commission fee and sometimes also other amended contractual terms.⁹⁵
- 2.51. There are several factors that PCWs take into account for renegotiations, but not all PCWs place the same value on the same criteria. The factors noted by PCWs as being particularly important for renegotiating the commission fee included the following: ⁹⁶
- (a) the volume and quality of customers provided by the PCW to the provider;
 - (b) the relationship between the PCW and provider;
 - (c) average policy premiums;
 - (d) sales volumes (including the volume of customers provided by the PCW to the relevant provider) and conversion rates; and
 - (e) fraud levels.
- 2.52. The CMA has been told by some providers that the main reasons PCWs give for increases in commission fees are increases in marketing and advertising costs, increases in operational costs, or that the rest of the providers on their panel pay a higher commission than the given provider.⁹⁷
- 2.53. Providers generally consider commission fees to be an important part of negotiations and some of the factors considered by providers when doing so include:⁹⁸

⁹⁴ URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 8, paragraph 8.4; URN 0153, Confused's response to a request for information in the DCTs Market Study dated 29 September 2016, question 8. Additionally, CTM told the CMA that [REDACTED]. See URN 1616, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Commercial Handbook June 2017', page 4, question 8 to 10.

⁹⁵ URN 6583.1, note of CMA call with [HIP] dated 25 May 2018, paragraph 11; URN 6423.1, note of CMA call with [HIP] dated 25 April 2018, paragraph 11; URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 21; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 19.

⁹⁶ URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 8, paragraph 8.4; URN 1616, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Commercial Handbook June 2017', page 4, questions 8 to 10.

⁹⁷ [REDACTED].

⁹⁸ URN 5455, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5197A, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 6626, note of CMA meeting with [HIP] [REDACTED], paragraph 15; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, questions 6(a) and 6(c); URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 7(a), paragraphs 7.2 and 7.4; URN 5151, [HIP]'s response to section 26 notice

- (a) The volume of sales generated by the PCW overall and for the provider.
- (b) The expected life-time value of consumers acquired from that PCW.
- (c) The strength of their commercial relationship with the PCW, including the PCW's willingness to collaborate on improving its customer introduction service.
- (d) The rationale given by the PCW for any proposed increase in commission fee, including the PCW's growth and share of sales; increasing advertising spend; improvements of service levels; and quality of the PCW platform.
- (e) How the PCW's commission fee benchmarks against other PCWs.
- (f) While one home insurance provider told the CMA that in assessing a commission fee proposal it requests information about the PCW's operating costs, total cost-per-acquisition and the target market in relation to the PCW's advertising,⁹⁹ the CMA understands that PCWs do not usually provide any specific data or information on the cost increases they refer to in the negotiations.¹⁰⁰

2.G. CTM's wide MFNs

- 2.54. The focus of the Investigation is on the wide MFN clauses in CTM's agreements with 32 home insurance providers, set out at Table 2.1 above. The remaining home insurance providers on CTM's panel had a narrow MFN in their agreements with CTM.¹⁰¹
- 2.55. In general terms, an MFN clause, such as the wide MFNs in CTM's agreements, obliges a provider (such as a home insurance provider) to ensure that the retail prices it quotes on the platform of the PCW with which it has agreed an MFN are no higher than the retail prices it quotes for the same product on rival PCWs' platforms, the provider's direct online sales channels, and possibly also on the provider's other channels (e.g. offline). Wide MFNs are also often referred to as 'price parity' clauses as they require

dated 24 November 2017, question 7(c); URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10(a) and 10(c).

⁹⁹ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 6(c).

¹⁰⁰ URN 6583.1, note of CMA call with [HIP] dated 25 May 2018, paragraph 11; URN 6423.1, note of CMA call with [HIP] dated 25 April 2018, paragraph 11.

¹⁰¹ See Annex C.II for a list of home insurance providers with narrow MFNs listing on CTM during the Relevant Period.

that the prices quoted on the platform benefitting from the wide MFN are at least on a par with, i.e. no higher than, those quoted on rival platforms.¹⁰²

- 2.56. By contrast, a 'narrow' MFN refers to an obligation on a provider to ensure that the retail prices it quotes on the platform of the PCW with which it has agreed the 'narrow' MFN are no higher than the retail prices for the same product on the provider's direct online sales channel (and possibly also on the provider's other direct channels (e.g. offline).
- 2.57. Accordingly, in this Decision a 'wide' MFN refers to the contractual restriction imposed on a provider by a PCW in respect of the retail prices the provider can quote on the platforms of third party rival PCWs, whereas a 'narrow' MFN refers to the contractual restriction imposed on the retail prices quoted on the provider's own direct channels. The extent to which anti-competitive effects may arise as a consequence of the inclusion of 'narrow' MFNs by CTM in its agreements with providers (and indeed by CTM's rivals in their agreements with providers)¹⁰³ is outside the scope of this Decision. However, the use of such 'narrow' MFNs is relevant to the CMA's assessment of the effects of CTM's wide MFNs and forms part of the legal and economic context for that assessment.¹⁰⁴

2.G.I. The terms of CTM's wide MFNs

- 2.58. The wide MFN in almost all of CTM's 32 agreements with home insurance providers was in materially the same terms and was expressed as a contractual obligation on providers.
- 2.59. For example, in CTM's agreement with [HIP] the wide MFN was expressed in the following way in clause 4.11:

'[t]he Insurance Provider warrants that it will not provide a quotation for a Policy to a Customer for BISL to display in any price comparison table referred to in clause 2.2 that has a higher premium payable than would payable by that Customer should

¹⁰² For example, see the CMA's submission to the OECD Hearing on Across Platform Parity Agreements (the OECD paper cited by BGL in paragraph 435 of its Response to the SO), Hearing on Across Platform Parity Agreements, [Note by United Kingdom](#), 27-28 October 2015, DAF/COMP/WD(2015)66, paragraph 7.

¹⁰³ As described in Section 6, all home insurance providers on CTM's panel in the Relevant Period had a narrow MFN in their agreements with CTM (and, in most cases, with CTM's rival PCWs), whether they had a wide MFN or not.

¹⁰⁴ See in particular Section 5 (Market Definition), Section 6 (the counterfactual) and Section 9 (the CMA's assessment of the effects on competition of CTM's wide MFNs), respectively.

*they have accessed the Insurance Provider Website directly or via any other aggregator website’.*¹⁰⁵

2.60. Similarly, CTM’s agreement with [HIP] stated at clause 4.7:

*‘[t]he Insurers will provide Customers with rates for its Insurance Products that are equal to or less than those rates offered on the Insurers’ Websites or other aggregator websites’.*¹⁰⁶

2.61. BGL submitted that agreements with some of the 32 providers should not be regarded as containing wide MFN clauses. The CMA has addressed such representations in Section 4.B.I below.

2.62. On 30 November 2017, around two months after the launch of the Investigation, CTM wrote to each of the 32 home insurance providers with which it had agreed a wide MFN clause, informing them that it would no longer be enforcing the wide MFN in their agreements.¹⁰⁷

2.G.II. Background to the use of wide MFN clauses by PCWs

2.63. Three of the Big Four PCWs (GoCompare, Confused and CTM) historically included wide MFNs in their agreements with insurance providers in at least the private motor insurance and home insurance sectors. GoCompare¹⁰⁸ and Confused¹⁰⁹ started using wide MFNs from at least 2006 and 2007 respectively, and CTM from at least 2008.¹¹⁰

2.64. Between September 2012 and September 2014, the CMA investigated the use of wide MFNs in the private motor insurance market, the findings of which were set out in the final report dated 24 September 2014 (the PMI

¹⁰⁵ URN 1817, BGL’s response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP], dated 12 May 2017. It should be noted that, following the PMI Order 2015, which prohibited wide MFNs in private motor insurance (in April 2015), BGL amended its standard wording for wide MFNs to make clear that, in relation to private motor insurance, the provisions only applied to the insurance provider’s website. For example, the agreement between BISL and [HIP] stated at clause 4.11 that *‘[f]or the avoidance of doubt this clause does not apply to an Insurance Provider Motor Policy’.*

¹⁰⁶ URN 1783, BGL’s response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL and [HIP], dated 14 January 2010, paragraph 4.7.

¹⁰⁷ URN 5266A, First BGL Submission dated 21 December 2017 page 2; as an example of the letter CTM sent to home insurance providers, see URN 5315.27, [HIP]’s response to section 26 notice dated 24 November 2017, question 17, Annex 09(ii).

¹⁰⁸ URN 5466, GoCompare’s response to follow-up questions to section 26 notice dated 14 November 2017, entitled ‘Copy of Annex 7 MFNs v2.xlsx’, question 7 and URN 0203, GoCompare’s response to a request for information in the DCTs Market Study dated 2 May 2017, Annex 3, tab ‘MFNs_PMI’, question 11.

¹⁰⁹ URN 4923, Confused’s response to follow-up questions to section 26 notice dated 14 November 2017, document entitled ‘Appendix A (amended) - Q7’. Trading names and brands’; URN 5498, Confused’s email response to follow-up questions to section 26 notice dated 8 January 2018, questions 1 and 2. URN 6322, Confused’s response to section 26 notice dated 27 April 2018, question 6 and question 7.

¹¹⁰ URN 8484.5, BGL’s Response to the Statement of Objections (Response to the SO) dated 22 February 2019, paragraph 78.

Market Investigation). This led to the PMI Order 2015, which prohibited the use of wide MFNs in the private motor insurance sector from 19 April 2015.

- 2.65. GoCompare and Confused removed their wide MFNs (but retained their narrow MFNs) from contracts with insurance providers in all types of insurance, including both motor and home insurance during or shortly after the PMI Market Investigation. Specifically, Confused removed its wide MFNs in December 2012 and GoCompare in March 2015.¹¹¹ CTM, in compliance with the PMI Order 2015, stopped enforcing its wide MFNs in private motor insurance from 18 April 2015¹¹², but – in contrast with the other Big Four PCWs – retained and continued to enforce its wide MFNs in home insurance until the end of the Relevant Period.¹¹³
- 2.66. With the exception of MoneySuperMarket, wide MFNs were therefore widely used by PCWs across insurance products until the PMI Market Investigation started in 2012 and were a feature of agreements between PCWs and insurance providers for almost a decade before the Relevant Period. In the Relevant Period, however, CTM was an outlier as compared with the other Big Four PCWs in retaining wide MFNs in its agreements with home insurance providers (and for other non-motor insurance products).

¹¹¹ Confused stated that it removed its wide MFNs *'in consideration to'* the private motor insurance investigation: URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 9; GoCompare removed its wide MFNs a month before the PMI Order 2015 came into force: URN 5466, GoCompare's response to follow-up questions to section 26 notice dated 14 November 2017, entitled 'Copy of Annex 7 MFNs v2.xlsx', question 7.

¹¹² URN 0075.1, BGL's response to a request for information in the DCTs Market Study dated 2 May 2017, question 10.

¹¹³ See further Section 8.A.II.(b) for details of CTM's decision to retain wide MFNs in home insurance following the PMI Order 2015.

3. LEGAL FRAMEWORK FOR EFFECTS ASSESSMENT

- 3.1 This Section sets out the legal framework for the assessment of whether CTM's wide MFNs had the appreciable effect of restricting competition during the Relevant Period.
- 3.2 The CMA's findings are made by reference to the following provisions of UK and EU competition law:
- (a) Section 2 of the Act (the Chapter I prohibition) prohibits agreements between undertakings which may affect trade within the UK and have as their object or effect the prevention, restriction or distortion of competition within the United Kingdom, unless a relevant exclusion applies or the agreements in question are exempt in accordance with the provisions of Part 1 of the Act.
 - (b) Article 101(1) TFEU prohibits agreements between undertakings which may affect trade between EU Member States and which have as their object or effect the prevention, restriction or distortion of competition within the European Union, unless they are exempt in accordance with Article 101(3) TFEU.
- 3.3 Under the European Union (Withdrawal Agreement) Act 2020, section 2(1) of the European Communities Act 1972 (under which EU law has effect in the UK's national law) remains in force until the end of the transition period that runs from 31 January 2020 (the date of the UK's exit from the European Union) until 11pm on 31 December 2020 (the Transition Period).¹¹⁴ This means that directly applicable EU law, including Articles 101 and 102 TFEU and Regulation 1/2003¹¹⁵, will continue to apply in the UK during the Transition Period. When applying the Chapter I prohibition to agreements, decisions by associations of undertakings or concerted practices within the meaning of Article 101 TFEU which may affect trade between Member States within the meaning of that provision, the CMA must also apply Article 101 TFEU to such agreements, decisions or concerted practices.¹¹⁶

¹¹⁴ Section 1A, European Union (Withdrawal) Act 2018 (as introduced by section 1, European Union (Withdrawal Agreement) Act 2020). See further CMA, [Guidance on the functions of the CMA under the Withdrawal Agreement](#) (CMA113, 28 January 2020).

¹¹⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty, Official Journal L 1, 4.1.2003 (the Modernisation Regulation), p. 1–25.

¹¹⁶ Article 3(1) of the Modernisation Regulation. In addition, section 60 of the Act provides that, so far as is possible (having regard to any relevant differences between the provisions concerned), questions arising in relation to UK competition law should be dealt with in a manner which is consistent with the treatment of corresponding questions under EU competition law. Further, the CMA (i) must act (so far as it is compatible with the provisions of Part I of the Act) with a view to securing that there is no inconsistency with the principles laid

- 3.4 Certain types of coordination between undertakings may reveal a sufficient degree of harm to competition that it may be found that there is no need to examine their effects.¹¹⁷ This is the case where the coordination can be regarded by its very nature as being harmful to the proper functioning of normal competition.¹¹⁸ Where the analysis of a type of coordination does not reveal a sufficient degree of harm to competition, it is necessary to assess whether that coordination has the effect of restricting competition to an appreciable extent.¹¹⁹
- 3.5 The CMA considers it is arguable that CTM's wide MFNs were by their very nature harmful to the proper functioning of normal competition. However, given the CMA's findings on the restrictive effects of CTM's wide MFNs, the CMA has chosen not to reach a conclusion as to whether CTM's network of wide MFNs amounted to an object infringement of the Chapter I prohibition or Article 101 TFEU (or both). The CMA therefore has not set out in this Section the legal framework for finding that an agreement restricts competition by object.

3.A. The civil standard of proof

- 3.6 The CMA has assessed the evidence in this case by reference to the 'civil' standard of proof, namely that it is sufficient to establish on the balance of probabilities that an infringement occurred.¹²⁰ In reaching a conclusion on the effect of CTM's network of wide MFNs on competition, it is necessary to assess whether the body of evidence viewed as a whole (referred to by the Competition Appeal Tribunal ('CAT') as the 'totality of the evidence') meets the required standard of proof, not each piece of evidence.¹²¹
- 3.7 BGL submitted that the '*presumption of innocence applies*', that the CMA must apply a '*robust standard of proof*', and that '*where there is doubt in establishing an allegation, this will operate to the advantage of the*

down by the TFEU, the CJEU and the General Court (together, the European Courts) and any relevant decision of the European Courts; and (ii) must have regard to any relevant decision or statement of the European Commission.

¹¹⁷ Case 56-65, Société Technique Minière v Maschinenbau Ulm GmbH EU:C:1966:38 (*STM*), at 249.

¹¹⁸ Case C-67/13 P, Groupement des cartes bancaires v European Commission EU:C:2014:2204 (*Cartes Bancaires*), paragraph 50.

¹¹⁹ See, for example, Case 56-65, Société Technique Minière v Maschinenbau Ulm GmbH EU:C:1966:38 (*STM*), at 249 and Case C-67/13 P, Groupement des cartes bancaires v European Commission EU:C:2014:2204 (*Cartes Bancaires*), paragraph 52.

¹²⁰ Case No: 1188/1/1/11, Tesco Stores Limited v The Office of Fair Trading [2012] CAT 31, paragraph 88.

¹²¹ Case No: 1262/5/7/16 (T) Agents' Mutual v Gascoigne Halman [2017] CAT 15, paragraph 203. The principle that it is sufficient if the body of evidence relied on, viewed as a whole, meets the required standard of proof has been repeatedly stated by the EU Courts, eg Cases C-403/4P etc Sumitomo Metal Industries v Commission [2007] EU:C:2007:52, paragraph 42 and Case T-105/17 HSBC Holdings v Commission, EU:T:2019:675, paragraph 203.

undertaking ... especially where the facts are susceptible to alternative and wholly legitimate explanations'.¹²² BGL further submitted that a decision by the CMA that an undertaking has infringed the Chapter I prohibition and Article 101 must be based on '*strong and compelling evidence*', that '*where evidence is equivocal, the case must be resolved in favour of the undertaking*', and that the CMA '*must exclude any plausible explanations other than adherence to [CTM's wide MFNs]*'.¹²³

3.8 The CMA accepts that any doubt as to whether an infringement of the Chapter I prohibition and Article 101 is established on the balance of probabilities operates to the advantage of the undertaking, in this case BGL.¹²⁴ However, insofar as BGL submits that a higher or more '*robust*' standard of proof than the balance of probabilities applies, that is incorrect. It is established that there is no 'heightened standard' of civil proof for finding an infringement of competition law.¹²⁵ As the House of Lords confirmed in another context, '*there is only one civil standard of proof*'.¹²⁶ In relation to the case law cited by BGL in support of its statements regarding the standard of proof, the CMA notes that:

(a) *Napp*,¹²⁷ to which BGL refers in support of the proposition that a decision should be based on '*strong and compelling evidence*', must be read in the light of subsequent case law, including judgments of the Supreme Court, which has rejected the proposition that '*the more serious the allegation, the more cogent the evidence needed to prove it*', and has confirmed that where the civil standard applies, the

¹²² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 13 and 14; URN 10459, BGL's response to the first Letter of Facts and Draft Penalty Statement (Response to the First LoF and DPS) dated 14 February 2020, paragraph 45.

¹²³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 15; URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 46. BGL also submitted that 'the CMA must prove not only the primary facts of the case but must also produce sufficient evidence to support its economic analysis', citing Case T-68/89, *Societa Italiano Vetro v Commission (Italian Flat Glass)*, EU:T:1992:38, paragraph 149 as authority for this, and further submitted that '[a]n abstract or theoretical analysis is insufficient'. While the CMA accepts that in order for it to reach a finding of infringement the evidence of appreciable effects overall needs to satisfy the requisite standard of proof, namely the balance of probabilities, it is not clear how the authority cited by BGL calls this into question or supports BGL's position. In that regard, the CMA notes that in *Societa Italiano Vetro* the General Court partially annulled the European Commission's decision on the basis that it had failed to adduce sufficient evidence to prove the existence of a cartel between three producers. However, the paragraph referred to by BGL merely summarises one of the applicant's arguments that '*if the Commission had not involved VP as a party to the proceedings, the market shares held jointly by SIV and FP during the period under consideration would have varied, for glass intended for the non-automotive market, between 21.2 per cent. and 36.1 per cent. That smaller market share could explain the basis of the decision as regards the accusation of a 'collective dominant position.'* According to VP, it is plausible that one of the underlying reasons for the procedure against it was to provide justification for the finding made by the Commission on the basis of Article 86'.

¹²⁴ Case No: 1188/1/1/11, *Tesco Stores Limited v The Office of Fair Trading* [2012] CAT 31, paragraph 88.

¹²⁵ Case No: 1122/1/1/09 *AH Willis & Sons Limited v Office of Fair Trading* [2011] CAT 13, paragraphs 45 to 47.

¹²⁶ *Re S-B (Children)* [2009] 1 AC 11, UKSC 17, paragraph 13.

¹²⁷ Case No: 1001/1/1/01 *Napp Pharmaceuticals v Director General of Fair Trading* [2002] CAT 1, paragraph 109.

standard of proof is '*the simple balance of probabilities, neither more nor less*'.¹²⁸

- (b) The EU cases referred to by BGL in support of its submission that the CMA '*must exclude any plausible explanations other than adherence to the WMFNs for the conduct of the HIPs*' are not relevant in the present case. Those cases involved findings by the European Commission of the existence of coordination based on the supposition that the parallel conduct identified could not be explained other than by a concerted practice between the undertakings involved.¹²⁹ In the present case, by contrast, the CMA is not seeking to rely on the absence of alternative plausible explanations in order to show that BGL was party to agreements (or concerted practices) with home insurance providers containing wide MFNs that infringed the Chapter I prohibition and Article 101(1).¹³⁰ The existence of those agreements is established by documentary evidence and is not generally disputed by BGL.¹³¹ In any event, as explained above, the relevant standard of proof under UK law is the balance of probabilities.

3.9 Accordingly, in order to reach a conclusion on whether, on the balance of probabilities, the Chapter I prohibition and Article 101 TFEU have been infringed, it must be examined whether CTM's network of wide MFNs was in fact likely to have restricted competition to an appreciable extent.¹³²

¹²⁸ Re S-B (Children) [2009] 1 AC 11, UKSC 17, paragraphs 64 and 70. Baroness Hale stated: 'I would go further and announce loud and clear that the standard of proof in finding the facts necessary to establish the threshold under [the relevant legislation at issue] is the simple balance of probabilities, neither more nor less. Neither the seriousness of the allegation nor the seriousness of the consequences should make any difference to the standard of proof to be applied in determining the facts. The inherent probabilities are simply something to be taken into account, where relevant, in deciding where the truth lies'.

¹²⁹ Case 29/83, CRAM and Rheinzink v European Commission, EU:C:1984:130 (CRAM), paragraph 16; Case C-89/85, A. Ahlström Osakeyhtiö, EU:C:1993:120 ('Woodpulp II'), paragraphs 71 and 126. In CRAM, the allegation related to a concerted practice to protect the German market from parallel imports of rolled zinc products based on the timing of the suspension of deliveries. In Woodpulp II, the allegation related to a concerted practice involving the coordination of prices of woodpulp products based on system of price announcements used by the undertakings.

¹³⁰ In Case T-305/04, Limburgse Vinyl Maatschappij v European Commission, EU:T:1999:80, the General Court stated at paragraphs 725 to 728 that CRAM and Woodpulp II are '*not applicable*' where '*the proof of the concerted action between the undertakings is based not on a mere finding of parallel market conduct but on documents which show that the practices were the result of a concerted action. In those circumstances, the burden is on the applicants not merely to submit an alleged alternative explanation for the facts found ... but to challenge the existence of those facts established on the basis of the documents*'. See also Case T-67/00, JFE Engineering v European Commission, EU:T:2004:221 (JFE Engineering), paragraphs 186-187. As set out in Section 4, CTM's wide MFNs were contained in written agreements between CTM and home insurance providers.

¹³¹ The CMA addresses in Section 4.B. the limited instances where BGL disputes that a relevant provider was subject to a wide MFN under its agreement with CTM.

¹³² See, for example, Generics (UK) Limited and others v CMA [2018] CAT 4, paragraph 328.

3.B. Assessment of anti-competitive effects

- 3.10 The Chapter I prohibition and Article 101 TFEU apply both to actual and potential anti-competitive effects, so that the assessment required is not limited to the actual effects alone but must also take account of the potential effects of the agreement on competition.¹³³ It is therefore necessary to establish whether CTM's wide MFNs are likely to have harmed competition, taking into account, as a relevant consideration, evidence as to what the actual effect on competition of CTM's network of wide MFNs has been.¹³⁴
- 3.11 For an agreement (or network of agreements) to be restrictive by effect it must affect (or be likely to affect) competition to such an extent that, on the relevant market, negative effects on prices, output, innovation or the variety or quality of goods and services can be expected with a reasonable degree of probability.¹³⁵ An analysis of the effects of an agreement must be based not only on existing competition between undertakings already present on the relevant market but also on potential competition.¹³⁶
- 3.12 The assessment of whether an agreement restricts competition must be understood within the actual legal and economic context in which competition would occur in the absence of the agreement,¹³⁷ taking into account the nature of the products or services concerned, as well as the real operating conditions and the structure of the market concerned.¹³⁸ For the purposes of analysing the restrictive effects of an agreement it is normally necessary to define the relevant market.¹³⁹
- 3.13 The European Commission's [Guidelines](#) on Vertical Restraints (2010/C 130/01) ('Vertical Guidelines') indicate several factors that are relevant to an assessment of whether a vertical agreement brings about an appreciable

¹³³ Case C-7/95 P, *John Deere v Commission*, EU:C:1998:256, paragraph 77; Case C-238/05, *Asnef-Equifax v Ausbanc*, EU:C:2006:734, paragraph 50; Case C-1/12 *Ordem dos Técnicos Oficiais de Contas v Autoridade da Concorrência*, EU:C:2011:127, paragraphs 71, 82, 89, 97. See also: *Guidelines on the application of Article 101(3) of the Treaty (2004/C 101/08) (the Article 101(3) Guidelines)*, paragraph 24; and *European Commission Guidelines on Vertical Restraints (2010/C 130/01) (the Vertical Guidelines)*, paragraph 97. In the light of this case law and guidance, BGL is incorrect insofar as it seeks to argue that potential or likely effects on competition are irrelevant to an effects analysis or insufficient for a finding of infringement: URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 47.

¹³⁴ Case 13-1013, *Streetmap v Google* [2016] EWHC 253 (Ch), paragraph 90.

¹³⁵ Case 56-65, *Société Technique Minière v Maschinenbau Ulm GmbH* EU:C:1966:38 (*STM*), paragraph 249; *Article 101(3) Guidelines*, paragraph 24; *Vertical Guidelines*, paragraph 97.

¹³⁶ See Judgment of 14 April 2011, *Visa Europe v Commission*, T-461/07, ECR, EU: T:2011:181 (*Visa*), paragraph 68, Judgment of 12 June 1997, *Tiercé Ladbroke v Commission*, T-504/93, ECR, EU:T:1997:84, paragraph 158.

¹³⁷ Case 56-65, *Société Technique Minière v Maschinenbau Ulm GmbH* EU:C:1966:38 (*STM*), paragraph 250; *Article 101(3) Guidelines*, paragraph 17.

¹³⁸ *Visa Europe v Commission*, T-461/07, ECR, EU: T:2011:181 (*Visa*), paragraph 67.

¹³⁹ *Article 101(3) Guidelines*, paragraph 27; Case C-234/89 *Stergios Delimitis v Henninger Bräu AG* ECR EU:C:1991:91 (*Delimitis*), paragraphs 14 to 16.

restriction of competition: the nature of the agreement; the market position of the parties,¹⁴⁰ competitors, and buyers of the contract products; entry barriers; the maturity of the market; the level of trade; the nature of the product; and other factors such as the cumulative effect (i.e. the coverage of the market by similar agreements)¹⁴¹ and whether the agreement is 'imposed' (i.e. mainly one party is subject to the restrictions or obligations).¹⁴² These relevant factors are not exhaustive and the importance of individual factors may vary from case to case.¹⁴³

3.14 The negative effects on the market that may result from vertical restraints, which UK and EU competition law aims at preventing, include:

- (a) the anti-competitive foreclosure of competitors by raising barriers to entry or expansion;
- (b) the softening or dampening of competition between competitors; and
- (c) the facilitation of collusion.¹⁴⁴

Such negative effects may, for example, harm consumers by increasing the retail prices of products, limiting the choice of products, lowering their quality or reducing the level of innovation.¹⁴⁵

3.C. Competition in the absence of the agreement: the counterfactual

3.15 The European Commission's Vertical Guidelines state that *'the assessment of whether a vertical agreement has the effect of restricting competition will be made by comparing the actual or likely future situation in a relevant market with the vertical restraints in place with the situation that would prevail in the absence of the vertical restraints in question.'*¹⁴⁶ An analysis of the actual or potential restrictive effects of an agreement must therefore be considered with reference to the competitive situation absent the agreement, i.e. the counterfactual. This is a hypothetical position reflecting the situation

¹⁴⁰ See also, for example, Case T-77/92 *Parker Pen v Commission*, EU:T:1994:85, paragraphs 39 to 47; Case 19/77 *Miller v Commission*, EU:C:1978:19, paragraph 10; and Cases 100/80, etc, *Musique Diffusion Française v Commission*, EU:C:1983:158, paragraphs 81 to 87. The position and importance of the parties on the market is to be assessed taking account of the market structure: see, for example, European Commission decision, COMP/34579 *MasterCard*, 19 December 2007, paragraph 105.

¹⁴¹ See also, for example, T-7/93 *Langnese Iglo*, paragraphs 99 and 129; T-9/93 *Schöller*, paragraphs 76 and 95.

¹⁴² Vertical Guidelines, paragraphs 111 to 121.

¹⁴³ Vertical Guidelines, paragraphs 111 and 112.

¹⁴⁴ Vertical Guidelines, paragraph 100; OFT, Vertical Agreements, OFT 419, 2004 (adopted by the CMA Board), paragraphs 7.9 to 7.17.

¹⁴⁵ Vertical Guidelines, paragraph 101; OFT 419, paragraph 7.18.

¹⁴⁶ Vertical Guidelines, paragraph 97.

that would have been likely to pertain in the absence of the agreement containing the restriction of competition.¹⁴⁷

- 3.16 In that regard, the CAT has stated that *‘fundamental to an ‘effects’ case is the counter-factual: i.e. what would have happened in the absence of the agreement?’* and that *‘in order to show a restriction by effect, in our judgment it is necessary to establish it on the balance of probabilities: i.e. that it is more likely than not that the counter-factual would have been more competitive’*.¹⁴⁸ The relevant counterfactual has to be likely and realistic in the actual context.¹⁴⁹ However, the question of what would have happened in the counterfactual world is a necessarily hypothetical question, and not a factual one.¹⁵⁰

3.D. Cumulative effects of agreements of a similar type

- 3.17 The effect of an agreement has to be assessed in the context in which it occurs including where it might combine with others to have a cumulative effect on competition.¹⁵¹ An agreement cannot be isolated from its context and the existence of similar contracts can be taken into account in so far as all the contracts of that type as a whole are such as to restrict competition.¹⁵² Where there is a network of similar agreements concluded by the same undertaking, the assessment of the effects of that network on competition applies to all the individual agreements making up the network.¹⁵³

¹⁴⁷ Case T-328/03, O2 (Germany) GmbH v Commission ECLI:EU:T:2006:116, paragraph 71: *‘The examination required in the light of Article [101](1) [TFEU] consists essentially in taking account of the impact of the agreement on existing and potential competition ... and the competition situation in the absence of the agreement ... those two factors being intrinsically linked.’* See also Case C-7/95 P, John Deere v Commission, EU:C:1998:256, paragraph 76; Racecourse Association v The Office of Fair Trading [2005] CAT 29 at [153]: *‘the effect of the [agreement] has to be compared with that which would have prevailed had it not been entered into, an exercise requiring an assessment of the competitive landscape that would exist in its absence (‘the counterfactual’), but within the context of the market as it was at the time of the [agreement].’*; and Case C-382/12 P, MasterCard and Others v Commission, EU:C:2014:2201, paragraph 161.

¹⁴⁸ Generics (UK) Limited and others v CMA [2018] CAT 4, paragraphs 328 and 330.

¹⁴⁹ Sainsbury’s Supermarkets Limited and others v MasterCard Inc. and others [2018] EWCA Civ 1536, paragraph 185. See also Judgment in Case C-382/12 P, MasterCard and Others v Commission, EU:C:2014:2201, paragraph 166: *‘... the scenario envisaged on the basis of the hypothesis that the coordination arrangements in question are absent must be realistic. From that perspective, it is permissible, where appropriate, to take account of the likely developments that would occur on the market in the absence of those arrangements.’*

¹⁵⁰ Sainsbury’s Supermarkets Limited v MasterCard Inc. and others [2016] CAT 11, paragraph 180.

¹⁵¹ Case 23/67, SA Brasserie de Haecht v Consorts Wilkin-Janssen, EU:C:1967:54 (*Brasserie de Haecht*), at 415; Delimitis, paragraph 14.

¹⁵² Brasserie de Haecht, at 415; Delimitis, paragraph 14.

¹⁵³ Case T-7/93, Langnese-Iglo GmbH v European Commission, EU:T:1995:98 (*Langnese Iglo*), paragraph 129; Case T-9/93, Schöller Lebensmittel GmbH & Co. KG v European Commission, EU:T:1995:99 (*Schöller*), paragraph 95.

- 3.18 The CMA has therefore assessed, in line with EU case law¹⁵⁴, the effect of the network of CTM's wide MFNs on competition by comparing the competitive situation in the Relevant Period with what is likely to have happened in the absence of the network of CTM's wide MFNs (ie in the counterfactual).¹⁵⁵ In other words, the CMA has assessed whether it is more likely than not that 'but for' the presence of the network of CTM's wide MFNs competition would have been appreciably stronger.

3.E. Appreciable effect on competition

- 3.19 An agreement that restricts competition will fall within the Chapter I prohibition or Article 101(1) TFEU only if its effects on competition are appreciable.¹⁵⁶ Appreciable in this context does not mean substantial; it means more than *de minimis* or insignificant.¹⁵⁷ Accordingly, if an agreement is to fall within the scope of the prohibition it must have the object or effect of 'perceptibly' restricting competition.¹⁵⁸ An agreement will fall outside the scope of the Chapter I prohibition or Article 101(1) TFEU if it has only an insignificant effect on the market, taking account of the weak position of the parties concerned.¹⁵⁹
- 3.20 The Vertical Guidelines explain that appreciable anti-competitive effects are likely to occur when at least one of the parties has or obtains some degree of market power and the agreement contributes to the creation, maintenance or strengthening of that market power or allows the parties to exploit such market power.¹⁶⁰ In that regard, the market position of the parties provides an indication of the degree of market power they possess and 'the higher their market share, the greater their market power is likely to be'.¹⁶¹
- 3.21 The European Commission holds the view that vertical agreements between non-competitors do not appreciably restrict competition if the market share

¹⁵⁴ For example, Langnese-Iglo, paragraph 129, and Schöller, paragraph 95. The CMA notes that both cases were cited with approval by BGL (See URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 352).

¹⁵⁵ Vertical Guidelines, paragraph 97.

¹⁵⁶ Article 101(3) Guidelines, paragraph 24; Vertical Guidelines, paragraph 97. The Office of Fair Trading, [Agreements and concerted practices](#) (OFT401), December 2004, adopted by the CMA Board, paragraph 2.15.

¹⁵⁷ Achilles Information Limited v Network Rail Infrastructure Limited [2019] CAT 20, paragraph 121 (judgment upheld by the Court of Appeal: Network Rail Infrastructure Limited v Achilles Information Limited [2020] EWCA Civ 323, judgment of 5 March 2020).

¹⁵⁸ Case C-226/11, Expedia Inc v Autorité de la Concurrence, EU:C:2012:795, paragraph 17.

¹⁵⁹ Case 5/69 Franz Völk v SPRL Ets J. Vervaecke [1969] ECR 295, paragraph 3. See also North Midland Construction v The Office of Fair Trading [2011] CAT 14, paragraph 45: '*the effect of the requirement [for an appreciable restriction of competition] is to impose a de minimis standard aimed at ensuring that anti-competitive agreements whose distorting effects (actual or potential) are so minor as not to be appreciable, do not involve an infringement of Article 101 TFEU.*'

¹⁶⁰ Vertical Guidelines, paragraph 97. See also Article 101(3) Guidelines, paragraph 25.

¹⁶¹ Vertical Guidelines, paragraph 114.

held by each of the parties to the agreement does not exceed 15%.¹⁶² This does not imply that vertical agreements between undertakings with market shares above 15% necessarily appreciably restrict competition.¹⁶³ However, nor does it mean that the CMA is precluded from finding that a vertical agreement between undertakings with market shares below that threshold constitutes an appreciable restriction of competition.¹⁶⁴ Such thresholds are one factor among others that may enable the CMA to determine whether the effect on competition of an agreement is appreciable.¹⁶⁵

3.F. How the CMA has applied the Legal Framework in its assessment

3.22 In the following Sections of the Decision, the CMA first sets out its findings in relation to whether BGL and each home insurance provider are ‘undertakings’ and whether the contracts between them are ‘agreements’ for the purposes of competition law (Section 4), before setting out its assessment of the effects on competition of CTM’s network of wide MFNs in the Relevant Period (Sections 5 to 9). In section 10, the CMA assesses other aspects of the legal assessment including whether any exclusions or exemptions may apply.

3.23 The CMA’s assessment takes into account the actual legal and economic context in which competition would occur in the absence of CTM’s network of wide MFNs. The remainder of this Decision is structured as follows:

- (a) **Section 4: Undertakings and Agreements** sets out the CMA’s assessment of whether the contracts between CTM and the 32 home

¹⁶² EU Commission, [Notice on agreements of minor importance which do not appreciably restrict competition under Article 101\(1\) of the Treaty on the Functioning of the European Union \(De Minimis Notice\)](#), June 2014, paragraph 8. The CMA will have regard to the De Minimis Notice in determining whether an agreement has an appreciable effect on competition (see OFT401, paragraph 2.18). BGL wrongly submitted that ‘Article 8 [of the De Minimis Notice] specifies that an agreement is not appreciable where the aggregate market shares of the parties to the agreement does not exceed 15% on any of the relevant markets affected by the agreement’ (BGL Response to SO, paragraph 357). Paragraph 8 of the Notice is clear that, in the case of a vertical agreement, each party’s market share must not exceed 15% in order for that provision to apply.

¹⁶³ De Minimis Notice, paragraph 3. The CMA does not dispute that agreements between undertakings that exceed the thresholds in the De Minimis notice may still fall outside the Chapter I prohibition and Article 101(1), as was found to be the case on the facts in Joined cases C-215/96 and C-216/95, Bagnasco and Others, EU:C:1999:12, (cited by the European Commission at paragraph 3 of the De Minimis Notice) and Cases C-180/98, etc, Pavlov v Stichting Pensioenfond Medische Specialisten, EU:C:2000:151 (referred to at paragraph 346 of BGL’s Response to the SO).

¹⁶⁴ Case C-226/11, Expedia Inc v Autorité de la Concurrence, EU:C:2012:795, paragraph 38.

¹⁶⁵ Case C-226/11, Expedia Inc v Autorité de la Concurrence, EU:C:2012:795, paragraph 31. The CMA disagrees with BGL’s submission that ‘the fact that an agreement falls outside the scope of the De Minimis Notice is *not an indication* that its effect is appreciable, only that further examination is required’ (URN 8484.5, BGL’s Response to the SO dated 22 February 2020, paragraph 362 (emphasis added)). While the CMA accepts that the fact that an agreement falls outside the scope of the De Minimis Notice does not provide sufficient evidence of itself to show that its effects are appreciable, it is clear from the case law of the European Courts that the CMA may take into account those thresholds (and the market shares of the parties more generally) as one factor among others in determining the appreciable effect of a restrictive agreement (see Case C-226/11, Expedia Inc v Autorité de la Concurrence, EU:C:2012:795, paragraph 31).

insurance providers are agreements between undertakings for the purposes of competition law.

- (b) **Section 5: Market Definition and Market Power** sets out the CMA's assessment of the relevant product and geographic market, and the CMA's assessment of CTM's market power.
- (c) **Section 6: The Counterfactual** sets out the CMA's assessment of the situation that would have been likely to pertain in the absence of CTM's wide MFNs.
- (d) **Section 7: Nature of Competition** sets out the CMA's assessment of the nature of competition for PCW services in the home insurance sector.
- (e) **Section 8: CTM's use of wide MFNs** sets out the CMA's assessment of how CTM used wide MFN's in practice, including the extent of compliance by the relevant providers and the proportion of home insurance providers covered by CTM's network of wide MFNs.
- (f) **Section 9: The Appreciable Effects of CTM's network of wide MFNs** sets out the CMA's assessment of whether CTM's network of wide MFNs had the effect of restricting competition during the Relevant Period, drawing on the analysis set out in other Sections of the Decision, and includes the CMA's assessment of whether CTM's network of wide MFNs had the effect of restricting competition to an appreciable extent.
- (g) **Section 10: Other aspects of the legal assessment** sets out the CMA's assessment and findings in respect of effect on trade, whether any exclusions or exemptions apply, duration, and attribution of liability.
- (h) **Section 11: CMA's Action** sets out the CMA's decision in relation to directions and financial penalty.

3.24 In its assessment, the CMA has carefully considered information from a wide range of sources obtained during its Investigation¹⁶⁶. In particular, the CMA has carefully considered the written and oral representations made by

¹⁶⁶ See Annex B for a fuller description of the information obtained by the CMA during the course of this Investigation.

BGL¹⁶⁷ and sets out its responses to the main representations made by BGL where relevant in its assessment.

- 3.25 Given the volume and extent of the representations made by BGL, the CMA has, where appropriate, addressed some of BGL's representations in the main body of the Decision and addressed others in Annexes. Accordingly, while the facts and reasons on which the CMA has based its decision are contained within the main body of the Decision, certain matters are addressed, or are addressed in more detail, in the Annexes. The Annexes therefore form a part of the Decision and should be read with the main body of the Decision.

¹⁶⁷ [HIP] was the only provider to make substantive written representations in response to the SO and in response to the First Letter of Facts. These are considered in particular in Section 8.B.II and Annex P.

4. UNDERTAKINGS AND AGREEMENTS

4.1 This Section sets out the CMA's assessment of whether each of CTM's 32 written contracts with home insurance providers that contained a wide MFN constituted an agreement between undertakings within the meaning of the Chapter I prohibition and Article 101 TFEU.

4.2 The CMA finds that BGL and the home insurance providers that were counterparties to the written contracts that contained wide MFNs are undertakings for the purposes of competition law and that each of the written contracts was an agreement between undertakings, and therefore within the scope of the Chapter I prohibition and Article 101 TFEU.

4.A. Undertakings

4.3 The Chapter I prohibition and Article 101 TFEU apply to agreements between undertakings. For the purposes of the Chapter I prohibition and Article 101 TFEU, the term undertaking covers every entity engaged in economic activity, regardless of its legal status and the way in which it is financed.¹⁶⁸ An entity is engaged in 'economic activity' where it conducts any activity 'of an industrial or commercial nature by offering goods and services on the market.'¹⁶⁹

4.4 The term undertaking designates an economic unit, even if in law that unit consists of several natural or legal persons.¹⁷⁰ The Chapter I prohibition and Article 101 TFEU do not apply to agreements between two persons who form part of a single economic unit or entity. In certain circumstances, where an agent works for the benefit of its principal that agent may, in principle, be treated as forming part of the same economic unit as the principal (the 'genuine agency' exception).¹⁷¹

4.A.I. *BGL and home insurance providers are undertakings*

4.5 The CMA finds that, throughout the Relevant Period:

- (a) BGL¹⁷² was, through the CTM business, engaged in the economic activity of offering PCW Services in the home insurance sector (including both customer introduction services to home insurance

¹⁶⁸ C-41/90 Klaus Höfner and Fritz Elser v Macrotron GmbH, EU:C:1991:161, paragraph 21.

¹⁶⁹ C-118/85 Commission v Italian Republic, EU:C:1987:283, paragraph 7.

¹⁷⁰ C-97/08 P Akzo Nobel NV and Others v Commission, EU:C:2009:536, paragraph 55.

¹⁷¹ C-40/73 Cooperative Vereniging 'Suiker Unie' UA v European Commission, EU:C:1975:174, paragraph 480; T-325/01 DaimlerChrysler AG v European Commission, EU:T:2005:322, paragraph 86; and Vertical Guidelines, paragraphs 1 and 12 to 21.

¹⁷² The CTM business was, throughout the Relevant Period, directly operated by BISL Limited. See Section 2.B.

providers and price comparison services to end-consumers as set out in Section 2.B) and is therefore an undertaking for the purposes of the Chapter I prohibition and Article 101 TFEU.

- (b) Each of the 32 home insurance providers that entered into the agreements was engaged in the economic activity of offering home insurance products and are therefore also undertakings for the purposes of the Chapter I prohibition and Article 101 TFEU.¹⁷³

4.A.II. CTM is not a ‘genuine agent’ of home insurance providers

4.6 BGL made extensive representations¹⁷⁴ prior to the issue of the SO that CTM acts as the ‘genuine agent’ of home insurance providers, and therefore that their contractual relationship falls outside the scope of the Chapter I prohibition and Article 101(1) TFEU.¹⁷⁵ BGL did not repeat these representations in response to the SO. The CMA therefore assumes that BGL no longer considers, as it previously submitted, that CTM acts as the ‘genuine agent’ of home insurance providers on its panel.

4.7 However, for completeness, the CMA summarises below the reasons (as previously set out in the SO) as to why the CMA disagreed with BGL’s submissions and finds that the CTM was not a ‘genuine agent’, such that the agreements fall within the scope of the Chapter I prohibition and Article 101 TFEU.

4.8 The Vertical Guidelines state that:¹⁷⁶

‘An agent is a legal or physical person vested with the power to negotiate and/or conclude contracts on behalf of another person (the principal), either in the agent’s own name or in the name of the principal, for the:

- purchase of goods or services by the principal, or*
- sale of goods or services supplied by the principal.’*

¹⁷³ As rule 10(2) of the CMA Rules has been applied, the CMA is addressing the Decision to BGL only in this case and not to any home insurance providers that have entered agreements with BGL that contain wide MFNs. However, in order to demonstrate an infringement of the Chapter I prohibition and Article 101 TFEU by BGL, the CMA must still show that BGL entered into one or more agreements with one or more undertakings that had as its object or effect the prevention, restriction or distortion of competition. Owing to the application of Rule 10(2), there is no assessment of liability in relation to home insurance providers.

¹⁷⁴ URN 5266A, First BGL Submission dated 21 December 2017.

¹⁷⁵ Citing T-325/01 DaimlerChrysler AG v European Commission, EU:T:2005:322, paragraph 86: ‘The case law shows that this sort of situation arises not only where the relationship between the companies in question is that of parent and subsidiary, but may also occur, in certain circumstances, in relationships between a company and its commercial representative, or between a principal and its agent.’

¹⁷⁶ Vertical Guidelines, paragraph 12.

- 4.9 The CMA has therefore considered whether CTM (as the purported agent) has the power to negotiate or conclude contracts on behalf of the home insurance providers (the purported principals).
- 4.10 The CMA finds that CTM does not negotiate or conclude contracts on behalf of home insurance providers and therefore is not a 'genuine agent' for the purposes of competition law:
- (a) CTM is not a 'commercial agent' for the purposes of the Commercial Agents (Council Directive) Regulations 1993 as it does not have authority to negotiate the sale or purchase of goods on behalf of the home insurance providers. It is also not an agent under English common law as it does not have the power to create, change or terminate the legal relations of the home insurance providers.¹⁷⁷
 - (b) CTM's agreements with home insurance providers do not (expressly or implicitly) authorise BGL to negotiate or conclude insurance contracts on behalf of the provider.¹⁷⁸
 - (c) Although BISL (the legal entity within BGL that directly operated the CTM business) in the Relevant Period was authorised by the FCA to deal in investments as an agent (in relation to its insurance distribution businesses), CTM did not buy or resell home insurance.¹⁷⁹ Following its incorporation as a separate legal entity, Compare The Market Limited has been authorised to act as an intermediary between consumers and home insurance providers but has not been authorised to conclude contracts for insurance policies (whether as agent or otherwise).¹⁸⁰
 - (d) BGL confirmed that contracts are concluded by consumers directly with the home insurance providers once they have accessed the provider's website: *'The prices will be presented to the consumer (usually ranked in order of price, with the lowest price being first) who may click through*

¹⁷⁷ For example, in *Haringey LBC v Ahmed* [2017] EWCA Civ 1861 the Court of Appeal stated at paragraph 28 that '[t]he usual characteristics of an agency relationship may be said to be authority for the agent to affect the principal's relationship with third parties, a fiduciary duty owed by the agent to the principal, and an ability on the part of the principal to exercise a degree of control over the agent'. The CMA notes, however, that the Vertical Guidelines indicate that the qualification given to an agreement under national legislation is not material to the assessment of whether Article 101 TFEU applies (see Vertical Guidelines, paragraph 13).

¹⁷⁸ See, for example, URN 0056, CTM's response to a request for information in the DCTs Market Study dated 23 January 2017, document entitled 'CTM Template Insurer Partner Agreement'.

¹⁷⁹ URN 5266A, First BGL Submission dated 21 December 2017, paragraph 2.4.1, page 7.

¹⁸⁰ Compare The Market Limited (Firm Reference 778488) is only authorised to arrange (bring about) deals in investments and make arrangements with a view to transactions in investments.

*to their preferred home insurance provider's website to purchase their chosen policy.*¹⁸¹

- (e) Various statements on CTM's website over time have made it clear that CTM does not act on behalf of providers and emphasise CTM's limited role in providing comparison services to consumers, for example:

*'We work for you, the customer, **not on behalf of insurers**.'*¹⁸²

*'Once you've completed the quote process you leave our website and move across to your provider's own website to complete your purchase. As you buy directly from them, they manage your policy and the supporting documents – we're not able to view or amend these and don't keep a record of them ourselves. If you contact your provider directly, they'll be able to help you with this.'*¹⁸³

*'In providing you with a quote we are not able to guarantee the availability of the product, service or price as you will need to deal with the product or service provider direct to make a purchase.'*¹⁸⁴

*'We provide a service which enables you to compare a number of prices for products and services, as well as product information from the providers on our panel. This will enable you make [sic] an informed decision before proceeding to your chosen provider for further information.'*¹⁸⁵ and

*'In order to purchase any of the products or services described on our website you must contact the product or service provider.'*¹⁸⁶
(emphasis added)

- 4.11 Moreover, even where a relationship between two undertakings is appropriately characterised as one of 'genuine agency', only the obligations imposed by the principal (which, in BGL's view, would be the providers) on the agent (which, in BGL's view, would be CTM) in relation to the contracts

¹⁸¹ URN 5266A, First BGL Submission dated 21 December 2017, Annex 1, paragraph 1.3.

¹⁸² URN 6655, Extracts from www.comparethemarket.com accessed on 28 February 2018.

¹⁸³ URN 6656, Extract from www.comparethemarket.com accessed on 12 September 2018.

¹⁸⁴ URN 6657, Terms and conditions applicable to the use of www.comparethemarket.com accessed on 12 September 2018 paragraph 2.5.

¹⁸⁵ URN 6657, Terms and conditions applicable to the use of www.comparethemarket.com accessed on 12 September 2018 page 1.

¹⁸⁶ URN 6657, Terms and conditions applicable to the use of www.comparethemarket.com accessed on 12 September 2018 paragraph 8.2.

which it negotiates or concludes on behalf of the principal will fall outside the scope the Chapter I prohibition and Article 101 TFEU.¹⁸⁷

4.12 By contrast, CTM's wide MFNs imposed contractual obligations on the home insurance providers, and therefore restricted the actions of those providers. CTM's wide MFNs would not therefore fall within the scope of the exception for genuine agency and would still be subject to the application of the Chapter I prohibition and Article 101(1) TFEU, even if there was a relationship of genuine agency between CTM and the relevant providers.¹⁸⁸

4.13 For completeness, the CMA sets out in Annex H in more detail the CMA's assessment of BGL's representations on the issue of 'genuine agency'.

4.B. Agreements between undertakings

4.14 During the Relevant Period, BGL (through BISL as the legal entity within BGL entering the contracts) was party to written contractual agreements containing a wide MFN clause with 32 home insurance providers for the provision of customer introduction services by CTM. The home insurance providers that were the counterparties to the 32 contracts containing CTM's wide MFNs are listed in Table 2.1 above and the details of the 32 contracts are listed in Annex C.1.

4.15 The CMA finds that each of the contracts with the 32 providers constituted an agreement within the meaning of the Chapter I prohibition and Article 101 TFEU.¹⁸⁹ In particular, each of the contracts expressed the joint intention of BGL (through BISL) and the relevant home insurance provider counterparty as to their relationship and conduct for the provision by CTM of customer introduction services for home insurance. Each contract included a wide MFN in similar terms, or a similar restriction in the case of [HIP]¹⁹⁰, as an express term and therefore imposed a contractual obligation on the relevant home insurance provider.¹⁹¹

¹⁸⁷ C-217/05 Confederacion Espanola de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA, EU:C:2006:784, paragraph 62 and Vertical Guidelines, paragraph 18.

¹⁸⁸ See decision of the Bundeskartellamt in B9-66/10 HRS-Hotel Reservation Service (HRS), paragraph 146: *'HRS does not act as a genuine agent with regard to the sale of hotel rooms. HRS cannot qualify as a genuine agent because the MFN clauses do not bring about any restraints of competition which emerge from a principal - in this case the hotel partners - but from the agent HRS.'*

¹⁸⁹ 'Agreement' has a wide meaning and covers agreements whether legally enforceable or not, written or oral. See The Office of Fair Trading, [Agreements and Concerted Practices](#) (OFT401), December 2004, adopted by the CMA Board, paragraph 2.7.

¹⁹⁰ See paragraphs 4.18-4.20 below.

¹⁹¹ The CMA notes that three providers ([HIP], [HIP], and [HIP]) that agreed a wide MFN with CTM towards the end of the Relevant Period did not [X] (see footnotes 41, 44, 46 on Table 2.1). However, the CMA considers that these agreements had the potential effect of restricting competition at that time that they were entered into. Moreover, CTM only stopped enforcing its wide MFNs as a result of the CMA opening its Investigation such that

4.16 BGL has not disputed that it was party to the contracts with the 32 home insurance providers that the CMA finds contained wide MFN clauses. However, BGL submitted that three of the 32 contracts – those with [HIP]¹⁹², [HIP]¹⁹³, and [HIP]¹⁹⁴ – should not be ‘*properly regarded*’ or ‘*properly identified*’ as having a wide MFN, or ‘*should be treated as a NMFN*’ (i.e. a narrow MFN). BGL also submitted that the wide MFN clauses in [HIP], [HIP], [HIP] and [HIP]’s contracts were regarded by those providers as “*null*’ or *otherwise did not apply*’ – albeit without further submitting that the contractual clauses should not therefore be treated as wide MFNs.¹⁹⁵ The CMA disagrees with these submissions for the reasons set out below. For completeness, the CMA also explains below the clauses with four providers that the CMA has, for the purposes of this Decision, treated as narrow MFNs.

4.B.I. BGL’s representations on clauses that should not be treated as wide MFNs

4.17 The CMA finds that the clauses in CTM’s contracts with [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP] should be treated as wide MFNs and has therefore included these agreements in its assessment of the effects of CTM’s network of wide MFNs.

4.18 Although the clause in [HIP]’s contract was drafted differently from the wide MFN clauses in the contract with other providers, it was similar in terms of the restriction it imposed on [HIP]. The clause was drafted in the following terms:

*‘The parties acknowledge that in the provision of quotations by the Insurance Provider for an Insurance Provider policy, the Insurance Provider’s ‘online flat pricing policy’ means that the premiums quoted do not vary by reference to either the different online distribution channels for that quotation or by reference to different providers within the online distribution channel. [...]’*¹⁹⁶

4.19 The clause therefore required [HIP] to maintain an ‘online flat pricing policy’, which operated in a similar way to a wide MFN clause by restricting [HIP]

these (and CTM’s other wide MFN clauses) would have remained in place and enforced absent the CMA’s enforcement action.

¹⁹² URN 8484.5, BGL’s Response to the SO dated 22 February 2020, paragraph 116; URN 8484.12, BGL’s response to the SO dated 22 February 2019, Annex 8.

¹⁹³ URN 10459, BGL’s Response to the First LoF and DPS dated 14 February 2020, paragraph 110.

¹⁹⁴ URN 10459, BGL’s Response to the First LoF and DPS dated 14 February 2020, paragraph 68; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 1.19 and 4.13.

¹⁹⁵ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 1.19 and 4.13.

¹⁹⁶ URN 1768, BGL’s response to the First BGL Notice, question 30, contractual arrangement between BISL Ltd and CIS General Insurance dated 11 June 2011, clause 2.10.

from quoting different prices on different online distribution channels, including other PCWs. Moreover, the agreement between CTM and the [HIP] also provided, at clause 2.12, that if the [HIP] changed its 'online flat pricing policy' then it was required to notify CTM and renegotiate the terms of the agreement, with CTM having the right to terminate the agreement or suspend services with immediate effect if the renegotiation did not lead to a binding agreement within 30 days.

- 4.20 The evidence obtained from BGL showed that CTM treated [HIP] as having a wide MFN, with an internal CTM document stating that the [HIP] had a '*WIDE*' pricing commitment because of a '*Flat pricing commitment in place for on-line pricing*'.¹⁹⁷ However, in response to the SO, BGL submitted that the clause in the agreement with [HIP] is not '*properly to be regarded as a WMFN*', referring to a '*carve-out*' that allowed [HIP] to offer '*lower quotes*' through '*offline promotions to existing customers*'.¹⁹⁸ The CMA disagrees that the '*carve out*' is such that the clause should be treated as a narrow MFN rather than a wide MFN. The '*carve out*' is very limited in scope in allowing [HIP] to offer off-line promotions to existing customers only. The clause therefore required [HIP] to price uniformly across PCWs as [HIP]'s default pricing strategy. In light of its unequivocal terms and the contemporaneous internal CTM document referred to above, the CMA finds that CTM's agreement with [HIP] contained a wide MFN.
- 4.21 The wide MFN in CTM's contract with [HIP] was in the following terms, and was similar to the clauses in CTM's contracts with other providers with wide MFNs:

*'The Insurance Provider warrants that it will not provide a quotation for an Insurance Provider Policy to a Customer for BISL to display in any price comparison table referred to in clause 2.2 that has a higher premium payable than would be payable by that Customer should they have accessed the Insurance Provider Website directly or via a different source of introduction, unless the customer amends the risk data or information used to produce the quotation for the Insurance Policy Provider'.*¹⁹⁹

¹⁹⁷ URN 4272, BGL's response to section 27 notice dated 26 September 2016, document entitled 'H15781-0028-008411'.

¹⁹⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 116; URN 8484.12, BGL's response to the SO dated 22 February 2019, Annex 8.

¹⁹⁹ URN 1767, BGL's response to the First BGL Notice dated 26 September 2017, contractual arrangement between BISL Ltd and [HIP], signed on 31 May 2013, clause 4.11.

- 4.22 The evidence obtained from BGL showed that during the Relevant Period CTM treated [HIP] as having a wide MFN²⁰⁰, and this is consistent with its response to the SO in which BGL referred to [HIP] as having a wide MFN with no ‘*carve outs*’.²⁰¹ However, BGL submitted in its response to the First Letter of Facts (‘LoF’) and Draft Penalty Statement (‘DPS’) that the MFN clause included in the agreement with [HIP] should not properly be considered as a wide MFN because [HIP] had negotiated an ‘*amendment*’ to the clause which BGL submitted allowed [HIP] to ‘*continue to offer lower prices (direct)*’ to certain customers.²⁰² The ‘*amendment*’ in question refers to the last part of the MFN clause in the agreement with [HIP], which states ‘*unless the Customer amends the risk data or information used to produce the quotation for the Insurance Policy Provider*’. [HIP] told the CMA that this would have included the use of a campaign code by a customer to obtain a discount.²⁰³ BGL’s submission merely refers to [HIP]’s ability to offer lower prices on its direct channel and does not address the point that [HIP]’s ability to offer lower prices on rival PCWs was still constrained by the clause.²⁰⁴
- 4.23 In any event, the CMA disagrees that the negotiated variation means that the clause in [HIP]’s contract should not be treated as a wide MFN. The MFN clause in CTM’s agreement with [HIP] mirrored CTM’s standard wide MFN wording. The variation to the clause, by contemplating the provision of different quotes on PCWs as a result of customers potentially amending the risk data or information used to obtain a quotation from [HIP], simply reflected the fact that the wide MFN applied to like-for-like quotations (i.e. for the same risk profile), and similar provisions were made in contracts that CTM had with other providers with wide MFNs.²⁰⁵ Furthermore, as noted above, CTM’s internal contemporaneous documents recorded [HIP]’s clause as a wide MFN and this is entirely consistent with BGL’s own position in its response to the SO.

²⁰⁰ URN 4272, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘H15781-0028-008411’, where the clause in the agreement with [HIP] is recorded as ‘*wide*’.

²⁰¹ URN 8484.12, BGL’s response to the SO dated 22 February 2019, Annex 8.

²⁰² BGL stated that [HIP] had ‘*negotiated changes to CTM’s standard WMFN wording which allowed it to continue to offer lower prices (direct) where the customer used a media or discount code and also for [HIP] to offer other incentives such as discounts on other [HIP] products*’, URN 10459, BGL’s Response to the First LoF and DPS dated 14 February 2020, paragraph 110. [HIP] indeed stated ‘*the additional wording we had managed to negotiate, meant that [HIP] retained the ability to continue to offer customers lower prices where the customer used a media or discount code, and also for [HIP] to offer other incentives such as discounts on other [HIP] products*’, URN 9825, [HIP]’ response to section 26 notice dated 26 July 2019, question 3(b).

²⁰³ URN 9825, [HIP]’ response to section 26 notice dated 26 July 2019, question 3(a).

²⁰⁴ Additionally, in its submission BGL notes that [HIP]’s ability to price lower only applied to ‘*certain*’ customers, not all of its customers.

²⁰⁵ For example, URN 1817, BGL’s response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP], dated 12 May 2017, paragraph 4.11, states that the obligation under the wide MFN was ‘*[s]ubject to [...] identical material risk data having been asked of and provided by the Customer to calculate the quotation premium*’.

- 4.24 The wide MFN in CTM's contract with [HIP] was also similar to the clauses in CTM's contracts with other providers with wide MFNs.²⁰⁶ The evidence obtained from BGL showed that CTM treated [HIP] as having a wide MFN²⁰⁷, and in its response to the CMA's statutory notice and the SO BGL referred to [HIP] as having a wide MFN with no 'carve outs'.²⁰⁸ However, BGL submitted in its response to the First LoF and DPS that [HIP] should be treated as having had a narrow MFN on the basis of the evidence provided by [HIP].²⁰⁹
- 4.25 The CMA does not agree. Although [HIP] stated that it has never sought to adhere to CTM's wide MFN and told the CMA it had '*verbally communicated to BISL Limited on or around the date of the [PMI] Order that it did not consider any wide MFNs in contracts between the parties to be effective*', this was on the basis of its interpretation of the CMA's PMI Order 2015: '*[s]ince 19 April 2015 (the effective date of the Private Motor Insurance Market Investigation Order 2015) [HIP] has considered the severance clause to be effective and the Wide MFN clause to be struck out in its entirety*'.²¹⁰
- 4.26 [HIP] also told the CMA that it '*has not managed to expressly remove the wide MFN from this contract owing to continued negotiation with BISL relating to the terms of variation covering this*'.²¹¹ Accordingly, despite [HIP]'s views on the enforceability of the wide MFN (based on the banning of similar clauses in the private motor insurance sector by the PMI Order 2015), the clause remained a contractual obligation in a written agreement with CTM that was binding on [HIP] throughout the Relevant Period.²¹² Further, the fact that CTM did not take steps during the Relevant Period to enforce the wide MFN in its contract with [HIP] is not sufficient to remove the agreement from the ambit of the Chapter I prohibition or Article 101(1).²¹³ The CMA therefore considers that [HIP] had a wide MFN in its contract with CTM.

²⁰⁶ URN 1812, BGL's response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP], dated 25 April 2014.

²⁰⁷ URN 4272, BGL's response to section 27 notice dated 26 September 2017, document entitled 'H15781-0028-008411'.

²⁰⁸ URN 8484.12, BGL's response to the SO dated 22 February 2019, Annex 8.

²⁰⁹ URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 68.

²¹⁰ URN 5157, [HIP]' response to section 26 notice dated 24 November 2017, question 13 c).

²¹¹ URN 5157, [HIP]' response to section 26 notice dated 24 November 2017, question 13 c).

²¹² Prior to the start of the Relevant Period, in March 2013, CTM had challenged [HIP] regarding an exclusive cashback offer with another PCW, stating internally that [HIP] was '*breaching their contract*' and that [HIP] '*must give us the same prices and get the [X] promotion taken down ASAP*'. CTM informed [HIP] that CTM was '*aware of the Exclusive offer on [X] and that not only is price parity essential to our proposition by ensuring that any consumers visiting ctm [sic] receive the best prices from our partners but, that this activity also goes against our mutual agreement that prices cannot be cheaper direct or via any other source*'. See URN 2896, BGL's response to the section 27 notice dated 26 September 2017, email chain from [Employee 9, CTM] to [Employee, CTM], ([Employee 1, CTM] and [Employee, CTM] in copy), email entitled '[HIP] Home Cashbacks', [X].

²¹³ For example, see Case-277/87 Sandoz prodotti farmaceutici v Commission, EU:C:1990:6, paragraph 3: '*the fact that a supplier may not have taken steps to ensure the observance by his customers of a contractual clause intended to restrict competition is not sufficient to remove that clause from the prohibition of Article [101](1) of the*

4.27 As noted above, BGL also submitted that the wide MFN clauses in [HIP], [HIP], [HIP] and [HIP]'s contracts were regarded by those providers as “*null or otherwise did not apply*” – albeit without further submitting that the contractual clauses should not therefore be treated as wide MFNs.²¹⁴ The CMA considers that the clauses should be treated as wide MFNs, and therefore included in the assessment of the effects of CTM's network of wide MFNs. As in the case of [HIP] and [HIP], the clauses in each of CTM's contracts with [HIP], [HIP], [HIP] and [HIP] mirrored CTM's standard wide MFN wording,²¹⁵ and CTM considered the clauses with these providers to be wide MFNs in its internal contemporaneous documents.²¹⁶ While [HIP], [HIP], [HIP] and [HIP] considered that the wide MFNs may have been unenforceable; this was on the basis of their interpretation of the effect of the PMI Order 2015 banning the use of wide MFNs in private motor insurance and on-going scrutiny by the CMA in terms of the enforceability of such clauses under competition law.²¹⁷ Moreover, despite BGL's submission,

[TFEU] and COMP/38698 CISAC, European Commission decision of 16 July 2008, paragraph 130 (partially annulled on other grounds, Cases T-442/08, etc, CISAC v Commission EU:T:2013:188): ‘*the argument raised by some EEA CISAC members that the membership clause has not been applied does not change the restrictive nature of the clause*’. While the CMA notes that these cases related to ‘by object’ infringements, it considers that the principle applies generally when determining the legal question of whether there was an ‘agreement’ for the purposes of the Chapter I prohibition and Article 101(1); irrespective of whether that agreement is then assessed in terms of whether it had the object of restricting competition or the effect of restricting competition. The CMA has therefore taken into account the evidence obtained from BGL and [HIP] in its assessment of whether CTM's wide MFNs had the appreciable effect of restricting competition, as set out in this Decision.

²¹⁴ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.13. BGL has variously submitted the following for the relevant home insurance providers: (i) for [HIP], BGL referred to [HIP]'s statement that the MFN clause with CTM was not enforced and it could find no evidence of an impact of wide MFNs on commission levels in home insurance nor evidence that wide MFNs affected its pricing strategy with other PCWs to argue that ‘[HIP]'s evidence does not support the CMA's case but supports BGL's case’, URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraphs 194 and 209, URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 69 70; (ii) [X] to argue that [X]'s evidence supports BGL's position, URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 221, URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, [X]; (iii) for [HIP], that it entirely and simply disregarded or ignored the wide MFN, that it considered the wide MFN to be ‘*null and void*’, and there is no evidence of any reaction on the part of CTM (URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 303; URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 176; URN 10792, BGL's response to the Second Letter of Facts (Response to Second LoF) dated 21 August 2020, paragraph 46); (iv) for [HIP], that it did not consider itself bound by the wide MFN and that therefore the wide MFN ‘*did not apply*’, URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 328, URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 46.

²¹⁵ URN 1808, BGL's response to the First BGL Notice dated 26 September 2017, contractual arrangement between BISL Ltd and [HIP], signed on 2 August 2011; [X]; URN 1794, BGL's response to the First BGL Notice dated 26 September 2017, contractual arrangement between BISL Ltd and [HIP], signed on 8 July 2010; [X].

²¹⁶ URN 4272, BGL's response to section 27 notice dated 26 September 2017, document entitled ‘H15781-0028-008411’.

²¹⁷ [HIP] stated ‘*The agreements contained the MFN clauses for the entire Relevant Period (up to our exit from direct sales in May 2016), but, as a matter of best practice, were not enforced following the CMA's Final Report in its Motor Insurance Market Investigation in 2015. Although this Report only related to the motor insurance industry we, in common with other insurers and brokers, extrapolated to the household market and the MFN clauses were not enforced across any of our trading lines*’ URN 5365, [HIP]'s response to section 26 notice dated 24 November 2017, question 15; [HIP] stated ‘*Following the CMA's review and removal of MFN clauses we believed at the time all MFN clauses on all personal lines products were null and void*’ URN 9193, [HIP]'s response to section 26 notice dated 3 July 2019, question 2(a)(ii); [HIP] stated ‘*We questioned internally the enforceability of wide MFN clauses and were of the view that it did not apply to home insurance; our reasoning*

CTM in fact took enforcement action against [HIP] and [HIP] in the Relevant Period to secure compliance with its wide MFNs, as set out in detail in Section 8.B.III.(b).(iv) and (vi), respectively and Annex M.²¹⁸

4.B.II. Clauses the CMA has treated as narrow MFNs

- 4.28 In the SO, the CMA provisionally found that a further two home insurance providers, [HIP] and [HIP], had wide MFNs in their contracts with CTM. However, following consideration of BGL's submissions, the CMA finds that these should on balance be treated as narrow MFNs for the purposes of this Decision.
- 4.29 [HIP] and [HIP] both had clauses in their contracts that were similar to CTM's wide MFN clauses. However, in each case there was an exception that allowed for '*promotional campaigns or target marketing through any medium other than the Insurance Provider Website*', which allowed such promotional campaigns on other PCWs²¹⁹. The CMA considers that this 'carve-out' relating to promotional campaigns and target marketing is such that, on balance and for the purposes of this Decision, the clauses should be interpreted as narrow MFNs. Objectively, the exception in these agreements means there was a material substantive difference compared to the wide MFNs in the contracts with the 32 home providers listed above, such that

was that the Motor Insurance investigation as regards the Competition Act applied equally to home insurance' URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 18; [HIP] [X].

²¹⁸ For example, on 24 July 2017, CTM sent an email to [HIP] advising that it was in breach of the wide MFN clause, referring to clause 4.7 of their agreement and requesting that [HIP] comply (see URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 8); and also on 24 July 2017 CTM wrote to [HIP] to confirm that it regarded [HIP] as in breach of contract, stating that [HIP] offering lower prices on other PCWs '*is in breach of clause 5.11 of our agreement dated 8 July 2010. For clarity, I refer to the CMA review of the Wide MFN clause in 2015. The CMA makes it clear that the PMI Order only applies to private motor insurance (cars). ... Please confirm when this will be remedied and clause 5.11 of the agreement will be adhered to*', URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 2.

²¹⁹ URN 1772, BGL's response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP], question 30, paragraphs 5.7 and 5.8; URN 1771, BGL's response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP] signed on 29 May 2008, paragraphs 5.7 and 5.8:

'5.7 The Insurance Provider shall always provide the most competitive Product pricing structure it operates for its Internet Product distribution channel to BISL when supplying its Product Specification Information. 5.8 BISL agrees that Clause 5.7 shall not prevent the Insurance Provider from offering a Product at a lower customer annual premium: a) where it does so as a result of any promotional campaigns or target marketing through any medium other than the Insurance Provider Website; b) where Products are offered, whether through the Insurance Provider Website or otherwise, at a discount to customers who are already customers of the Insurance Provider or its Affiliates; or c) where the Insurance Provider runs a tactical pricing savings campaign of limited duration, whether directly through the Insurance Provider Website or otherwise; or d) where the Insurance Provider elects to offer Products at a lower premium where they are arranged via a different channel where such election is due to the Insurance Provider's claims experience by channel. The Insurance Provider shall give BISL 15 days advance notice in writing of any such change in rating. Where BISL does not agree to such changes in risk rating BISL shall have the option to terminate the Agreement forthwith by notice in writing to the Insurance Provider.'

that there is justification for separate treatment as narrow MFNs rather than wide MFNs.

- 4.30 In the case of [HIP], however, despite the exception for promotional campaigns in the clause, [HIP] treated the clause as if [HIP] was prevented from engaging in promotional deals with other PCWs.^{220, 221} The CMA therefore considers that the fact that [HIP] believed the clause, despite its wording, prevented it from engaging in promotional deals with other PCWs during the Relevant Period means that evidence on its pricing strategy, both before and after it was informed²²² that CTM stopped enforcing its wide MFNs, is relevant for the purpose of understanding the effect of CTM's wide MFNs on providers' pricing strategies generally.
- 4.31 Finally, the CMA has (as provisionally found in the SO) also treated CTM's agreements with [HIP] and [HIP], for the purposes of this Decision, as containing only narrow MFNs:²²³
- (a) The clause in [HIP]'s contract with CTM contained an exception that allowed [HIP] to provide lower quotes than those displayed on CTM to '*another supplier of services similar to the Customer Service*' provided by CTM.²²⁴ In other words, the exception allowed [HIP] to quote lower prices on other PCWs than those it quoted on CTM.
 - (b) Although the clause in [HIP]'s contract with CTM, on its face, included a standard wide MFN²²⁵, [HIP] told the CMA that following the PMI Order 2015 it treated the wide MFN as unenforceable. Unlike for the contracts with [HIP], [HIP], [HIP], [HIP] and [HIP] referred to above (which the

²²⁰ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, questions 6, 10 and 12.

Additionally, an internal 2018 report provided by [HIP] refers to the removal of CTM's wide MFN '*since the CMA paper*' (i.e. the launch of the present investigation), and CTM being '*initially reluctant to include home as part of the wide MFN removal*', URN 9633, [HIP]'s response to section 26 notice dated 26 July 2019, question 1. URN 9142, [HIP]'s response to section 26 notice dated 19 June 2019, question 1.

²²¹ [HIP]'s shares of the total volume of home insurance providers' sales made through PCWs for home insurance products were less than 1% [§] and [§] in 2016 and 2017 respectively.

²²² [HIP] was informed by CTM in November 2017 that CTM was no longer enforcing its wide MFNs in the same way as CTM informed other insurance providers with whom it has confirmed it had a wide MFN, URN 5245, letter provided by [HIP] in response to section 26 notice dated 24 November 2017.

²²³ For [HIP], the MFN in the agreement with CTM did not apply to quotes provided via another PCW; [HIP] itself stated that it did not believe that it had a wide MFN in place with CTM because of this exception; and BGL did not enforce the clause as a wide MFN.

²²⁴ URN 6636, BGL's follow up email to section 26 notice dated 17 October 2017, Agreement between BISL Ltd and [HIP] dated 18 May 2012, clause 7.4.1.3 The definition of '*Customer Service*' is '*the service provided by BISL to BISL Customers via the BISL Website, under which a BISL Customer completes BISL's online quotation form in relation to the category of insurance required by the BISL Customer and BISL obtains quotations from Participating Providers for the provision of such Insurance*'. Furthermore, internal documents obtained from BGL record [HIP]'s clause as narrow (for example, URN 4272, BGL's response to section dated 27 September 2017, document entitled 'H15781-0028-008411').

²²⁵ URN 1804, BGL's response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP], dated 11 July 2013, clause 4.11.

CMA finds all had wide MFNs), CTM agreed that [HIP]'s clause was not enforceable on the basis of the way it had been drafted.²²⁶

- 4.32 Accordingly, as with the clauses in CTM's contracts with [HIP] and [HIP], the CMA considers that there was a material substantive difference in relation to the clauses in [HIP] and [HIP]'s contracts (compared to the wide MFNs in the contracts with the 32 home providers listed above), such that there is justification for separate treatment as narrow MFNs rather than wide MFNs for the purposes of this Decision.

²²⁶ CTM's internal documents from 2016 note that the way in which [HIP]'s 'clause has been drafted means that it is still difficult to challenge them even on Home' and that '[w]e sought advice from Legal who advised that the MFN clause within [HIP]'s contract is not product specific, meaning if challenged, they could argue that if the Wide element falls away, it does so for Home too. We have therefore not raised this with [HIP] as a contract breach – Legal's view being that this is a commercial decision to call as to whether we challenge Home pricing parity'. In April 2017, internal CTM documents referring to [HIP] record the need for the 'MFN clause in the contract to be rewritten and agreed, to be able to enforce for non-motor products'. (See URN 4105, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Pricing Parity August 2016', slide 6; URN 4061, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee 12, CTM] and [Employee 1, CTM] ([Employee 2, CTM] in copy), email entitled '[HIP] Briefing Doc', dated 30 November 2016; URN 4074, BGL's response to section 27 notice dated 26 September 2017, email between [Employee 7, CTM] and [Employee 9, CTM], email entitled 'FW: Internal – Exec Summary - [HIP]' dated 31 May 2015.

5. MARKET DEFINITION AND MARKET POWER

- 5.1 This Section sets out the CMA's assessment of the relevant product and geographic market, as well as its assessment of CTM's market power during the Relevant Period.
- 5.2 The CMA finds that the relevant market in this case is the provision of PCW services for home insurance products ('PCW Services for Home Insurance') in the UK. The market for PCW Services for Home Insurance is a two-sided market comprising the supply by PCWs of (i) customer introduction services to home insurance providers and (ii) price comparison services to consumers.
- 5.3 Assessing consumers' and providers' demand-side characteristics and PCWs' supply-side characteristics during the Relevant Period, the CMA finds that the alternatives available to consumers and providers would have been unlikely to constrain a hypothetical monopolist in the provision of PCW Services for Home Insurance in the UK such that a 5-10% increase in commission fees (which would lead to only a modest increase in retail prices) would be rendered unprofitable. The alternatives available to providers and consumers include alternative acquisition channels such as providers' (online and offline) direct sale of new business, the use of brokers by providers and consumers, as well as providers' sale of renewal policies to their existing customers.
- 5.4 Following its assessment of the relevant market, the CMA has considered CTM's position in the relevant market during the Relevant Period. Based on this assessment, the CMA finds that CTM had a strong position in the market for the supply of PCW Services for Home Insurance in the UK during the Relevant Period such that it had market power. In particular, the CMA finds that CTM has had persistently high market shares since at least 2012 and its market share was more than 50% throughout the Relevant Period, around twice the size of the next largest PCW (MoneySuperMarket).
- 5.5 The CMA sets out below its assessment of the relevant market and CTM's market position in the following sub-sections:
- (a) Legal framework for market definition (see Section 5.A).
 - (b) The CMA's approach to market definition in the present case and considerations related to two-sided markets (see Section 5.B).
 - (c) The relevant product market (see Section 5.C).

- (d) The relevant geographic market (see Section 5.D).
- (e) CTM's position in the relevant market (see Section 5.E).
- (f) Conclusions on market definition and market power (see Section 5.F).

5.A. Legal framework for market definition

5.6 For the purposes of analysing the restrictive effects of an agreement it is normally necessary to define the relevant market, which comprises the combination of the relevant product and geographic markets.²²⁷ The EU Courts have defined:

- (a) the relevant product or service market as '*including products or services which are substitutable or sufficiently interchangeable with the product or service in question, not only in terms of their objective characteristics, by virtue of which they are particularly suitable for satisfying the constant needs of consumers, but also in terms of the conditions of competition and/or the structure of supply and demand on the market in question*';²²⁸ and
- (b) the relevant geographic market as comprising '*the area in which the undertakings concerned are involved in the supply and demand of products or services, in which the conditions of competition are sufficiently homogenous and which can be distinguished from neighbouring areas because the conditions of competition are appreciably different in those areas*.'²²⁹

5.7 The CMA's guidance states that market definition is not an end in itself but is a key step in identifying the competitive constraints acting on a supplier of a given product or service. Therefore, market definition is important in the process of establishing whether or not a particular agreement has an appreciable effect on competition in a market.²³⁰ However, The Court of Justice of the European Union ('CJEU') has held that it is still necessary to take into account any factor that is relevant in relation to the economic or legal context in which the agreement occurs, regardless of whether such a factor concerns the relevant market.²³¹

²²⁷ Article 101(3) Guidelines, paragraph 27; *Delimitis*, paragraphs 14 to 16.

²²⁸ Case T-504/93, *Tiercé Ladbroke SA v European Commission*, ECR EU:T:1997:84, paragraph 81.

²²⁹ Case T-310/01, *Schneider Electric SA v European Commission*, ECR EU:T:2002:254, paragraph 153.

²³⁰ The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraphs 2.1 to 2.2.

²³¹ Case C-382/12 P, *MasterCard and Others v Commission*, EU:C:2014:2201, paragraph 177.

- 5.8 For the purposes of defining the relevant market, the CMA considers the most immediate competitive constraints on the behaviour of the undertakings supplying the product or service that is the focus of the Investigation ('focal product').²³² The CMA uses the conceptual framework known as the hypothetical monopolist test to carry out its assessment of the relevant market. This test seeks to establish the smallest product group and geographical area such that a hypothetical monopolist controlling that product group in that area could profitably sustain 'supra competitive' prices.²³³
- 5.9 The assessment starts by considering a hypothetical monopolist of the focal product operating in a focal area (i.e. an area under investigation in which the focal product is sold).²³⁴ Then the question is whether it would be profitable for the hypothetical monopolist to sustain a 'Small but Significant Non-transitory Increase in Price' (SSNIP) above competitive price levels. If the answer to this question is 'yes' then the relevant market is defined: the product and area under the hypothetical monopolist's control is (usually) the relevant market.²³⁵
- 5.10 If the answer to the question is 'no', the scope of the products/geographic area under consideration is expanded and then the question is considered again based on the expanded set of products/geographic area. This is repeated until it is possible for the hypothetical monopolist to sustain profitably a SSNIP and therefore the relevant market is defined.²³⁶
- 5.11 The relevant product market is defined primarily by considering the degree of demand-side substitution. In practice, the question the CMA considers in relation to demand-side substitution is whether the customers of the focal product would switch to alternatives in response to a 5-10% price increase such that a hypothetical monopolist of the focal product would find such a price increase unprofitable and therefore the product consumers switch to should be considered to be part of the market in which the focal product competes. The CMA will only factor in supply-side substitution if it is

²³² The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraph 3.20.

²³³ The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraph 2.7.

²³⁴ The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraph 2.9.

²³⁵ The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraph 2.10.

²³⁶ The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraphs 2.11 to 2.13.

reasonably likely to take place, and already has an impact by constraining the supplier of the product in question.²³⁷

5.B. The CMA's approach to market definition in this case

- 5.12 The assessment of the relevant product market starts with the product that the CMA's competition concerns relate to, which in this case is the supply of PCW services for home insurance products in the UK. Therefore, as a first step for defining the product market, the CMA has considered PCW Services for Home Insurance as the focal product for applying the hypothetical monopolist test.²³⁸ In particular, the CMA has considered whether a hypothetical monopolist of PCW Services for Home Insurance would find it profitable to increase commission fees (i.e. the prices that PCWs set) by 5-10%.
- 5.13 In taking this approach, the CMA has focused its assessment on the constraints on the hypothetical monopolist PCW that arise in relation to the customers of PCWs during the Relevant Period (i.e. providers that listed on PCWs and consumers that used PCWs in the Relevant Period). In particular, as set out in paragraph 5.11, the question the CMA considers in relation to demand-side substitution is whether the customers of the focal product (in this case PCW services) would switch to alternatives in response to a SSNIP such that a hypothetical monopolist of the focal product (PCW Services) would find such a price increase unprofitable.
- 5.14 When applying the hypothetical monopolist test to two-sided platforms for PCW Services for Home Insurance in the present case, the CMA's assessment has had regard to the following points:²³⁹
- (a) Whether the relevant market should be defined as two separate markets on each side of the two-sided platform or if one market should be defined covering both sides of the two-sided platform (see Section 5.B.I).
 - (b) There is no single price offered to both sets of customers to which to apply a SSNIP (the 'price of interest') (see Section 5.B.II).

²³⁷ The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraph 3.18.

²³⁸ In practice, from the perspective of insurance providers, this means customer introduction services, and from the point of view of consumers, it means comparison services.

²³⁹ See the approach to two-sided markets outlined in the Office of Fair Trading and Competition Commission, [Merger Assessment Guidelines](#) (CC2/OFT1254), September 2010, adopted by the CMA Board, paragraph 5.2.20.

- (c) The effect of the SSNIP on the demand of one set of customers may be exacerbated by indirect network effects²⁴⁰ (Section 5.B.III).
- (d) The constraints on a firm may come not only from other two-sided intermediaries but also from ‘one-sided’ firms serving one set of customers (see Section 5.B.IV).

5.B.I. Market definition with two-sided platforms

- 5.15 As explained in Section 2, CTM and other PCWs serve and connect two distinct customer groups (consumers and home insurance providers) and can be considered two-sided platforms. An initial question when applying the hypothetical monopolist test to two-sided platforms is, therefore, whether separate markets should be defined on each side of the platform that connects the user groups (in this case, the PCWs) or whether it is appropriate to define a single market.
- 5.16 These two possible alternatives are reflected in the approaches taken by competition authorities and courts to market definition in cases involving two-sided platforms. In some cases separate markets have been defined on each side of the two-sided platform,²⁴¹ while in others (including other cases relating to comparison services) a single market has been defined, covering users on both sides of the platform.²⁴² The important point is that, however the market is defined, in carrying out an assessment of the effects of an agreement it is necessary to take into account any factor that is relevant in relation to the economic or legal context in which an agreement occurs.²⁴³ Accordingly, even where the two-sides of a platform are defined as separate markets, it is necessary to take into account the interaction between those two markets, including any indirect network effects (see Section 5.B.III).²⁴⁴

²⁴⁰ Network effects arise when the value of a good or service to its users increases with the number of users (e.g. a consumer finds a telephone network more valuable the more other consumers use that network). In the case of indirect network effects, the value of the service provided by the platform to its users increases with the number of users on the other side of the platform and users benefit from the number of users on the same side of the platform indirectly, through its impact on the number of users on the other side of the platform.

²⁴¹ For example, see Case T-111/08 MasterCard v European Commission, ECR, EU:T:2012:260, paragraph 175 upholding the European Commission’s view that the four-party bank card system operated by MasterCard operated in three separate markets.

²⁴² For example, see: Just Eat/Hungryhouse, paragraphs 4.8 to 4.28 relating to the market for online food platforms; the *PMI Market Investigation: Final report*, paragraphs 4.24 to 4.34 relating to a PCW market for private motor insurance; Case AT.39740 Google Search (Shopping), paragraphs 191 to 250 relating to the market for comparison shopping services; Agents’ Mutual v Gascoigne Halman [2017] CAT 15, paragraphs 136 to 142 relating to the market for property portals.

²⁴³ Case C-67/13 P, *Groupeement des Cartes Bancaires v European Commission*, ECR, EU:C:2014:2204 (*Cartes Bancaires*), paragraph 78; Case C-382/12 P, *MasterCard and Others v Commission*, EU:C:2014:2201, paragraph 177.

²⁴⁴ Case C-67/13 P, *Groupeement des Cartes Bancaires v European Commission*, ECR, EU:C:2014:2204 (*Cartes Bancaires*), paragraphs 73 to 78.

- 5.17 To determine which alternative is appropriate in this case we have considered the nature of the two-sided platform. This is because a distinction can be made between (i) two-sided platforms which facilitate transactions between (or ‘match’) customers on each side of the platform and (ii) those two-sided platforms that do not facilitate transactions (e.g. ‘media-type’ platforms like radio stations and newspapers).^{245, 246}
- 5.18 In the present case, PCWs ‘match’ home insurance providers, which want customers to be introduced to them, and consumers, who want to search, compare and purchase home insurance. The options that are available for consumers to search for and compare home insurance, and to access insurance providers to purchase home insurance, are limited to the same channels that are used by providers to source customers (including PCWs and providers’ online and offline direct channels). This means that the same potential constraints should be taken into account from the perspective of each side of the platform when assessing the constraints on a hypothetical monopolist platform.
- 5.19 The CMA, therefore, finds that it is appropriate to define a single product market for PCW Services for Home Insurance in this case. Within this single product market, the CMA has taken into account the perspective of both sides and the impact of any indirect network effects on the platform when assessing the hypothetical monopolist platform’s ability to increase the price of concluding a transaction (i.e. the commission fee charged by the platform). The CMA has taken this approach because the possible competitive constraint on a PCW may come from either user group, as explained further in paragraph 5.25.
- 5.20 However, the CMA notes that for the purposes of analysing the restrictive effects of an agreement, it does not matter whether separate markets are defined on each side of the platform that connects both user groups or whether one market is defined encompassing both sides of the platform and includes both user groups. This is because, as both approaches would identify the competitive constraints acting on a supplier of a given product or service, either definition of the relevant market would provide a coherent

²⁴⁵ Filistrucchi et al. suggest that ‘Whether one should define a single market or two interrelated markets depends on whether we are dealing with a two-sided transaction market or a two-sided non-transaction market. In two-sided non-transaction markets, two (interrelated) markets need to be defined. In two-sided transaction markets, only one market should be defined.’ Lapo Filistrucchi, Damien Geradin and Eric van Damme, *Market Definition in Two-Sided Markets: Theory and Practice*, Tilburg Law School Legal Studies Research Paper Series.

²⁴⁶ See discussion in Lapo Filistrucchi, Damien Geradin and Eric van Damme, 2013, [Identifying Two-Sided Markets](#), World Competition, vol. 36(1), 33-59, cited in [Just Eat and Hungryhouse: A report on the anticipated acquisition of JUST EAT plc of Hungry House Holdings Limited](#), 16 November 2/017 (Just Eat/Hungryhouse), paragraph 4.11, and The Office of Fair Trading and Competition Commission, [Merger Assessment Guidelines](#) (CC2/OFT1254), September 2010, adopted by the CMA Board, footnote 60.

framework for analysing the restrictive effects of agreements under investigation in the present case.

5.B.II. Price of interest

- 5.21 When applying the hypothetical monopolist test to two-sided platforms for PCW Services for Home Insurance, the CMA has considered the most appropriate price on which to apply a SSNIP (the ‘price of interest’) when there is no single price offered to both sets of customers.
- 5.22 As the agreements under investigation are wide MFNs – which place contractual restrictions on the retail prices quoted by home insurance providers on PCWs – the retail prices offered to consumers could be considered a useful starting point when (i) identifying the competitive constraints acting on a supplier of PCW Services for Home Insurance and (ii) assessing the appreciable effects of such agreements on competition during the Relevant Period.
- 5.23 PCWs do not, however, set retail prices for home insurance products and nor do they charge consumers for using the services they provide. Changing the pricing structure of PCWs to consider such hypothetical charges would require assuming a fundamental change in the business model that the Big Four PCWs used in the Relevant Period and therefore it is unlikely that PCWs could do this by starting to charge customers within a short time frame.²⁴⁷ On this basis, the CMA does not consider it appropriate to consider the impact of a hypothetical monopolist PCW charging consumers.
- 5.24 Nonetheless, PCWs can influence the retail prices offered to consumers through the commission fees charged to providers for introducing consumers when that introduction results in a sale. This is consistent with the strategies used by the Big Four PCWs to compete on retail prices. For example, one of the Big Four PCWs (Confused) told the CMA that it can work with providers to influence retail prices and it has numerous opportunities to do so every month.²⁴⁸ Another of the Big Four PCWs (GoCompare) emphasised that it has limited direct control over the retail price and range of products offered

²⁴⁷ BGL submitted that, although charging consumers is not one of the options suggested in its submissions, the introduction of a paywall on the CTM website and reaching an agreement with a company such as PayPal to collect fees from consumers could be completed within six months URN 8808, BGL’s response to section 26 notice dated 10 May 2019, question 5. The CMA however considers that were BGL to charge consumers for using CTM’s platform then consumers would likely switch to another one of Big Four PCWs (as alternative suppliers of price comparison services for home insurance) rather than switching away from the PCW channel.

²⁴⁸ URN 6322, Confused’s response to section 26 notice dated 27 April 2018, question 21.

by the providers on its panel, but it does have control over the commission fees it charges.²⁴⁹

5.25 The CMA's analysis has, therefore, focussed on the commission fees charged by PCWs to providers when applying the hypothetical monopolist test. The CMA has taken into account the constraints that PCWs face on both sides of the market, which means that a commission fee increase across all PCWs may be rendered unprofitable by the actions of providers and/or consumers:

- (a) *Providers*. In response to a common commission fee increase across all PCWs, providers might decide to stop or reduce their use of PCWs as a channel, especially if such an increase were to make the PCW channel less profitable than other channels for attracting and selling to some or all consumers ('direct impact' of the commission fee increase).²⁵⁰
- (b) *Consumers*. In response to a common commission fee increase across all PCWs, providers might decide to continue using PCWs but set higher retail prices for products quoted through PCWs (i.e. to pass-through the higher commission fees to consumers). As a result of this increase in retail prices, some consumers may then decide to stop using PCWs and potentially use alternative channels through which to search, compare and purchase home insurance ('indirect impact' of the commission fee increase).²⁵¹

5.26 To understand the indirect impact of a common commission fee increase across the PCW channel as a whole, the CMA has considered to what extent (if any) commission fee increases can be expected to be reflected in

²⁴⁹ URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 10.

²⁵⁰ As noted by BGL, providers could, in principle, also react to commission fee increases by reducing the number of products they offer on PCWs (e.g. by reducing the number of risk profiles they quote for) or by withdrawing certain of their brands from PCWs (i.e. 'partially delist'), URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 126 (i); and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 2.10, 3.17 and 4.37. However, when the CMA asked a number of providers to explore how they may react to commission fee increases by PCWs and what strategies they can and do use in response to such increases, only two providers mentioned this 'partial delisting'. One provider ([HIP]) mentioned changing its 'footprint' (that is, reducing the number of risk profiles it quotes for, as a strategy that it tried) but it was not a successful strategy (see URN 6590.1, note of CMA call with [HIP] dated 26 April 2018, paragraph 14.) The other provider [HIP] told the CMA that the alternatives to passing on PCW commission fee increases such as only quoting for '*consumer risks that are profitable on the most expensive [PCW]*' or deciding to '*withdraw from expensive PCWs altogether*' are options that would not be '*a good outcome for consumers nor for the [HIP]'s insurance business*' URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

²⁵¹ The CMA notes that the 'direct' and 'indirect' impacts of any commission fee increase by a hypothetical monopolist PCW may also reinforce each other because of indirect network effects. This is because any decrease in users on one side of the platform following the increase in commission fees may lead to a decrease in the number of users on the other side of the platform, initiate a 'feedback loop' between the two sides of the platform such that the profitability to a hypothetical monopolist PCW of any increase in commission fees may be overestimated in his case.

the retail prices that consumers find on PCWs (i.e. the retail prices set by providers on PCWs). The CMA therefore asked home insurance providers about recent changes to their costs and whether they passed on those cost changes to consumers.

- 5.27 While [redacted]^{252, 253} providers told the CMA that their ability to pass on other cost changes depends on the trading conditions at the time they occur and it may take longer to react to firm-specific cost changes.²⁵⁴ The CMA therefore considers that the relevant pass-through for the purposes of the hypothetical monopolist test is likely to be higher than the firm-specific pass-through (as such a commission fee increase would affect all providers listing on PCWs and can be considered as similar to an 'industry wide' cost change for this acquisition channel) but may not be as high as the 100% pass-through of industry-wide cost changes.
- 5.28 Even if the rate of pass-through of a commission fee increase by a hypothetical monopolist PCW was 100%, there would be a relatively small, less than 2-4% [redacted]%, increase in retail prices on average for consumers following a 5-10% increase in commission fees.^{255, 256} This is because

²⁵² Insurance Premium Tax is a tax on general insurance prices. As set out in paragraph 2.29, the most recent increase in the tax took place in June 2017 and resulted in an increase in the standard tax that applies to home insurance from 10% to 12%.

²⁵³ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 8, paragraph 46; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, question 8; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 8; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 8; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5121, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

²⁵⁴ [redacted]; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

²⁵⁵ In monetary terms, this means a less than £5 ([redacted]) increase compared to the average home insurance policy price on PCWs. The implication of this for the assessment of the relevant product market is discussed in Section 5.C.III.

²⁵⁶ The CMA does not, as claimed by Oxera, consider this to be a '*primary point*' in its assessment of the relevant market in this case, nor does the CMA consider that this '*negligible increase*' in retail prices would '*not result in any noticeable switching*' without reference to other evidence URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 4.38 to 4.39. In particular, the CMA's finding that consumers would have been unlikely to switch to one of their 'outside options' in response to a 5-10% increase in commission fees by a hypothetical monopolist PCW is based on the CMA's assessment of the following evidence: (i) the specific reasons consumers use PCWs when searching for, comparing and purchasing home insurance products during the Relevant Period in comparison to the alternative acquisition channels used by providers, in particular providers' online direct channels (Section 5.C.I); (ii) the search and purchasing behaviour of consumers that used PCWs during the Relevant Period, their use of providers' online direct channels alongside PCWs and whether these consumers were also sent a renewal offer from their existing home insurance provider (Section 5.C.II); and (iii) whether consumers that purchased through a PCW would have been able to find a lower price for the same home insurance product on providers' online direct channels or from their existing provider at the point of renewal, based on the pricing strategies of home insurance providers during the Relevant Period (Section 5.C.III).

commission fees account for less than 40% [§] of home insurance retail prices on PCWs on average.²⁵⁷

- 5.29 BGL submitted that the CMA's approach '*unduly focuses on one dimension of competition on only one side of a two-sided market*'.²⁵⁸ In particular, BGL noted that the CMA's focus on commission fees ignores '*other dimensions of competition that the CMA itself describes as important*' and in doing so does not properly account for competition on the consumer side of the market.²⁵⁹ In this regard, BGL cited three additional dimensions of competition: marketing and advertising, usefulness of comparison and retail prices.²⁶⁰
- 5.30 Although BGL did not consider that the available data allowed it to quantify the effect of a SSNIP-variant based on the marketing and advertising or usefulness of comparison services dimensions of competition,²⁶¹ it stated that evidence on these three factors should be considered within the framework of these SSNIP-variants.²⁶² In doing this, BGL's assessment largely considered the same factors as the CMA as well as additional evidence in relation to competition on Google AdWords, PCWs' and providers' adverts and CTM's marketing strategies.²⁶³
- 5.31 BGL stated further that retail prices potentially capture both sides of the two-sided platform, whereas commission fees only capture one side of the two-

²⁵⁷ BGL submitted data on the average retail price per policy sold on CTM. See URN 5488.2, BGL's response to follow-up questions dated 11 January 2018, spreadsheet entitled 'Response to Q4'. Based on this analysis, the average retail price on CTM was [§] in 2016. However, this is an unweighted average of sales. When calculating the weighted average of retail price per policy sold, the figure is [§] in 2017. The CMA used this number as an indication of average retail prices on PCWs. Based on the CMA's analysis of commission fees set by the large PCWs, the average commission fee was over £40 [§] in 2017.

²⁵⁸ In this regard, BGL stated that a key question is the extent of competition between PCWs and other channels and focusing only on commission fees does not capture how end-consumers see the various distribution channels as substitutable. Specifically, BGL stated that any assessment of the competitive constraints on CTM should take into account price dispersion in the home insurance sector more generally. The CMA's assessment of the relevant market considers how consumers see the various channels and the price dispersion between channels in Sections 5.C.I to 5.C.III below. See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 121(i); URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 4.5 and 4.21; and URN 5786, BGL's submission ('Second BGL Submission') dated 14 March 2018, pages 10 to 13.

²⁵⁹ See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 122; and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 4.5 and 4.23.

²⁶⁰ See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 125; and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.33.

²⁶¹ Namely, a small but significant and non-transitory decrease in marketing and advertising, a small but significant and non-transitory decrease in the usefulness of comparison services and a small but significant and non-transitory increase in retail prices.

²⁶² See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 125; and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.33.

²⁶³ More information on the CMA's assessment of BGL's submissions on providers and PCWs' marketing and advertising activities (including the application of SSNIP-variant test on CTM's paid search advertising for home insurance) can be found in Annex H: Assessment of evidence on the marketing and advertising activities of providers and PCWs.

sided market (the PCW-provider relationship).²⁶⁴ This is because, on the consumer side, retail prices reflect the price paid by consumers and therefore directly capture the PCW-customer relationship and, to the extent that providers pass-through commission fees to retail prices, retail prices can also capture the PCW-provider relationship.

5.32 In assessing BGL's submissions the CMA has found as follows:

- (a) The CMA agrees that it is appropriate to consider both sides of a two-sided platform. As outlined above, the CMA's approach in conducting a SSNIP on commission fees considers the possible constraint from both providers and consumers. In particular, the CMA's assessment considers the behaviour of both consumers and providers as well as the pass through of commission fees to retail prices.
- (b) The CMA does not consider that it is appropriate or realistic to consider a SSNIP on retail prices as PCWs do not set the retail prices on their sites. Rather these retail prices are determined by the providers listing on PCWs and an important way in which PCWs can influence, and therefore compete on these retail prices is through the commission fees they charge providers.²⁶⁵ This was acknowledged by BGL, stating that under a wide MFN *'the supplier is still free to set its price; it just has to set the same prices for each distribution channel.'*²⁶⁶
- (c) The CMA agrees with BGL that the available data on the marketing and advertising or usefulness of comparison services does not allow for any effect of a SSNIP-variant to be meaningfully quantified for these dimensions of competition, such that CMA does not consider it is appropriate to conduct a SSNIP on these dimensions in this case. The CMA has, however, considered evidence on (i) the importance of PCWs' usefulness of comparison services to consumers in its assessment of the relevant market (see Section 5.C.IV.(a).(i)) and (ii) providers and PCWs' marketing and advertising activities (see Section 5.C.IV.(a).(ii)).

5.33 Therefore, as outlined above, in the context of the agreements under investigation and the nature of competition set out in Section 7, the CMA

²⁶⁴ In this regard, BGL noted that it is important to consider the full 'system' price when applying the SSNIP test in the context of a two-sided platform. See URN 5786, Second BGL Submission dated 14 March 2018, paragraph 5.1.1.

²⁶⁵ Similarly, when defining a market involving upstream firms a SSNIP would be conducted on wholesale prices as these are the prices set by the upstream firms. This is the case even though the demand for the products or services of the upstream firms depends on the retail prices charged by downstream firms and wholesale prices are a method through which the upstream firms can influence those retail prices.

²⁶⁶ URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 443.

considers that it is most appropriate to focus its SSNIP test on the commission fees charged by PCWs to providers.

5.B.III. Indirect network effects

- 5.34 When applying the hypothetical monopolist test to two-sided platforms for PCW Services for Home Insurance in the present case, the CMA has considered whether the impact of the SSNIP on commission fees may be exacerbated by indirect network effects.
- 5.35 This is because, in the presence of indirect network effects, an increase (or decrease) in the number of users on one side of the platform (in the present case, home insurance providers listing on the PCW) leads to an increase (or decrease) in the number of users on the other side of the platform (in the present case, consumers searching for and comparing home insurance through the PCW), and vice versa. The strength of indirect network effects may be different for one group of users than for the other group of users, e.g. the number of consumers using the PCW may be more important for providers than the number of providers listing on the PCW for consumers.
- 5.36 The extent to which it is necessary to consider indirect network effects when applying the hypothetical monopolist test and SSNIP in any particular case depends on the strength of the indirect network in that case. The greater the strength of the indirect network effects the more important it is to consider them as they are likely to have a greater impact on the hypothetical monopolist test and SSNIP.
- 5.37 For example, if an increase in commission fees across all PCWs leads to some providers delisting from (or reducing their use of) all PCWs, consumers may find PCWs as a channel less valuable for searching and comparing, or accessing and purchasing home insurance products (or both), and may switch to one of their 'outside options' for either or both activity. In turn, this may lead to more providers delisting from all PCWs. This is because, if fewer consumers use PCWs as a channel to access and purchase home insurance, providers may find this channel a less valuable (and less profitable) source of new consumers than alternative channels.
- 5.38 As a result, there is a potential 'feedback loop' between outcomes on each side of the platform. If this potential feedback loop is not taken into account, the profitability to a hypothetical monopolist PCW of any increase in

commission fees may be overestimated (meaning the market may be defined more narrowly than it actually is).²⁶⁷

- 5.39 The CMA finds, however, that during the Relevant Period, due to the significant number of consumers and providers already using PCWs, indirect network effects were not strong in relation to the Big Four PCWs in home insurance and, therefore, in relation to a hypothetical monopolist PCW.²⁶⁸
- 5.40 While indirect network effects may have been stronger for the Big Four PCWs in the past (e.g. when the Big Four PCWs first started operating in home insurance), the CMA notes that they did not appear to be particularly strong in the competitive landscape during the Relevant Period. For example, one of the Big Four PCWs (Confused) told the CMA that it had consolidated its panel of providers during the Relevant Period but the reduction in the number of providers had not had any material impact on the number of customers introduced. This PCW told the CMA that this was because, in home insurance, consumers focus on price rather than on the breadth of the panel and would not look further than the top ten providers appearing on the results page.²⁶⁹
- 5.41 This is corroborated by findings from the CMA's consumer research in its DCTs Market Study which showed that only 9% of PCW users in home insurance have considered 10 results or more when obtaining quotes.²⁷⁰ It is also consistent with data obtained in the DCTs Market Study (set out in paragraph 7.25) which showed that in home insurance in 2016 a substantial majority (over 70%) ([X]%) to ([X]%) of unique visitors clicked through to the top five providers and more than 70% ([X]%) to ([X]%) of unique visitors purchased from the top five providers.
- 5.42 This shows that once a PCW has a sufficiently large panel that covers a range of providers, adding or removing individual providers is unlikely to have a strong impact on the use of the PCW by consumers. This is likely to

²⁶⁷ As set out in footnote 250, home insurance providers could decide to 'partially delist' from PCWs in response to commission fee increases by PCWs and, in practice, could be equivalent to a reduction in the number of providers available to consumers on PCWs which may in turn lead to a decrease in the number of these consumers using PCWs. However, only two providers mentioned the possibility of 'partially delisting' as a strategy in response to commission fee increases by PCWs and, even if these two providers did fully or partially delist from PCWs, the CMA considers it is unlikely to initiate a 'feedback loop' between the two sides of the platform such that the profitability to a hypothetical monopolist PCW of any increase in commission fees may be overestimated in the present case.

²⁶⁸ This does not mean that indirect network effects are not strong in relation to other PCWs providing comparison services in home insurance. This is reflected in the barriers to entry and expansion identified in Section 5.C.VI and Section 5.E.II.

²⁶⁹ URN 5397.1, note of CMA call with Confused dated 12 December 2017, paragraphs 4 and 5.

²⁷⁰ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'E9: How many of the results that were presented to you on the comparison site did you consider as possible products/services which suited your needs?'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

be true for the Big Four PCWs, which each listed more than 35 ([REDACTED]) home insurance brands in 2017.²⁷¹ Similarly, with all of the Big Four PCWs introducing a significant number of consumers to providers (see paragraph 5.63), it is likely that a very large number of consumers would need to stop using PCWs for providers to decide to delist from PCWs as a channel. This is supported by providers' views on the importance of and their reliance on the Big Four PCWs, as set out in Section 5.C.IV.(a).

- 5.43 Therefore, the CMA finds that indirect network effects were not strong in relation to the Big Four PCWs in home insurance during the Relevant Period and the CMA has therefore not considered the impact of indirect network effects in relation to a SSNIP in commission fees by a hypothetical monopolist PCW.

5.B.IV. 'One-sided' vs 'two-sided' constraints

- 5.44 When applying the hypothetical monopolist test to two-sided platforms for PCW Services for Home Insurance in the present case, the CMA's assessment has considered whether the constraints on a hypothetical monopolist may come not only from other two-sided intermediaries but also from 'one-sided' firms serving one set of customers.
- 5.45 This is because the constraints on two-sided platforms may not only come from other two-sided platforms but also from 'one-sided' firms. For example, providers may find that other ways of acquiring consumers (i.e. their 'outside options') could be alternatives to using PCWs for customer introduction services. Similarly, consumers may see alternative channels (such as providers' own websites) as substitutes to PCWs when looking to search, compare and purchase home insurance products.
- 5.46 Therefore, when assessing the potential constraint on PCWs, the CMA has considered whether 'one-sided' channels, notably providers' direct websites and offline channels, are part of the relevant market.

5.C. The relevant product market

- 5.47 The CMA has used this framework to consider whether a hypothetical monopolist of PCW Services for Home Insurance would find it profitable to increase commission fees (i.e. the prices that PCWs set) by 5-10%, taking

²⁷¹ Source: CMA analysis of the Commissions Fees Dataset (Annex D). In 2017, Confused listed [REDACTED] home insurance brands, CTM listed [REDACTED], GoCompare listed [REDACTED] and MoneySuperMarket listed [REDACTED].

both the consumer and home insurance provider side into account in its assessment of the relevant product market.²⁷²

- 5.48 For home insurance providers, their decisions about which channels to use to attract consumers, and whether to keep using PCWs for this purpose, depends on the profitability of providers' alternative acquisition channels and their use by consumers when searching for, comparing and for purchasing home insurance products. It is the relative strength of these 'outside options' (i.e. the direct sale of new business to consumers, retaining consumers at the point of renewal or through the use of home insurance brokers) in combination that might lead them to stop (or reduce) their use of the PCW channel if a 5-10% increase in commission fees were to make this acquisition channel less profitable relative to other channels for attracting and selling to consumers.
- 5.49 For consumers, their choice of channels when searching for and comparing insurance products, and for accessing the provider's website to purchase home insurance, is linked to the particular characteristics of each channel (i.e. usefulness of comparison services, number of providers available to be compared, retail prices offered by home insurers on each channel, etc.). The use of providers' 'outside options' by consumers is, therefore, dependent on the specific reasons they use PCWs and whether these could be replicated by other distribution channels relied upon by home insurance providers.
- 5.50 Given that the strength of providers' alternative acquisition channels as outside options and the profitability of a 5-10% increase in commission fees by a hypothetical monopolist PCW is primarily dependent upon whether consumers would switch to these alternative channels, the CMA has assessed consumers' and providers' demand-side characteristics as well as PCWs' supply-side characteristics during the Relevant Period. In particular, the CMA has considered:

²⁷² This assessment relates to the question whether the relevant market should be defined more broadly than the CMA's focal product. The CMA considered if it was appropriate to define the market more narrowly than PCW Services for Home Insurance, such as segmented by type of home insurance policy (contents insurance, buildings insurance or combined policies) or confined to a subset of PCWs (or individual PCWs). However, the CMA concluded that in the present case it is not appropriate to define separate relevant markets by type of home insurance policy or as a subset of PCWs or an individual PCW. This is because: (i) PCWs' business strategies do not differentiate between different types of home insurance products, although some of the Big Four PCWs may charge different commission fees for single policies (i.e. buildings only insurance or contents only insurance) than for combined policies (see paragraph 7.56), (ii) providers typically offer both types of home insurance and, in their responses to the CMA's requests for information, did not differentiate between different types of home insurance when determining their sales strategies, (iii) BGL has submitted that the relevant market covers all types of home insurance (see URN 5266A, report attached to the First BGL submission ('First Oxera Report') dated 21 December 2017, paragraph 1.3.1), (iv) a material proportion (over 20%) ([X]) of consumers that obtained a home insurance quote on a PCW multi-home (i.e. use more than one PCW) (more information on this analysis can be found in Annex I) and (v) each of the Big Four PCWs told the CMA that they see the other Big Four PCWs (and, in some cases, some of the smaller PCWs) as their closest competitors.

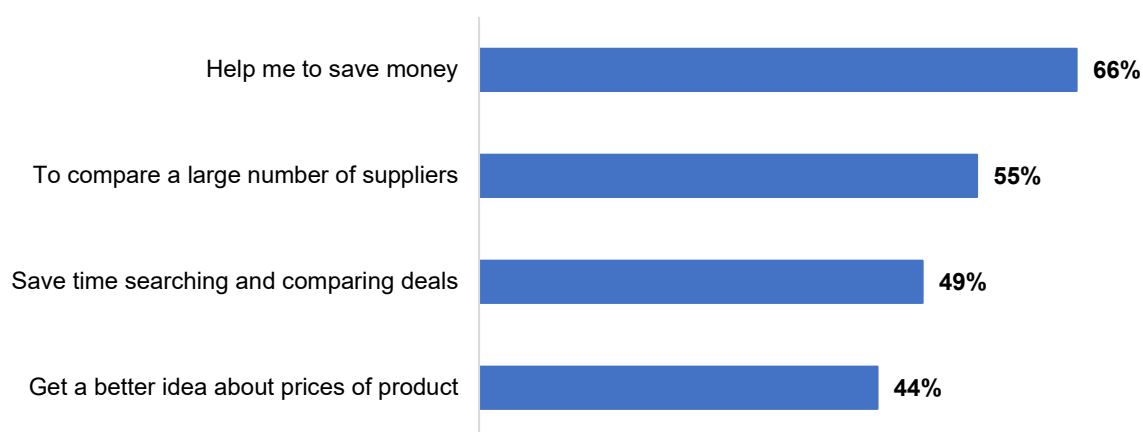
- (a) The specific reasons consumers use PCWs when searching for, comparing and purchasing home insurance products during the Relevant Period in comparison to the alternative acquisition channels used by providers, in particular providers' online direct channels (Section 5.C.I);
- (b) The search and purchasing behaviour of consumers that used PCWs during the Relevant Period, their use of providers' online direct channels alongside PCWs and whether these consumers were also sent a renewal offer from their existing home insurance provider (Section 5.C.II);
- (c) Whether consumers that purchased through a PCW would have been able to find a lower price for the same home insurance product on providers' online direct channels or from their existing provider at the point of renewal, based on the pricing strategies of home insurance providers during the Relevant Period (Section 5.C.III);
- (d) The alternative strategies available to providers for acquiring consumers outside of the PCW channel during the Relevant Period, such as providers' (online and offline) direct channels, their ability to retain more consumers at the point of renewal or through the use of home insurance brokers (Section 5.C.IV);
- (e) The evidence obtained from the Big Four PCWs in relation to their closest competitors during the Relevant Period, including how they set their overall commercial and marketing strategies as well as the extent to which they monitored home insurance providers direct channels and sale of renewal policies to existing customers (Section 5.C.V); and
- (f) The possibility that a hypothetical monopolist of PCW Services for Home Insurance would have been constrained from profitably increasing commission fees by supply-side substitution, either by PCWs operating in other sectors or home insurance providers (Section 5.C.VI).

5.51 Having assessed consumers' and providers' demand-side characteristics and PCWs' supply-side characteristics, during the Relevant Period, the CMA concludes that the 'outside options' of both consumers and providers, either individually or in combination, were unlikely to constrain a hypothetical monopolist of PCW Services for Home Insurance such that a 5-10% increase in commission fees would be rendered unprofitable.

5.C.I. Reasons consumers use PCWs

- 5.52 The CMA finds that consumers use and value PCWs for a number of reasons that are specific to the PCW channel and cannot be replicated by the alternative acquisition channels of home insurance providers. In particular, the price comparison services offered to consumers by PCWs are not offered by providers' individual (online and offline) direct channels such that shopping around for home insurance without using a PCW was a poor substitute to using a PCW during the Relevant Period.
- 5.53 As shown in Figure 5.1, the consumer survey conducted as part of the DCT Market Study ('DCTs Survey') found that the most important reasons why consumers choose to use PCWs when shopping around are to save money (66% of those who recently used a comparison site for home insurance), to compare a large number of suppliers (55% of respondents), to save time when comparing deals (49%) and to get a better idea about prices of the home insurance product (44%).²⁷³

Figure 5.1: Most important reasons for using PCWs in Home Insurance



Source: Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'M6: Why did you use a comparison site on this occasion?' Base: All who have used a comparison site for home insurance in the last 3 months (234). Only the reasons selected by more than 100 respondents that had used a comparison site for home insurance in the last 3 months have been shown.

- 5.54 This demonstrates that consumers value PCWs not only for the price savings they can make by using them but also for the convenience and time saved when using PCWs to compare products. In addition, the price savings offered by PCWs also result from the specific features of PCWs: namely, the

²⁷³ In addition, as set out in paragraph 7.45, the DCTs Survey also finds that 32% of consumers who had used a comparison site for home insurance considered the ease of use of a comparison site (that is, the time and effort for consumers using the PCW such as navigating the website, the collection of data, speed of comparison results, and ability to transact easily) factored this into their decision on which particular PCW to use when shopping around.

fact that they allow consumers to easily and relatively quickly compare offers from a range of providers. This increased transparency and reduced search costs intensify competition between home insurance providers on PCWs and result in savings for consumers.²⁷⁴

- 5.55 The DCTs Market Study found that consumers are typically presented with 40-50 home insurance quotes when they enter their details on a PCW.²⁷⁵ A consumer that obtained a quote from a similar number of individual providers' websites in order to have the same overview of the available products and to compare several offers would find it a much more complex and time-consuming process as the question sets required to retrieve the home insurance quote would need to be completed by the consumer multiple times.²⁷⁶ One PCW (GoCompare) told the CMA that '*a consumer would incur significant search time and costs if he/she were to attempt to replicate the service provided by a PCW by generating and comparing a large number of quotes directly from different HIPs or Brokers*'.²⁷⁷ This PCW estimated this would take a consumer more than 7 hours of their own time to search and compare the same number of home insurance offers as those displayed by its comparison site.²⁷⁸
- 5.56 While it is unlikely that consumers would consider all these quotes, consumers know that by using a PCW they get a good overview of the offers available to them and they can easily compare the top quotes on the results page once the 40-50 home insurance quotes have been displayed by the PCW.²⁷⁹ In respect of comparing a large number of home insurance providers and saving time when shopping around, comparing products by

²⁷⁴ This is consistent with BGL's submission that, across all sectors that it operates, CTM estimated it has saved UK consumers £1 billion in the financial year 2017/18 and that, in home insurance specifically, '*CTM considers that significant savings on home insurance premiums can reasonably be attributed to PCWs in general and specifically to CTM*' URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 83.

²⁷⁵ The [DCTs Market Study](#), September 2017, Final Report, Page 32. In addition, as set out in paragraph 7.45, the CMA's finding that PCWs are a convenient way for consumers to conduct a comparison quickly and in one place was corroborated by Mintel's consumer research, stating that: '*The convenience of a PCW leads it to be the 'first stop' for consumers wanting to switch or purchase new insurance products. Mintel noted that this was because consumers can research a wide range of home insurance products available to them in a matter of minutes when using a PCW – offering a quick and convenient way of comparing prices, product features and consumer reviews in one visit*' URN 6650, Mintel, *Price Comparison Sites in General Insurance*, July 2016, page 20; URN 6651, Mintel, *UK Home Insurance Report*, December 2016, page 23.

²⁷⁶ The CMA notes that consumers comparing offers from several providers only using their online direct channels and not PCWs would also require them to know which sites to visit in advance of their product search.

²⁷⁷ URN 4868, GoCompare's response to section 26 noticed dated 14 November 2017, question 3.2.

²⁷⁸ GoCompare's estimate is based on consumers taking around 5-10 ([X]) minutes to complete the questions set by the PCW and obtaining quotes from 50 home insurance providers. See URN 0167, GoCompare's response to the Statement of Scope in the DCT's Market Study dated 29 September 2016, question 8, paragraph 8.4.

²⁷⁹ Indeed, the DCTs Survey found that only 9% of consumers considered 10 or more results when comparing home insurance products on PCWs. Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question E19: 'How many of the results that were presented to you on the comparison site did you consider as possible products/services which suited your needs?'

using providers' individual websites is, therefore, unlikely to be a good substitute to PCWs for consumers who value the convenience of using a PCW and the range of offers that PCWs present.²⁸⁰

- 5.57 Consistent with the CMA's assessment, BGL's submissions emphasised that PCWs provide services to consumers that cannot be replicated by providers' direct channels: *'[b]y enabling customers to evaluate complex products in a swift and user friendly manner on their relative merits (against a range of comparables), CTM is able to better engage customer interest and market and sell insurers' products to those customers more effectively.'*²⁸¹ BGL also quoted research from the FCA to demonstrate this point: *'The PCWs were perceived to allow consumers to achieve in minutes what would otherwise take hours, and make a potentially boring and difficult job, relatively painless by presenting complex information in a simple and accessible way'*.²⁸²
- 5.58 This evidence supports the CMA's finding that consumers use and value PCWs for a number of reasons that are specific to the PCW channel and providers' online direct channels were a poor substitute to PCWs for consumers shopping around for home insurance during the Relevant Period.

5.C.II. Consumer search and purchasing behaviour

- 5.59 While the price comparison services offered to consumers by PCWs are not offered by providers' individual online direct channels (such that shopping around for home insurance without using a PCW was a poor substitute to using a PCW for consumers during the Relevant Period), the CMA has analysed how consumers behaved in practice.
- 5.60 First, the CMA's analysis of consumer behaviour during the Relevant Period finds that a substantial majority (80% to 90%) ([§]%) of consumers do not look beyond the PCW channel (i.e. they do not use providers' online direct channels) when shopping around for home insurance (as set out in Section 5.C.II.(a)). This is consistent with the DCTs Survey finding that consumers who use PCWs rely upon them as their main source of information when searching for and comparing home insurance online.²⁸³

²⁸⁰ The CMA's finding is consistent with the CMA's Private Motor Insurance market investigation, where the CMA concluded consumers *'searching for PMI not using a PCW was a poor substitute for using a PCW, and searching without a PCW was a not sufficiently strong constraint on PCWs to prevent PCWs from being a separate market'* The [PMI Market Investigation](#), September 2014, paragraph 4.31.

²⁸¹ URN 5786, Second BGL Submission dated 14 March 2018, question 3.2.2, page 4.

²⁸² FCA, [Price comparison website: Consumer market research](#), prepared for the FCA by Atticus, June 2014.

²⁸³ The extent to which consumers who compare the quotes shown on a PCW with those available from providers' own websites would be able to find a lower price on the direct channel than that quoted on PCWs is considered in Section 5.C.III.(a).

5.61 Further, the CMA also analysed the proportion of consumers who purchased through a PCW that also obtained a quote on a provider's online direct channel or received a renewal offer from an existing provider (as set out in Section 5.C.II.(b)). As PCWs are paid only when consumers complete a transaction with the provider through the PCW, the potential constraint posed by providers' alternative acquisition channels on the commission fees set by a hypothetical monopolist PCW is greater when a larger proportion of consumers that purchased through a PCW also obtained a quote on a provider's online direct channel or received a renewal offer from an existing provider. The CMA finds, however, that a majority (50% to 60%) ([81%]) of consumers who made a purchase through the PCW channel did so without comparing the home insurance quotes they obtained on a PCW with quotes from providers' online direct channel or with the renewal offer of an existing provider.

5.C.II.(a). Behaviour of consumers who obtained a quote on the PCW channel

5.62 The CMA has considered the extent to which consumers who obtained a home insurance quote on a PCW also did so on providers' online direct channels during the Relevant Period.²⁸⁴ This is relevant because the greater the proportion of consumers that multi-channel (i.e. comparing the quotes shown on a PCW with those available from providers' own websites), the greater the potential for home insurance providers to acquire those consumers directly through their online channels instead of through a PCW, and – it follows – the greater the potential constraint posed by providers' 'outside options' on the commission fees set by the hypothetical monopolist PCW.²⁸⁵ The extent to which consumers who compare the quotes shown on a PCW with those available from providers' own websites would be able to find a lower price on the direct channel than that quoted on PCWs, in particular given the presence of narrow MFNs in the contracts between providers and PCWs, is considered in Section 5.C.III.(a).

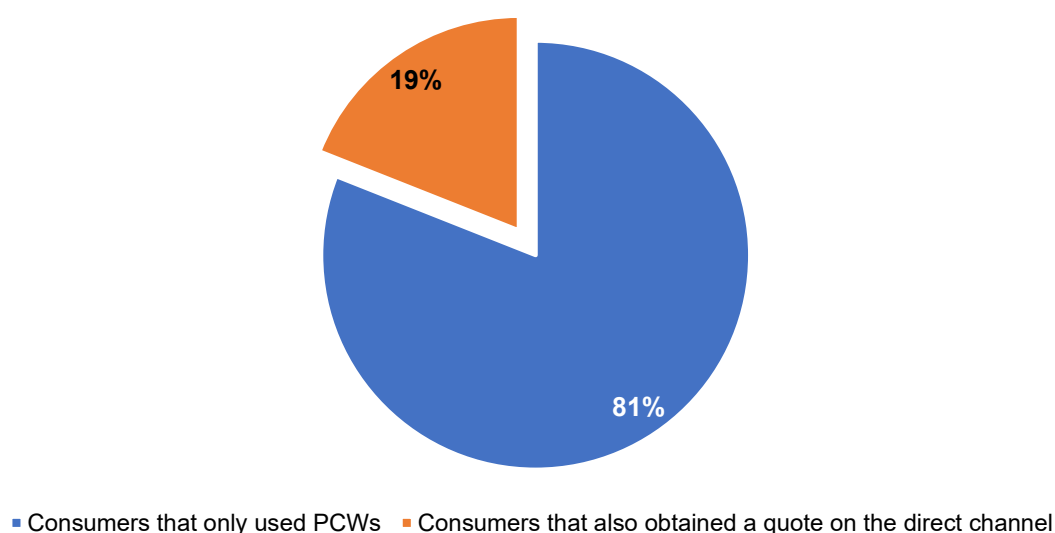
5.63 However, as shown in Figure 5.2 below, the CMA's analysis of new business quotes generated on PCWs and the online direct channel of home insurance providers in the period September 2016 – August 2017 shows that a substantial majority of PCW users (80% to 90%) ([81%]) do not look beyond

²⁸⁴ More information can be found in Annex I: Consumer Behaviour analysis.

²⁸⁵ The CMA further considers that the less than 20% ([19%]) of all PCW users that also obtained a quote on providers' online direct channel in the period September 2016 – August 2017 overstates the potential constraint faced by PCWs by any one home insurance provider's direct channel. Although it is appropriate to assess the collective constraint on a hypothetical monopolist PCW from the direct channels of home insurers for the purposes of defining the relevant market in this case, the decision of any individual home insurance provider to stop (or reduce their use) of the PCW channel will be based on the relative strength of its own 'outside options'.

PCWs when searching for home insurance online, with only a small proportion (less than 20%) ([19%]) of consumers also using the direct online channel. This same analysis also shows that the users of each of the Big Four PCWs were more likely to generate a quote on another PCW than to do so on the website of a provider, suggesting the primary constraint on each PCW is likely to come from other PCWs rather than the online direct channel as a whole.²⁸⁶

Figure 5.2: Proportion of consumers who obtained a quote on the PCW channel that also did so on providers' online direct channels



Source: Consumer Behaviour Analysis (Annex I).

5.64 The results of the CMA's analysis is consistent with the DCTs Survey, which found 74% of consumers that used PCWs as well as other sources of information as part of their comparison said that PCWs were their main source of information.²⁸⁷ In contrast, only 12% of consumers said that they mainly relied upon another source of information (e.g. home insurance providers' own websites or phoning home insurance providers directly) and a further 12% of consumers said that they relied upon PCWs as well as other sources of information equally as part of their comparison.²⁸⁸

²⁸⁶ More information can be found in Annex I.

²⁸⁷ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'E17: Would you say that'. Base: All who have used a comparison site for home insurance in the last 3 months and used at least one other source of information in addition to the comparison site (140).

²⁸⁸ In its response to the CMA's First Letter of Facts, BGL relied upon a report by Oxera that incorrectly referenced this DCTs Survey result as finding '37% of DCT users only used comparison websites to compare available options' to support its position that the direct channel is part of the relevant market as it 'implies that 63% of PCW users look beyond the PCW channel when comparing products' URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 3.14. As set out in this paragraph, this DCTs Survey result in fact implies that only 24% of PCW users look beyond the PCW channel when comparing home insurance products.

- 5.65 BGL submitted that there was ‘*a significant degree of overlap in consumer usage of the various distribution channels (multi-channelling)*’ in the period September 2016 – August 2017 as 40% to 50% [X] of consumers who obtained a home insurance quote on the direct channel also generated a quote on one or more PCWs.²⁸⁹ BGL also stated that ‘*more than one third of customers who decide to purchase their home insurance directly on the HIP’s website are very well aware of the service that PCWs offer and use this to negotiate better deals with the HIP directly*’.²⁹⁰ BGL supported its point with a statement made by GoCompare that, having obtained a quote on a PCW, there are ‘*very low barriers and costs to a consumer switching to a Direct Channel in order to purchase the policy*’.²⁹¹
- 5.66 The CMA considers that the relevant consideration when defining the market in this case is whether consumers that used PCWs during the Relevant Period would switch away in response to any increase in retail prices following a 5-10% increase in PCW commission fees. The assessment of the relevant product market starts with the focal product being considered, which in this case is the supply of PCW services for home insurance products. The CMA’s assessment has therefore focused on the competitive constraints faced by PCWs.
- 5.67 This is important because, as set out in the Merger Assessment Guidelines, ‘*[t]he boundaries of the relevant product market may depend on the identity of the products in the candidate market. In particular, where products are differentiated, the competitive constraints they impose on each other need not be symmetric. In other words, a hypothetical product A may constrain product B’s price while product B’s prices have no effect on product A.*’²⁹² In this regard, while evidence that PCWs constrain alternative channels (e.g. new business sales made by providers on their direct online channels) may be consistent with competition between PCWs and alternative channels, it does not provide evidence of the strength of the constraint placed by those alternative channels on PCWs.
- 5.68 The CMA’s consumer behaviour analysis directly observed the extent to which consumers who obtained a quote on a PCW also did so from a provider’s online direct channel. The CMA’s analysis is therefore informative to assess whether consumers that used PCWs during the Relevant Period would switch away in response to any increase in retail prices following a 5-

²⁸⁹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 130 (ii).

²⁹⁰ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 130 (ii).

²⁹¹ URN 4868, GoCompare’s response to section 26 noticed dated 14 November 2017, question 3.2.

²⁹² See the approach to asymmetric constraints outlined in the Office of Fair Trading and Competition Commission, [Merger Assessment Guidelines](#) (CC2/OFT1254), September 2010, adopted by the CMA Board, paragraph 5.2.20.

10% increase in PCW commission fees. In contrast, the CMA considers that the evidence relied upon by BGL is of limited additional probative value to the assessment of the relevant market in this case because it comprises evidence on the extent to which consumers using providers' online direct channels also use PCWs. BGL's submissions are therefore informative for assessing the constraint from PCWs on the direct channel rather than the constraint from the direct channel on PCWs.²⁹³

- 5.69 In that regard, the high percentage of direct channel users who also use a PCW, together with the reasons given by consumers for using PCWs (e.g. their ability to give a better understanding of the offers available to them from a wide range of home insurance providers), is consistent with PCWs constraining the providers' online direct channels rather than illustrating the potential constraint faced by a hypothetical monopolist PCW from home insurance providers' own websites. The CMA therefore considers that the evidence relied upon by BGL supports the presence of an asymmetric constraint between PCWs and the direct channel whereby PCWs provide a greater constraint on the direct channel than the direct channel does on PCWs.
- 5.70 The CMA therefore considers that its analysis is relevant when assessing the constraint from providers' online direct channels on PCWs whereas the evidence submitted by BGL is not.
- 5.71 In addition, the CMA does not consider that the survey evidence cited by BGL demonstrates that the constraint on a hypothetical monopolist PCW from the online direct channel of home insurance providers would render a 5-10% increase in commission fees unprofitable. In particular:
- (a) BGL has not provided evidence to substantiate its statement that consumers were able *'to negotiate better deals with the HIP directly'* in relation to the direct sale of **new business** online by home insurance providers and instead relied on evidence that some consumers using a PCW used the quotes obtained on the PCW to negotiate a better deal with their existing provider at the point of **renewal**.²⁹⁴

²⁹³ For example, the fewer than 1 million consumers found to obtain a home insurance quote on at least one PCW and on one individual provider's own website accounts for less than 20% (≈) of all consumers who used the PCW channel in the period September 2016 – August 2017 but represents 40% to 50% (≈) of all consumers that used the direct channel in the same period. Source: CMA analysis of the Consumer Behaviour dataset. More information can be found in Annex G: Behaviour of consumers using PCWs.

²⁹⁴ This evidence submitted by BGL was from the DCTs Survey. URN 8808, BGL's response to section 26 notice dated 10 May 2019, question 14.

- (b) While BGL cited a statement by GoCompare that, having obtained a quote on a PCW, there are *‘very low barriers and costs to a consumer switching to a Direct Channel in order to purchase the policy’*²⁹⁵, this does not reflect the actual behaviour of consumers based on the CMA’s analysis of new business quotes generated on PCWs and the direct online channel of home insurance providers (see paragraph 5.63 and Figure 5.2).

5.72 BGL further submitted that the statements made by two home insurance providers in relation to the behaviour of consumers *‘indicated that customers are easily able to (and do) switch from PCWs to direct and vice versa’* supported its view that direct sales necessarily form part of the relevant market.²⁹⁶ The evidence obtained by the CMA from the first of these providers ([HIP]) noted that the *‘effort cost’* of switching between PCWs and providers’ direct channels is *‘relatively low’*²⁹⁷. The second provider (which has a large brand not listed on PCWs) ([HIP]) noted in its submissions to the DCTs Market Study that, although it had observed *‘a significant number of consumers accessing multiple PCWs and/or comparing a direct quote’*, it considered that *‘some consumers will actively choose not to use [PCWs]’* such that they will *‘compare and ultimately purchase from suppliers’ direct sales channels’*.²⁹⁸

5.73 The CMA does not, however, consider that the statements from these two home insurance providers referenced by BGL support its view that direct sales form part of the relevant market. In particular:

- (a) The statement made by the first provider ([HIP]) in its submission to the CMA went on to note that, while it did not consider there to be significant barriers to consumers switching or ‘multi-channelling’ between PCWs and providers’ own websites, consumers have very little incentive to do so due to the presence of narrow MFNs.²⁹⁹ [HIP]’s reasoning was that, if a consumer were to obtain a quote from a PCW and providers’ online direct channels, they *‘would not receive any price benefit’* such that *‘the reward is nil’* as a consequence of these price parity clauses.³⁰⁰

²⁹⁵ URN 4868, GoCompare’s response to section 26 notice dated 14 November 2017, question 3.2.

²⁹⁶ URN 8484.5, BGL’s response to the SO dated 22 February 2019, paragraph 140.

²⁹⁷ URN 5095, [HIP]’s response to section 26 notice dated 24 November 2017, question 23.

²⁹⁸ URN 1450, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 1; URN 1459, [HIP]’s response to the Update Paper in the DCTs Market Study dated 28 March 2017, questions 1 and 3.

²⁹⁹ As set out below in Section 5.C.III.(a), the CMA finds that narrow MFNs limit the potential constraint on PCWs from providers’ direct channels, as they mean that in most cases, providers would have to replicate price increases on the PCW channel following an increase in commission fees on their own online direct channels.

³⁰⁰ URN 5095, [HIP]’s response to section 26 notice dated 24 November 2017, question 23.

- (b) The submission made by the second provider [HIP] that some consumers will not use PCWs when searching for home insurance products, comparing the products available to them and ultimately purchasing home insurance from the provider is not relevant to the present case. This is because, as the CMA has focused its assessment on the constraints on the hypothetical monopolist PCW that arise in relation to consumers that used PCWs in the Relevant Period, the behaviour of consumers who did not obtain a quote from a PCW when shopping around would not affect the profitability of a SSNIP in commission fees by a hypothetical monopolist PCW.

5.74 The CMA therefore does not consider BGL's submissions to demonstrate that sales made through PCWs and on providers' online direct channels form part of the same relevant market.

5.C.II.(b). Behaviour of consumers who purchased through the PCW channel

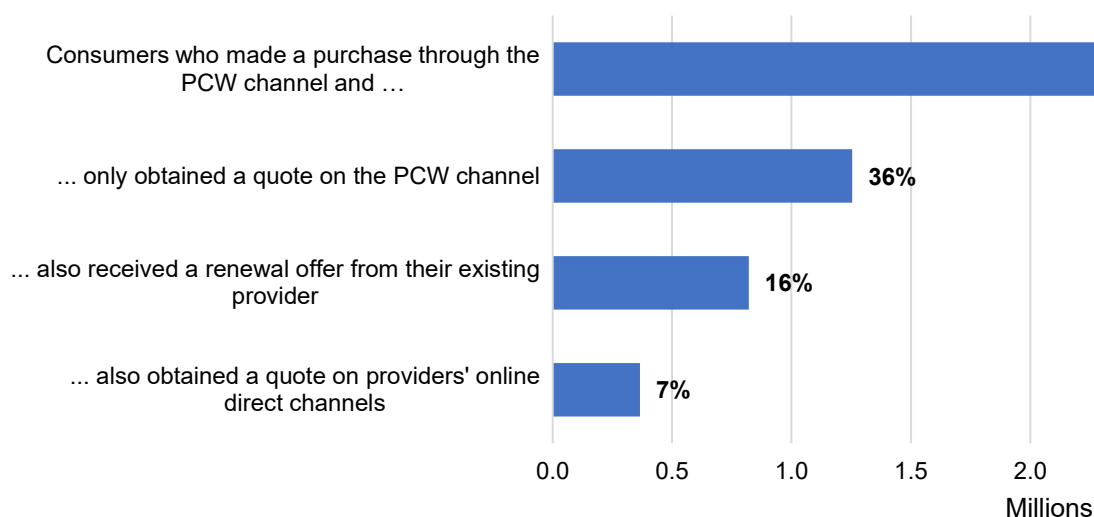
5.75 The CMA has also analysed whether consumers who purchased through the PCW channel also received a quote from a provider directly (either online or at the point of renewal).

5.76 This is relevant because (as PCWs are only compensated when consumers complete a transaction after clicking-through to a provider's website) the greater the proportion of consumers that obtained a quote on a PCW as well as doing so on providers' online direct channels or received a renewal offer from an existing provider, in theory, the greater the potential for home insurance providers to acquire those consumers through their '*outside options*' in response to a 5-10% increase in PCW commission fees. It therefore follows that the potential constraint posed by providers' alternative acquisition channels on the commission fees set by the hypothetical monopolist PCW is greater when a larger proportion of consumers that purchased through a PCW also multi-channelled or received a renewal offer from an existing provider.

5.77 However, as shown in Figure 5.3, the CMA's analysis of new business quotes generated by PCWs and the new business and renewal quotes generated by home insurance providers in the period September 2016 – August 2017 finds that the majority (50% to 60%) ([55%]) of consumers who purchased through the PCW channel did not obtain a quote from a home

insurance provider's own website or receive a renewal offer from an existing provider.^{301, 302}

Figure 5.3: Shopping behaviour of consumers who purchased through the PCW channel



Source: Consumer Behaviour Analysis (Annex I).

5.78 Figure 5.3 also shows that, in contrast, only around 15% ([16%]) and around 35% ([36%]) of consumers that purchased through the PCW channel compared a quote obtained from a PCW with one from a provider's online direct channel or with the renewal offer of an existing home insurance provider, respectively.^{303, 304} The extent to which consumers who purchased through the PCW channel and (i) obtained a quote from a home insurance provider's own website or (ii) were sent a renewal offer by an existing home insurance provider would be able to find a lower price than that quoted on PCWs is considered in Section 5.C.III.

5.79 While BGL did not address in its submissions the results of the CMA's analysis of searching and purchasing behaviour of consumers at the point of

³⁰¹ The CMA's analysis found that less than half ([45%]) of consumers that purchased through the PCW channel either obtained a quote from a home insurance provider's online direct channel or received a renewal offer from an existing provider or both in the period September 2016 – August 2017.

³⁰² More information can be found in Annex I.

³⁰³ The CMA notes that this analysis shows that renewal consumers who shop around and switch provider are relatively important to PCWs, which is consistent with the relative importance of renewals within all home insurance policies, as set out in paragraphs 2.31 and 5.157. However, the CMA's analysis finds that the proportion (around one in three ([35%])) consumers who used the PCW channel and received a renewal offer from an existing provider in the period September 2016 – August 2017 is lower than the 49% of consumers found in the DCTs Survey to have searched for home insurance using a PCW and who said that they were prompted to do so as they were coming to the end of their current contract and needed to renew [Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question M3: 'What first prompted you to start shopping around for [Home Insurance] on this occasion?' Base: All who have used a comparison site for home insurance in the last 3 months (234)].

³⁰⁴ Less than 10% ([7%]) of consumers that purchased through the PCW channel were found by the CMA to both obtain a quote from providers' own websites and receive a renewal offer from an existing provider.

renewal, it did submit that sales made by providers on their direct channel should form part of the relevant market. BGL's position was based on analysis conducted by Oxera that showed [X] of consumers who purchased through a home insurance provider's own website also generated a quote on one or more PCWs.^{305, 306}

- 5.80 BGL's argument does not, however, take into account the fact that the competitive constraints between PCWs and the online direct channel of providers are asymmetric (as set out in paragraphs 5.66 – 5.70). The CMA considers that this evidence cited by BGL in fact further demonstrates the competitive constraint faced by home insurance providers' alternative acquisition channels (i.e. their online direct channel or the renewal offers sent to their existing customers) from a hypothetical monopolist PCW when consumers decide whether to purchase home insurance through the PCW channel.
- 5.81 The CMA therefore does not consider BGL's submissions to demonstrate that sales made through PCWs and on providers' online direct channels form part of the same relevant market.

5.C.III. Providers' pricing strategies

- 5.82 Although most consumers who use the PCW channel do not seek out quotes elsewhere, some do compare the quotes they obtained on a PCW with one from a provider's online direct channel (i.e. a new business price) or with a renewal offer sent to them by their existing home insurance provider (i.e. a renewal price). While the price comparison services offered to consumers by PCWs are not offered by providers' individual online direct channels, the CMA has assessed how the prices offered to consumers by home insurance providers differ across the alternative acquisition channels used by consumers and providers. This assessment is to understand how attractive these alternative options are likely to be for consumers and whether they are likely to place a constraint on PCWs' commissions.
- 5.83 First, the CMA finds that the vast majority of home insurance providers' contracts with PCWs included a narrow MFN clause during the Relevant Period (as set out in Section 5.C.III.(a)). As a result of these clauses, any increase in the retail prices set by providers on a PCW could be expected to

³⁰⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 130 (ii).

³⁰⁶ Oxera analysis submitted by BGL found that '[X] proportion of renewing customers use PCWs or shop around prior to renewing' based on its finding that [X] of consumers generated a quote on at least one PCW prior to renewing. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.74.

lead directly to a similar increase in the retail prices set by providers on their own website, unless the provider is already setting higher prices on its direct online channel than on the PCW.³⁰⁷ The CMA therefore considers that a hypothetical monopolist PCW would be able to profitably increase commission fees by 5-10% as this would not lead to, in the majority of cases, retail prices on PCWs becoming relatively more expensive in comparison to retail prices on narrow MFN providers' online direct channels. This increase in commission fees would be likely to be profitable for a hypothetical monopolist PCW as consumers would not switch away from the PCW channel because they would not find lower prices on providers' online direct channels.

- 5.84 Further, based on its assessment of providers' pricing strategies (as set out in Sections 5.C.III.(b) to 5.C.III.(c)), the CMA finds that the minority of consumers who purchased through a PCW and also obtained a quote from a provider's online direct channel or received a renewal offer from their existing provider would generally have been highly unlikely to have been offered a lower price than found on PCWs. The CMA finds that this, when considered alongside the specific reasons why consumers use PCWs (set out in Section 5.C.I), is further evidence that a hypothetical monopolist PCW would have been able to profitably increase commission fees by 5-10% in the Relevant Period.

5.C.III.(a). *Implications of narrow MFNs for providers' pricing on the direct channel*

- 5.85 The CMA finds that the presence of narrow MFN clauses in contracts between PCWs and home insurance providers means that the potential constraint from the direct channel for new business sales is limited in practice. These clauses mean that any increase in retail prices on the PCW channel following a 5-10% increase in commission fees by a hypothetical monopolist PCW could also be expected, in most cases, to lead directly to

³⁰⁷ 'The CMA's notes that, although its guidance states that when carrying out the hypothetical monopolist test *'the prices of products outside of the hypothetical monopolist's control are held constant at their competitive levels'*, its approach to the pass-through of a 5-10% increase in PCW commission fees to retail prices in the presence of narrow MFNs is appropriate in the present case [The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, fn 13]. This is because (as set out in paragraphs 5.97 and 5.98) the inclusion of narrow MFNs in contracts between the Big Four PCWs and providers is consistent with the legal and economic context of the present case and should therefore be considered in its assessment of the relevant market. In addition, as the CMA considers that the appropriate 'price of interest' for the application of the hypothetical monopolist test (i.e. PCW commission fees) relates to the focal product for the definition of the relevant market (i.e. PCW Services for Home Insurance) rather than the retail prices set by providers on PCWs, the CMA has conducted the hypothetical monopolist test with reference to the cost to (i) home insurance providers when self-supplying customer introductions services and (ii) consumers when looking to search, compare and purchase home insurance products without the use of a PCW during the Relevant Period.

an increase in retail prices offered to consumers on a narrow MFN provider's own website during the Relevant Period.

- 5.86 Narrow MFNs are very common in contracts between PCWs and home insurance providers, with the vast majority (over 90% (~~§~~)) of sales made through PCWs in 2017 were by providers covered by narrow MFNs (as set out in paragraph 6.5). As a result of these clauses, any retail price increase on a PCW by these providers (e.g. in response to a commission fee increase) will need to be matched by a similar retail price increase on a provider's online direct channel, unless the provider is already setting higher prices on its direct online channel than on the PCW.³⁰⁸
- 5.87 This is consistent with the views put to the CMA by a number of home insurance providers regarding their pricing strategy across PCWs and on the direct channel. For example:
- (a) [HIP] submitted that while *'hypothetically [HIP] could choose to pass on high cost per sale fees in prices offered to consumers who choose to purchase via [the PCW] channel, [HIP] prices for direct channel consumers would also have to rise in tandem due to the existence of narrow MFNs'*.³⁰⁹
 - (b) [HIP] told the CMA it offers cheaper prices to consumers on PCWs than can be found on its online direct channel *'partially due to narrow MFNs'*.³¹⁰
 - (c) [HIP] stated that during the Relevant Period, absent narrow MFN clauses, it would *'offer lower prices direct as our [acquisition costs] would be lower'* on its own website in comparison to PCWs.³¹¹
 - (d) [HIP] told the CMA that the ~~§~~.³¹²
- 5.88 Therefore, consumers looking to avoid any impact of a commission fee increase would be unlikely to do so by purchasing the same home insurance product on the provider's direct online channel due to narrow MFNs.
- 5.89 Some providers could potentially still price more competitively on their direct channels than on PCWs in some circumstances by using different brands or selling different products on PCWs as compared to their direct channels.

³⁰⁸ See a further explanation of narrow MFNs in paragraph 2.56.

³⁰⁹ URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

³¹⁰ URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

³¹¹ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 1.

³¹² URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

This is because narrow MFNs only apply to the same product sold on PCWs and the direct online channel. In practice, only four home insurance providers told the CMA that they use different brands or different products on PCWs and their direct channels.³¹³

- 5.90 However, these four providers also told the CMA that the brands/products they list on [redacted]. In addition, as set out in Section 5.C.IV.(a).(ii), the CMA has obtained information from two of these home insurance providers showing that the cost-per-acquisition of the direct channel is substantially higher than PCWs' commission fees because of the significant investment required to build up a brand and attract consumers to the direct channel. All else equal, these higher costs would be expected to result in higher prices on providers' direct channels than on PCWs during the Relevant Period.³¹⁴
- 5.91 The evidence submitted by providers on the implication of narrow MFNs for the prices offered to consumers on their online direct channel supports the CMA's finding that the around 15% [16%] of consumers who purchased through a PCW and obtained a quote from a provider's online direct channel during the Relevant Period would not have switched away from the PCW channel following a 5 to 10% increase in commission fees by a hypothetical monopolist PCW.
- 5.92 BGL submitted that the CMA's finding is inconsistent with its views in the DCTs Market Study, where the strength of constraint on PCWs from the direct channel of providers was recognised and justified the inclusion of narrow MFNs in contracts between PCWs and home insurance providers.³¹⁵ BGL also stated that:
- (a) The assumption any hypothetical monopolist PCW would have narrow MFNs in its contracts with providers is '*an artificial and circular way to exclude direct channels from the relevant market*',³¹⁶
 - (b) Narrow MFNs should instead be viewed as '*an outcome of the competitive interactions*'³¹⁷ between PCWs and home insurance providers rather than its starting point; and

³¹³ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 3, paragraph 26; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 2; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2016, question 4.

³¹⁴ This is discussed further in Section 5.C.IV.(ii).

³¹⁵ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraphs 133 to 135.

³¹⁶ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.48.

³¹⁷ URN 8933, Transcript of the oral hearing ('Oral Hearing') with BGL held on 4 April 2019, page 80, lines 13 to 17.

- (c) Contrary to the CMA's assessment, *'the widespread use of narrow MFNs in itself is evidence of competition between PCWs and the direct channel'*.³¹⁸

5.93 The CMA does not agree with BGL that the CMA's finding that the presence of narrow MFN clauses weakens the potential constraint on PCWs from the online direct channels of providers in practice diverges from the views set out in the DCTs Market Study.

5.94 While the CMA did find that PCWs *'are not just competing with one another to attract consumers but may also be competing with other channels including a [home insurance provider's] direct sales channel'*³¹⁹ in the DCTs Market Study, it also considered that the competitive constraint on PCWs from providers' direct channels could be weakened in practice when:

- (a) Any commission increase by a PCW that is passed through to the provider's retail price on the PCW is – under the terms of a narrow MFN – required to be mirrored by a price increase on the provider's direct channel (unless providers' prices on the direct channel are already greater than found on PCWs).³²⁰
- (b) A provider, due to its narrow MFNs, cannot increase sales on its online direct channel by charging a lower price on the online direct channel than on PCWs such that it is unable to recoup the fixed costs of advertising its online direct channel to consumers. In particular, if this leads to less investment by a provider in its online direct channel then the competitive constraint imposed by the online direct channel may be weakened.³²¹

5.95 The CMA notes that its views from the DCTs Market Study that, while PCWs and providers may compete to attract consumers to their websites, the competitive constraint on PCWs from providers' direct channels could be weakened in practice by narrow MFNs are consistent with evidence submitted by home insurance providers (as set out in paragraph 5.87).

5.96 BGL itself recognises the main efficiency justification for narrow MFNs is to prevent home insurance providers from *'undercutting the retail price offered*

³¹⁸ URN 10460, Fourth Oxa Report dated 14 February 2020, footnote 37.

³¹⁹ [DCTs Market Study](#), September 2017, Final report, paragraph 2.7.

³²⁰ [DCTs Market Study](#), September 2017, Final report - Paper E: Competitive landscape and effectiveness of competition, paragraph 3.52.

³²¹ [DCTs Market Study](#), September 2017, Final report - Paper E: Competitive landscape and effectiveness of competition, paragraph 3.53.

on the PCW³²² and limit their ability to ‘free-ride on the marketing and advertising investments of PCWs’.³²³ Similar statements to these can be found in BGL’s own *Commercial Procedures Handbook*, which notes that ‘narrow MFNs are paramount to the ongoing viability of the comparison model’ and that these clauses ‘prevent [home insurance providers] from ‘free-riding’ on CTM’s marketing investment’.³²⁴ The CMA considers that it is precisely for these reasons that any hypothetical monopolist of PCW Services for Home Insurance would require narrow MFN clauses in its contracts with providers and not because narrow MFNs are ‘an outcome of the competitive interactions’ between PCWs and providers as stated by BGL.³²⁵

- 5.97 The CMA also finds its assumption that any hypothetical monopolist PCW would have narrow MFNs in its contracts with home insurance providers is consistent with the economic and legal context of the case. First, narrow MFNs covered a large majority (over 90%) [X] of PCW sales of home insurance in 2017³²⁶ and have been used by PCWs since 2008.³²⁷ Second, as set out in paragraph 6.5.(c).(i), the CMA observes that two of the Big Four PCWs (Confused and GoCompare) maintained narrow MFNs in their contracts with home insurance providers when removing wide MFN clauses. This was also BGL’s approach when removing wide MFNs in the private motor insurance sector following the PMI order and when removing wide MFNs in the home insurance sector as a result of the CMA’s current investigation.³²⁸
- 5.98 The CMA considers the inclusion of narrow MFNs in contracts between the Big Four PCWs and providers, given that narrow MFNs covered over 90% of PCW sales of home insurance in 2017, are a feature of the market that weaken the potential constraint from the direct channel of home insurance providers in practice as providers cannot attract consumers to their own website through lower retail prices than found on any hypothetical monopolist PCW.

³²² URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.47.

³²³ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 135.

³²⁴ For example: See URN 1616, BGL’s response to the First BGL Notice dated 26 September 2017, document entitled ‘CTM Commercial Handbook June 2017’, page 9.

³²⁵ Furthermore, if BGL was correct that presence of narrow MFNs in its (and other PCWs’) contracts with home insurance providers reflects the fact that providers’ direct channels compete with PCWs on price then the narrow MFN would amount to a horizontal restriction of price competition between competing undertakings. In such a case, CTM and the home insurance provider would be agreeing not to undercut each other’s competing offer to consumers.

³²⁶ As set out in Table 6.1 below.

³²⁷ ‘CTM was the last [of the Big Four PCWs] to introduce [narrow MFNs] ... from 2008 onwards’ Source: URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 78.

³²⁸ URN 0075, BGL’s response to a request for information in the DCTs Market Study dated 2 May 2017, question 12, document entitled ‘comparethemarket.com- 16 May 2017.docx’.

- 5.99 The CMA therefore does not consider BGL's submissions to demonstrate that sales made through PCWs and on providers' online direct channels form part of the same relevant market.

5.C.III.(b). New business pricing

- 5.100 Although the vast majority of home insurance providers are restricted from offering consumers a lower retail price on their own website than on PCWs due to the presence of narrow MFNs, the CMA analysed the prices on PCWs and providers' online direct channels to understand the typical difference in retail prices found by the around 15% [16%] of consumers who purchased through a PCW and obtained a quote from a provider's online direct channel during the Relevant Period.
- 5.101 The CMA's analysis used Consumer Intelligence data³²⁹ between December 2015 and November 2017 to estimate the median differences in prices offered to consumers by providers for comparable home insurance quotes between (i) each of the Big Four PCWs and their online direct channels and (ii) the lowest priced PCW and their online direct channels.³³⁰
- 5.102 While this analysis of the Consumer Intelligence data should be treated with caution and considered alongside other evidence due to the numerous factors that affect the prices quoted by home insurance providers across PCWs and the direct channel,³³¹ the results of the CMA's analysis set out in Table 5.1 are consistent with the information obtained from providers on their pricing strategies (set out in paragraph 5.87).³³² In particular, the CMA's analysis found that:

³²⁹ More information on the Consumer Intelligence data can be found in Annex O.

³³⁰ For this analysis of the Consumer Intelligence data (Annex O), the CMA estimated the median price difference between a provider's online direct channel and (i) the price quoted by the provider on each of the Big Four PCWs individually and (ii) the lowest price quoted by the provider on the PCW channel (assuming that this is the price which would be offered to consumers by a hypothetical monopolist PCW) for all comparable risks quoted in the period December 2015 – November 2017. In addition to only conducting this analysis on home insurance products sold by providers on both PCWs and their online direct channel, the CMA controlled for the excess values used to collect the pricing data for each PCW and the own website of each provider to ensure this analysis uses comparable observations. This means that the price quoted using a risk profile on PCW A with combined voluntary/compulsory and buildings/contents excesses of £200 will not be compared to the price quoted for the same risk profile on PCW B with combined voluntary/compulsory and buildings/contents excesses of £300.

³³¹ The numerous factors that affect the use of Consumer Intelligence data for any robust analysis of home insurance retail prices across PCWs and providers' direct channel are discussed in Annex O: Retail prices dataset.

³³² As outlined in Annex O, due to the limitations of the pricing data available, analysis of whether, for the same product, the absolute price on one PCW was higher, the same or lower than the absolute price on another PCW or the direct channel is not determinative and should only be considered alongside other evidence. In this case, the CMA's analysis is consistent with the evidence provided by providers on their pricing strategies.

- (a) The proportion of brands (with available data) found to typically price home insurance products more cheaply on their online direct channel than on each of the Big Four PCWs was less than 15% [redacted] over the period (accounting for less than 10% [redacted] of policies sold through each individual PCW on average in 2016 and 2017).
- (b) Less than 10% of brands [redacted] typically priced home insurance products more cheaply on their online direct channel than the lowest priced PCW over the period (accounting for almost none [redacted] of the policies sold through the PCW channel in 2016 and 2017).³³³

Table 5.1: Providers' pricing on PCWs and their online direct channel

	CTM	Confused	GoCompare	MSM	The lowest priced PCW
Proportion of brands that typically offered a lower price on their online direct channel than on each individual PCW	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
Share of sales made through each individual PCW/all PCWs by these brands.	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

Source: CMA's analysis of the Retail Prices dataset (Annex O).

- 5.103 The results of the CMA's analysis supports its finding that the around 15% [16%] of consumers who purchased through a PCW and obtained a quote from a provider's online direct channel during the Relevant Period would have been unlikely to find a lower price than offered to them on a PCW.
- 5.104 BGL submitted analysis conducted by Oxera of the prices on each individual PCW and the direct channel as evidence in support of its argument that PCW sales and direct sales should be in the same relevant market. Oxera concluded on the basis of this analysis that *'[t]he evidence shows that retail prices on PCWs and on direct channels overlap to a significant degree'* and the *'high degree of correlation between PCW prices and direct prices ... provide evidence that direct sales and PCW sales are likely to be in the same relevant market'*.³³⁴

³³³ While the results of this analysis may suggest that a home insurance provider did not comply with a narrow MFN, the CMA has identified that there are limitations with the Consumer Intelligence data that mean a provider may be observed to offer a lower price on its direct channel even when it may in fact be complying (or seeking to comply) with a narrow MFN (see Annex O: Retail Prices dataset).

³³⁴ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 130 (i).

- 5.105 The motivation for Oxera to assess the correlation between prices on each PCW and providers' online direct channels is that, if products are close substitutes, *'one would expect the prices of both products to move together over time'* even if they have different prices.³³⁵ The CMA notes, however, that the price of interest for applying a SSNIP test in the present case is the price of PCW Services for Home Insurance (i.e. PCW commission fees) and not the price of the home insurance products sold to consumers by providers through PCWs (as is the focus in Oxera's analysis). Oxera's analysis does not therefore demonstrate whether consumers who use PCWs for specific reasons (as set out in Section 5.C.I) would switch to providers' online direct channels and hence whether this channel could have constrained a hypothetical monopolist PCW's ability to profitably increase commission fees by 5-10% during the Relevant Period.
- 5.106 In addition to high positive correlation coefficients in any price-correlation analysis not by themselves providing evidence that two products are in the same relevant market,³³⁶ the CMA considers that a likely spurious reason for Oxera finding such a high positive correlation of prices in its analysis is the presence of narrow MFNs in contracts between the Big Four PCWs and home insurance providers.³³⁷ BGL recognised that this could have contributed to Oxera's finding, stating that (if they were binding and effective)³³⁸ narrow MFNs *'could have a levelling effect and increase the correlation'* between prices set by providers on PCWs and their own direct channel *'relative to how [home insurance providers] would choose to price if only responding to consumer and competitor pricing pressure'*.³³⁹ Due to this contractual obligation for a provider to offer consumers the same (or a higher) price for the same home insurance product on their own website as offered on a PCW, the high positive correlation of prices found by Oxera in

³³⁵ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.58.

³³⁶ There are many significant limitations associated with price correlation analysis that may lead its results to be an unreliable indicator of the substitutability of two products and, therefore, the boundaries of the relevant product or geographic market. For example, one important element of price correlation analysis is controlling for common shocks to prices across different products or geographic areas (such as movements in the costs of common inputs) as it is possible that high positive correlation coefficients could be driven entirely by changes in these common elements. The CMA notes that, as Oxera did not control for any common costs between the retail prices offered to consumers on PCWs and on providers' online direct channels (such as the premium required by home insurance provider to insure a consumer's building and/or contents or other industry-wide costs that would be common across the PCW and providers' own websites), this limitation in Oxera's analysis is likely to be a spurious reason for its finding of a high positive correlation between prices on each PCW and providers' online direct channels.

³³⁷ URN 8808, BGL's response to section 26 notice dated 10 May 2019, question 9.

³³⁸ While the CMA notes that BGL submitted analysis conducted by Oxera that shows the results of its price correlation analysis on the prices offered to consumers on each PCW and providers' online direct channels hold when controlling for narrow MFNs that are *'binding and effective'*, BGL did not submit any analysis to demonstrate that narrow MFNs were not *'binding and effective'* during the Relevant Period. URN 8808, BGL's response to section 26 notice dated 10 May 2019, question 9.

³³⁹ URN 8808, BGL's response to section 26 notice dated 10 May 2019, question 9.

its analysis is unlikely to illustrate a competitive interaction between PCWs and providers' online direct channels.³⁴⁰

- 5.107 The CMA therefore does not consider BGL's submissions to demonstrate that sales made through providers' online direct channels form part of the same relevant market as PCW Services for Home Insurance.

5.C.III.(c). Renewal pricing

- 5.108 In addition to assessing whether consumers shopping around on PCWs would have found a lower price for the same home insurance product on providers' online direct channels, the CMA considered the extent to which consumers may have been offered a lower price when renewing with their existing provider than could be obtained on the PCW channel. This is relevant because (as PCWs are only compensated when consumers complete a transaction after clicking-through to a provider's website) consumers that switched home insurance providers through a PCW during the Relevant Period may have, in theory, decided to remain with their existing provider if their renewal offer was lower than the price quoted to them on the PCW channel following a 5-10% increase in PCW commission fees.
- 5.109 The CMA finds that those consumers who purchased through a PCW after receiving a renewal offer from their existing provider would be unlikely to be offered a lower price than found on PCWs following a 5-10% increase in commission fees by a hypothetical monopolist PCW. This finding is based upon evidence showing that (i) renewal policies are priced more expensively than the new business policies available to consumers on PCWs, in part to allow providers to recoup the costs of acquiring new consumers, and (ii) consumers that contact their existing provider to negotiate a better renewal quote are unlikely to be offered a lower price than could be obtained on the PCW channel. These are discussed in turn below.

³⁴⁰ BGL also submitted analysis conducted by Oxera which showed that, based on the underlying results used by the CMA in Table 5.1, 40-55% [§] of brands with available data typically priced home insurance products more cheaply or equally on their online direct channel than on each PCW individually. Oxera considered that these results supported BGL's position that direct sales should be in the same relevant market as PCW Services for Home Insurance URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 3.17. The CMA, however, agrees with Oxera's concession that *'the presence of narrow MFNs could explain why a significant proportion of brands price equally on the direct channel'*. Further, the CMA notes that (based on Oxera's interpretation of the underlying data used by the CMA in Table 5.1) 45-60% [§] of brands with available data were typically found to have priced home insurance products more expensively on their online direct channel than on PCWs during the Relevant Period.

5.C.III.(c).(i). Prices of renewal policies

- 5.110 The majority of home insurance providers told the CMA that, during the Relevant Period, their pricing strategy differed between new business and renewals – with providers typically increasing their retail prices at renewal.³⁴¹ This is because new business policies are typically sold at a loss to remain competitive to acquire new customers, with subsequent increases in retail prices at renewal to recoup the costs of acquiring new business.^{342, 343}
- 5.111 Providers also told the CMA that they observed that demand was relatively less elastic at the point of renewal than for new business, with consumers more price sensitive on PCWs than providers' online and offline direct channels.³⁴⁴ Given that the CMA's analysis shows that a substantial majority of renewal consumers did not shop around to compare their quote with the new business prices available to them in the market during the Relevant Period, the CMA considers that this relatively less elastic demand is likely to incentivise providers to set higher prices for renewals than for new policies.³⁴⁵ This is consistent with the FCA's findings in its general insurance pricing practices market study, stating that providers (after selling policies at a discount to new customers) *'increase premiums when customers renew, targeting increases at those less likely to switch'*.³⁴⁶
- 5.112 Evidence from providers also indicates that the difference between new policy prices and renewal prices had been generally increasing over time.³⁴⁷ For example, one provider submitted analysis showing that the difference in

³⁴¹ [REDACTED]. One provider ([HIP]) highlighted that the 'PCW journey' has the highest year-on-year price increase in the early years of a home insurance policy.

³⁴² Some providers take into account the long-term profitability of consumers when setting new business prices. This assessment of a consumer's 'lifetime value' to the provider is calculated by combining expected income from the core policy (including from potential future renewals) with relevant add-on income and then deducting cost. Providers could use historic data to assess the future value of various distribution channels when determining the aggregate possible losses on the sale of new business policies while ensuring that their pricing strategy is profitable overall. Where providers use lifetime value models to directly inform their pricing strategy, they use customer conversion and retention information as a direct input into the calculation of new business pricing. More information can be found in FCA, [General insurance pricing practices market study: Interim report](#) (October 2019), 4.13 to 4.15.

³⁴³ Information provided by insurers to the FCA as part of its General insurance pricing practices market study also showed that most providers *'charge different prices to new and renewing customers for reasons other than risk or cost to serve'*, with the main reason given by providers for doing so being *'to recover the losses that they incur giving introductory discounts to new customers, sometimes at below cost.'* FCA, [General insurance pricing practices market study: Interim report](#) (October 2019), 4.35

³⁴⁴ URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 10; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6161, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

³⁴⁵ Another influencing factor in the pricing of renewals was the provider's expected customer retention rate. To maintain profitability, some providers told the CMA that an increase in the number of consumers leaving at the end of their contract would likely lead to a decrease in renewal prices. See [REDACTED]; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 1; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 1; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 1.

³⁴⁶ FCA, [General insurance pricing practices market study: Interim report](#) (October 2019), 1.6.

³⁴⁷ [REDACTED]

the retail price between a new customer and a first renewal customer increased from 0-10% [REDACTED]% in 2013 to 10-20% [REDACTED]% in 2017.³⁴⁸

- 5.113 When the CMA asked providers about the difference between new business prices in 2016 and first renewal prices in 2017, information submitted by six³⁴⁹ providers on their average new business prices in 2016 and first-year renewal prices in 2017 indicated an increase of between 5-25% [REDACTED]% with an average³⁵⁰ of [15%].³⁵¹ The CMA notes that even the lower bound of this range is greater than the expected less than 2-4% [REDACTED] increase in new business prices on PCWs if providers fully passed-through a 5-10% increase in PCW commission fee by a hypothetical monopolist of PCW Services for Home Insurance (set out in paragraph 5.28).
- 5.114 The evidence submitted by providers supports the CMA's finding that those consumers who purchased through a PCW after receiving a renewal offer from their existing provider would have been unlikely to have been offered a lower price than offered to them on a PCW.
- 5.115 BGL submitted that because the prices available to new and switching consumers are comparable to those renewing for the first time then the sale of renewal policies by providers to first-year renewal customers should form part of the same relevant market as PCW Services for Home Insurance. BGL supported its view with reference to the following evidence:
- (a) Analysis conducted by Oxera that identified an average price difference '*for the most part*, [REDACTED]' between first year renewals and new business.³⁵²
 - (b) Research published by the FCA in 2015 which found that consumers who renewed their home insurance policy once paid on average only around 5% more than a new customer.³⁵³
 - (c) Other research published by the FCA in 2018 which found that information from home insurance providers showed that there are

³⁴⁸ [REDACTED]

³⁴⁹ [REDACTED]

³⁵⁰ The median increase between average new business prices in 2016 and first-year renewal prices in 2017 for these six home insurance providers was [REDACTED].

³⁵¹ The data used by the CMA in this analysis is the average premium for new business policies in 2016 to the average premium for policies first year renewal policies in 2017. One provider ([REDACTED]) is not included in the CMA's analysis as, while it submitted data on its average premium for new business policies in 2016 to the average premium for first year renewal in 2017, consumers acquired through its online direct channel are eligible for a two-year fixed contract and therefore do not pay a higher premium in the second year of their policy. [REDACTED].

³⁵² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 150 (i).

³⁵³ FCA: Occasional Paper No.12 – Encouraging consumers to act at renewal (Evidence from field trials in the home and motor insurance markets), December 2015, pages 8 and 9, as cited in URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 151.

'sharp premium increases' at the second and third renewal of consumers' policies with their existing providers.³⁵⁴

- 5.116 BGL said that this evidence of a relatively small difference in price between consumers that have purchased a new home insurance policy and those that decided to remain with their existing provider after the first year suggests they are *'likely to form part of the same market, consistently with the logic of a standard SSNIP test'* conducted on the retail prices offered to consumers by providers on PCWs.³⁵⁵
- 5.117 The CMA does not consider, however, that BGL's submissions demonstrate that the sale of policies by providers to their existing customers at the point of their first renewal should form part of the same relevant market as PCW Services for Home Insurance.
- 5.118 First, the CMA does not consider Oxera's analysis to be supportive of BGL's view that the sale of policies by providers to their existing customers at the point of their first renewal by home insurance providers form part of the same relevant product market as PCW Services in Home Insurance. In particular:
- (a) The less than [X] price difference between new business and first-year renewal policies found by Oxera [X] increase in retail prices on PCWs following a 5-10% increase in PCW commissions by a hypothetical monopolist PCW. Consumers at the point of renewal that choose to shop around and switch provider on a PCW are therefore still able to save money on their home insurance policy even using Oxera's results.
 - (b) Oxera did not follow the CMA's approach to control for the change in risk profile (to the extent possible) of the cohorts by assessing the increase in the premiums of providers' new business customers in 2016 at their point of first renewal in 2017 (instead looking at the difference in average premiums for the new business and first-year renewal customers of the home insurance providers in each year), thereby not considering any difference in price (or lack thereof) that may be driven by the risk profile of the different customer cohorts.³⁵⁶

³⁵⁴ FCA: Pricing practices in the retail general insurance sector: household insurance, October 2018, paragraph 4.16, as cited in URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 151.

³⁵⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 150 (i).

³⁵⁶ The CMA's approach is consistent with the submissions of providers on the comparability of new business and renewal premiums in any one year. For example, one provider ([HIP]) noted in its submission that a new business price in 2017 is not directly comparable to a first-year renewal price in 2017 *'as there will be different risk mixes present in each segment'* URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 3.

- 5.119 Second, the research published by the FCA in 2015 is based on a sample of three providers, meaning it is non-representative of the sector as a whole. In addition, the FCA data considers renewal prices against new business prices in a given year and not for a given consumer cohort during the lifetime of the contract. The CMA's analysis is, in contrast, based on evidence obtained from a larger number of providers and allowed for the comparison between new business prices in one year and renewal prices in the subsequent year. The CMA's analysis demonstrates that the difference between new policy prices and renewal prices can be significantly greater than suggested by the FCA's three illustrative examples.
- 5.120 The CMA does not therefore consider BGL's submissions to support its argument that the sale of renewal policies by home insurance providers to their existing customers at the point of first renewal form part of the same relevant market as PCW Services for Home Insurance

5.C.III.(c).(ii). Negotiations between consumers and home insurance providers

- 5.121 The DCTs Survey found that 31% of consumers who had recently used a comparison site for home insurance may have used the quotes obtained on a PCW to negotiate a better renewal price with their existing home insurance provider.³⁵⁷ This could, in theory, illustrate PCWs having to compete with renewal quotes to incentivise consumers to switch providers through the PCW rather than renewing with their existing provider. This is because PCWs are not compensated by providers (in the form of a commission fee paid) when a consumer renews its existing policy after using information obtained on a PCW to obtain a lower retail price by the existing provider.
- 5.122 However, evidence obtained from home insurance providers shows that only a small proportion of consumers contact them to discuss their renewal offer and many providers said that they do not even try to capture how many people try to negotiate.³⁵⁸ For example, one of these providers ([HIP]) said that when it did some checks it found that only a small number of consumers tried to negotiate so it decided not to focus on this area.³⁵⁹

³⁵⁷ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question M6: 'Why did you use a comparison site on this occasion?' Base: All who have used a comparison site for home insurance in the last 3 months (234).

³⁵⁸ URN 6148, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6174, [HIP]'s response to section 26 notice dated 16 April 2018, question 4.

³⁵⁹ URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 4.

- 5.123 Those consumers who do contact an existing provider to discuss their renewal offer are unlikely to be able to negotiate a reduction in their retail price that would match the price of a new policy purchased through the PCW channel. In this regard, 10 providers said they would not match a quote generated by a consumer on a PCW when discussing a potential discount on their renewal offer,³⁶⁰ with three having an explicit policy not to offer any consumer a reduction in their renewal quote.³⁶¹ Of the 7 providers that do offer discounts to consumers at renewal but do not match the prices quoted on PCWs, six told the CMA that reductions in renewal quotes were only available to consumers based on an assessment of their lifetime value³⁶² and one said that a consumer needed to not have made a claim against their policy for at least three years in order to be offered a reduction in renewal quote.³⁶³ Only two providers told the CMA they are willing to match a quote received by a consumer on a PCW ([HIP] and [HIP]), and a discount was only given to around 0-10% [X] and 0-10% [X] of their renewal consumers respectively.³⁶⁴
- 5.124 The evidence obtained from providers supports the CMA's finding that those consumers who purchased through a PCW after receiving a renewal offer from their existing provider would not have been able to negotiate a lower price than offered to them on a PCW.
- 5.125 BGL submitted that as '*a substantial proportion of customers who renew their policy enter into negotiations with the HIP prior to renewing*' and '*are likely to have used the comparison services of a PCW to aid negotiations*' it follows that consumers that have renewed once with their home insurance provider should form part of the same relevant market as PCW Services for Home Insurance.³⁶⁵ In addition to the DCTs Survey finding (set out in paragraph 5.121), BGL used survey evidence provided to the CMA by [X]

³⁶⁰ URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6161, [HIP]' response to section 26 notice dated 16 April 2018, question 4; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6178.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 3; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6148, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 4.

³⁶¹ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6174, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 4.

³⁶² [X]; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; [X]; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 4.

³⁶³ [X]

³⁶⁴ [X]

³⁶⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 150 (iv).

that around 60% ([REDACTED]) of consumers who renewed with their existing provider only did so after shopping around to support its view that these consumers should form part of the relevant market in the present case.³⁶⁶

- 5.126 However, the CMA does not agree with BGL that this survey evidence demonstrates that consumers who renewed with their existing provider once form part of the relevant market. The CMA has given more weight to its analysis of the actual behaviour of all cohorts of consumers who were sent a renewal quote from their existing provider (and not only those in their first year) in the period September 2016 – August 2017 as this provides direct evidence of whether consumers could compare their renewal quote with one obtained on the PCW channel, rather than reporting the stated behaviour of consumers as done by the above surveys. The CMA's analysis found that less than 20% ([18%]) of all consumers that received a renewal offer from their existing provider (i.e. in any year of their contract with a home insurance provider) also obtained a quote on at least one PCW during the Relevant Period, a significantly lower proportion than found in the DCTs Survey or the survey evidence submitted by Confused.
- 5.127 When this actual behaviour of consumers at the point of renewal is considered alongside the evidence from providers that the small proportion of their renewal customers contact them at the point of renewal are only offered limited discounts when they attempt to negotiate, the CMA finds that the constraint on PCWs' commission fees by providers' sale of renewal policies to be limited in practice.
- 5.128 As part of its response, BGL submitted analysis carried out by Oxera of the evidence from home insurance providers discussed in paragraph 5.123. Oxera noted that some providers had '*calculated the proportion of all customers who contacted them after receiving an invite to renew*' rather than the '*relevant metric*' of '*the proportion of customers who went on to renew who had contacted their provider before doing so*'.³⁶⁷ The only provider considered by Oxera to use this '*relevant metric*' was [HIP], which estimated that 25-35% ([REDACTED]) of customers who went on to renew negotiated a discount before doing so in 2016, falling to 20-30% ([REDACTED]) in 2017.³⁶⁸
- 5.129 The CMA does not share Oxera's view that the '*relevant metric*' in this case is '*the proportion of customers who went on to renew who had contacted*

³⁶⁶ URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 28 and URN 4757, Confused's response to section 26 notice dated 14 November 2017, document entitled 'Appendix H – Q28'.

³⁶⁷ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.76.

³⁶⁸ [REDACTED]

their provider before doing so'.³⁶⁹ When assessing the competitive constraints on a hypothetical monopolist PCW, the CMA considers that (following a 5-10% increase in PCW commissions fees) it is the proportion of PCW users who received a renewal quote and may have attempted to negotiate a lower renewal offer from their existing provider before going on to purchase a new policy through the PCW channel that is relevant. As this cannot be directly observed, the CMA has therefore relied upon the evidence submitted by providers that only a small proportion of their renewal customers contact them at the point of renewal and there are only limited discounts available to those consumers that attempt to negotiate with their existing provider rather than estimate the '*relevant metric*' in this case.

- 5.130 Given the discounts available to consumers that negotiate with providers at the point of renewal would not match the prices offered on PCWs in the vast majority of cases, the CMA considers it is therefore unlikely that those consumers who purchased through a PCW after receiving a renewal offer from their existing provider would place sufficient competitive pressure on a hypothetical monopolist PCW by entering into negotiations with their provider at the point of renewal such that a 5-10% increase in commission fees would be rendered unprofitable.
- 5.131 The CMA does not therefore consider BGL's submissions to support its argument that the sale of renewal policies by home insurance providers to their existing customers at the point of first renewal form part of the same relevant market as PCW Services for Home Insurance

5.C.IV. Providers' alternative consumer acquisition strategies

- 5.132 The CMA finds that delisting from (or withdrawing from certain risk segments on) a hypothetical monopolist PCW in response to a 5-10% increase in PCW commissions fees would lead to a significant loss in sales volumes and profits for home insurance providers that would be impossible or very costly for providers to replicate through the sale of new business on the direct channel, the sale of renewals to existing customers or the use of brokers to acquire consumers.³⁷⁰ These alternative acquisition strategies are discussed in turn below.

³⁶⁹ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.76.

³⁷⁰ For an explanation on which home insurance providers are insurance underwriters and which are brokers, see Sections 2.C.I and 2.C.II.

5.C.IV.(a). Sale of new business on the online direct channel

5.133 The CMA finds that home insurance providers would not have been able to replace the new business sales they made through PCWs on their online direct channels during the Relevant Period. This is because (i) PCWs have become increasingly important in providers' overall consumer acquisition strategies as a growing number of consumers move away from providers' direct channels and (ii) despite there being year-on-year increases in PCW commission fees in the period 2012 – 2017, providers consider that PCWs remain a cost-effective consumer acquisition channel and can facilitate the entry and growth of smaller providers. These are taken in turn below.

5.C.IV.(a).(i). Importance of PCWs to providers' consumer acquisition strategies

5.134 The majority of providers contacted by the CMA said that replicating the sales they currently make on PCWs on other channels would not be possible.³⁷¹ This is because (i) sales through PCWs represent the majority share of consumers who buy a new policy or 'switch' home insurance provider (instead of renewing with their existing provider), with most consumers using only the PCW channel when doing so, and (ii) for a large and growing proportion of consumers, PCWs are the most important tool for shopping around.³⁷²

5.135 Consistent with this many home insurance providers told the CMA that it is essential or important to list on most or all of the Big Four PCWs,³⁷³ with

³⁷¹ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5197A, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5157, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5455, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5121, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 6215, [HIP]'s response to section 26 notice dated 26 April 2017, question 1; URN 6252, [HIP]'s response to section 26 notice dated 26 April 2017, question 1.

³⁷² URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 1c.

³⁷³ See URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(g); URN 5157; [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7(g); URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 7(g); [§]; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 1(a); URN 5142, [HIP]'s response to the section 26 notice dated 24 November 2017, question 10; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 6(g); URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 1.

several providers considering that PCWs' importance in their channel strategy for home insurance had significantly increased during the Relevant Period.³⁷⁴ For example:

- (a) One provider ([HIP])³⁷⁵ stated, '*customers have increasingly moved away from the traditional direct and broker channels and see PCWs as offering very competitive premiums, increased ease of purchase and increased choice*'; and
- (b) Another ([HIP])³⁷⁶ emphasised that it is '*an increasing challenge to attract consumers via other direct channels*' as '*PCWs provide ... a quick and easy route to comparing prices*' and '*consumers who habitually use PCWs would not tend to switch to a non PCW channel.*'

5.136 Home insurance providers also told the CMA that there are variances in consumer groups acquired via different channels because of the different consumer mix using those channels, and that different channels offer different market dynamics.^{377, 378} This is a further reason why providers typically use PCWs, as well as their own direct channels, to acquire consumers (as these channels allow them to reach different consumer groups). The CMA has also found that some providers sell different products, sometimes under different brands, on PCWs and the direct channels to reflect the differences in the consumer groups using different channels.³⁷⁹

5.137 The views of home insurance providers are consistent with the CMA's assessment that the PCW channel was the most important channel used by providers for acquiring new business in the Relevant Period. In particular:

- (a) An increasing number of consumers have migrated from the group of non-PCW users to the group of PCW users when buying a new home

³⁷⁴ For example, see URN 5157, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 1(a); URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 1.

³⁷⁵ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 1, paragraph 13.

³⁷⁶ URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 1.

³⁷⁷ See for instance, URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 2; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 2; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 3.

³⁷⁸ Differences between the users of PCWs and home insurance providers' direct online channels are also reflected in the price sensitivity of consumers using these channels (see Table 7.2) with PCW users being more sensitive to individual providers' prices than those using the direct channels.

³⁷⁹ See for instance, URN 5315, [HIP]'s response to the section 26 notice dated 24 November 2017, question 2; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 2; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 2; URN 6583.1, note of CMA call with [HIP] dated 25 May 2018, paragraph 13.

insurance policy.³⁸⁰ As shown with the overall sector trends included in Figure 2.3 (and discussed in paragraphs 2.35 to 2.37), the proportion of home insurance providers' new business sales made using PCWs increased from around 40% [§] in 2012 to more than 60% [§] in 2017;³⁸¹ and

- (b) Only a very small proportion of PCW users also generate a quote on an individual home insurance provider's online direct channel, such that they would be unable to capture a sufficient number of these multi-channelling consumers via their own websites to allow them to stop (or reduce their use) of the PCW channel. On average, the proportion of PCW users that also obtained a quote from the own website of each provider is around 1% [1.4%], [§] ([HIP]) only able to attract 5-10% [§] of all PCW users to its brand's websites.^{382 383}

5.138 Providers' strategies when negotiating commission fees also indicate that they do not see other acquisition channels as credible alternatives to profitably replace customer introductions from PCWs. Only one provider ([HIP]) said that it could potentially replace the loss of such introductions through sales made via brokers because of its strong brand, if it no longer wanted to use PCWs (see further Section 5.C.IV.(c)). However, this provider

³⁸⁰ BGL submitted that 'the volume of sales through PCWs has increased at a similar rate to the reduction in the volume of sales to new and switched customers through direct channels', which it considered as supporting the substitutability of PCWs and direct channels from both a demand and supply-side perspective URN 5266A, First Oxera Report dated 21 December 2017, section 2.6, page 46. However, while the shift from the direct channel to PCWs is consistent with PCWs acting as a competitive constraint on the direct channel, it is unlikely to be consistent with a material competitive constraint the other way around. This is consistent with the competitive constraints they impose on each other being asymmetric. See Office of Fair Trading and Competition Commission, [Merger Assessment Guidelines](#) (CC2/OFT1254), September 2010, adopted by the CMA Board, paragraph 5.2.20. This is likely to be the case where products are differentiated, such that the competitive constraints they impose on each other need not be symmetric. This is especially the case given that this shift has happened despite the material [§]% year-on-year increases in commission fees charged by PCWs [CMA analysis of PCWs' commission fees included in the Commission Fees Dataset (Annex D). As set out in paragraph 5.150 and Figure 5.4, the weighted average PCW commission fee in home insurance has increased by around [§] (from £[§] to £[§]) per policy from 2012 to 2017.

³⁸¹ CMA analysis of eBenchmarkers data. See URN 6258, eBenchmarkers response to follow-up questions to section 26 notice dated 14 November 2017, question 1 to 3 and URN 6648, eBenchmarkers response to a follow-up question to a request for information, email chain between eBenchmakers and the CMA entitled 'RE: CMA request – Case 50505', dated 8 August 2018.

³⁸² Based on the CMA's analysis of new business quotes generated on PCWs and the direct online direct channel of home insurance providers in the period September 2016 – August 2017. More information can be found in Annex I Consumer Behaviour analysis.

³⁸³ The CMA's analysis also considered the proportion of PCW users who also generated a quote on an individual provider's online direct channel and went on to purchase a home insurance policy through the PCW channel. This is because the ability of providers to replicate sales made through the PCW channel is greater when a larger proportion of consumers that purchased through a PCW also multi-channelled, thereby placing a greater potential constraint on the commission fees set by the hypothetical monopolist PCW. The results of the CMA's analysis are consistent with its results for all PCW users who also generated a quote on an individual provider's online direct channel, finding that the proportion of PCW users who also generated a quote on an individual provider's online direct channel and went on to purchase a home insurance policy through the PCW channel is around 1% ([§]) on average [§] [HIP] only able to attract 5-10% [§]% of these consumers to its brand's websites.

has not used this strategy to resist commission fee increases by PCWs. Other providers the CMA spoke to ([HIP], [HIP], [HIP], [HIP]) did not mention using alternative channels as a possible lever in negotiations.³⁸⁴

- 5.139 While in some cases home insurance providers managed to reduce the amount of a commission fee increase initially proposed by the Big Four PCWs (e.g. based on arguments concerning the share of sales of the PCW³⁸⁵ or the strength of the provider's proposition to the PCW³⁸⁶), providers have typically accepted significant year on year commission fee increases.³⁸⁷ In addition, several home insurance providers emphasised that they had weak or almost no bargaining power when negotiating with PCWs on their proposed commission fee increases.³⁸⁸ For example, one provider ([HIP]) told the CMA a *'PCW has a stronger bargaining position as, without the insurer conceding, there would be a risk of having to leave the panel'* and that, for the PCW, *'the delisting of an insurer would have little impact on their revenue as with over 100 prices displayed, another insurer or broker would simply convert the business'*.³⁸⁹
- 5.140 From CTM's internal emails, it appears that in some cases providers referred to the commission fee paid to other PCWs during the negotiations with CTM, and used this (and the potential implications of a higher commission fee for the relative prices on CTM) as an argument to mitigate the proposed commission fee increase.³⁹⁰ The CMA has, however, not seen any evidence in CTM's internal documents of providers referring to other channels (e.g. their direct channel) in their negotiations with PCWs.
- 5.141 This evidence supports the CMA's finding that home insurance providers would not have been able to replace the new business sales they made through PCWs on their online direct channels during the Relevant Period.

³⁸⁴ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraphs 20 to 22; URN 6583.1, note of CMA call with [HIP] dated 25 May 2018, paragraph 10; URN 6423.1, note of CMA call with [HIP] dated 25 April 2018, paragraph 11; URN 6590.1, note of CMA call with [HIP] dated 26 April 2018, paragraphs 10 to 11.

³⁸⁵ URN 6583.1, note of CMA call with [HIP] dated 25 May 2018, paragraph 11; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 7.

³⁸⁶ URN 6423.1, note of CMA call with [HIP] dated 25 April 2018, paragraph 12; URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 20; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(f).

³⁸⁷ This is shown in Figure 5.4 below.

³⁸⁸ URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(f)].

³⁸⁹ URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 7(e).

³⁹⁰ URN 4059, BGL's response to section 27 notice dated 26 September 2017, email between [Employee, HIP] to [Employee, BGL] and [Employee, BGL] entitled RE: [HIP]/CTM CPA 2017'

- 5.142 BGL submitted that the ‘*very basic observation*’ that two large home insurance providers ([HIP] and [HIP]) do not list all their brands on PCWs supports its view that direct sales necessarily form part of the relevant market.³⁹¹ BGL supported its point with reference to the 2017 Mintel *Home Insurance Report*, which stated that this strategy by ([HIP] and [HIP]) ‘*has not proved detrimental to their leading market positions*’,³⁹² as well as the submissions of one of these providers ([HIP]) to the DCTs Market Study that ‘*competition and choice in insurance has, in [HIP]’s view, been enhanced as a result of some brands not listing on PCWs*’.³⁹³
- 5.143 The CMA does not, however, consider that BGL’s observation that two large home insurance providers ([HIP] and [HIP]) do not list all their brands on PCWs support its view that direct sales form part of the relevant market. In particular:
- (a) One of these providers ([HIP]) said that, if its brands were no longer listed on PCWs, it ‘*would be extremely difficult to replace the volume of lost sales*’ and ‘*PCWs are a key source of new business volume*’ given that sales made through PCWs represent more than one third (around [%]) on average) of its total new business volume during the Relevant Period.³⁹⁴
 - (b) The other provider ([HIP]) told the CMA that its brand listed on PCWs was dependent on this channel (with the vast majority [%] of its brand’s new business sales being made through PCWs) such that it is important to be available to consumers on the platforms of all of the Big Four PCWs.³⁹⁵
 - (c) The CMA considers that BGL’s observation that two large home insurance providers ([HIP] and [HIP]) do not list all their brands on PCWs is not relevant to the present case. This is because, as the CMA has focused its assessment on the constraints on the hypothetical monopolist PCW that arise in relation to providers (and their brands) that listed on PCWs in the Relevant Period, the fact that providers choose not to list certain brands on PCWs would not affect the profitability of a SSNIP in commission fees by a hypothetical monopolist PCW.

³⁹¹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 138.

³⁹² URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 10.

³⁹³ URN 1450, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 3.

³⁹⁴ URN 5129 [HIP]’s response to section 26 notice dated 24 November 2017, question 1, paragraph 1.4.

³⁹⁵ URN 5256A, [HIP]’s response to section 26 notice dated 24 November 2017, question 7.

- 5.144 The CMA therefore does not consider BGL's submissions to demonstrate that sales made by providers on their own direct channels form part of the same relevant market as PCW Services for Home Insurance.

5.C.IV.(a).(ii). PCWs as a cost-effective consumer acquisition channel for providers

- 5.145 Home insurance providers told the CMA that trying to capture at least some sales from PCWs would require significant (and risky) investment, especially in attracting consumers to their online direct channels through marketing and advertising. This is because, as providers listing on PCWs benefit from the material investment in marketing and advertising made by PCWs but only pay when a consumer introduced by the PCW completes a purchase, trying to capture at least some sales from PCWs would significantly increase providers' cost-per-acquisition, reduce profitability or would require a radical change in providers' business models.³⁹⁶
- 5.146 The Big Four PCWs told the CMA that they compete with each other to attract consumers to their websites through their marketing and advertising activities³⁹⁷, which was confirmed by several insurance providers³⁹⁸ and other PCWs active or previously active in the home insurance sector³⁹⁹

³⁹⁶ URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 1; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 1.

³⁹⁷ See URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 24, paragraph 24.2; URN 0005.1, BGL's response to a request for information in the DCTs Market Study dated 29 September 2016, question 5; URN 0004, BGL's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, questions 10 and 11; URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 1; URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 6, page 9, paragraph 6.4; and URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 1.

³⁹⁸ URN 1389, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1412, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1462, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1517.1, [HIP] response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1445, [HIP] response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1391, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1483, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 4; URN 1450, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; and URN 1490, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10, paragraph 10.2(a).

³⁹⁹ A business (Covéa Group) that has considered entering as a PCW in the home insurance sector also told the CMA that PCWs compete on marketing and advertising. URN 5559.1A, note of CMA call with Covéa Insurance dated 14 December 2017, paragraph 7; URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraph 10; URN 1517B, Seopa's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1384, uSwitch's response to the Statement of Scope in the DCTs Market

during the CMA's DCTs Market Study. The importance of marketing and advertising is reflected in PCWs' expenditure on these activities, with the Big Four PCWs' advertising spend growing from £[X] million in 2012 to £[X] million in 2017.^{400, 401} This significant investment in marketing and advertising by the Big Four PCWs is likely to have contributed to the growing use of the Big Four PCWs by consumers of home insurance (and of other insurance products).

- 5.147 In contrast, the marketing and advertising activities of home insurance providers are more limited than that of the Big Four PCWs. In particular, only the larger insurance providers with strong brands or insurance products that are only available on the provider's direct channels tend to invest in above-the-line advertising campaigns (e.g. TV advertising directed to a wider spread of audience).⁴⁰² Most other providers told the CMA that they relied on the Big Four PCWs' investments in large above-the-line advertising (e.g. advertising directed to a wider, more general audience, such as TV or Radio adverts) rather than running their own campaigns. For example, several providers said that their advertising includes direct mail and targeted emails, which are generally targeted to growing their businesses through cross-selling products to existing customers.⁴⁰³
- 5.148 While the larger providers that do invest in above-the-line advertising campaigns could aim to capture some sales from PCWs, two [large] home insurance providers with strong brands or products that are only available to consumers on their direct channels typically have a higher cost-per-

Study dated 29 September 2016, question 10, page 27; and URN 5607.1, note of CMA call with uSwitch dated 15 December 2017, paragraph 13.

⁴⁰⁰ Based on data from CTM, MoneySuperMarket, GoCompare and Confused. The figure refers to general, non-sector specific, advertising. See URN 6438.18, BGL's response to the section 26 notice ('Second BGL Notice') dated 3 May 2018, question 9, document entitled 'CMA Marketing Template'; URN 6379, Confused's response to section 26 notice dated 27 April 2018, question 12, document entitled 'CMA Marketing Template (Confused data)'; URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 4, document entitled 'Annex 4'; URN 6352, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 13, document entitled 'Appendix 6 - CMA Marketing Data (MSM data incl 2017).xlsx'.

⁴⁰¹ As highlighted in the CMA's DCTs Market Study and PMI Market Investigation, marketing and advertising was the most significant cost for PCWs (See: The [DCTs Market Study](#), September 2017, Final Report, Paper E, paragraphs 2.18 to 2.22 and 2.68; The [PMI Market Investigation](#), April 2015, paragraphs 8.24 and 8.25.).

⁴⁰² URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 3; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 25; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 22; URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 21; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 21; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, questions 2 and 3.

⁴⁰³ URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, question 27; URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 23; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 24; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, questions 1 and 19; URN 5121, [HIP]'s response to section 26 notice dated 24 November 2017, question 22.

acquisition on their direct channels than the commission fees they pay to PCWs:

- (a) One well-known insurance provider ([HIP]) (that [X]) told the CMA that its cost-per-acquisition on its direct channels (where it incurs its own marketing costs) is typically higher than the commission fees it pays to PCWs.⁴⁰⁴ This difference is driven by the significant marketing investment required to attract consumers to the brand sold through the direct channel.
- (b) Another provider with a well-known brand ([HIP]) told the CMA that the cost-per-acquisition on its own direct channel is around [X] as high as the average commission fee it pays to PCWs, even when accounting for the lifetime value of the consumer.⁴⁰⁵

5.149 Evidence from other providers also shows that PCWs are a relatively cost-effective channel,⁴⁰⁶ and PCWs can facilitate the entry and growth of insurance providers by reducing the need to invest in marketing and advertising and also because by being listed next to known insurance providers and on a trusted PCW, relatively less known providers can also become more attractive to consumers (the ‘halo’ effect).⁴⁰⁷

5.150 This is despite there being year-on-year increases in PCW commission fees in the period 2012 – 2017. Figure 5.4 shows that the weighted average commission fee in home insurance across for three of the Big Four PCWs increased in the period 2012 to 2017 and increased across the Big Four PCWs by more than 10% ([X]) (from £[X] to £[X]) per policy over this time.

Figure 5.4: Weighted average commission of the Big Four PCWs (individually and collectively)

[X]

Source: CMA analysis of the Commission Fees Dataset (Annex D).

Note: the analysis does not include commission fees charged to vertically integrated brands.

⁴⁰⁴ See URN 1461, [HIP]’s response to follow up questions to a request for information in the DCTs Market Study dated 9 January 2017, question 6.

⁴⁰⁵ URN 6626, note of CMA meeting with [HIP] [X], paragraph 5.

⁴⁰⁶ URN 6626, note of CMA meeting with [HIP] [X], paragraph 5; URN 5184B, [HIP]’s response to section 26 notice dated 24 November 2017, question 1; URN 5256A, [HIP]’s response to section 26 notice dated 24 November 2017, question 1; URN 5243, [HIP]’s response to section 26 notice dated 24 November 2017, question 1.

⁴⁰⁷ URN 0167, GoCompare’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 6, paragraph 10.2; and URN 0123, Confused’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 5.

- 5.151 These views are consistent with information submitted by eBenchmarkers to the CMA on home insurance providers' cost-per-sale on different online channels during the Relevant Period.⁴⁰⁸ This information showed that, for the home insurance brands that submitted data to eBenchmarkers, those that had a higher cost-per-sale on their non-PCW online acquisition channels than the commission fee paid to PCWs invested an average of more than [£] in online marketing and advertising activities.⁴⁰⁹
- 5.152 While the figures submitted by eBenchmarkers to the CMA are not directly comparable to information submitted by the Big Four PCWs, the CMA finds that this investment in online marketing and advertising activities by home insurance providers is much more limited than that of CTM and other PCWs in 2017. In particular:
- (a) The online marketing spend of one of the Big Four PCWs ([£]) has been greater than its spend on offline marketing in every year since 2012.⁴¹⁰ This PCW's ([£]) spend online marketing and advertising in 2017 was £[£] million, with more than £[£] million of this related to its acquisition of consumers who were looking to compare home insurance products on its platform.⁴¹¹
 - (b) BGL submitted that CTM's spend on online marketing [£].⁴¹² CTM's online marketing and advertising spend in 2017 was [£], with around [£] of this related to its acquisition of consumers who were looking to compare home insurance products on its platform.⁴¹³
- 5.153 The CMA considers that the views of home insurance providers and the information submitted by eBenchmarkers is consistent with its views in the DCTs Market Study that, unable to recoup the fixed costs of advertising their online direct channel to consumers by offering a lower price on its own website than found on PCWs (as under the terms of narrow MFNs), the

⁴⁰⁸ URN 6258, eBenchmarkers response to follow-up questions to section 26 notice dated 14 November 2017, question 2.

⁴⁰⁹ Of all brands that submitted data to eBenchmarkers: 17 brands have a non-aggregator online marketing cost-per-sale higher than the commission fees they pay to PCWs, with these brands spending an average of over £[£] on online marketing and advertising activities, and 12 brands pay higher commission fees to PCWs than their non-aggregator online cost-per-sale, with these brands spending on average less than £[£] on online marketing and advertising activities URN 6258, eBenchmarkers response to follow-up questions to section 26 notice dated 14 November 2017, question 2. eBenchmarkers defined non-aggregator online marketing cost-per-sale (i.e. the cost-per-sale for their non-PCW online acquisition channels) as a provider's spend on online paid-for search terms (branded, branded-generic, and generic), spend on affiliate sources (cashback and non-cashback), and spend on display marketing divided by the providers sales from these consumer acquisition channels.

⁴¹⁰ [£]

⁴¹¹ [£]

⁴¹² URN 6438.18, BGL's response to the Second BGL Notice dated 3 May 2018, question 9, document entitled 'CMA Marketing Template.xlsx'.

⁴¹³ URN 6438.18, BGL's response to the Second BGL Notice dated 3 May 2018, question 9, document entitled 'CMA Marketing Template'.

constraint on PCWs from providers' online direct channel may be weakened in practice due to the presence of narrow MFN clauses in contracts between PCWs and providers.

- 5.154 This evidence supports the CMA's finding that, consistent with the important role played by PCWs in acquiring new customers, home insurance providers would not have been able to replace the new business sales they made through PCWs on their online direct channels during the Relevant Period without significant (and risky) investment in their marketing and advertising activities.
- 5.155 BGL recognised the importance of PCWs to home insurance providers in its submissions to the CMA, stating that *'PCWs have helped foster competition and increase consumer choice by helping new entrants gain visibility vis-à-vis consumers on their platform'* with CTM itself having *'many more brands active on its website than a few years ago'*.⁴¹⁴ BGL supports its submission by referencing the information provided by home insurance providers to the CMA, with one provider [HIP] stating its [redacted]⁴¹⁵ and another ([HIP]) that said *'PCWs have been important to our success and growth ... 85-90% of our monthly New Business comes via PCWs'*⁴¹⁶.
- 5.156 The CMA considers that BGL's view that PCWs have allowed new home insurance providers to enter the market and the evidence from providers to be consistent with the 'halo' effect and the CMA's finding that delisting from (or withdrawing from certain risk segments) a hypothetical monopolist PCW would lead to a significant loss in sales volumes and profits for home insurance providers.

5.C.IV.(b). Sale of renewal policies to existing customers

- 5.157 The majority of policies sold by home insurance providers are renewals – accounting for around three quarters (74%) of policies written every year (as set out in paragraph 2.31). Generally, providers told the CMA that renewal sales were an important part of their business strategy, requiring both new business and renewal policies to maintain the profitability of their business.
- 5.158 However, the majority of providers contacted by the CMA said that they did not view renewal policies as an alternative to new business sales made

⁴¹⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 83.

⁴¹⁵ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 1(c).

⁴¹⁶ URN 6252, [HIP]'s response to section 26 notice dated 26 April 2017, question 1(a).

using the PCW channel,⁴¹⁷ with some providers emphasising that it would not be profitable to replace the new business sales made using the PCW channel by increasing the number of consumers who renewed at the end of their contract.⁴¹⁸ For example, one large provider ([HIP]) told the CMA that it would be unlikely to ‘offset’ a loss in home insurance sales made using PCWs as ‘retention rates are already at a high level.’⁴¹⁹ Another provider ([HIP]) said that any ‘improvement in the retention rate would have to come from further price discounting and promotions’, with the loss in profit from this approach unlikely to be ‘economically viable’.⁴²⁰ Some of the providers provided evidence that they manage the performance of their renewal sales separately from their new business activities.⁴²¹

- 5.159 While providers told the CMA that they generally expect the importance of renewals to continue in the future, the need to acquire new consumers is important, and will increase, in order to replace the consumers who do not renew with their existing provider at the end of their contract.⁴²² For example,

⁴¹⁷ Of the providers who were asked to submit views on the ability of renewals to replace new business sales made using the PCW channel, (15 of 18) said that they did not view renewal policies as an alternative to new business sales made using the PCW channel. Of the other three providers who provided views on the ability of renewals to replace new business sales made using the PCW channel, two ([HIP] and [HIP]) said that renewals cannot totally replace the need for new business sales, while the other provider ([HIP]) said that it may consider reducing its new business sales if its renewal rate was higher than planned. URN 6292, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6180, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6167, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6178.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6232.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6143 [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6161, [HIP]’ response to section 26 notice dated 16 April 2018, question 2; URN 6157, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6241, [HIP]’s to section 26 notice dated 16 April 2018, question 2; [X]; URN 6152, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6148, [HIP]’s response to section 26 notice dated 16 April 2018, question 2(b); URN 6325.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6169 [HIP]’ response to section 26 notice dated 16 April 2018, question 2; URN 6262, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6323.1 [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6236.1 [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6404, [HIP]’s response to section 26 notice dated 16 April 2018, question 2.

⁴¹⁸ URN 6167, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6178.1, [HIP]’s response dated to section 26 notice dated 16 April 2018, question 2; URN 6143, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6262 [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6152, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6157, [HIP]’s response to section 26 notice dated 16 April 2018, question 2.

⁴¹⁹ URN 6152, [HIP]’s response to section 26 notice dated 16 April 2018, question 2.

⁴²⁰ URN 6178.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 2.

⁴²¹ URN 6232.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 2; URN 6148, [HIP]’s response to section 26 notice dated 16 April 2018, question 2.

⁴²² URN 6292, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6180, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6167, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6178.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6232.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6143, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6161, [HIP]’ response to section 26 notice dated 16 April 2018, question 1; URN 6157, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6241, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6174, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6152, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6148, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6325.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 1; URN 6169, [HIP]’ response to section 26

one provider ([HIP]) suggested that changes introduced by the FCA during the Relevant Period to increase consumer engagement at renewal will likely increase the number of consumers who decide to switch provider at the end of their contract, increasing the need to acquire consumers as part of their new business activities.⁴²³

- 5.160 This evidence supports the CMA's finding that home insurance providers would not have been able to replace the new business sales they made through PCWs by retaining more existing customers at the point of renewal during the Relevant Period.
- 5.161 BGL submitted that as home insurance providers insist on the inclusion of non-re-solicitation clauses in their agreements with PCWs, this '*strongly indicates that [home insurance providers] regard PCWs as a competitive threat in respect of customers about to renew their policy for the first time*'.⁴²⁴ This is because non-re-solicitation clauses prevent PCWs from directly marketing their comparison services to those consumers that purchased home insurance from a provider after generating a quote on a PCW, typically for 13 months after the original sale occurred.⁴²⁵ This allows home insurance providers to potentially retain more consumers at the point of first renewal than would otherwise be the case without such an agreement.
- 5.162 BGL supports its view in relation to non-re-solicitation clauses with reference to the following observations:
- (a) The DCTs Market Study found that 50-60% of sales made through the Big Four PCWs in 2016 were made by home insurance providers with non-re-solicitation clauses in their contracts with PCWs;⁴²⁶
 - (b) CTM itself has non-re-solicitation clauses in place [X] home insurance providers included in its panel, collectively accounting for [X] of CTM's home insurance sales in the period December 2017 to November 2018 (i.e. the twelve months immediately following the Relevant Period);⁴²⁷ and
 - (c) CTM's experience suggests that home insurance providers do monitor CTM's adherence to non-re-solicitation clauses, with one instance of a

notice dated 16 April 2018, question 1; URN 6262 [HIP]'s response to section 26 notice dated 16 April 2018, question 1.

⁴²³ URN 6148, [HIP]'s response to section 26 notice dated 16 April 2018, question 1.

⁴²⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 156.

⁴²⁵ More information on non-re-solicitation clauses can be found at paragraph 2.48.

⁴²⁶ The DCTs Market Study, 'Paper E: Competitive landscape and effectiveness of competition', September 2017, paragraph 4.93.

⁴²⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 156.

provider ([HIP]) enforcing the contractual clause in relation to both motor and home insurance in November 2015.⁴²⁸

- 5.163 However, the CMA considers that although BGL's observations are consistent with home insurance providers facing strong competition from PCWs for consumers at the point of first renewal, this evidence does not demonstrate a sufficiently strong competitive constraint on any hypothetical monopolist PCW such that first-year renewal sales by providers necessarily form part of the relevant market.
- 5.164 The CMA's assessment of the relevant product market in this case started with the focal product being considered – the supply of PCW Services for Home Insurance – and therefore focused on the competitive constraints faced by PCWs. In contrast, the presence of non-re-solicitation clauses in contracts between PCWs and home insurance providers weakens the constraint from PCWs on the sale of renewal policies to consumers at the point of their first renewal and relates to the competitive constraints faced by providers. Rather than demonstrating that first-renewal consumers form part of the relevant market, as submitted by BGL, this is consistent with home insurance providers being further constrained by PCWs in the absence of such clauses.
- 5.165 Further, the CMA notes that while evidence referenced by BGL in its submission demonstrates competition between PCWs and home insurance providers for consumers at their point of first renewal, it is consistent with PCWs acting as a competitive constraint on the renewal channel of providers and not with a material competitive constraint the other way around.⁴²⁹ For example, BGL stated that:
- (a) Non-re-solicitation clauses were requested by home insurance providers that viewed '*PCWs as a competitive threat for renewing customers*', which is consistent with home insurance providers being further constrained by PCWs when setting prices to their existing customers at the point of renewal in the absence of such clauses;⁴³⁰ and

⁴²⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 156 and URN 8484.13, BGL's response to the SO dated 22 February 2019, Annex 9, email chain entitled 'RE: MARKETING RE-SOLICITATION', between [Employee, HIP] and [Employee 1, CTM], dated 26 November 2015.

⁴²⁹ As set out in paragraphs 5.66 to 5.70, this is comparable to the competitive constraints they impose on each other being asymmetric. See Office of Fair Trading and Competition Commission, [Merger Assessment Guidelines](#) (CC2/OFT1254), September 2010, adopted by the CMA Board, paragraph 5.2.20. This is likely to be the case where products are differentiated, such that the competitive constraints they impose on each other need not be symmetric.

⁴³⁰ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.73.

- (b) Providers would be less constrained by PCWs as they would be able to *'push renewal prices higher over time'*, which is also consistent with home insurance providers being further constrained by PCWs when setting prices to their existing customers at the point of renewal in the absence of such clauses.⁴³¹

5.166 The CMA does not therefore consider BGL's submissions to support its argument that the sale of renewal policies by home insurance providers to their existing customers at the point of first renewal form part of the same relevant market as PCW Services for Home Insurance

5.C.IV.(c). Use of brokers by home insurance providers

5.167 Brokers sell insurance by acting as intermediaries between consumers and underwriters, for instance, by arranging the purchase of insurance policies that are best suited to consumers' needs either on an advised or non-advised basis. In doing this, brokers may (i) rely on a panel of insurance underwriters or (ii) have an agreement with just one insurance underwriter (see Section 2.C.II). The service that brokers provide could, therefore, be considered as an alternative acquisition channel for some home insurance providers (i.e. underwriters, see Section 2.C.I) in response to a 5-10% increase in PCW commissions fees.

5.168 However, the specific services brokers offer home insurance underwriters differ from the services provided by PCWs. Brokers are therefore unlikely to be seen as close substitutes to PCWs by home insurance underwriters when acquiring consumers (see Section 2.C.II). Similarly, consumers are unlikely to see brokers as close substitutes to PCWs as they cannot use all brokers to compare the offers from a range of providers. While some brokers do compare offers from a number of underwriters in their panel, this is typically far fewer offers than consumers can find on PCWs and would be for more personalised policies (particularly in an advised sale) than those available on a PCW.

5.169 In addition, some brokers target specific consumer 'niches' and focus on 'non-standard' products, which is in contrast with PCWs' broader focus.⁴³² As set out in Section 2.C.II, brokers that target the 'mass market' (and some 'niche' brokers) ([HIP], [HIP], [HIP], [HIP], [HIP]) tend to list on PCWs as well

⁴³¹ URN 8502.7, BGL's response to the SO dated 22 February 2019, 'Non Resolicitation Clause Removal (Jan 19) Draft'.

⁴³² URN 5418.1, note of CMA call with The Property Insurer dated 14 December 2017, paragraphs 7 to 8; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 2.

as using their direct channels and do not consider that their direct channels could replace the sales made on PCWs.

- 5.170 This evidence supports the CMA's finding that home insurance providers would not have been able to replace the new business sales they made through PCWs by using brokers during the Relevant Period.
- 5.171 BGL highlighted in its submission that one provider ([HIP]) told the CMA that it could '*generate new household insurance sales to replace business previously introduced via PCWs in the near or short term*'⁴³³ by increasing its reliance on alternative distribution channels, including brokers.⁴³⁴ However, this provider also told the CMA that, when using brokers, they have to pay a [%] commission to the broker not just at the point of acquiring the consumer but also each time the consumer renews the policy. This means that, over the lifetime value of the consumer renewing with that provider, using brokers can be a relatively expensive way of acquiring consumers compared to PCWs.⁴³⁵ Moreover, the CMA refers to the consistent body of evidence submitted by 20 home insurance providers in its assessment of the relevant market and not the views of one, albeit large, provider.

5.C.V. Evidence from the Big Four PCWs on competitive constraints

- 5.172 The CMA finds that, for setting their overall commercial and marketing strategy, the Big Four PCWs consider each other to be their closest competitors and they actively monitor each other.
- 5.173 In contrast, home insurance providers' online direct channels are typically only routinely monitored by PCWs to ensure providers comply with narrow MFNs and providers' offline new business sales or sale of renewal policies are not routinely monitored. This is consistent with the Big Four PCWs not seeing providers' online direct channels (when the potential constraint from providers' online new business sales is limited, in particular due to the presence of narrow MFNs), offline direct channels or sale of renewal policies to consumers as competitive constraints.
- 5.174 When asked by the CMA about their closest competitors in the provision of comparison (or lead generation) services for home insurance, three of the Big Four PCWs (Confused, GoCompare and MoneySuperMarket) named each other, CTM and PCWs that operate in other sectors as their closest competitors. In particular:

⁴³³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 141.

⁴³⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 141.

⁴³⁵ URN 6626, note of CMA meeting with [HIP] [%], paragraph 5.

- (a) Confused did not include providers' direct channels or their sale of renewals policies when listing its competitor set, which only included other PCWs (MoneySuperMarket, GoCompare, CTM and uSwitch);⁴³⁶
- (b) GoCompare told the CMA that its closest competitors in home insurance were other PCWs (including CTM, MoneySuperMarket, Confused, uSwitch and Quotezone)⁴³⁷ and did not mention insurance providers' direct channels or renewals as close competitors; and
- (c) MoneySuperMarket told the CMA that, while PCWs operate in a competitive landscape, competing with each other as well as other intermediaries and direct provider offerings,⁴³⁸ from a commercial perspective MoneySuperMarket tends to focus its monitoring efforts on its closest competitors (namely its rival PCWs CTM, GoCompare and Confused) and less on providers' direct channels (other than two insurance brands that are not listed on PCWs).⁴³⁹

5.175 The CMA has found that the Big Four PCWs other than CTM actively monitor their closest competitors in similar ways, with their activities focusing on the prices offered by home insurance providers on rival PCWs to assess their pricing competitiveness, the number of providers on their panel and the quantity of quotes offered to consumers relative to their peers.⁴⁴⁰ Only one of these PCWs (MoneySuperMarket) cited other sources, including reports produced by eBenchmarkers that provide an overview of all new home insurance sales (and MoneySuperMarket's share of these sales) from the Big Four PCWs and around 30 providers as well as research studies assessing consumer brand perceptions of PCWs.⁴⁴¹

5.176 The CMA's review of GoCompare and MoneySuperMarket's⁴⁴² internal documents shows that, while PCWs actively monitor each other's marketing and pricing strategies, they do not routinely monitor home insurance providers' direct channels (other than to monitor their compliance with

⁴³⁶ URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 1.

⁴³⁷ URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 6, paragraph 6.1.

⁴³⁸ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 1.

⁴³⁹ URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 4.

⁴⁴⁰ URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 4; URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 4; URN 4868.1, GoCompare's response to section 26 notice dated 14 November 2017, question 4, document entitled 'GoCompare Monthly Meeting' dated 11 August 2017; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 4.

⁴⁴¹ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 4.

⁴⁴² Confused did not submit internal documents related to its monitoring of other PCWs or providers' direct channels to the CMA.

narrow MFNs⁴⁴³) and do not take these into account when determining their overall commercial strategies.⁴⁴⁴

- 5.177 In contrast to the other Big Four PCWs, BGL told the CMA that CTM's '*main competitors are both direct insurance brands as well as price comparison websites*' such as MoneySuperMarket (including [X]), GoCompare, Confused and uSwitch.⁴⁴⁵ The CMA notes, however, the sources of information used by CTM to monitor providers direct channels and other PCWs make reference to the Big Four PCWs as a 'market'⁴⁴⁶ or use the Big Four PCWs as a benchmark (for example, when monitoring the prices offered by providers on other PCWs⁴⁴⁷).
- 5.178 This is consistent with the CMA's review of CTM's internal documents – including regular board updates, research reports, internal reports on CTM's marketing and advertising strategy (including regular marketing performance dashboards), and regular product performance and brand reviews.⁴⁴⁸ CTM

⁴⁴³ In contrast to its monitoring of prices offered to consumers by providers on their online direct channel, one PCW (MoneySuperMarket) told the CMA that it would not be able to obtain reliable information on renewal prices and it does not actively monitor trends in these prices URN 6335, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 15.

⁴⁴⁴ URN 9856, MoneySupermarket's response to a request for information in the DCT Market Study dated 29 September 2016, document entitled '5b – [X] workshop – MSM Brand Power Presentation 06 10 16 FINAL'; URN 1325, MoneySuperMarket's response to a request for information in the DCT's Market Study dated 29 September 2016, document entitled '5d – MoneySuperMarket – Main debrief deck – Draft 18 08'; URN 6343, MoneySuperMarket's response to section 26 notice dated 27 April 2018, document entitled 'Pricing Strategy Review Findings and Action Plan' dated October 2016; URN 1121, GoCompare's response to a request for information in the DCT's Market Study dated 29 September 2019, document entitled 'Annex 5.29 Gocompare.com monthly ad and brand report and Q4 findings prepared by [X] (Ap 15)' dated April 2015; URN 1138, GoCompare's response to a request for information in the DCT's Market Study dated 29 September 2016, document entitled 'Annex 5.3 Ad and Brand KPI Dashboard 4 week rolling'; URN 0229, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, document entitled 'Annex 5.10 Gocompare.com H1 2016 Debrief prepared by [X] (June 2016)'; URN 0290, GoCompare's response to a request for information in the DCT's Market Study dated 29 September 2016, document entitled 'Annex 5.11 Gocompare.com Q3 Debrief prepared by [X] (Q3 2015)'; URN 0322, GoCompare's response to a request for information in the DCT's Market Study dated 29 September 2016, document entitled 'Annex 5.14 Gocompare.com monthly ad and brand report prepared by [X] (June 2016)'; URN 9854, GoCompare's response to a request for information in the DCT Market Study dated 29 September 2016, document entitled 'Annex 5.7 Gocompare.com Ad and Brand Tracker Ad hoc report – data portal (6 Oct 16)'.

⁴⁴⁵ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 25.

⁴⁴⁶ URN 1619, BGL's response to the First BGL Notice dated 26 September 2017, spreadsheet entitled 'Q25 - NEW Aug-17 - car home van market estimates.XLSX' and URN 1618, BGL's response to the First BGL Notice dated 26 September 2017, spreadsheet entitled 'Q25 - Market landscape size June 17.XLSX'.

⁴⁴⁷ For example: URN 1620, BGL's response to the First BGL Notice dated 26 September 2017, spreadsheet entitled 'Q25 - Pricing Parity Sept 2017.PDF'.

⁴⁴⁸ URN 0089, BGL's response to a request for information in the DCTs Market Study dated 2 May 2017, document entitled '4b. CTM Monthly Report - August'16'; URN 2604, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Deep Dive Presentation Evolution to Bonding 2.0 [X] 2016 J(ul. SLT July'16 Final)'; URN 2655, BGL's response to the First BGL Notice dated 26 September 2017, document entitled '2017 Aug. Brand Equity Update Aug'17'; URN 2524, BGL's response to the First BGL Notice dated 26 September 2017, question 4. document entitled 'CTM Quarterly Brand Power Report. Q4' 16'; URN 2523, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Brand Equity Deep Dive Presentation July'15 Final 17_07'; URN 2160, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Marketing Performance Dashboard 300317 v2'; URN 2194, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Marketing performance dashboard 03.08.15'; URN 2126, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Marketing Performance Dashboard 090617'; URN 2149, BGL's response to the First BGL Notice dated 26 September 2017,

almost exclusively benchmarked itself against the other Big Four PCWs when setting its commercial and marketing strategy in the internal documents obtained by the CMA. In these documents CTM assessed its competitive position in relation to the other Big Four PCWs with regard to (i) consumer attitudes (for example brand loyalty and bonding), (ii) marketing

document entitled 'CTM Marketing Performance Dashboard 2402'; URN 2081, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 20022017 redacted'; URN 2050, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 07112016 redacted'; URN 2084, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 21112016 redacted'; URN 2093, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 24102016 redacted'; URN 2100, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 28022017 redacted'; URN 2056, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance by Channel Review - 12th May 2017 (12052017) redacted'; URN 2044, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 04072016 redacted'; URN 2061, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 12122016 redacted'; URN 2052, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 09012017 redacted'; URN 2070, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 17022017 redacted'; URN 2071, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 17102016 redacted'; URN 2106, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 31012017 redacted'; URN 2090, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 23062017 redacted'; URN 1985, BGL's response to the First BGL notice dated 26 September 2017, question 20, document entitled 'Q20 CTM Strategic Plan August 2014 Presentation (Exec Board strat 2014-22 MASTER_FINAL_Redacted.PDF'; URN 1983, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Board Final 160312 Ex Appendices Redacted'; URN 1984, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Breadth strategy overview Redacted'; URN 1992, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Main Board July 2016 Final Ex Videos Redacted'; URN 1991, BGL's response to the First BGL Notice dated 26 September 2016, question 20, document entitled 'Q20 June Main Board Strat Presentation V1 Redacted'; URN 2026, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20-Home Autumn 2016 Online Insurance Aggregator Report-CTM'; URN 2697, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Brand review deck - 14.10.15 revised'; URN 2741, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM brand review 090615 LATEST FINAL 08.06.15 FINAL'; URN 2716, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Brand Review 16.09.16 FINAL'; URN 2727, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM BRAND REVIEW - 01.03.16 -FINAL'; URN 1901, BGL's response to the First BGL Notice dated 26 September 2017, question 39, document entitled 'Q39 - Home Steering June 17 Final'; URN 2044, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 04072016 redacted'; URN 2045, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance by Channel Review 5th May 2017 (05092016) redacted.PDF'; URN 2048, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 07042017 redacted'; URN 2072, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 18042017 redacted'; URN 2101, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 28042017 redacted'; URN 2051, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 08082016 redacted'; URN 2068, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 16032017 redacted'; URN 2113, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review End of Month 31032017 redacted'; URN 2077, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 18072017 redacted'; URN 2078, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 19062016 redacted'; URN 2049, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance Review 07072017 redacted'.

performance and market position (e.g. market shares and quote shares),⁴⁴⁹ and (iii) commission fee and price performance in relation to home insurance.

- 5.179 The CMA found only a very limited number of CTM's internal documents that mention home insurance providers' direct channels as a competitive threat. Those that the CMA has identified mention a provider's direct channel in the context of a threat from that provider to vertically integrate with a new PCW (such that they would become a competitor and likely no longer list on CTM's platform) and date from 2013 and 2014 – before the Relevant Period.^{450, 451} Similarly, CTM's internal documents did not show that CTM competes with or benchmarks itself against renewal quotes by home insurance providers.⁴⁵² Given the context of these internal documents, the CMA does not therefore consider them to be consistent with BGL's submissions of CTM assessing the competitive threat it or other PCWs face from providers' direct channels or their sale of renewal policies to existing customers.
- 5.180 The only other context in which the CMA has identified that CTM makes reference to competition from providers' direct channels in its internal documents is in relation to paid search advertising on home insurance related search terms (i.e. 'generic' keywords), where some providers appear to compete with PCWs.⁴⁵³ BGL noted that this competition between PCWs and home insurance providers in relation to generic keywords was also referenced by two other PCWs:⁴⁵⁴
- (a) MoneySuperMarket told the CMA that PCWs compete with other intermediaries and providers' direct channels as many consumers search for home insurance related terms on search engines and could

⁴⁴⁹ Quote shares measure PCWs' relative market position based on the number of quotes provided to consumers. Consumers may not purchase home insurance every time they request a quote, so quote shares and market shares may be different, depending on PCWs' ability to convert quotes into sales by insurance providers.

⁴⁵⁰ URN 1985, BGL's response to the First BGL notice dated 26 September 2017, question 20, document entitled 'Q20 CTM Strategic Plan August 2014 Presentation (Exec Board strat 2014-22 MASTER_FINAL_Redacted.PDF'.

⁴⁵¹ The CMA notes that [HIP] said they had never considered entering into the PCW market. See URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 25.

⁴⁵² The CMA finds only one mention of renewals from 2013 in CTM's internal documents. See URN 2291, BGL's response to the First BGL notice dated 26 September 2017, question 20, document entitled '2013 Dec. CTM Bonding Deep Dive 09 12 13 UPDATED', page 16. This document mentions that consumers are not necessarily shocked by renewal prices and not all consumers use PCWs when renewing their insurance.

⁴⁵³ For example, see URN 2045, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Product Performance by Channel Review 5th May 2017 (05092016) redacted.PDF', question 20, page 3.

⁴⁵⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 139.

therefore be directed to MoneySuperMarket, other PCWs or providers' direct websites;⁴⁵⁵ and

- (b) Confused told the CMA that, in relation to the differences in costs of providing lead generation services for home insurance compared to that for motor insurance, pay-per-click advertising is 'much more competitive' for home insurance than in motor insurance and that providers 'dominated' the Google AdWords auctions for generic keywords in the period 2013 – 2017.⁴⁵⁶

- 5.181 Related to the views of these PCWs, BGL submitted an internal document from CTM (dated 5 February 2019) of the 'impression share'⁴⁵⁷ of PCWs and home insurance providers from home insurance related search terms using Google AdWords auctions.⁴⁵⁸ As this internal document shows that adverts from five providers ([HIP], [HIP], [HIP], [HIP] and [HIP]) were as prevalent in the Google AdWords impressions for home insurance related search terms as three PCWs (CTM, MoneySuperMarket and GoCompare), BGL considers that providers' direct channels do compete with PCWs and that there is a *'mutual competitive constraint exercised on PCWs and on HIPs'*.⁴⁵⁹
- 5.182 However, the CMA finds that competition between PCWs and home insurance providers when bidding for home insurance related search terms in Google AdWords auctions is not indicative of the strength of constraint faced by PCWs from the online direct channel of providers overall.
- 5.183 While an analysis of Google AdWords impressions data would identify the providers that could, in principle, compete with PCWs for consumers that shop around for home insurance, this would only be useful in the absence of any other evidence on the closeness of competition between PCWs and providers' online direct channel. In particular, this analysis would not demonstrate whether home insurance providers and/or consumers who use PCWs would switch to the online direct channel and hence whether this channel could constrain a hypothetical monopolist PCW's ability to profitably increase commission fees by 5-10%. The CMA therefore does not consider that BGL's submission regarding CTM's paid search advertising strategy, when considered with other evidence, demonstrates that sales made

⁴⁵⁵ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 1.

⁴⁵⁶ URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 27.

⁴⁵⁷ The 'impression share' can be defined as how often a PCW or home insurance providers' branded advert appears in the sponsored search results out of the number of times a Google search user enters a particular search terms or if their search query includes a specific keyword (i.e. the 'impression').

⁴⁵⁸ URN 8484.20, BGL's response to the SO dated 22 February 2020, document entitled '16_Annex_Case 50505_PPC Direct Competitor Analysis_2019'.

⁴⁵⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 143.

through PCWs and providers' direct channels form part of the same relevant market.⁴⁶⁰

- 5.184 The CMA therefore does not consider that BGL's submissions demonstrate that providers' online direct channels and their sale of renewals to existing customers form part of the same relevant market as the supply of PCW Services for Home Insurance.

5.C.VI. Supply-side substitution by providers

- 5.185 The CMA has considered whether supply-side substitution is reasonably likely to take place and whether it has had an impact by constraining a hypothetical monopolist of PCW Services for Home Insurance.⁴⁶¹ This is because a possible constraint on a hypothetical monopolist is the timely and effective entry and expansion of a firm or firms into the provision of the hypothetical monopolist's activities in response to a 5-10% increase in prices (i.e. PCW commission fees in this case).
- 5.186 In order to be successful and establish themselves, PCWs need to attract consumers to their site and convert visits into click-throughs to home insurance providers and sales. This is commonly achieved through significant investment in marketing and advertising activities.⁴⁶²
- 5.187 PCWs also need to provide consumers with a broad and appealing range of choice, which can only be achieved by signing up a large number of insurance providers to their platform.⁴⁶³ However, before agreeing to bear the integration costs associated with joining a PCW's platform, the CMA

⁴⁶⁰ More information on the CMA's assessment of BGL's submissions on providers and PCWs' marketing and advertising activities (including CTM's use of paid search advertising) can be found in Annex H: Assessment of evidence on the marketing and advertising activities of providers and PCWs.

⁴⁶¹ The CMA considers that supply-side substitution is only relevant to its assessment of the relevant market when it is as timely as demand-side substitution, i.e. undertakings that do not currently supply a product might be able to supply it at short notice and without incurring substantial sunk costs (for example, sunk costs may include investments in product placement, distribution and production technology). See: The Office of Fair Trading, [Market Definition: understanding Competition Law](#) (OFT403), December 2004, adopted by the CMA Board, paragraph 3.13.

⁴⁶² All respondents, independently of their size and their role in the market, have identified marketing and advertising spend as a significant barrier to entry and expansion. See URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 6; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 6; URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 6; URN 5700.1, note of CMA call with Comparison Creator dated 31 January 2018, paragraph 8; URN 5559.1A, note of CMA call with Covéa Insurance dated 14 December 2017, paragraph 7; [X]; URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraph 5; URN 5418.1, note of CMA call with The Property Insurer dated 14 December 2017, paragraphs 5 and 8; URN 5607.1, note of CMA call with uSwitch dated 15 December 2017; URN 5699.1, note of CMA call with Vast Visibility dated 8 February 2018, paragraph 12.

⁴⁶³ PCWs explained that scale is key to obtain a good panel of providers. URN 5607.1 note of CMA call with uSwitch dated 15 December, paragraphs 4 and 12; URN 5710.1 note of CMA call with [HIP] dated 16 January 2018, paragraph 9; URN 5699.1, note of CMA call with Vast Visibility dated 8 February 2018, paragraph 9.

understands that providers balance such costs against the prospective benefits from listing on a new PCW, and large insurance brands have been reluctant to sign up to a new PCW if the volumes of consumers of home insurance that can be supplied by the PCW are low.⁴⁶⁴ This can give rise to a 'chicken-and-egg' problem where new entrant PCWs need a broad panel of providers to attract consumers of home insurance to their platforms, but large insurance brands often require an established track record of high volumes of home insurance consumers before they agree to join an additional PCW.

- 5.188 The CMA therefore considers that PCWs in the home insurance sector face material barriers to entry and expansion mainly because of marketing and advertising spending and the integration costs providers need to incur to list on a PCW.
- 5.189 The strength of these barriers is reflected in the fact that businesses with well-known brands and a significant financial capacity and user base, like Tesco Compare and Google, have not been able to successfully challenge the Big Four PCWs.⁴⁶⁵ In addition, three insurance providers [HIP], [HIP] and [HIP] told the CMA that they had considered setting up a PCW or had had discussions about it internally but the barriers to entry were felt to be too high.⁴⁶⁶
- 5.190 The existence of these material barriers to entry and expansion mean that it is unlikely that a 5-10% commission fee increase by a hypothetical monopolist of PCW Services for Home Insurance would be rendered unprofitable by supply-side substitution. For these reasons, the CMA has concluded that the relevant product market should not be widened based on supply-side substitution.

⁴⁶⁴ In particular, the importance of guaranteeing a certain volume of sales to insurance providers to make them willing to incur these integration costs and join a new platform was highlighted by entrants that aimed to offer a mass-market proposition. See URN 5607.1, note of CMA call with uSwitch dated 15 December 2017, paragraph 11; [REDACTED]; URN 5418.1, note of CMA call with The Property Insurer dated 14 December 2017; URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraph 3. Only one small PCW, focusing its offer on a niche market, told the CMA that signing up providers has not proven to be difficult, see URN 5700.1, note of CMA call with Comparison Creator dated 31 January 2018, paragraph 5.

⁴⁶⁵ Tesco Compare entered as a PCW in the general insurance sectors in 2012 and Tesco Compare ceased trading in 2014 URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraphs 10 and 15. Google acquired *beatthatquote.com* in 2011, re-branded it as 'Google Compare' in 2012. Google Compare ceased trading in 2015.

⁴⁶⁶ URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 24; [REDACTED]; URN 5559.1A, note of CMA call with [HIP] dated 14 December 2017, paragraph 5.

5.D. The relevant geographic market

5.191 The CMA has considered whether the relevant geographic market is likely to be narrower or wider than the UK. The CMA concludes that the relevant geographic market is the UK,⁴⁶⁷ and has given particular weight to the following factors:

- (a) PCWs target UK consumers at a national level and they all operate in the whole of the UK. The only exception is Seopa that operates a Northern Ireland-specific website in addition to its national PCW.⁴⁶⁸
- (b) PCWs' pricing (commission fees) is determined at the national level.
- (c) PCWs' marketing and advertising activities are typically carried out at the national level (e.g. TV advertising, online search advertising).

5.E. CTM's position in the relevant market

5.192 In this Section, the CMA sets out its assessment of CTM's position on the market for the provision of PCW Services for Home Insurance in the UK.

5.193 In assessing whether CTM's wide MFNs are likely to have had an appreciable effect of restricting competition, an important consideration is the position of CTM and other PCWs in the market for the provision of PCW Services for Home Insurance in the UK as well as the positions of home insurers and consumers that use those services.⁴⁶⁹ This is reflected in the Vertical Guidelines, which explain that appreciable anti-competitive effects are likely to occur when at least one of the parties has or obtains some degree of market power and the agreement contributes to the creation, maintenance or strengthening of that market power or allows the parties to exploit such market power.⁴⁷⁰

5.194 The CMA has therefore assessed CTM's position in the relevant market with regard to the following:

⁴⁶⁷ BGL also considered the relevant geographic market to be no wider than the UK in scope. URN 5266A, First Oxera Report dated 21 December 2017, page 4.

⁴⁶⁸ Note that Compare NI is very small with only [X] home insurance policies in 2016/17 having been purchased through Compare NI. See URN 5262, Seopa's response to a request for information dated 14 December 2017, question 2.

⁴⁶⁹ As set out in the Vertical Guidelines, the market position of the parties, competitors and customers are relevant factors in assessing whether a vertical agreement brings about an appreciable restriction of competition (see paragraphs 111 and 114 to 116).

⁴⁷⁰ Vertical Guidelines, paragraph 97. See also Article 101(3) Guidelines, paragraph 25 and Office of Fair Trading, Agreements and Concerted Practices (OFT 401), December 2004, adopted by the CMA board, paragraph 2.15.

- (a) The market share of CTM relative to the other Big Four PCWs both before and throughout the Relevant Period (Section 5.E.I);
- (b) The barriers to entry and expansion faced by other PCWs in the home insurance sector both before and throughout the Relevant Period (Section 5.E.II);
- (c) Other factors relevant to the assessment of CTM's market power, such as CTM's approach to negotiations with providers and its enforcement of contractual clauses both before and throughout the Relevant Period (Section 5.E.III); and
- (d) The countervailing buyer power of CTM's customers – for these purposes home insurance providers – based on their market shares and their ability to switch from CTM to alternative suppliers of customer introduction services during the Relevant Period (Section 5.E.IV).

5.195 Based on its assessment, the CMA finds that CTM had a strong position in the market for the supply of PCW Services for Home Insurance in the UK during the Relevant Period, such that it had market power. In particular, the CMA finds that CTM has had persistently high market shares since at least 2012 and its market share was more than 50% throughout the Relevant Period. By way of comparison, this was significantly above the 15% threshold in the European Commission's *De Minimis* notice and the 30% threshold in VABER.

5.E.I. Market Shares

5.196 The CMA considers that market shares are a relevant factor in the assessment of market power and in assessing the appreciable effects of an agreement on competition.⁴⁷¹ In this regard:

- (a) The Vertical Guidelines are clear that the market position of the parties to an agreement provides an indication of the degree of market power they possess and *'the higher their market share, the greater their market power is likely to be'* in the relevant market.⁴⁷²

⁴⁷¹ See paragraphs 2.4 and 4.1 [Assessment of market power: understanding Competition Law](#) (OFT 415), December 2004.

⁴⁷² Vertical Guidelines, paragraph 114.

- (b) The Vertical Guidelines further state that, although the importance of individual factors may vary from case to case, a *‘high market share of the parties is usually a good indicator of market power’*.⁴⁷³
- (c) The Office of Fair Trading’s (‘OFT’) guidance similarly explains that *‘in general, market power is more likely to exist if an undertaking ... has a persistently high market share’* and that *‘the history of the market shares of all undertakings in the market is often more informative than considering market shares at a single point in time’*.⁴⁷⁴

5.197 BGL does not dispute this, submitting that the market share of the parties to an agreement is one of three factors in assessing the appreciable effects of an agreement, stating that the higher the market shares, the more significant the effects of the agreements are likely to be.⁴⁷⁵

5.198 The CMA’s analysis of CTM’s market shares in the provision of PCW Services for Home insurance in the UK in the period 2012 – 2018 by volume together with the other Big Four PCWs are shown in Figure 5.5.⁴⁷⁶

Figure 5.5: PCW bs by volume in the period 2012 – 2018

[✂]

Source: CMA analysis of the Commission Fees Dataset (Annex D)

5.199 As shown in Figure 5.5, CTM has persistently been the largest PCW since at least 2012 and the only one to grow consistently in the period 2012 – 2018. In addition, throughout the Relevant Period, CTM’s market share was more than [✂] and it was more than twice the size of the next largest PCW (MoneySuperMarket).

5.200 The CMA has also analysed CTM’s market shares based on alternative measures of supply in the provision of PCW Services for Home Insurance in the UK and found them to be broadly consistent with the volume shares set out in Figure 5.5. In particular:

⁴⁷³ Vertical Guidelines, paragraph 112.

⁴⁷⁴ OFT415, paragraphs 4.2 and 4.3.

⁴⁷⁵ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 1.4. The other two factors were the market coverage of the agreements and evidence on the actual or likely effects on competition. The CMA’s assessment of appreciability of the effects on competition of CTM’s network of wide MFNs is set out in section 9 and summarised in section 9.D.

⁴⁷⁶ The CMA has estimated the market share of the Big Four PCWs by the volume of home insurance product (i.e. both ‘single’ and ‘combined’ policies) sales to consumers made by home insurance providers through the PCW channel. The CMA notes that the market shares of the Big Four PCWs based on their commission fee revenue does not materially differ to that based on the volume of sales.

- (a) CTM's market share as measured by the proportion of redirections (i.e. when a visitor clicks through from a PCWs' website to a provider's own website) was around 60% ([REDACTED]) in 2017, with the market shares of the other Big Four PCWs measured on the same bases ranging from 5-25% ([REDACTED]) in the same year.⁴⁷⁷
- (b) CTM's market share as measured by commission fee revenue was also around 60% ([REDACTED]) in 2017, with the market shares of the other Big Four PCWs measured on the same bases ranging from 5-25% ([REDACTED]) in the same year.⁴⁷⁸

5.201 The CMA considers that the strength of CTM's market position, as reflected in its persistently high market shares, is further evidenced by the behaviour of consumers that obtained a quote on CTM during the Relevant Period, as set out in Figure 5.6. The CMA finds that, as over 65% ([REDACTED]) of CTM's consumers only obtained a home insurance quote on its platform and did not do so on other PCWs or providers' online direct channels, home insurance providers could not reach these consumers through CTM's rival PCWs or their direct channels.⁴⁷⁹

Figure 5.6: Number of consumers obtaining quotes on the Big Four PCWs found to single-home and single-channel

[REDACTED]

Source: CMA analysis of the Consumer Behaviour dataset (see Annex I). Consumers are described as single-homing when they use only one PCW, whereas multi-homing refers to a consumer using more than one PCW. Similarly, consumers are described as single-channelling when they use only one online channel to obtain quotes (in this case, the PCW channel), whereas multi-channelling refers to a consumer using more than one online channel.

5.202 Figure 5.6 also shows that the number of consumers found to obtain a home insurance quote from CTM and who did not obtain a quote on any other PCW or providers' online direct channel when shopping around for home insurance (and were therefore unique to CTM's platform) was around 1.8

⁴⁷⁷ CMA analysis of: URN 6438.10, BGL's response to the Second BGL Notice dated 3 May 2018, question 6, document entitled 'Q26 - Question 41 (Sales Data).xlsx' and URN 6374, Confused's response to section 26 notice dated 27 April 2018, question 8, document entitled 'Q8_ _Oct_17_ _Mar_18.xlsx'; URN 6375, Confused's response to section 26 notice dated 27 April 2018, question 9; document entitled 'Q9 January 2014_ Sales& Click-through information.xlsx'; URN 4759, Confused's response to section 26 notice dated 14 November 2017, questions 30 document entitled 'Appendix J – Q30 2017'; URN 4924, Confused's response to follow-up questions to section 26 notice dated 14 November 2017, question 30, document entitled 'Appendix J (amended) – Q30 – Jan – Oct 2013 and Nov – Dec 2016.xlsx'; URN 0123.1, Confused's response to a request for information in the DCTs Market Study, spreadsheet entitled 'CMA DCT Data Request - Home Insurance.xlsx', tab 'Home Insurance - Question 6'; URN 0123.2, Confused's response to follow-up questions to a request for information in the DCT Market Study dated 29 September 2016, question 4b; URN 6300, GoCompare's response to section 26 notice dated 27 April 2018, question 3; URN 6454, MoneySuperMarket's response to section 26 notice dated 27 April 2018, questions 10, 11 and 12.

⁴⁷⁸ The CMA's analysis of the Commission Fees data set (Annex D).

⁴⁷⁹ More information can be found in Annex I: Consumer Behaviour analysis.

million [X]. In addition to this being around 35% ([X]) of all consumers who obtained a quote on the PCW channel overall, the CMA finds that the number of consumers unique to CTM's platform is more than the total number of consumers who obtained a quote on any other individual PCW: [X].

- 5.203 BGL submitted that '*CTM's 'market power' as alleged by the CMA is very much exaggerated and in fact, without any material significance in this case.*'⁴⁸⁰ This was, however, based on BGL's definition of the relevant market (in which BGL estimated that CTM had a market share of [X] in 2016-17⁴⁸¹) and not the CMA's finding of the relevant market for the purposes of assessing CTM's network of wide MFNs as PCW Services for Home Insurance in the UK (in which CTM has been the largest PCW since at least 2012 with a persistently high market share).
- 5.204 It is also clear that CTM was well aware of its position in the market and importance to home insurance providers during the Relevant Period. For example, in informing [HIP] about an increase in commission fees in April 2016, CTM stated: '*We continue to be market leading in the world of price comparison Our market share on home has been over 50% for some time now and we have seen this grow further since our campaign launched on 1st March. We deliver a high proportion of quality customers that are unique to comparethemarket.com that cannot be reached by our partners through any other distribution channel.*'⁴⁸²
- 5.205 In addition, the CMA considers that market power is not absolute but a matter of degree. The CMA is not in this Decision finding that CTM had substantial market power such that it had a dominant position within the meaning of the Chapter II prohibition or Article 102 TFEU.⁴⁸³ However, the CMA considers that the degree of market power held by CTM, as reflected in its market shares and the further evidence considered in this section, is a factor in the assessment of whether CTM's network of wide MFNs had the appreciable effect of restricting competition.⁴⁸⁴ Indeed, as described above, BGL accepts that market share is one of three factors relevant to the assessment of whether CTM's network of wide MFNs appreciably restricted competition.

⁴⁸⁰ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 166.

⁴⁸¹ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraphs 165 and 166.

⁴⁸² URN 6223, [HIP]'s response to section 26 notice dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP] entitled 'Commercial Review', dated 13 May 2016, page 11.

⁴⁸³ The Office of Fair Trading, [Assessment of market power: understanding Competition Law](#) (OFT415), December 2004, adopted by the CMA Board, paragraph 2.9.

⁴⁸⁴ See further Section 9.D summarising the factors relevant to the CMA's assessment of appreciability.

5.E.II. Barriers to entry and expansion

- 5.206 As an undertaking with a persistently high market share may not necessarily have market power if there are low entry barriers and there is a strong threat of potential competition, the CMA has taken into account whether market shares alone might not be a reliable guide to market power.⁴⁸⁵
- 5.207 The CMA finds, however, that there were material barriers to entry and expansion in the provision of PCW Services for Home Insurance in the UK both before and throughout the Relevant Period.
- 5.208 These material barriers to entry and expansion arise because, in order to be successful and establish themselves, PCWs need to attract consumers to their site and convert such visits into click-throughs to home insurance providers and sales. This is commonly achieved through significant investment in marketing and advertising activities, which all third-party respondents – independently of their size and their role in the market – have identified as a significant barrier to entry and expansion.⁴⁸⁶
- 5.209 However, as set out in Section 5.C.VI, this can give rise to a ‘chicken-and-egg’ problem where new entrant PCWs need a broad panel of providers to attract consumers of home insurance to their platforms, but large insurance brands often require an established track record of high volumes of home insurance consumers before they agree to join an additional PCW.
- 5.210 The strength of these barriers to entry and expansion is reflected in the fact that businesses with well-known brands and a significant financial capacity and user base, like Tesco Compare and Google, have not been able to successfully challenge the Big Four PCWs.⁴⁸⁷ In addition, three insurance providers the [HIP], [HIP] and [HIP] told the CMA that they had considered

⁴⁸⁵ The Office of Fair Trading, [Assessment of market power: understanding Competition Law](#) (OFT415), December 2004, adopted by the CMA Board, paragraph 4.4. (See also, Vertical Guidelines, paragraph 113: ‘in the case of low entry barriers [a high market share] may not be indicative of market power’.) However, an undertaking with a large market share in a market protected by significant entry barriers is likely to have market power (OFT415, paragraph 5.4).

⁴⁸⁶ All respondents, independently of their size and their role in the market, have identified marketing and advertising spend as a significant barrier to entry and expansion. See URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 6; URN 4934.1, MoneySuperMarket’s response to section 26 notice dated 14 November 2017, question 6; URN 4868, GoCompare’s response to section 26 notice dated 14 November 2017, question 6; URN 5700.1, note of CMA call with Comparison Creator dated 31 January 2018, paragraph 8; URN 5559.1A, note of CMA call with [HIP] dated 14 December 2017, paragraph 7; [REDACTED]; URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraph 5; URN 5418.1, note of CMA call with The Property Insurer dated 14 December 2017 paragraphs 5 and 8; URN 5607.1, note of CMA call with uSwitch dated 15 December 2017, paragraph 13; URN 5699.1, note of CMA call with Vast Visibility dated 8 February 2018, paragraph 12.

⁴⁸⁷ [HIP] entered as a PCW in the general insurance sectors in 2012 and [HIP] ceased trading in 2014 URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraphs 10 and 15. Google acquired *beatthatquote.com* in 2011, re-branded it as ‘Google Compare’ in 2012. Google Compare ceased trading in 2015.

setting up a PCW or had had discussions about it internally but the barriers to entry were felt to be too high.⁴⁸⁸

- 5.211 Although to some extent new entrants might be able to overcome these barriers – for example by providing niche offerings – marketing and advertising activities as well as integration costs with providers remain substantial barriers to new entrants expanding to achieve a significant volume of sales.⁴⁸⁹
- 5.212 The CMA also obtained evidence from Confused, GoCompare and MoneySuperMarket that CTM's wide MFN limited the growth of their price comparison services business in the home insurance sector.⁴⁹⁰ This is consistent with the CMA's finding in the DCTs Market Study that wide MFNs may '*reduce [PCWs'] ability and incentives to enter and expand by seeking to attract lower prices from suppliers via lower commission fees*'.⁴⁹¹ The CMA therefore finds (as set out in Section 9.B) that the presence of wide MFNs helped to maintain or strengthen CTM's market power in the Relevant Period.
- 5.213 BGL did not submit evidence to rebut the CMA's findings on the material barriers to entry and expansion faced by PCWs in home insurance. Indeed, the CMA considers that BGL's submissions are consistent with the CMA's finding that there were material barriers to entry and expansion in the provision of PCW Services for Home Insurance in the UK during the Relevant Period. For example, BGL submitted that home insurance providers were initially reluctant to join CTM's platform because of the '*low volumes involved*' such that CTM '*needed to expand both sides of the platform quickly and in tandem, as it was difficult to attract consumers without a strong panel of providers and vice versa*'.⁴⁹²

⁴⁸⁸ URN 5160, [HIP]'s response dated to section 26 notice dated 24 November 2017, question 24; [X]; URN 5559.1A, note of CMA call with [HIP] dated 14 December 2017, paragraph 5.

⁴⁸⁹ One small PCW [Seopa] noted that, when it entered the market developing the technology needed to provide a PCW service represented a major entry cost. However, while the cost of developing the technology may have been significant in the past, the cost is likely to have reduced in more recent years as the digital technology has developed and platforms have become widely available on the internet. In addition, the availability of many providers who offer insurance-related white label comparison solutions suggests that the platform technology per se is unlikely to represent a significant entry barrier. URN 5506.1, note of CMA call with Seopa on 13 December 2017, paragraph 7.

⁴⁹⁰ See URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 6; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 6; and URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 6.

⁴⁹¹ The [DCTs Market Study](#), September 2017, Final Report, Paper E, paragraph 3.8.

⁴⁹² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 69.

5.E.III. Other factors relevant to CTM's market power

- 5.214 The CMA considers that CTM's approach to negotiations and its enforcement of contractual clauses is consistent with CTM having market power in the provision of PCW Services for Home Insurance in the UK during the Relevant Period.
- 5.215 First, the CMA's analysis of each PCW's weighted average commission fees in the period 2012 – 2018 (as shown in Figure 5.7) is consistent with CTM exerting its market power over home insurance providers both before and throughout the Relevant Period. CTM had the highest weighted average commission fee among the Big Four PCWs since 2014 and its weighted average commission fee increased by around 20% [X] in the period 2012 to 2018. This increase in CTM's weighted average commission fee was greater than the increase for any other PCW and reflects CTM's importance relative to other PCWs both before and throughout the Relevant Period.⁴⁹³

Figure 5.7: Weighted average commission fees of the Big Four PCWs

[X]

Source: CMA analysis of the Commission Fees Dataset (Annex D).

Note: the analysis does not include commission fees charged to vertically integrated brands.

- 5.216 The CMA's analysis of CTM's weighted average commission fee in the period 2012 – 2018 is consistent with the views of home insurance providers on CTM's approach to annual negotiations on CPAs. For example:
- (a) One large provider ([HIP]) said that, when compared to negotiations with [X], CTM are [X] and that CTM's *'starting point for commission increase has always been higher than both the previous year, [X], specifically regarding their initial proposals in respect of year on year increases and £ value; this is likely because they understand they are dominant.'*⁴⁹⁴
 - (b) Another home insurance provider ([HIP]) said that, of all PCWs, CTM are *'extremely aggressive and difficult to negotiate with'* and that it was *'often left powerless to decline the increased commission requests.'*⁴⁹⁵

⁴⁹³ For example: CTM's weighted average commission fee increase in the period 2012 to 2018 was around 20% [X], which is greater than [X]'s around 10-20% ([X]) increase over the same period.

⁴⁹⁴ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 20.

⁴⁹⁵ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 5(d).

This provider considered that these discussions have left it in a *'take it or be removed from [CTM's] panel position each year'*.

- (c) A provider with a well-known brand ([HIP]) said that *'CTM 'drives a hard bargain' and generally requests a higher commission increase than other PCWs, which means that negotiations with them usually takes longer'*.⁴⁹⁶ While this provider noted that this was partly down to CTM's market position as the leader in general insurance, negotiations with other PCWs would be quite quick as they *'look to maintain a good relationship with their partners'*.

5.217 Second, the CMA considers that CTM's approach to negotiations on other contractual terms and when enforcing its wide MFN is consistent with CTM exerting its market power over providers in the provision of PCW Services for Home Insurance in the UK during the Relevant Period. This finding is based on the following evidence:

- (a) Evidence from [HIP] and [HIP] in particular that the inclusion of wide MFNs in their contracts were [§<] or were *'required as a condition of trading'*.⁴⁹⁷
- (b) BGL's repeated refusal of requests by several (including some of the largest) home insurance providers over several years to remove CTM's wide MFN from their contracts.⁴⁹⁸ In contrast, other PCWs who had wide MFNs in contracts with providers did remove them following the PMI Order 2015.
- (c) The instances of enforcement action taken by CTM against six providers (as described in Annex M), including CTM's approach in enforcing its wide MFNs with [HIP] (demanding three price discounts as compensation for a large insurer entering into a promotional deal with a rival PCW) and [HIP] (explicitly threatening to delist it from CTM's panel). The responses of the relevant insurers against whom CTM enforced in particular that of [HIP], [HIP] and [HIP] confirm CTM's ability to successfully exert its market power.

5.218 BGL submitted that *'it is hard to see how the CMA can sustain the allegation that CTM had superior bargaining power to [providers]'* in the context of

⁴⁹⁶ URN 6590.1, note of CMA call with [HIP] dated 26 April 2018, paragraph 10.

⁴⁹⁷ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(a); URN 5256A, [HIP]'s response to section 26 notice dated November 2017, question 16.

⁴⁹⁸ Set out in Section 8.A.II.(c).

negotiations and CTM's enforcement of contractual clauses.⁴⁹⁹ In particular, BGL submitted that:

- (a) Negotiations with home insurance providers were lengthy and difficult (often lasting several months) and that all providers have regular opportunities to renegotiate or terminate their contractual relationship with CTM on 30 days-notice.⁵⁰⁰
- (b) Commission fee negotiations with providers are affected by multiple factors and take place between CTM and providers in a wider context than just home insurance, with commission fees being negotiated for multiple insurance products simultaneously.⁵⁰¹
- (c) CTM's average commission fees from 2012 to 2017 increased [~~3~~] per policy in total which is in line with RPI and below the trend rate of increase for CTM's brand and marketing expenditure.⁵⁰²
- (d) CTM feels constrained by providers such that it accepts contractual clauses that limits its ability to sell products to its consumers, such as the non-re-solicitation clauses demanded by most providers.⁵⁰³

5.219 The CMA does not consider that BGL's submissions demonstrate that CTM did not have '*superior bargaining power*' to home insurance providers such that CTM did not have and was unable to exert its market power during the Relevant Period.

5.220 First, the CMA does not disagree with BGL that negotiations with home insurance providers often lasted several months and that providers are able to renegotiate or terminate their contract with CTM. However, BGL has not demonstrated how this evidence refutes the CMA's finding that CTM was able to exert its market power over providers in the provision of PCW Services for Home Insurance in the UK during the Relevant Period. In particular, the CMA considers that providers were unable to delist from CTM's platform not due to any contractual restriction but rather (as set out in Section 5.E.IV) due to the absence of an effective choice of alternative suppliers of customer introduction services that they could switch to readily and at little cost to themselves.

5.221 Second, the CMA does not dispute that commission fee negotiations are affected by multiple factors and, for many providers, take place in a wider

⁴⁹⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 105.

⁵⁰⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 102 to 103.

⁵⁰¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 107 and 108.

⁵⁰² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 112.

⁵⁰³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 106.

context than just home insurance. However, BGL has not explained or submitted evidence demonstrating the implications of this or how this constrained CTM's market power.

- 5.222 Third, BGL's submission that CTM's average increase in commission fees was '*well below the trend rate of CTM's brand and marketing expenditure*' compares CTM's income per sale to the overall increase in CTM's total marketing and advertising expenditure, not its marketing and advertising expenditure per sale. Based on information provided by BGL, the CMA has estimated that CTM's marketing and advertising expenditure per sale remained [✂].⁵⁰⁴ ⁵⁰⁵ The CMA therefore considers that the around 20% [✂] increase in its weighted average commission fee in the period 2012 to 2018 is consistent with CTM's ability to exert its market power over providers in the Relevant Period.
- 5.223 Finally, BGL's submission that CTM accepts contractual clauses that are beneficial to providers is not inconsistent with CTM's ability to exert market power during the Relevant Period. This is because an undertaking with market power may still accept some contractual clauses that are not in its favour, while still extracting favourable terms overall. The CMA notes in this context that, while some home insurance providers' contracts with CTM contained non-re-solicitation clauses, providers were nevertheless required to enter into a contract with BGL that included restrictive clauses – such as wide and narrow MFNs – before being listed on CTM's price comparison platform.⁵⁰⁶
- 5.224 In addition, BGL repeatedly refused to remove its wide MFN clause from providers' contracts despite numerous requests and the CMA is not aware of any occasion when BGL agreed during the Relevant Period to the removal of its wide MFN from a contract. As described in Section 8.B.III., CTM systematically monitored and queried home insurance providers' compliance

⁵⁰⁴ This is because the increase in CTM's total marketing and advertising expenditure was in line with the increase in the total number of consumers introduced to suppliers through CTM's platform over the same period. CMA analysis of Commission Fees Dataset and URN 6438.18, BGL's response to the Second BGL Notice dated 3 May 2018, question 9, document entitled 'CMA Marketing Template.xlsx'.

⁵⁰⁵ As most of BGL's marketing and advertising is at the brand level and it does not as a matter of course split its marketing and advertising by product line the CMA has calculated this based on CTM's total marketing and advertising and the total number of consumers introduced to suppliers through CTM's platform. URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 21.

⁵⁰⁶ For example: See URN 1616, BGL's response to the First BGL Notice dated 26 September 2017, section 3, document entitled 'CTM Commercial Handbook June 2017', pages 8 and 9. Narrow MFNs were a minimum requirement for providers when joining CTM's panel both before and throughout the Relevant Period. Whilst wide MFNs were included as a standard term and could be negotiated out of the contract, [the CMA is not aware of any instances in the Relevant Period when a new panel insurer successfully negotiated removal of the wide MFN from its contract (see further Section 8.A.II.c) on CTM's repeated refusal to remove its wide MFNs from its contracts) and the CMA is not aware of any provider joining CTM's panel or entering into a new contract in the Relevant Period that did not have a wide MFN (see Annex C).

with their narrow or wide MFNs and successfully enforced its wide MFNs including against large significant providers in terms of sales through PCWs and through CTM.⁵⁰⁷ In contrast, BGL identified only one instance⁵⁰⁸ of a provider [HIP] raising CTM's non-compliance with its non-re-solicitation clause in relation to both motor and home insurance in November 2015.⁵⁰⁹

- 5.225 The CMA therefore finds that the observed increase in CTM's weighted average commission fee in the period 2012-2018, its approach to negotiations with providers and its enforcement of its contractual clauses is consistent with CTM having market power in the provision of PCW Services for Home Insurance in the UK during the Relevant Period.

5.E.IV. Countervailing buyer power

- 5.226 Countervailing buyer power exists where buyers have a strong negotiating position with their suppliers, which constrains the market power of a supplier.
- 5.227 The Vertical Guidelines state that *'the first indicator of buyer power is the market share of the customer on the purchase market'* which reflects the importance of its demand for possible suppliers.⁵¹⁰ The CMA finds that, in contrast to CTM's strong market position during the Relevant Period (as set out in Section 5.E.I), [HIP] accounted for less than 15% [X] of CTM's sales in 2017 and the largest five providers accounted for around 50% [48%] of CTM's sales in the same year.⁵¹¹ This is consistent with the proportion of overall PCW sales in 2017 made by the [X] (around 10% [X]) and the five largest (around 45% [45%]) home insurance providers.
- 5.228 The CMA therefore considers that the position of individual home insurance providers would be unlikely to exert countervailing buyer power as they were less important to CTM than vice versa during the Relevant Period.
- 5.229 In addition to the Vertical Guidelines, the OFT's guidance further sets out that *'size is not sufficient for buyer power'* and that *'buyer power requires the buyer to have choice'*.⁵¹² In the present case, countervailing buyer power would therefore exist if home insurance providers listing on CTM's platform had a strong negotiating position with CTM because they had a choice of

⁵⁰⁷ Including [HIP] who was required to self-fund three price discounts following enforcement action by CTM. See paragraphs 8.124 to 8.128 of Section 8.B.III.(b).(i).

⁵⁰⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 106 and URN 8484.13, BGL's response to the SO dated 22 February 2019, Annex 9, email chain entitled 'RE: MARKETING RE-SOLICITATION', between [Employee, HIP] and [Employee 1, CTM], dated 26 November 2015.

⁵⁰⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 156.

⁵¹⁰ Vertical Guidelines, paragraph 116.

⁵¹¹ Source: CMA analysis of the Commissions Fees Dataset (Annex D).

⁵¹² OFT415, paragraph 6.1.

alternative suppliers of customer introduction services that they could switch to readily and at little cost to themselves.⁵¹³ The CMA has therefore considered the ability of providers to switch to the other Big Four PCWs as a way in which to prevent CTM exerting its market power.

5.230 The CMA finds, however, that home insurance providers did not have an effective choice of alternative suppliers to CTM for the provision of PCW Services for Home Insurance in the UK during the Relevant Period. This finding is made with reference to the following evidence:

- (a) In addition to CTM being the largest PCW during the Relevant Period (with a market share of just over 50%), the majority of consumers using CTM's platform single-homed and single-channelled (over 65% [redacted] between September 2016 and August 2017). As such, providers could not access the significant proportion of consumers that used PCWs without listing on CTM's platform (as set out in Figure 5.7).⁵¹⁴
- (b) Individual providers could only reach a small proportion of CTM's consumers through other PCWs (10 to 20%) ([redacted]) and a very small proportion of CTM's consumers through their own websites (which each attracted only around 1% ([redacted]) of CTM's users on average, with [redacted] ([HIP]) attracting only less than 10% [redacted] of CTM's users to its brands' online direct channels).⁵¹⁵
- (c) One provider ([HIP]) told the CMA *'that CTM were, and still are, the dominant provider of customers to its business [redacted]'*⁵¹⁶
- (d) Another provider [HIP] said that [redacted] 'in the distribution of new business home insurance policies to consumers.'⁵¹⁷
- (e) A provider with a large brand not listed on PCWs ([HIP]) considers that *'the emergence of CTM in terms of market position and strength in both the motor and household ... restricts companies' ability to have*

⁵¹³ While this includes the ability to self-supply customer introduction services through their alternative acquisition channels, the CMA finds that delisting from (or withdrawing from certain risk segments on) PCWs would lead to a significant loss in sales volumes and profits for providers that would be impossible or very costly for providers to replicate through (i) the sale of new business on the direct channel or (ii) the sale of renewals to existing customers (as set out in Section 5.C.IV). The CMA has therefore focused its assessment of whether home insurance providers listing on CTM could rely upon other Big Four PCWs as alternative suppliers of the PCW Services for Home Insurance in the UK provided by CTM.

⁵¹⁴ CMA's analysis of the Consumer Behaviour Dataset (see Annex I).

⁵¹⁵ CMA's analysis of the Consumer Behaviour Dataset (see Annex I).

⁵¹⁶ See URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 14.

⁵¹⁷ [redacted].

*successful outcomes on any negotiation, not only on commissions but in any other particular agreement’.*⁵¹⁸

- (f) One of the largest providers ([HIP]), in deciding not to take the risk of being listed from CTM due to a breach of its wide MFN by entering into a promotional deal with one another of the Big Four PCWs, noted in November 2017 that the *‘worst case scenario is that CTM could terminate their agreement with us – whilst CTM represent nearly [X] of our sales.’*⁵¹⁹

- 5.231 Given the lack of effective alternatives to CTM, the fact that the largest five providers accounted for around 50% [48%] of CTM’s sales is not sufficient to give those providers combined countervailing buyer power.
- 5.232 BGL submitted that PCWs are one of multiple distribution channels used by a provider such that *‘PCWs are only one small component of the wider [sector]’*.⁵²⁰ BGL argued that this was supported by the fact that PCWs only constitute between 1-16% of home insurance policies sold by the ten largest providers and also that larger providers strongly promote their direct channels, only *‘picking up incremental sales through PCWs, often through the use of subsidiary brands’*.⁵²¹
- 5.233 The CMA considers that while PCWs are one of multiple distribution channels and sales of home insurance policies generated by PCWs only account for a small proportion of all policies in force, this is not inconsistent with CTM having market power in the relevant market. The CMA finds that PCWs are the largest distribution channel for new business and (as set out in Sections 2.E and 5.C.IV) home insurance providers delisting from (or withdrawing from certain risk segments on) PCWs would lead to a significant loss in sales volumes and profits for providers that would be impossible or very costly for providers to replicate through alternative acquisition channels.
- 5.234 BGL also submitted that providers are (part of) much larger organisations than CTM and have significantly larger revenue across their business than CTM.⁵²² In particular, BGL highlighted that the largest providers account for a large proportion of CTM’s sales (the largest five accounting for 50% of CTM’s sales) which contrasts with the proportion of provider sales that CTM accounts for (less than 10% of many insurers’ policies in force).⁵²³

⁵¹⁸ URN 5256A, [HIP]’s response to section 26 notice dated 24 November 2017, question 7(g).

⁵¹⁹ URN 5315.15, [HIP]’s response to section 26 notice dated 24 November 2017, document entitled ‘MSM ATL’.

⁵²⁰ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 93.

⁵²¹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraphs 94, 95 and Figure 4.

⁵²² URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraphs 96 and 97.

⁵²³ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 101.

- 5.235 The CMA considers that the relative size of home insurance providers' organisations and their total revenues across their business in comparison to CTM is not inconsistent with CTM having market power. This is because buyer power is not determined by size but requires buyers to have an effective choice of alternative suppliers.
- 5.236 BGL submitted that CTM's '*commercial relationships with partner [home insurance providers] are characterised by mutual dependency in which both sides need each other*'.⁵²⁴ In particular, BGL submitted:
- (a) CTM considers all of the providers listed on its website are individually important, with it being counterproductive for CTM to delist providers and CTM cannot afford the risk of providers delisting (either completely or a specific brand) or decreasing usage.⁵²⁵
 - (b) CTM needs to ensure it lists the main brands that consumers would expect a credible PCW to list and a good mix of providers including smaller and niche brands to ensure all risk types are catered for and consumers have a choice of providers.⁵²⁶
 - (c) Providers will threaten to delist from CTM (which they are free to do as they are not tied into long term agreements with BGL⁵²⁷) in order to secure a lower commission fee or better terms during the regular opportunities providers have to renegotiate their contract.⁵²⁸
- 5.237 The CMA does not consider that BGL's submissions demonstrate that CTM's '*commercial relationships with partner [home insurance providers] are characterised by mutual dependency*'.
- 5.238 While the CMA agrees that CTM needs to ensure it has an attractive panel of home insurance providers, the CMA considers that the threat of providers delisting from CTM is insufficient to have prevented CTM from exerting its market power during the Relevant Period.
- 5.239 The CMA also notes that BGL did not provide evidence that it assessed what impact the brands that delisted from CTM's platform had on its financial performance during the Relevant Period.⁵²⁹ The CMA therefore infers that, in contrast to BGL's submission that CTM considers that all of the providers listed on its website are individually important, the loss of these eleven

⁵²⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 98.

⁵²⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019 paragraph 100.

⁵²⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 111.

⁵²⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 102 and 103.

⁵²⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 111.

⁵²⁹ URN 8808, BGL's response to section 26 notice dated 10 May 2019, question 6.

brands was not considered significant by CTM at the relevant time and had a minimal impact on its home insurance business.

- 5.240 The CMA therefore considers that CTM's existing customers did not (collectively or individually) exert countervailing buyer power to limit the market power of CTM in the provision of PCW Services for Home Insurance in the UK during the Relevant Period.

5.F. Conclusions on market definition and market power

- 5.241 Assessing consumers' and providers' demand-side characteristics and PCWs' supply-side characteristics during the Relevant Period, the CMA finds that the relevant market in this case is the provision of PCW Services for Home Insurance in the UK.
- 5.242 The CMA also finds that, based on its market shares, the barriers to entry and expansion in the relevant market and other factors relevant to an undertaking's market power, CTM had market power in the supply of PCW Services for Home Insurance in the UK during the Relevant Period.

6. THE COUNTERFACTUAL

6.1 This Section sets out the CMA's finding on the legal and economic context in which competition would occur in the absence of CTM's wide MFNs (i.e. the counterfactual).

6.2 In summary, the CMA finds that it is likely and realistic that providers subject to CTM's wide MFNs would have only had narrow MFNs in their contracts with CTM in the counterfactual. Accordingly, the key difference between the Relevant Period and in the counterfactual is that in the counterfactual no home insurance provider would be contractually prevented from quoting lower prices on rival PCWs than on CTM.

6.A. CMA's assessment

6.3 As set out in Section 3.C, the restrictive effects of an agreement must be assessed in comparison to the legal and economic context in which competition would occur in the absence of the agreement. In particular, the assessment of whether a vertical agreement has the effect of appreciably restricting competition should include a comparison of the actual or likely future situation in the relevant market with the vertical restraints in place with the situation that would prevail in the absence of the vertical restraints in the agreement (i.e. the counterfactual).⁵³⁰

6.4 The CMA has assessed what is likely to have happened in the absence of CTM's wide MFNs. In order to make that assessment, the CMA has considered what the likely and realistic counterfactual would have been if CTM's wide MFNs had not been in place. In particular, the CMA has considered whether the likely and realistic counterfactual scenario is one in which providers subject to CTM's wide MFNs would have only had narrow MFNs in their contracts with CTM or, instead, is a scenario in which these providers would have had no MFNs in their contracts with CTM.

6.5 The CMA finds that it is likely and realistic that providers subject to CTM's wide MFNs would have only had narrow MFNs in their contracts with CTM in the counterfactual for the following reasons:

- (a) BGL's contemporaneous internal documents show that during the Relevant Period it considered that narrow MFNs were a minimum requirement for providers to list on CTM's platform.⁵³¹ The CMA

⁵³⁰ Vertical Guidelines, paragraph 97.

⁵³¹ For example, see URN 1616, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Commercial Handbook June 2017', page 9; URN 8484.3, Third Oxera Report dated 22 February

understands that this remains the case notwithstanding removal of its wide MFNs from its contracts following its decision not to enforce its wide MFNs in November 2017.

- (b) As shown by Table 6.1 below during and in the year after the Relevant Period, BGL had narrow MFNs in its contracts with all of the providers listed on CTM (either as a standalone clause or as part of a wide MFN). Replacing wide MFNs with narrow MFNs involves a simple contractual amendment and CTM's wide MFNs contained the same contractual restrictions on the direct channel as narrow MFNs.⁵³² Indeed, when informing providers that it would no longer enforce its wide MFNs in home insurance in November 2017, CTM explained that it still considered the narrow MFN component of the relevant contractual provisions to be in place.⁵³³ This was also CTM's approach when removing wide MFNs in the private motor insurance sector following the PMI Order 2015.⁵³⁴
- (c) Finally, CTM maintaining narrow MFNs in contracts with providers is consistent with the behaviour of the other Big Four PCWs:
 - (i) both Confused (in December 2012) and GoCompare (in March 2015) stopped using wide MFNs in the private motor insurance and home insurance sectors and maintained the narrow MFN component of their clauses.⁵³⁵ As shown by Table 6.1 below, during and in the year after the Relevant Period, both of these PCWs had a narrow MFN in their agreements with providers accounting for over 80% of sales on their platform.
 - (ii) MoneySuperMarket has historically not used wide MFNs, but has had narrow MFNs in its contracts with all home insurance providers listing on its platform,⁵³⁶ see Table 6.1 below.

2019, paragraphs 4.47; URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 135; URN 4182, BGL's response to section 27 notice dated 26 September 2017, document entitled '14/15 strategy and plans, August 2014', slide 55.

⁵³² See Section 2.G.I above.

⁵³³ For example, see URN 5315.27, [HIP]'s response to section 26 notice dated 24 November 2017, question 17, Annex 09(ii).

⁵³⁴ URN 0075.1, BGL's response to a request for information in the DCTs Market Study dated 2 May 2017, question 10, tab 'MFNs_PMI'.

⁵³⁵ URN 4923, Confused's response to follow-up questions to section 26 notice dated 14 November 2017, document entitled 'Appendix A (amended) - Q7'; URN 5498, Confused's email response to follow-up questions dated 8 January 2018, question 1 and question 2. URN 6322, Confused's response to section 26 notice dated 27 April 2018, question 6 and 7; URN 0168, GoCompare's response dated 1 November to request for information in the DCTs Market Study dated 29 September 2017, paragraph 13.4; URN 5466, GoCompare's response to follow-up questions to section 26 notice dated 14 November 2017, entitled 'Copy of Annex 7 MFNs v2.xlsx', and URN 0203, GoCompare's response to a request for information in the DCTs Market Study dated 2 May 2017, question 11, Annex 3, tab 'MFNs_PMI'.

⁵³⁶ URN 4934.1, MSM's response to section 26 notice dated November 2017, questions 7 and 23.

Table 6.1: Proportion of a PCW's sales made by home insurance providers with which the PCW had a narrow MFN (either as a standalone clause or as part of a wide MFN)

	2012	2013	2014	2015	2016	2017	2018
CTM	88%	88%	100%	100%	100%	100%	100%
Confused	[X]%	[X]%	[X]%	[X]%	[X]%	[X]%	[X]%
GoCompare	[X]%	[X]%	[X]%	[X]%	[X]%	[X]%	[X]%
MoneySuperMarket	[X]%	[X]%	[X]%	[X]%	[X]%	[X]%	[X]%

Source: CMA analysis of the Commission Fees Dataset (Annex D).

- 6.6 BGL has not contested that it is likely and realistic that providers subject to CTM's wide MFNs would have only had narrow MFNs in their contracts with CTM in the counterfactual.⁵³⁷
- 6.7 For the purposes of the present case, the CMA has therefore carried out its assessment of CTM's wide MFNs on the basis of a counterfactual under which providers subject to CTM's wide MFNs would have only had narrow MFNs in their contracts with CTM rather than those providers having no MFNs in their contracts with CTM. Given that all of the other Big Four PCWs only had narrow MFNs during the Relevant Period, this would mean that in the counterfactual all of the Big Four PCWs only employed narrow MFNs. In using this counterfactual, the CMA does not rule out the possibility that narrow MFNs may in themselves in certain legal and economic contexts give rise to potential restrictive effects on competition. However, it has not carried out such an assessment in the present case.
- 6.8 Based on this counterfactual and for the purpose of the CMA's assessment, the key difference between competition during the Relevant Period and in the counterfactual is that in the counterfactual no home insurance provider would be contractually prevented from quoting lower prices on rival PCWs than on CTM. That is, contractually, there would be no constraint on the relative retail prices that the relevant providers could set across PCWs such that they could freely engage in differential pricing strategies that involved quoting a lower price on one or more rival PCWs than the one quoted on CTM.

⁵³⁷ As set out in paragraph 5.92, in the context of Market Definition, BGL submitted that narrow MFNs should be viewed as 'an outcome of the competitive' interactions between PCWs and home insurance providers rather than its starting point and should not be included in the assessment of the relevant market. For the reasons set out in paragraph 5.93 to 5.98 the CMA disagrees and has assumed that any hypothetical monopolist PCW would have narrow MFNs in its contracts with home insurance providers. URN 8933, Transcript of the oral hearing ('Oral Hearing') with BGL held on 4 April 2019, page 80, lines 13 to 17.

7. NATURE OF COMPETITION

- 7.1 This Section sets out the CMA's assessment of the nature of competition for PCW Services for Home Insurance in the UK, as defined in Section 5. In order to assess the effects on competition of CTM's network of wide MFNs, it is necessary to understand the legal and economic context in which it operated. As explained in paragraph 3.13, several factors will be relevant to whether a vertical agreement appreciably restricts competition. These include the nature of the products or services and the competitive conditions in which the parties, their competitors and their customers operate.
- 7.2 PCWs are digital platforms which serve and connect two distinct user groups (consumers and home insurance providers). Based on the behaviour of these two customer groups for PCW Services for Home Insurance, the CMA finds that PCWs have strong incentives to both (i) attract consumers to their PCW using marketing and advertising; and (ii) ensure those consumers click-through to a provider and purchase from that provider via the PCW's platform by ensuring its PCW is easy to use and has attractive product offerings (in particular retail prices) relative to its rivals. In this section the CMA has focused primarily on competition on price, as this is the dimension of competition most directly affected by CTM's wide MFNs.
- 7.3 The CMA finds that the retail prices quoted by home insurance providers on PCWs are an important dimension of competition both (i) between the Big Four PCWs and (ii) between providers when competing on PCWs to acquire consumers. This is driven by the shopping behaviour of consumers using PCWs, including the material proportion of consumers who used multiple PCWs when searching for home insurance, particularly among users of CTM's rivals (see Section 7.A), and the importance of retail prices and rankings for consumers when searching for and choosing between home insurance products on PCWs (see Section 7.B).
- 7.4 The importance of price competition between PCWs is reflected in the strategies of the Big Four PCWs. Securing competitive retail prices from home insurance providers compared to their rival PCWs was viewed in the Relevant Period as critical to the competitive strategies of all the Big Four PCWs. The precise mechanisms by which the Big Four PCWs sought to secure competitive prices from providers on their platform relative to their rivals' platforms varied between PCWs. These mechanisms were adjusted by the Big Four PCWs in response to market dynamics and each PCW's broader commercial strategy over time (Section 7.C).

- 7.5 The strategies of two of CTM's rivals among the Big Four PCWs included incentivising providers to offer the lowest price on their platform by adopting differential pricing strategies, i.e. strategies that involved providers setting different prices across PCWs. In particular, an important part of the strategies of these two PCWs was agreeing promotional deals with providers, in which the provider offers a temporary discount on the PCW, typically in return for lower commission fees. Both focused on promotional deals, rather than longer term commission fee reductions, in order to gain lower prices from providers. By contrast, CTM's pricing strategy was primarily to rely on its wide MFNs to ensure that the relevant providers were not able to offer lower prices on rival PCWs than on CTM.
- 7.6 For providers competing on PCWs, the importance of price competition is reflected in their monitoring behaviour and pricing strategies (Section 7.D). As with PCWs, providers' pricing strategies vary, reflecting the complexity of the factors relevant to provider pricing, and are adjusted in response to market dynamics and providers' broader commercial strategies over time. The CMA finds that, during the Relevant Period, most providers, including some of the largest, implemented differential pricing strategies across PCWs, whether on their base retail prices or through temporary promotional deals, or both.
- 7.7 The CMA finds that promotional deals were an important strategy for two of the Big Four PCWs and were used by many home insurance providers both during the Relevant Period, when CTM's wide MFNs were in place, and since the Relevant Period. Such deals have typically provided the relevant PCW with the desired improvement in the provider's quoted retail price relative to the PCW's rivals as well as leading to a relative improvement in the provider's ranking on the relevant PCW, and an increase in sales for both the PCW and the provider who agreed the deal (Section 7.E). These deals were therefore an effective way for both PCWs and providers to compete on retail prices and, by lowering retail prices, benefitted consumers.
- 7.8 The CMA sets out below its assessment of the evidence in the following sub-sections:
- (a) How consumers and providers use PCWs.
 - (b) The role and importance of retail prices and rankings in competition between PCWs and between providers on PCWs.
 - (c) How PCWs compete for consumers.
 - (d) How home insurance providers compete on retail prices on PCWs.

- (e) The impact of promotional deals on retail prices and rankings.
- (f) Conclusions on the nature of competition.

7.A. How consumers and providers use PCWs

- 7.9 As set out in Section 2.D, CTM and other PCWs serve and connect two distinct customer groups (consumers and home insurance providers) and as such can be considered two-sided platforms. Consumers use PCWs to search for and compare home insurance products, and then potentially to click through and purchase home insurance from a provider, while home insurance providers use PCWs to access customers.
- 7.10 When more than one PCW is available, consumers can decide either to 'single-home' or to 'multi-home'. Consumers are described as single-homing when they use only one PCW (to search and compare insurance quotations, and then, potentially, to click-through to make a purchase), whereas multi-homing refers to a consumer using more than one PCW (for the search and comparison functions, and then, potentially, using one PCW to click-through to make a purchase). Similarly, providers can decide either to 'single-source', by listing on only one PCW, or 'multi-source', by listing on more than one PCW. The choice of consumers to single- or multi-home, and the choice of providers to single- or multi-source, have implications for the nature and intensity of competition between PCWs.
- 7.11 A high proportion of single-homing consumers or single-sourcing providers will generally mean that a PCW faces less direct competition from other PCWs when offering its services to customers on the other side of its platform. This is because, for example, when a high proportion of consumers single-home, the PCW becomes the only way for a provider to access that particular group of consumers (and vice versa). As a result PCWs have an incentive to encourage user groups on either side towards single-homing or single-sourcing so that its platform becomes the only way for providers to access these consumers and vice-versa.⁵³⁸ They also have an incentive to compete to attract single homing-consumers to their site through marketing and advertising as well as ease of use and ensuring such consumers maintain confidence that they will access the best priced product offerings.

⁵³⁸ This is reflected in CTM's internal documents which frequently refer to CTM's attempt to increase consumers' loyalty and to the 'need to [X]'. See, for instance, URN 1984, BGL's response to the First BGL Notice dated 26 September 2017, question 20, document entitled 'Q20 Breadth strategy overview Redacted', pages 27, 32 and 33 and URN 1988, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CTM Strategy Update', pages 17, 29 and 39.

- 7.12 In contrast, a high proportion of multi-homing consumers or multi-sourcing providers generally means that a PCW faces greater direct competition from other PCWs when it offers its services to customers on the other side of the platform. For example, when a high proportion of consumers multi-home, providers can access these multi-homing consumers on more than one PCW. This gives each PCW a greater incentive to compete on the attractiveness of the product offerings by providers on its platform (including the retail prices providers quote) so that these multi-homing consumers are encouraged to click through to a provider's website to make a purchase from its platform rather than a rival PCW's.
- 7.13 To understand how the behaviour of consumers and providers on PCWs may affect the nature of competition between PCWs during the Relevant Period, the CMA has considered (i) the new business quotes generated by consumers on each of the Big Four PCWs and (ii) the listing behaviour of home insurance providers across the Big Four PCWs.
- 7.14 With regards to consumers, the CMA's analysis of new business quotes generated by consumers on each of the Big Four PCWs during the Relevant Period found that:⁵³⁹
- (a) A majority (over 50%) [58% to 80%] of consumers on each of the Big Four PCWs single-homed. This was particularly the case for consumers who used CTM [X]; and
 - (b) Each of the Big Four PCWs had a material proportion (over 20%) [X] of its consumers who multi-homed. CTM's rivals had materially greater percentages of consumers who multi-homed: Confused [X], GoCompare [X] and MoneySuperMarket [X] compared to CTM [X].
- 7.15 With regards to providers, as discussed in Section 5:
- (a) The Big Four PCWs represent the main distribution channel for home insurance providers acquiring new business as they are the most important tool for shopping around for a large proportion of consumers (paragraph 5.134). PCWs accounted for over 60% of home insurance providers' new business sales in 2017.⁵⁴⁰ By listing on these PCWs, providers can therefore access a large group of consumers.

⁵³⁹ The details of the CMA's analysis are set out in Annex I.

⁵⁴⁰ Based on CMA analysis of eBenchmarks data: URN 6258, eBenchmarks response to follow-up questions to section 26 notice dated 14 November 2017, questions 1 and 3, document entitled 'CMA eBenchmarks response 080518.xlsx'; URN 6648, eBenchmarks response to a follow-up question to a request for information,

- (b) PCWs are a relatively cost-effective channel through which to reach those consumers as providers only pay a commission fee on the sales they make. By listing on PCWs, providers benefit from the material investment in marketing and advertising made by PCWs but pay only when they make a sale to a consumer introduced by the PCW.⁵⁴¹ This reduces the need for providers to make otherwise risky and substantial investments in marketing and advertising. As such, providers cannot effectively replicate the sales they make through PCWs through other channels (Section 5.C.IV).
- (c) Each of the Big Four PCWs has a significant proportion of consumers who single-home and single-channel. As these consumers use only one PCW and do not compare offers with those available on providers' online direct channels, providers cannot access them through alternative PCWs or their direct channels (paragraphs 5.201 to 5.202).

7.16 The CMA finds that as a consequence the vast majority of home insurance providers typically multi-source (i.e. list on more than one PCW).⁵⁴² This is confirmed by the CMA's analysis of the listing behaviour of home insurance providers across PCWs. This found that most providers have multi-sourced since at least 2013. As shown in Table 7.1, providers making up more than 80% [83-92%] of PCW sales in home insurance have listed their brands on all of the Big Four PCWs between 2012 and 2017.

Table 7.1: Listing behaviour of home insurance providers' brands (weighted by volume of sales)

	2012	2013	2014	2015	2016	2017
One PCW	1%	1%	1%	2%	2%	3%
Two PCWs	2%	2%	1%	2%	2%	3%
Three PCWs	14%	9%	7%	4%	4%	5%
Four PCWs	83%	88%	91%	92%	92%	88%

Source: CMA analysis of the Commissions Fees Dataset (Annex D).

7.17 The CMA finds that the patterns of usage of PCWs by consumers and providers, whereby the majority of consumers single-home but a material

email chain between eBenchmakers and the CMA entitled 'RE: CMA request – Case 50505', dated 8 August 2018.

⁵⁴¹ Some providers have conversion floors in their agreements with PCWs. These conversion floors require a minimum commission payment from the provider to the PCW. This minimum payment comes into force when either the converted sales of the provider fall below an absolute level (i.e. total number of sales based on quotes provided on the PCW) or a relative level (i.e. the percentage of sales relative to the number of consumers who have clicked through from the PCW to that provider).

⁵⁴² Even where a well-known provider has a brand that is not listed on any PCW, that provider has at least one other brand listed on one or more PCWs (e.g. the [HIP] does not list its brand 'X' on PCWs, but does list its brand 'Y'). [X]. See URN 1458, note of CMA meeting with [HIP] dated 3 July 2017, paragraphs 9 and 10.

proportion of consumers of each of the Big Four PCWs multi-home, and the vast majority of providers multi-source, have a number of consequences for how PCWs compete.

- 7.18 First, the Big Four PCWs do not primarily compete with each other for a home insurance provider to list exclusively on their site. Rather, the Big Four PCWs aim to sign up a broad range of providers in order to be able to offer competitive quotes to as many consumers as possible, given their expectations and heterogeneous characteristics.^{543,544} As exclusive listing is unlikely to be an option for any of the Big Four PCWs, this also means that an important way in which each of the Big Four PCWs competes is by incentivising providers to offer lower prices on its platform relative to the retail prices those providers offer on the other Big Four PCWs, to gain a competitive advantage over its rivals – for example by competing to offer lower commission rates to providers. This is considered in further detail in section 7C below.
- 7.19 Second, the mixture of single and multi-homing by consumers means that each of the Big Four PCWs has strong incentives to both (i) attract consumers to their PCW using marketing and advertising; as well as (ii) ensure those consumers click-through to a provider and purchase from that provider from its platform by ensuring its PCW is easy to use and has attractive product offerings (in particular retail prices) relative to its rivals. The CMA also finds that CTM's rivals are particularly incentivised to compete on the ease of use of their PCWs and the attractiveness of their product

⁵⁴³ This is supported by BGL. See URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 100.

⁵⁴⁴ While PCWs seek to have a large panel of providers, this does not mean that PCWs are willing to sign up all providers. PCWs will consider a number of factors when deciding which providers to list on their panel including:

- (a) Whether the brand in question has a large consumer appeal and the scale of the provider (e.g. to ensure it is able to support consumers during both the sales process as well as aftersales services).
- (b) Whether the provider adds incremental value to the PCWs' end users (e.g. the extent to which the provider overlaps with other panel members in terms of the profiles it intends to provide a quote for) and whether the home insurance provider specifically focuses on an under-served or niche segment of the home insurance sector.
- (c) The relevant provider's pricing against comparable brands.
- (d) The standard of the provider's website.

See URN 3530, BGL's response to section 27 notice dated 26 September 2017, question 8, document entitled 'CTM Commercial Handbook June 2017'; URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, paragraph 9.5; URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 8; URN 4868, GoCompare's response to section 26 Notice dated 14 November 2017, question 8; URN 0167, GoCompare's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 12, paragraph 12.1; URN 1296, MoneySuperMarket's response to a request for information in the DCTs Market Study dated 29 September 2016, question 10 and 11.

offerings, particularly price, given that they have a materially higher proportion of multi-homing consumers than CTM.^{545,546}

- 7.20 As discussed further below at Section 7.C.I, the CMA finds – and BGL agrees – that consistent with these incentives, (i) marketing and advertising; (ii) the usefulness of their comparison service; and (iii) retail prices are the main dimensions of competition between PCWs. In the remainder of this section, the CMA focuses primarily on competition on price, as this is the dimension of competition most directly affected by CTM's wide MFNs. Furthermore, BGL has not argued that any restriction of price competition resulting from CTM's wide MFNs would be justified by an enhancement of competition on other parameters.

7.B. Consumer behaviour and the importance of retail prices and rankings in competition between PCWs and between providers on PCWs

- 7.21 As set out above, the fact that most insurers multi-source and a material proportion of consumers using the Big Four PCWs multi-home, means that PCWs have strong incentives to compete on the retail prices offered by insurers on their platforms. In this Section, the CMA sets out, based on the evidence on consumer behaviour, the role and importance of retail prices and rankings in competition between PCWs and between providers competing on PCWs.

7.B.I. The role and importance of retail prices and rankings for competition between PCWs

- 7.22 The CMA finds that a PCW needs to compete on securing as competitive quotes from as wide a range of providers as possible on its platform. This is because retail prices are an important factor for consumers when choosing between PCWs and when choosing between home insurance products on PCWs. In coming to this finding, the CMA has assessed consumers' views from consumer research carried out during the Relevant Period on the importance of retail prices (and other factors) when shopping for home insurance. In particular:

⁵⁴⁵ For example, MoneySuperMarket told the CMA that consumers' use of multiple PCWs and their awareness of pricing differences between PCWs were factors which drove MoneySuperMarket to focus on price in its strategy. URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 14, lines 17 to 26.

⁵⁴⁶ Given CTM's high market share of over 50% as set out at Section 5.E.I, CTM's rivals will be particularly incentivised to be competitive against CTM on these parameters of competition.

- (a) Consumer research conducted for the 2017 Mintel report shows that 53% of policy holders are persuaded most by price when they select a home insurance policy: *'Price is the most influential factor determining which home insurance policy to buy, selected by 53% of policy holders. This compares to 26% who ranked policy coverage as their most important consideration.'*⁵⁴⁷
- (b) Data from the GFK market report dated December 2017 shows that *'the cost of policy'* is the most frequently stated reason for choosing a consumer's home insurance provider, with more than 70% [X] of consumers stating price as a key factor.⁵⁴⁸ In contrast the second most popular reason for choosing a policy was *'policy features'* (less than 20% [X]) followed by *'holding other products with the provider'* (less than 20% [X]).
- (c) Results from the DCTs Survey show that price is the most important aspect of comparing home insurance products both when making a comparison on a PCW and across PCWs:
 - (i). Price (annual or monthly) was named as the most important aspect of comparison between policies by 81% of home insurance respondents in the DCTs Survey.⁵⁴⁹ This is consistent with evidence that price is also the most important aspect considered by consumers who shop around at the point of contract renewal.⁵⁵⁰
 - (ii). The main reasons given by consumers in the DCTs Survey as to why they used more than one PCW when shopping for home insurance was to check prices across different sites (selected by 65% of respondents that used more than one PCW) or to ensure they got the best product (54%).⁵⁵¹

⁵⁴⁷ Other influential factors when choosing a home insurance policy, in order of importance, are brand reputation, level of excesses and customer reviews. See URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 12.

⁵⁴⁸ GFK data was submitted by one home insurance provider as part of its responses to the CMA investigation. See URN 6169, [HIP]'s response to section 26 notice dated 16 April 2018, question 8.

⁵⁴⁹ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'E11: And which was most important to you in comparing products or services? Please rank these aspects in order of importance.'

⁵⁵⁰ URN 6651, Mintel, *UK Home Insurance Report*, December 2016, page 12. Mintel research found that, of those that shopped around at their last home insurance renewal, 63% of consumers stated that they shopped around to ensure they were offered a competitive deal and 43% wanted to lower the amount they paid.

⁵⁵¹ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'E1: Why did you use more than one comparison site on this occasion?' Base: Consumers who used more than one comparison site for home insurance in the last 3 months (152).

- 7.23 This evidence is contrary to BGL's submissions that consumers are more focussed on the quality and coverage of the home insurance product when purchasing home insurance, prioritising factors such as brand name rather than looking at the cheapest result from a PCW search.^{552, 553} The evidence clearly shows that while non-price factors including brand name and quality of cover play a role,⁵⁵⁴ price is a key driver of consumers' choice.
- 7.24 In addition, the DCTs Market Study⁵⁵⁵ found that PCWs have increased the pricing transparency available to consumers when searching for a product on a PCW, and have led to providers offering lower prices to consumers. The DCTs Market Study also found that, overall, the reduced search costs and increased pricing transparency created by PCWs has led to consumers using PCWs becoming more sensitive to changes in home insurance providers' retail prices.⁵⁵⁶ Consistent with the DCTs Market Study, estimates from providers on the sensitivity of consumers to changes in the prices of their products show that consumers are more sensitive to changes in price on the PCW channel than on providers' other channels, see Section 7.B.II.(a) below.⁵⁵⁷
- 7.25 Finally, home insurance products are listed in retail price order by default on the Big Four PCWs, with the lowest priced product being listed first as the top ranked result. Evidence obtained by the CMA in the DCTs Market Study

⁵⁵² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 420 and URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 301.

⁵⁵³ BGL also submitted that consumers of motor insurance are much more price sensitive than consumers of home insurance. This is because: (i) motor insurance is mandated by law; (ii) on average PMI is much more expensive than home insurance; (iii) the size of claims for home insurance is potentially much bigger than for motor; and (iv) homes usually are consumers' most important assets and consumers look at brand. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 420. While the CMA accepts that consumers of motor insurance may be more price sensitive than consumers of home insurance given that PMI is generally more expensive and is mandated by law, this does not imply that consumers of home insurance are not price sensitive.

⁵⁵⁴ Providers confirmed that in the final choice of which policy to purchase, non-price factors are important and are likely to impact on 'click-through' rates, and therefore sales, but they tend to become important once the consumer has already engaged with the options available on the PCW results page, starting from the ones at 'the top of screen' which by default, as explained below in paragraphs 3.7.25, are the lowest-priced offerings. See URN 6178.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 13.

⁵⁵⁵ The [DCTs Market Study](#), September 2017, Paper E and Final Report.

⁵⁵⁶ As discussed at paragraph 3.7.34 below, this increase in price sensitivity among users of PCWs has contributed to increased price competition between insurers.

⁵⁵⁷ The sensitivity of consumers to changes in retail prices is assessed by calculating the elasticity of demand which measures the percentage change in sales volumes in response to a 1% change in price. The CMA notes that while it managed to gather data on the elasticity of demand for providers' offers on PCWs, it was not possible to gather information on consumers' elasticity of demand for individual PCWs or the PCW channel as a whole. The CMA was not able to source information on how the demand for home insurance sold via PCWs would change if the price of all the offers on an individual PCW or on the PCW channel as a whole would change. These elasticities are likely to be different from (and likely to be lower than) those provided by individual insurance providers. For example, while a home insurance provider may lose significant sales in response to a price increase when listing on a PCW, some of those lost sales are likely to be gained by another home insurance provider on the same PCW and would not be lost from the point of view of the PCW.

from three of the Big Four PCWs (CTM, Confused and MoneySuperMarket) shows that the vast majority of sales of home insurance made through their platforms in 2016 were made by home insurance providers ranked in the top five results. In particular, the evidence shows that in home insurance in 2016 the vast majority (between [X]% and [X]%) of consumers who click-through to a provider's website clicked through to providers ranked in the top [X] results⁵⁵⁸ and more than 70% ([X]% to [X]%) of consumers who purchased through a PCW clicked-through to and purchased from providers ranked in the top five results.⁵⁵⁹

- 7.26 Consistent with this, several providers confirmed to the CMA the importance of being on top of the result page or at least in the top five results,⁵⁶⁰ and one provider [HIP] told the CMA that being in the top five positions makes a policy purchase up to 20 times more likely.⁵⁶¹

7.B.II. The role and importance of retail prices and rankings for providers

- 7.27 The CMA finds that two linked factors – the retail prices quoted on PCWs and the way in which search results are ranked on PCWs – are particularly important factors for consumers when choosing a specific provider on a PCW.

⁵⁵⁸ In 2016 and based on click-throughs by unique visitors, providers ranked in the top five results received [X]% of click-throughs on CTM, [X]% of click-throughs on Confused and [X]% of click-throughs on MoneySuperMarket. While data was received from GoCompare, it only related to those consumers who had accounts with GoCompare rather than all consumers who use GoCompare and therefore was not used for this analysis. URN 0075, BGL's response to a request for information in the DCTs Market Study dated 2 May 2017, question 9, document entitled 'comparethemarket.com- 16 May 2017.docx'; URN 0155, Confused's response to a request for information in the DCTs Market Study dated 2 May 2017, question 11(ii), spreadsheet entitled '11. home insurance ranking'; URN 1308A.1, MoneySuperMarket's response to a request for information in the DCTs Market Study dated 2 May 2017, question 8(i), spreadsheet entitled 'Q8 home clicks 2016 all positions'; URN 1308A.2, MoneySuperMarket's response to a request for information in the DCTs Market Study dated 2 May 2017, question 8(ii), spreadsheet entitled 'Q8 home clicks 2016 top 5' and URN 0225, GoCompare's response to a request for information in the DCTs Market Study dated 2 May 2017, question 3.

⁵⁵⁹ In 2016 and based on sales to unique visitors, providers ranked in the top five results made [X]% of sales on CTM, [X]% of sales on Confused and [X]% of sales on MoneySuperMarket. While data was received from GoCompare, it only related to those consumers who had accounts with GoCompare rather than all consumers who use GoCompare and therefore was not used for this analysis. URN 0075, BGL's response to a request for information in the DCTs Market Study dated 2 May 2017, question 9, document entitled 'comparethemarket.com- 16 May 2017.docx'; URN 0155, Confused's response to a request for information in the DCTs Market Study dated 2 May 2017, question 11(iv), spreadsheet entitled '11. home insurance ranking'; URN 1308A.3, MoneySuperMarket's response to a request for information in the DCTs Market Study dated 2 May 2017, question 8(iii), spreadsheet entitled 'Q8 home sales 2016 all positions'; URN 1308A.4, MoneySuperMarket's response to a request for information in the DCTs Market Study dated 2 May 2017, question 8(iv), spreadsheet entitled 'Q8 home sales 2016 top 5' and URN 0225, GoCompare's response to a request for information in the DCTs Market Study dated 2 May 2017, question 3.

⁵⁶⁰ See URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 13; URN 6174, [HIP]'s response to the section 26 notice dated 16 April 2018, question 5; URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

⁵⁶¹ URN 6178.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

7.28 In coming to this finding, the CMA has assessed:

- (a) the sensitivity of consumer demand to changes in home insurance providers' retail prices, on PCWs in particular;
- (b) consumers' views from recent consumer research on the importance of retail prices (and other factors) when shopping for home insurance; and
- (c) evidence from PCWs and providers on the relationship between the ranking of home insurance products on PCWs and consumers' purchasing decisions.

7.B.II.(a). Consumer demand and retail prices

7.29 To assess the sensitivity of consumer demand to changes in price, the CMA obtained providers' estimates of consumers' elasticity of demand⁵⁶² for home insurance on the PCW channel and providers' direct channels. Table 7.2 shows that providers' estimates of consumers' elasticity of demand in response to a 1% change in price for home insurance on the PCW channel are high, in absolute terms and relative to other channels.⁵⁶³

⁵⁶² The elasticity of demand measures the percentage change in sales volumes in response to a 1% change in price.

⁵⁶³ URN 1433, [HIP]'s response to a request for information in the DCTs Market Study dated 17 May 2017; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 1387, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 2(f); URN 1395, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 2(f); URN 1443, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 1(b); URN 1461, [HIP]'s response to follow up questions to a request for information in the DCTs Market Study dated 9 January 2017, question 5; URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; paragraph 38; URN 1495, [HIP]'s response to a request for information in the DCTs Market Study dated 9 January 2017, question 5; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 1516, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 2(e); URN 1526A, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 1(e).

Table 7.2: Providers' estimates of consumers' elasticity of demand on the direct and PCW channels (% change in demand in response to 1% change in price)

<i>Home insurance provider</i>	<i>Direct</i>			<i>PCW</i>
	<i>Online</i>	<i>Offline</i>	<i>Overall</i>	<i>Online</i>
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
Median	0-5 [X]	0-5 [X]	0-5 [X]	0-10 [X]

Source: CMA analysis of providers' submissions.

- 7.30 The median estimate of consumers' elasticity of demand provided by nine providers was 5-10 [X]% for the PCW channel as a whole, 0-5% [X]% for their direct online channel and 0-5% [X]% for their direct offline channel (such as for sales made over the telephone or face-to-face). These median estimates show that, in response to a 1% increase in the price of a policy, a provider would lose more than twice as many sales on the PCW channel [X]% than they would on their direct channels [X]%.
- 7.31 This is similar to the information supplied by a number of home insurance providers that could only provide estimates of consumers' elasticity of demand on their direct channel relative to their PCW channel.⁵⁶⁴ They found consumers on PCWs to be in the range of [X] times more elastic than those on their direct channel.
- 7.32 Taken together, these estimates of consumers' elasticity of demand show that consumers who use PCWs are more sensitive to the retail prices offered by home insurance providers relative to consumers using other channels.

⁵⁶⁴ In particular:

- [HIP] said that PCW users are [X] than direct online consumers and [X] than direct offline consumers;
- [HIP] said that, for an equivalent price increase on the PCW and direct channel channels, the volume of sales lost on PCWs is [X] compared to its own website; and
- [HIP] said that the elasticity of demand on PCWs is [X] than on its direct online channel.

URN 1444B, [HIP]'s response to follow-up questions to a request for information in the DCTs Market Study dated 9 June 2017, question 6; URN 1461, [HIP]'s response to follow-up questions to a request for information in the DCTs Market Study dated 9 January 2017, question 5; URN 1516, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 2(e).

7.B.II.(b). Consumer research

- 7.33 As described in paragraph 7.22 above, evidence from consumers shows that retail prices are a particularly important factor in their decision of which home insurance product they pick. For example, price (annual or monthly) was named as the most important aspect of comparison between policies by 81% of home insurance respondents in the DCTs Survey.
- 7.34 Consistent with this, industry reports highlight that (i) in 2017, the home insurance sector had not achieved significant premium growth over the past decade because price competition had significantly intensified;⁵⁶⁵ and (ii) PCWs are likely to have significantly contributed to this outcome by improving consumers' ability to shop around and shifting their focus onto prices.⁵⁶⁶

7.B.II.(c). Relationship between rankings and consumers' purchasing behaviour

- 7.35 Retail prices are also a particularly important factor for consumers when choosing a provider on a PCW because of the way in which home insurance products are listed on the Big Four PCWs and the impact of a product's ranking on whether a consumer decides to click-through to a provider's website, and ultimately purchase from that provider, or not.
- 7.36 As described above at paragraph 7.25, products are listed in retail price order by default on the Big Four PCWs, with the lowest priced product being listed first as the top ranked result. Further, evidence from both PCWs and providers shows that the majority of sales of home insurance made through PCWs were made by home insurance providers ranked in the top [X] results.
- 7.37 Therefore, the CMA finds that a brand's position in the list of returned quotes is the main driver of its sales and, consequently, there is a diminishing chance for a provider to attract consumers when it appears further down on the screen, particularly outside the top five positions. This is reflected in the fact that providers told the CMA that they monitored and reacted to changes in their rankings on PCWs as described in paragraph 7.124 below.
- 7.38 The CMA therefore finds that two linked factors, the retail prices quoted on PCWs and the way in which search results are ranked on PCWs, are particularly important factors for consumers when choosing a specific

⁵⁶⁵ URN 6652, Mintel, *UK Home Insurance Report*, December 2017, page 13.

⁵⁶⁶ URN 6651, Mintel, *UK Home Insurance Report*, December 2016, pages 16 and 41.

provider on a PCW. As a result, providers need to compete on retail prices when competing on PCWs and this is reflected in their competitive strategies as set out below in Section 7.D.II.

- 7.39 BGL does not dispute that retail prices are an important dimension of competition for providers competing on PCWs.⁵⁶⁷

7.C. How PCWs compete for consumers

- 7.40 In this section, the CMA finds that:

- (a) the three main dimensions of competition between PCWs are marketing and advertising, usefulness of their comparison service and retail prices; and
- (b) all of the Big Four PCWs have implemented strategies focussed on securing competitive prices from providers when compared to their rival PCWs, including by incentivising providers to adopt differential pricing strategies.

7.C.I. Dimensions of competition

- 7.41 The CMA finds that competition between PCWs occurs through: (i) marketing and advertising; (ii) the usefulness of their comparison service; and (iii) retail prices. BGL also considers that these are the primary dimensions of competition between PCWs for home insurance.⁵⁶⁸

7.C.I.(a). Competition through marketing and advertising

- 7.42 The CMA finds that marketing and advertising is important to PCWs. By investing in marketing and advertising, PCWs are able to expand their consumer base, for example, to attract consumers who would otherwise renew, single-home on other PCWs or single-channel on providers' other channels. Further, as discussed in paragraph 7.19 above, each PCW has an incentive to compete to attract single-homing consumers to its platform and,

⁵⁶⁷ BGL submitted that providers '*compete vigorously on price*'. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 390.

⁵⁶⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 23 and URN 8484.6, BGL's response to the SO dated 22 February 2020, Annex 2. BGL considers that marketing and rewards, customer experience, service functionality and retail prices are important dimensions of competition between PCWs. Also, in URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraph 294, BGL notes that the chief parameters of competition between PCWs are ease of use and functionality, advertising (notably via Google and on TV), rewards, and price competitiveness across the board.

through the use of marketing and advertising, encourage them, and all other consumers using its platform, to single-home with it.

7.43 This finding is based on the following evidence:

- (a) the behaviour of consumers, for whom marketing and advertising by PCWs, including consumer incentive rewards such as vouchers (e.g. cinema ticket offers, or meal offers) or toys is a relevant consideration
- (b) the views of the Big Four PCWs⁵⁶⁹, several insurance providers⁵⁷⁰ and other PCWs active or previously active in home insurance⁵⁷¹, which told the CMA that PCWs compete on marketing and advertising – for example, BGL told the CMA that *‘Marketing is also a key area of competition, where the various DCTs all compete to attract customers’*; and
- (c) the Big Four PCWs’ expenditure on these activities. As highlighted in the DCTs Market Study,⁵⁷² marketing and advertising was the most significant cost for PCWs⁵⁷³ with the advertising expenditure of the Big Four PCWs across all products growing from £[X] million in 2012 to £[X] million in 2017 and CTM’s expenditure increasing from £[X] million to £[X] million over the same period.⁵⁷⁴

⁵⁶⁹ See URN 1632, BGL’s response to the First BGL Notice dated 26 September 2017, question 24, paragraph 24.2; URN 0005.1, BGL’s response to a request for information in the DCTs Market Study dated 29 September 2016, question 5; URN 0004, BGL’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, questions 10 and 11; URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 1; URN 0168, GoCompare’s response to a request for information in the DCTs Market Study dated 29 September 2016, question 6, page 9, paragraph 6.4; and URN 4934.1, MoneySuperMarket’s response to section 26 notice dated 14 November 2017, question 1.

⁵⁷⁰ URN 1389, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1412, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1462, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1517.1, [HIP] response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1445, [HIP] response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1391, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1450, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; and URN 1490, [HIP]’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10, paragraph 10.2(a).

⁵⁷¹ A business ([HIP]) that has considered entering as a PCW in the home insurance sector also told the CMA that PCWs compete on marketing and advertising. URN 5559.1A, note of CMA call with [HIP] dated 14 December 2017, paragraph 7; URN 5710.1, note of CMA call with [HIP] dated 16 January 2018, paragraph 10; URN 1517B, Seopa’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1384, uSwitch’s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10, page 27; and URN 5607.1, note of CMA call with uSwitch dated 15 December 2017, paragraph 13.

⁵⁷² The [DCTs Market Study](#), September 2017, Final Report, Paper E, paragraphs 2.18 to 2.22 and 2.68.

⁵⁷³ This is also consistent with the findings in the PMI Market Investigation. The [PMI Market Investigation](#), April 2015, paragraphs 8.24 and 8.25.

⁵⁷⁴ Based on data from CTM, MoneySuperMarket, GoCompare and Confused. The figure refers to general, non-sector specific, advertising. See URN 6438, BGL’s response to the Second BGL Notice dated 3 May 2018, question 9; URN 6379, Confused’s response to section 26 notice dated 27 April 2018, question 12; URN 6302,

7.C.I.(b). Competition on usefulness of comparison services

- 7.44 In addition to marketing and advertising, the CMA finds that the usefulness of comparison services is an important consideration for consumers when choosing a PCW.
- 7.45 Evidence from the DCTs Survey demonstrates the importance consumers attach to the usefulness of comparison services, which is affected by two key factors:⁵⁷⁵
- (a) *Ease of use* (the time and effort for consumers using the PCW), including navigating the website, the collection of data, speed of comparison results, and ability to click through to a provider's website and purchase easily. In the DCTs Survey, 32% of consumers who had used a comparison site for home insurance considered this factor when deciding which particular PCW to use.⁵⁷⁶ The convenience of conducting a comparison quickly and in one place was another reason given by consumers for why they use PCWs.⁵⁷⁷ Mintel's consumer research corroborates these results.⁵⁷⁸
 - (b) *Quality of comparison*, including both the number and range of providers, the quality of their offerings and relevance of results. Survey evidence shows that the ability to compare a large number of suppliers is an important reason for using a PCW.⁵⁷⁹ As described in paragraph 7.16 above, providers making up over 80% of PCW sales in home insurance have listed their brands on all of the Big Four PCWs.

GoCompare's response to section 26 notice dated 27 April 2018, question 4; URN 6335, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 13.

⁵⁷⁵ The [DCTs Market Study](#), September 2017, Final Report, Paper E, paragraphs 2.24-2.25

⁵⁷⁶ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'M12: How did you decide which particular site[s] to use?'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

⁵⁷⁷ In particular, 49% of those who recently used a comparison site for home insurance said that wanting to save time when searching and comparing home insurance products was one of the reasons they used a PCW when shopping around. Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'M6: Why did you use a comparison site on this occasion?'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

⁵⁷⁸ The convenience of a PCW leads it to be the 'first stop' for consumers wanting to switch or purchase new insurance products. Mintel noted that this was because consumers can research a wide range of home insurance products available to them in a matter of minutes when using a PCW – offering a quick and convenient way of comparing prices, product features and consumer reviews in one visit. URN 6650, Mintel, *Price Comparison Sites in General Insurance*, July 2016, page 20; URN 6651, Mintel, *UK Home Insurance Report*, December 2016, page 23.

⁵⁷⁹ 54% of those who recently used a comparison site said listed 'to compare a large number of suppliers' as a reason for doing so, second only to 'to help save money' (71% of respondents). Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question 'M6: Why did you use a comparison site on this occasion?'. Base: Consumers who have shopped around using a comparison site in the last 3 months (1,668).

- 7.46 All of the Big Four PCWs told the CMA that PCWs compete on the usefulness of their comparison services (including the ease of use and the quality of comparison)⁵⁸⁰ and its importance can also be seen in their strategies, which include working with providers to increase the number of quotes returned for consumers and reviewing question sets.⁵⁸¹ In particular, BGL's submissions highlighted the importance of having a wide and varied range of providers to attract consumers.⁵⁸² This was also confirmed by several home insurance providers during the DCTs Market Study.⁵⁸³

7.C.I.(c). Competition on retail prices

- 7.47 The CMA finds that the retail prices quoted by home insurance providers on a particular PCW are an important dimension of competition between the Big Four PCWs. As such, in order to attract consumers to their platform and expand, each of the Big Four PCWs needs to implement competitive strategies aimed at securing the lowest price (or at least equal lowest price) compared to their rival PCWs. Such strategies include incentivising providers on their panel to quote lower prices on their platforms than they quote on the other Big Four PCWs (i.e. '*differential pricing strategies*').

⁵⁸⁰ See URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 24, paragraph 24.2; URN 0005, BGL's response to a request for information in the DCTs Market Study dated 29 September 2016, question 5; URN 0004, BGL's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, questions 10 and 11; [URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 1; URN 5397.1, note of CMA call with Confused dated 12 December 2017, paragraph 11; URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 6, page 9, paragraph 6.4; URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 10, paragraph 10.2; and URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 1.

⁵⁸¹ URN 3737, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Plan 2015/16 30th April Exec Board', page 15; URN 6322, Confused's response to section 26 notice dated 27 April 2018, question 21(a); URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 12, paragraph 12.2 and URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 5, paragraph 5.2(a); URN 6335, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 17; and URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraphs 13(a) and 20.

⁵⁸² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 100. To ensure the quality of its comparison services, BGL submitted that CTM's panel needs to include (i) well-known insurance brands; (ii) mix of providers to be able to show diversity in choice to its customers and to ensure good coverage for all types of risk, (iii) niche providers to cover a diverse set of customer requirements and more niche risks; and (iv) larger providers.

⁵⁸³ See URN 1389, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1399, IDO's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1517.1, [HIP] response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1526, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1445, [HIP] response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1391, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1524B, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1450, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1490, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10, paragraphs 10.4(c) and 10.4(d).

- 7.48 The CMA also finds that the importance of price competition between PCWs is reflected in the strategies of each of the Big Four PCWs, which are described separately in Section 7.C.II below. All of the Big Four PCWs viewed securing competitive retail prices as critical to their competitive strategies in the Relevant Period. The precise mechanisms by which each PCW sought to incentivise providers to quote their best prices on its platform, rather than those of its rivals, varied between PCWs and over time, in response to market dynamics and each PCW's broader commercial strategies.
- 7.49 Further, given the importance of the prices ranked at the top of the results page (particularly in the top five positions) as set out at paragraphs 7.35 to 7.37 above, it is particularly important for PCWs to ensure that products ranked in the top five positions on their platforms are competitively priced relative to their rival PCWs. This is reflected in both the monitoring behaviour of the Big Four PCWs (as set out in Section 5.C.V), CTM's approach to monitoring and enforcing its wide MFNs (as set out in Section 8.B.III) and the competitive strategies of the Big Four PCWs (see Section 7.C.II below).
- 7.50 These findings are based on the following evidence:
- (a) Evidence on the behaviour of consumers. In particular, as described at paragraphs 7.14: (i) consumers using PCWs are very price sensitive and the retail prices offered by providers on PCWs are a key factor in their choices;⁵⁸⁴ (ii) each of the Big Four PCWs has a material proportion (over 20%) ([~~§~~]) of its consumers who multi-home; and (iii) most consumers who multi-home 60-70% ([~~§~~]) do so in order to compare prices across PCWs.

⁵⁸⁴ Indeed, market research by Mintel found that, as PCW use had increased over time, consumers had become more price-sensitive when shopping for home insurance. Mintel reported that this increased focus on price by PCW users has led to products being less differentiated, with non-price aspects being considered less frequently by consumers when making their purchase decision. URN 6651, Mintel, *UK Home Insurance Report*, December 2016, page 23.

- (b) The views of the Big Four PCWs⁵⁸⁵ and providers.⁵⁸⁶ For example, BGL said that *'highly competitive prices and premiums are needed to address one of the two primary reasons consumers use DCTs [PCWs]: to save time and money.'*⁵⁸⁷ BGL also said that *'[o]ffering competitive insurance prices is at the heart of CTM's business model. Albeit only one dimension amongst several, price remains an important factor for many consumers when considering which home insurance product to buy, and therefore, which distribution channel to use.'*⁵⁸⁸ Indeed this is reflected in its main commercial rationale in using wide MFN clauses in its agreements with insurers.
- (c) The competitive strategies of the Big Four PCWs. In particular, as described in Section 7.C.II, the Big Four PCWs have implemented, during and since the Relevant Period, competitive strategies focussed on securing the lowest price (or at least equal lowest price) from providers when compared to their rival PCWs, including by incentivising providers to implement differential pricing strategies.
- (d) The monitoring behaviour of the Big Four PCWs. In particular, the Big Four PCWs monitor the retail prices quoted on their platform against those of other PCWs (as set out in Section 5.C.V.).⁵⁸⁹ This includes

⁵⁸⁵ See URN 0005.1, BGL's response to a request for information in the DCTs Market Study dated 29 September 2016, question 5; URN 0004, BGL's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, questions 10 and 11; URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 24, paragraph 24.2; URN 5786, Second BGL Submission dated 14 March 2018, page 13; URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, questions 1 and 2; URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 2, paragraph 2.2; URN 0168, GoCompare's response to a request for information in the DCTs Market Study dated 29 September 2016, question 6, page 9, paragraph 6.4(ii); URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 2, paragraph 2.6; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 2.

⁵⁸⁶ In addition, during the DCTs Market Study, eight providers told the CMA that PCWs compete on the level of savings / prices displayed (including promotional deals), with only two providers ([HIP] and [HIP]) considering there was little competition on prices. The CMA notes that one of those providers (the[HIP]) has discussed and agreed promotional deals with PCWs despite saying that PCWs have little incentive to engage in promotional activity that would lead to lower prices for consumers and the other commented that competition on commission fees was not working effectively. See URN 1389, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1391, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1462, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1399, IDO's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1502B, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1524B, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; URN 1526, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10. URN 1412, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10; and URN 1490, [HIP]'s response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 10, page 19, paragraphs 10.3 and 10.5.

⁵⁸⁷ URN 0004, BGL's response to the Statement of Scope in the DCTs Market Study dated 29 September 2016, question 11.

⁵⁸⁸ URN 5786, Second BGL Submission dated 14 March 2018, page 13.

⁵⁸⁹ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 26, paragraph 26.1; URN 4794.1, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, paragraphs 22.1 to 22.9; URN 4749.1, Confused's response to section 26 dated 14 November 2017, question 4;

comparing: (i) the cheapest retail price quoted on their site compared to their rivals; and (ii) the cheapest retail price for each brand quoted on their site compared to the cheapest retail price of the same brand on their rivals.^{590, 591}

- 7.51 In particular, PCWs are incentivised to compete on the prices quoted by providers by the need to ensure that the consumers they attract to their sites go on to click through and purchase from providers. It is generally only when consumers who have visited a PCW click through to and purchase from providers that providers pay a commission fee to that PCW.⁵⁹² This, combined with the high price sensitivity of consumers using PCWs, and the material proportion of consumers who multi-home,⁵⁹³ means PCWs need to compete on the retail prices quoted by providers.⁵⁹⁴ For CTM's rivals it is even more important that their pricing strategies are effective given they have a materially higher proportion of consumers who multi-home and will observe if prices are lower on other PCWs (see paragraph 7.14 above).
- 7.52 PCWs also have an incentive to achieve the best price from providers using differential pricing strategies as by doing so they can advertise the fact that they have the lowest prices. In this way, PCWs are better able to use retail prices to attract both multi-homing consumers and also consumers who usually single-home on other PCWs, but who might be attracted to a competing PCW through its advertising of lower prices. Having the lowest prices therefore makes PCWs' investment in marketing and advertising (see Section 7.C.I.(a) above) more effective.
- 7.53 BGL has not disputed that retail prices are an important dimension of competition between PCWs in home insurance. As described more fully

URN 4868.1, GoCompare's response to section 26 notice dated 14 November 2017, Appendix 4.1; URN 4868.6, GoCompare's response to section 26 notice dated 14 November 2017, Appendix 4.6 and for MoneySuperMarket see URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 4; URN 6334, MoneySuperMarket's response to section 26 notice dated 27 April 2018, Appendix 8, slide 3.

⁵⁹⁰ For example, see URN 4794.1, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, paragraphs 22.1 to 22.9; URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 4.

⁵⁹¹ One provider [HIP] told the CMA that, after agreeing a deal with [X], it was approached by other PCWs to explore its willingness to run similar deals (see below footnote 664).

⁵⁹² The CMA understands that in some cases, providers have paid commission fees to PCWs based on consumers clicking through even without making a purchase. For example, [X]. However, these arrangements are not typical.

⁵⁹³ See paragraph 3.7.14 above.

⁵⁹⁴ BGL submitted that the low level of multi-homing by consumers using PCWs suggests that pursuing the lowest premium for any single policy is not an obvious strategy for a PCW (URN 5266A, First BGL Submission dated 21 December 2017, page 14, paragraphs 4.7(c) and 4.8). However, BGL has also submitted that it considered that having as low premiums as its competitors in search results was 'critical' to its PCW proposition and was a core focus of its competitive strategy. The CMA finds, as set out in Section 8.A.II, that CTM's use of wide MFNs was integral to this competitive strategy and effective in achieving its objectives. In addition, as set out at paragraph 3.7.14, the CMA considers that the proportion of consumers on each of the Big Four PCWs that multi-home (over 20%) is material.

below and in Section 8.A.II, securing the lowest or equal lowest price on its platform relative to the other Big Four PCWs is regarded by CTM as ‘critical’ to its proposition. In response to the SO, BGL confirmed that *‘Without the confidence that **PCWs can deliver a better deal for consumers**, the PCW proposition has very little value. However, consumer trust is difficult to win and easy to lose.’*⁵⁹⁵ BGL also pointed to an internal presentation which states that *‘price comparison sites exist to save people money, therefore **competitive pricing is core to our proposition**. [emphasis added]’*⁵⁹⁶

- 7.54 BGL did however submit that marketing and advertising and usefulness of the comparison services are more important parameters of competition, ‘as customers take for granted the fact that they will be shown the best prices on PCWs, due to the intrinsic nature of their business’.⁵⁹⁷ BGL did not provide any evidence to substantiate the claim that customers take for granted that they will be shown the best prices on PCWs, and this claim is inconsistent with the consumer research described at paragraph 7.22(c) above, which showed that the most common reason for consumers using multiple PCWs was to check prices across different sites as well as its other submissions on the critically of having low premiums to its proposition. The CMA does not therefore consider that BGL’s submission undermines the CMA’s findings on the importance of price competition to PCWs.

7.C.II. Big Four PCWs’ pricing strategies


- 7.55 Having established that retail prices are an important dimension of competition between PCWs, the CMA finds that all of the Big Four PCWs have implemented strategies focussed on securing competitive prices from providers when compared to their rival PCWs, including by incentivising providers to adopt differential pricing strategies. As described in more detail below, the exact nature of the strategies has varied between the Big Four PCWs and adjusted over time in response to competitive dynamics. However, the CMA finds that the need to be competitive on prices quoted was a common and core part of each of the Big Four PCWs’ pricing strategies in the Relevant Period.
- 7.56 As described in Section 8.A.II, I the Relevant Period, wide MFNs were integral to CTM’s its competitive strategy and effective in achieving its objective of securing from providers prices that were competitive with its rivals whilst maintaining growth in commission fees. Outside of wide MFNs,

⁵⁹⁵ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 88.

⁵⁹⁶ URN 8484.5, BGL’s Response to the SO dated 22 February 2020, paragraph 411, referring to URN 5750, BGL’s response to section 27 notice dated 26 September 2017, page 2.

⁵⁹⁷ URN 8484.5, BGL’s Response to the SO dated 22 February 2020, paragraph 40.vi.

there are broadly three ways in which the Big Four PCWs sought to influence providers' pricing decisions on their platform relative to their rivals during and after the Relevant Period. These are:

- (a) Through the structure and level of their negotiated commission fees (generally on an annual basis). For example, GoCompare told the CMA that it had used during the Relevant Period a tiered commission structure which involved agreeing to a lower commission fee on particular types of policies it wanted to target to increase sales (see paragraphs 7.94 to 7.96). By agreeing a lower commission fee on such policies, GoCompare sought to incentivise home insurance providers to quote for these policies,⁵⁹⁸ and to offer a more competitively priced and/or improved product to consumers using its platform for that type of policy. This was achieved by the provider either reducing its base retail prices⁵⁹⁹ or maintaining the same price but offering additional benefits such as better product coverage, with a view to increasing sales of such policies through GoCompare.^{600,601} Similarly, as described in paragraph 7.99 below, GoCompare, after the Relevant Period, [].
- (b) Through temporary deals which affect the structure and level of their commission fees. Under such deals, the structure and the level of commission fee is conditional on the number of policies sold or other parameters (such as conversion rates⁶⁰²). For example, CTM used volume-based discounts in the Relevant Period in the expectation that, for the duration of the volume-based discounts, the provider would have an incentive to lower its retail price on CTM to achieve the volume threshold and benefit from the lower commission fee (see paragraph 7.105).⁶⁰³
- (c) Through promotional deals. MoneySuperMarket and Confused were the main users of promotional deals in the Relevant Period in home insurance (see paragraphs 7.66 to 7.74 and 7.83 to 7.86). These deals can take various forms and they typically involve the PCW agreeing to lower its commission fee, or to feature a specific insurance provider in a PCW-financed promotional campaign, for a specific period, in return for

⁵⁹⁸ [].

⁵⁹⁹ A provider's base retail price is the price quoted by a provider to a consumer in response to a search outside of any promotional deal.

⁶⁰⁰ See URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 13, paragraph 13.6.

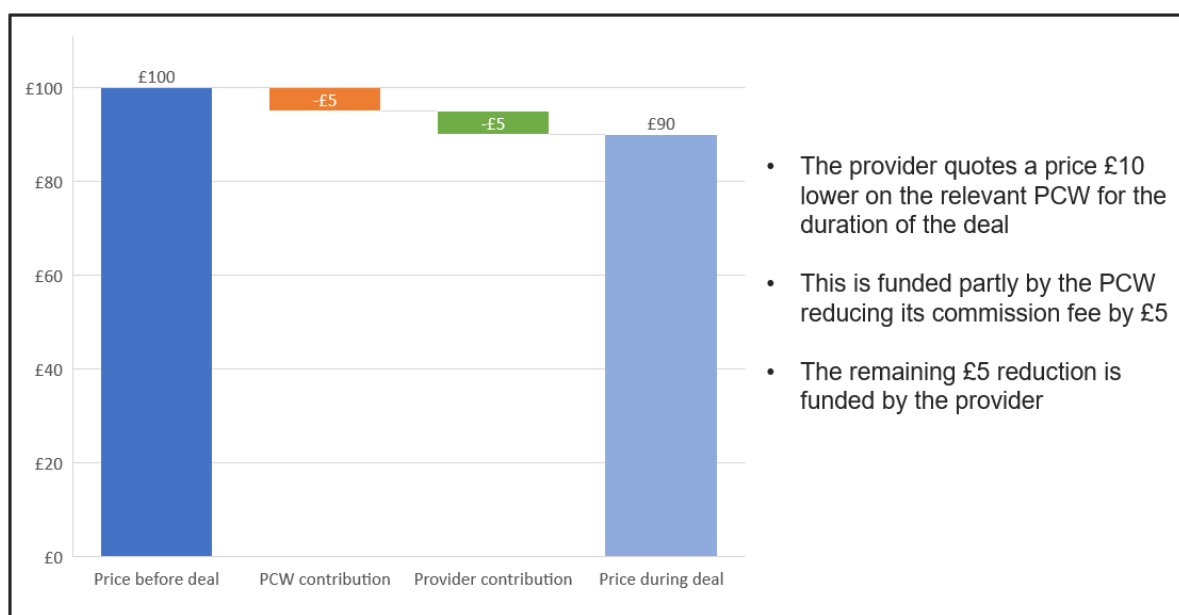
⁶⁰¹ Confused and CTM also used or trialled tiered commission structures, but these had other aims rather than targeting lower retail prices.

⁶⁰² URN 6152, [HIP]'s response to section 26 dated 16 April 2018, question 12.

⁶⁰³ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 15, paragraph 15.3.

the provider agreeing either (i) to lower the retail prices offered by that provider through the PCW's platform (either by a fixed amount or a fixed percentage),^{604,605} and/or (ii) to provide a better product coverage or additional benefits (e.g. cashback offers and/or vouchers⁶⁰⁶). The cost of the free product or the cashback is shared between the provider and the relevant PCW. The figure below shows an illustrative example of how a promotional deal functions.

Figure 7.1: Illustrative example of promotional deal



7.57 The following table summarises the number of deals agreed by the Big Four PCWs between January 2016 and June 2019, i.e. during and after the Relevant Period:

⁶⁰⁴ The financial contribution of each party to the promotional deal varies: the CMA understands that typically, PCWs and providers agree to split in equal parts the cost of the promotional deal (e.g. a £5 reduction in commission fee by the PCW corresponds to a £10 decrease of the insurance retail price). However, a provider may agree to bear more than 50% of the cost of the promotional deal. One home insurance provider ([HIP]) told the CMA that promotional deals have been offered where the home insurance provider is expected to make more than 50% of the contribution. See URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7.

⁶⁰⁵ Promotional deals can be *exclusive*, meaning that the insurance product is only available at the reduced price on the PCW with which the deal has been agreed and not on the other PCWs the provider lists on, or *non-exclusive*, meaning that the provider is free to set the same (discounted) retail price on other PCWs. One provider ([HIP]) told the CMA that [X]. See URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7.

⁶⁰⁶ The amount of cashback is typically deducted from the PCWs' quote, so that the customer sees the net retail price. See URN 6583.1, note of CMA call with [HIP] dated 25 May 2018, paragraph 9.

Table 7.3: The number of promotional deals agreed by PCWs from January 2016 to June 2019

	<i>Number of promotional deals</i>
MoneySuperMarket	40
Confused	23
GoCompare	3
CTM	2
All PCWs	68

Source: CMA analysis of the Promotional Deals Dataset (see Annex J). URN 9615, spreadsheet titled 'Copy of Appendix 3 MSM ATL Campaigns.xlsx', URN 9859 MoneySuperMarket's response dated 15 November 2019 to follow-up question dated 8 November 2019, URN 6159, [HIP]'s document 'Appendix 2.pdf', pages 9-18, URN 9711, [HIP]'s response to section 26 notice dated 26 July 2019 and URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 12(b).

- 7.58 Other strategies include improving the flow of data between PCWs and insurance providers to improve their quotability and pricing. As discussed below,⁶⁰⁷ PCWs achieve this by (i) improving question sets to increase providers' 'quotability', i.e. the probability that they will return a quote to the consumer when the consumer inputs their information;⁶⁰⁸ and (ii) by supplying more data to providers about consumers at point of quote, in order to help providers to identify and manage risks better, for example fraud risk. Providers are thus incentivised to reflect this reduced risk in their retail prices. For example, as described in paragraph 7.107, under CTM's tiered partnership structure introduced across all products in anticipation of the ban on wide MFNs in private motor insurance under the PMI Order, providers who priced lower or equal lower on CTM received additional benefits including data.
- 7.59 The following sub-sections set out in detail the competitive strategies of the Big Four PCWs in the Relevant Period and how they have evolved over time (including after the Relevant Period). The various ways in which PCWs seek to influence providers' retail prices on their platform are not mutually exclusive.
- 7.60 BGL made a number of representations on the incentives of PCWs to engage in promotional deals. These are considered in Annex K.

⁶⁰⁷ See paragraphs 3.7.65, 3.7.80, 3.7.90 and 3.7.107.

⁶⁰⁸ PCWs need to share data from consumers requesting quotes with insurance providers so the providers can use the consumers' information to generate and provide quotes. Issues with data not flowing through correctly, which may be related to the PCW's question set for consumers, can result in insurers not providing quotes for a particular search. URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] of MoneySuperMarket held on 5 July 2019, page 15.

7.C.II.(a). MoneySuperMarket's pricing strategy

- 7.61 As described in Section 2, MoneySuperMarket was the second largest PCW in home insurance in the Relevant Period and accounted for approximately 20% [REDACTED] of PCW sales in home insurance in 2017. MoneySuperMarket has never had any wide MFN clauses in its contracts with home insurance providers.⁶⁰⁹ According to [Employee 1, MSM]⁶¹⁰ MoneySuperMarket '*never considered the possibility of using such clauses because our belief was that it was not the right thing for our customers.*'⁶¹¹
- 7.62 MoneySuperMarket explained that a key aspect of its strategy was to ensure that consumers should be able to find a cheaper alternative to both their renewal quote and quotes found on other PCWs.⁶¹²
- 7.63 In order to obtain the best quotes, MoneySuperMarket focussed its competitive strategy on incentivising providers to adopt differential pricing strategies through '*targeted pricing investments and offers*'.⁶¹³ MoneySuperMarket considered these targeted investments to be a '*significant*' aspect of competition between PCWs.⁶¹⁴ MoneySuperMarket developed this pricing strategy because [REDACTED].⁶¹⁵ [REDACTED].^{616, 617}
- 7.64 As a result, MoneySupermarket developed a plan to improve its price competitiveness in motor and home insurance (which it referred to as its '*Best Price Strategy*')⁶¹⁸ in order to deliver more sales and win market share.⁶¹⁹ There were two key elements to the strategy, [REDACTED].^{620, 621}
- 7.65 For the first element of the strategy, i.e. 'quotability', MoneySuperMarket told the CMA that it invested in technology and undertook a '*re-platforming*' in

⁶⁰⁹ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraphs 5 to 6.

⁶¹⁰ From 2014 until 2019. See URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 2.

⁶¹¹ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 6.

⁶¹² URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 11.

⁶¹³ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, questions 17 and 26.

⁶¹⁴ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 2.

⁶¹⁵ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 8.

⁶¹⁶ URN 6343, MoneySuperMarket's response to section 26 notice dated 27 April 2018, document entitled 'Pricing Strategy Review Findings and Action Plan'.

⁶¹⁷ URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 13 to 15.

⁶¹⁸ URN 6335, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 5.

⁶¹⁹ URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 13 to 15.

⁶²⁰ [REDACTED], the CMA notes that MoneySuperMarket engaged in promotional deals in both home and motor insurance in 2016. URN 6453, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 3, document entitled 'Appendix 2 - Pricing Investments v3 updated'. MoneySuperMarket told the CMA that '[REDACTED]' URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 14.

⁶²¹ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 17.

order to ensure that quotes were returned for as many consumers (and risks) as possible. To maximise the number of providers who return quotes for consumers, MoneySuperMarket increased the size of its insurance panel and reviewed its question sets to ensure that data was flowing correctly between insurance providers and MoneySuperMarket.⁶²²

- 7.66 For the second element of the strategy, i.e. strengthening its reliance on promotional deals, MoneySuperMarket decided to target particular providers⁶²³ and/or particular consumer segments with promotional deals in order to reduce retail prices quoted on its platform compared to its rivals and thereby drive more sales on its platform.⁶²⁴ MoneySuperMarket told the CMA that it [REDACTED].⁶²⁵
- 7.67 MoneySuperMarket undertakes financial analysis of potential deals with specific providers to decide which providers to target, assess the expected profitability of deals (i.e. the impact on revenues compared to the cost of the deal) and propose deals which will be profitable.⁶²⁶ [Employee 1, MSM] told the CMA that an important parameter in this analysis is a provider's quotability because: '[REDACTED]'.⁶²⁷
- 7.68 This means that when MoneySuperMarket initiates a promotional deal (and this is generally the case),⁶²⁸ it usually negotiates only with a subset of the insurance providers on its panel '[REDACTED]'.⁶²⁹
- 7.69 As well as [REDACTED]. [Employee 1, MSM] explained that, because *'approximately [REDACTED] of consumers buy from insurers ranked in the top three positions. If we were more expensive than our competitors for these insurers, we knew that we would lose sales to our competitors. We would usually do deals with insurers that were already reasonably competitive on price and the aim was*

⁶²² URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 17; URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, pages 13 to 15. URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 13.

⁶²³ [REDACTED]. See paragraph 3.7.69

⁶²⁴ URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 17.

⁶²⁵ URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 9.

⁶²⁶ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 12; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 20.

⁶²⁷ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 17.

⁶²⁸ MoneySuperMarket told the CMA that insurance providers may approach the PCW in particular circumstances, for instance when they are looking for increasing their volume of sales: '*[...]they're coming to you at their year-end and they're chasing volume, they may come to us to say, 'Look, we want more volume. Can we do a pricing initiative?'*' URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] of MoneySuperMarket held on 5 July 2019, page 35.

⁶²⁹ URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 7.

*to make them even more competitive.*⁶³⁰ By contrast, [Employee 1, MSM] explained that it is unlikely that MoneySuperMarket [REDACTED].⁶³¹

- 7.70 After agreeing deals, MoneySuperMarket explained that, in order to ensure that the agreed retail price reduction was passed to consumers, it audited providers by comparing [REDACTED].⁶³²
- 7.71 MoneySuperMarket's increased focus on incentivising providers to engage in differential pricing through promotional deals was observed by providers. For example, [HIP] told the CMA that *'[HIP]'s earlier deals with aggregators were largely informal and it was often [HIP] that would propose offers and ideas to PCWs. More recently, MSM [MoneySuperMarket] have been very keen to do offers with it'*.⁶³³
- 7.72 To make its investments in promotional deals more visible and to show its focus on making low prices available to consumers on its platform, MoneySuperMarket increased at the same time its spending on advertising promotional deals, both in private motor insurance and home insurance.⁶³⁴ In particular, it developed 'ATL deals', where MoneySuperMarket typically includes specific insurance providers in its ATL advertising (e.g. television advertising campaigns) rather than providing a commission discount, while the insurance provider offers a discount on its retail price. In addition, MoneySuperMarket gave extra prominence to the provider and the promotional deals by flagging to consumers in their results page that there was a deal in place.⁶³⁵
- 7.73 When negotiating ATL deals, MoneySuperMarket [REDACTED].⁶³⁶ It then selects a winning bid based on a set of criteria including [REDACTED].⁶³⁷ These deals typically require about four weeks to be implemented (from proposal to the provider until final sign off). In contrast, simpler deals (e.g. deals only advertised with

⁶³⁰ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 13.

⁶³¹ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 13.

⁶³² URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 8.

⁶³³ URN 6626, note of CMA meeting with [HIP] [REDACTED], paragraph 8.

⁶³⁴ See URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 26. URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 19.

⁶³⁵ URN 9318, Transcript of CMA interview with [Employee 1, MSM] held on 14 June 2019, page 11.

⁶³⁶ URN 9612, MoneySuperMarket's response to follow up questions to section 26 notice dated 25 June 2019, question 5.

⁶³⁷ [Employee 1, MSM] told the CMA that MoneySuperMarket would approach a '*handful*' of providers to put forward bids for ATL deals, from which it might receive '*two or three*' offers. URN 10621, witness Statement of [Employee 1, MSM] 28 July 2020, paragraph 16.

a message on MoneySuperMarket's results page) can be agreed and finalised more quickly.^{638,639}

- 7.74 In total, MoneySuperMarket agreed 18 deals in the Relevant Period in home insurance (5 in 2016 and 13 in 2017, see further details Section 9.B). In addition to its investment in 'above-the-line' (ATL) marketing (e.g. TV advertisement) of some promotional deals, it invested approximately a [✂] reduction in commission fee revenue⁶⁴⁰ in targeted promotional deals across home and motor insurance in 2017 to improve its price competitiveness with specific providers and/or consumer segments.⁶⁴¹
- 7.75 MoneySuperMarket submitted that CTM's wide MFN impacted on its ability to implement its Best Price Strategy in the Relevant Period. As described in paragraph 8.109, MoneySuperMarket explained to the CMA, providing contemporaneous documents in support, that several providers that it had wanted to target for promotional deals told it that they could not proceed with such deals because, or at least in part because, of CTM's wide MFN. In addition, [Employee 1, MSM] told the CMA that *'because of CTM's wide MFN clauses, we could not get some of the more competitive insurers to engage with us. This included those insurance providers who, based on MSM's pricing models, we had identified as being the most desirable partners – as well as being some of the most competitive providers in the top positions of our table, they were also the ones with some of the largest footprints in the UK.'*⁶⁴²
- 7.76 As a result, [Employee 1, MSM] told the CMA, *'our pricing strategy was more costly, as engaging with less competitive insurers required bigger investments on our part in order to conclude promotional deals with a truly competitive retail price. The biggest challenge for us related to the reach of some of those less competitive insurers, as some of the bigger insurers have big footprints which would have given us access to better prices for a bigger*

⁶³⁸ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 18.

⁶³⁹ BGL submitted that one PCW MoneySuperMarket said that *'Promotional deals could be agreed within a couple of days or four weeks if involving a TV campaign'*. The CMA notes that, while the implementation of an agreed deal is likely to be relatively quick (although the CMA notes that the exact quote from MoneySuperMarket is *'a couple of days, if you wanted, a week'*), negotiations between PCWs and providers on promotional deals are complex and, for the reasons set out below in Section 7.D.II.(b).(i), may require more time. URN 10535, transcript of the Oral Hearing on the Draft Penalty Statement ('DPS Oral Hearing') with BGL held on 9 March 2020, page 27.

⁶⁴⁰ URN 6343, MoneySuperMarket's response to section 26 notice dated 27 April 2018, document entitled 'Pricing Strategy Review Findings and Action Plan'.

⁶⁴¹ This amount covers the commission discount applied by MoneySuperMarket as part of the deal, on top of the investments made by the providers. URN 6348, MoneySuperMarket's response to section 26 notice dated 27 April 2018, Annex 4, document entitled 'Extract from MSM Group PLC Board Meeting Papers – January 2017 Strategy Update – Price'. URN 6343, MoneySuperMarket's response to section 26 notice dated 27 April 2018, document entitled 'Pricing Strategy Review Findings and Action Plan'.

⁶⁴² URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 27.

home insurance population in the UK than we were able to achieve.’⁶⁴³ The impact of CTM’s wide MFNs on MoneySuperMarket’s Best Price Strategy is considered further in Section 9.B.I.

- 7.77 While MoneySuperMarket’s ability to implement fully its Best Price Strategy was impacted by CTM’s wide MFN, the promotional deals it was able to enter into were successful in increasing sales. It provided internal contemporaneous presentations which showed that the [REDACTED].⁶⁴⁴ This is supported by the CMA’s analysis of promotional deals, discussed at Section 7.E below, which showed that promotional deals resulted in reduced prices and improved rankings on the relevant PCW for the providers involved.
- 7.78 More generally, MoneySuperMarket told the CMA that its Best Price Strategy was successful, as improving its pricing position correlated with improvements in its conversion rates. In home insurance, MoneySuperMarket considered its Best Price Strategy allowed MoneySuperMarket to gain market share,⁶⁴⁵ which increased from 10-20% [REDACTED] to 20-30% [REDACTED] between 2016 and 2018.⁶⁴⁶
- 7.79 As temporary promotional deals were the focus of MoneySuperMarket’s Best Price Strategy in 2017, MoneySuperMarket told the CMA that it did not seek to influence providers’ base retail pricing behaviour by [REDACTED]. MoneySuperMarket’s strategy during the Relevant Period focussed on temporary promotional deals as a substitute - and not a complement - to a strategy focussed on [REDACTED].⁶⁴⁷
- 7.80 As discussed in more detail in Section 9, MoneySuperMarket told the CMA that its focus on price competitiveness continued after the Relevant Period, and promotional deals became part of its ‘*business as usual activity*’.⁶⁴⁸ However, MoneySuperMarket told the CMA that its strategy has evolved. In

⁶⁴³ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 28.

⁶⁴⁴ For example, MoneySuperMarket submitted to the CMA an internal presentation discussing the impact of a promotional deal agreed with [HIP] in 2017. MoneySuperMarket reported that the deal improved various metrics including (i) [HIP] daily clicks by [REDACTED], and (ii) [HIP]’s percentage of Top of Screen by [REDACTED]. MoneySuperMarket also noted that whilst [HIP]’s quote rate remained steady throughout the duration of the offer Top of Screen percentage slowly diminished, which could have been because other home insurance providers reacted to [HIP]’s deal. URN 4934.4, MoneySuperMarket’s response to the section 26 notice dated 14 November 2017, document entitled ‘Appendix 3 – [HIP] ATL Offer Performance’. Also see URN 6337, MoneySuperMarket’s response to section 26 notice dated 27 April 2018, Appendix 1b; URN 6349, MoneySuperMarket’s response to section 26 notice dated 27 April 2018, Appendix 4, question 7.

⁶⁴⁵ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 20.

⁶⁴⁶ See Table 2.3.

⁶⁴⁷ URN 9318, Transcript of CMA interview with [Employee 1, MSM] held on 14 June 2019, page 24.

⁶⁴⁸ URN 8968, MoneySuperMarket’s response to section 26 notice dated 31 May 2019, questions 2, 3 and 4; URN 8969, MoneySuperMarket’s response to section 26 notice dated 31 May 2019, Appendix 1, document entitled ‘Pricing Investments’; URN 6335, MoneySuperMarket’s response to section 26 notice dated 27 April 2018, questions 1 and 2.

particular, in order to secure more competitive quotes from insurance providers, it has complemented its focus on promotional deals [§].⁶⁴⁹ [§].⁶⁵⁰

- 7.81 Therefore, the CMA finds that in the Relevant Period, MoneySuperMarket pursued a strategy focused on incentivising providers to implement differential pricing strategies in order to secure the lowest price from providers when compared to their rival PCWs. MoneySuperMarket implemented this strategy primarily by seeking to agree promotional deals with home insurance providers, both during and after the Relevant Period. MoneySuperMarket considered this strategy to be successful during the Relevant Period and has continued to seek to achieve lower prices from insurers relative to its rivals, in particular through the use of promotional deals, after the Relevant Period as a core part of its Best Price Strategy.

7.C.II.(b). Confused's pricing strategy

- 7.82 As described in Section 2, Confused is the fourth largest PCW in home insurance in the Relevant Period and accounted for [§]% of PCW sales in home insurance in 2017. Confused removed its wide MFN clauses from its agreements with insurance providers in home and motor insurance in December 2012 in anticipation of the outcome of the PMI Market Investigation.⁶⁵¹ Therefore, during the Relevant Period, Confused did not rely on this type of contractual mechanism as part of its commercial strategy. Confused told the CMA that not using wide MFNs *'presents opportunities to offer customers discounted rates through use of co-funded discounts to their cost per acquisition. However, there have been examples where we have been unable to do this with particular brands on our home insurance panel because other PCWs have maintained their partners' commitment to a Wide MFN.'*⁶⁵²
- 7.83 Confused stated that the focus of its strategy during the Relevant Period was *'the desire to differentiate Confused from other PCWs and focus on competitive prices, which are a major choice factor for consumers.'*⁶⁵³ Similarly to MoneySuperMarket (see above paragraph 7.64), Confused's strategy in home insurance during the Relevant Period focussed on agreeing

⁶⁴⁹ URN 9116, MoneySuperMarket's response to section 26 notice dated 25 June 2019, question 2.

⁶⁵⁰ URN 9116, MoneySuperMarket's response to section 26 notice dated 25 June 2019, question 2.

⁶⁵¹ URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 9.

⁶⁵² URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 9.

⁶⁵³ URN 5397.1, note of CMA call with Confused dated 12 December 2017, paragraph 16.

temporary promotional deals with selected providers and improving quotability.⁶⁵⁴

7.84 The use of promotional deals by Confused was part of an adjustment to its strategy in 2016 to focus specifically on the competitiveness of the retail prices quoted on its platform against other PCWs.⁶⁵⁵ Confused told the CMA that as a result of this change in strategy, *‘we have been more proactive in approaching our panel HIPS [home insurers] and brokers in order to secure co-funded discounts which feed through to customer pricing.’*⁶⁵⁶

7.85 Confused also told the CMA that achieving ‘price competitiveness’ by incentivising differential pricing by providers through the use of promotional deals is a major focus for it in both motor and home insurance.

*‘Our strategy to negotiate deals on Motor and Home Insurance with Insurance Providers is similar across both products, in that we want to ensure that our motor and home panels are as competitive as they can possibly be. [X].’*⁶⁵⁷

7.86 In particular, Confused told the CMA that it *‘primarily focus[ed] on customer pricing’*⁶⁵⁸ in its home insurance business, because [X] of the traffic to Confused.com is delivered via one affiliate website ([X]) which uses Consumer Intelligence data to rank PCWs on the basis of retail price. In particular, Confused told the CMA that, when ranked in 1st position, [X] provides to Confused.com [X] of its total home insurance customer traffic, with an incremental fall in traffic when dropping down the ranking positions.⁶⁵⁹ In total, Confused agreed 12 deals in home insurance the Relevant Period (7 in 2016 and 5 in 2017, see further details in Section 9.B).

7.87 Similarly to MoneySuperMarket, Confused also told the CMA that it [X].⁶⁶⁰ Confused would therefore only [X].⁶⁶¹ Once a deal has been put in place, Confused uses desktop audits and third party data to ensure the agreed price reduction has been implemented, and retrospectively reviews the success of the deals.⁶⁶²

⁶⁵⁴ URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 1.

⁶⁵⁵ URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 17.

⁶⁵⁶ URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 18.

⁶⁵⁷ URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 25.

⁶⁵⁸ URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 18.

⁶⁵⁹ See URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 18.

⁶⁶⁰ URN 9809, Confused’s response to follow-up questions to section 26 notice dated 31 May 2019, questions 2 and 3.

⁶⁶¹ URN 9809, Confused’s response to follow-up questions to section 26 notice dated 31 May 2019, question 2b.

⁶⁶² URN 6322, Confused’s response to section 26 notice dated 27 April 2018, question 5; URN 6372, Confused’s response to section 26 notice dated 27 April 2018, question 4, document entitled ‘Q4._Home_Offer_Tracker’.

- 7.88 The evidence obtained from Confused shows that, during the Relevant Period, Confused's pricing strategy did not prioritise the negotiation of commission fees (outside the context of promotional deals) as a way to gain a competitive edge over its rivals, choosing instead to focus on promotional deals to incentivise providers to quote lower or at least as low retail prices on its platform compared to its rivals.
- 7.89 Confused's willingness to agree promotional deals in home insurance has continued after the Relevant Period. In particular, Confused told the CMA that, since late 2017, it has '[redacted]'.⁶⁶³ Furthermore, in addition to temporary promotional deals co-funded by lowering its commission fee, Confused considered an '[redacted]'.⁶⁶⁴
- 7.90 In addition to promotional deals, Confused told the CMA that, like MoneySuperMarket, it has continued to work with providers to improve their retail pricing through the provision of more detailed data to incentivise lower prices on its platform.⁶⁶⁵
- 7.91 For completeness, the CMA notes that '[redacted]' which has been used with '[redacted]' home insurance providers. Confused told the CMA that this tiered commission structure was not specifically aimed at lowering the retail prices quoted on its platform. Instead, it was aimed at increasing the number of quotes generated on its platform '[redacted]'.⁶⁶⁶
- 7.92 Therefore, the CMA finds that Confused pursued a strategy focused on securing the lowest price from providers when compared to rival PCWs, including by incentivising providers to implement differential pricing strategies. Confused's key means of implementing this strategy was to agree promotional deals with home insurance providers, both during and after the Relevant Period. Confused considered this strategy to be successful during the Relevant Period and has continued to rely on promotional deals after the Relevant Period as a core part of its commercial strategy.

7.C.II.(c). GoCompare's pricing strategy

- 7.93 As described in Section 2 GoCompare is the third largest PCW in home insurance in the Relevant Period and accounted for '[redacted]' of PCW sales in

⁶⁶³ URN 8983, Confused's response to section 26 notice dated 31 May 2019, question 2a.

⁶⁶⁴ [HIP] told the CMA that its relationship team had conversations with Confused and CTM following '[redacted]', in which each PCW 'expressed an appetite to run such deals', and [HIP] 'made it clear that they would be open to more detailed discussions in the future around such deals', but with a focus on 'ensuring that any such deal was profitable.' URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, paragraph 14.3.

⁶⁶⁵ URN 8978, Confused's response to section 26 notice dated 31 May 2019, question 4.

⁶⁶⁶ URN 6644, Confused's response to follow up question to section 26 notice dated 31 May 2019.

home insurance in 2017. During the Relevant Period, GoCompare did not rely on wide MFNs as part of its commercial strategy as the clauses were removed from its agreements with providers in home and motor insurance in March 2015, following the PMI Market Investigation.⁶⁶⁷

- 7.94 Like MoneySuperMarket and Confused, during the Relevant Period, GoCompare's strategy was focussed on price competitiveness. Rather than using temporary promotional deals, however, it focused on incentivising providers to quote their best prices on GoCompare primarily through the structure and level of its negotiated commission fees, including through a tiered commission structure, [X].⁶⁶⁸
- 7.95 Under GoCompare's tiered commission structure, a home insurance [X]. This is aimed at [X] retail price or better product coverage, to consumers on GoCompare.⁶⁶⁹
- 7.96 GoCompare said that during the Relevant Period it had trialled this tiered commission structure with a [X] home insurance providers [X] retail brands.⁶⁷⁰
- 7.97 While promotional deals were not a key aspect of GoCompare's strategy during the Relevant Period, GoCompare told the CMA that its approach to promotional deals was kept under review in both private motor insurance and home insurance in the Relevant Period.⁶⁷¹ While it did not carry out any promotional deals in home insurance during the Relevant Period, GoCompare trialled around ten promotional deals⁶⁷² in private motor insurance during the Relevant Period (since March 2017) in order to be

⁶⁶⁷ URN 5466, GoCompare's response to follow-up questions to section 26 notice dated 14 November 2017, question 7, entitled 'Copy of Annex 7 MFNs v2.xlsx' and URN 0203, GoCompare's response to a request for information in the DCTs Market Study dated 2 May 2017, question 11, Annex 3, tab 'MFNs_PMI'.

⁶⁶⁸ This reflects GoCompare's view that the structure and level of its negotiated commission fees are an important to attract more providers onto its platform whereas promotional deals are less relevant for that purpose. URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 2.

⁶⁶⁹ URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 13.

⁶⁷⁰ URN 6304, GoCompare's response to the section 26 notice dated 27 April 2018, question 11. In June 2019 GoCompare told the CMA that it has increased the coverage of its tiered commission structure since the end of the Relevant Period. As at June 2019, [X] insurance providers and [X] brands have accepted GoCompare's tiered commission fee structure. URN 8950, GoCompare's response to section 26 notice dated 31 May 2019, question 2; URN 9251, GoCompare's response to section 26 notice dated 25 June 2019, question 1.

⁶⁷¹ URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 19.

⁶⁷² URN 4868.14, GoCompare's response to section 26 notice dated 14 November 2017, document entitled 'Annex 21 Exclusive Deals'; URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 21.

‘[REDACTED]’⁶⁷³ [REDACTED] and therefore GoCompare decided to use promotional deals in motor insurance during the Relevant Period ‘[...] [REDACTED]’.⁶⁷⁴

- 7.98 Since the Relevant Period, GoCompare has run promotional deals in home insurance for the first time, specifically, three promotional deals with three different providers as of June 2019.^{675, 676} GoCompare told the CMA that the deals were initiated by the providers. For the deal with [HIP], GoCompare told the CMA that [HIP] [REDACTED]. GoCompare told the CMA that the deal resulted [REDACTED].⁶⁷⁷
- 7.99 GoCompare also told the CMA that since the end of the Relevant Period, it has been exploring with providers the feasibility of various alternative structures for its negotiated commission fees (in addition to the tiered structure described above), including one whereby [REDACTED] to incentivise providers to quote lower prices on its platform.⁶⁷⁸ According to GoCompare, the feasibility of these alternative models for its commissions fees depends primarily on commercial and technical implications for providers.^{679, 680}
- 7.100 Therefore, the CMA finds that GoCompare pursued a strategy focused on securing competitive prices from providers when compared to their rival PCWs. GoCompare’s mechanism to implement this strategy during the Relevant Period was to agree alternative commission structures with home insurance providers, which it has continued [REDACTED].

⁶⁷³ URN 6304, GoCompare’s response to the section 26 notice dated 27 April 2018, question 12. URN 4868, GoCompare’s response to section 26 notice dated 14 November 2017, question 19.

⁶⁷⁴ URN 4868, GoCompare’s response to section 26 notice dated 14 November 2017, question 19.

⁶⁷⁵ These are [HIP], [HIP] and [HIP]. The first deal was agreed with [HIP] and took place in July 2018, see URN 9726, [HIP]’s response to section 26 notice dated 26 July 2019, question 1. URN 8950, GoCompare’s response to section 26 notice dated 31 May 2019, question 2, and URN 9740, GoCompare’s response to follow-up questions to section 26 notice dated 26 June 2019, question 2. URN 9142, [HIP]’s response to section 26 notice dated 19 June 2019, question 3. URN 9636, [HIP]’s response to section 26 notice dated 26 July 2019, question 2.

⁶⁷⁶ BGL submitted that, as GoCompare did not internally classify its arrangement with [HIP] as a promotional deal ([REDACTED]) and did not mention the arrangement with [HIP] to the CMA in its response to the CMA’s information request, this shows the lack of GoCompare’s commercial interest in engaging in promotional deals after the Relevant Period. However, these two deals were structured as promotional deals as they involved GoCompare temporarily reducing its commission fee in return for the provider temporarily lowering the retail price it quoted on GoCompare – consistent with this [HIP] and [HIP] recorded each of the arrangements as a promotional deal. The CMA’s findings on the changes in PCW strategies since CTM stopped enforcing its wide MFNs are described in Section 9. URN 9142, [HIP]’s response to section 26 notice dated 19 June 2019, question 3. URN 9636, [HIP]’s response to section 26 notice dated 26 July 2019, question 2.

⁶⁷⁷ URN 8950, GoCompare’s response to section 26 notice dated 31 May 2019, question 3. For the other deals, GoCompare in June 2019 was still considering their impact on sales and revenues.

⁶⁷⁸ [REDACTED]. URN 8950 GoCompare’s response to section 26 notice dated 31 May 2019, question 2.

⁶⁷⁹ [REDACTED] URN 9251, GoCompare’s response to section 26 notice dated 25 June 2019, question 2.

⁶⁸⁰ GoCompare explained that [REDACTED]. See URN 9251, GoCompare’s response to section 26 notice dated 25 June 2019, question 2.

7.C.II.(d). CTM's pricing strategy

- 7.101 BGL's submissions and CTM's internal documents demonstrate how retail prices are an important dimension of competition between PCWs and how CTM's pricing strategy has evolved over time, including after the Relevant Period.
- 7.102 In the Relevant Period, CTM did not agree any promotional deals in home insurance.^{681,682} In 2017, BGL told the CMA that this was because it had limited confidence that insurance providers would pass on the commission fee reduction through lower retail prices and this was one of the reasons identified in some internal contemporaneous documents.⁶⁸³ However, BGL's internal documents clearly show that an additional reason was that CTM's preference was to secure lower prices by maintaining and enforcing its wide MFNs rather than by incentivising providers through lower commission fees including promotional deals. For example, CTM stated in an internal presentation from August 2017 which was considering the result of a trial promotional deal in motor insurance that, rather than discounting commission fees, CTM had '*chosen*' previously to rely on wide MFNs to obtain lower prices as it did not want to reduce profitability⁶⁸⁴ or start a commission fee '*discounting war*' (see Section 8.A.II.).⁶⁸⁵
- 7.103 BGL has stated that it is sceptical of the benefits of promotional deals as part of the PCW model.⁶⁸⁶ This is because, BGL argues, for a co-funded promotional deal, the PCW needs to balance the loss it makes from

⁶⁸¹ BGL submitted that in 2013, CTM trialled promotional two deals (with [HIP] and [HIP]), but the two deals were found not to be commercially attractive. See URN 9239, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, question 33. The CMA also understands that the [HIP] agreed a deal with CTM in [REDACTED]. See URN 9825, [HIP]' response to section 26 notice dated 26 July 2019, question 2.

⁶⁸² As discussed in more detail in Section 8.B.III.(i). and Annex M, CTM requested that [HIP] offer three price discounts to CTM's customers as part of enforcement action against [HIP] in 2017 when [HIP] participated in a promotional deal with MoneySuperMarket, which had the effect of putting [HIP] in breach of CTM's wide MFN. [HIP] had to self-fund these discounts, with no contribution from CTM in terms of e.g. reduced commission fees.

⁶⁸³ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 15, paragraph 15.2. For example, an internal presentation on the impact of the ban on wide MFNs in motor insurance raised the concern that any reduction in commission fees may not be passed on to consumers as it states that '*CMA assumption that CPA [commission fee] reductions will pass to better customer pricing is not substantiated in their report*'. URN 3139, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Commercial Proposition - Post MFN Discussion Points (Jun-14)', slide 3.

⁶⁸⁴ Which BGL considered to be likely given the high level of single homing by CTM customers. See URN 1965, BGL's response to the First BGL Notice dated 26 September 2017, question 17, document entitled 'Q17 Pricing parity results v3 [Autosaved]_Redacted'.

⁶⁸⁵ Internal documents also show that BGL considered that using promotional deals could have raised the expectations of insurance providers in relation to the availability of future deals. See URN 1963, BGL's response to the First BGL Notice dated 26 September 2017, question 17, document entitled 'Q17 [HIP] Pricing Parity Trial v6_Redacted'.

⁶⁸⁶ For example, BGL has submitted that CTM has always been sceptical of the benefits of promotional deals as part of a PCW business model. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 181, 247 and 248 and URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraphs 9(v) and 18(iii)(d).

sacrificing some commission fee revenue on sales that would have otherwise been made through its platform against the gain it will make from the commission fee revenue made on additional sales made to consumers ‘*stolen*’ from other PCWs or sales channels. There is therefore no guarantee that the any additional sales will outweigh any loss in commission fee revenue.⁶⁸⁷

- 7.104 At the beginning of 2017, CTM trialled a promotional deal with a motor insurance provider.⁶⁸⁸ Internal documents explain that CTM decided to agree this deal to test⁶⁸⁹ the effectiveness of promotional deals in the light of the ‘*aggressive*’ discounting strategies undertaken by other PCWs following the PMI Order 2015 (MoneySuperMarket and Confused, as set out above).⁶⁹⁰ In CTM’s view, these strategies implemented by rival PCWs had ‘*restricted other PCW CPA growth*’.⁶⁹¹ CTM’s internal documents also show that this trial promotional deal was more successful than it had predicted.⁶⁹²
- 7.105 In 2014, as part of its review of its pricing strategy across all insurance products in light of the CMA’s likely ban on the use of wide MFNs in private motor insurance, CTM introduced volume-based discounts, under which a provider was offered a reduced commission fee on converted sales over a certain threshold. The CMA understands that CTM agreed 14 volume based discounts during the Relevant Period and that it agreed up to two in the 13 months after it stopped enforcing its wide MFNs (December 2017 to

⁶⁸⁷ BGL submitted that a PCW’s commission fee revenue on sales that would have otherwise been made through its platform can be lost for two reasons: (i) the provider with the promotional deal pays a lower commission fee on sales it would have made through the platform anyway; and (ii) if the provider makes sales to consumers that would have otherwise purchased from another provider through the platform then the PCW losses out on the difference in the commission fee between the two providers. URN 8484.5, BGL’s Response to the SO dated 22 February 2020, paragraph 247.

⁶⁸⁸ In March 2017 BGL agreed a three-month trial in motor insurance with [HIP]. See URN 1962, BGL’s response to the First BGL Notice dated 26 September 2017, question 17, document entitled ‘Q17 [HIP] Pricing Parity Trial v5_Redacted’. Another internal document indicates that trials with other insurance providers ([HIP] and [HIP]) were considered but not implemented by CTM. See URN 1965, BGL’s response to the First BGL Notice dated 26 September 2017, question 17, document entitled ‘Q17 Pricing parity results v3 [Autosaved]_Redacted’. As set out in paragraph 3.7.104, the deal with [HIP] was successful. [HIP] told the CMA that, due to the success of this trial a second three-month trial period has been agreed with BGL starting in January 2018.

⁶⁸⁹ ‘*Run a price test with [HIP] to discover more about overall CTM price elasticity.*’ See URN 1963, BGL’s response to the First BGL Notice dated 26 September 2017, question 17, document entitled ‘Q17 [HIP] Pricing Parity Trial v6_Redacted’.

⁶⁹⁰ An internal BGL presentation notes that ‘*MSM have reduced their discounting, but Confused are discounting very aggressively.*’ URN 1964, BGL’s response to the First BGL Notice dated 26 September 2017, question 17, document entitled ‘Q17 Insurance Pricing (Feb-17)’.

⁶⁹¹ URN 1964, BGL’s response to the First BGL Notice dated 26 September 2017, question 17, document entitled ‘Q17 Insurance Pricing (Feb-17)’.

⁶⁹² BGL expected the trial deal with [HIP] to have negative profit impact because BGL estimated that the likely effect of the deal was a crowding out of sales from [HIP] to other brands. However, BGL internal documents show that the trial was more successful than expected and with a proportion of incremental sales to CTM higher than expected. See URN 1965, BGL’s response to First BGL Notice dated 26 September 2017, document entitled ‘Q17 Pricing parity results v3 [Autosaved]_Redacted’, slide 5.

December 2018).⁶⁹³ BGL told the CMA that, in its view, volume-based discounts ‘offer partners some of the benefits of CPA [commission fee] discounting, without the risk of partners absorbing all of the value and not passing on any benefit to CTM’s customers [through lower premiums].’⁶⁹⁴ In addition, an internal contemporaneous CTM document states that CTM also considered that volume-based discounts reduced ‘the risk of ceding CPA [commission] value across all sales.’^{695,696}

7.106 As explained in more detail in Section 8.A.II, whilst ensuring the prices quoted on its platform were as good as those quoted on its rivals’ platforms was ‘critical’ to CTM, CTM’s view was also that this should not be achieved by sacrificing growth in commission fees, which increased year on year before and during the Relevant Period (see Figure 5.7). Further, the CMA notes that BGL has not submitted contemporaneous or other analysis supporting its assessment of the relative risks of volume-based discounts and promotional deals in terms of pass through to lower retail prices. By contrast:

- (a) The evidence submitted by providers indicates that the impact on retail prices of CTM’s volume-based discounts in the Relevant Period was relatively limited. Several providers told the CMA that they did not reduce their prices at all during the volume-based discount, while when prices were reduced this was in some cases a marginal discount,

⁶⁹³ Data provided by BGL shows that one volume-based discount was in place in each of November 2017, December 2017 and January 2018, and it is not clear if this represents one volume-based discount that started in November 2017 and lasted for three months, or two to three separate volume-based discounts. As the Relevant Period ended in November 2017, the former would imply that no volume-based discounts were agreed in the 13 months after CTM stopped enforcing its wide MFNs, whereas the latter would imply that either one or two volume-based discounts were agreed in this period. URN 1975, BGL’s response to the First BGL Notice dated 26 September 2017, document entitled ‘Q18 – VBD history’; URN 8502.10, BGL’s response to the SO dated 22 February 2019, spreadsheet entitled ‘10 CTM’s volume base discounts’.

⁶⁹⁴ URN 1632, BGL’s response to the First BGL Notice dated 26 September 2017, question 15, paragraph 15.3. It is unclear to the CMA why BGL believes that volume-based discounts eliminate the risk of providers absorbing all the value of the reduction compared to promotional deals. It has not submitted contemporaneous analysis or analysis prepared as part of this investigation supporting this view.

⁶⁹⁵ URN 1964, BGL’s response to the First BGL Notice dated 26 September 2017, question 17, document entitled ‘Q17 Insurance Pricing (Feb-17)’.

⁶⁹⁶ BGL also submitted that CTM offered more volume-based discounts before November 2017 than after and, according to BGL, this suggests that the wide MFN did not reduce CTM’s incentives to compete by way of negotiated commissions. However, the CMA does not consider that CTM had no incentive to compete on retail prices during the Relevant Period and therefore had no incentive to agree volume-based discounts. Rather, as set out in Section 9, the CMA considers that CTM had a reduced incentive to compete on retail prices and this is demonstrated by the fact that CTM only agreed volume-based discounts and not promotional deals during the Relevant Period given that volume-based discounts involved a smaller investment in terms of commission fee revenue by the PCW and were less likely to lead to a reduction in the provider’s price as set out above. Figure 10.2 in the Oxera report also shows that CTM reduced the number of volume-based discounts from July 2017, which was two months before the CMA launched this Investigation and four months before CTM’s decision not to enforce its wide MFNs. Therefore, it is not clear how the two events are linked and whether CTM was planning to reduce its use of volume-based discounts anyway. See URN 8484.3, Third Oxera Report dated 22 February 2019, figure 10.2 and URN 10460, Fourth Oxera report dated 14 February 2020, paragraph 7.5.

balanced with increased prices on other PCWs, or primarily driven by other commercial considerations.⁶⁹⁷

- (b) The evidence submitted by providers and PCWs on the effect of promotional deals on retail prices and the CMA's analysis of the impact of promotional deals on retail prices (see Section 7.E.I) show that promotional deals led to lower prices on the PCW in question and in doing so created a relative improvement in the retail price quoted on that PCW relative to rival PCWs.

- 7.107 At the same time in late 2014, CTM also introduced a tiered partnership structure. This was (and continued after the Relevant Period to be⁶⁹⁸) applied across all insurance providers for all products. Under CTM's scheme, insurance providers were allocated to one of three tiers and those in the higher tiers would receive enhanced services including data sharing, anti-fraud assistance, IT support and special offers.
- 7.108 Quoting at least the same level of prices on its platform as on its rivals platform (referred to by CTM as 'pricing parity') was a key determinant of the level of benefits a provider would receive.⁶⁹⁹ Providers which supported CTM's '*key objectives (pricing, payment terms, conversion, tagging and customer value)*' received greater levels of service, whereas those '*including large partners that choose to favour our competitors at our customers [sic] expense*' received no additional benefits.⁷⁰⁰

⁶⁹⁷ Several providers [[HIP], [HIP], [HIP] on one occasion and [HIP] on two occasions] told the CMA that retail prices were not reduced during the volume-based discount and noted that the commission savings during the volume-based discounts were marginal. Other providers told the CMA that they had reduced retail prices although:

- (a) [HIP] told the CMA that its price reduction [X].
- (b) [HIP] told the CMA that for one of its three deals [X].
- (c) While [HIP] reduced retail prices by [X], which reduced the commissions it had to pay by [X], it told the CMA that volume-based discounts are intrinsically more risky than promotional deals because lowering retail prices does not necessarily imply a reduction in commissions if the sales target is not met.
- (d) [HIP] told the CMA that it had reduced retail prices during the volume-based discounts but it did so [X].

URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 12; URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 12; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 20; URN 6148, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(a) and (b); URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6169, [HIP]' response to section 26 notice dated 16 April 2018, question 9.

⁶⁹⁸ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 99.

⁶⁹⁹ This included price parity with the insurance provider's direct channel as well as with other PCWs. In particular, CTM planned to remove from its panel any brands which did not meet CTM's '*basic partner requirements*' including '*direct pricing parity*', URN 4182, BGL's response to section 27 notice dated 26 September 2017, document entitled '14/15 strategy and plans', slide 56.

⁷⁰⁰ URN 4182, BGL's response to section 27 notice dated 26 September 2017, document entitled '14/15 strategy and plans', slide 56.

- 7.109 In addition, as discussed in more detail in Section 8.A.II, wide MFNs were integral to CTM's competitive strategy during the Relevant Period. In particular:
- (a) CTM's main commercial rationale for including wide MFNs in its contracts with insurers was to enable it to ensure that it had the lowest or equal lowest prices on its platform by contractually restricting home insurance providers from offering lower prices on rival PCWs. CTM considered that having at least as good prices quoted on its platform as on its rivals' platforms was '*critical*'⁷⁰¹ to its strategy. However, unlike MoneySuperMarket and Confused, it was not focused on obtaining *lower* prices than its rivals by encouraging providers to differentiate their prices across PCWs, preferring to focus instead on obtaining equal lowest prices. Indeed, CTM considered that insurers price differentiating across PCWs would harm its competitive position (see Section 8.A.II.(a) for further detail).
 - (b) CTM's wide MFNs across all insurance products were an integral part of CTM's strategy in strengthening its competitive position by contractually preventing providers subject to its wide MFNs from quoting lower prices on rival PCWs. This ensured that CTM was not undercut by the prices those providers offered on its competitors' platforms. Accordingly, CTM's network of wide MFNs helped it maintain growth in commission fees because it did not itself have to invest to incentivise providers to match the lower prices offered on other PCWs (for example by lowering commission fees) (see Section 8.A.II for further detail).
- 7.110 BGL has stated that there has not been any significant or sustained change in BGL's competitive strategy as regards promotional deals and volume-based discounts since it stopped enforcing the wide MFN on 30 November 2017. According to BGL's submission, its preference remains [X]⁷⁰²
- 7.111 As explained at paragraph 7.106 above, the CMA has not seen any evidence to support BGL's contention that volume-based discounts are more likely to lead to actual cost savings to consumers than promotional deals. Moreover, as set out in more detail in 9.B.II.(c), after the Relevant Period, CTM has actively explored promotional deals with home insurance providers. In particular, CTM told the CMA that it has agreed promotional deals in home insurance with two providers ([HIP] and [HIP]). It has also

⁷⁰¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 72.

⁷⁰² URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 18(a)(i).

proactively approached other providers about the possibility of agreeing promotional deals in home insurance, including [HIP], [HIP] and [HIP], all of whom had wide MFNs in the Relevant Period.⁷⁰³ Furthermore, the CMA is aware that CTM agreed several further promotional deals in home insurance in early 2020.⁷⁰⁴

- 7.112 BGL has submitted that it does not consider the agreement of two promotional deals with home insurance providers in 2019 to be a significant or sustained change in its competitive strategy or something that arose as a result of its disapplication of wide MFNs. According to BGL, the deals were trials and were not therefore a new strategy as BGL had previously done trials of promotional deals in motor insurance. In addition, BGL pointed out that there was a gap of over a year between the disapplication of the wide MFN and the first promotional deal.⁷⁰⁵
- 7.113 However, the CMA considers that it is highly relevant that, having preferred to rely on wide MFNs in the Relevant Period to achieve its pricing strategy and also having expressed the view in this Investigation that promotional deals are not attractive to PCWs, CTM has started to discuss and agree promotional deals since stopping enforcement of its wide MFNs.
- 7.114 In addition, while CTM has stated that it considered that the '*trial*' deals in home insurance were either unsuccessful or inconclusive⁷⁰⁶, it has subsequently entered into further promotional deals, including another with the provider with which BGL considered its '*trial*' deal to be unsuccessful ([HIP]).⁷⁰⁷
- 7.115 The fact that BGL has characterised the first two deals it has done in home insurance since removal of its wide MFN as trials and that it did not enter into discussions for such deals until July 2018⁷⁰⁸ does not undermine the CMA's finding that since CTM removed its wide MFNs it has discussed and entered into promotional deals with providers. This is in contrast to its

⁷⁰³ URN 9270, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, document entitled 'Cases 50505 presentation referred to in Annex 16A' and URN 9247, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, Annex 24; URN 9256 [HIP]'s response to section 26 notice dated 19 June 2019, question 4; URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 5(a)(i).

⁷⁰⁴ URN 10561, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED] and URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED].

⁷⁰⁵ URN 9162, BGL's response to follow-up questions to section 26 dated 10 May 2019, question 33(a).

⁷⁰⁶ However, internal documents submitted by one of the providers who agreed a deal with CTM [HIP] noted that '[REDACTED]' in relation to the deal. [REDACTED].

⁷⁰⁷ URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED].

⁷⁰⁸ URN 9270, BGL's response to follow-up questions to section 26 dated 10 May 2019, document entitled 'Cases 50505 presentation referred to in Annex 16A' and URN 9245 to URN 9247, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, Annexes 22 to 24; URN 8872, BGL's response to section 26 notice dated 10 May 2019, questions 28 and 30; URN 9239, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, question 33.

behaviour in the Relevant Period and contrary to its submissions that PCWs (and insurers) have little incentive to do promotional deals.

7.116 In conclusion, the CMA finds that:

- (a) Like the other three Big Four PCWs, price competition was a core part of CTM's competitive strategy in the Relevant Period.
- (b) Unlike the other three Big Four PCWs, CTM maintained wide MFNs in the Relevant Period and these were integral to its competitive strategy, as described in greater detail in Section 8.A.II. Its strategy was to secure from insurers quotes that were at least as good as the quotes on its rivals' platforms.
- (c) Promotional deals were not part of its strategy, with CTM preferring to rely primarily on its wide MFNs and also to provide additional benefits to providers who quoted as good prices on CTM's platform as on its rivals' platforms (which it continues to do).
- (d) In addition, CTM used volume-based discounts to increase incentives on providers (including those with only narrow MFNs) to quote lower prices on its platform. However, these were a less effective means of securing a lower retail price from a provider and involved a smaller sacrifice of commission fee revenue by CTM than promotional deals.
- (e) Following removal of its wide MFNs in November 2017, CTM has begun to engage in promotional deals in home insurance.

7.C.II.(e). Conclusion on the pricing strategies of the Big Four PCWs

7.117 As set out above, the CMA finds that all of the Big Four PCWs have implemented strategies focussed on securing competitive prices from providers when compared to their rival PCWs. The exact strategies used varied between the PCWs and over time:

- (a) MoneySuperMarket pursued a strategy of incentivising providers to price differentiate and quote the lowest prices on its site through the use of promotional deals, both during and after the Relevant Period, as well as using other methods to improve its price competitiveness through improving quotability and supplying additional consumer data to providers;

- (b) Confused also focused on promotional deals as a means of achieving the lowest prices quoted by providers, both during and after the Relevant Period;
- (c) GoCompare focused during the Relevant Period on incentivising providers to quote their best prices on GoCompare by negotiating commission fees, including through a tiered commission structure, but since the Relevant Period has also agreed a number of promotional deals with providers and has been [§<]; and
- (d) CTM used wide MFNs, volume-based discounts and a tiered partnership structure to achieve its pricing strategy of having prices at least as low as its rivals during the Relevant Period. Since the Relevant Period it has maintained [§<], but has also agreed a number of promotional deals with providers.

7.D. How home insurance providers compete on retail prices on PCWs

7.118 Having found that price is an important dimension of competition for PCWs and that this is reflected in the strategies of the Big Four PCWs, the CMA also finds that retail prices are a particularly important dimension of competition between providers competing on PCWs, based on the behaviour of consumers using PCWs and the views and behaviour of providers. In addition, the evidence shows that many providers (accounting for approximately 65% of sales made through PCWs in 2017) used differential pricing (especially promotional deals) during the Relevant Period, and more providers have done so after the Relevant Period.⁷⁰⁹

7.D.I. Importance of retail price competition between home insurance providers

7.119 The CMA finds that retail prices are a particularly important dimension of competition between providers competing on PCWs. It is clear that the pricing strategies employed by one provider depend on the pricing strategies of other providers.

7.120 The CMA's finding is based on the following:

- (a) The evidence on the price sensitivity of consumers in choosing home insurance products on PCWs, including the evidence that the majority

⁷⁰⁹ Providers using differential pricing during the relevant period included some providers who were subject to CTM's wide MFNs. These providers either set their differential prices in a way that was compliant with the wide MFN, i.e. by having their lowest prices on CTM, or faced enforcement action by CTM as detailed in Section 8.B.III.

of consumers purchase from providers listed in the top five results which are ranked based on price (see Section 7.B above).

- (b) The views of home insurance providers on the importance of retail prices as a parameter of competition on PCWs (see Section 7.D.I.(a) below).
- (c) The pricing strategies of home insurance providers (see Section 7.D.II below).

7.D.I.(a). Views of home insurance providers on the importance of retail prices

7.121 As described in Section 7.B, retail prices are a particularly important factor for consumers using PCWs. This is supported by the views of providers who told the CMA that, along with quality factors (e.g. brand reputation, consumer reviews, add on features⁷¹⁰ and policy coverage⁷¹¹), retail prices are an important dimension of competition between providers and are particularly important for sales through the PCW channel, where consumers are the most price sensitive.⁷¹² For example:

- (a) [HIP] (narrow MFN) said that *'[HIP] would deem premium as one of the most important parameters of competition. [...] [X]'*⁷¹³
- (b) [HIP] (wide MFN) said that *'We believe that [PCWs] customers visit such websites for little reason other than securing a cheap price. They may choose to select one of the more expensive products due to additional features or insurer brand strength, but all else being equal, we'd expect customers to buy the cheapest product.'*⁷¹⁴

⁷¹⁰ Such as legal cover included in the home insurance.

⁷¹¹ That is, the types and level of damages that are covered by the policy.

⁷¹² See URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9; URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6148, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6174, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16; URN 6178.1, [HIP]'s response to the section 26 notice dated 16 April 2018, question 6; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 10; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 13; URN 6161, [HIP]' response to the section 26 notice dated 16 April 2018, question 6; URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6262, [HIP]'s response to the section 26 notice dated 16 April 2018, question 8; URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6169, [HIP]' response to the section 26 notice dated 16 April 2018, question 8; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 3].

⁷¹³ URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 8.

⁷¹⁴ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9.

- (c) [HIP] (narrow MFN) said that *'We believe price is the most important factor to customers across all channels. Other factors are also an influence, e.g. product benefits, add on covers/costs and excesses.'*⁷¹⁵

7.122 The importance of retail prices as a dimension of competition between providers competing on PCWs is also clearly reflected in the way in which providers compete on PCWs. In particular, given the nature of competition between providers on PCWs, providers need to be particularly responsive to changes in their competitors' pricing strategies.

7.123 This is because insurance quotes are generally ranked by retail price, such that providers that quote lower retail prices appear higher on a PCW's results page. As discussed in paragraph 7.25 above, appearing near or at the top of the results page (particularly in the top five) can significantly affect a provider's sales as the majority of sales are made by providers appearing in those positions. This means that if providers are close together in price, even small changes in relative pricing can have a significant impact on sales, through changing providers' rankings in PCW search results.

7.124 This is reflected in the way that providers monitor and respond to their ranking performance and rivals' pricing changes:

- (a) All providers who were asked (accounting for approximately 80% of sales through PCWs in 2017) told the CMA that they monitored their relative ranking on PCWs including how often they appear as the top ranked result ('top of screen'),^{716, 717} and the majority of those providers

⁷¹⁵ URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 5.

⁷¹⁶ See URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9; URN 6174, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16; URN 6178.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 10; URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 13; URN 6161, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6148, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6169, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 3.

⁷¹⁷ This includes 20 providers contacted by the CMA. The CMA has no evidence to suggest and BGL has not suggested that the behaviour of other providers in terms of monitoring would differ materially from those consulted.

(accounting for approximately 55% of sales) monitored⁷¹⁸ the retail prices or promotional activities of rival providers.⁷¹⁹

- (b) Three quarters of providers who were asked (accounting for approximately 70% of sales through PCWs in 2017) told the CMA that they have responded to competitive dynamics by adjusting their retail pricing⁷²⁰ to maintain a competitive position.⁷²¹ This includes reacting to a worsening of the provider's 'top of screen' performance (i.e. the proportion of quotes where that provider appears at the top of the rankings). To the extent providers' new business pricing focuses on optimising their competitive position on each PCW, this may include flexing retail prices across PCWs in response to a worsening in their

⁷¹⁸ Some providers used both formal methods (e.g. internal monitoring activity and subscriptions to third parties' reports on pricing and promotional trends) and informal methods (e.g. ad-hoc mystery shopping and reviews of promotional deals). In relation to the more formal methods, a number of third parties provide regular reports, data and benchmarking material to providers to track retail prices and ongoing promotional activity in the market., which providers may decide to subscribe to. Third parties include data analytics companies (like Consumer Intelligence and eBenchmarkers), the ABI and others (e.g. GFK, 'Keyfact' – a company providing newsletter with insight on promotional deals). In addition, the Big Four PCWs offer their partners (either under payment of a fee or as part of their service bundle) various material to scan the market, for example [MarketIQ by MoneySuperMarket, MiMi by CTM and Data Insight Plus by Confused (See URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7).

⁷¹⁹ This is based on the responses of 13 of the 20 providers the CMA contacted who were asked this question (see footnote 716 for full list of responses). Of these 13, three [[HIP], [HIP] and [HIP]] explained that their price monitoring only focuses on market-wide retail prices (rather than tracking prices of individual providers) to compare their relative pricing position versus the market. By contrast, promotional deals are tracked at provider level (i.e. specifically in relation to those providers that offer the promotional deals). See URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9; URN 6174, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6323.1 [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16; URN 6178.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 10; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 13; URN 6148 [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6169 [HIP]' response to section 26 notice dated 16 April 2018, question 8; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 3.

⁷²⁰ As regards brokers, by adjusting their commission fee.

⁷²¹ In particular, 15 out of 20 providers which have been asked this question during the investigation. URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6232.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9; URN 6174, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6178.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6143, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6169, [HIP]' response to section 26 notice dated 16 April 2018, question 8; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 10; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 13; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 3; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3; URN 9548, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 5315.46, [HIP]'s response to section 26 notice dated 24 November 2017, email chain with CTM entitled 'RE: [Employee 2, CTM] ctm call next week'; URN 5197A, [HIP]' response to section 26 notice dated 24 November 2017, questions 7 and 14; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 7. URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 3; URN 9666, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

‘top of screen’ performance. For example, [HIP] explained that it invested resource in monitoring prices, testing and adjusting its pricing across PCWs as PCWs were its largest distribution channel. To compete against the larger well-known brands it considered that it needed to offer the cheapest price in order to feature at the top of each PCW’s results page.⁷²²

7.D.II. Pricing strategies of home insurance providers

7.125 The CMA’s analysis of providers’ strategies shows that providers accounting for the majority of sales through PCWs (approximately 65% in 2017⁷²³) used differential pricing during the Relevant Period whether on base retail prices and/or through the use of promotional deals. It also shows that more providers have done so after the Relevant Period. This was in spite of the existence of a number of factors discussed at paragraphs 7.152 to 7.157 below which disincentivise differential pricing by insurance providers, in particular narrow MFNs and CTM’s wide MFNs.

7.126 In the following subsections, the CMA describes in more detail the pricing strategies of the providers contacted by the CMA during the Investigation. In particular, the CMA has assessed whether such insurance providers generally (i) quoted different base retail prices on the Big Four PCWs to reflect differences in commission fees or other factors; and/or (ii) used promotional deals. Annex L describes in more detail the pricing strategies of providers subject to wide MFNs that were contacted during the course of the Investigation. As part of this it addresses BGL’s representations specific to each such providers’ strategies.

7.D.II.(a). Providers’ base pricing strategies

7.127 As set out in the DCTs Market Study, providers calculate the lifetime values (LTV) of the consumers they acquire where the LTV of a consumer reflects the revenues and costs associated with a consumer for the duration of the provider’s relationship with that consumer.⁷²⁴ Providers use these LTVs to determine their base retail prices to maximise their profits over the lifetime of the consumer relationship. As described in Section 5, this typically involves

⁷²² URN 9729, Transcript of interview with [Senior Executive, HIP], [Employee, HIP] and [Employee, HIP] held on 17 July 2019, page 32 lines 4 to 8. See also for example URN 6169, [HIP]’ response to section 26 notice dated 16 April 2018, question 8; URN 6325.1, [HIP]’s response to section 26 notice dated 16 April 2018, question 16; URN 6404, [HIP]’s response to section 26 notice dated 16 April 2018, question 7.

⁷²³ The CMA has used figures from 2017 when discussing providers’ shares of sales for PCW, to allow comparability between figures.

⁷²⁴ The [DCTs Market Study](#), September 2017, Final Report, Paper E, Appendix 3, paragraphs 16-18.

providers selling new business policies at a loss to remain competitive to acquire new customers, with subsequent increases in retail prices at renewal to recoup the costs of acquiring new business.⁷²⁵

- 7.128 A provider's LTVs can vary for each PCW.⁷²⁶ In particular, a provider's assessment of the LTV of a consumer it acquires through a PCW is based on historic data on consumers acquired through that PCW on, for example, claims costs, customer retention rates, customer mix, average price of policies and acquisition costs. This information is used to calculate the expected revenue and cost of insuring a typical consumer acquired through that PCW.
- 7.129 A relevant part of this LTV calculation is the commission fee charged by PCWs. As set out in Section 2 at paragraph 2.50, commission fees are subject to annual negotiations which can take many months to complete each year, as confirmed by BGL.⁷²⁷ The negotiations are typically initiated by the PCW and, as shown in Figure 5.7, have typically resulted in the Big Four PCWs increasing their commission fees year on year.⁷²⁸
- 7.130 The CMA finds that PCWs' commission fees are a relevant factor in setting a provider's base retail prices.⁷²⁹ Of the 21 home insurance providers asked by

⁷²⁵ See paragraphs 5.110 to 5.114.

⁷²⁶ URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 5; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, questions 6; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 9; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 5197A, [HIP]'s response to section 26 notice dated 24 November 2017, question 9; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6590.1, Note of CMA call with [HIP] dated 26 April 2018, paragraph 6.

⁷²⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 102.

⁷²⁸ See among others URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 10. URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 7. URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 7.

⁷²⁹ This is based on evidence from 21 home insurance providers accounting for 74% of PCW sales in 2017. See URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 5; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 9; URN 5157, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5455, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4; URN 5256B, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; [REDACTED]; URN 6215, [HIP]'s response to the section 26 notice dated 16 April 2018, question 4; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5197A, [HIP]'s response to section 26 notice dated 24 November 2017, question 9; URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 9, paragraphs 48 and 49; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 8 and 9; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 9; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, questions 8 and 9; URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

the CMA about the impact of commission fees on their pricing, 16 said that these fees had at least some impact on how they set prices. For example:

- (a) [HIP] said that *'Cost of acquisition is a major factor in the profitability of the [HIP] business model' and 'commissions for acquiring new home customers on the PCW channel accounts for an average of [X] of the total premium. If a customer is expected to stay for only a year, they will typically see a higher price than one expected to stay for longer'*.⁷³⁰
- (b) [HIP] said that: *'Ultimately cost per acquisition (CPA) forms part of [HIP] Direct's overall acquisition cost and expense base, which is funded by the gross premium paid by our customers'*.⁷³¹
- (c) [HIP] said that *'As a result, any increase in expenses (including aggregator commissions) will feed directly into annual price increases, after allowing for any changes in claims loss ratios.'*⁷³²
- (d) [HIP] said that *'[X]. Increases to Commission feed directly into this calculation and so will generally be passed on to customers'*.⁷³³

7.131 Consistent with this, the evidence from a majority of providers^{734, 735} also shows that changes in commission fees impact on the base retail prices

⁷³⁰ URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 7.

⁷³¹ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5

⁷³² URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

⁷³³ URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 9;

⁷³⁴ See URN 5157, [HIP]' response to section 26 notice dated 24 November 2017, question 5; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4; 5256B, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 9, paragraphs 48 and 49; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 9; URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, questions 8 and 9. In addition, one home insurance provider said that changes in commission may be passed depending on trading conditions, see URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 6, paragraph 6.1.

⁷³⁵ As discussed above, depending on the provider's strategy this base retail price can be the same across PCWs or different between PCWs. One home insurance provider ([HIP]) told the CMA that these various factors are updated in its pricing models alongside the commission fees charged by PCWs. As this may not happen for some time after the PCW commission fees have been agreed, any increase in commission charged by PCWs on the provider's retail prices will only take effect sometime after it has been agreed with the PCW. URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 7.

quoted on PCWs.^{736,737} Providers will generally seek to pass through to retail prices at least part of any increase in commission fees. For example, [HIP] told the CMA that *'The PCW acquisition costs [commission fees] are an expense input and where acquisition costs have changed through negotiation with a PCW, this directly feeds into the profitability modelling that is performed on the product(s) impacted. [...] This may result in a change to customer prices if the change has materially impacted [HIP]'s [profitability] requirements.'*⁷³⁸

7.132 In addition, as described in paragraph 7.141 below, four providers ([HIP]⁷³⁹, [HIP], [HIP] and [HIP]) accounting for approximately 24% of PCW sales in 2017 took into account differences in commission fee levels between PCWs in determining the prices quoted on each PCW. Moreover, as discussed in paragraph 7.149 below, two other providers ([HIP], [HIP]) accounting for approximately 8% of PCW sales in 2017 told the CMA that, after the Relevant Period, they updated their pricing models so that differences across PCWs (including differences in commission fees) can be reflected in the retail prices they quote.⁷⁴⁰ For example, [HIP] confirmed that it has explored different options to price differentiate across PCWs after the Relevant Period and has updated its pricing models to enable it to adjust retail prices to reflect PCW-specific commission fees.⁷⁴¹

7.133 Such pass-through may not however always be PCW-specific to reflect actual differences between PCWs in commission fees or commission fee increases by a particular PCW at a given point in time. In particular, as set out below at paragraph 7.151, many providers generally set the same base retail prices across PCWs. Therefore, differences in commission fees

⁷³⁶ In contrast, seven providers specifically stated that during the Relevant Period changes in commissions have not been passed on to retail prices and another ([HIP]) suggested that it has to absorb commission fee increases. See URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 9; [REDACTED]; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 4; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 5197A, [HIP]' response to section 26 notice dated 24 November 2017, question 9; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 8 and 9; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 5; URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

⁷³⁷ One home insurance provider ([HIP]) told the CMA that, as the various PCW-specific factors that affect LTVs are updated in its pricing models alongside the commission fees charged by PCWs and because this may not happen for some time after the PCW commission fees have been agreed, any increase in commission charged by PCWs on the provider's retail prices will only take effect sometime after it has been agreed with the PCW. URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 7.

⁷³⁸ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 9, paragraphs 48 and 49.

⁷³⁹ See footnote 748.

⁷⁴⁰ URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4; URN 9548, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

⁷⁴¹ URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4. [HIP] told the CMA that it could consider setting 'different prices if there was a difference in the cost of supply or a difference in the data capture across PCWs' as 'there is no policy of setting the same prices'. URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 11.

between individual PCWs would not be reflected in such providers' base retail prices on each individual PCW. The provider in such circumstances will generally reflect any increase in commission fees by one or more PCWs as an average across all prices quoted by the provider across all PCWs.⁷⁴² Therefore, in respect of those providers, an increase in commission fees by one PCW will not lead to a price disadvantage for that PCW relative to its rivals.

- 7.134 Other factors may also lead a provider not to fully reflect a commission fee increase by an individual PCW in its retail prices quoted on that PCW (or indeed on other PCWs), with the provider electing to absorb all or part of the increase. For example, a provider may not be able to maintain its competitive position relative to other providers if it passes through in full or in part an increase in commission fee by a PCW.⁷⁴³
- 7.135 BGL submitted that there is little or no relationship between retail prices and commission fees paid to PCWs. According to BGL, retail prices in insurance depend on the evaluation of risk, claims record, and other considerations, rather than commission fees.⁷⁴⁴ The CMA acknowledges that the base retail prices providers quote on PCWs is determined by various factors, including those cited by BGL. However, the evidence from providers described above in paragraphs 7.130 to 7.131 confirms that commission fees are a relevant factor when providers set the retail price they quote on PCWs.
- 7.136 BGL also submitted that there is no evidence of providers passing through into their retail prices differences in commission fee levels between PCWs.⁷⁴⁵ The CMA disagrees. As detailed below at paragraphs 7.141 to 7.149, a number of providers do take into account differences in commission fee levels when setting prices on different PCWs and several more have updated their pricing models after the Relevant Period to allow this.⁷⁴⁶

⁷⁴² For example, [HIP], which generally priced uniformly between PCWs (and between PCWs and its direct channel) explained that '*operating under wide MFNs has meant that variability in commission by PCW has not been accounted for at the channel level, but at the product portfolio level. Principally if [HIP] wanted to reflect unique changes in CPA by passing them straight through to Leads Generated by each PCW, then [HIP] would need the ability to vary customer premiums on a like-for-like basis. This is something which has been impossible under wide MFNs*'. URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

⁷⁴³ For example, [HIP] told the CMA that in a highly competitive UK home insurance market, it is unable to pass on cost increases (including commission fee increases) by way of price increases '*without adversely affecting other factors such as customer satisfaction, customer retention and new business volumes*'. URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 8 and 9.

⁷⁴⁴ URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, paragraphs 62 to 63 and 81.

⁷⁴⁵ URN 10459, BGL's Response to the First LoF and DPS dated 14 February 2020, section 3.2.7.

⁷⁴⁶ In some cases providers who would otherwise have passed through differences in commission fee levels to retail prices are likely to have been prevented from doing so by CTM's wide MFNs. For example as discussed in Section 8.B.II.(b), [HIP] put a proposed price increase on CTM to reflect an increase in CTM's commission fees on hold because of CTM's wide MFN, and as discussed in Section 8.B.III.(b).(iii). and Annex M [HIP] temporarily

- 7.137 Moreover, as part of a promotional deal, providers often pay a lower commission fee to the relevant PCW and in turn reduce the retail prices they quote on that PCW (see paragraph 7.56(c)). The CMA's assessment of the importance of promotional deals in providers' competitive pricing strategies is considered in detail in Section 7.D.II.(b). below.
- 7.138 However, the CMA accepts that, while most providers did pass through changes in commission fees to base retail prices as set out at paragraph 7.133 above, most providers did not in the Relevant Period engage in PCW-specific pass-through to base retail prices of differences in commission fee levels (or indeed performance) between PCWs. This was because many providers preferred, or were required, to set uniform base prices for the reasons described below at paragraphs 7.152 to 7.157. Such reasons included CTM's wide MFNs, as described in detail in Section 9.
- 7.139 In the following subsections, the CMA has assessed in more detail home insurance providers' pricing strategies, in particular whether they differentiate their base retail prices across PCWs, or adopted uniform base retail pricing, whereby the same prices are quoted across all PCWs. The CMA also assesses the factors driving these strategies.

7.D.II.(a).(i). Differential base retail pricing

- 7.140 As discussed above at paragraph 7.128, some of the factors that are considered by home insurance providers in setting prices can differ between PCWs. This, coupled with the importance of price and rankings, creates incentives for providers to differentiate their base retail prices across PCWs in order to reflect these differences.
- 7.141 The CMA finds that seven home insurance providers ([HIP], [HIP] (until early 2016), [HIP], [HIP], [HIP], [HIP] and [HIP] (until April 2017)) (accounting for nearly 30% [29%] of PCW sales in 2017) engaged in differential base retail pricing in the Relevant Period. Four of these providers ([HIP], [HIP], [HIP] and [HIP]) specifically took into account differences in commission fee levels

increased its prices by £[X] on CTM to reflect CTM's higher commission fees following the PMI Order 2015, but removed this when informed by CTM that CTM's position was that the prohibition on wide MFNs in the PMI Order 2015 did not extend to home insurance and the increase was therefore in breach of CTM's wide MFN.

between PCWs when quoting retail prices on PCWs.^{747, 748} While most of these providers ([HIP], [HIP], [HIP], [HIP], [HIP] and [HIP]) were subject to CTM's wide MFNs, they either operated their differential base retail pricing strategies in a way that was compliant with the wide MFN (i.e. by ensuring that they always priced lowest on CTM) or faced enforcement action by CTM, as detailed in Section 8.⁷⁴⁹ The CMA sets out examples of these pricing strategies below.

- 7.142 [HIP] (accounting for [REDACTED]% [10-20%] of sales made through PCWs in 2017) adopted a differential base retail pricing strategy from early 2015 onwards.⁷⁵⁰ This strategy aimed to achieve a differential of up to [0-5%] [REDACTED]% between PCWs.⁷⁵¹ [HIP] explained that its pricing model '*tak[es] into account the profitability targets for each channel, informed by [HIP]'s annual business plan and the need for direct cost and claims costs to be covered by the premium.*', where direct costs include costs of acquisition, including commission fees.⁷⁵²
- 7.143 [HIP] also explained that whilst it was alert to and abided by the terms of CTM's wide MFN, this generally did not conflict with its differential pricing strategy as '*CTM have naturally been the lowest priced due to its own performance and [HIP] has achieved top line profitability each year*'.⁷⁵³ However, on at least on one occasion, in early 2017 when [HIP]'s desired pricing strategy conflicted with CTM's wide MFN, this led [HIP] to consider

⁷⁴⁷ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, questions 5 and 15; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 19, paragraph 90; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9, paragraph 22; URN 5184B; [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 8; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 4 and 15; URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.a.ii.

⁷⁴⁸ One of these providers [HIP] changed its approach during the Relevant Period such that it did not use the identity of the PCW as a rating factor, but still used differential pricing based on commission fees (although the differences between PCWs are now less than [REDACTED]). [HIP] told the CMA that it has reduced the level of differential pricing due to the high level of cost associated with that strategy when compared to the limited differences in commission fees. See URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 4 and URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 9. Notwithstanding this, as discussed below, [HIP] has also pursued a differential pricing strategy by way of promotional deals.

⁷⁴⁹ See Section 8.B.III

⁷⁵⁰ URN 5315.30, [HIP]'s response to section 26 notice dated 24 November 2017, question 19, Annex 11A.

⁷⁵¹ The difference between the pricing on PCWs and the direct channel is due to the fact that '*[HIP] takes a completely different rating approach between its direct channel and aggregator channels because they consist of two completely different journeys. [REDACTED] As such, a cost per enquiry must be paid to the partner that provides this additional data; this journey is completely different to that of the PCW journey where, due to the number of quotes provided on PCWs, it would not be feasible to collect this additional data*' See [REDACTED].

⁷⁵² URN 5315, [HIP]'s response to the section 26 notice dated 24 November 2017, question 4.

⁷⁵³ URN 6626, note of CMA meeting with [HIP] [REDACTED].

putting a proposed price increase on CTM on hold in order to '*adhere to the clause [CTM's wide MFN]*'.⁷⁵⁴

- 7.144 [HIP] (accounting for [X]% [5-10%] of sales made through PCWs in 2017) also adopted a differential pricing strategy, differentiating its prices '*per product and per distribution channel, in line with the dynamics of each channel to [X]*'.⁷⁵⁵ Its base retail prices '*[X]*'.⁷⁵⁶
- 7.145 In addition, [HIP] told the CMA that it performs frequent price tests on PCWs consisting of temporary price variations between PCWs to test consumer behaviour in response to price differences on each PCW. These price tests allow [HIP] to understand if it has been too cheap or too expensive on any PCW, together with the impact of particular prices on its ranking on each PCW's search results pages, and to vary its prices accordingly.⁷⁵⁷ As detailed in Section 8.B.III, CTM monitored [HIP]'s compliance with its wide MFN during the Relevant Period and took steps to enforce the clause when it observed lower prices in rival PCWs.⁷⁵⁸
- 7.146 [HIP] , an insurance broker,⁷⁵⁹ implemented a differential pricing strategy since 2007.^{760,761} [HIP] explained that its strategy consists of increasing or decreasing its '*commission*' (i.e. its broker margin) on particular premiums/risks in order to remain competitive on prices, and that '*If our rates are not competitive against other HIP[home insurance provider] [X] to see if we can get any further discounts off [X] so we can pass onto the customers.*'⁷⁶² As detailed in Section 8.B.III., CTM monitored [HIP] 's compliance with its wide MFN during the Relevant Period and took steps to enforce the clause when it observed lower prices on rival PCWs, in particular on GoCompare.⁷⁶³

⁷⁵⁴ URN 5720, [HIP]'s response to section 26 notice dated 24 November 2017, internal email chain entitled 'RE Trading agenda and pack - week 6' dated 14 February 2017.

⁷⁵⁵ [X]. See URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 8.

⁷⁵⁶ URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 7.

⁷⁵⁷ [HIP] explained that it is able to perform this price test because its advance pricing capability on the PCW channel '[X]'. See URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 11; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 5. As set out in Annex L, whilst undertaking these price tests, [HIP] ensured that the test prices were within CTM's compliance tolerance thresholds (see Section 8.A.II.(d)).

⁷⁵⁸ See Section 8.B.III.(b).(v).

⁷⁵⁹ Section 2.C.II describes the difference between insurance brokers and other insurance providers.

⁷⁶⁰ URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, questions 13 and 15.

⁷⁶¹ URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 13.

⁷⁶² URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3.

⁷⁶³ See Section 8.B.III.(b).(ii).

- 7.147 [HIP] (narrow MFN) and [HIP] both made changes to their pricing strategies in the Relevant Period. [HIP] historically differentiated prices across PCWs based on a range of factors related to expected profitability of customers acquired from each PCW. However, in early 2016, [HIP] switched to a uniform base pricing strategy as it found that its differential pricing strategy had high running costs.⁷⁶⁴ [HIP] switched from differential base retail pricing to a uniform base pricing strategy in April 2017 to *'adopt a more consistent approach across PCWs and removed the differences in premiums between PCWs in its pricing'*.^{765,766}
- 7.148 [HIP] told the CMA that *'Outside of any promotional deals, [HIP]'s pricing will generally be the same across PCWs'*.⁷⁶⁷ However, [HIP] agreed a different commercial model with [X] in [X], where it [X]. This resulted in *'cheaper prices for a cross section of consumers'*.⁷⁶⁸
- 7.149 In addition, several providers whose strategy was primarily to price uniformly on base retail prices across PCWs have also considered and/or invested in systems to enable differential pricing between PCWs in the future. In particular, two providers ([HIP] and [HIP]) (covering approximately [X]% of sales made through PCWs in 2017) told the CMA that, after the Relevant Period, they have updated their pricing models so that differences across PCWs (including differences in commission fees) can be reflected in the retail prices they quote.⁷⁶⁹ Further, another provider ([HIP]) told the CMA that it now has the ability to factor into its pricing both acquisition costs and the LTV of the consumers each PCW attracts, where they differ by PCW. However, it has chosen not to do so to date due to the presence of narrow MFNs and its desire not to price its direct business more expensively than its PCW business.⁷⁷⁰
- 7.150 BGL submitted that the evidence shows that no home insurance provider has told the CMA that *'it had, or had ever had, any desire or intention to quote different retail base prices across different PCWs'*.⁷⁷¹ However, as detailed in the preceding paragraphs, the CMA has found that several

⁷⁶⁴ URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

⁷⁶⁵ URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

⁷⁶⁶ As set out in Section 8.B.II.(a), [HIP] does not appear in the monthly reports prepared by CTM for its internal monthly price parity meetings, monitoring the pricing behaviour of the providers ('CTM snapshots') (the process used by CTM to monitor levels of 'price parity' by home insurance providers and record proposed actions to be taken) during the period it adopted a differential pricing strategy and therefore the CMA infers that [HIP] was compliant with the wide MFN, either by pricing within CTM's tolerances or because its policy of differential pricing did not involve setting higher prices on CTM.

⁷⁶⁷ URN 6642, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 1.

⁷⁶⁸ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.a.i.

⁷⁶⁹ URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4; URN 9548, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

⁷⁷⁰ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 3.

⁷⁷¹ URN 8484.5, BGL's response to the SO dated 22 February 2020, paragraph 200.

providers did quote differential base prices across different PCWs during the Relevant Period, and others have considered and/or invested in systems to enable differential pricing between PCWs in the future.

7.D.II.(a).(ii). Uniform base retail pricing

7.151 Many providers adopted a strategy of generally setting the same base retail prices across the Big Four PCWs (and, in some cases, also across their direct channels) during the Relevant Period ([HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP]).⁷⁷²

7.152 There are a number of factors which incentivise providers to set uniform base retail prices across PCWs. Home insurance providers who were subject to CTM's wide MFN were contractually prevented from freely differentiating their prices across PCWs.⁷⁷³ As set out in Section 8.B.III, the effect of the contractual provisions was reinforced by CTM monitoring providers' pricing on other PCWs, questioning providers prices and enforcing its wide MFNs when necessary. Two large established providers confirmed that compliance with CTM's wide MFN was an important factor informing their uniform base retail pricing strategies:

- (a) [HIP] (accounting for [X] [0-5%] of sales made through PCWs in 2017) had a general strategy to quote the same base retail price across the Big Four PCWs in the Relevant Period. [HIP] told the CMA that in setting its PCW pricing strategy it was mindful of the impact on sales of any pricing strategy on its direct channel but also its legal obligations

⁷⁷² Of those asked, sixteen home insurance providers told the CMA that their strategy was to set the same base retail price across PCWs (i.e. outside of promotional deals), although one more home insurance provider [[HIP]] stopped using differential pricing across PCWs in April 2017 (see paragraph 3.7.47 above). See URN 1433, [HIP]'s response to a request for information in the DCTs Market Study dated 17 May 2017, question 2; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5157, [HIP]' response to section 26 notice dated 24 November 2017, question 5; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, questions 5 and 18; URN 1443, [HIP]'s response to a request for information in the DCTs Market Study dated 9 June 2017, question 1b; [X]; URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(b), paragraph 7.2 and 7.3(a); URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 21; [X]; URN 6169, [HIP]' response to section 26 notice dated 16 April 2017, question 7; [X]; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4, 6 and 19; URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, questions 5, 15 and 18; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 5365, [HIP] response to section 26 notice dated 24 November 2017, question 20; URN 9825, [HIP]' response to section 26 notice dated 26 July 2019, question 1; URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 3; URN 9659, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9174, [HIP]'s response to section 26 notice dated 19 June 2019, questions 2 and 3].

⁷⁷³ While providers subject to wide MFNs could still use differential base retail pricing if they ensured that CTM always received the lowest price, this restriction reduced the benefits of differential base retail pricing and thereby incentivised uniform base retail pricing.

under its wide MFN with CTM. It explained that CTM's wide MFN was *'ingrained in [HIP]'s pricing principles'*⁷⁷⁴ and *'as a consequence of MFN clauses we incorporate an allowance for each customer that is equal across all PCWs and direct pricing'*.⁷⁷⁵ Section 8, paragraphs 8.97 to 8.99, explains in more detail the impact of CTM's wide MFN on [HIP]'s pricing strategy in the Relevant Period.

- (b) [HIP] (accounting for [X] [0-5%] of sales made through PCWs in 2017) also had a pricing strategy to quote the same base retail price across all PCWs. [HIP] told the CMA that it set its pricing strategy to ensure compliance with CTM's wide MFN.⁷⁷⁶ [HIP] explained that it managed its home insurance PCW book at a portfolio level (rather than an individual PCW level) *'in part due to'* its wide MFN with CTM.⁷⁷⁷ [HIP] explained that CTM's wide MFN has meant that *'pricing could not be lower for any other PCW which restricted [HIP]'s ability to provide any kind of offer that allowed the option to pass through savings onto customers'*.⁷⁷⁸ Therefore, its pricing model used a *'predicted PCW factor that allows [HIP] to price to consistent levels across the PCWs'*.⁷⁷⁹

7.153 Other factors incentivising uniform base retail pricing apply to both home insurance providers with wide MFNs and those with only narrow MFNs in their contracts with CTM.

7.154 Because narrow MFNs are a standard contractual obligation used by all of the Big Four PCWs, providers consider the potential impact of their PCW pricing strategies on sales made through their online direct channels.⁷⁸⁰ In

⁷⁷⁴ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 17.

⁷⁷⁵ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5. See also URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8b) (i). URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, questions 2 and 3.

⁷⁷⁶ [HIP] stated that *'due to the presence of Wide MFN in the Comparethemarket clause, the home insurance premium has not been varied at any time (up until early 2018)'*. (URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, questions 9 and 11) and *'as a result [of CTM's wide MFN], [HIP]'s current pricing model does not differentiate between PCWs'*. [HIP] confirmed that it was constrained in its ability to price home insurance products independently which was *'in stark contrast to its ability'* to do so in PMI post the PMI Order 2015. See URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 19; URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, page 3, paragraph 16.

⁷⁷⁷ This means that [HIP]'s policy in managing its insurance book was not to take into account the specific characteristics including performance of each PCW (e.g. claims rate, risk level, LTV) in setting retail prices on PCWs. See URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4. URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 11(c); URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, page 3, paragraph 16; URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 8.

⁷⁷⁸ URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 19.

⁷⁷⁹ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16. URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4a).

⁷⁸⁰ URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 5; URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, questions and 9; URN 6157, [HIP]'s response to

particular, to protect sales made through its online direct channel, a provider may not want to engage in a pricing strategy that involves offering consumers a lower price on one or more PCW than it offers on its online direct channel.⁷⁸¹ This means that, as a result of the narrow MFNs, some providers may have a disincentive to engage in differential pricing on PCWs because differential pricing would mean that the retail price on at least one PCW would be lower than the retail price quoted on the direct channel. Since the retail prices on the PCWs could not be higher than the retail price on the direct channel, the only way in which to engage in differential pricing as between the PCWs would be to lower the price on one or more of the PCWs.

7.155 For example, [HIP] said that:

*'Where wide MFNs or narrow MFNs are in place [HIP] no longer has the ability to price direct to website business more cheaply or on better terms than it is able to on PCWs. As a consequence, and not to disadvantage direct to website customers, we currently provide the same premium across all on line channels.'*⁷⁸²

7.156 The pricing strategies adopted by a provider also depend on its technical capability as implementing a pricing strategy that differentiates base retail prices between PCWs requires additional investment, including specific pricing software. For example, several providers ([HIP], [HIP] and [HIP]) told the CMA that, in order to implement differential pricing features in their pricing models, they had to make investments in their pricing technology, including migrating to a new IT platform.^{783, 784}

section 26 notice dated 16 April 2018, question 6; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 6; URN 6152, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; [REDACTED]; URN_9858, [HIP]'s response to the Update Paper in the DCTs Market Study dated 24 April 2017, paragraph 20, questions 11, 12 and 13; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, question 8; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6590.1, Note of CMA call with [HIP] dated 26 April 2018, paragraph 6. (See also Section 6).

⁷⁸¹ For example, the [HIP] explained that it would hesitate to differentially price if this would mean disadvantaging customers on its direct channel. URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 15.

⁷⁸² URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 15.

⁷⁸³ For example, [HIP] told the CMA that, [REDACTED]. URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 5. URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 10, paragraph 62. URN 5455, [HIP]'s response to section 26 notice dated 24 November 2017, questions 4 and 19.

⁷⁸⁴ In addition, [HIP] explained that it was willing to invest in additional resource to differentiate its prices across PCWs because of the importance to its business of the PCW channel and the need to feature in the top of PCWs' results page to compete against the larger well-known providers. The costs involved in developing and maintaining the capability to use differential pricing is also shown by the fact that, as discussed above at paragraph 3.7.147, [HIP] reduced the level of differential pricing in its pricing model due to the costs of maintaining it. URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 11.

7.157 Differences in the level of commission fees between the Big Four PCWs during the Relevant Period were not regarded by many providers as sufficiently large to justify changing pricing strategies and making these investments.⁷⁸⁵ For example, [HIP] explained that while there was not a significant benefit to reflecting differences in commission fees in its pricing in the Relevant Period, this could change if there were large differences in commission fees between PCWs.⁷⁸⁶

7.D.II.(b). Differential pricing by way of promotional deals

7.158 Besides deciding whether to quote uniform or differentiated base retail prices across PCWs, home insurance providers' strategies include a further element, that is whether to agree a temporary reduction on their base retail prices on a particular PCW through a promotional deal (for a description of promotional deals, see paragraph 7.56(c) above).

7.159 The CMA finds that during and since the Relevant Period promotional deals were used by many providers. A total of 21 providers accounting for approximately 80% of sales through PCWs in 2017 agreed a total of 68 deals during and after the Relevant Period (up to June 2019).⁷⁸⁷ The CMA finds that, consistent with this, many of the providers who were asked about their approach to promotional deals (accounting for over 50% [51%] of sales made through PCWs in 2017) were willing to consider these deals on a case-by-case basis in the Relevant Period as described in paragraph 7.171 below.

7.160 Table 7.4 below summarises the number of promotional deals agreed during and after the Relevant Period by provider.

Table 7.4: The number of promotional deals agreed by providers from January 2016 to June 2019

Total number of promotional deals agreed	
Home insurance providers subject to wide MFNs	
[HIP]	1
[HIP]	2
[HIP]	2
[HIP]	2
[HIP]	1
[HIP]	2
[HIP]	1

⁷⁸⁵ The CMA considers the effect of CTM's wide MFNs on reducing the competitive pressure faced by CTM and its rivals when setting commission fees in Section 9.

⁷⁸⁶ URN 6423.1, note of CMA call with [HIP] dated 25 April 2018, paragraph 8.

⁷⁸⁷ These figures are based on data provided by PCWs and providers which the CMA has used to identify promotional deals which were agreed and implemented in the period January 2016 to June 2019, as set out in Annex J.

[HIP]	2
[HIP]	1
All providers with wide MFNS	14

Home insurance providers without wide MFNs

[HIP]	5
[HIP]	12
[HIP]	1
[HIP] ⁷⁸⁸	1
[HIP]	12
[HIP]	2
[HIP]	1
[HIP]	1
[HIP]	6
[HIP]	2
[HIP]	2
[HIP]	9
All providers without wide MFNs	54
Total	68

Source: CMA analysis of the Promotional Deals Dataset (see Annex J), URN 9711, [HIP]'s response to section 26 notice dated 26 July 2019; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 12(b), URN 9615, MoneySuperMarket's response to follow up questions to section 26 notice dated 31 May and 25 June 2019, document entitled 'Copy of Appendix 3 MSM ATL Campaigns.xlsx'; URN 9859 MoneySuperMarket's response to follow-up questions to section 26 notice dated 8 November 2019; URN 6159, [HIP]'s response to section 26 notice dated 16 April 2018, question 8, document entitled 'CMA return slide pack Appendix 2', slides 9 to 18.

7.161 BGL made a number of representations on the incentives of providers to engage in promotional deals. These are considered in Annex K.

7.D.II.(b).(i). Negotiation of promotional deals

7.162 When negotiating promotional deals, PCWs and home insurance providers take into account various factors.

7.163 As described in paragraphs 7.67 and 7.87 above, both MoneySuperMarket and Confused undertook financial analysis to assess the expected profitability of a deal and therefore only contacted a targeted provider for a proposed deal if they considered the deal was likely to be profitable. In addition, as described in paragraphs 7.67 to 7.69, MoneySuperMarket will generally only approach providers who have [X], with which MoneySuperMarket has a [X] and who are ranked in the top positions on MoneySuperMarket.

7.164 Therefore, PCWs target only a subset of providers on their panel with promotional deal offers. This means that some providers will only have

⁷⁸⁸ While [HIP] had a wide MFN in its contract with CTM, it [X] and its promotional deal took place after this.

limited if any opportunities to engage in such deals which is reflected in the evidence from providers set out below.⁷⁸⁹

- 7.165 Further, for a promotional deal to go ahead, the insurance provider's financial assessment of the deal and commercial reasons need to align with those of the PCW. Providers may decline to agree a PCW's proposition for many reasons including⁷⁹⁰ the terms or scope of the deal⁷⁹¹, the identity of the PCW/overall relationship with the PCW⁷⁹², other promotional deals with a rival PCW⁷⁹³, the potential impact on its direct channel sales/preference to maintain uniform pricing between channels including because of narrow MFNs,⁷⁹⁴ impact on consumers' lifetime value⁷⁹⁵ and/or lack of budget to support the deal⁷⁹⁶ or other operational issues.⁷⁹⁷ In addition, the existence of CTM's wide MFN was a relevant factor for several providers.⁷⁹⁸
- 7.166 For many providers, promotional deals were viewed as tactical or opportunistic, i.e. as a tool to be used occasionally when the circumstances are right, rather than a core part of their pricing strategies. In part this reflected the fact that PCWs rather than providers generally initiated such deals in the Relevant Period. As described above, PCWs would target a

⁷⁸⁹ The CMA notes that the selection criteria noted above mean that the providers with the most opportunities to engage in promotional deals are likely to be those with the most relevance to consumers, ie those with the most competitive pricing.

⁷⁹⁰ URN 9813, Confused's internal email chain provided in response to follow-up questions to section 26 notice dated 25 June 2019, entitled 'RE: Confused.com Second Line'. URN 9812, Confused's internal email chain provided in response to follow-up questions to section 26 notice dated 25 June 2019, entitled 'Possible Partner Offers'; URN 9810 Confused's internal email provided in response to follow-up questions to section 26 notice dated 25 June 2019, entitled 'Potential Discounts'; URN 9811 Confused's internal email chain provided in response to follow-up questions to section 26 notice dated 25 June 2019, entitled 'RE Discounting using Exhaustive search'; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 21.

⁷⁹¹ For example, [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], and [HIP] declined promotional deals because for example the customer group targeted, the level of reduction, the impact on lifetime value of the customer and/or the level of co-funding. URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, question 13; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 13. URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 7; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, question 16; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 14; URN 9256.58 to URN 9256.60, [HIP]'s response to section 26 notice dated 19 June 2019, question 4.

⁷⁹² For example, [HIP] and [HIP]. URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, question 7. URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 14.

⁷⁹³ For example, [HIP]; see URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 21.

⁷⁹⁴ For example, [HIP] and [HIP]. URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 3.

⁷⁹⁵ For example, [HIP], [HIP], [HIP]. URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 14.

⁷⁹⁶ For example, [HIP], [HIP] and [HIP]'s; see URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 21.

⁷⁹⁷ Including re-platforming and call centre issues. URN 6626, Note of CMA meeting with [HIP] [X]; URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 14.

⁷⁹⁸ See Sections 8.B.II-8.B.III.

limited number of providers, mainly those that regularly featured in the top few positions in their rankings, for such promotional deals. As [HIP] explained, *'promotional deals very much depended on the appetite of both parties at a particular moment in time, although conversations are always ongoing in the background'*, *'promotional deals have been used as a tactical tool by [HIP]'* and *'there is always an element of uncertainty with how a promotional deal will perform'*.⁷⁹⁹

7.167 As described in paragraph 7.173 below, several providers trialled promotional deals in the Relevant Period, reflecting in particular MoneySuperMarket and Confused's strategies of focusing on promotional deals. In addition, rejecting one promotional deal offer did not mean the provider in question would not consider a deal again in the future if it was able to enter one. For example, after CTM had enforced its wide MFN against [HIP] for entering into a promotional deal with [X], as described in Section 8.B.III.(b).(i), [HIP] rejected a further deal with [X] due to CTM's wide MFN. However, it explained to [X] that this *'doesn't mean we wouldn't review the idea again in the future.'*⁸⁰⁰ Following CTM's decision to stop enforcing its wide MFN, [HIP] engaged in a promotional deal with [X]. Moreover, as noted below in paragraph 7.176, three providers which were not willing to agree deals in the Relevant Period agreed one or more deals after the Relevant Period.

7.168 While MoneySuperMarket told the CMA that it typically does not [X],⁸⁰¹ Confused had agreed deals [X].⁸⁰²

7.169 On the basis of the evidence set out above, the CMA finds that negotiations between PCWs and providers for promotional deals are complex and are affected by a variety of factors. In addition, the approach taken by PCWs to target only a subset of providers on their panel with offers for promotional deals, means that some providers will only have limited if any opportunities to engage in such deals. This is confirmed by the evidence from providers set out below.

7.D.II.(b).(ii). Evidence on providers' approach to promotional deals

7.170 As outlined above, the CMA has found that during and since the Relevant Period (up to June 2019), a total of 21 providers accounting for approximately 80% of sales made through PCWs in 2017 agreed a total of

⁷⁹⁹ URN 6626, note of CMA meeting with [HIP] [X].

⁸⁰⁰ [X]

⁸⁰¹ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 24.

⁸⁰² URN 9809, Confused's response to follow-up questions to section 26 notice dated 31 May 2019, questions 2 and 3.

68 deals. Of these, 10 providers accounting for almost 50% of PCW sales in 2017 agreed promotional deals during the Relevant Period. Several of these providers engaged in multiple promotional deals over time and deals lasting a long time (for instance, [HIP], [HIP], [HIP], who all had narrow MFNs).

- 7.171 Further, 10 home insurance providers ([HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP]) (out of the 24 asked to report on the importance, frequency and success of promotional deals) accounting for over 50% [REDACTED] of PCW sales, considered promotional deals on a case-by-case basis in the Relevant Period.⁸⁰³
- 7.172 These providers discussed or agreed promotional deals with PCWs during the Relevant Period, and, while some of these providers were unable to agree deals due, at least in part, to CTM's wide MFNs as described in Section 8.B.II, others agreed several promotional deals and/or agreed promotional deals in the Relevant Period that covered extended periods of time (eg 6 months or more). Such providers included both providers that quoted the same base retail prices on all PCWs and providers that engaged in differential base retail pricing.
- 7.173 Other providers have told the CMA that they were unwilling to engage in promotional deals during the Relevant Period.⁸⁰⁴ However, three of these providers, [HIP], [HIP] and [HIP], have trialled promotional deals in home insurance (in some cases, during the Relevant Period).⁸⁰⁵ [HIP], which differentiated on base retail prices but was generally unwilling to enter into

⁸⁰³ See URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, questions 7d, 11 and 12, paragraphs 7.13 to 7.16, 11.1 and 12.1; URN 5197A, [HIP]' response to section 26 notice dated 24 November 2017, questions 14 and 16; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 11, URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10 and 11, URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 14, paragraphs 72 to 74, URN 6252, [HIP]'s response section 26 notice dated 16 April 2018, questions 9 and 10; URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10 and 12.

⁸⁰⁴ See [REDACTED]; URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, questions 11 and 12; URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 11; URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4; URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, questions 12 and 13; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 13; URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10 and 11.

⁸⁰⁵ See URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, questions 11 and 12, URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, questions 12 and 13, URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 13.

promotional deals following trialling such deals, confirmed that it was nevertheless open to discussions with PCWs on promotional deals.⁸⁰⁶

- 7.174 This confirms that most providers were willing to consider promotional deals on a case by case basis even if promotional deals were not a core part of the providers' preferred pricing strategy in the Relevant Period.⁸⁰⁷
- 7.175 Some of the other providers contacted by the CMA during the investigation (accounting for less than 7% of PCW sales in 2017) told the CMA that they did not have or rarely had discussions with PCWs about promotional deals during the Relevant Period.⁸⁰⁸ This is consistent with PCWs targeting only a subset of providers on their panel with promotional deal offers (see paragraph 7.164 above).
- 7.176 The use of promotional deals by some providers has also evolved after the Relevant Period. In particular, the CMA finds that several providers (covering 21% of PCW sales in 2017) agreed their first promotional deals with PCWs in home insurance in the 19 months after CTM stopped enforcing its wide MFNs ([HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP]), including some which said that, during the Relevant Period, they were unwilling to do so ([HIP], [X]) (see Section 9), as well as some which were previously bound by CTM's wide MFNs ([HIP], [HIP], [HIP], [HIP], [HIP]).⁸⁰⁹ In addition, the CMA is aware of two additional providers who agreed promotional deals in 2020 ([HIP] and [HIP])⁸¹⁰ having not agreed any promotional deals during

⁸⁰⁶ URN 9729, Transcript of CMA interview with [Senior Executive, HIP], [Employee, HIP] and [Employee, HIP] held on 17 July 2019, page 29, lines 18 to 20; URN 9139, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.

⁸⁰⁷ Other reasons included two providers [[HIP] and [HIP]] (one subject to a wide MFN) which were unwilling to engage in promotional deals due to the restrictions imposed by MFNs on their direct channel and one provider subject to a wide MFN [HIP] was unwilling to engage in promotional deals as it only has [X]. See [X]; [X] and URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

⁸⁰⁸ See URN 5157, [HIP]'s response to section 26 notice dated 24 November 2017, questions 6b) and 9; URN 5455, [HIP]'s response to section 26 notice dated 24 November 2017, question 11; URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 9; URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 11; URN 9825, [HIP]'s response to section 26 notice dated 26 July 2019, question 2; URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 2. One provider [[HIP]] said that while it had previously discussions about promotional deals, these had never progressed beyond an explorative stage. URN 9659, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

⁸⁰⁹ URN 9825, [HIP]' response to section 26 notice dated 26 July 2019, questions 1 and 2; URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 2; URN 9659, [HIP]'s response to section 26 notice dated 26 July 2019, question 2. URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4(a); URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 1. One of these providers [[HIP]] had previously agreed a promotional deal before the Relevant Period (in May 2015) but not agreed any promotional deals during the Relevant Period.

⁸¹⁰ BGL submitted that as one of these providers ([HIP]) had not been contacted by the CMA, there is no evidence of its appetite for promotional deals, or its compliance with the wide MFN during the Relevant Period. BGL also submitted that the provider is very small and its quote only appeared in the 21st position of the results page in which its promotional deal was observed (URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 46). The CMA does not dispute these observations, but does not consider that they

the Relevant Period, one of which ([HIP]) had previously told the CMA they were unwilling to do so and both of which were previously bound by CTM's wide MFNs.⁸¹¹

7.177 Evidence from both providers and PCWs shows that promotional deals were generally successful for providers. In particular:

- (a) Seven out of eleven providers who agreed promotional deals before or during the Relevant Period and were asked by the CMA said that they considered the promotional deals to have been successful. A further provider [HIP] provided information showing that a promotional deal led to an increase in sales and revenue.⁸¹² The other three providers [HIP], [HIP] and [HIP] explained that, while the deals led to an increase in sales, this increase was not sufficient for them to pursue further promotional deals at the relevant time.⁸¹³ One of these providers [HIP] has now engaged in promotional deals it considered to be successful since the Relevant Period.
- (b) Six out of nine providers who agreed promotional deals after the Relevant Period and were asked by the CMA said that they considered promotional deals to have been successful ([HIP],⁸¹⁴ [HIP],⁸¹⁵ [HIP],⁸¹⁶

undermine the facts that i) the provider in question did not agree any promotional deals during the Relevant Period when it was bound by CTM's wide MFN and ii) it has done so since CTM stopped enforcing its wide MFN.⁸¹¹ URN 10568, screenshots of quotes and promotional deals taken by the CMA from the CTM's website on [REDACTED]; URN 10567, screenshots of quotes and promotional deals taken by the CMA from [REDACTED] website on [REDACTED]. BGL submitted that these screenshots are not robust and do not capture a true picture of overall market dynamics, and that the CMA has not assessed whether the promotional deals included in the screenshots were effective, successful or relevant to the CMA's theory of harm (URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraphs 42 to 43 and 48 to 49). The CMA does not contend that the screenshot evidence represents a comprehensive picture of overall use of promotional deals in 2020, and has not used it to this effect but rather has used it only to show that certain providers have agreed promotional deals with certain PCWs after the period covered by the CMA's Promotional Deals Dataset. Furthermore, while the CMA has not carried out an analysis of the deals included in these screenshots, it has assessed the impact of the promotional deals covered by the Promotional Deals Dataset, with the results of this analysis detailed in Section 7.E. The CMA has no reason to suspect that the results of this analysis would differ if applied to the promotional deals included in the screenshot, nor has BGL made any submissions to this effect. Therefore, the CMA does not consider that BGL's submissions undermine the CMA's use of this evidence to support its findings that promotional deals are an important aspect of competition between PCWs and providers.

⁸¹² See URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10 and 11; URN 5129, [HIP]'s response to section 26 notice dated 24 November 2017, questions 7d, 11 and 12, paragraphs 7.13 to 7.16, 11.1 and 12.1; URN 5197A, [HIP]'s response to section 26 notice dated 24 November 2017, question 15; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 20(b), paragraph 63; URN 6325.12, Annex 10 of [HIP]'s response to section 26 notice dated 16 April, question 21, pages 6 and 7; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, questions 9 and 10; URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 5299, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15.

⁸¹³ See URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, questions 11 and 12, [REDACTED]; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 14 and 15; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 13.

⁸¹⁴ URN 9207, [HIP]'s response to section 26 notice dated 26 July 2019, question 5(c).

⁸¹⁵ URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 3(g).

⁸¹⁶ URN 9142, [HIP]'s response to section 26 notice dated 19 June 2019, question 3(c).

[HIP],⁸¹⁷ [HIP]⁸¹⁸ and [HIP]⁸¹⁹), while one said the impact was unclear or at most neutral [HIP]⁸²⁰. By contrast, only two smaller providers [HIP]⁸²¹ and [HIP]⁸²² accounting for less than [%] of sales said the promotional deals they agreed were unsuccessful.

- (c) Contemporaneous evidence from MoneySuperMarket showed that promotional deals it had agreed had boosted the performance of both the relevant providers (e.g. through increased click share) and MoneySuperMarket (e.g. through additional revenue).⁸²³

7.178 The CMA therefore finds that promotional deals were an important means of competing through differential pricing that providers were generally willing to engage with. The CMA considers that this demonstrates providers' willingness to engage in differential pricing in particular when incentivised by PCWs to do so.

7.D.III. Conclusion on competition between home insurance providers on retail prices

7.179 In conclusion, the CMA finds that retail prices are a particularly important dimension of competition between providers on PCWs. This finding is supported by:

- (a) the evidence on the price sensitivity of consumers in choosing home insurance products on PCWs (see Section 7.B);
- (b) the views of home insurance providers as regards the importance of prices, rankings, and monitoring and reacting to competitors' price cuts (see Section 7.D.I.(a)); and
- (c) the pricing strategies adopted by providers (see Section 7.D.II).

⁸¹⁷ URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 1(h).

⁸¹⁸ [%].

⁸¹⁹ URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 4(b).

⁸²⁰ [%].

⁸²¹ URN 9659, [HIP]'s response to section 26 notice dated 26 July 2019, question 1(g).

⁸²² URN 9825, [HIP]' response to section 26 notice dated 26 July 2019, question 2.

⁸²³ For example, MoneySuperMarket submitted to the CMA an internal presentation discussing the impact of a promotional deal agreed with [HIP] in 2017. MoneySuperMarket reported that the deal improved various metrics including (i) [HIP]'s average daily clicks by [%], and (ii) [HIP]'s percentage of Top of Screen by [%]. MoneySuperMarket also noted that whilst [HIP]'s quote rate remained steady throughout the duration of the offer Top of Screen percentage slowly diminished, which could have been because other home insurance providers reacted to [HIP]'s deal. URN 4934.4, MoneySuperMarket's response to the section 26 notice dated 14 November 2017, document entitled 'Appendix 3 [%] ATL Offer Performance'. Also see URN 6337, MoneySuperMket's response to section 26 notice dated 27 April 2018, Appendix 1b; URN 6349, MoneySuperMarket's response to section 26 notice dated 27 April 2018, Appendix 4, question 7.

7.180 The strategies of the home insurance providers have varied over time and in response to the strength of competition from their rivals. The CMA also finds that, while some providers have a preference to price uniformly across PCWs, most insurers have engaged in differential pricing during and after the Relevant Period. This is demonstrated by:

- (a) The use of differential pricing during the Relevant Period by providers making the majority of sales through PCWs (approximately 65% in 2017), either through differential base retail pricing or through the use of promotional deals (see paragraph 7.125).
- (b) The use of promotional deals during or after the Relevant Period by 21 providers accounting for the vast majority of sales through PCWs (80% in 2017), who engaged in 68 deals between January 2016 and June 2019 (see paragraph 7.159).
- (c) Providers adopting differential pricing strategies after the Relevant Period, including providers investing in systems to allow differential base retail pricing and providers who had previously not engaged in promotional deals starting to agree such deals (see paragraphs 7.149 and 7.176).

7.E. The impact of promotional deals on retail prices and rankings

7.181 As set out in the above sections, the CMA finds that price competition is an important dimension of competition between PCWs and between providers competing on PCWs. The CMA has also found that seeking to incentivise providers to differentiate their prices across PCWs was an important strategy of two of CTM's rivals in the Relevant Period and that the majority of providers engaged in differential pricing both during and after the Relevant Period.

7.182 In order to understand further the importance of such strategies to competition between PCWs and between providers on PCWs, the CMA has analysed the impact of promotional deals on retail prices and on rankings.⁸²⁴ This analysis covered 59⁸²⁵ product-level promotional deals agreed between

⁸²⁴ The CMA has focused on promotional deals rather than other forms of differential pricing such as differential pricing on base retail prices in its analysis. This is because promotional deals a) as set out above, have been used extensively by PCWs and providers during and since the Relevant Period, and b) can have their impact assessed more clearly than other forms of differential pricing, as each deal is a discrete event lasting for a defined period.

⁸²⁵ As set out in Annex J, figures for the number of promotional deals included in the CMA's analysis differ from figures in this section on the number of promotional deals agreed by providers during and after the Relevant Period, as i) the analysis is conducted on the product level rather than the provider level (as some promotional deals covered multiple insurance brands/products) and ii) certain deals are not included in the analysis, for the reasons explained in Annex J.

the Big Four PCWs and 17 providers, over a 3-year period from July 2016 to June 2019. Details of the CMA's analysis of promotional deals is set out in Annex J. the CMA summarises below the results of its analysis.

7.183 The CMA's analysis finds that promotional deals:

- (a) Led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs.
- (b) Led to a relative improvement in the provider's ranking on the relevant PCW.

7.184 Based on these results together with the evidence set out previously in this section on the importance of price to competition between PCWs and between providers competing on PCWs, the CMA finds that promotional deals were an important and effective way for PCWs to compete on the prices quoted on their platforms during and after the Relevant Period. Moreover, the CMA finds that the use of promotional deals by one or a group of providers increases the competitive pressure on all providers and thus increases competition between providers on price. The CMA's interpretation of the results of its analysis is supported by the views of providers and PCWs who have entered into promotional deals.

7.185 BGL has submitted that CTM seriously doubts whether promotional deals produce sustainable and real benefits for consumers.⁸²⁶ BGL made a number of representations in support of this submission, which are considered in Annex K.

7.E.I. Impact of promotional deals on retail prices

7.186 The CMA has considered the extent to which engaging in promotional deals both during and since the Relevant Period led to reductions in home insurance providers' retail prices based on:

- (a) The structure of the promotional deals agreed.
- (b) The extent to which a relative reduction in retail price was observed on the PCW which had a promotional deal when compared to other PCWs.

⁸²⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 181.

- (c) Evidence from providers and PCWs on how deals were implemented in practice.

- 7.187 In relation to the structure of promotional deals, all of the 59 product-level promotional deals examined by the CMA involved the provider reducing its retail price for the duration of the promotional deal (either directly or through cashback). This was typically by a fixed amount from £[0-5] £[£] to £[15-20] £[£]⁸²⁷ but in some instances providers agreed to a percentage reduction of their retail prices from [0-10]% [£] to [10-20]% [£]%. The average reduction in the retail price was roughly £[5-15] £[£] (or roughly [5-10]% [£] of the average retail price of policies sold on CTM in 2017).^{828, 829}
- 7.188 The CMA also conducted an analysis of the extent to which a relative reduction in retail price was observed during promotional deals – i.e. whether the PCW which had agreed the deal was able to gain a competitive advantage compared to its rivals.^{830, 831} Given that a promotional deal involves the provider agreeing to reduce its price on the relevant PCW, and the provider would not have any clear incentive to replicate that price reduction on other PCWs, a relative price improvement for the relevant PCW should be expected – despite BGL’s views discussed at paragraph 7.103 above that insurers may not pass on commission fee discounts to

⁸²⁷ The CMA notes that for one promotional deal a provider agreed to offer between £15 and £30 cashback.

⁸²⁸ The range and (unweighted) average has been calculated using the unique values of promotional deals agreed by home insurance providers in the period January 2016 – June 2019. As outlined at footnote 282, the CMA has estimated that weighted average retail price per policy sold in CTM in 2017 was £135.

⁸²⁹ BGL submitted that the agreed value of the promotional deals included in the CMA’s analysis showed ‘*the marginal nature of the promotional deals in question*’, as a significant number of the deals ‘*appear to be in the range [£], which is approximately within the range dismissed by the CMA at paragraph 9.59 footnote 435 of the SO as unlikely to affect consumer behaviour.*’ See URN 8484.5, BGL’s response to the SO dated 22 February 2020, paragraph 243. However, it is not the case that the CMA stated that this level of price increase was unlikely to affect consumer behaviour. Rather, in the context of the evidence set out in Section 5.C, the CMA considered that this level of price increase, applied across all providers listing on PCWs (in the context of the hypothetical monopolist test, as explained in paragraphs 5.8 to 5.11), was unlikely to cause substantial numbers of consumers to stop using the PCW channel as a whole and switch to another channel. This includes evidence on the presence of narrow MFNs which mean that any increase in retail prices on the PCW channel could also be expected, in most cases, to lead directly to an increase in retail prices offered to consumers on a narrow MFN provider’s own website during the Relevant Period. This does not imply that promotional deals, which affect the price of a single provider on a single PCW, would not result in consumers switching between providers on PCWs and/or between PCWs; indeed such switching would be entirely consistent with the CMA’s finding in Section 5 that the relevant market is the provision of PCW services for home insurance products, and therefore covers the sales of all providers through all PCWs.

⁸³⁰ Analysing the relative change in price compared to the provider’s price on other PCWs rather than the absolute change in price also allows the CMA to control for changes unrelated to the promotional deal that may have caused the provider’s prices to change across all PCWs, e.g. changes in the cost of supplying home insurance or the competitiveness of rival providers.

⁸³¹ As outlined in Annex O, the Consumer Intelligence pricing data used in this analysis is subject to certain limitations. These limitations mean that any analysis conducted with this data should be treated with caution, should be designed with these limitations in mind and the results of such analysis should be considered in the light of other evidence as the CMA has done with its promotional deals analysis (see paragraphs 3.7.190 to 3.7.192). As further explained in Annex J, the CMA considers that the impact of the limitations in the data are less likely to impact this analysis because the analysis considers i) relative rather than absolute prices and ii) specific events within a short period of time.

consumers when they do promotional deals. Indeed, in all but one of the 59 product-level promotional deals there was an improvement in the retail price quoted on the PCW in question relative to rival PCWs. In particular, as set out in Annex J:⁸³²

- (a) For 53 deals the relative price improvement on the target PCW was 50% or more of the agreed price reduction when compared to at least two benchmark PCWs.
- (b) For 50 deals the relative price improvement on the target PCW was 70% or more of the agreed price reduction when compared to at least two benchmark PCWs.
- (c) For 30 deals the relative price improvement on the target PCW was 100% or more of the agreed price reduction when compared to at least two benchmark PCWs.

7.189 While the results of this analysis are consistent with promotional deals leading to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs, the analysis did not consider what would have happened to the provider's retail prices in the absence of the promotional deal. For example, if the provider would have reduced its price on the relevant PCW even without the deal, the CMA's analysis would overestimate the effect of the deal (and conversely, if the provider would have increased its price in the absence of the deal, the CMA's analysis would underestimate the effect). It is not clear how such a counterfactual would have been constructed.⁸³³ Therefore, the CMA has considered the results of its analysis alongside other evidence, particularly the evidence obtained from providers and PCWs, to assess the extent to which promotional in themselves deals led to reductions in providers' retail prices.

7.190 The CMA considers that its interpretation of the results of its analysis is supported by the evidence from providers and PCWs. In particular, the evidence from providers and PCWs supports the view that promotional deals

⁸³² In Annex J, the CMA sets out its assessment of 59 promotional deals from both during and after the Relevant Period and including deals agreed by each of the Big Four PCWs. In doing this the CMA used the Retail prices Dataset and looked at (a) the retail prices in the month before, the month of and the month after the start of the promotional deal (in order to assess the change in the retail prices due to the promotional deal); (b) the retail prices of providers on the PCW with the promotional deal relative to other PCWs (in order to control for general changes in the providers' retail prices over the three months (e.g. due to general changes in the competitiveness of rival providers)). For further detail on the methodology used see Section J.III of Annex J.

⁸³³ Indeed BGL (Oxera) stated that identifying what would have happened to the provider's retail prices in the absence of the promotional deal is a difficult task (see URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.5) and did not include a counterfactual in its own analysis which is discussed in Annex K.

lead to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs.

- 7.191 In particular, the CMA asked 13 providers⁸³⁴ how they implemented promotional deals and in every instance the providers told the CMA that they reduced the price on the relevant PCW during the promotional deal. In addition, in all but one instance this also resulted in a relative price improvement for the relevant PCW compared to other PCWs, as prices on other PCWs were either not discounted or discounted to a much lesser extent.⁸³⁵
- 7.192 Consistent with the evidence from providers, the two PCWs that focused on agreeing promotional deals during the Relevant Period (MoneySuperMarket and Confused) told the CMA that they have processes in place to ensure that the agreed reductions in retail prices occurred during the promotional deal.⁸³⁶ One of these PCWs also submitted an analysis of one of its promotional deals showing a reduction in the retail price.⁸³⁷
- 7.193 The CMA therefore finds that promotional deals led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs. This means that promotional deals benefited consumers and were an important way for providers and PCWs to compete on the price quoted.

⁸³⁴ The CMA asked [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP] about how they implemented promotional deals. The CMA did not ask all providers in the analysis about their implementation of promotional deals, as this question was asked alongside other questions which were not relevant to all providers. URN 9825, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9659, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9666, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 3; URN 9636, [HIP]'s response to section 26 notice dated 26 July 2019, question 2; URN 9132, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9652b, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 6152, [HIP]'s response to section 26 dated 16 April 2018, question 10; URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 11; URN 9711, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

⁸³⁵ In one case, the provider [HIP] applied the same discount across all PCWs at the same time.

⁸³⁶ For example, MoneySuperMarket monitors the retail price the home insurance provider sets on its platform before and after the change and also compares the position of the provider on the PCW's results page before and after the deal has gone live (this is in the expectation that a provider will on average be higher on the results page during a promotional deal). Similarly Confused uses both desktop audits and Consumer Intelligence data to check that a promotional deal has been applied correctly and will follow-up with the provider if there are any discrepancies. URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 24; URN 4934.4, MoneySuperMarket's response to the section 26 notice dated 14 November 2017, document entitled 'Appendix 3 – [HIP] ATL Offer Performance'; URN 6322, Confused's response to section 26 notice dated 27 April 2018, question 5.

⁸³⁷ URN 4934.4, MoneySuperMarket's response to section 26 notice dated 14 November 2017, document entitled 'Appendix 3 – [HIP] ATL Offer Performance', question 19, slide 3.

7.E.II. Impact of promotional deals on home insurance providers' rankings

- 7.194 The CMA has also considered the extent to which a relative improvement in a provider's ranking was observed on the PCW which had the promotional deal when compared to other PCWs.⁸³⁸ This is because, as outlined above, providers monitor their ranking on PCWs and react to a worsening of their ranking on PCWs – as such, if promotional deals affect rankings they will affect competition between providers.
- 7.195 In doing this the CMA has focused on the change in the proportion of quotes where the provider was ranked: (i) in the top five results; and (ii) as the top result. This is because, as noted above (see paragraph 7.25), the majority of sales of home insurance made through their platforms in 2016 were made by home insurance providers ranked in the top five results. This is also consistent with the views of providers and this evidence shows the importance to providers of retail price competitiveness and ranking on PCWs (see Section 7.D.I).
- 7.196 The CMA's analysis shows that, in general, promotional deals led to an improvement in the provider's ranking on the PCW in question, relative to their ranking on rival PCWs.⁸³⁹ In particular, as set out in Annex J, based on the data available the analysis considered 40 product-level promotional deals and shows that:⁸⁴⁰
- (a) For 39 of the 40 deals, there was a relative improvement in the proportion of the provider's quotes ranked in the top five results when compared to each benchmark PCW. For 32 of these deals this relative improvement was 1.5 percentage points or more. The largest

⁸³⁸ Analysing the relative change in ranking compared to the provider's ranking on other PCWs rather than the absolute change in ranking allows the CMA to control for changes unrelated to the promotional deal that may have caused the provider's rankings to change across all PCWs, e.g. the competitiveness of rival providers.

⁸³⁹ In doing this the CMA looked at: (a) nine promotional deals agreed with home insurance providers by MoneySuperMarket and two agreed with Confused; (b) the rankings in the month before, the month of and the month after the start of the promotional deal (in order to assess the change in the rankings due to the promotional deal); (c) the rankings of providers on the PCW with the promotional deal relative to other PCWs (in order to control for general changes in the providers' rankings over the three months (e.g. due to general changes in the competitiveness of rival providers)). The CMA's analysis was based on the Retail Prices Dataset (Annex O).

⁸⁴⁰ Only 40 of the 59 product-level promotional deals considered in the CMA's promotional deal analysis are used for this analysis of the impact on rankings. This is because in some cases, relevant providers had multiple products and the same promotional deal was in place with at least two of those products. Generally, these products differ in terms of retail price with the retail price quoted for one of the products being consistently lower than the retail price quoted for the other products. Therefore, this cheaper product appears nearer the top of the rankings than the other products. Given this, where a promotional deal applied to multiple products, the CMA has focused on the lowest priced product as this is the product where there is likely to be an impact on the proportion of times the product appears in the top five results or as the top result.

improvement was [20-30] [X] percentage points, with an average improvement of [5-10] [X] percentage points.⁸⁴¹

- (b) For 37 of the 40 deals, there was a relative improvement in the proportion of the provider's quotes ranked as the top results when compared to each benchmark PCW. For 18 of these deals this relative improvement was 1.5 percentage points or more. The largest improvement was [10-20] [X] percentage points with an average of [0-5] [X] percentage points.⁸⁴²

- 7.197 Consistent with this, one provider [HIP] told the CMA that one of its primary drivers in agreeing promotional deals is to improve its visibility on PCWs relative to other providers.⁸⁴³ Similarly, as described in paragraph 7.69, MoneySuperMarket typically offers promotional deals to providers which are ranked in the top positions of its comparison table. This is because engaging in a promotional deal with providers ranked below the top three positions and with a significant price difference from the top three would be unlikely to affect significantly the provider's ranking.⁸⁴⁴
- 7.198 In addition, when analysing a particular promotional deal on its platform, one PCW (MoneySuperMarket) found that the proportion of the time the relevant provider was ranked top increased by [X]. Further, the PCW noted that during the month the promotional deal was in place the provider's retail price remained steady, but the proportion of quotes for which that provider was the cheapest decreased, indicating that rival providers may have reacted to the promotional deal in question.⁸⁴⁵
- 7.199 In view of the above, the CMA finds that promotional deals led to an improvement in the ranking of relevant home insurance providers on the relevant PCW for the duration of the agreement. This will in turn have reduced the ranking of rival providers on that PCW, increasing the competitive pressure on these providers. It is therefore reasonable to expect that price reductions by providers in the form of lower base retail prices in response to changes in the level or structure of PCWs' commission fees would have had similar effects.

⁸⁴¹ The median relative improvement for these deals was [5-10] [X] percentage points.

⁸⁴² The median relative improvement for these deals was [5-10] [X] percentage points.

⁸⁴³ URN 5102, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(c).

⁸⁴⁴ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 13.

⁸⁴⁵ [X].

7.F. Conclusions on the nature of competition

7.200 In this section the CMA set out its findings on the nature of competition in the market for PCW Services for Home Insurance in the UK.

7.201 In summary, the CMA finds that:

- (a) PCWs compete on marketing and advertising, the usefulness of their comparison services and the retail prices quoted by insurers on their platforms;
- (b) The retail prices quoted by providers on PCWs are an important dimension of competition, both for the PCWs and for the providers when competing on PCWs to acquire consumers;
- (c) The monitoring behaviour and pricing strategies of the Big Four PCWs all reflect the importance of securing competitive prices from providers. These strategies were adjusted in response to market dynamics and the PCW's broader commercial strategies over time.
- (d) In the Relevant Period, CTM preferred primarily to rely on its wide MFNs to secure competitive prices from the relevant providers. It also agreed temporary volume-based discounts with providers (whether with narrow or wide MFNs). Whilst it did not enter into any promotional deals during the Relevant Period, it has done so since it stopped enforcing its wide MFNs. Further details on the role of CTM's wide MFNs in its competitive strategy is contained in Section 8.
- (e) For two out of three of CTM's rivals (MoneySuperMarket and Confused) incentivising providers to differentiate their prices across PCWs through promotional deals was an important part of their strategies to secure the best prices.
- (f) Like PCWs, providers' pricing strategies vary and adjust in response to market dynamics and the provider's broader commercial strategy over time.
- (g) The importance of price competition for providers competing on PCWs is reflected in their monitoring behaviour and pricing strategies. Most providers were willing to differentiate their prices across PCWs whether by way of promotional deals or quoting different base retail prices or both, during the Relevant Period and afterwards. Providers accounting for approximately 65% of PCW sales engaged in differential pricing

(especially promotional deals) during the Relevant Period, and more providers have done so after the Relevant Period.

- (h) Promotional deals lead to a decrease in retail prices on the relevant PCW, as well as a relative price improvement compared to other PCWs, and relative improvement in ranking for the relevant provider. Based on this, alongside the above findings on the importance of price competition and on PCWs' and providers' strategies, the CMA finds that promotional deals are an effective means of competing on retail prices for PCWs, and their use increases competition between providers on price.

7.202 The CMA's assessment in this section has centred on how competition functioned during the Relevant Period while CTM's wide MFNs were in place (as well as relevant developments since the Relevant Period). In the following sections, the CMA assesses how CTM used its wide MFNs (Section 8) and the effect this had on competition during the Relevant Period (Section 9).

8. CTM'S USE OF WIDE MFNs

8.1 This Section sets out the CMA's assessment of how CTM used wide MFNs in practice. How CTM's network of wide MFNs operated in practice and the proportion of home insurance providers it covered forms part of the legal and economic context for the assessment of whether, in the absence of CTM's network of wide MFNs, the situation is likely to have been more competitive.⁸⁴⁶

8.2 The CMA finds that:

- (a) CTM's wide MFNs prevented the relevant providers from quoting lower prices on CTM's rival PCWs and CTM was therefore protected, as a matter of contract, from being undercut by the prices they offered on other PCWs (see Section 8.A.I).
- (b) CTM's wide MFNs were integral to CTM's competitive strategy in home insurance and effective in achieving its objectives, and CTM behaved accordingly. CTM believed that, in the absence of its network of wide MFNs, it would be subject to greater price competition, increasing pressure on commission fees and reducing its profits (See Section 8.A.II.).
- (c) Providers had strong incentives to comply with CTM's wide MFNs. In addition to providers' taking their contractual obligations seriously, CTM was an important source of new business and it communicated to providers the importance it placed on compliance, including by monitoring and enforcing its wide MFNs (see Section 8.B.I.).
- (d) There was widespread compliance by home insurance providers with CTM's wide MFNs during the Relevant Period. Most home insurance providers adopted pricing strategies that were consistent with CTM's wide MFNs and, in particular, providers accounting for a significant proportion of sales on PCWs specifically took into account CTM's wide MFN in determining their pricing strategies. (see Section 8.B.II.)
- (e) CTM systematically monitored providers' pricing on other PCWs and escalated its enforcement process to resolve non-compliance with its wide MFNs, including against both large providers and small providers (see Section 8.B.III.).

⁸⁴⁶ See Section 3.B. The CMA's assessment of the appreciable effects of CTM's wide MFNs on (i) competition between PCWs and (ii) competition between home insurance providers competing on PCWs is set out in Section 9.

- (f) CTM's network of wide MFNs covered home insurance providers accounting for over 40% of home insurance policies sold through CTM and approximately 40% of home insurance policies sold through the PCWs in 2016 and 2017 (see Section 8.C.)

8.A. The nature and role of CTM's wide MFNs

8.3 In this Section, the CMA sets out its assessment of:

- (a) the nature of CTM's wide MFNs in terms of the contractual restraint the clause imposed on home insurance providers (Section 8.A.I.); and
- (b) the role of CTM's network of wide MFNs in its commercial strategy (Section 8.A.II.).

8.A.I. *The nature of CTM's wide MFNs was to restrict providers from pricing lower on rival PCWs*

8.4 In assessing whether an agreement brings about an appreciable restriction of competition, a relevant factor is the nature of the restriction in terms of the restraints that it contains.⁸⁴⁷

8.5 CTM's wide MFN clauses were a term in CTM's agreements with 32 home insurance providers that contractually prevented those providers from quoting lower prices on CTM's rival PCWs than on CTM.⁸⁴⁸ CTM's network of wide MFNs therefore provided CTM with a contractual guarantee that quotes on its platform were the lowest priced (or equal lowest priced)⁸⁴⁹ quotes available from the relevant providers across PCWs. This meant that CTM was protected, as a matter of contract, from being undercut by the prices offered by these 32 providers on another PCW and the ability of the relevant providers to implement differential pricing strategies across PCWs was restricted.

8.6 As set out in Section 2.G., the wide MFN in almost all of CTM's agreements with the 32 home insurance providers was in materially the same terms.⁸⁵⁰

⁸⁴⁷ Vertical Guidelines, paragraph 113. BGL referred to the '*nature of the agreement*' being a factor that is '*especially relevant*' in assessing whether an agreement has the appreciable effect of restricting competition (see URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 345).

⁸⁴⁸ The 32 home insurance providers with wide MFNs in their agreements with CTM are listed in Table 2.1 and Annex C. The CMA sets out in section 4.B.I its assessment of which agreements between CTM and providers the CMA finds, for the purposes of this Decision, contained wide MFN clauses.

⁸⁴⁹ In this Decision, the CMA refers to lowest prices as meaning lowest or equal lowest price.

⁸⁵⁰ As explained in Section 4.B.I. although the clause in [HIP]'s contract was drafted differently from the wide MFN clauses in the contracts with other providers, it was similar in terms of the restriction it imposed on [HIP]. This is because it required [HIP] to maintain an '*online flat pricing policy*', which operated in a similar way as a

The restraint was clearly expressed as a contractual obligation on providers not to provide a quotation on CTM's platform that was higher than would be payable by a consumer via a different source of introduction, or as a contractual obligation to quote rates on CTM that were equal to or less than the rates offered elsewhere. Accordingly, the terms of CTM's wide MFNs expressly restricted the relevant providers from quoting prices on rival PCWs⁸⁵¹ that were lower than those quoted on CTM.

- 8.7 Failure to comply with CTM's wide MFN was a breach of contract which could lead to enforcement action, including the possibility of being delisted by CTM from its platform. Furthermore, by preventing the relevant providers from offering lower prices on CTM's rival PCWs, CTM's wide MFN clauses restricted not only the freedom of the 32 providers to differentiate their prices between PCWs, but also prevented CTM's rival PCWs from gaining a competitive price advantage over CTM, unless the relevant provider was willing to breach its wide MFN clause.

8.A.II. CTM's wide MFNs were integral to its competitive strategy and effective in achieving its objectives

- 8.8 The CMA finds that CTM's wide MFNs were integral to CTM's competitive strategy in home insurance and effective in achieving its objectives, and CTM behaved accordingly. CTM believed that, in the absence of its network of wide MFNs, it would be subject to greater price competition, increasing pressure on commission fees and reducing its profits. CTM's competitive strategy in home insurance, and the integral role of its network of wide MFNs in ensuring that its strategy was effective, forms a key aspect of the legal and economic context in which competition between PCWs and competition between providers on PCWs took place, particularly in view of the strength of CTM's market position.⁸⁵²
- 8.9 Since it introduced wide MFNs in 2008 and 2009 across insurance products,⁸⁵³ CTM's competitive strategy was to balance commission fee growth with a pricing position that was competitive with other PCWs.⁸⁵⁴ BGL

wide MFN clause by restricting [HIP] from quoting different prices on different online distribution channels, including other PCWs.

⁸⁵¹ Referred to in the wording of some of CTM's wide MFNs as '*other aggregator websites*'.

⁸⁵² See Section 5.E. As explained in Section 3.B, the assessment of whether an agreement restricts competition must be understood within the actual legal and economic context in which competition would occur in the absence of the agreement, taking into account the nature of the products or services concerned, as well as the real operating conditions and structure of the market concerned.

⁸⁵³ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 176.

⁸⁵⁴ URN 3408, BGL's response to section 27 notice of 26 September 2017, document entitled 'Core Insurance Pricing Paper'.

confirmed that the '*primary objective*' of CTM's wide MFN clauses was '*to ensure that CTM offered the best possible price to customers, and hence strengthen its competitive position vis-à-vis rivals*'.⁸⁵⁵

- 8.10 Wide MFNs were included as a standard term across insurance products,⁸⁵⁶ although not all providers had them in their contracts. CTM explained that '*CTM has sought to include [wide MFNs] in HIP [home insurance providers] contracts, where it has been possible to do so. Each contract with an insurer is an individual negotiation, where multiple commercial and human factors can influence the final outcome. As a result, CTM does not have Wide MFNs as part of all of its HIP [home insurance providers] agreements [...]*'.⁸⁵⁷
- 8.11 CTM's wide MFNs across all insurance products were an integral part of CTM's strategy in strengthening its competitive position by contractually preventing providers subject to its wide MFNs from quoting lower prices on rival PCWs. This ensured that CTM was not undercut by the prices those providers offered on its competitors' platforms.⁸⁵⁸ Accordingly, CTM's network of wide MFNs helped it maintain growth in commission fees because it did not itself have to invest to incentivise providers to match the lower prices offered on other PCWs (for example by lowering commission fees).⁸⁵⁹ Instead, CTM could rely on the contractual restrictions imposed by its network of wide MFNs, rather than competing on the merits with other PCWs to display the lowest prices by discounting its own commission fees.^{860 861}

⁸⁵⁵ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 364.

⁸⁵⁶ Until the PMI Order 2015 which banned their use in private motor insurance. See paragraph 8.12.

⁸⁵⁷ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, paragraph 31.6; BGL added at paragraph 31.8 that '*In terms of differentiation across multiple HIP [home insurance providers] agreements, as mentioned above, each is an individual negotiation and each party will have its own priorities, objectives and 'redlines' when seeking to come to a mutually acceptable position. For some HIP providers, the inclusion of a Wide MFN was acceptable*'.

⁸⁵⁸ For example, see: URN 3139, BGL's response to section 27 notice dated 26 September 2017, slide deck entitled '*Impact of ban on Wide MFN*' dated July 2014, slide 2 in which CTM expressed the concern that the ban on wide MFNs in private motor insurance would mean '*some partners will choose to use this change as an opportunity to offer lower premiums to our competitors, in an effort to drive business to the lowest cost PCWs and to encourage PCWs, including CTM, to reduce CPAs in order to maintain competitive pricing*'.

⁸⁵⁹ For example, see URN 5750, BGL's response to section 27 notice dated 26 September 2017, document entitled '*Best Prices, June 2015*', slides 8 and 16, in which CTM recorded its observations that '*Partners have used the prohibition of wide MFN s [sic] to try to drive down CPAs in return for best prices ... Despite aggressive CPA discounting from our competitors, CTM's CPAs remain the highest in the market and continue to grow (⌘ in FY)*'. The slides further noted that '*MSM, Confused and Google have been aggressively discounting CPAs in an attempt to steal market share*' and '*[t]he market has evolved and made achieving best prices more difficult, in particular the prohibition of wide MFNs and an increase in CPA discounting*'.

⁸⁶⁰ For example, see URN 1965 BGL's response to First BGL Notice dated 26 September 2017, document entitled '*[HIP] Pricing parity results – August 2017 v3 [Autosaved]_Redacted*', slide 2 in which CTM explained that '*Other PCWs have increasingly been discounting CPAs to gain lower prices for customers. CTM has chosen not to do this in the past, on the basis that we expected that it would i) reduce profitability; ii) we have previously relied more on WMFNs; and iii) we don't want to start a CPA discounting war*'.

⁸⁶¹ BGL submitted that its objective in using wide MFNs was to secure the lowest prices for consumers using its platform in order to preserve consumer trust in its PCW proposition and were therefore a '*pro-competitive, pro-*

- 8.12 The CMA's finding in the PMI Market Investigation in September 2014 that the use of wide MFNs by PCWs in private motor insurance (including by CTM) gave rise to an adverse effect on competition⁸⁶² prompted CTM to consider whether to retain wide MFN clauses in its other lines of business, including home insurance. However, despite the CMA's findings, which had a potential read-across to the use of wide MFNs by CTM in home insurance⁸⁶³, CTM decided to continue to maintain and introduce wide MFNs into new contracts with providers as late as October 2017 (after the present Investigation had been launched).⁸⁶⁴ By contrast, CTM's rivals had stopped using similar clauses by March 2015, in light of the CMA's Market Investigation and before the PMI Order 2015 came into force. In addition, several insurers also made the read-across requesting removal, and in some cases (wrongly) assuming removal, of CTM's wide MFN from their contracts across all products in the light of the PMI Order 2015.⁸⁶⁵
- 8.13 In contrast to BGL's submissions in the present Investigation⁸⁶⁶, BGL's internal documents documenting its reaction to the PMI Market Investigation and its decision to continue to impose wide MFNs in home insurance,

consumer measure' (URN 8933, Transcript of the Oral Hearing with BGL held on 4 April 2019, page 11, lines 8 to 11 and URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 38 and 176). The CMA has addressed BGL's submissions on this point in Annex P. In particular, the fact that BGL considered its objectives in using wide MFNs were pro-competitive does not mean that its wide MFNs did not have anti-competitive effects. Moreover, the CMA notes that BGL has not submitted evidence that there are pro-competitive efficiencies arising from its network of wide MFNs that meet the conditions for exemption under section 9 of the Act or Article 101(3) TFEU.

⁸⁶² The CMA found that wide MFNs softened price competition between PCWs in private motor insurance, which was likely to lead to less entry, less innovation and higher commission fees, all leading to higher prices for consumers. See: PMI Market Investigation, [Final Report](#), paragraphs 58 and 59. https://assets.publishing.service.gov.uk/media/5421c2ade5274a1314000001/Final_report.pdf, paragraphs 53 to 63.

⁸⁶³ For example, [HIP] explicitly drew this to CTM's attention, stating, among other things, that: '*CTM remain the only PCW looking to enforce this term across non-PMI products – something none of your competitors have done since the order was made. In [HIP]'s opinion, this is contrary to the spirit of the CMA's findings in the PMI market investigation, limiting the pro-competitive outcomes of the ban to PMI. The ultimate effect across all other insurance products is therefore the same as it was historically for PMI i.e. an overall adverse effect on competition by reducing PCWs incentives to compete and innovate, most likely leading to higher commission fees and premiums for customers*'.

URN 5402, [HIP]'s response to section 26 notice dated 24 November 2017, question 20, email chain with CTM entitled '*RE: Removal of wide MFN (Home/Van)*', dated 2 May 2017, page 6.

⁸⁶⁴ See Section 2.G.II and Annex C. See also Section 8.A.II.(b) below for further details on CTM's decision to maintain and enforce its wide MFNS following the PMI Order 2015.

⁸⁶⁵ For example, [HIP], [HIP], [HIP] and [HIP] considered that the wide MFNs may have been unenforceable on the basis of their interpretation of the effect of the PMI Order 2015 banning the use of wide MFNs in private motor insurance and on-going scrutiny by the CMA in terms of the enforceability of such clauses under competition law (see Section 4.B.I.).

⁸⁶⁶ In that regard, BGL has sought to downplay the importance of its network of wide MFNs to its commercial strategy. For example, describing them as '*only one subsidiary factor in a complex marketing mix*' (URN 8484.5, BGL response to the SO dated 22 February 2019, paragraph 180) and stating at the oral hearing that '*[c]andidly, wide MFNs were neither material nor appreciable in our behaviour. They were part of a commercial toolkit, part of a general conversation we had with the home insurance providers to make sure we had the right ability to open the debate and get the right price for our customers. They were very rarely taken out the box, so it was very rarely used in any force*' (URN 8933, Transcript of the Oral Hearing with BGL held on 4 April 2019, page 11, lines 11 to 16).

together with the actions it took in the Relevant Period to maintain and enforce its wide MFNs, demonstrate that CTM considered its network of wide MFNs to be an integral and effective part of its competitive strategy in home insurance during the Relevant Period:

- (a) As set out in Section 8.A.II.(a) below, CTM's contemporaneous internal documents on the potential implications of a ban on the use of wide MFNs in private motor insurance show that, at that time, CTM considered that its wide MFNs were important and effective in achieving its objectives. In particular, these documents show that at the relevant time CTM believed that its network of wide MFNs helped it to secure the lowest prices on its platform, reducing the need for it to compete with other PCWs by lowering its commission fees. Moreover, BGL's submissions to the CMA in the PMI Market Investigation and DCTs Market Study confirm that, before and during the Relevant Period, CTM considered that its wide MFNs were an important part of its competitive strategy. For example, BGL expressed the view to the CMA that without wide MFNs, providers could charge higher prices on the '*most popular*' PCWs,⁸⁶⁷ with the most popular PCW in home insurance at that time (2017) being CTM.⁸⁶⁸
- (b) As set out in Section 8.A.II.(b) below, CTM's decision, following detailed internal consideration, to retain wide MFNs for products other than private motor insurance (including home insurance) demonstrates that CTM's wide MFNs were an integral part of CTM's competitive strategy and that it regarded them as effective. CTM's internal documents clearly indicate it was aware of the legal risks of retaining wide MFNs across other products. That it continued to retain wide MFNs following the CMA's findings in the PMI Market Investigation, notwithstanding the obvious risks regarding the potential for anti-competitive effects, is inconsistent with BGL's submissions that CTM's wide MFNs were not material to its competitive strategy.
- (c) As set out in Section 8.A.II.(c) below, despite increasing pressure, CTM resisted requests from providers (including large providers such as [HIP], [HIP] and [HIP]) for wide MFNs to be removed from their contracts. This also demonstrates that CTM regarded its network of wide MFNs as an integral and effective part of its competitive strategy in home insurance. Again, the fact that CTM resisted such requests is

⁸⁶⁷ See paragraphs 8.30 to 8.32.

⁸⁶⁸ In 2017, CTM's market share was over 50%. See Section 5.E.I.

inconsistent with BGL's submissions that CTM's wide MFNs were not material to its competitive strategy.

- (d) As set out in Section 8.A.II.(d) below, CTM's systematic monitoring and enforcement of its wide MFNs also demonstrates the importance CTM placed on having wide MFNs in its agreements with home insurance providers, as well as ensuring compliance by providers with their contractual obligations not to offer prices on other PCWs that were lower than on CTM.

8.A.II.(a). CTM's internal documents on the potential implications of a ban on the use of wide MFNs in private motor insurance

- 8.14 CTM's contemporaneous internal documents on the potential implications of a ban on the use of wide MFNs in private motor insurance show that, at that time, CTM's wide MFNs were an integral and effective part of its competitive strategy across all insurance products, including home insurance. CTM considered that its network of wide MFNs helped it to secure the lowest quotes on its platform and reduced the need for it to compete on price by lowering its commission fees. The importance of its wide MFNs to CTM is also demonstrated by the level of seniority of the individuals within CTM and the wider BGL Group involved in the discussions.
- 8.15 Although they were created in the context of the CMA's PMI Market Investigation, these documents are relevant as they, in particular, reflect CTM's common objectives in introducing and using wide MFNs across all insurance products up until the PMI Order 2015, namely balancing the need to secure the lowest prices whilst maintaining growth in commission fees.⁸⁶⁹ While there are differences between the private motor insurance and home insurance sectors, the nature of the services provided by PCWs to insurance providers and consumers in both sectors is the same and the legal and economic context is similar in many respects. For example, in both sectors the Big Four PCWs are the largest PCWs (with CTM being the largest), the majority of consumers using PCWs single-home (i.e. use one PCW), and consumers are price-sensitive, with the most common reason for using a

⁸⁶⁹ BGL submitted that CTM's internal documents referring to its commercial strategy regarding the use of wide MFNs are irrelevant because they pre-date the Relevant Period or mainly relate to the PMI Market Investigation. These representations are addressed in Annex P. In summary, the CMA disagrees with BGL's representations. In particular, the CMA's ability to rely on evidence pre-dating an infringement in order to describe the wider context of the unlawful conduct and to interpret subsequent facts correctly is established in case-law. Further, CTM's internal documents provide a clear insight into the views of CTM at that time about the impact of the PMI Order 2015 on its business and the importance of its wide MFNs as it decided on its future strategy across all insurance products. The views expressed in CTM's internal documents, including by senior management, are consistent with other evidence including on the behaviour of CTM in retaining and enforcing its wide MFNs and refusing their removal from contracts as described in the remainder of this section.

PCW being to save money. Accordingly, the CMA considers that BGL is wrong to suggest that documents relating to its use of wide MFNs in private motor insurance are not relevant to its use of the same clauses in home insurance, or that no weight should be given to them.

- 8.16 CTM was aware from at least 2013 that competition authorities and other regulators were considering the potential for wide MFNs to have anti-competitive effects. In August 2013, [Senior Executive, CTM] shared an article with [Senior Executive, BGL] about the OFT's *Amazon Marketplace* investigation into Amazon's use of wide MFNs as part of a price parity policy.⁸⁷⁰ Referring to the OFT's investigation, [Senior Executive, CTM] stated:

*'The MFN's in question are, to my knowledge, the same as the ones we operate, albeit the situation is very different given Amazons [sic] dominance. [Employee 1, BGL] and I were already clear that the MFN's [sic] we operate would not be defensible should we have a dominant market share, albeit of course our share is a long way off dominant at 8% of sales. I still believe we have a good opportunity to maintain the status quo and the development below does not change anything, albeit the timing is unfortunate and this will generate noise from partners.'*⁸⁷¹

- 8.17 [Senior Executive, BGL] responded: *'Key for me is to understand how we respond/act if it goes against us.'* [Senior Executive, CTM] replied a few minutes later indicating that, while there was time to reach a position, he and [Employee 1, BGL] were considering ways to operate without wide MFNs including by adopting an approach, described as [X].⁸⁷²

- 8.18 CTM's concern about the potential implications for CTM's competitive strategy across insurance products of competition authorities preventing the use of wide MFNs increased during the course of the PMI Market Investigation. For example, in July 2014, CTM prepared a slide deck titled *'Impact of ban on Wide MFN'* specifically to consider the effects of removing wide MFNs from its contracts with insurance providers referring to the *'risk'*

⁸⁷⁰ Case CE/9692/12, OFT, [Investigation into suspected anti-competitive arrangements by Amazon relating to online retail](#), closed on administrative priority grounds, November 2013. Following parallel investigations by the OFT and the German National Competition Authority (the Bundeskartellamt), Amazon ended its use of wide MFNs on Amazon.co.uk and more widely in the European Union.

⁸⁷¹ URN 2983, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], email entitled 'RE: Amazon has had to withdraw MFN's', dated 30 August 2013 page 1.

⁸⁷² URN 2983, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], email entitled 'RE: Amazon has had to withdraw MFN's', dated 30 August 2013, page 1.

that insurance providers would offer lower premiums to other PCWs in return for lower commission fees, which would in turn require CTM to reduce its commission fees in response to increased competitive pressure:

‘some partners will choose to use this change as an opportunity to offer lower premiums to our competitors, in an effort to drive business to the lowest cost PCWs and to encourage PCWs, including CTM, to reduce CPAs [commission fees] in order to maintain competitive pricing.’⁸⁷³

- 8.19 CTM also expected, based on what it had already observed, that in the absence of wide MFNs in private motor insurance: *‘CPA [commission fees] discounting will occur amongst competitors for selected insurance partners. Anecdotal evidence already in market.’⁸⁷⁴* In order to address the *‘potential credibility issue if we can’t offer best prices on a regular basis’*, CTM considered several options in response to the anticipated ban on wide MFNs in private motor insurance. As set out in Figure 8.1 below, these options included making *‘selective offers’* to insurance providers, *‘matching competitor offers’* and *‘beating competitors at their own game’* to maintain *‘pricing parity’⁸⁷⁵*:

⁸⁷³ URN 3139, BGL’s response to section 27 notice dated 26 September 2017, slide deck entitled ‘Impact of ban on Wide MFN’ dated July 2014, slide 2.

⁸⁷⁴ URN 3139, BGL’s response to section 27 notice dated 26 September 2017, slide deck entitled ‘Impact of ban on Wide MFN’ dated July 2014, slide 3.

⁸⁷⁵ URN 3139, BGL’s response to section 27 notice dated 26 September 2017, slide deck entitled ‘Impact of ban on Wide MFN’ dated July 2014, slide 5. As described in Section 7.C.II.(d), CTM adopted across all insurance products a tiered partnership structure in light of the ban on wide MFNs in private motor insurance. This further confirms the CMA’s view that the role played by CTM’s wide MFN in its competitive strategy across all insurance products including home insurance and private motor insurance until they were banned in private motor insurance were the same.

Table 8.1: CTM internal slide setting out options for responding to anticipated ban on wide MFNs in private motor insurance

Options

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Option	Summary	Pros	Cons
1	Wait and see what the proliferation of offers does to performance before reacting to competitor activity	<ul style="list-style-type: none"> - Prices may be less elastic than we think - Lower initial cost - Competitors will lose income in short term and may reduce ad spend 	<ul style="list-style-type: none"> - Competitors could be successful in positioning themselves as cheaper in customers' minds. - It may then be difficult to undo this perception
2	Selective offers – 'Divide & Conquer'	<ul style="list-style-type: none"> - Helps maintain price advantage with key brands - Encourages other brands to reduce pricing to maintain volumes 	<ul style="list-style-type: none"> - Offers likely to have a significant cost - Drives selected brands to expect offers to provide best prices
3	Aim to match competitor offers to maintain price parity	<ul style="list-style-type: none"> - Protects pricing position - Reduced risk of damaging brand 	<ul style="list-style-type: none"> - Expensive - Hard to be sure of competitor pricing
4	Beat competitors at their own game	<ul style="list-style-type: none"> - We are best placed - privately owned and having highest CPAs - If successful, high reward potential 	<ul style="list-style-type: none"> - Very expensive - High risk
5	Tier partners and offer top tier pay to play rates or tiered CPA's designed to keep competition high and prices low without contractual commitment	<ul style="list-style-type: none"> - Potentially low cost - Rewards top tier partners - Drives price competition and offers the chance to reduce effective CPA 	<ul style="list-style-type: none"> - Risk that one partner dominates and drives lower overall CPA - No previous experience of this type of offer - Doesn't directly address discounting by competitors

Source: URN 3139, BGL's response to section 27 notice dated 26 September 2017, slide deck entitled 'Impact of ban on Wide MFN' dated July 2014, slide 5.

8.20 The 'cons' for all of the options were identified as having significant cost implications for CTM (in terms of lowering CTM's commission fees) or the risk that other PCWs would successfully position themselves as cheaper than CTM in consumers' minds. The 'cons' identified would also have had wider implications across insurance products.⁸⁷⁶

8.21 A further slide in the deck highlighted that CTM had trialled discounting commission fees previously and '*in all instances the outcome has been negative for CTM*'.⁸⁷⁷ At the time CTM therefore regarded its wide MFNs, at least in private motor insurance, as effective in reducing the need for it to invest in offers to insurance providers to secure the lowest prices and that CTM expected that the removal of its wide MFNs would increase the competitive pressure on CTM.

⁸⁷⁶ For example, consumers perceiving CTM's rivals to be cheaper would affect CTM's PCW proposition generally given, as BGL confirmed, the importance of consumer trust on price to its proposition across all products. BGL also confirmed that the wider commercial relationship between CTM and providers, many of whom operated across private motor insurance and home insurance (and indeed other insurance products), would also affect, for example, negotiations on commission fees across other insurance products. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 107.

⁸⁷⁷ URN 3139, BGL's response to section 27 notice dated 26 September 2017, slide deck entitled 'Impact of ban on Wide MFN' dated July 2014, slide 6.

- 8.22 CTM's view that rival PCWs would discount their commission fees if wide MFNs were removed in private motor insurance was repeated in an internal CTM strategy document dated August 2014. In a slide titled '*Capability – MFN's, Best prices and Quotability*', CTM stated that '*[t]iering partners, deepening our proposition and offering alternative commission models is seen as a potential way to benefit from the MFN changes and continue to offer best prices and high quotability*'. A further internal CTM slide deck in September 2014 on managing relationships with its partners stated that the '*[p]rohibition of wider MFNs will potentially cause differential pricing across PCWs*'.⁸⁷⁸ The same slide deck highlighted that CTM would need to work closer with its partners to secure exclusive offers or discounted pricing, including deals that would be co-funded by CTM and insurance providers.⁸⁷⁹
- 8.23 The role of CTM's wide MFNs and the consequences to CTM's competitive strategy of their removal detailed above were not limited to private motor insurance. In November 2014, [Employee 6, CTM] prepared a slide deck titled '*CTM post MFN*' which considered options '*for life beyond car MFN's [sic]*'.⁸⁸⁰ The slides covered all types of insurance offered on CTM ('*car, home, van, bike, pet*').⁸⁸¹ The summary slide confirmed the importance to CTM of having the best prices and the role wide MFNs had in achieving this, without having to discount commission fees, stating that:

'A fundamental pillar of the CTM proposition is giving our customers access to the best prices

MFN's [sic] have been a tool to support this – but not the only tool

We have options ready for life beyond car MFN's [sic] and are trialling these

*We want to be the distributor of choice for our insurance / product partners...but this doesn't just mean discounting CPA's [commission fees] [sic]*⁸⁸²

- 8.24 Slide 9 of the same slide deck refers to other '*tools*' that CTM could use to remain competitive on price, absent its wide MFNs. These included CTM's

⁸⁷⁸ URN 3301, BGL's response to section 27 notice dated 26 September 2017, internal document entitled 'Relationship Management: the way forward in 2014/2015', 29 September 2014, slide 8.

⁸⁷⁹ URN 3301, BGL's response to section 27 notice dated 26 September 2017, internal document entitled 'Relationship Management: the way forward in 2014/2015', 29 September 2014, slide 9.

⁸⁸⁰ URN 3368, BGL's response to section 27 notice dated 26 September 2017, internal document entitled 'CTM post MFN', November 2014', slide 2.

⁸⁸¹ URN 3368, BGL's response to section 27 notice dated 26 September 2017, internal document entitled 'CTM post MFN, November 2014', slide 15.

⁸⁸² URN 3368, BGL's response to section 27 notice dated 26 September 2017, internal document entitled 'CTM post MFN, November 2014', slide 2.

scale, the quality of its PCW offering to providers, discounting commission fees and measures to provide added support and value to providers – all of which would require CTM to compete on the merits either by lowering commission fees or investing to add value for providers.

- 8.25 By January 2015, CTM had observed a noticeable shift in the approach of ‘a large number’ of insurance providers to negotiating commission fees and offering discounted pricing, including through the use of promotional deals. A slide deck prepared by [Employee 1, CTM]⁸⁸³,) stated:

‘Following the announcement in Sep-14 that narrow [sic⁸⁸⁴] MFNs are to be prohibited, we’ve seen a shift in approach from a large number of partners:

- *Increased resistance to CPA [commission fee] increases*
- *Higher instances of lower pricing on other PCWs and direct websites*
- *An expectation that CPA [commission fee] reductions will be offered for exclusives (furthered by MSM/Confused/Google all offering reductions of up to 50%)*
- *Attempts to drive competition among PCWs*
- *An awareness that PCWs must avoid ‘equivalent behaviours’ to an MFN.’⁸⁸⁵*

- 8.26 Later in 2015, after the PMI Order 2015 had come into force, CTM’s internal documents show that CTM, at that time, considered that wide MFNs had in the past limited the competitive pressure on it to discount commission fees to secure the lowest prices. A slide deck prepared by [Employee 1, CTM] in June 2015 entitled ‘Best Prices’ described the impact of the ban on wide MFNs in private motor insurance as having had the effect of increasing the competitive pressure on CTM:

‘Partners have used the prohibition of wide MFN s [sic] to try to drive down CPAs [commission fees] in return for best prices

⁸⁸³ In May 2016 [Employee 1, CTM]’s [§].

⁸⁸⁴ The CMA considers that this should have said ‘wide MFNs’ on the basis that the announcement referred to in September 2014 was the CMA’s final report in the PMI Market Investigation containing the decision to prohibit wide MFNs in the private motor insurance sector.

⁸⁸⁵ URN 3208, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Partner Proposition (Jan-15)’, slide 5.

*This has been a constant challenge, not helped by the continuous drip feed of the CMA findings’.*⁸⁸⁶

- 8.27 The slides also show that CTM considered that its wide MFNs were important, not only to secure the lowest prices, but also to resist competitive pressure from other PCWs seeking to attract business away from CTM, explaining that:

*‘Insurance pricing is highly complex and our competitors are trying to buy better prices to claw-back market share that we have won’.*⁸⁸⁷

*‘MSM, Confused and Google have been aggressively discounting CPAs [commission fees] in an attempt to steal market share’.*⁸⁸⁸

*‘The market has evolved and made achieving best prices more difficult, in particular the prohibition of wide MFNs and an increase in CPA [commission fee] discounting’.*⁸⁸⁹

- 8.28 The effects of the prohibition of wide MFNs in private motor insurance were further highlighted in a CTM ‘Exec Finance Update’ dated April 2016.⁸⁹⁰ This update shows that the absence of wide MFNs in private motor insurance had the ‘*biggest impact*’ on the commercial landscape in the previous two years, had restricted CTM’s ability to secure ‘*best prices*’, and that CTM was seeing greater competition, with other PCWs holding or reducing commission fees.⁸⁹¹

⁸⁸⁶ URN 5750, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Best Prices, June 2015’, slide 8.

⁸⁸⁷ URN 5750, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Best Prices, June 2015’, slide 2.

⁸⁸⁸ URN 5750, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Best Prices, June 2015’, slide 8.

⁸⁸⁹ URN 5750, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Best Prices, June 2015’, slide 16.

⁸⁹⁰ URN 3889, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘CTM Exec Finance Update, 26 April 2016’.

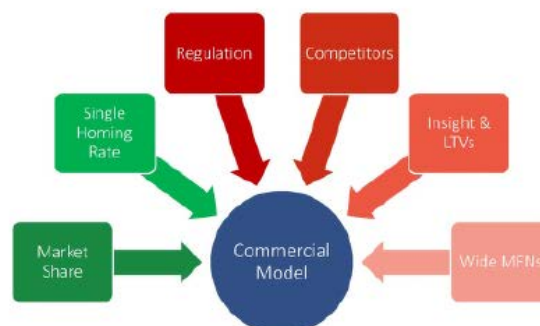
⁸⁹¹ URN 3889, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘CTM Exec Finance Update, 26 April 2016’, slide 30. The slide also identifies that providers ‘*now understand*’ the lifetime value (LTV) of consumers acquired through different PCWs. As set out in Section 7.D.II.(a), differences in LTV between PCWs was a factor in commission fee negotiations and potentially a factor in differentiating prices across PCWs.

Figure 8.1: CTM internal slide providing an update on influences on the commercial landscape

Influences

3

- The commercial landscape for PCWs and insurers has changed over the last 24 months
- The prohibition of WMFNs has had the biggest impact, restricting our ability to get best prices
- Partner profitability has been under pressure through greater competition and regulatory change (LASPO, add-ons, etc)
- Other PCWs are holding/reducing CPAs for the biggest brands, in order to gain best prices
- Insurers now understand LTV by PCW
- Our continued growth in share and our SHR help us to achieve our goals



Source: URN 3889, BGL's response to section 27 notice dated 26 September 2017, document entitled 'CTM Exec Finance Update, 26 April 2016', slide 30

8.29 By August 2017, CTM had decided to run a trial promotional deal in private motor insurance in response to increasing discounting of commission fees by rival PCWs:

'Other PCWs have increasingly been discounting CPAs [commission fees] to gain lower prices for customers

CTM has chosen not to do this in the past, on the basis that we expected that it would i) reduce profitability; ii) we have previously relied more on WMFNs; and iii) we don't want to start a CPA [commission fee] discounting war'.⁸⁹²

8.30 The views expressed in its internal documents, as described above, are consistent with BGL's submissions to the CMA (and its predecessor the Competition Commission) during the PMI Market Investigation and the DCTs Market Study.⁸⁹³

8.31 During the PMI Market Investigation in 2013 and 2014, BGL provided evidence to the Competition Commission⁸⁹⁴ on the importance of wide MFNs

⁸⁹² URN 1965, BGL's response to First BGL Notice dated 26 September 2017, slide 2.

⁸⁹³ As explained above, by the time of the DCTs Market Study, CTM was the only one of the Big Four PCWs to have retained wide MFNs in home insurance.

⁸⁹⁴ The CMA took over the functions of the Competition Commission on 1 April 2014, while the PMI Market Investigation was on-going.

to CTM's consumer proposition and the effects of such clauses on the prices offered by insurance providers across insurance products on different PCWs:

(a) In a multilateral hearing with PCWs in July 2013, [Employee 1, BGL] stated: *'From our consumer proposition what we cannot have is a scenario where the customer comes back and says: 'Actually I put my identical information into your site and this is what I received. Actually, that was not the best. I did not have the outcome I wanted.'* We want to guard against that outcome, and the way in which we guard against that outcome is to say just do not provide those [i.e. higher] prices to us.⁸⁹⁵

(b) In a multilateral hearing with PCWs in February 2014, [Senior Executive, CTM] expressed *'grave concerns over the current understanding of proposed remedies relating to wide MFNs.'*⁸⁹⁶ He expanded on these concerns as follows:

*'In a PMI market without MFNs, the consumer will no longer have confidence that they can find the best price. The PMI market will rewind 10 years, with consumers having to search a multitude of providers across a range of channels, never understanding whether they can secure the best price.'*⁸⁹⁷

(c) At the same hearing in February 2014, [Senior Executive, CTM] also expressed his view that wide MFNs would *'become increasingly important'* to prevent insurance providers from using price optimisation software to offer different prices to consumers using different PCWs:

*'[W]e believe that MFNs – wide MFNs, indeed – will become increasingly important within the comparison model to protect consumers from the sophisticated pricing optimisation software being deployed by insurers.'*⁸⁹⁸

8.32 Similarly, in April 2017, in a written response to a question about the impact of the removal of wide MFNs in the PMI sector (in the context of the DCTs Market Study), CTM highlighted the effectiveness of wide MFNs preventing price differentiation by providers across PCWs:

⁸⁹⁵ URN 9607.1, transcript of multi-lateral response hearing with PCWs held on 18 July 2013, page 26 and 27.

⁸⁹⁶ URN 9607.2, transcript of multi-lateral response hearing with PCWs held on 28 February 2014, page 6.

⁸⁹⁷ URN 9607.2, transcript of multi-lateral response hearing with PCWs held on 28 February 2014, page 10.

⁸⁹⁸ URN 9607.2, Transcript of multi-lateral response hearing with PCWs held on 28 February 2014, page 9.

- (a) *'MFNs are vital to the DCT consumer proposition, [...]. MFNs provide both credibility and help prevent free-riding by suppliers (and other intermediaries).'*⁸⁹⁹
- (b) *'[T]he removal of [wide] MFNs may allow insurers (and other suppliers) to price discriminate more effectively (and, rather than offering savings elsewhere, simply charge higher prices on the most popular DCTs).'*⁹⁰⁰

8.A.II.(b). CTM's decision to retain and enforce its wide MFNs in home insurance following the PMI Order 2015

- 8.33 CTM's decision to retain and enforce its wide MFNs in home insurance following the PMI Order 2015 further demonstrates the importance of its network of wide MFNs to its competitive strategy. As described in Section 8.A.II.(a) above, CTM was concerned at that time about the potential impact that a ban on wide MFNs in private motor insurance would have on CTM's competitive position and its ability to maintain growth in commission fees. CTM's internal documents show that, despite an awareness of the risks involved, it decided to continue to retain, introduce and enforce its wide MFNs in home insurance (and other insurance products).
- 8.34 In late 2014, prior to the PMI Order 2015 being issued, CTM was concerned at the legal implications the ban may have on its ability to use wide MFNs in other insurance products, but by mid-2015, after the PMI Order 2015 had come into force, CTM had decided it was able to maintain, introduce and enforce wide MFNs outside of private motor insurance.
- 8.35 BGL explained that its main concern over the enforceability of wide MFNs in home insurance had been due to a provision in the PMI Order 2015 prohibiting 'equivalent behaviours' to the banned wide MFN.⁹⁰¹ For example, a slide pack from November 2014 notes that CTM was awaiting guidance from the CMA on *'behaviours that seek to replicate the same anticompetitive effects as wide MFN's [sic]'*, but that the proposed changes to its approach in private motor insurance for after the wide MFN ban were *'aligned to CMA findings'* as it had *'no intention to delist based on prices offered, nor to radically change commercial terms'*.⁹⁰² However, as reflected in its internal documents described below, having sought legal advice on the scope of the

⁸⁹⁹ URN 9857, BGL's response to the DCTs Update Paper dated 28 March 2017, page 18.

⁹⁰⁰ URN 9857, BGL's response to the DCTs Update Paper dated 28 March 2017, page 18.

⁹⁰¹ URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 16. Under the PMI Order 2015, 'Equivalent Behaviour' was prohibited: a PCW 'must not engage in any course of action (including entering into contractual terms or engaging in unilateral conduct) which has the object of replicating any of the anti-competitive effects of a Wide MFN Clause'.

⁹⁰² URN 3368, BGL's response to section 27 notice dated 26 September 2017, internal document entitled 'CTM post MFN, November 2014', slide 24.

PMI Order 2015, CTM decided in the months after the PMI Order 2015 came into force that it could continue to use and enforce its existing wide MFNs in home insurance, as well as include them in new contracts with providers. CTM's position contrasts with the two other Big Four PCWs that previously had wide MFNs in their contracts; both removed such clauses across all insurance products (including home insurance) before the PMI Order 2015 came into force.⁹⁰³

- 8.36 CTM's decision to continue to impose and enforce wide MFNs in home insurance was reflected in the minutes of a '*regulatory relationship management meeting*' held on 29 July 2015 attended by, among others, [Employee 2, CTM], which stated the following regarding wide MFNs:

*'Reconfirmed that only Private Car is impacted by the current CMA order. WMFN can continue to be used and enforced across all other products.'*⁹⁰⁴ (emphasis added)

- 8.37 It was also reflected in correspondence with a number of providers, which had sought clarification as to whether CTM would be removing its wide MFNs across all insurance products. As described more fully in Section 8.A.II.(c) below, following the PMI Order 2015, several home insurance providers requested that CTM remove the wide MFNs from their home insurance contracts, including [HIP], [HIP] and [HIP]. [HIP] also queried whether CTM would be removing the wide MFN in home insurance in light of the PMI Order 2015.⁹⁰⁵ Despite numerous such requests, CTM refused to do so, confirming the integral role in its competitive strategy of its wide MFNs.
- 8.38 Despite this decision and the position taken in correspondence with providers, CTM's internal documents also show that BGL's senior management remained concerned as to how '*robust*' CTM could be in '*enforcing*' wide MFNs outside of private motor insurance. Ahead of a CTM '*best prices meeting*' to be held on 16 March 2016, [Employee 2, CTM] stated to [Employee 8, CTM] on 1 March 2016 that:

⁹⁰³ Confused removed all wide MFNs from its insurance agreements in December 2012; similarly, GoCompare removed all wide MFNs in March 2015. MoneySuperMarket never included wide MFNs in its contracts with insurers.

⁹⁰⁴ URN 3298, BGL's response to section 27 notice dated 26 September 2017, document entitled '*Regulatory Change update for ctm – actions 29.07.15*', page 2

⁹⁰⁵ See further footnote to paragraph 8.49 below.

'[Employee 4, BGL] is meeting with [Employee 1, BGL] tomorrow regarding how robust we can be with enforcing the wide MFN for non-car products so we will share this at the meeting too'.⁹⁰⁶

- 8.39 However, over time – despite the risks involved – CTM became more confident about how robust it could be in enforcing its wide MFNs outside of private motor insurance. At a weekly team meeting of the CTM relationship management team on 8 March 2016, the approach to wide MFNs for *'non PMI products'* was summarised as follows:

'[Employee 2, CTM] and [Employee 4, BGL] have looked at the approach to the MFN clauses for non PMI products. Our approach will be managed on a partner by partner basis, first with a conversation. [...] [Employee 2, CTM] will review the process after a month and we will implement MFN's [sic] that are not for car.'⁹⁰⁷

- 8.40 By June 2016, BGL's legal team had agreed that – subject to an additional review and sign off process involving [Employee 1, BGL] – CTM could continue to maintain, introduce and enforce its wide MFNs in respect of products other than private motor insurance and indeed introduce them into new contracts. In an email from [Employee 2, CTM] to [Employee 1, CTM] on 2 June 2016, [Employee 2, CTM] stated:

'Agreement from legal that we can enforce/introduce wide MFNs – but this is not 'official' yet (needs [Employee 1, BGL]'s sign off)'.⁹⁰⁸

- 8.41 Senior management's decision to enforce and continue to introduce wide MFNs, other than in private motor insurance, demonstrates both (i) how integral CTM's wide MFNs were to its competitive strategy and (ii) that CTM's senior management recognised there was a degree of legal risk

⁹⁰⁶ URN 3378, BGL's response to section 27 notice dated 26 September 2017, internal email chain between [Employee 2, CTM] and [Employee 8, CTM], email entitled 'RE: Best prices actions', dated 22 March 2016, page 3.

⁹⁰⁷ URN 3347, BGL's response to section 27 notice dated 26 September 2017, document entitled 'CTM Meeting Minutes 8 3 16', page 1.

⁹⁰⁸ URN 3396, BGL's response to section 27 notice dated 26 September 2017, internal email chain between [Employee 2, CTM] and [Employee 1, CTM], email entitled 'RE: Strategic Pillar Report', dated 2 June 2016, page 1. BGL submitted that this chain of emails was *'irrelevant'* to the CMA's case as the CMA must look at how the clauses were actually applied in practice (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, page 10, Table A, paragraph 29). The CMA considers that evidence on how CTM viewed its wide MFNs, including its decisions about how robust it could be in enforcing its wide MFNs demonstrates the importance of wide MFNs to CTM's commercial strategy, as well as providing evidence as to how they operated in practice that is relevant to the assessment of the effects of the network of wide MFNs on competition. As set out in Section 8.B. below, the CMA has also assessed providers' compliance with their wide MFN obligations in practice, including the actions CTM took to secure such compliance.

involved, hence investing in and getting legal sign off for standard agreed internal processes when querying pricing by providers with wide MFNs.

- 8.42 Other internal documents show how the decision was implemented internally. For example, one document describes the '*new process agreed regarding Relationship Management team liaison with partners on non-car WMFN enforcement/negotiations*', noting that the new process was signed off by [Employee 4, BGL] on 2 June 2016.⁹⁰⁹ Under the new process, communications with insurance providers with wide MFNs about their pricing that were not resolved by a pro-forma email used by CTM when querying quotes by any providers were subject to approval from BGL's legal and compliance team.⁹¹⁰ In setting out guidance for '*non-car WMFN enforcement/negotiations*', this document also confirmed CTM's policy as being to:

- '1) Enforce the WMFN on all products except Car
- 2) Introduce WMFNs on all products except Car when;
 - a. Negotiating CPAs with current partners
 - b. Agreeing contracts with new partners'.⁹¹¹

- 8.43 CTM's reaction to the launch, in September 2016, of the CMA's DCTs Market Study⁹¹² also showed how integral CTM's wide MFNs were to its competitive strategy and that it was therefore prepared to take the risk of maintaining and enforcing its wide MFNs. As part of the DCTs Market Study, the CMA looked at whether PCWs were competing effectively, referring in its Statement of Scope to wide MFNs as a type of practice that had raised competition concerns in the CMA's (and its predecessors') previous work, including the PMI Market Investigation.⁹¹³

⁹⁰⁹ URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation', slide 8.

⁹¹⁰ On 5 September 2016, [Employee 2, CTM] confirmed to [Employee 1, CTM] that '*[a]ll other pricing discussions & emails are dealt with on a case-by-case basis using the Sign off System*', URN 9165: BGL's response to follow up questions to section 26 notice dated 10 May 2019, email chain between [Employee 2, CTM] and [Employee 1, CTM] ([Employee, CTM] in copy), email entitled 'Re: Pricing', dated 5 September 2016.

⁹¹¹ URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation', slide 9. The CMA is not aware of any provider joining CTM's panel or entering into a new agreement for home insurance between mid-2013 and November 2017 that did not have a wide MFN in its contract. See Annex C. 12 providers joined CTM's panel during this period. CTM included wide MFNs in its contracts as late as October 2017 but did not include such clauses in two contracts agreed in November 2017 after commencement of the Investigation.

⁹¹² DCTs Market Study case page: <https://www.gov.uk/cma-cases/digital-comparison-tools-market-study#responses-to-statement-of-scope>.

⁹¹³ DCTs Market Study, [Statement of Scope](#), paragraphs 4.8 and 4.9, footnote 3 and Annex A.

- 8.44 In November 2016, following a meeting with the CMA in the DCTs Market Study, [Senior Executive, CTM] provided an update to [Senior Executive, BGL], informing him that CTM had *'faced tricky questions on why we still enforced wide MFN's [sic] on Home insurance'* from the CMA, albeit indicating that more broadly the discussion had been a *'positive one'*.⁹¹⁴ In response, [Senior Executive, BGL] noted that it *'had passed me by that best price clauses still exist in home'*, asking *'what is this worth and should we consider a proactive stance?'*⁹¹⁵
- 8.45 [Senior Executive, CTM] advised that *'having revisited'* the decision to use wide MFNs in home, van, bike and pet insurance *'in light of the current climate'* he still considered the use of wide MFNs was *'fine'*. He also advised against *'taking a proactive stance'* but identified that *'it is clearly an area of focus and so we should discuss our approach further to ensure* [[Senior Executive, BGL] was] *comfortable with the position'*.⁹¹⁶
- 8.46 However, [Senior Executive, BGL] responded that he was *'not comfortable to accept the risk at this stage'* and stated that *'[w]e need to consider along with all other known areas of risk ... as we cant [sic] afford anything coming leftfield post their review where we can't say we are happy on what (if any) commercial impact a change will have'*.⁹¹⁷
- 8.47 Notwithstanding its awareness of the risks involved, CTM continued to maintain and enforce its wide MFNs in home insurance. It continued to include wide MFN clauses in new contracts as late as October 2017.⁹¹⁸

⁹¹⁴ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], email entitled 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016', dated 28 November 2016, page 2.

⁹¹⁵ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], email entitled 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016' dated 28 November 2016, page 2. The CMA interprets *'proactive stance'* in this context as [Senior Executive, BGL] suggesting that CTM should consider taking the proactive step of no longer using wide MFNs in home insurance if it was not *'worth'* doing so. This is consistent with his position in his subsequent email that he was *'not comfortable to accept the risk at this stage'*.

⁹¹⁶ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016' dated 28 November 2016, page 1. BGL submitted that this email exchange *'focusses exclusively on CTM's strategic response to the PMI Order 2015, also offers no insight into the effects that WMFNs are alleged to have had in the home insurance market'* (see URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, Annex 6, page 7). However, the email clearly relates to CTM's decision to retain wide MFNs in home insurance, a position it *'revisited'* in the context of the *'current climate'* of the CMA's DCTs Market Study, and therefore shows the importance to CTM of retaining its wide MFNs despite its awareness of the legal risk.

⁹¹⁷ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016', dated 28 November 2016, page 1.

⁹¹⁸ Contracts with wide MFNs agreed in 2017 include [HIP] (replacing a previous contract entered into in December 2011), [HIP], [HIP] and [HIP]: URN 1817, BGL's response to the First BGL Notice dated 26 September 2017, question 30, contractual arrangement between BISL Ltd and [HIP] dated 12 May 2017; URN 1818, BGL's response to the First BGL Notice dated 26 September 2017, Contract between BGL and [HIP]; URN 1790, BGL's response to the First BGL Notice dated 26 September 2017, contract between BGL and [HIP]; URN 1820, BGL's

Furthermore, as described in Section 8.B.III. below, it was escalating its enforcement action at least as late as July 2017, as well as refusing the removal of the clauses from contracts at this time (see Section 8.A.II.(d). below). Accordingly, BGL's argument in the present Investigation, that wide MFNs were not material to CTM's strategy, is undermined by the fact that it continued to impose and enforce its wide MFNs throughout the Relevant Period. This was despite the obvious risks recognised by senior management within BGL regarding the potential for anti-competitive effects, at least following the CMA's findings in the PMI Market Investigation and on-going scrutiny in the DCTs Market Study.

8.A.II.(c). CTM's refusal to remove its wide MFNs following requests from home insurance providers

- 8.48 CTM's refusal of requests from providers (including large providers such as [HIP], [HIP] and [HIP]) for wide MFNs to be removed from their contracts further demonstrates that CTM's wide MFNs were an integral and effective part of its competitive strategy. These requests also demonstrate the concerns that the relevant providers had at the time at being subject to CTM's wide MFNs.⁹¹⁹ The fact that CTM resisted such requests from providers is inconsistent with BGL's submissions in the present Investigation that wide MFNs were not material to its commercial strategy.
- 8.49 At the time of the PMI Order 2015, several insurers sought removal of their wide MFN clauses from their contracts or clarification as to whether they would be removed.⁹²⁰ In addition, three large insurers ([HIP], [HIP], and

response to the First BGL Notice dated 26 September 2017, Contract between BGL and [HIP]. The CMA is not aware of any provider joining CTM's panel or entering into a new agreement for home insurance between mid-2013 and November 2017 that did not have a wide MFN in its contract (see Annex C).

⁹¹⁹ In response to the SO (URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraphs 103, 314, 315), BGL submitted that providers subject to its wide MFNs could have renegotiated their contracts if they regarded the clauses as commercially restrictive or illegal in any way in support of its case that its wide MFNs had no material impact on the behaviour of the relevant providers. The evidence in this section demonstrates that several insurers did in fact seek removal of such clauses because they regarded them as restrictive and/or illegal but CTM refused. Moreover, [HIP] told the CMA that '[X]' (URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(a)). [HIP] stated that it '*has always reluctantly accepted that wide and narrow MFN clauses were required as a condition of trading with PCWs.*', URN 5256A, [HIP]'s response to section 26 notice dated November 2017, question 16. [HIP] also told the CMA that it had repeatedly sought to remove the wide MFN clause from its contract during negotiations but failed to do so (URN 9825, [HIP]' response to section 26 notice dated 26 July 2019, question 3.). However, in response to the First Letter of Facts and Draft Penalty Statement, BGL argued on the contrary that evidence of such requests and refusals are not relevant to the CMA's assessment of the appreciability of the effects of its wide MFNs on competition (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 315 and 316). The CMA disagrees. It considers that such evidence is probative as to the role of CTM's wide MFNs in its strategy in the Relevant Period for the reasons set out in this section and to the assessment of the effects of its wide MFNs on competition as set out in section 9 of this Decision.

⁹²⁰ The requests by [HIP], [HIP] and [HIP] are considered in detail in this Section. In addition to those three insurers, [HIP] sent a contract variation to CTM in October 2016 seeking to remove its wide MFN clause across all products which CTM never actioned. (URN 5157, [HIP] response to section 26 notice dated 24 November

[HIP]) sought removal of their wide MFNs from their contracts prior to⁹²¹ and during the Relevant Period. These multiple requests over several years demonstrate that home insurance providers were concerned by the effect the wide MFN clause was having on their commercial positions.

8.50 [HIP] requested the removal of the wide MFN clause from its contracts on at least four occasions in 2012,⁹²² 2013, 2016 and 2017. [HIP] told the CMA that *'CTM resisted all attempts by [HIP] to remove wide MFN from contracts relating to non-motor products.'*⁹²³ At least one of these requests (2013) was escalated to a [Senior Executive]-level discussion, while two (2013 and 2016) involved legal team discussions. The exchanges clearly show that [HIP] considered CTM's wide MFNs to be anti-competitive and that it communicated that view to CTM:

- (a) An internal CTM document summarising CTM's relationship with [HIP] in February 2013 noted that *'Although [HIP] had previously conceded that 'best price across all aggregators' clause would remain in their contract, they continue to raise this point as they believe it is anticompetitive. We are currently awaiting the written opinion of their counsel on this matter, but will be standing firm on the clause, a legal meeting is being arranged for w/c 11/2/13. [HIP] are now pricing with parity across all channels.'*⁹²⁴ Another CTM internal document⁹²⁵

2017, question 13(c)). [HIP] explained that CTM had been reluctant to remove its wide MFN from home insurance but changed its position following the launch of the present Investigation (URN 9633, [HIP] response to section 26 notice dated 26 July 2019, document entitled 'Aggregator Trading Action'). In March 2015 just before the PMI Order 2015 came into force, [HIP] sought clarification as to whether it could differentiate its prices across PCWs – CTM responded that [HIP] was able to do so provided that CTM had equal or lower prices than its rival PCWs (URN 3220, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee, HIP] and [Employee 2, CTM], email entitled 'Re: Catch-Up dated 12 March 2015) and a few weeks later, in April 2015, [HIP] sought further clarification whether CTM would amend its agreement to remove the wide MFN altogether in light of the PMI Order 2015. [HIP] recalls that in response CTM confirmed that it would only be removing it as far as it applied to private motor insurance (URN 9729, Transcript of interview with [Senior Executive, HIP], [Employee, HIP] and [Employee, HIP] held on 17 July 2019, page 14 lines 21 to 26).

⁹²¹ BGL has submitted that evidence pre-dating the Relevant Period is either irrelevant or far too removed chronologically to support any inferences or conclusions. (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, section 5.1; URN 10465, BGL's response to the First LoF and DPS dated 14 February 2020, Annex 6, page 4). The CMA disagrees for the reasons set out in Annex P.

⁹²² URN 3981, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Group aggregator meeting - December 2012', page 3.

⁹²³ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16.

⁹²⁴ URN 3969, BGL's response to section 27 notice of 26 September 2017, BGL's document entitled '[HIP] exec Summary - Feb 2013'. See also CTM internal report on the outcome of the legal meeting: *'legal meeting was held on 12/2, involving [§] [Employee 1, CTM], [Employee 1, BGL] and BGL External Counsel. No change in position was agreed by either side - agreed to review again when CC findings are known.'* URN 3972, BGL's response to section 27 notice of 26 September 2017, document entitled '[HIP] exec summary - Feb 2013 (updated)', page 2.

⁹²⁵ In an email from [Senior Executive, CTM] to [Employee 1, CTM] dated 19 February 2013: *'I saw [Senior Executive, HIP] during coffee at the FSA meeting this morning. I told him we were confident in our position and that the clause must remain. He backed down pretty quickly and conceded that was fine. He shared that, if the FSA/CC come calling, they want to be able to show they tried to get out of the clause so that they can not [sic] be accused of anything underhand.'* URN 2858, BGL's response to section 27 notice dated 26 September 2017, document entitled '[HIP]'s Wide MFN'.

indicates that [HIP] *'backed down'* and accepted that the clause could remain after a [Senior Executive]-level discussion between the organisations during which CTM's [Senior Executive] stated that CTM was *'confident in [its] position.'*

- (b) In September 2016, CTM resisted removing its wide MFN during protracted contract negotiations for both home and van insurance lasting from at least July 2016 to January 2017. On 11 July 2016, [Employee, HIP] emailed [Employee 4, CTM] requesting the removal of the wide MFN clause. *'Re MFN clause, the [HIP] group understanding of the review [the PMI Investigation] was that although it was focused on private motor, home and travel the decisions apply to all GI [general insurance] products transacted via an Aggregator. This is something we strongly believe must be reflected within the new agreement.'*⁹²⁶ [Employee 4, CTM] responded on 22 September 2016 refusing the request on the basis that the PMI Order 2015 only applied to private motor insurance and not to other insurance products including home insurance.⁹²⁷
- (c) In [§], [HIP] again requested that CTM remove the wide MFN in home insurance. This request was made at a time when [HIP] wanted to enter into a promotional deal with [§] which would put it in breach of its wide MFN obligations.⁹²⁸ [HIP] highlighted the pro-competitive impact of the removal of wide MFNs in private motor insurance: *'[HIP] believes that there has been a clear increase in competition in the market for private motor insurance (PMI) since the ban of wide MFNs. We've noticed an increase in promotional offers being presented across PCWs, as insurers are now able to leverage promotional deals with selected partners in order to drive commercially advantageous arrangements.'* [HIP] also highlighted that CTM was the only PCW to continue to rely on wide MFNs to *'guarantee the 'cheapest' price'* and that *'the ultimate effect across all other insurance products is therefore the same as it*

⁹²⁶ URN 3410, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee 4, CTM] and [Employee, HIP], email entitled '[EXTERNAL] RE: Contract amendment' dated 11 July 2016.

⁹²⁷ URN 6236.9, [HIP]'s response to section 26 notice dated 16 April 2018, email from [Employee 4, CTM] to [Employee, HIP] entitled 'Contract' and URN 6236.11, [HIP]'s response to section 26 notice dated 16 April 2018, entitled 'RE: contract' in which [Employee 4, CTM] explained that the *'amendments re the wide MFN will be left out (as we can't enforce car anyway)'*. In a subsequent email to [Employee 1, CTM] and [Employee 2, CTM] on 5 January 2017, [Employee 4, CTM] explained that *'[t]hey [[HIP]] owe us [CTM] [§] from the last CPA increase due to an ongoing issue re signing the amendment – they [[HIP]] wanted the wide MFN clause removing [sic] in full and we [CTM] refused, had a call with contracts/legal/[HIP] on this. This should be sorted in the next week.'* (URN 3473, BGL's response to section 27 notice dated 26 September 2017, internal email between [Employee 4, CTM], [Employee 2, CTM]) and [Employee 1, CTM], email entitled 'RE: [HIP] CPAs', dated 5 January 2017.

⁹²⁸ [HIP]'s proposed deal with [§] and the enforcement action CTM took in response is set out in detail in Section 8.B.III.(b).(i) below and Annex M.

was historically for PMI i.e. an overall adverse effect on competition by reducing PCWs incentives to compete and innovate, most likely leading to higher commission fees and premiums for customers.⁹²⁹ This request was subsequently escalated to [Employee 1, CTM] and [Employee, HIP] and incorporated into the discussions around [HIP]'s proposed promotional deal with [✂].⁹³⁰

- 8.51 [HIP] requested removal of its wide MFN clause from its contracts across all products in 2012/2013⁹³¹ and again in 2015. In April 2015, days after the PMI Order 2015 came into force, [HIP] informed CTM in a meeting on 24 April 2015 between [Employee 13, CTM] and [Employee, HIP] that removal of its wide MFN clauses was a *'priority'* for [HIP] and CTM recorded as an action *'to explain further considerations for CTM to treat [HIP]'s contract as an exception to the other contracts as the removal of the MFN clauses is a priority for [HIP]'*.⁹³² Three weeks later, [HIP] renewed its requests for removal of the clause and CTM reiterated the reasons it had provided [HIP] previously for refusing to change [HIP]'s contract, including that the PMI Order 2015 only applied to private motor insurance and therefore the clause would remain for home insurance.⁹³³ An internal CTM email noted that CTM's relationship with [HIP] had been *'challenging in recent months'* due to

⁹²⁹ URN 5402, [HIP]'s response to section 26 notice dated 24 November 2017, question 20, email chain with CTM entitled *'RE: Removal of wide MFN (Home/Van)'*, dated 2 May 2017, page 6.

⁹³⁰ URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 21. See Annex M.

⁹³¹ [HIP] entered into its agreement with CTM containing a wide MFN on 1 December 2011 covering both private motor insurance and home. A year later CTM records in an internal meeting attended by [Senior Executive, CTM] that [HIP] wanted to *'pull back from the 'best price' clause citing the Competition Commission review as a reason for concern. However, [[HIP]] have now subsequently agreed to give best price'*. URN 3981, BGL's response to section 27 notice dated 26 September 2017, document entitled *'Group aggregator meeting - December 2012'*, page 3. In April 2013, a request from [HIP] to remove the wide MFN from its contract was again recorded in an internal CTM executive summary. The only item listed as *'issues'* under *'Relationship Overview – Car & Home Panel'* was that *'[[HIP]] have requested the price parity clause be removed from their contract [...] – ctm have declined this request'*. URN 3558, BGL's response to section 27 notice dated 26 September 2017, document entitled [HIP] Exec Summary – April 2013', slide 3.

⁹³² URN 3237, BGL's response to section 27 notice dated 26 September 2017, document titled *'Meeting Minutes Comparethemarket 24-4-15'*.

⁹³³ BGL submitted that [HIP]'s request in April 2015, only related to removal of the wide MFN clause in so far as it related to private motor insurance in light of the PMI Order 2015 referring to document URN 3240, BGL's response to section 27 notice dated 26 September 2017, email between [Employee, HIP] and [Employee 2, CTM], email entitled *'RE: Actions from yesterday's call'*, dated 14 May 2015, page 1 in support. (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 314). The CMA disagrees. URN 3240 reflects the final position agreed between [HIP] and CTM following CTM's refusal in earlier correspondence to remove the wide MFN clause entirely from [HIP]'s contract. This is demonstrated by the fact that the email from [HIP] to CTM on 14 May 2015 (referred above) recorded that [HIP]'s *'repeated requests ...to remove these clauses have been rejected'* on the basis that the CMA's PMI Order 2015 only relates to private motor insurance and so the wide MFN clause would *'need to remain for the household product which is on the same agreement'*. If [HIP] had only requested removal of the clause in so far as it related to private motor insurance there would have been no need for CTM to have *'rejected'* [HIP]'s repeated requests to remove the clause (URN 3241, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee, HIP] and [Employee 2, CTM], forwarded to [Employee, CTM], email entitled *'[HIP] – [✂]'*, dated 14 May 2015, pages 1 to 3.

'key issues for [HIP], including the removal of the MFN clause in the contract'.⁹³⁴

8.52 [HIP]⁹³⁵ raised the removal of the wide MFN from its contract on a number of occasions in 2015 and 2017. In an internal email in March 2015, [HIP] set out that its *'main priority is getting the wide MFN clause removed'* because it considered itself to be at a competitive disadvantage compared to those home insurance providers that were only subject to narrow MFNs in their contracts with CTM.⁹³⁶ [HIP] linked a proposed increase in commission fees with removal of its wide MFN clause because it considered that it would be *'worse off compared to our competitors as we have to both keep prices aligned and take a CPA [commission fee] increase'* and *'once the wide MFN clause is removed we will reconsider taking an increase in CPAs [commission fees]'*.⁹³⁷

8.53 This concern was again reflected in an internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Senior Executive, HIP] of June/July 2017 in relation to CTM's proposed commission increases (for both home and pet insurance), [Employee, HIP] stated: ⁹³⁸

'They [CTM] are obviously not confirming this, however this is the perfect storm scenario when they know we are under market pressure and expect us to take a significant increase, they won't back off from MFN so expect us to either absorb this cost or to pass onto customers across the whole market, instead of just to them.'

Position today is that we cannot afford this increase and will pass onto their customers only if they force this on us'

8.54 [HIP] internally also regarded CTM's wide MFN as preventing it from being able to work with MoneySuperMarket on promotional deals. In an internal

⁹³⁴ URN 3749, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee 13, CTM] and [Employee 1, CTM], ([Employee 2, CTM] and [Employee 9, CTM] in copy), email entitled '[HIP]: Summary', dated 27 May 2015, page 1. Like most insurers listing multiple insurance products on CTM, [HIP]'s wide MFN clause covered all such insurance products.

⁹³⁵ The CMA refers to section 8.B.II below where it addresses BGL's representations on [HIP]'s strategy more generally including the weight the CMA places on [HIP]'s submissions in response to the SO and First LoF.

⁹³⁶ URN 5714, [HIP]'s response to section 26 notice dated 24 November 2017, question 21.

⁹³⁷ URN 5714, [HIP]'s response to section 26 notice dated 24 November 2017, question 21. This concern at the impact that CTM's wide MFN was having on [HIP]'s ability to compete against two of its main rivals who did not have wide MFNs is reflected again in an internal email in June 2015 in which [HIP]'s Head of Distribution Development and Relationships stated that *'we know from providers that have 1 contract for motor/home/other products that the clause is generic so has been removed, so we suffer from only doing pet/home with them!'* URN 5717, [HIP]'s response to section 26 notice dated 24 November 2017, question 21.

⁹³⁸ URN 5716, [HIP]'s response to section 26 notice dated November 2017, internal email entitled 'FW: CTM CPA update in readiness for our meeting at 11' dated 30 June 2017, page 2.

slide briefing pack titled '*Exclusives – MFN Blocker*' in June 2017, [HIP] noted that:⁹³⁹

'As part of this years [sic] CPA negotiation we have again pressed for the removal of the wide MFN, however, this is currently non negotiable with CTM'.

8.A.II.(d). CTM's systematic monitoring of quotes on rival PCWs and enforcement of its wide MFNs shows their importance to CTM

- 8.55 CTM's systematic monitoring and enforcement of its wide MFNs also demonstrates the importance CTM placed on having wide MFNs in its agreements with home insurance providers, as well as the importance to CTM of ensuring compliance by providers with their contractual obligations not to offer prices on other PCWs that undercut CTM.
- 8.56 CTM spent considerable time and effort in monitoring quotes on rival PCWs to ensure that the prices on its platform were not being undercut on rival platforms, reflecting the importance to CTM of securing lowest prices.⁹⁴⁰ CTM held so-called '*Pricing Parity*' meetings every month to analyse Consumer Intelligence data and this allowed CTM to identify prices on CTM that were higher than those on other PCWs or insurance providers' direct sites.⁹⁴¹ The meetings were chaired by [Employee 2, CTM] and were attended by [X], including [Employee 4, CTM] and [Employee 5, CTM], [Employee 9, CTM], [Employee 8, CTM]; and [X], [Employee 3, BGL].⁹⁴² The purpose of the meetings was to '*determine the priority in which RMs [relationship managers] approach partners...and clearly highlight the specific actions they are taking with partners to rectify any non-pricing parity*'.⁹⁴³ The meetings covered private motor, home, van, and bike insurance from around 2013.⁹⁴⁴
- 8.57 To facilitate discussions at the monthly meetings, a detailed document was prepared each month setting out the level of '*price parity*' for each insurance

⁹³⁹ URN 5315.45, [HIP]'s response to section 26 notice dated 24 November 2017, document entitled 'MSM Exec Briefing June 2017', slide 5.

⁹⁴⁰ CTM also monitored all providers' quotes on their direct channels to ensure compliance with their narrow MFN obligations.

⁹⁴¹ URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation', slide 11.

⁹⁴² URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 6, paragraphs 6.3 and 6.4

⁹⁴³ URN 3155, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 2, CTM] to [Employee, BGL], email entitled 'RE: Risk Register – Action update due', dated 2 October 2014.

⁹⁴⁴ URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation', slide 13 and URN 5751, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices: Into 2013/14', page 3.

brand on CTM's panel (internally referred to by CTM as '*price parity snapshots*').^{945,946} The snapshots recorded the internal and external actions taken, or to be taken, if lower prices were observed on CTM's rival PCWs from the Consumer Intelligence data in the previous month. Such actions included '*monitor*' or '*send risk data*' (CTM's compliance process and instances where CTM escalated its enforcement are set out in Section 8.B.III below).⁹⁴⁷

- 8.58 If a brand was absent from any given monthly snapshot that meant that CTM had not identified a lower price on its rival PCWs outside of its '*pricing competitiveness target*'.⁹⁴⁸ This '*pricing competitiveness target*' was what CTM considered to be an acceptable level of pricing disparity for the month, beyond which a provider would be considered as non-compliant and identified as potentially requiring follow up action by CTM.⁹⁴⁹ CTM had an internal tolerance threshold because it recognised the limitations of using Consumer Intelligence data to identify when providers may not be offering CTM '*price parity*'.⁹⁵⁰ The limitations of the data mean that apparent price differences across PCWs can arise not only from data errors but also, for example, differences in the default excesses on PCWs, mapping software errors, or differences in the question sets used between PCWs.⁹⁵¹ CTM's

⁹⁴⁵ The snapshots were prepared by a Relationship Executive who was not involved in negotiations with home insurance providers, URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 6, paragraph 6.4.

⁹⁴⁶ BGL submitted snapshots for the period April 2015 to September 2017, with some exceptions, and for the period December 2017 to May 2019. See URN 4795.1 to URN 4795.37, BGL's responses to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Snapshot Best Prices May - 15'; URN 6438.26 to URN 6438.34, BGL's response to the Second BGL Notice dated 3 May 2018, question 21; URNs 9170b to 9170g and URNs 8882 to 8892, BGL's response to section 26 notice dated 10 May 2019.

⁹⁴⁷ The snapshots also include: (i) columns for 'Evidence Required' and 'Actions & Update' to be completed; (ii) any question set, mapping differences or issues with Consumer Intelligence data to be detailed in full; and (iii) any references made to liaising with the providers, e.g. on conference call or during monthly meeting to be referenced in the following month's snapshot.

⁹⁴⁸ URN 6438, BGL's response to the Second BGL Notice dated 3 May 2018, paragraph 26.1 and 31.1 and URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 36, paragraph 36.2.

⁹⁴⁹ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 36, paragraph 36.2.

⁹⁵⁰ CTM's awareness of the limitations of the data provided is also identified in internal documents submitted by BGL in response to the section 27 notice of 26 September 2017. See URN 3128, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Management of best prices', slide 4, URN 3252, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Pricing Competitiveness', slide 5; URN 3523, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices', slide 3 and URN 4032, BGL's response to section 27 notice dated 26 September 2017, document entitled '[HIP] Workshop, 9th October 2013', slide 4. In addition, home insurance providers also explained to CTM why retail prices may differ across PCWs, for example, in an email to CTM one provider, [HIP], explained that the price differences observed by CTM were driven by factors including differences in question and answers sets and excess levels among other factors, URN 4080, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee, HIP] and [Employee 9, CTM], entitled 'RE: [EXTERNAL] RE: Customer Deals vs [X] and other PCW's'.

⁹⁵¹ As explained in detail in Annex N, the Consumer Intelligence data has limitations because several different factors can affect it, including differences in PCWs' default excesses (if a PCW specifies a higher default excess than other PCWs, the retail price returned for a given consumer for a given policy will be lower on that PCW); differences in PCWs' question sets (there may be some variation in the questions used by difference PCWs to generate a quote, leading to the same consumer generating different risk profiles across difference PCWs); and inconsistencies caused by data mapping (there may be differences in the data mapping used by PCWs to collect

tolerance threshold therefore reflected the extent to which monitoring was practicable in view of these data limitations, but the resources committed by CTM also demonstrate that, despite these limitations, CTM considered that monitoring was an important and worthwhile exercise.

8.59 Before 2017, the pricing competitiveness target consisted of, on a monthly basis, a provider achieving ‘parity’ [X] % of the time in its prices on the other Big Four PCWs.⁹⁵² From 2017, CTM reduced the target for ‘price parity’ with the other Big Four PCWs to [X] %.⁹⁵³ BGL explained that *‘if CTM was priced more expensively by more than £[X] in respect of [X] per cent of the risks during the month in question ([X] % in 2016 increased to [X] % in 2017), CTM might contact the [home insurance provider] in question to try to understand the reason, although these tolerances were not always strictly applied’*.⁹⁵⁴ In this Decision, the CMA refers to these internal targets as CTM’s ‘compliance tolerance thresholds’.

8.60 The CMA describes further below in Section 8.B.III., CTM’s escalation process following on from its systematic monitoring to ensure compliance with its wide MFNs. However, in itself, the time and resources that CTM committed to monitoring quotes on rival PCWs confirms the importance that CTM placed on obtaining lowest prices to its competitive strategy and, as demonstrated by the actions CTM took following up on its monitoring, how integral to its competitive strategy and effective its wide MFNs were in ensuring that CTM was not undercut by the prices offered by the relevant providers on a rival PCW.

8.B. Compliance by home insurance providers with CTM’s wide MFNs

8.61 The CMA finds that there was widespread compliance with CTM’s wide MFNs during the Relevant Period. The relevant home insurance providers had strong incentives to comply with their contractual obligations. Most home insurance providers adopted pricing strategies that were consistent with

information on consumers and transfer this to providers for the purposes of generating a quote). There are also other issues that may affect the data, including inconsistency in product offerings, price testing by providers (which CTM identified as a limitation of the Consumer Intelligence data because it introduced natural variations (URN 3128, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Management of best prices’, slide 4)), timing, and the use of enrichment data. BGL confirmed the limitations of the Consumer Intelligence data in its response to the SO (URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 185).

⁹⁵² URN 6438, BGL’s response to the Second BGL Notice dated 3 May 2018, question 21, paragraph 21.3; URN 2947, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Best Prices May v2.pptx’, slide 3.

⁹⁵³ URN 1632, BGL’s response to the First BGL Notice dated 26 September 2017, question 36, paragraph 36.2. Throughout the Relevant Period, the price parity target in relation to home insurance providers’ direct channels was [X]: see URN 3151, BGL’s response to section 27 notice dated 26 September 2017, BGL’s internal email chain between BGL and CTM, email entitled ‘RE: 14/15 objectives & our new ways of working – Spreadsheet Locations.msg’, dated 25 September 2014.

⁹⁵⁴ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 187.

CTM's wide MFNs and, in particular, providers accounting for a significant proportion of sales on PCWs specifically took into account CTM's wide MFN in determining their pricing strategies. To ensure compliance, CTM systematically monitored providers' pricing on rival PCWs and escalated its enforcement process against providers when it was unable to resolve instances where it had identified they were offering lower prices on other PCWs in breach of CTM's wide MFNs.

- 8.62 The extent to which the relevant providers' pricing strategies on PCWs were consistent with their contractual obligations under CTM's wide MFNs is relevant to assessing the legal and economic context in which competition would occur in the counterfactual, i.e. in the absence of CTM's network of wide MFNs.⁹⁵⁵ In the absence of CTM's network of wide MFNs, providers would not have been required or had the incentive to price consistently with their contractual obligations under CTM's wide MFNs.⁹⁵⁶ They would instead have been able to differentiate their prices across PCWs by offering lower prices on other PCWs than on CTM without the risk of facing enforcement action by CTM or, at the very least, adversely affecting their commercial relationship with CTM, which was a major source of new business.
- 8.63 While there are a number of factors that contributed to providers' individual commercial decisions regarding their pricing strategies (for example, in relation to base retail pricing and the use of promotional deals),⁹⁵⁷ there was widespread compliance with CTM's wide MFNs by providers in terms of implementing their pricing strategies:
- (a) As set out in Section 8.B.I., the relevant home insurance providers had strong incentives to comply with their contractual obligations because failure to do so was a breach of contract, CTM was an important source of business, and providers were aware of the importance CTM placed on compliance.
 - (b) As set out in Section 8.B.II., most home insurance providers adopted pricing strategies that were consistent with CTM's wide MFNs and, in particular, providers accounting for a significant proportion of sales on PCWs specifically took into account CTM's wide MFN in determining their pricing strategies.
 - (c) As set out in Section 8.B.III., CTM systematically monitored providers' pricing on rival PCWs and escalated its enforcement process against

⁹⁵⁵ See Section 3.B.

⁹⁵⁶ See further Section 9A.

⁹⁵⁷ See Section 7.D.II.

providers when it identified they were offering lower prices on other PCWs in breach of CTM's wide MFN.

8.B.I. Home insurance providers had strong incentives to comply with CTM's wide MFNs

8.64 The CMA finds that the relevant providers had strong incentives to comply with the obligations imposed by CTM's wide MFNs:

- (a) Providers took their obligations seriously as failure to comply with CTM's wide MFN was a breach of contract with potentially significant consequences, including the possibility of being de-listed from CTM's panel or being subject to a claim for damages. At the very least, failure to comply was likely to adversely affect a provider's commercial relationship with CTM with, for example, potential implications for annual commission fee negotiations.
- (b) CTM communicated clearly and repeatedly to the relevant providers the importance it placed on compliance with their wide MFN obligations.
- (c) CTM was an important source of business for home insurance providers, accounting for over 50% of new business sales on PCWs and a significant proportion of many providers' sales on PCWs.

8.B.I.(a). Providers took their contractual obligations under CTM's wide MFNs seriously

8.65 As would be expected of most businesses, the relevant providers took their contractual obligations under CTM's wide MFNs seriously. For example, as set out in more detail in Section 8.B.II below, three of the largest providers with wide MFNs ([HIP], [HIP] and [HIP], which together accounted for approximately 18% of sales on PCWs in 2017) confirmed that they regarded them as binding and therefore generally abided by them. This was the case even though several providers, including [HIP] and [HIP], had doubts as to the enforceability of CTM's wide MFNs under competition law in view of the CMA's scrutiny of wide MFNs in the PMI Market Investigation and DCTs Market Study.⁹⁵⁸

8.66 Breach of CTM's wide MFN by a home insurance provider, as a term of its contract with CTM, risked leading to action being taken by CTM for breach of

⁹⁵⁸ See Section 8.A.III.(d) above. In addition, [HIP], [HIP], [HIP] and [HIP] considered that the wide MFNs may have been unenforceable on the basis of their interpretation of the effect of the PMI Order 2015 banning the use of wide MFNs in private motor insurance and on-going scrutiny by the CMA in terms of the enforceability of such clauses under competition law (see Section 4.B.I.).

contract, including the possibility of a claim for damages or delisting from CTM. As set out in more detail in Section 8.B.III and Annex M, CTM not only took enforcement action against large providers (such as [HIP] and [HIP]), but also against much smaller providers (such as [HIP], [HIP], [HIP], and [HIP]), demonstrating the importance CTM placed on compliance by all providers with its wide MFNs, irrespective of their size.⁹⁵⁹

8.67 Even the largest providers were concerned at the consequences of breaching CTM's wide MFN, including the possibility of facing a damages claim from CTM or being delisted:

- (a) [HIP]'s internal documents show that, even after the CMA had opened the Investigation, [HIP] was concerned that the likely response of CTM to a decision by [HIP] not to follow through on the compensation required by CTM (after CTM enforced its wide MFN against [HIP] in [REDACTED]) was that CTM could bring a claim against [HIP] or remove it from CTM's platform.⁹⁶⁰
- (b) [HIP], the largest provider, having identified in [REDACTED] that [HIP] was running a promotional deal with [REDACTED], assumed that [HIP] did not have a wide MFN as otherwise *'if they do have a wide MFN, are CTM looking at switching them off?'*⁹⁶¹. At around the same time, [HIP] was also considering whether it could enter into a promotional deal with [REDACTED], but took the view that *'ahead of the CMA decision [in the DCTs Market Study], should we decide to provide cheaper rates to non CTM customers, we ultimately risk CTM switching us off'*.⁹⁶² Moreover, in deciding not to breach CTM's wide MFN by entering into a promotional deal with one of CTM's rival PCWs, [HIP] itself noted in November 2017, that *'The worst case scenario is that CTM could terminate their agreement with us – whilst CTM represent nearly [REDACTED] of our sales'*.⁹⁶³
- (c) When CTM took enforcement action against [HIP] in [REDACTED], this was immediately escalated to the most senior levels within [HIP] who

⁹⁵⁹ See Section 8.B.III below.

⁹⁶⁰ URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled 'Fwd: CTM Briefing – For Awareness': Senior management within [HIP] thought that CTM would *'threaten'* removing [HIP] from CTM's panel *'with some vigour'* and in relation to the possibility of CTM bringing a claim for breach of contract, commented that *'any normal person wouldn't do this as the WMFN clause is highly likely to be held legally unenforceable by the court, [REDACTED]'*. See Section 8.B.III below and Annex M on the enforcement action taken by CTM against [HIP] for entering into a promotional deal with [REDACTED] in [REDACTED].

⁹⁶¹ URN 5315.46, [HIP]'s response to section 26 notice dated 24 November 2017, internal email chain entitled 'RE: [Employee 2, CTM] ctm call next week', dated [REDACTED]. [HIP]'s assumption about [HIP] not having a wide MFN was wrong.

⁹⁶² [REDACTED]

⁹⁶³ URN 5315.15, [HIP]'s response to section 26 notice dated 24 November 2017, document entitled 'MSM ATL'.

quickly responded to align [HIP]’s prices, including terminating a promotional deal with [X] early and self-funding a price reduction on CTM.⁹⁶⁴ [HIP] was genuinely concerned that CTM would potentially delist it for entering into the promotional deal with [X].⁹⁶⁵ It confirmed to the CMA that it took CTM’s enforcement action in [X] very seriously [X].⁹⁶⁶

- 8.68 Home insurance providers were also aware that failure to comply with CTM’s wide MFNs could adversely affect their relationship with CTM, including in commission fee negotiations. In that regard, BGL explained that the negotiation of commission fees (often referred to in internal documents as ‘CPAs’) reflects the commercial relationship between CTM and the provider.⁹⁶⁷
- 8.69 [HIP] identified that a risk in not complying with CTM’s wide MFN was a worsening of its commercial relationship with CTM. [HIP] was concerned that although CTM might, in the light of the CMA opening the Investigation, accept [HIP] not following through on the price discounts required by CTM there was a risk that the consequence would be that CTM *‘penalise [HIP] commercially- CTM have already made aggressive overtures relating to the next round of commission fee negotiations which could be exacerbated.’*⁹⁶⁸
- 8.70 The link between commission fee negotiations and complying with CTM’s wide MFN is also apparent from correspondence between CTM and [HIP]. As more fully described in Annex M, having raised concerns in February 2016 about [HIP]’s customers receiving a discount on GoCompare⁹⁶⁹, CTM shortly afterwards proposed an increase in commission fees.⁹⁷⁰ The correspondence between CTM and [HIP] indicates that [HIP]’s underperformance in terms of conversion rate on CTM following the negative impact of the pricing change on GoCompare and CTM’s concerns about CTM being undercut on a rival PCW affected the relationship between them.

⁹⁶⁴ See Section 8.B.III below and Annex M.

⁹⁶⁵ [HIP] told the CMA that terminating the promotional deal with [X] early was *‘one of the instances where we needed to make changes quickly because I did not want to go – I did not want to be on a list that went to the CTM board threatening us with delisting’*, URN 9729, Transcript of interview with [Senior Executive, HIP], [Employee, HIP] and [Employee, HIP] held on 17 July 2019, page 21, lines 18 to 20.

⁹⁶⁶ URN 5184B, [HIP]’s response to section 26 notice dated 24 November 2017, question 19. See further Annex M on the enforcement action taken by CTM against [HIP].

⁹⁶⁷ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 107.

⁹⁶⁸ URN 9153, [HIP]’s response to section 26 notice dated 19 June 2019, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled *‘Fwd: CTM Briefing – For Awareness’*, [X].

⁹⁶⁹ URN 6223, [HIP]’s response to section 26 notice dated 16 April 2018, email chain between [HIP] and BGL, dated 12 February 2016, page 16.

⁹⁷⁰ URN 6223, [HIP]’s response to section 26 notice dated 16 April 2018, email chain between [HIP] and BGL, dated 29 April 2016, pages 11 and 12.

For example, following initial pushback from [HIP] on the proposed commission fee increase, CTM stated that *‘every month we do consistently see that some of our customers are not getting the best prices on the market’* and confirmed that CTM *‘will not be able to move forward with no increase this year’*.⁹⁷¹ CTM also made it clear to [HIP] that, while the proposed minimum increase in commission fee did *‘not take into account any additional increase for the low performance’* by [HIP], CTM still had concerns stating it *‘would like to pick this up with you and look again at the price differences we have exchanged emails over in the past’*.⁹⁷²

8.B.I.(b). CTM communicated to providers the importance it placed on compliance with its wide MFNs

- 8.71 CTM communicated clearly and repeatedly to providers the importance it placed on compliance with their wide MFN obligations in their contracts. This gave rise to a reasonable belief or apprehension on the part of the providers that they could face enforcement action if they engaged in differential pricing that resulted in higher prices on CTM than on other PCWs, incentivising them to comply with the wide MFNs.
- 8.72 As described in Section 8.A.III.(d). above and Section 8.B.III.(a). below, CTM spent considerable time and effort in systematically monitoring the prices that home insurance providers were quoting on other PCWs.⁹⁷³ Where CTM identified that a home insurance provider had been pricing differently across PCWs outside of CTM’s compliance tolerance thresholds, CTM contacted the provider providing it with the relevant data and requesting an explanation of its pricing.⁹⁷⁴ If the provider’s pricing was not amended to CTM’s satisfaction, CTM took steps to escalate its enforcement action in order to resolve the situation (see Section 8.B.III. below).
- 8.73 BGL has sought to downplay the significance of the actions CTM took having identified *‘problems’* with a provider’s pricing, submitting that *‘CTM might contact the [home insurance provider] in question to try to understand the reason, although these tolerances were not always strictly applied’*.⁹⁷⁵ However, the contemporaneous internal documents of providers (as well as

⁹⁷¹ URN 6223, [HIP]’s response to section 26 notice dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP] entitled ‘RE: Commercial Review’, dated 3 June 2016, page 9.

⁹⁷² URN 6223, [HIP]’s response to section 26 notice dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP] entitled ‘RE: Commercial Review’, dated 14 June 2016, page 7.

⁹⁷³ Such systematic monitoring also included monitoring the prices of all providers (i.e. both those with and those without wide MFNs) on their direct channels to secure compliance with CTM’s narrow MFNs.

⁹⁷⁴ See Section 8.A.III.(e). CTM’s relationship managers were provided with a pro-forma email to send to providers that CTM believed were not complying with its wide MFNs.

⁹⁷⁵ URN 8484.5, BGL’s response to the SO dated 22 February 2019, paragraph 187.

CTM's own internal documents) show that CTM put significant pressure on providers to resolve CTM's concerns about their pricing. For example, one provider, [HIP], stated in an internal email that CTM was chasing *'incessantly re pricing'*⁹⁷⁶ and another, [HIP], referred to *'intense challenge from CTM'* over the summer of 2017 regarding its pricing.⁹⁷⁷

- 8.74 These documents from providers commenting on the pressure from CTM reflect the fact that an important aspect of CTM's account relationship managers' role was to ensure that providers understood the importance to CTM of not quoting prices on rival PCWs that undercut CTM and to take steps to address any concerns about a provider's pricing. CTM's internal documents describe CTM's *'Number 1 objective'* as being to achieve pricing parity within CTM's compliance tolerance thresholds and, to help its employees achieve this objective, CTM developed a *'Best Prices pack'* to *'determine the priority in which you approach your partners, better support you in doing this and clearly highlight the specific actions you are taking with them to rectify any non-pricing parity'*.⁹⁷⁸ As set out in Section 8.A.II.(d) above, CTM discussed any concerns about providers pricing lower on other PCWs during monthly meetings and prepared monthly *'price parity snapshots'* to record the internal and external actions taken.
- 8.75 BGL also objected to the description of actions taken by CTM to resolve pricing *'problems'* by providers outside of CTM's compliance tolerance threshold as *'enforcement'* as *'these procedures are followed across the board whether the provider has a WMFN or not'*.⁹⁷⁹ BGL instead characterised this as being a matter *'that in a few cases CTM drew the contractual position under the WMFN – believed at the time to be perfectly valid – to the [home insurance provider]'s attention'*.⁹⁸⁰
- 8.76 The CMA disagrees. CTM's internal documents repeatedly reference the need for it not only to retain but also to *'enforce'* its wide MFNs.⁹⁸¹ Indeed, it sought internal legal advice, as described in Section 8.A.II.(b) above, to ensure that it could *'enforce'* its wide MFNs and put in place internal

⁹⁷⁶ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, Appendix E.

⁹⁷⁷ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 18.

⁹⁷⁸ URN 3151, BGL's response to section 27 notice dated 26 September 2017, BGL's internal email chain between BGL and CTM, email entitled 'RE: 14/15 objectives & our new ways of working – Spreadsheet Locations.msg', dated 25 September 2014, page 2.

⁹⁷⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 187.

⁹⁸⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 190.

⁹⁸¹ For example, URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation' slides 8 and 9 and URN 3396, BGL's response to section 27 notice dated 26 September 2017, internal email chain between [Employee 2, CTM] and [Employee 1, CTM], email entitled 'RE: Strategic Pillar Report', dated 2 June 2016, page 1. The importance to it of being able to enforce its wide MFNs is also reflected in its approach to its contract with [HIP] and the need for *'the MFN clause in the contract to be rewritten and agreed, to be able to enforce for non-motor products'* as described in Section 4.B.I. above.

processes, including legal sign off, when raising pricing issues with providers with wide MFNs.

8.77 Moreover, BGL's characterisation in the present Investigation of its actions ignores not only its own characterisation in the Relevant Period but also the importance to most businesses of abiding by contractual terms (in particular ones imposed by an important trading partner that regards compliance with those terms as important to the commercial relationship). In addition, the very presence of the wide MFNs in their contracts incentivised providers to avoid enforcement by ensuring that they did not offer prices on other PCWs that were lower than on CTM. As set out in Section 2.G.II, wide MFNs had been used by CTM since at least 2008, were a feature of agreements between PCWs and insurance providers for nearly a decade before the Relevant Period, and, as described by [HIP], they were '*part of the landscape*'.⁹⁸²

8.78 In that context, the fact CTM may not have taken steps to enforce its wide MFN on every occasion where it was concerned that a provider was not complying with its contract, does not mean that its network of wide MFNs did not have an effect on providers' pricing strategies. Even if CTM did not explicitly refer to a provider's contractual obligation to comply with the wide MFN when initially raising concerns with a provider about its pricing, such concerns were raised against the backdrop of a contractual obligation, breach of which could have serious implications for the provider. Accordingly, the mere existence of the wide MFN in CTM's contracts with providers is, to at least some extent, likely to have created a 'visual and psychological' background that encouraged providers to resolve CTM's concerns and deterred providers from adopting differential pricing strategies that involved pricing lower on other PCWs than on CTM.⁹⁸³

⁹⁸² URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 16.

⁹⁸³ In that regard, the CJEU has held, in the context of a finding of a restriction 'by object', that the '*fact that the supplier is not strict in enforcing such prohibitions cannot establish that they had no effect since their very existence may create a 'visual and psychological' background*' (See Case 19/77, *Miller International Schallplatten GmbH v European Commission*, [1978] ECR 131, paragraph 7). See also COMP/38698 *CISAC*, European Commission decision of 16 July 2008, paragraph 130 (partially annulled on other grounds, Cases T-442/08 etc, *CISAC v European Commission*, EU:T:2013:188): '*As the clause has the object of allocating authors according to their nationality, by putting the decision into the hands of the 'domestic' collecting society as to whether or not authors may join a different collecting society, it is not necessary to show that the clause was applied or enforced. The mere existence of the clause creates a 'visual and psychological' background which deters collecting societies from attracting authors who are currently either members of other collecting societies or who are not nationals of their domestic territory. Similarly, the argument raised by some EEA CISAC members that there were simply no requests by authors to become members of a collecting society, other than the one in the country of which they are a national, does not negate the restrictive nature of the clause. On the contrary, there would be no need for such a clause if this statement was correct*'. While these cases related to restrictions 'by object', the point that the mere existence of a restriction in an agreement may affect the behaviour of the parties to the agreement is relevant to an assessment of the effects of the restriction.

- 8.79 In any event, the evidence set out in this Section shows that providers had strong incentives to comply with CTM's wide MFNs and – following the PMI Order 2015 – CTM made it clear to providers that its wide MFNs still applied in home insurance and repeatedly refused requests from providers for their wide MFNs clauses to be removed from their contracts.⁹⁸⁴ In addition, as described more fully below in Section 8.B.III, where necessary CTM explicitly drew providers' attention to their contractual obligations.⁹⁸⁵

8.B.I.(c). CTM was an important source of business for home insurance providers

- 8.80 Home insurance providers also had a strong incentive to comply with CTM's wide MFNs because CTM was an important source of new business.
- 8.81 The CMA has found that PCWs are the largest distribution channel for new business and a provider delisting from (or withdrawing from certain risk segments on) PCWs would lead to a significant loss in new business sales volumes that would be impossible or very costly for providers to replicate through alternative channels.⁹⁸⁶ The CMA has also found that CTM had a strong market position throughout the Relevant Period such that it had market power.⁹⁸⁷ In addition to CTM being the largest PCW during the Relevant Period (with a market share of over 50% of sales of home insurance made through PCWs), the majority of consumers using CTM's platform single-homed and single-channelled (over 65% between September 2016 and August 2017) such that home insurance providers could not access the significant proportion of consumers that used PCWs without listing on CTM's platform.⁹⁸⁸
- 8.82 Home insurance providers were aware of the importance of CTM to their business in taking steps to ensure that they were compliant with their contractual obligation.⁹⁸⁹ CTM was also well aware of its position in the market and importance to home insurance providers, communicating this during contract negotiations. For example, in informing [HIP] about an increase in commission fees in April 2016, CTM stated: *'We continue to be market leading in the world of price comparison Our market share on home has been over 50% for some time now and we have seen this grow*

⁹⁸⁴ See Section 8.A.III.(d). above.

⁹⁸⁵ See Section 8.B.III.(b). below.

⁹⁸⁶ See Section 5.C.IV. above.

⁹⁸⁷ See Section 5.E. above.

⁹⁸⁸ See Section 5.E.I. above.

⁹⁸⁹ For example, URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 19. See further Annex M on the enforcement action taken by CTM against [HIP]. See also URN 5315.15, [HIP] response to section 26 notice dated 24 November 2017, question 16.

further since our campaign launched on 1st March. We deliver a high proportion of quality customers that are unique to comparethemarket.com that cannot be reached by our partners through any other distribution channel'.⁹⁹⁰ As explained in Section 8.B.I.(a). above, this correspondence relating to CTM increasing its commission fees to [HIP] was in the context of CTM raising concerns with [HIP] about [HIP]'s prices on CTM being undercut by [HIP]'s prices on a rival PCW.

8.B.II. Widespread compliance by providers with CTM's wide MFNs

8.83 The CMA finds that there was widespread compliance with CTM's wide MFNs during the Relevant Period. Most home insurance providers adopted pricing strategies that were consistent with CTM's wide MFNs and, in particular, providers accounting for a significant proportion of sales on PCWs specifically took into account CTM's wide MFN in determining their pricing strategies.

8.B.II.(a). Most providers adopted pricing strategies that were consistent with CTM's wide MFNs

8.84 There are a number of factors that contributed to providers' individual commercial decisions regarding their base retail pricing and the use of promotional deals.⁹⁹¹ Some providers engaged in differential pricing strategies across PCWs (by differentiating base retail prices or using promotional deals), whereas others adopted uniform pricing. However, overall, and consistent with the strong incentives to comply with CTM's wide MFNs, most providers adopted pricing strategies that were compliant with their contractual obligations, or at least were regarded by BGL at the time as being so.

8.85 Where CTM identified as part of its systematic monitoring of providers' pricing that a provider was offering lower prices on other PCWs in breach of CTM's wide MFN, CTM would seek to rectify this and would escalate its enforcement process if necessary, as set out in Section 8.B.III below. Accordingly, if CTM had had concerns that any other providers had been pricing outside of CTM's compliance tolerance thresholds, CTM would have

⁹⁹⁰ URN 6223, [HIP]'s response to section 26 notice dated 16 April 2018, email chain between [HIP] and BGL dated 13 May 2016, pages 9 to 11.

⁹⁹¹ See Section 7.D.II. above.

taken steps to resolve the issue and, as confirmed by BGL, such steps were ‘very often’ successful in resolving compliance issues.⁹⁹²

- 8.86 The CMA obtained information from 17 providers with wide MFNs about their pricing strategies.⁹⁹³ These 17 providers accounted for over 35% of sales made through PCWs and over 90% of sales made through PCWs by providers with wide MFNs in 2017.⁹⁹⁴ Section 7.D.II sets out the CMA’s assessment of the providers’ pricing strategies, and a summary of the evidence from each provider is set out in Annex L.
- 8.87 13 out of the 17 providers with wide MFNs contacted by the CMA priced the same across PCWs or consistently priced lower on CTM, such that their pricing strategy was consistent with CTM’s wide MFNs.⁹⁹⁵ These 13 providers accounted for nearly 30% of sales made through PCWs in 2017. As set out in Section 8.B.III.(b). below, the other four providers contacted by the CMA sought to engage in differential pricing strategies which periodically resulted in non-compliance with their wide MFN obligations. The pricing of all four of these providers was closely monitored by CTM. Each of them faced enforcement action when CTM identified that such differential pricing resulted in their quotes being higher on CTM than on one or more of its rivals’ platforms (outside of CTM’s compliance tolerance thresholds) that were not resolved through initial follow up discussion.⁹⁹⁶
- 8.88 Of the 13 providers that generally priced the same across PCWs or consistently priced lower on CTM, nine adopted a uniform base retail pricing strategy during the Relevant Period.⁹⁹⁷ Accordingly, their pricing strategies were consistent with CTM’s wide MFN.⁹⁹⁸ Similarly, although [HIP] adopted a differential base retail pricing strategy, it explained that this generally did not conflict with CTM’s wide MFN because ‘*CTM have naturally been the lowest priced due to its own performance*’.⁹⁹⁹ Accordingly, [HIP]’s pricing strategy

⁹⁹² URN 8484.5, BGL’s response to the SO dated 22 February 2019, paragraph 188.

⁹⁹³ Due to data limitations, the CMA was unable to undertake a robust pricing analysis to determine the level of compliance in the Relevant Period. The CMA assesses Oxera’s Coverage and Compliance analysis at paragraphs 8.94 below and in Annex N.

⁹⁹⁴ As described in Annex B, the CMA’s evidence gathering in this Investigation sought to balance the need for the CMA to operate efficiently and effectively with avoiding unnecessary burdens on businesses. The CMA prioritised its limited resources by focusing on obtaining information from a representative sample of 27 home insurance providers, 17 with wide MFNs and 10 with narrow MFNs in their agreements with CTM. These 27 insurers accounted for 80-90% of sales by volume made through PCWs in 2017.

⁹⁹⁵ [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [X], [HIP], [HIP], [HIP], [HIP], and [HIP].

⁹⁹⁶ [HIP], [HIP], [HIP] and [HIP]. These providers together accounted for approximately 10% of sales made through PCWs in 2017.

⁹⁹⁷ See Section 7.D.II.(a).(ii) above. These were [HIP], [HIP], [HIP], [HIP], [HIP], [X], [HIP], [HIP], and [HIP]. [X].

⁹⁹⁸ As set out in Sections 8.B.III.(b).(i) and 8.B.III.(b).(iii), CTM took enforcement action when [HIP] and [HIP], which otherwise adopted a uniform base retail pricing strategies, sought to price lower on other PCWs than on CTM.

⁹⁹⁹ See Section 7.D.II.(a).(i). above.

was also consistent with CTM's wide MFN during the Relevant Period. The CMA also finds that the other three providers ([HIP], [HIP], and [HIP]) had pricing strategies that were also consistent with their obligations under CTM's wide MFNs during the Relevant Period.

- 8.89 [HIP] implemented a differential base pricing strategy until [X], after which it changed its strategy to adopt uniform base pricing across PCWs.¹⁰⁰⁰ In the period when [HIP] differentiated its prices across PCWs, there were no instances when CTM's monthly monitoring identified [HIP] as pricing outside of CTM's compliance tolerance threshold.¹⁰⁰¹ [HIP] also did not enter into any promotional deals during the Relevant Period¹⁰⁰² and there is no evidence of CTM seeking to challenge [HIP] in relation to its pricing. Taking into account the way that CTM monitored and where necessary escalated action against other providers when it identified that they were pricing outside of its compliance tolerance thresholds (as set out in Section 8.B.III.), along with the evidence on the strong incentives on providers to comply with their wide MFN obligations, the CMA considers that [HIP]'s pricing strategy was consistent with its obligations under CTM's wide MFN, or at very least that CTM regarded [HIP] at the relevant time, through its systematic monitoring, as complying with its wide MFN.
- 8.90 Similarly, while it is not clear whether [HIP] or [HIP] adopted uniform base retail pricing strategies across PCWs during the Relevant Period¹⁰⁰³, neither entered into any promotional deals in the Relevant Period and neither of them was the subject of challenge by CTM about their pricing.¹⁰⁰⁴ For the same reasons as [HIP], the CMA considers that, at the very least, this indicates that, at the relevant time, CTM regarded [HIP] and [HIP] as pricing in a way that was consistent with their obligations under CTM's wide MFNs. The CMA also notes in this context that whilst neither [HIP] nor [HIP] entered

¹⁰⁰⁰ URN 6167, [HIP]'s response to section 26 notice dated 26 April 2018, question 6.

¹⁰⁰¹ [HIP] appeared in CTM's monitoring snapshots in July to September 2017 with '*monitor*' recorded as the action. Given that no further follow-up action was taken, the CMA infers that CTM satisfied itself that any pricing discrepancies during this period were not due to deliberate non-compliance with its wide MFN and/or were quickly resolved. URN 4795.18, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Competitiveness Snapshot Sep-17(last month completed)_redacted'; URN 4795.24, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Aug-17' and URN 4795.31, BGL's responses to follow up questions to the First BGL Notice dated 26 September 2017, entitled 'Pricing Parity Snapshot Jul-17', question 23.

¹⁰⁰² See Section 7.D.II.(b). above.

¹⁰⁰³ [HIP] and [HIP] were only contacted by the CMA after issue of the SO for the purpose of the CMA's analysis of promotional deals having identified that they had entered into promotional deals after the Relevant Period. The CMA therefore obtained more limited information from these two providers than from the other providers contacted prior to the SO.

¹⁰⁰⁴ Although [HIP] noted that CTM previously queried cheaper price differentials following CTM carrying out periodical rate testing of its brand on other PCWs URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 3.

into promotional deals in the Relevant Period, both of them did so after the end of the Relevant Period, when CTM was no longer enforcing its wide MFNs.¹⁰⁰⁵

- 8.91 The remaining 15 providers with wide MFNs that were not contacted by the CMA as part of the Investigation accounted for only around 5% of sales made through PCWs in 2017.¹⁰⁰⁶ None of these providers engaged in promotional deals in the Relevant Period. Moreover, none of these providers were subject to escalated enforcement action by CTM in the Relevant Period and CTM's monthly monitoring snapshots do not highlight any of these providers as requiring follow up action. In the light of this, and the strong incentives on providers to comply with CTM's wide MFNs, the CMA considers that their pricing strategies were consistent with their wide MFN obligations, or at very least that CTM regarded them at the relevant time through its systematic monitoring as complying with its wide MFNs.¹⁰⁰⁷
- 8.92 BGL submitted that the CMA has failed to prove a clear causal link between home insurance providers' pricing practices and CTM's network of wide MFNs, and that CTM's wide MFN did not materially affect the strategy that most providers intended to follow all along.¹⁰⁰⁸ BGL's view is that the CMA has therefore not proved that providers were constrained in their pricing strategies to comply with CTM's wide MFNs.¹⁰⁰⁹
- 8.93 The CMA disagrees with BGL that CTM's network of wide MFNs did not constrain or materially affect the strategy of home insurance providers for the reasons set out in this Section. The CMA also disagrees with BGL that it is necessary to prove that CTM's wide MFNs constrained all providers from acting differently than they otherwise would have done in the Relevant Period.¹⁰¹⁰ In the absence of CTM's network of wide MFNs, the need to comply with a contractual obligation and the risk of facing enforcement action as a result of breaching CTM's wide MFNs would not have constrained any home insurance providers from behaving differently, for example using differential pricing strategies that involved pricing lower on

¹⁰⁰⁵ See further Sections 9.A.III.(b). and 9.C.II below.

¹⁰⁰⁶ In addition, none of the 15 providers individually accounted for more than 2% of sales made through PCWs in 2017. The CMA does not consider that it is necessary to obtain information from every counterparty or examine how each individual agreement within a network of similar agreements operated in practice in order to assess whether a network of agreements as a whole had an appreciable effect on competition (see further section 8.C below on Market Coverage of CTM's network of wide MFNs).

¹⁰⁰⁷ Two providers that entered into wide MFNs with CTM towards the end of the Relevant Period did not start [§]. URN 1622, BGL's response to the First BGL Notice dated 26 September 2017, question 29, document entitled 'Q29 – List of HIP Contacts and related information (FINAL).xlsx'.

¹⁰⁰⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 193.

¹⁰⁰⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 272.

¹⁰¹⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 191.

other PCWs than on CTM. Accordingly, although the observable behaviour of individual providers in terms of their compliance with CTM's wide MFNs (and CTM's own behaviour in enforcing its wide MFNs) during the Relevant Period is clearly informative and relevant in assessing the effects on competition of CTM's network of wide MFNs, it is also necessary to consider the extent to which that behaviour and competition more generally would have been different in the absence of CTM's network of wide MFNs.¹⁰¹¹

- 8.94 BGL further submitted that, contrary to the CMA's findings, there was 'a *situation of widespread disregard*' by providers with their wide MFN obligations.¹⁰¹² The main evidence submitted by BGL in support of this submission is an ex-post analysis undertaken by BGL's economic advisers in the context of the present Investigation (Oxera's Coverage and Compliance analysis). According to BGL, Oxera's Coverage and Compliance analysis, which is based on Consumer Intelligence data, '*shows that on average a quarter of brands covered by a WMFN were priced above the [✂] tolerance [CTM's compliance tolerance threshold] in the period January 2016 to September 2017.*'¹⁰¹³
- 8.95 The CMA addresses Oxera's Compliance and Coverage analysis in detail in Annex N. In particular, for the reasons set out in Annex N, which include the limitations of the Consumer Intelligence data used in the analysis and the methodology adopted, the CMA does not consider that Oxera's analysis is sufficiently robust to be relied upon to draw the conclusions that BGL seeks to. Moreover, even if Oxera's analysis is taken at face value, the proportion of brands, risks and policies that Oxera considered to be 'compliant' with CTM's wide MFN is significant and therefore the results are inconsistent with BGL's submission of '*widespread disregard*' by providers with its wide MFNs.¹⁰¹⁴

¹⁰¹¹ See Sections 3 and 6 in relation to the counterfactual. The CMA addresses BGL's submissions regarding the '*effective*' coverage of CTM's network of wide MFNs, including its submission about the need for a provider to have taken the wide MFN into account in its commercial strategy in the Relevant Period in order to be regarded as '*covered*' by CTM's network of wide MFNs, in more detail in Section 8.C.II below. The CMA has also addressed BGL's representations on the impact of CTM's wide MFNs on the behaviour of providers in Annex P.

¹⁰¹² URN 8484.5 BGL's Response to the SO dated 22 February 2019, section 4.15.

¹⁰¹³ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 267.

¹⁰¹⁴ See further Annex N. For example, the proportion of brands subject to CTM's wide MFNs deemed by Oxera as 'compliant' is between 57% and 72%. The average brand-level proportion of risks considered to be 'compliant' is between 70% and 80%.

8.B.II.(b). CTM's wide MFNs were factored into the pricing strategies of a significant proportion of providers with wide MFNs

- 8.96 Although there are a number of factors that contributed to providers' individual commercial decisions regarding their base retail pricing strategies and the use of promotional deals¹⁰¹⁵, providers accounting for a significant proportion of sales on PCWs specifically took into account CTM's wide MFN in determining their pricing strategies. In particular, this included three of the largest providers with wide MFNs ([HIP], [HIP] and [HIP]), which together accounted for approximately 18% of sales made through PCWs and over 20% of sales made through CTM in the Relevant Period.¹⁰¹⁶ After CTM stopped enforcing its wide MFNs, [HIP], [HIP] and [HIP] all proceeded to enter into promotional deals with [X].¹⁰¹⁷
- 8.97 [HIP] told the CMA that CTM's wide MFN was '*ingrained within [HIP]'s pricing principles*'¹⁰¹⁸ and that it worked with its partners (such as CTM) to comply with regulatory and contractual obligations, including wide MFNs, and to rectify any issues where necessary.¹⁰¹⁹ [HIP] explained to the CMA that '*if [HIP] wanted to reflect unique changes in CPA [commission fees] by passing them straight through to Leads Generated by each PCW, then [HIP] would need the ability to vary customer premiums on a like-for-like basis. This is something which has been impossible under wide MFNs*'.¹⁰²⁰ [HIP] further explained that the impact of this was that '*[w]ith wide MFNs Commissions can be increased by PCWs knowing that the prices offered to their consumers will not be adversely impacted relative to other PCWs. Essentially this is tantamount to removing competition between PCWs in respect of price, resulting in a scenario whereby PCWs who charge lower Commissions are subsidising those charging higher Commissions*'.¹⁰²¹
- 8.98 [HIP] also confirmed that any variability in prices between PCWs observed in pricing data from the Relevant Period would have been as a result of '*operational inconsistency*' rather than deliberate non-compliance.¹⁰²² As set out in in Section 8.B.III.(b).(i). below, on the one occasion (in [X]) when

¹⁰¹⁵ As set out in Section 7.D.II.above.

¹⁰¹⁶ Annex L contains further details on the pricing strategies of other providers. For example, [HIP] told the CMA that, apart from when it adjusted its pricing in [X] without being aware that the PMI Order 2015 only applied to private motor insurance and subsequently faced enforcement from CTM (see Section 8.B.III.(b).(iii). below), it had a consistent pricing strategy across PCWs. Similarly, [HIP] ran regular price checks across all PCWs to ensure its prices were consistent for the same risks.

¹⁰¹⁷ See Sections 9.A.III.(b). and 9.C.II. below.

¹⁰¹⁸ URN 6236.1, [HIP]'s response dated 4 May 2018 to section 26 notice dated 16 April 2018, question 17.

¹⁰¹⁹ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 16.

¹⁰²⁰ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5

¹⁰²¹ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

¹⁰²² URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 13(a)(iii).

[HIP] entered into a promotional deal with [X] in breach of CTM's wide MFN, CTM took enforcement action against [HIP].

8.99 [HIP] explained that CTM's wide MFN restricted its ability to agree promotional deals in home insurance: *'[w]here wide MFNs still apply, no promotional/exclusive discounts can be offered'*.¹⁰²³ [HIP] provided examples of deals rejected in 2017 in home insurance with two different PCWs (MoneySuperMarket and Confused). These rejections followed the enforcement action taken by CTM in [X], as set out in Section 8.B.III. below.¹⁰²⁴

(a) [X] approached [HIP] for a co-funded deal in home insurance. [HIP] responded that while it was interested in working with MoneySuperMarket on a co-funded deal in motor insurance, it was not open to doing a deal in home insurance at that time, but would review the idea again in the future.¹⁰²⁵ [X]. However, [HIP] confirmed to the CMA that *'[t]he offer had to be rejected as comparethemarket had enforced [sic] wide MFN'*,¹⁰²⁶ in [X].

(b) [X] The minutes prepared by [X] of a monthly partnership review meeting between [HIP] and [X] on [X] (shortly prior to CTM giving notice that it had stopped enforcing its wide MFNs) show that [X] had offered [HIP] a deal in home insurance, but [HIP] had stated that it was not interested in such deals:

'No interest in home offers from [HIP]. – If [HIP] are interested in the Home offer, this will push up the priority of the [X] – [X] customer discount mentioned'¹⁰²⁷ (emphasis added)

8.100 As in the case of [X], [HIP] confirmed that the reason that it was unable to support [X] with a promotional deal on home insurance was *'due to comparethemarket enforcing wide MFN'*. [X].¹⁰²⁸

8.101 [HIP] told the CMA that CTM's wide MFN had become *'part of the landscape'* and its pricing strategy in the Relevant Period had proceeded on the basis that the clause would remain in place.¹⁰²⁹ [HIP] took the view that any contractual clause is deemed binding and therefore it would not knowingly or

¹⁰²³ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

¹⁰²⁴ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 12.

¹⁰²⁵ [X]

¹⁰²⁶ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 12.

¹⁰²⁷ URN 5084, [HIP]'s response to section 26 notice dated 24 November 2017, email between Confused and [HIP] entitled '[EXTERNAL] [HIP] notes' dated 4 December 2017.

¹⁰²⁸ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 12.

¹⁰²⁹ URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 16.

deliberately break a contract.¹⁰³⁰ As a result, [HIP] adopted a pricing model during the Relevant Period under which it did not differentiate its prices across PCWs to take into account the specific characteristics including performance of each PCW *'in part due to'* its wide MFN with CTM.¹⁰³¹ [HIP] explained that CTM's wide MFN has meant that *'pricing could not be lower for any other PCW which restricted [HIP]'s ability to provide any kind of offer that allowed the option to pass savings onto customers'*.¹⁰³² [HIP] also confirmed that any price variations between PCWs were explained by mapping issues due to variations in question sets and answers or issues related to new regulations in September 2016.¹⁰³³

8.102 Like [HIP], [HIP] also rejected promotional deals because of CTM's wide MFN. [HIP] rejected at least two promotional deals in home insurance offered by two of CTM's rival PCWs (MoneySuperMarket and Confused) in 2017.¹⁰³⁴

(a) [X] approached [HIP] about entering into a promotional deal, noting:

'Our feelings are anyone implementing a narrow MFN clause [sic¹⁰³⁵] are on shaky ground. It would appear anti-competitive to us especially if parties are using it to stop lower premiums in the market and the update from the CMA in a couple of weeks could be interesting.'

[HIP] responded by stating that: *'We've double checked and wide MFNs still exist in another agreement. This means we won't be able to enter into a cash / price discount.'*¹⁰³⁶

(b) [X]: on [X], [HIP] responded to a promotional deal offer from [X] stating: *'Rather embarrassingly I have forgotten that we have a wide MFN clause in place which is stopping this... Looks like we can't do it 😞'*

¹⁰³⁰ URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 8. URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 8.

¹⁰³¹ See URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, questions 14 and 16; URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, page 3, paragraph 16; URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 8.

¹⁰³² URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 19

¹⁰³³ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, questions 8 and 9.

¹⁰³⁴ URN 6323.3, [HIP]'s response to section 26 notice dated 16 April 2018, question 14, email chain between [HIP] and [X]. Both MoneySuperMarket and Confused also confirmed to the CMA that during the Relevant Period [HIP] rejected offers of promotional deals due to CTM's wide MFN.

¹⁰³⁵ Given the context of this email (an offer of a promotional deal to [HIP] by a PCW) and [HIP]'s response, the CMA considers that this was intended to read 'wide MFN clause'.

¹⁰³⁶ URN 6323.4, [HIP]'s response to section 26 notice dated 16 April 2018, question 14.

Two months later, on [X], [X] asked [HIP] to re-consider its offer, to which [HIP] responded: *‘The short answer is no I’m afraid. We have a rule within [HIP] that we cannot knowingly break legally enforceable contract terms. Given these terms are still legal, we are not in a position to contravene the terms.’*¹⁰³⁷

- 8.103 [HIP] told the CMA that it had always had a general *‘operating awareness’* of the wide MFN in its contract with CTM and that it *‘typically... abided by the terms of the wide MFN’*.¹⁰³⁸ It also stated that it did not want to be in a position of being in breach of contract with CTM, and that everyone within the [HIP] business knew about the wide MFN.¹⁰³⁹ Despite this, in its response to the SO, [HIP]’s position was that, absent CTM’s wide MFN, it did not consider that *‘it would have had a greater incentive to enter into promotional deals with other PCWs’* and that where promotional deals proposed to [HIP] *‘have ostensibly been rejected on the basis of the CTM-wide MFN, this would not have been the only reason’*.¹⁰⁴⁰ As such, [HIP] told the CMA that CTM’s wide MFN *‘had no perceptible impact on its pricing strategy’*.¹⁰⁴¹
- 8.104 As set out below, [HIP]’s contemporaneous internal documents and its responses to information requests issued under section 26 of the Act, as well as its repeated requests to CTM to remove its wide MFN from its contract (described in Section 8.A.III.(d). above), show that CTM’s wide MFN was actively discussed within [HIP] during the Relevant Period, was a significant consideration in [HIP]’s pricing strategy, and was a constraining factor in respect of [HIP]’s ability to enter into promotional deals.¹⁰⁴²
- 8.105 In terms of the impact of CTM’s wide MFN on [HIP]’s pricing strategy, in February 2017 [HIP] put a price increase on CTM on hold because of CTM’s wide MFN. In an internal email, [HIP]’s pricing team recommended an increase in the prices set on CTM by 1% intended to reflect an increase in CTM’s commission fees but at the same time indicated that *‘a differential rating approach’* to PCWs based on their performance was to be put on hold

¹⁰³⁷ URN 6323.3, [HIP]’s response to section 26 notice dated 16 April 2018, email chain between [HIP] and [X]

¹⁰³⁸ URN 6325.1, [HIP]’s response to section 26 notice dated 16 April 2018, paragraph 53.

¹⁰³⁹ URN 6626, note of CMA meeting with [HIP] [X].

¹⁰⁴⁰ URN 8419, [HIP]’s response to the SO dated 25 January 2019, paragraph 3.2.

¹⁰⁴¹ URN 10424, [HIP]’s response to the First LoF dated 31 January 2020.

¹⁰⁴² [HIP]’s responses to the SO and the First Letter of Facts are therefore inconsistent with its internal contemporaneous documents and its responses to the CMA’s statutory requests for information under section 26 of the Act. The CMA has placed greater weight on [HIP]’s contemporaneous documents and responses to section 26 notices as these documents reflect the internal views within [HIP]’s business at the relevant time or are information that has been provided in response to statutory requests (rather than representations relating to an alleged anti-competitive agreement to which [HIP] was party, albeit in circumstances in which [HIP] was not an addressee of the SO as a Rule 5(3) party).

because of CTM's wide MFN.¹⁰⁴³ A subsequent internal [HIP] email exchange about CTM's commission fee increase which had prompted the 1% increase, involving [Senior Executive, HIP], stated that CTM *'won't back off from MFN so expect us to either absorb this cost or to pass onto customers across the whole market, instead of just to them'*.¹⁰⁴⁴

- 8.106 CTM's wide MFN was also a factor in [HIP]'s decision not to enter into promotional deals with CTM's rival PCWs. [HIP] stated that *'[...] there were some occasions where the presence of the Wide MFN in the Comparethemarket.com agreement had been a contributing factor in [HIP] not proceeding with a Promotional Deal. The removal of this clause removed the risk of being in breach of the Comparethemarket.com agreement.'*¹⁰⁴⁵ In particular, CTM's wide MFN affected [HIP]'s decision to reject four deals in home insurance with *MSM*:¹⁰⁴⁶

- (a) *February 2017*: on 22 February 2017, a [HIP employee] raised an internal query with a [HIP employee] as to whether [HIP] could enter into a promotional deal with [X]: *'We've been approached by [X] who would like to run an above the line marketing campaign with them to include a provider exclusive offer such as [X] off or a voucher etc. As you know we have a wide MFN clause in our agreement with CTM [...]. Please could I have your view on whether you see an issue from a CTM contractual perspective of entering into an exclusive price offer with MSM?'*

The [HIP employee] replied: *'I am not satisfied that we can operate the MSM [MoneySuperMarket] proposition without breaching the CTM clause 4.10 [the wide MFN]. The contractual defined terms in my opinion ensure that the clause applies to all household contracts sold*

¹⁰⁴³ The email stated *'[X] increase for CTM is recommended. In light of the conversation regarding the 'Most Favoured Nation' clause, a differential rating approach to the Aggs based on their performance against plan has been put on hold. Pricing will carry out some investigations and confirm how we adhere to the clause (including the optimisation by each agg).'* URN 5720, [HIP]'s response to section 26 notice dated 24 November 2017, internal email chain entitled 'RE Trading agenda and pack - week 6' dated 14 February 2017.

¹⁰⁴⁴ URN 5716, [HIP]'s response to section 26 notice dated 24 November 2017, internal email entitled 'CTM CPA update in readiness for our meeting at 11', dated 2 July 2017. In addition, demonstrating the impact of CTM's wide MFN on [HIP]'s ability to price differentiate between PCWs, in April 2017, [Employee, HIP] explained to [Employee, CTM] that [HIP] would have to pass on CTM's 5-10% [X]% proposed commission fee increase to [X] URN 5719, [HIP]'s response to section 26 notice dated 24 November 2017, question 21, email chain entitled 'RE: [HIP] Pet Commercials'.

¹⁰⁴⁵ URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 4, paragraph 12.6.

¹⁰⁴⁶ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 16; URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 4, paragraph 12.6.

*under the [HIP] brands and available directly from the website or a different source of introduction originating online.*¹⁰⁴⁷ (emphasis added)

The communication with MoneySuperMarket following these internal discussions shows that CTM's wide MFN was a decisive factor as to whether [HIP] could accept MoneySuperMarket's offer. In response to MoneySuperMarket's reminder email of [X], a [HIP employee] replied that *'[a]t the moment I'm still working on whether we could do this contractually which is the major hurdle I need to overcome, and would be the showstopper for us if we can't.'*¹⁰⁴⁸ (emphasis added). [HIP] did not proceed with the proposed deal.

- (b) *August 2017*: on 1 August 2017, a [HIP employee] sent an email to senior personnel seeking a 'steer/decision' from the Leadership Team regarding *'[t]he opportunity to be part of the [X] campaign in [X].'* The email notes that [HIP]'s Trading Team had highlighted a number of risks including that *'[HIP] would be in breach of the 'most favoured nation' clause in the CTM contract.'*¹⁰⁴⁹
- (c) [X]: in an internal briefing pack dated [X] ahead of a senior strategic meeting with [X], [HIP] referred to the fact that [HIP] wanted to enter into a promotional deal with [X] to be launched in [X].¹⁰⁵⁰ However, [X] could not hold the slot unless [HIP] was confident it would go ahead with the deal even if CTM's wide MFN remained in place (which would have put [HIP] in breach of CTM's wide MFN). [HIP] decided that it could not take the risk, which included *'CTM switching us off'*, and decided not to go ahead with the deal, describing CTM's wide MFN as a *'blocker'* and stating in the briefing pack that:

*'The wide MFN in the CTM agreement prevents us from being able to work with [X] on exclusive pricing offers, such as the above the line activity that [X] are running with partners ([HIP]) [X].'*¹⁰⁵¹

'As part of this years [sic] CPA [commission fee] negotiation we have again pressed for the removal of the wide MFN, however, this is

¹⁰⁴⁷ URN 5315.23, [HIP]'s response to section 26 notice dated 24 November 2017, internal email entitled 'MSM exclusive offer vs CTM MFN clause', dated 22 February 2017.

¹⁰⁴⁸ URN 4934.5, MoneySuperMarket's response to section 26 notice dated 14 November 2017, internal email from [Employee, HIP] to [Employee, MSM], entitled 'RE: Quick question – ATL', dated 24 March 2017

¹⁰⁴⁹ URN 5315.19, Annex 8(d)(i) to [HIP]'s response to section 26 notice dated 24 November 2017, page 7. [X]. URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 16.

¹⁰⁵⁰ [X]

¹⁰⁵¹ [HIP] did not have a wide MFN only a narrow MFN with CTM. See Annex C.II.

currently non-negotiable with CTM, until the current CMA review is completed'

'[...] should we decide to provide cheaper rates to non CTM customers, we ultimately risk CTM switching us off'

'We have spoken to [X] about pencilling us in for the [X], once the CMA decision has been made, [X] even if the CMA rules don't change and we could end up in breach with CTM'.¹⁰⁵²

- (d) *November 2017*: on 15 November 2017, an internal paper prepared for [HIP]'s pricing committee to assess the impact of a proposed deal with [X] to launch in [X],¹⁰⁵³ referred to the present Investigation into CTM's use of wide MFNs and stated:

*'In running a pricing offer there is a risk that we will be in breach of our contract with comparethemarket.com (CTM). The CTM agreement includes a wide most favoured nation (MFN) clause. [...] **Following the launch of the CTM investigation, a view from [X] [HIP employee] remains that the wide MFN clause is still applicable until the conclusion of the CMA investigation in to CTM.***

'The worst case scenario is that CTM could terminate their agreement with us – whilst CTM represent nearly [X] of our sales.'¹⁰⁵⁴ (emphasis added)

According to [HIP], the other reasons the deal did not ultimately go ahead included that (i) [X].¹⁰⁵⁵

- 8.107 Other internal documents, which relate to the impact on [HIP]'s pet insurance business of CTM's wide MFN, are consistent with the evidence on the impact of CTM's wide MFN on [HIP]'s ability to engage in promotional deals or other differential pricing strategies in home insurance. Although the documents relate to pet insurance rather than home insurance, they reflect the common objective and nature of CTM's wide MFNs across all insurance products and [HIP]'s concerns at the impact CTM's wide MFN was having on its ability to price differentiate across PCWs. [HIP] confirmed that its views

¹⁰⁵² [X]

¹⁰⁵³ [X]

¹⁰⁵⁴ [X]

¹⁰⁵⁵ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 16.

on the impact of CTM's wide MFN did not differ between home insurance and pet insurance.¹⁰⁵⁶

8.108 These internal documents show that [HIP] *'asked that they [CTM] take this [the wide MFN] out for us this year on the basis that we think the CMA will rule to take this out in the current review. It prevents us from doing other deals or changing rates with other partners'*¹⁰⁵⁷ and that, in October 2018, a [HIP employee] stated that *'[i]n relation to the differing rates contractually, the only thing that used to stop us was the CTM MFN clause, this was revoked from contracts following the CMA review and was taken off across all products. So contractually we're fine as far as differing rates go.'*¹⁰⁵⁸

8.109 Evidence obtained from MoneySuperMarket and Confused corroborates that [HIP] and [HIP] declined to enter into detailed discussions about promotional deals with MoneySuperMarket and/or Confused during the Relevant Period because of CTM's wide MFN.¹⁰⁵⁹ GoCompare was also aware of CTM's wide MFN when seeking to agree a promotional deal with [HIP] in the context of its tiered commission structure:

*'To provide a bit of support to this [the tiered commission structure] I would suggest we do a co-fund in [X], with both parties contributing [X] to an offer or price discount if you are able to do this (MFN dependent I guess!).'*¹⁰⁶⁰

¹⁰⁵⁶ URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, paragraph 29.

¹⁰⁵⁷ URN 5729, [HIP]'s response to section 26 notice dated 24 November 2017, question 26. Whilst relating to pet insurance, the CMA infers given the nature of the statement and its consistency with other documentary evidence that the position was the same in home insurance in the Relevant Period.

¹⁰⁵⁸ URN 9256.84, [HIP]'s response to section 26 notice dated 19 June 2019, Annex 15(b), question 6. This is further reflected in an internal email in September 2018 stating that *'MSM have asked us many time [sic] to partner with offers and we'd declined based on the previous MFN clause [included in] one of the other aggs contracts'* URN 9256.44, [HIP]'s response to section 26 notice dated 4 June 2019, internal email from [Employee, HIP] to others at [HIP], entitled '[X]', dated 11 September 2018.

¹⁰⁵⁹ URN 9809, Confused's response to follow up questions to section 26 notice dated 31 May 2019, question 3; URN 4756C, Confused's response to section 26 notice dated 14 November 2017, question 22, Appendix G; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, questions 21 and 22 and URN 4934.7, MoneySuperMarket's response to section 26 notice dated 14 November 2017, email from [Employee, HIP] to [Employee, MSM], entitled 'RE: Home', dated 4 November 2017. In addition, [Employee 1, MSM], stated: *'Some of the insurance providers who had expressed an interest in promotional deals on motor insurance products told us that they could not do the same for home insurance, due to contractual restrictions in place with another PCW. They either referred to CTM expressly or it was clear from what they said that they were referring to CTM. I understood from verbal conversations with the partnerships team that these insurance providers feared, or were told, that they would be delisted by CTM, which would have caused damage to their overall sales performance given that CTM was the largest PCW. ... These included [HIP], [HIP], [HIP] and [HIP]'. See URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraphs 23 and 26.*

¹⁰⁶⁰ URN 9256.16, [HIP]'s response to section 26 notice dated 19 June 2019, email from [Employee, MSM] to [Employee, HIP] entitled 'Commercials', dated 26 June 2017.

8.B.III. CTM's enforcement process to resolve instances of non-compliance with its wide MFNs

- 8.110 The CMA finds that, following CTM's systematic monitoring of providers' pricing on other PCWs, CTM took action when it considered it necessary to resolve providers' non-compliance with its wide MFNs.
- 8.111 As explained in Sections 8.B.I. and 8.B.II. above, providers had strong incentives to comply with CTM's wide MFNs and in practice there was widespread compliance. Moreover, as explained by BGL, if pricing discrepancies meant a provider's quotes on CTM were less competitive than on other PCWs, the problem was '*very often*' resolved by informal contact.¹⁰⁶¹ However, where the matter was not resolved in this way, CTM took action to follow up by escalating the issue with the provider. The fact that CTM took such action for non-compliance by large providers (such as [HIP] and [HIP]) and smaller providers (such as [HIP] and [HIP]) demonstrates the importance to CTM of compliance with its wide MFNs. Further, the limited number of occasions in which CTM needed to escalate its enforcement actions indicates that, in general, CTM considered that providers were pricing in compliance with its wide MFNs.
- 8.112 In this sub-section, the CMA explains CTM's internal process for securing compliance by providers with its wide MFNs, and describes the episodes in which CTM escalated its enforcement action to ensure six providers complied with its wide MFNs.

8.B.III.(a). CTM's compliance process for enforcing its wide MFNs

- 8.113 As set out in Section 8.A.II.(d) above, CTM spent considerable time and effort in monitoring quotes on rival PCWs to ensure that the prices on its platform were not being undercut on rival platforms. Monitoring prices on rival PCWs is not itself inherently anti-competitive. However, monitoring can be used to facilitate anti-competitive behaviour.¹⁰⁶² In the present case, CTM considered it worthwhile to expend the time and resources in systematically monitoring insurance providers' offerings on other PCWs as a core part of its pricing strategy, of which its wide MFNs were integral. Importantly, CTM's systematic monitoring of the prices providers were offering on other PCWs incentivised and motivated the relevant providers to comply with CTM's wide MFNs (as described in Section 8.B.I above). It also enabled CTM to take

¹⁰⁶¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 188.

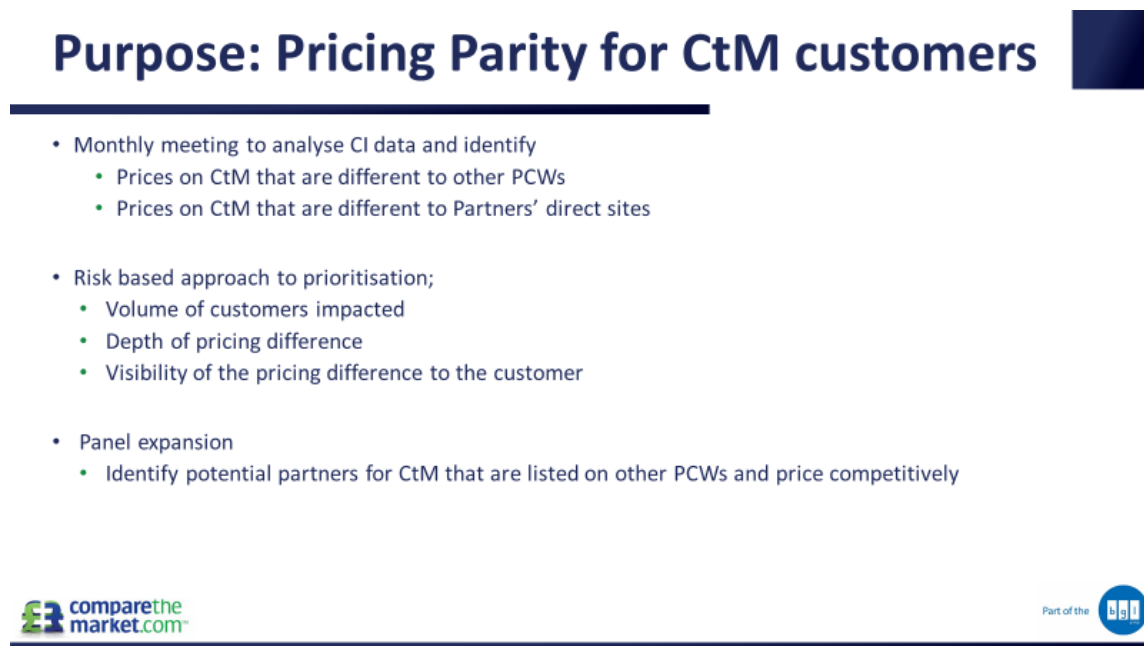
¹⁰⁶² For example, the Vertical Guidelines refer, in paragraphs 48 and 50 respectively, to the relevance, and potential effectiveness, of a monitoring system in the context of resale price maintenance (RPM) and restrictions on the territory into which or the customers to whom the buyer may sell goods or services.

action to secure compliance with its wide MFNs where necessary as described below.

8.114 CTM's systematic monitoring of providers' prices on other PCWs involved monthly '*pricing parity*' meetings and the preparation of monthly '*price parity snapshots*'. As set out in Section 8.A.II.(b) above, following the PMI Order 2015, CTM decided to continue to enforce and introduce wide MFNs in its home insurance contracts.¹⁰⁶³ Accordingly, CTM agreed a new internal process for the relationship management team to use when liaising with providers when enforcing and negotiating on wide MFNs other than private motor insurance.¹⁰⁶⁴



8.115 CTM's internal process covering its core products ('Car, Home, Van and Bike') is illustrated by the extracts from an internal CTM presentation in June 2016 relating to the 'CMA PMI quarterly statement' set out below.¹⁰⁶⁵

Figure 8.2: Extract from CTM internal document 'CMA PMI Quarterly Statement', June 2016, slides 11 and 13



Purpose: Pricing Parity for CtM customers

- Monthly meeting to analyse CI data and identify
 - Prices on CtM that are different to other PCWs
 - Prices on CtM that are different to Partners' direct sites
- Risk based approach to prioritisation;
 - Volume of customers impacted
 - Depth of pricing difference
 - Visibility of the pricing difference to the customer
- Panel expansion
 - Identify potential partners for CtM that are listed on other PCWs and price competitively

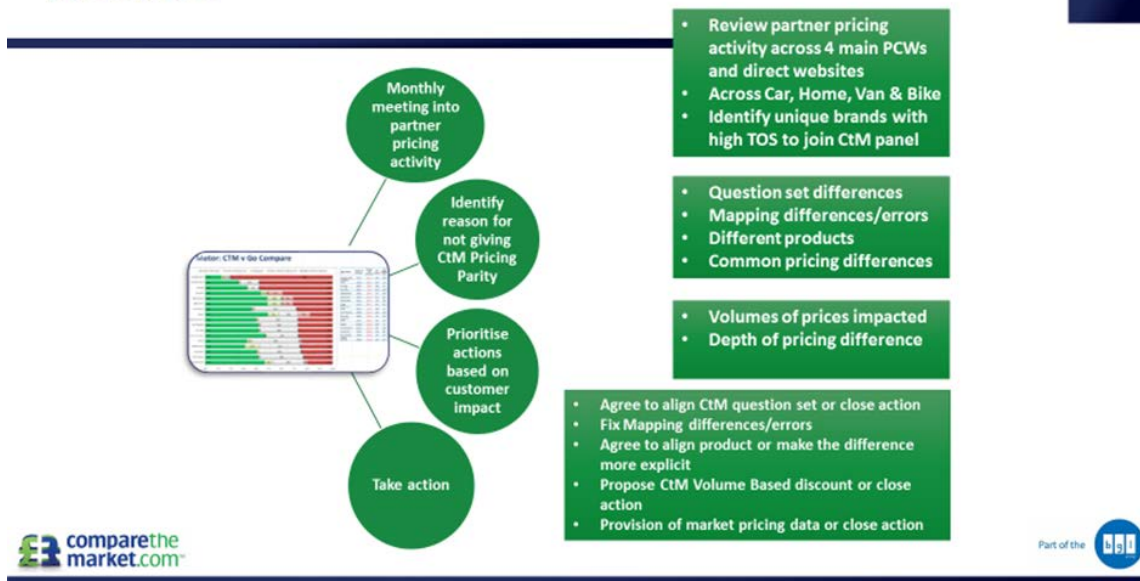
 

¹⁰⁶³ See paragraph 8.40.

¹⁰⁶⁴ See paragraph 8.42.

¹⁰⁶⁵ URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation' slides 11 and 13.

Results



Source: URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation', slides 11 and 13.

8.116 As part of its approach to ensuring CTM was not undercut on other PCWs in relation to home insurance, while also complying with the CMA's PMI Order 2015, CTM provided training in relation to '*non car WMFN enforcement/negotiations*'. It put in place an approval process by which its relationship management team could, as a result of CTM's monitoring, take enforcement action in relation to particular home insurance providers (and other '*non-car*' insurance products).¹⁰⁶⁶ This process involved a case-by-case approach, requiring approval through the '*corporate services sign-off system*' (also referred to internally as the '*legal and compliance system*') for the proposed content of any telephone conversation with a provider about enforcing or negotiating wide MFNs. Following that conversation, approval was also needed for follow-up email communication and any subsequent communications. The extract below shows how the process was explained internally at CTM.

¹⁰⁶⁶ URN 1917, BGL's response to the First BGL Notice dated 26 September 2017, paragraphs 37.1 to 37.2; URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, question 37, document entitled 'CMA PMI Quarterly Statement, June 2016 Presentation', slide 9; and URN 6438, BGL's response to the Second BGL Notice dated 3 May 2018, paragraphs 25.1 and 33.1, question 19(c).

Figure 8.3: Extract from CTM internal document ‘CMA PMI Quarterly Statement’, June 2016, slide 9


Training - non-car WMFN enforcement/negotiations


1877

- As the response to Partners for each of the scenarios below will be different depending on their individual circumstances the RM team shall;
- 1. Submit our proposed telephone conversation content as a ‘New Advice Request’ on the corporate services sign-off system for approval. The content will detail why we want to enforce/negotiate the non-car WMFN with the partner & what their response is likely to be
- 2. Be specific re the context of the conversation, e.g.
 1. Is it during CPA negotiations or not?
 2. Have you or are you also discussing pricing differences on car?
 3. Attach any relevant emails/documents as an audit trail
- 3. Further to the telcon with the partner, submit our proposed follow-up email comms as a ‘New Advice Request’ on the corporate services sign-off system for approval
- 4. Ensure that we continue to gain advice & approval for each stage of our communications with partners via the corporate services sign-off system.

- **Scenarios**
- 1) Enforce the WMFN on all products except Car
- 2) Introduce WMFNs on all products except Car when;
 - a. Negotiating CPAs with current partners
 - b. Agreeing contracts with new partners

- **Please note:** This Sign Off is subject to the RM team accepting that responses to advice requests within this area remain ‘Work in progress’ and further refinements going forward may be necessary. The RM team will raise with Legal any partner feedback following such advice requests as this will help them with any learnings.



Part of the 

Source: URN 1876, BGL’s response to the First BGL Notice dated 26 September 2017, question 37, document entitled ‘CMA PMI Quarterly Statement, June 2016 Presentation’, slide 9.

8.117 When a pricing difference outside of CTM’s compliance tolerance thresholds was identified (i.e. when CTM’s systematic monitoring meant *‘discrepancies were noticed, in particular on trends, with the consequence that quotes on CTM were less competitive’*¹⁰⁶⁷), CTM contacted the relevant insurance provider to identify the reason for the apparent higher prices on its platform. CTM used an agreed pro-forma email and provided the relevant Consumer Intelligence data showing that CTM was being priced higher than the quotes on other PCWs.

8.118 The approved language for the pro-forma email was sent by [Employee 2, CTM] to CTM’s relationship managers on 26 November 2015, with a request that it be issued to all partners who had been pricing differently across PCWs based on Consumer Intelligence data in September and October 2015:

‘Please see the approved comms below that we can use when sending CI data to partners highlighting pricing differences between CtM & other PCWs for all products.

Dear [partner]

¹⁰⁶⁷ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 188.

Please find attached a report produced by Consumer Intelligence, an independent third party research company. We are always striving to achieve the best deals for our customers, hence we have provided to you a copy of the Consumer Intelligence report, which shows that we are not achieving the best deal for our customers and that they are able to achieve a better deal elsewhere.

We are keen to understand from you how we can develop our proposition with you and achieve a better deal for our customers.

Please can you send this to partners who have appear to have [sic] been pricing differently in the last 2 months (September & October data)’¹⁰⁶⁸

- 8.119 This standard email was used as a means of prompting discussion between CTM and the providers that CTM believed were not complying with CTM’s wide MFNs.¹⁰⁶⁹
- 8.120 As set out in Section 8.B.I. above, where a provider had a wide MFN in its contract with CTM, it had strong incentives to explain and resolve the issue following CTM’s prompt in order to ensure compliance with the wide MFN. BGL explained that *‘[v]ery often as a result of these informal contacts the problem is resolved’*.¹⁰⁷⁰ For example, this might have been the case if the *‘problem’* was identified as resulting from an mapping software error or a difference in question sets or a simple error, and a solution was agreed to resolve the issue.
- 8.121 Where CTM’s concern about a provider’s pricing was not resolved, CTM took a *‘risk based approach’* to the prioritisation of pricing differences that it wished to pursue further, taking into account the volume of customers affected, the extent of the pricing difference, and the visibility of the pricing difference to the customer.¹⁰⁷¹ As set out in Section 8.B.III.(b). below, CTM escalated its enforcement action with six providers during the Relevant Period, referring specifically to the provider’s obligations under CTM’s wide

¹⁰⁶⁸ URN 9167, BGL’s response to follow up questions dated 10 May 2019, Best Prices Email to Partners – approved, email from [Employee 2, CTM] to [Employee 9, CTM] and others, 26 November 2015.

¹⁰⁶⁹ CTM’s standard email, or an email with the same purpose but slightly different wording was used in correspondence with providers. For example, see: URN 5184A1, [HIP]’s response to section 26 notice dated 24 November 2017, document entitled ‘Appendix C’, page 95; URN 5096, [HIP]’s response to section 26 notice dated 24 November 2017; and URN 6262, [HIP]’s response to section 26 notice dated 16 April 2018, question 6.

¹⁰⁷⁰ URN 8484.5, BGL’s response to the SO dated 22 February 2019, paragraph 188.

¹⁰⁷¹ URN 1876, BGL’s response to the First BGL Notice dated 26 September 2017, question 37, document entitled ‘CMA PMI Quarterly Statement, June 2016 Presentation’ slide 11.

MFN clause, in order to resolve the concerns. The CMA is aware of only one occasion in the Relevant Period where CTM did not escalate its compliance processes because of uncertainty over the enforceability of the wide MFN clause which was in different terms to its standard wide MFN clause.¹⁰⁷²

8.B.III.(b). CTM escalated its enforcement action where it identified providers were not complying with its wide MFNs

- 8.122 The CMA finds that CTM escalated its enforcement action where it identified that home insurance providers were not complying with its wide MFNs and the matter was not resolved through initial discussion. The CMA has obtained evidence that CTM took action against six providers during the Relevant Period, which together accounted for nearly 15% of sales through PCWs in 2017.¹⁰⁷³ These providers included some of the most well-known and largest providers in terms of sales on PCWs ([HIP], [HIP] ([HIP]), and [HIP]), as well as smaller providers ([HIP], [HIP] and [HIP]).
- 8.123 CTM's action to enforce its wide MFNs led to the relevant home insurance providers changing or offering to change their pricing behaviour, including by:
- (a) Immediately adjusting, at their own cost, their base retail prices or removing a promotional deal with a rival PCW, or both, to comply with their obligations (see [HIP] and [HIP] below).
 - (b) Agreeing to compensate CTM by self-funding three price discounts on CTM and refusing any further promotional deals with CTM's rivals to avoid the risks of further enforcement action by CTM (see [HIP] below).
 - (c) Offering not to quote on CTM if CTM identified quotes it was 'unhappy' about on a rival PCW (see [HIP] below).

¹⁰⁷² CTM's internal documents from 2016 note that the way in which [HIP]'s 'clause has been drafted means that it is still difficult to challenge them even on Home' and that '[w]e sought advice from Legal who advised that the MFN clause within [HIP]'s contract is not product specific, meaning if challenged, they could argue that if the Wide element falls away, it does so for Home too. We have therefore not raised this with [HIP] as a contract breach – Legal's view being that this is a commercial decision to call as to whether we challenge Home pricing parity'. In April 2017, internal CTM documents referring to [HIP] record the need for the 'MFN clause in the contract to be rewritten and agreed, to be able to enforce for non-motor products'. (See URN 4105, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Pricing Parity August 2016', slide 6; URN 4061, BGL's response to section 27 notice dated 26 September, email between [Employee 12, CTM] and [Employee 1, CTM] entitled '[HIP] Briefing Doc', dated 30 November 2016; URN 4074, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 7, CTM] to [Employee 1, CTM] and [Employee 2, CTM] entitled 'FW: Internal – Exec Summary [X]', dated 26 May 2017). See further section 4.B.I.

¹⁰⁷³ [HIP], [HIP], [HIP], [HIP], [HIP], and [HIP].

- (d) Adapting its pricing going forward following CTM's enforcement action to ensure that it was generally within CTM's compliance tolerance thresholds (see [HIP] below).¹⁰⁷⁴

8.124 The CMA sets out below a summary of the enforcement action taken by CTM in respect of these six providers. Annex M describes in more detail the evidence the CMA has obtained and addresses BGL's representations on the enforcement actions it took against the six providers.

8.B.III.(b).(i). CTM's enforcement action against [HIP]

8.125 CTM took enforcement action against [HIP], which accounted for [X] [0-5%] of sales made through PCWs in 2017, after [HIP] entered into a promotional deal with [X] in [X] in breach of CTM's wide MFN. As a consequence of CTM's action, [HIP] agreed to provide compensation to CTM (in the form of three self-funded price discounts on CTM) and refused further requests from CTM's rival PCWs to enter into promotional deals.

8.126 [HIP] agreed to a promotional deal with [X] in [X] following a proposal by [X]. The promotional deal started in [X]¹⁰⁷⁵ and involved [X] investing around £[X] of [X], including [X] price reduction on its quotes on [X]. [HIP] was aware that the deal would put it in breach of CTM's wide MFN, but thought the heightened focus by the CMA on wide MFNs at that time (i.e. during the CMA's DCTs Market Study) meant [HIP] '*stood a good chance of negotiating the clause out of our contracts*'.¹⁰⁷⁶

8.127 However, when [HIP] sought to have the wide MFN removed from its contract, CTM refused making clear its position that the wide MFN in home insurance was enforceable (see Section 8.A.III.(d) above). [HIP]'s protracted negotiations with CTM resulted in '*crunch talks with the senior stakeholders*' at CTM including [Employee 1, CTM] and [Employee 2, CTM], but by that time [HIP] could not back out of the deal with [X] because [X].¹⁰⁷⁷

8.128 In compensation for [HIP]'s breach of the wide MFN, '*CTM demanded that in order to allow [HIP] to operate outside of the contract that we would could [sic] simply match the [X] offer, but that we had to offer at least three*

¹⁰⁷⁴ The evidence obtained by the CMA indicates that (i) in relation to [HIP], the present Investigation had begun before the issue was resolved and (ii) in relation to [HIP], there was correspondence with CTM in late July 2017 regarding differences in question sets following CTM's escalation, but it is not clear whether CTM's concern was resolved before the present Investigation began.

¹⁰⁷⁵ [X]

¹⁰⁷⁶ URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled 'Fwd: CTM Briefing – For Awareness', [X].

¹⁰⁷⁷ [X]

promotions in 2017 in H2 ... 2 x 10% on household insurance and 1 x 5% on motor insurance'.¹⁰⁷⁸ The same internal email stated that [HIP] agreed to this compensation '*under a level of duress*', reflecting [HIP]'s concerns about the consequences of breaching CTM's wide MFN.¹⁰⁷⁹ In this way, the three self-funded price discounts agreed to by [HIP] were '*by way of consideration to waive the wide MFN effective on Home insurance, allowing [HIP] to proceed with MSM unrestricted*'.¹⁰⁸⁰ [HIP] considered that it had no option, given its contractual obligations under its wide MFN and the importance of listing on CTM to its business, but to agree to these terms even though they were clearly against [HIP]'s commercial interests and went beyond like-for-like compensation for CTM.¹⁰⁸¹

- 8.129 [HIP] applied the first agreed discount with CTM in July 2017, but when the CMA issued its findings in the DCTs Market Study and launched the Investigation into CTM's wide MFNs, [HIP] [REDACTED].¹⁰⁸² However, even at this point, [HIP] was still concerned that CTM might still bring a claim for breach of contract against [HIP], might delist [HIP] or in some other way penalise [HIP] either operationally or commercially, notwithstanding the launch of the CMA's Investigation.¹⁰⁸³ Moreover, as described in Section 8.B.II above, following the enforcement action by CTM, [HIP] did not enter into any further promotional deals proposed by other PCWs until after CTM stopped enforcing its wide MFNs.¹⁰⁸⁴

8.B.III.(b).(ii). CTM's enforcement action against [HIP]

- 8.130 CTM took enforcement action against [HIP], an insurance broker accounting for less than 1% [REDACTED] of sales of home insurance made through PCWs in 2017. Notwithstanding its size, [HIP]'s compliance with CTM's wide MFN was consistently monitored by CTM before and during the Relevant

¹⁰⁷⁸ URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled 'Fwd: CTM Briefing – For Awareness', [REDACTED].

¹⁰⁷⁹ URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled 'Fwd: CTM Briefing – For Awareness', [REDACTED]. See Section 8.B.I.(a).

¹⁰⁸⁰ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 5.

¹⁰⁸¹ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 5.

¹⁰⁸² URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled 'Fwd: CTM Briefing – For Awareness', [REDACTED].

¹⁰⁸³ URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email between [Employee, HIP], [Employee, HIP], [Employee, HIP], [Employee, HIP] and [Employee, HIP] entitled 'Fwd: CTM Briefing – For Awareness', [REDACTED]. See also Section 8.B.I.(a).

¹⁰⁸⁴ See paragraph 8.99.

Period.¹⁰⁸⁵ In March 2016 CTM took steps to enforce its wide MFN when it observed lower prices on GoCompare.

- 8.131 In February 2016, based on its monitoring¹⁰⁸⁶, CTM *'identified that [HIP] customers were receiving a [X] discount on GoCompare when compared with the same quote on CTM'*.¹⁰⁸⁷ It wrote to [HIP] raising this concern, indicating that it may be necessary to review the commercial agreements between them because of the *'negative effect'* of [HIP]'s pricing on GoCompare.¹⁰⁸⁸
- 8.132 In response, [HIP] offered to reduce the volume of quotes on CTM, if CTM was *'unhappy that there maybe [sic] a few quotes whereby GoCompare get a slightly better rate than Compare the market'* and requested that CTM provide details of the quotes to enable it to verify the price differences alleged by CTM.¹⁰⁸⁹ In following up, CTM expressed its disappointment that [HIP] was unable to identify the quotes involved and reminded [HIP] of its contractual obligations under its wide MFN, emphasising the importance to CTM of [HIP] not offering lower prices on other PCWs: *'At this point I would like to remind you that the contractual arrangement between us includes an agreement to provide us with price parity across all distribution channels. We want the best deals for our customers and currently this is not being achieved because they are able to achieve a better deal elsewhere. Please confirm your plans to resolve this, I look forward to hearing from you shortly.'*¹⁰⁹⁰
- 8.133 Shortly after this, [HIP] agreed to revised, increased commission fees in June 2016, although CTM accepted maintenance of the same lower

¹⁰⁸⁵ [HIP] featured frequently in CTM's price parity snapshots in the period 2015-2017. See, among others, URN 4795.11, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot'. URN 4795.28, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Jan-16_redacted'. URN 4795.15, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Issues Log'.

¹⁰⁸⁶ URN 4795.28, BGL's response to section 26 follow up questions dated 17 November 2017, question 23, document entitled 'Pricing Parity Snapshot Jan-16_redacted'. The entry for [HIP] refers to [HIP] pricing differently on GoCompare more often and notes *'RM [CTM Relationship Manager] to chase partner'* as an action.

¹⁰⁸⁷ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled 'FW: Sales Floor', dated 12 February 2016, page 3.

¹⁰⁸⁸ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP], ([Employee 2 HIP] in copy) entitled 'FW: Sales Floor', dated 12 February 2016, page 3.

¹⁰⁸⁹ URN 6223, [HIP]'s response to section 26 notice dated 16 April 2018, email chain between [HIP] and CTM, email entitled 'FW: Sales Floor', dated 16 February 2016, pages 14 to 15.

¹⁰⁹⁰ URN 3349, BGL's response to section 27 notice of 26 September 2017, email chain between [Employee 3, CTM] to [Employee, HIP], email entitled 'RE: Sales Floor.msg' dated 16 March 2016, page 1.

'conversion floor'¹⁰⁹¹ that had previously been agreed with [HIP] in 2015, in exchange for [HIP] lowering its prices on CTM.¹⁰⁹²

- 8.134 [HIP]'s poor compliance with CTM's wide MFN was discussed by CTM with [HIP] on several occasions during the context of these negotiations, with CTM reminding [HIP] of the contractual nature of its obligation under its wide MFN. For example, on [REDACTED], CTM also reminded [HIP] that it was required to offer CTM pricing parity under the terms of its contract with CTM:

*'[CTM] now have the situation where 60% of GoCo quotes are cheaper compared with only 14% of quotes cheaper on ctm [...] How do we get back to pricing parity here as per the agreement we have in place? I attach a small sample of risks where we are priced against. [...] Please can you investigate and advise why these are priced differently.'*¹⁰⁹³

- 8.135 During exchanges between April and June 2016 regarding the increase to [HIP]'s commission, CTM reiterated on several occasions [HIP]'s obligations to ensure that it did not price lower on other PCWs. For example, CTM told [HIP] that the minimum commission fee increase it could accept did not take into account *'any additional increase for the low performance, but I would like to pick this [[HIP]'s pricing] up with you and look again at the price differences we have exchanged emails over in the past'*.¹⁰⁹⁴

- 8.136 CTM's internal documents show that it was satisfied with the progress it achieved in ensuring that [HIP] was pricing consistently with CTM's wide MFN. For example, CTM's snapshot for June 2016 indicates that *'[w]ritten approval sought from legal regarding application of the wide MFN for home which has been issued the partner [sic] for feedback'*¹⁰⁹⁵ and an internal email dated 13 June 2016 noted that CTM *'Pushed back to ... [HIP] on them not meeting their non-car wide MFN obligations. Real progress with the help of Legal'*.¹⁰⁹⁶

- 8.137 For the remainder of the Relevant Period, although CTM continued to monitor and from time to time raised the issue of pricing differences, [HIP]'s

¹⁰⁹¹ Under a 'conversion floor' or 'sales floor', the commission fee paid to the PCW is linked to the provider achieving a minimum conversion rate or minimum sales rate.

¹⁰⁹² URN 6223, [HIP]'s response to section 26 notice dated 16 April 2018, email chain between [HIP] and CTM entitled 'Re: Commercial Review', dated 14 June 2016, page 6.

¹⁰⁹³ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP] entitled 'FW: Sales Floor', dated 2 March 2016, page 1.

¹⁰⁹⁴ URN 6223, [HIP]'s response to section 26 notice dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled 'RE: Commercial Review', dated 14 June 2016, pages 7 to 8.

¹⁰⁹⁵ URN 4795.32, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Snapshot Jun-16_redacted'.

¹⁰⁹⁶ URN 3400, BGL's response to section 27 notice dated 26 September 2017, internal email from [Employee 11, CTM] to [REDACTED] entitled 'Highs and Lows', dated 13 June 2016, page 3.

pricing appears to have been regarded by CTM as generally within its compliance tolerance threshold.¹⁰⁹⁷

8.B.III.(b).(iii). CTM's enforcement action against [HIP]

- 8.138 CTM took enforcement action against [HIP], a home insurance provider accounting for less than 1% [X] of sales of home insurance made through PCWs in 2017, when it observed that [HIP] was quoting lower prices on other PCWs than on CTM.
- 8.139 In March 2017, [HIP] applied a temporary increase of [X] on its quotes on CTM in home insurance to reflect CTM's higher commission fees.¹⁰⁹⁸ After observing the increase through its systematic monitoring, CTM queried the increase, noting internally that a meeting had been arranged with [HIP] to be followed up, following approval from BGL's legal team, with a notice informing [HIP] that CTM regarded [HIP] as in breach of CTM's wide MFN.¹⁰⁹⁹
- 8.140 At the meeting with CTM in March 2017, [HIP] questioned the application of the PMI Order 2015 and CTM's ability to enforce its wide MFN.¹¹⁰⁰ CTM's confirmed to [HIP] in a follow up email the same day that having raised the matter with BGL's in house legal team, CTM's position was that *'[t]he prohibition in the [PMI] Order refers to PMI Products only and therefore does not extend to other insurance products'*, concluding with the statement: *'I trust this clarifies our position regarding the need to adhere to clause 4.9 of the agreement [the wide MFN clause].'*¹¹⁰¹ [Employee, HIP] forwarded this email internally, explaining that CTM was *'giving us a ticking off for applying different pricing on BIKE, VAN and HOME across other aggregators. Car is fine as this has legally been challenged and quashed!'*, as well as noting that *'it is on their radar now, so I would imagine this will be reviewed monthly from now on'*.¹¹⁰²

¹⁰⁹⁷ See Annex M.

¹⁰⁹⁸ [HIP] stated that its pricing team, which made an adjustment to [HIP]'s pricing to reflect the PMI Order 2015 in early 2017, was unaware that the PMI Order 2015 only related to private motor insurance. URN 9174, [HIP]'s response to section 26 notice dated 24 June 2019, question 2.

¹⁰⁹⁹ Following internal approval by BGL's legal division. URN 4795.27, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Feb-17', which stated: *'Risk data sent for home and van, meeting arranged for 24th March - Follow up with wide MFN notice for non PMI, obtain sign off from [X].'* The CMA infers that the reference to '[X]' is to [Employee 3, BGL], [X] who attended CTM's monthly compliance 'price parity' meetings.

¹¹⁰⁰ URN 9174.1 [HIP]'s response to section 26 notice dated 24 June 2019, question 10, email from [Employee 7, CTM] to [Employee, HIP] entitled 'CMA PMI Final Order', dated 24 March 2017, pages 1 and 2.

¹¹⁰¹ URN 9174.1, [HIP]'s response to section 26 notice dated 24 June 2019, question 10, email chain between the CMA and [Employee, HIP] entitled 'RE FW:CMA PMI Final Order', dated 8 July 2019.

¹¹⁰² URN 9174.1 [HIP]'s response to section 26 notice dated 24 June 2019, question 10, internal email entitled 'FW:CMA PMI Final Order', page 1.

8.141 As a direct result of CTM's action, [HIP] confirmed that it removed the [X] price increase on CTM and thereafter '*continued to price consistently across all PCWs for Home Insurance*'.¹¹⁰³

8.B.III.(b).(iv). CTM's enforcement action against [HIP]

8.142 CTM took enforcement action against [HIP], a home insurance provider that accounted for [X] [0-5%] of sales of home insurance made through PCWs in 2017. [HIP]'s compliance with the wide MFN was consistently monitored by CTM before and during the Relevant Period,¹¹⁰⁴ and CTM took steps to enforce the clause in early [X] and again in [X] when [HIP] entered into promotional deals with [X].

8.143 At the [X], [HIP] agreed a promotional deal with [X]¹¹⁰⁵ [X].¹¹⁰⁶

8.144 The pricing disparity between CTM and [X] in breach of CTM's wide MFN was identified by CTM within a month, in [X], through CTM's systematic monitoring. CTM's [X] snapshot showed that CTM decided to take action and '*[c]hase up home on [X] due to fixed price difference rather than question set*'.¹¹⁰⁷ An internal CTM email dated [X] recorded that the '*Pricing Parity meeting highlighted [X] became the outlier in terms of pricing for in [X]. Relevant RM [Relationship Managers] picking up with brands via legal for a view. Some partners (... [HIP]) have exclusive pricing banners on [X].*'¹¹⁰⁸ CTM took action to resolve the issue, with CTM's snapshot for [X] that '*Home differences have been challenged*' with [HIP] and, in an internal email, CTM stating that it had '*[p]ushed back to [HIP] ... on them not meeting their non-car wide MFN obligations. Real progress with the help of Legal*'.¹¹⁰⁹

8.145 CTM similarly took action when, in [X], [HIP] agreed a promotional deal with [X]. CTM identified the pricing disparity between CTM and [X] resulting from the promotional deal as part of its systematic monitoring. An internal CTM email dated [X], referred to a priority for that month being to understand [HIP]'s reasons for setting a lower retail price on [X], drawing

¹¹⁰³ URN 9174.1, [HIP]'s response to section 26 notice dated 24 June 2019, question 10, email chain between the CMA and [Employee, HIP] entitled 'RE FW:CMA PMI Final Order', dated 8 July 2019.

¹¹⁰⁴ [HIP] featured frequently in CTM's monthly 'price parity' snapshots in the period 2015-2017. See, among others, [X]

¹¹⁰⁵ [X]

¹¹⁰⁶ See Section 7.D.II.(a).(i). In home insurance a provider is usually charged by a PCW when consumers purchase a product having clicked through from a PCW and this is called a cost per acquisition model as the provider is charged by the PCW for acquiring those consumers. However, there are alternative charging models that PCWs can employ which include charging a provider every time consumers 'click-through' to the that provider's website, this is called a cost per click model.

¹¹⁰⁷ [X]

¹¹⁰⁸ [X]

¹¹⁰⁹ [X]

attention to CTM's wide MFN: *'They [HIP] are pricing against us on [X]. Will send an email pointing out and asking them to confirm what's happening – will send through legal as it will refer to wide MFN'*.¹¹¹⁰

- 8.146 CTM subsequently discussed with [HIP] the fact customers were *'able to receive cheaper prices for [[HIP]'s] home products on other Price Comparison Websites'*.¹¹¹¹ As it had not received a satisfactory response following that discussion, CTM wrote to [HIP] on [X] stating that it regarded [HIP] as being in breach of contract, seeking confirmation the breach of the wide MFN would be remedied:

'I refer to our discussion regarding customers being able to receive cheaper prices for your home products on other Price Comparison Websites. As you have not been able to explain the reason for these price differences or give any assurance that the differences have been rectified, I have to assume that this approach forms part of your overall pricing strategy.

This practice is in breach of clause 5.11 of our agreement dated 8 July 2010.

For clarity, I refer to the CMA review of the Wide MFN clause in 2015. The CMA makes it clear that the PMI Order only applies to private motor insurance (cars).

[...]

*Please confirm when this will be remedied and clause 5.11 of the agreement will be adhered to.'*¹¹¹²

- 8.147 [HIP]'s explanation was that the price disparity was due to the fact that, because additional questions on *'[X] journey'* offered *'incremental information for pricing'*, [HIP]'s *'insurer relations team have managed to agree discounted rates with our panel on receipt of this additional data'*.¹¹¹³

¹¹¹⁰ URN 3512, BGL's response to the section 27 notice dated 26 September 2017, internal email from [Employee 4, CTM] to [Employee 7, CTM] and [Employee 2, CTM] entitled 'Price Parity', dated 16 June 2017, page 1.

¹¹¹¹ URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, email chain between [HIP] and BGL entitled 'RE: [EXTERNAL] FW: [HIP] Home Price Differences', page 3.

¹¹¹² URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, email chain between [HIP] and BGL entitled 'RE: [EXTERNAL] FW: [HIP] Home Price Differences', page 3.

¹¹¹³ URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 2, email from [Employee, HIP] to [Employee 4, CTM] ([Employee, HIP] in copy), entitled 'RE: [EXTERNAL] FW: [HIP] Home Price Differences', [X], page 2.

[HIP] proposed that CTM ‘*mirror the question set on [X]*’ in order to allow CTM to benefit from the same rates.¹¹¹⁴

8.B.III.(b).(v). CTM’s enforcement action against [HIP]

8.148 CTM took enforcement action against [HIP], [X], and which accounted for [approximately] [X] [5-10%] of sales of home insurance made through PCWs in 2017. [HIP]’s compliance with CTM’s wide MFN was consistently monitored by CTM during the Relevant Period and CTM took steps to enforce the clause in [X] when it observed that [HIP] was quoting lower prices on [X] than on CTM. [HIP] is a major insurer trading under the brand name [HIP] on PCWs.

8.149 CTM monitored [HIP]’s pricing in 2015 and 2016 and took steps to ensure that [HIP] was pricing with CTM’s compliance tolerance levels, for example by sending Customer Intelligence data to [HIP] (see Annex M). However, when CTM identified that [HIP]’s prices were lower on [X] than on CTM in [X], CTM raised the issue with [HIP] in [X], but was clearly not satisfied with [HIP]’s response. In [X], CTM escalated its enforcement action, sending an email to [HIP], attaching a copy of [HIP]’s contract with CTM, stating:

‘I refer to my email [X] regarding customers being able to receive cheaper prices for your products on other Price Comparison Websites. As you have not been able to explain the reasons for these price differences or give any assurances that the differences have been rectified, I [Employee 4, CTM] have to assume that this approach forms part of your overall pricing strategy.

This practice is in breach of clause 4.11 of your agreement dated 28 November 2012.

For clarity, I refer to the CMA review of the Wide MFN clause in 2015. The CMA makes it clear that the PMI order only applies to private motor insurance (cars).

[...]

¹¹¹⁴ URN 6643, [HIP]’s response to follow-up questions to section 26 notice dated 16 April 2018, email chain between [HIP] and BGL entitled ‘RE: [EXTERNAL] FW: [HIP] Home Price Differences’, page 2.

Please confirm when this will be remedied and clause 4.11 of the agreement will be adhered to'.¹¹¹⁵

- 8.150 A call was arranged between [Employee 1, CTM] and [Senior Executive, HIP], that took place on [REDACTED] *'to deal with the matter at senior management level'*¹¹¹⁶. [HIP] explained that it *'had to take the matter very seriously at this stage because of the escalation process now involved [REDACTED]'*.¹¹¹⁷
- 8.151 [HIP] explained that, during the telephone call on [REDACTED], [Employee 1, CTM] made a specific threat to delist [HIP] due to its poor levels of compliance with CTM's wide MFN.¹¹¹⁸ As a result, [HIP] told the CMA that it took *'the matter very seriously at this stage'*¹¹¹⁹ and *'genuinely believed'*¹¹²⁰ that it would be delisted by CTM. The outcome of the call with [Employee 1, CTM] was that [HIP] agreed to amend its pricing to ensure compliance with its wide MFN obligations, as recorded in an email exchange between [HIP] and BGL [REDACTED] in which [Senior Executive, HIP] confirmed to CTM that [HIP] would address the pricing issue:

'I've just had my guys together and instructed them in no uncertain terms the pricing parity issues need to be fixed no later than [REDACTED]'.¹¹²¹

- 8.152 As a result of the delisting threat, [HIP] cut short a promotional deal with [REDACTED] and reduced its prices on CTM, at its own cost, to comply with CTM's wide MFN.¹¹²² CTM's Relationship Manager sought further confirmation of [HIP]'s return to pricing within CTM's tolerance thresholds from [HIP] by email on 1 [REDACTED] asking *'have all the prices been aligned now?'*.¹¹²³ This was confirmed

¹¹¹⁵ URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, email from [Employee 4, CTM] to [Employee, HIP] entitled '[HIP] Pricing' [REDACTED], Appendix C, page 27.

¹¹¹⁶ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 19 and URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, Appendix F, page 56.

¹¹¹⁷ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 19.

¹¹¹⁸ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 21; URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 19.

¹¹¹⁹ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 19.

¹¹²⁰ URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 15.

¹¹²¹ URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, email from [Senior Executive, HIP] to [Employee 1, CTM] entitled '[EXTERNAL] Earlier telecon' dated [REDACTED], Appendix C, page 19. [Employee 1, CTM] replied confirming that *'Getting the best possible price for CTM customers is very important to us, it's good to have a timeline'*.

¹¹²² URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 19 and 24; URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 11. Although, [HIP] told the CMA it *'believes that it would have terminated this deal shortly after [REDACTED] on economic grounds anyway'*, CTM escalated its enforcement action when the matter was not resolved through initial discussions and [HIP] was concerned at the consequences, including de-listing, of being in breach of its contractual obligations under its wide MFN, that it took immediate action to ensure future compliance.

¹¹²³ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix G', page 59. A copy of this email was also provided as part of URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', pages 24 to 25.

by [HIP] by return email: *'they have indeed, this was completed on the [REDACTED]'*.¹¹²⁴

- 8.153 The result of the enforcement action against [HIP] was recorded in an internal CTM presentation in [REDACTED], which stated: *'Overall pricing parity stands at 55% down by 1.5%. This was predominantly due to a [HIP] issue which has subsequently been resolved'*.¹¹²⁵ CTM's snapshots do not identify any price discrepancies in [HIP]'s pricing after [REDACTED] outside of its compliance tolerance thresholds. However, [HIP] recorded internally, following a meeting with CTM in [REDACTED] after the CMA opened this Investigation, that CTM *'know the MFN (pricing parity) clause will come out at some point in 2018, but they're still enforcing it in the meantime. Same old story there'*.¹¹²⁶

8.B.III.(b).(vi). CTM's enforcement action against [HIP]

- 8.154 CTM took enforcement action against [HIP], a home insurance provider that accounted for approximately [REDACTED] [0-5%] of sales of home insurance through PCWs in 2016 and [REDACTED] [0-5%] in 2017. [HIP]'s compliance with CTM's wide MFN was challenged by CTM before and during the Relevant Period with requests to explain pricing differences and an explicit request for [HIP] to comply with its wide MFN obligations.¹¹²⁷
- 8.155 As part of its systematic monitoring, CTM queried [HIP]'s prices on several occasions between June 2016 and October 2017 by sending [HIP] risk data relating to its PCW activity for it to review, explain and take action to remedy where necessary.¹¹²⁸
- 8.156 In February 2017, CTM's snapshots recorded again sending risk data to [HIP] relating to home insurance and an action to *'provide advice request for a stronger email to obtain a reply from partner'*.¹¹²⁹ On 13 February 2017,

¹¹²⁴ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix G', page 59.

¹¹²⁵ URN 4077, BGL's response to section 27 notice dated 26 September 2017, document entitled 'V.O.C. Core commercial update', slide 6.

¹¹²⁶ URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, email from [Employee, HIP] to [Employee, HIP] entitled 'Re: Notes from CTM meeting' [REDACTED], 'Appendix C', page 113.

¹¹²⁷ For example, in 2015 and 2016, CTM's snapshots show that CTM took action regarding price disparities by sending [HIP] risk data relating to its PCW activity for it to review in August, October and December 2015. In addition, an email dated 28 June 2016 from a CTM representative to [HIP], asked [HIP] to explain why their policies were cheaper on other PCWs than on CTM, referring to a Consumer Intelligence report on their pricing as compared to Confused, MoneySuperMarket and GoCompare. The standardised email stated (see URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 20, (URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 7: *'Please find attached a report produced by Consumer Intelligence, an independent third party research company. We are always striving to achieve the best deals for our customers, hence we have provided to you a copy of the Consumer Intelligence report, which shows that we are not achieving the best deal for our customers and that they are able to achieve a better deal elsewhere...'*

¹¹²⁸ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 20 and URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, pages 8 to 20.

¹¹²⁹ [REDACTED].

CTM sent [HIP] its standard email querying apparent price differentials outside of its tolerances, attaching Consumer Intelligence data.¹¹³⁰ This was followed up with a further standard email on 13 April 2017¹¹³¹ and several 'chaser' emails, including an email dated 26 April 2017 stating: *'Did you get an answer from your pricing team regarding this?'* and an email [X] which attached further Consumer Intelligence data.¹¹³²

- 8.157 Having spoken with [HIP], on [X], CTM escalated the issue by sending an email to [HIP] advising that it was in breach of the wide MFN clause, referring to clause 4.7 of their agreement and requesting that [HIP] comply with CTM's wide MFN:

'I refer to our recent telephone conversation when you confirmed that customers are able to receive cheaper prices for your home products on other Price Comparison Websites.

This practice is in breach of clause 4.7 of our agreement dated 16 July 2008.

For clarity, I refer to the CMA review of the Wide MFN clause in 2015. The CMA makes it clear that the PMI Order only applies to private motor insurance (cars).

[...]

Please confirm when this will be remedied and clause 4.7 of the agreement will be adhered to'.¹¹³³

- 8.158 On [X], CTM sent a further chaser stating: *'Following our recent discussion I understand that this email is with your Legal team and I need a response urgently.'*¹¹³⁴

- 8.159 CTM's internal snapshot for [X] recorded the timeline of steps taken in relation to [HIP], noting that as of [X] CTM was considering its next steps:

'[X]- Home New product on ctm - send partner mapping document in first instance to check if there is an issue

[X] - Send risk data for car and home and provide advice request for a stronger email to obtain a reply from partner

¹¹³⁰ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 14.

¹¹³¹ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 15.

¹¹³² URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 20.

¹¹³³ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 8.

¹¹³⁴ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 13

[REDACTED] - Awaiting advice re: non PMI results - Send risk data

[REDACTED] - Letter from legal sent to partner for home - Chase partner response

[REDACTED] - Partner advised q/s is causing differences. Partner unable to provide q/s differences - Next steps under review'.¹¹³⁵

8.160 [HIP] replied on [REDACTED] that it was taking the issue seriously: *'we have been taking some time here to look into this issue carefully'*, explaining that a number of factors may give rise to the difference in pricing, and stating that *'we are concerned about the issues you have raised in your earlier email, and would like to discuss these with you on your return from leave'*.¹¹³⁶

8.161 Shortly after the CMA published its final report in the DCTs Market Study (and opened the present Investigation) on [REDACTED], [HIP] followed up with CTM on the enforceability of CTM's wide MFN, stating that in the light of the CMA's findings it *'wanted now to put the issue of the wide MFN to bed once and for all'*. [HIP] expressed its view that, *'given the CMA's clear concerns, the wide MFN in the contract between us cannot be enforced. If we do not hear anything further from you on this issue, we will take this to be your understanding as well'*.¹¹³⁷ As with the other home insurance providers with wide MFNs in their agreements, CTM wrote to [HIP] on [REDACTED] informing it that CTM had decided to no longer enforce its wide MFN.¹¹³⁸

8.C. The market coverage of CTM's network of wide MFNs

8.162 The CMA finds that CTM's network of wide MFNs covered providers accounting for over 40% of home insurance policies sold through CTM and approximately 40% of sales made through PCWs in 2016 and 2017.

8.163 BGL has made a large number of representations regarding the CMA's assessment of market coverage, in particular submitting that the CMA has over-estimated the coverage of CTM's network of wide MFNs. The CMA has addressed these points below in setting out its assessment.

¹¹³⁵ [REDACTED]

¹¹³⁶ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 18, email from [Employee, HIP] to [Employee 4, CTM] entitled 'RE: [HIP] Home Price Differences' [REDACTED].

¹¹³⁷ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, page 21, email chain between [Employee, HIP] and [Employee 4, CTM] entitled 'RE: [HIP] Home Price Differences' [REDACTED].

¹¹³⁸ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, pages 7, email from [Employee 4, CTM] to [Employee, HIP] and entitled 'Most Favoured Nation Clause' [REDACTED].

8.C.I. The CMA's assessment of market coverage

- 8.164 It is common ground with BGL that market coverage is an important factor in assessing the extent to which CTM's network of wide MFNs had an appreciable effect on competition.¹¹³⁹ As BGL submitted, this is in line with the established *Delimitis* line of case law, as well as the Vertical Guidelines.¹¹⁴⁰
- 8.165 As set out in section 3.D, the effect of an agreement has to be assessed in the context in which it occurs, including where it might combine with other agreements to have a cumulative effect on competition.¹¹⁴¹ Where there is a network of similar agreements concluded by the same undertaking, the assessment of the effects of that network on competition applies to all the individual agreements making up that network.¹¹⁴² Accordingly, when assessing the effects on competition of a network of similar agreements, it is necessary to consider as a relevant factor the extent of the network in terms of the proportion of the market that it covers.¹¹⁴³
- 8.166 CTM had wide MFNs in its agreements with 32 home insurers during the Relevant Period. The wide MFN in each agreement was in materially the same terms or, in the case of the [HIP], operated in a similar way and was treated by BGL as a wide MFN.¹¹⁴⁴ The CMA therefore finds that each of the 32 agreements was similar and, accordingly, the CMA has assessed the combined effect of CTM's network of wide MFN's on competition.
- 8.167 In order to establish the market coverage of CTM's network of wide MFNs, the CMA has assessed the proportion of PCW sales by volume covered by the network of CTM's wide MFNs. As set out in Table 8.2 below, CTM's wide MFNs were contained in agreements with home insurance providers accounting for approximately 40% of sales of home insurance policies sold

¹¹³⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 363(v), 395, 397 and 348 to 354; and URN 8484.3, Third Oxera Report, dated 22 February 2019, paragraphs 1.4 and 5.1.

¹¹⁴⁰ See Section 3.D. In the SO, the CMA described the coverage of CTM's wide MFNs as a factor that is likely to have exacerbated the adverse effect of CTM's wide MFNs (SO, paragraphs 11.171 to 11.173) and was a reason for the CMA's provisional finding that CTM's wide MFNs had the appreciable effect of restricting competition (SO, paragraph 12.5). In the light of BGL's submissions that coverage is an 'essential' part of the assessment of whether CTM's wide MFNs had appreciable effects on competition, the CMA does not, for the avoidance of doubt, characterise coverage as an 'exacerbating' factor in this Decision. The CMA considers that coverage is a relevant factor in the assessment of the effects on competition of CTM's wide MFNs and the extent to which such effects are appreciable and has taken coverage into account in its assessment accordingly.

¹¹⁴¹ Case 23-67, *SA Brasserie de Haecht v Consorts Wilkin-Janssen*, at 415; Case C-234/89 *Stergios Delimitis v Henninger Bräu AG* ECR EU:C:1991:91 (*Delimitis*), paragraph 14.

¹¹⁴² Case T-7/93, *Langnese-Iglo*, paragraph 131; Case T-9/93, *Schöller*, paragraph 98

¹¹⁴³ Case T-7/93, *Langnese-Iglo*, paragraph 101; Case T-9/93, *Schöller*, paragraph 78. In addition, the Vertical Guidelines refer to the 'cumulative effect, i.e. the coverage of the market by similar agreements entered into by other undertakings as a relevant factor that may have to be taken into account (Vertical Guidelines, paragraph 121).

¹¹⁴⁴ See Section 4.B.I. above.

through the Big Four PCWs, and over 40% of home insurance policies sold through CTM, in 2016 and 2017.

Table 8.2: Proportion by volume of home insurance policies sold by home insurance providers with wide MFNs through the Big Four PCWs and through CTM in 2016 and 2017

	2016	2017
Sales made using CTM	[REDACTED]	[REDACTED]
Sales made using the Big Four PCWs	[REDACTED]	[REDACTED]

Source: CMA analysis of the Commission Fees Dataset (Annex D) and information from BGL.¹¹⁴⁵

8.168 The home insurance providers subject to CTM's wide MFNs in the Relevant Period are listed at Table 2.1 and include [REDACTED], [HIP], as well as other large well-known insurers, such as [HIP] and [HIP], and brands that are particularly significant in terms of sales on PCWs, such as [HIP] under the brand [HIP].

8.C.II. The CMA's views on BGL's representations on market coverage

8.169 BGL submitted that the CMA has overestimated the market coverage of CTM's network of wide MFNs.¹¹⁴⁶ In BGL's view '*what is relevant to an effects case is effective coverage*' of CTM's network of wide MFNs¹¹⁴⁷, and that for a provider to be included in the market coverage calculation '*it is not sufficient that the [provider] has a wide MFN clause in its contract with CTM, it must also be the case that the [provider] took this clause into account in its commercial strategy*'.¹¹⁴⁸ BGL also submitted that, in the SO, the CMA failed

¹¹⁴⁵ The figures in Table 8.2 are based on sales made by the providers set out in Table 2.1. However, because the underlying data is based on yearly sales, the CMA has simplified the calculation for each year by excluding from the market coverage figures those providers that were on CTM's panel and had wide MFNs in their agreements for less than six months of the relevant year. Sales made through CTM and through PCWs by the following home insurance providers have therefore been excluded from the figures in Table 8.2 above: for 2016, [HIP] and [HIP] (which together accounted for less than 1% of sales through the Big Four PCWs in 2016); for 2017, [HIP], [HIP] and [HIP] (which together accounted for less than 1% of sales through the Big Four PCWs in 2017). [HIP], [HIP] and [HIP] [REDACTED] and [HIP] and [HIP] signed agreements [REDACTED], see URN 1622, BGL's response to the First BGL Notice dated 26 September 2017, question 29, document entitled 'Q29 – List of HIP Contacts and related information (FINAL).xlsx'.

¹¹⁴⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 400; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 330.

¹¹⁴⁷ URN 8484.3, Third Oxera Report dated 22 February 2020, paragraph 5.12. BGL also submitted that the CMA has overestimated market coverage because it has incorrectly identified the relevant market. The CMA's findings on market definition are set out in section 6, in which the CMA also addresses BGL's representations that the market should be defined more widely.

¹¹⁴⁸ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.11. BGL also submitted that CTM's wide MFNs did not apply to all sales made by a provider on PCWs on the basis that, to the extent that a provider was offering a different product for a specific risk on a rival PCW, CTM's wide MFN did not apply. BGL submitted that this meant that providers could circumvent CTM's wide MFN by setting lower default levels of liability excess or through different question sets. The CMA agrees that in principle it may be possible for providers to circumvent CTM's wide MFNs in this way. However, as set out at in section 8.B.I, the relevant providers had strong incentives to comply with their contractual obligations. Moreover, the CMA has found that CTM's monitoring and enforcement limited the ability and the incentives of providers to try and circumvent CTM's wide MFNs. This is further supported by the fact that the CMA has found limited evidence that in practice providers sought to

*‘to analyse why home insurance providers were apparently complying with [CTM’s wide MFN]’ and that ‘the ‘but for’ counterfactual in the CMA’s case is satisfied’ only if it is proved that CTM’s wide MFNs ‘constrain the [home insurance providers] to act differently from how they otherwise would’.*¹¹⁴⁹

8.170 On that basis, BGL submitted that the CMA should exclude from its calculation of the market coverage of CTM’s network of wide MFN the sales of those providers through PCWs that:

- (a) the CMA did not obtain information from during its Investigation, on the basis that there is no evidence that they did or did not take CTM’s wide MFN in account¹¹⁵⁰;
- (b) in BGL’s view, denied ever having been bound by CTM’s wide MFN;
- (c) in BGL’s view, disregarded CTM’s wide MFN; or
- (d) in BGL’s view, did not change their strategy after BGL stopped enforcing its wide MFNs on 30 November 2017.¹¹⁵¹

8.171 Applying these criteria, BGL submitted that only two providers with wide MFNs in their agreements with CTM may be considered to have been *‘actually influenced’* and therefore *‘covered’* by CTM’s wide MFNs.¹¹⁵² Accordingly, BGL considers that all of the other providers with wide MFNs in their agreements with CTM should be excluded from the CMA’s calculation of the market coverage of CTM’s network of wide MFNs.¹¹⁵³

8.172 For the reasons set out below, the CMA disagrees with both: (a) BGL’s approach to the assessment of market coverage of CTM’s network of wide MFNs, which is contrary to the established position in case law, and (b)

circumvent the wide MFN clause in these ways (see Annex P, which addresses in more detail BGL’s representations on providers’ ability to circumvent its wide MFNs).

¹¹⁴⁹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 191 and URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 46. BGL further submitted that *‘[t]he legal error which permeates much of the SO is the failure to prove a clear causal link between [home insurance providers’] pricing practices and [CTM’s wide MFNs], ie that it was the existence of [CTM’s wide MFNs] which determined the [home insurance providers’] actions’* (BGL Response to SO, paragraph 193).

¹¹⁵⁰ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 330; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.12.

¹¹⁵¹ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 330; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.13

¹¹⁵² URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 330; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 4.14 and 4.15. In relation to these two providers, [HIP] and [HIP], BGL submitted that the evidence of their compliance is *‘wholly equivocal and inconclusive’*, see URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 330 and 456.

¹¹⁵³ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.13 to 4.14.

BGL's exclusion of certain providers with wide MFNs from the calculation of market coverage.

8.C.II.(a). The CMA's reasons for why BGL's approach to 'effective' coverage is wrong

- 8.173 As set out in Section 3.D, and referred to above, the legal position is clear that where there is a network of similar agreements concluded by the same undertaking (in this case CTM's wide MFNs), the assessment of the effects of that network on competition applies to all the individual agreements making up the network. A bundle of similar agreements must be considered as a whole and it is not necessary to examine separately whether the individual agreements have an appreciable effect on competition.¹¹⁵⁴
- 8.174 The CMA's approach to calculating market coverage based on the providers' sales made through PCWs in the relevant market is therefore in accordance with case law and consistent with the Vertical Guidelines, and market coverage is a factor that the CMA has taken into account in its assessment of the effects of CTM's wide MFNs. In that regard, the CMA has assessed whether it is more likely than not that 'but for' the presence of the network of CTM's wide MFNs competition would have been appreciably stronger.
- 8.175 In contrast, BGL's approach of excluding agreements with certain providers from the market coverage calculation, based on the categories listed at paragraph 8.170 above, is inconsistent with established case law. As BGL submitted, market coverage is a relevant factor in the CMA's assessment because the greater the coverage of the network of agreements, the greater the likely effect on competition.¹¹⁵⁵ However, BGL's approach to the

¹¹⁵⁴ The CMA notes that in exceptional circumstances it may be appropriate to sub-divide an undertaking's network of agreements (see: Judgment of 7 December 2000, Case C-214/99, *Neste Markkinointi OY v Yötuuli Ky and Others*, EU:C:2000:679 ('Neste')). However, this should only be done where a sub-category of the agreements can be distinguished from the rest 'on the basis of an objective criterion', for example where, as in *Neste*, certain contracts could be excluded from a network of exclusive purchasing agreements for the supply of motor fuel on the basis of having a much shorter duration than others in the network and therefore could be assumed not to have contributed significantly to any cumulative foreclosure effect (*Neste*, paragraphs 32 to 39). Further, as explained by Advocate-General Fennelly in *Neste*: '*For a distinction to be relevant, it must be significant and based on the substantive terms of the agreements at issue and their materially different economic effects*' (Opinion of Advocate-General Nial Fennelly, 6 July 2000, paragraph 29). As set out in Section 4.B., each of CTM's agreements with the 32 providers was similar because the wide MFN was in materially the same terms or, in the case of the [HIP], operated in a similar way and was treated by BGL as a wide MFN. The criteria referred to by BGL, set out at paragraph 8.170 above, do not relate to objective differences in the substantive terms of the agreements and therefore do not provide a basis for excluding them from the assessment of the coverage of CTM's network of wide MFNs.

¹¹⁵⁵ BGL submitted that it is '*uncontroversial*' that the coverage of the agreements in question is a relevant factor for the assessment of appreciable effects, and that '*the greater the share of the market to which the agreements in question apply, the more significant their effects are likely to be*'. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 363(v), 348-354; URN 8484.3, Third Oxera Report, dated 22 February 2019, paragraphs 1.4 and 5.1.

calculation of market coverage wrongly focuses on the assessment of the observable effect of its wide MFN on each relevant provider's behaviour during the Relevant Period.

- 8.176 By focusing only on each home insurance provider's individual behaviour in the Relevant Period, BGL's approach ignores the fact that the CMA is required to assess the effects of the network of CTM's wide MFNs on competition by comparison with what is likely to have happened in the counterfactual (i.e. in the competitive situation that is likely to have prevailed in the absence of CTM's network of wide MFNs).¹¹⁵⁶ While the observable behaviour of individual insurers (and indeed PCWs) during the Relevant Period is clearly informative and relevant in assessing the effects of CTM's wide MFNs, and has been taken into account by the CMA¹¹⁵⁷, that behaviour only reflects the competitive dynamics that existed with CTM's network of wide MFNs in place.¹¹⁵⁸ It is therefore also necessary to consider the extent to which that behaviour and competition more generally would have been different in the absence of CTM's network of wide MFNs.
- 8.177 Accordingly, the CMA considers that it is relevant to take into account not only the behaviour of individual insurers (and indeed PCWs) in the Relevant Period, but also the way in which they are likely to have behaved in the competitive situation in the counterfactual. In particular, the fact that an individual provider may, for example, state that its own behaviour was unaffected by the wide MFN in its agreement does not of itself mean that its behaviour would have been the same if there had been both (i) no such clause in its agreement, and (ii) the entire network of CTM's wide MFNs had been absent.¹¹⁵⁹ Absent its own wide MFN, the provider would have had the ability to behave differently, and absent the entire network of CTM's wide MFNs it would have been under more competitive pressure, and thus had a greater incentive to do so. This is explained further in Section 9.
- 8.178 By contrast, BGL's approach assumes that the wide MFNs in CTM's agreements with providers falling within the categories set out at paragraph

¹¹⁵⁶ See Section 3.C above.

¹¹⁵⁷ For example, such observed behaviour includes the pricing strategies in the Relevant Period of the relevant providers as discussed in detail in Section 7.D. (including Annex L) and compliance by providers with CTM's wide MFNs in the Relevant Period, which is set out in detail above at section 8.B.II above. In Annex L, the CMA addresses BGL's specific representations on the evidence for each provider as to the extent to which CTM's wide MFNs had an impact on their behaviour in the Relevant Period. In summary, in many instances, the CMA does not agree with BGL's interpretation of the evidence on which it relies to support its view that the relevant provider's pricing strategies did not comply with, or that their behaviour was not altered by, CTM's wide MFN.

¹¹⁵⁸ And indeed for many years previously. As explained in Section 2.G.II, CTM had wide MFNs in place from 2008. It is also likely to reflect the fact that GoCompare only removed its wide MFNs in home insurance less than a year before the Relevant Period.

¹¹⁵⁹ For example, several providers stated in response to statutory information notices that they were unwilling to engage in promotional deals during the Relevant Period, but have since gone on to agree promotional deals since CTM stopped enforcing its wide MFNs. See Section 9.A.III.(b). and 9.C.II.

8.170 could not have affected competition between PCWs or competition between providers competing on PCWs. However, it cannot be assumed (as BGL implicitly seeks to do) that the competitive dynamics between PCWs and between providers competing on PCWs, or the behaviour of individual providers, would have been the same absent CTM's network wide MFNs. This ignores the dynamic nature of the competitive process. It also ignores, as explained above, the fact that the framework for assessing whether an agreement or network of agreements affects competition involves comparing the position with CTM's network of wide MFNs in place against the counterfactual. It is only by making this comparison that the CMA can assess whether competition between PCWs and between providers competing on PCWs would have been appreciably stronger if CTM had not had wide MFNs in any of its agreements with providers.

8.179 Consequently, the CMA has assessed the extent to which the behaviour of all the relevant providers (and indeed of the PCWs) is likely to have been different in the counterfactual, reflecting the change in competitive dynamics absent CTM's wide MFN.¹¹⁶⁰ For example, if absent CTM's network of wide MFNs there would have been greater competitive pressure on providers to differentiate prices across PCWs to reflect differences between PCWs in terms of performance and cost (e.g. commission fees), then providers would have needed to respond to that competitive pressure. Therefore, it cannot be assumed (as BGL's approach does) that the competitive situation in the counterfactual would have simply reflected the observed behaviour of the relevant providers in the Relevant Period.

8.180 For the reasons set out above, the CMA therefore considers that BGL's approach to '*effective*' coverage is wrong and is inconsistent with the position in established case law. However, for completeness and without prejudice to that position, the CMA addresses below BGL's specific representations regarding each of the four categories that BGL submitted¹¹⁶¹ should be excluded from the market coverage assessment.

¹¹⁶⁰ As set out in Section 9, the CMA has found that the competitive dynamics between PCWs and between providers competing on PCWs would have been different in the absence of CTM's network of wide MFNs. In particular, the CMA has found that CTM's network of wide MFNs reduced price competition between PCWs and between providers competing on PCWs.

¹¹⁶¹ See paragraph 8.170 above.

8.C.II.(b). The CMA's reasons for not excluding providers with wide MFNs from the calculation of market coverage

- 8.181 As set out in paragraph 8.170 above, BGL identified four categories of providers whose agreements BGL submitted should be excluded from the calculation of market coverage of CTM's network of wide MFNs.
- 8.182 BGL's first category of providers with wide MFNs it considered should be excluded from the coverage assessment are the 15 providers with wide MFNs from which the CMA did not request information. As explained in Section 8.B.II.(a)., to operate efficiently and effectively and avoid unnecessary burdens on businesses. the CMA prioritised its limited resources by focusing on obtaining information from 17 providers with wide MFNs. These 17 providers accounted for over 35% of sales made through PCWs and over 90% of sales made through PCWs by providers with wide MFNs in 2017.¹¹⁶² The remaining 15 providers with wide MFNs that the CMA did not contact to obtain information during the Investigation accounted for only around 5% of sales made through PCWs and none of them individually accounted for more than 2% of sales through PCWs in 2017.
- 8.183 The CMA does not consider that it is necessary to obtain information from every counterparty or examine how each individual agreement within a network of similar agreements operated in practice in order to assess whether the network as a whole had an appreciable effect on competition.¹¹⁶³ The CMA therefore considers that it has acted proportionately in obtaining a sufficient body of evidence to carry out an assessment of the effects of CTM's network of wide MFNs on competition, and it would be inconsistent with established case law to exclude from the CMA's market coverage assessment the 15 providers with wide MFNs from which it has not directly obtained information.¹¹⁶⁴ The written agreements provided by CTM for these 15 providers all contained CTM's standard wide MFN clause¹¹⁶⁵ and BGL has not submitted evidence to suggest that these

¹¹⁶² As described in Annex B, the CMA's evidence gathering in this Investigation sought to balance the need for the CMA to operate efficiently and effectively with avoiding unnecessary burdens on businesses (see Transparency and disclosure: Statement of the CMA's policy and approach, (CMA6, January 2014), paragraphs 2.6 and 4.2). The CMA prioritised its limited resources by focusing on obtaining information from a representative sample of 27 home insurance providers, 17 with wide MFNs and 10 with narrow MFNs in their agreements with CTM. These 27 insurers accounted for 80-90% of sales by volume made through PCWs in 2017.

¹¹⁶³ Indeed, the CMA notes in this context, that in some cases it would not be feasible to do so, for example where a network of agreements comprises several hundred or more similar agreements.

¹¹⁶⁴ Although the CMA did not directly obtain information from the 15 providers, information obtained by the CMA from BGL as well as from third parties included information relating to such providers. In particular, the CMA obtained from BGL information including documents relating to all its agreements with all providers on its panel and on its monitoring activity and enforcement actions against all providers with wide MFNs. The CMA also obtained details of all promotional deals entered with all providers on their panels from the Big Four PCWs during and after the Relevant Period, as well as relevant commission fee and sales data for all providers.

¹¹⁶⁵ See Section 4.B.

agreements did not operate in the same legal and economic context as the agreements with the providers contacted directly by the CMA.

8.184 The final three categories identified by BGL (the second, third and fourth categories set out at paragraph 8.170 above), comprise a further 15 providers that BGL submitted should be excluded from the calculation of market coverage. BGL's reasons for submitting that all three categories should be excluded are based on its view of the lack of impact that its wide MFNs had on the behaviour of these 15 providers in the Relevant Period.

8.185 BGL has submitted that:

- (a) five providers [HIP],¹¹⁶⁶ [HIP],¹¹⁶⁷ [HIP],¹¹⁶⁸ [HIP]¹¹⁶⁹ and [HIP]¹¹⁷⁰ denied being bound by CTM's wide MFN;
- (b) five providers disregarded CTM's wide MFN on the basis it was not a constraint on their preferred pricing strategy in the Relevant Period

¹¹⁶⁶ For the reasons set out in Section 4.B.I, the CMA does not consider that CTM's wide MFN with [HIP] was 'null and void'.

¹¹⁶⁷ [HIP] [X]. As set out in the footnote to Table 8.2, to simplify the calculation of the market coverage of CTM's network of wide MFNs, [HIP] is not included in the CMA's market coverage figures in 2016. For the reasons set out in section 4.B, the CMA does not consider that CTM's wide MFN with [HIP] was 'null and void'.

¹¹⁶⁸ For the reasons set out in Section 4.B.I, the CMA does not consider that CTM's wide MFN with [HIP] was 'null and void'.

¹¹⁶⁹ The CMA does not dispute that [HIP] told the CMA that internally it regarded its wide MFNs following the PMI Order 2015 as null and void (URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a)(ii)). However, for the reasons set out in section 4.B, the CMA does not consider that this renders CTM's wide MFN with [HIP] 'null and void' or that this meant that CTM's wide MFN had no impact on [HIP]'s pricing strategy in the Relevant Period. As set out in Annex L, [HIP] stated that its wide MFNs prevented it from successfully completing promotional deals although it did enter into two promotional deals in the Relevant Period. In addition, [HIP]'s pricing was consistently monitored and questioned by CTM and CTM enforced its wide MFN against [HIP] on both occasions it entered into promotional deals, as set out in Annex M. The CMA therefore disagrees with BGL that taking all the evidence together relating to [HIP]'s observable behaviour in the Relevant Period including the strong incentives on providers to comply with their contractual obligations and the actions that CTM took to enforce its wide MFNs that it can be inferred from this one statement, as BGL seeks to do, that CTM's wide MFN had no impact on [HIP]'s pricing behaviour in the Relevant Period, irrespective of its internal view on the legality or otherwise of CTM's wide MFN following the PMI Order 2015.

¹¹⁷⁰ The CMA does not dispute that internally [HIP] considered that its wide MFN clause no longer applied in home insurance following the PMI Order 2015. For the reasons set out in Section 4.B, the CMA however does not consider that this renders CTM's wide MFN with [HIP] 'null and void'. Moreover, as described in Annex M, [HIP] also confirmed that it was under 'intense challenge from CTM' over its pricing throughout the Relevant Period and that in July 2017 it was told by CTM that CTM regarded it as in breach of its wide MFN. In response to such questioning, [HIP] repeatedly sought to assure CTM that the price differences identified by CTM were technical (and therefore implicitly not in breach of its wide MFN obligations) and it also sought legal advice to clarify the legality of CTM's wide MFN. It was not until the CMA launched the Investigation, that [HIP] informed CTM that it regarded CTM's wide MFN as unenforceable. The CMA therefore disagrees with BGL that taking all the evidence together relating to [HIP]'s observable behaviour in the Relevant Period including the strong incentives on providers to comply with their contractual obligations and the actions that CTM took to enforce its wide MFNs that it can be inferred from this one statement, as BGL seeks to do, that CTM's wide MFN had no impact on [HIP]'s pricing behaviour, irrespective of its internal view on the legality or otherwise of CTM's wide MFN following the PMI Order 2015.

([HIP], [HIP],¹¹⁷¹ [HIP],¹¹⁷² [HIP] and [HIP])¹¹⁷³ and one provider ([HIP]) did not take CTM's wide MFN into account until [REDACTED]¹¹⁷⁴; and

- (c) four providers ([HIP], [HIP], [HIP],¹¹⁷⁵ and [HIP]) should also be excluded from the market coverage assessment on the basis that the evidence on their pricing strategy after CTM notified providers it was no longer enforcing its wide MFNs suggests they were not constrained by CTM's wide MFNs in the Relevant Period.¹¹⁷⁶

8.186 BGL also argued that in respect of the two remaining providers, [HIP] and [HIP], the evidence was '*wholly equivocal and inconclusive*' as to whether these providers should be regarded as '*covered*' by CTM's wide MFN.¹¹⁷⁷

8.187 As set out above in Section 8.B.II, the CMA has found that there was widespread compliance by providers with CTM's wide MFNs, contrary to BGL's submissions.¹¹⁷⁸ Providers had strong incentives to comply with their contractual obligations under their wide MFNs. The CMA has also found that in terms of sales through PCWs in the Relevant Period, most providers adopted pricing strategies that were consistent with their obligations under CTM's wide MFNs.¹¹⁷⁹

8.188 In addition, as set out in Sections 8.B.II. and 8.B.III. above, as well as in Annex L, the CMA disagrees with BGL's interpretation of the evidence on the observable impact that CTM's wide MFNs had in the Relevant Period on the

¹¹⁷¹ [HIP] like [HIP] was also excluded by the CMA to simplify its calculation of market coverage in 2016 and [REDACTED] (see the footnote to Table 8.2).

¹¹⁷² See section 8.B.II above. For the reasons set out section 8.B.II, the CMA disagrees that [HIP] was not constrained by its wide MFN or that it '*disregarded*' its wide MFN obligations.

¹¹⁷³ The CMA refers to Annex L for the CMA's assessment of whether, as asserted by BGL, these insurers '*disregarded*' CTM's wide MFNs. In respect of [HIP], [HIP] and [HIP], the CMA does not consider that, because an insurer had a policy of pricing uniformly across PCWs in the Relevant Period and did not pursue promotional deals, and therefore that CTM's wide MFN was not a constraint on their preferred pricing policy that it can be inferred that such insurers '*disregarded*' CTM's wide MFN. The relevant insurer's pricing strategy was consistent with their obligations under CTM's wide MFNs and as described in Section 8.B.II above, if it had not been consistent, CTM would have taken enforcement action to secure compliance.

¹¹⁷⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 330; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.13. See further paragraph 8.188 below on [HIP]'s pricing strategy and the enforcement action taking by CTM against [HIP].

¹¹⁷⁵ Both [HIP] and [HIP] were enforced against by CTM (see Annex M).

¹¹⁷⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 330; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 4.13.

¹¹⁷⁷ BGL's response to LoF and DPS, dated 14 February 2020, paragraph 330.

¹¹⁷⁸ In particular, as regards the category of five providers that BGL considers should be excluded from market coverage on the basis that they '*disregarded*' CTM's wide MFNs, BGL relies heavily on Oxera's Coverage and Compliance Analysis (see Annex N) to support its contention that the relevant providers did not comply with its wide MFN. URN 8484.3, Third Oxera Report dated 22 February 2020, paragraph 5B.2. The CMA's assessment of this analysis is at Annex N. For the reasons set out in Annex N, without supporting evidence, Oxera's analysis is not sufficiently robust to draw conclusions on the level of compliance generally or by individual providers in the Relevant Period. In any event, Oxera's Coverage and Compliance analysis, contrary to BGL's representations, in fact shows widespread compliance by the relevant providers with CTM's wide MFNs. Annex L addresses in more detail BGL's representations on the pricing strategies of each of these five providers.

¹¹⁷⁹ See Section 8.B.II.(a) above.

pricing strategies of several of the providers that BGL seeks to exclude from the calculation of coverage. For example:

- (a) CTM's wide MFN directly affected [HIP]'s pricing strategy. This observable impact included [HIP] rejecting several promotional deals because of CTM's wide MFN.¹¹⁸⁰
- (b) [HIP]'s compliance with its wide MFN obligations was consistently monitored during the Relevant Period, with CTM contacting [HIP] and sending it Customer Intelligence data on several occasions to ensure [HIP] priced within CTM's compliance tolerance thresholds. CTM escalated its enforcement action in [X] when CTM identified that [HIP] had entered into a promotional deal with [X]. As a result, [HIP] adjusted its prices to comply with CTM's wide MFN.¹¹⁸¹ In addition, [HIP] sought, when price testing on rival PCWs, to ensure that such price testing was within CTM's compliance tolerance thresholds.¹¹⁸²
- (c) BGL excludes from its calculation of market coverage providers against which CTM escalated its enforcement action to ensure compliance with its wide MFN.¹¹⁸³
- (d) Contrary to BGL's submissions, the evidence relating to [HIP] and [HIP] is not '*wholly equivocal and inconclusive*'. Both [HIP] and [HIP] factored into their pricing strategies CTM's wide MFN and refused to enter into promotional deals with CTM's rivals because of CTM's wide MFNs.¹¹⁸⁴ Moreover, like [HIP], CTM escalated its enforcement action against [HIP] when it entered into a promotional deal with [X], requiring [HIP] to self-fund three price discounts in compensation for being in breach of its wide MFN obligations.¹¹⁸⁵

8.189 Accordingly, BGL's approach excludes almost all providers from the assessment of its network of wide MFNs and the calculation of market coverage, by excluding the sales of 15 providers even where such providers (a) had a pricing strategy that was consistent with CTM's wide MFN¹¹⁸⁶, (b) adjusted their pricing following monitoring or escalated enforcement action

¹¹⁸⁰ See Section 8.B.II.(b). above.

¹¹⁸¹ See Section 8.B.III.(b).(v) above and Annex M.

¹¹⁸² See Annex L.

¹¹⁸³ [HIP], [HIP], [HIP] and [HIP]. See Section 8.B.III.(b). above and Annex M.

¹¹⁸⁴ See Section 8.B.II.(b). above.

¹¹⁸⁵ See Section 8.B.III.(b).(i) above and Annex M.

¹¹⁸⁶ For example, [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP].

by CTM to comply with CTM's wide MFNs¹¹⁸⁷, or (c) did not enter promotional deals because of CTM's wide MFN.¹¹⁸⁸

8.190 Further, BGL's criteria for excluding the 15 providers (and further its submission that the evidence for including [HIP] and [HIP] is '*wholly equivocal and inconclusive*') from the assessment of coverage are based on its ex-post interpretation of evidence obtained by the CMA¹¹⁸⁹ during the Investigation about the pricing strategies and behaviour of the relevant providers in the Relevant Period and after. They are not excluded on the basis of objective criteria based on significant distinctions between the substantive terms of CTM's wide MFNs.¹¹⁹⁰

8.191 It follows that BGL's approach would mean that a party to an agreement within a network of similar agreements that complied with its own agreement would be unable to self-assess effectively the likely compatibility of the agreement with competition law. In order to assess whether the network of similar agreements restricted competition, and therefore whether its own agreement was unlawful, the party would need to obtain and interpret evidence as to the individual behaviour of all other parties to similar agreements within the network. Only by doing that could it assess whether those other agreements should be included within the network for the purposes of market coverage and whether the network as a whole had an appreciable effect on competition.¹¹⁹¹ Taking such an approach would be contrary to legal certainty because it would mean that the assessment of the likely anti-competitive effects of an agreement that forms part of a network of similar agreements could only be determined retrospectively, based on the assessment of factors that are unforeseeable, and indeed at least partly unobservable, to each party.¹¹⁹²

¹¹⁸⁷ For example, [HIP] and [HIP], (see Sections 8.B.III.(v) and 8.B.III.(iii) respectively and Annex M).

¹¹⁸⁸ For example, [HIP] did not enter promotional deals because of CTM's wide MFN (see Section 8.B.II.(b). above and Annex L).

¹¹⁸⁹ Including Oxera's Coverage and Compliance Analysis which the CMA does not consider to be sufficiently robust as explained in Annex N to be relied upon for the purposes sought by BGL.

¹¹⁹⁰ See *Neste*, cited in the footnote to paragraph 8.173 above.

¹¹⁹¹ Including making any assessment of the applicability of the De Minimis Notice and the VABER thresholds uncertain, undermining their very purpose.

¹¹⁹² As set out in Section 3.B., the Chapter I prohibition and Article 101 TFEU apply both to actual and potential anti-competitive effects. In establishing whether CTM's network of wide MFNs is likely to have harmed competition it is necessary to take into account, as a relevant consideration, evidence as to what the actual effect of CTM's network of wide MFNs has been. However, if 'similar' agreements forming a network (ie agreements that cannot be distinguished on an objective basis, based on their substantive terms, as having clearly different economic effects) are treated differently under competition law then it would give rise to significant legal uncertainty because, despite imposing the same restriction, some agreements within the network would be prohibited and others would not. As recognised by Advocate-General Fennelly in *Neste* '*a persuasive and cogent argument based on legal certainty can be made in favour of requiring a global analysis for the purpose of determining whether a supplier's network of agreements is caught by Article [101](1) [TFEU]*' and '*[f]or a distinction to be relevant, it must be significant and based on the substantive terms of the agreements at issue and their materially different economic effects*' (see *Neste*, Opinion of Advocate General Fennelly, 6 July 2000, paragraphs 26 and 29).

- 8.192 Finally, the CMA considers that BGL's approach, in addition to being wrong, would undermine the purpose and effective enforcement of the Chapter I prohibition and Article 101 TFEU. This is because BGL's approach assumes that where the parties to a vertical agreement containing a restriction, such as a wide MFN clause, are content to behave in accordance with the terms of that restriction (for example because it aligns with their commercial objectives i.e. the obligations under the agreement are not in conflict with the party's preferred strategy) then that agreement would be deemed to not restrict competition. Such an approach, in particular, ignores the fact that a vertical agreement is often part of a network of similar agreements, and that it is the effect of the network on competition that must be assessed, not the effect of each individual agreement separately on behaviour.
- 8.193 For example, in the context of resale price maintenance (RPM), an established 'by object' infringement, suppliers often impose a policy of RPM across their distribution network to avoid price-cutting by resellers. Absent the characterisation of RPM as a 'by object' infringement, BGL's approach would effectively mean that the price restriction in the agreements between a supplier and any resellers that are content to price in line with the RPM policy¹¹⁹³ would not restrict competition because those resellers would not have discounted anyway (for example from the recommended resale price). BGL's approach misses the point that, in this example, absent the resale price restriction, at least some resellers could discount, which in turn would increase the competitive pressure on other resellers, forcing them to respond. With an RPM policy in place resellers are shielded from the rigours of price competition by the network of RPM agreements, enabling them to adopt their preferred pricing strategy.
- 8.194 Similarly, in the context of a network of wide MFNs, some providers may be content to price uniformly across PCWs and to be shielded from the rigours of price competition by the presence of wide MFNs that prevent other providers from differentiating prices across PCWs. In the absence of the network of wide MFNs there would be greater pressure on them to respond to price competition. This is explained further in Section 9.

8.D. Conclusions on CTM's use of wide MFNs

8.195 In conclusion, for the reasons set out above, the CMA finds that:

- (a) CTM's wide MFNs prevented the relevant providers from quoting lower prices on CTM's rival PCWs and CTM was therefore protected, as a

¹¹⁹³ And indeed, as is often the case, may have pressured the supplier to impose RPM on its retailers.

matter of contract, from being undercut by the prices they offered on other PCWs.

- (b) CTM's wide MFNs were integral to CTM's competitive strategy in home insurance and effective in achieving its objectives, and CTM behaved accordingly. CTM believed that in the absence of its network of wide MFNs it would be subject to greater price competition, increasing pressure on commission fees and reducing its profits.
- (c) Providers had strong incentives to comply with CTM's wide MFNs. In addition to providers' taking their contractual obligations seriously, CTM was an important source of new business and it communicated to providers the importance it placed on compliance, including by monitoring and enforcing its wide MFNs.
- (d) There was widespread compliance by home insurance providers with CTM's wide MFNs during the Relevant Period. Most home insurance providers adopted pricing strategies that were consistent with CTM's wide MFNs and, in particular, providers accounting for a significant proportion of sales through PCWs specifically took CTM's wide MFN into account in determining their pricing strategies.
- (e) CTM systematically monitored providers' pricing on other PCWs and escalated its enforcement process to resolve non-compliance with its wide MFNs, including against both large providers and small providers.
- (f) CTM's network of wide MFNs covered home insurance providers accounting for over 40% of home insurance policies sold through CTM and approximately 40% of home insurance policies sold through PCWs in 2016 and 2017.

8.196 The CMA draws on these findings in its assessment of the appreciable effects of CTM's wide MFNs on (i) competition between PCWs and (ii) competition between home insurance providers competing on PCWs, which is set out in Section 9.

9. THE APPRECIABLE EFFECTS OF CTM'S WIDE MFNS

- 9.1 The CMA finds that, during the Relevant Period, CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting:
- (a) competition between PCWs, by reducing price competition and restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power; and
 - (b) competition between providers competing on PCWs, by reducing price competition.
- 9.2 As set out in Section 3, the assessment of whether an agreement has the appreciable effect of restricting competition under the Chapter I prohibition or Article 101(1) must be made within the actual legal and economic context in which competition would occur in the absence of the agreement. In applying the legal framework, the CMA has therefore assessed whether the network of CTM's wide MFNs had the appreciable effect of restricting competition by comparing the competitive situation in the Relevant Period with what is likely to have happened in the absence of the network of CTM's wide MFNs (i.e. in the counterfactual in which CTM only had narrow MFNs).¹¹⁹⁴
- 9.3 During the Relevant Period, the home insurance providers subject to CTM's wide MFNs were prevented from offering lower prices on rival PCWs than on CTM, in circumstances where price was an important dimension of competition, both between PCWs and between providers competing on PCWs.
- 9.4 The CMA finds that CTM's network of wide MFNs had the following effects:
- (a) The 32 insurers were unable to quote lower prices on rival PCWs. If the relevant insurers reduced their prices on a rival PCW below the prices offered on CTM, they had to fund an equivalent price reduction on CTM. This reduced the insurers' incentives to lower their prices. Accordingly, several insurers refused to enter into promotional deals with CTM's rivals or adjusted their prices following enforcement action by CTM. By contrast, absent CTM's network of wide MFNs, the 32 insurers would have had a greater ability and increased incentives to compete on price by quoting different prices across PCWs. For example, they would have been able to reflect another PCW's lower

¹¹⁹⁴ As set out in Section 6, in the counterfactual it is likely that CTM would only have had narrow MFNs, as the other Big Four PCWs did (instead of its network of wide MFNs).

commission fees in their prices on that PCW and to freely target price reductions on CTM's rival PCWs.

- (b) CTM's rival PCWs were prevented from gaining a competitive price advantage over CTM for quotes from the 32 insurers (unless an insurer was willing to take the risk of breaching its wide MFN). CTM's rivals therefore had reduced incentives to lower their commission fees or otherwise seek to incentivise the 32 insurers to offer them lower prices.
- (c) CTM relied primarily on its network of wide MFNs to ensure it had the lowest prices from the 32 insurers, rather than competing on the merits with other PCWs for such prices. CTM typically benefitted from any reduction in retail prices achieved by its rivals, without the need to lower its own commission fees or provide some other benefit to the insurers. In addition, CTM was able to increase its commission fees without the insurers covered by its wide MFNs being able to fully reflect that increase in the prices they quoted on CTM compared to the prices quoted on other PCWs. By contrast, absent CTM's network of wide MFNs, CTM would have had increased incentives to compete more strongly against rival PCWs to secure lower quotes from the 32 insurers, including by lowering its commission fees.
- (d) CTM's rival PCWs were restricted in their ability to expand because they were unable to secure a price advantage over CTM from the 32 insurers. CTM was therefore able to use its network of wide MFNs to maintain or strengthen its market power.
- (e) Because the 32 insurers competed less strongly on price, other providers were subject to less competitive pressure and therefore competition on retail prices between all insurers competing on PCWs was reduced.

9.5 Because price was an important parameter of competition between PCWs and between providers competing on PCWs, the reduction of price competition resulting from the presence of CTM's network of wide MFNs was such that negative effects on the level of PCWs' commission fees and the retail prices offered by providers on PCWs in the Relevant Period can be expected with a reasonable degree of probability.

9.6 The effects of CTM's network of wide MFNs in restricting competition during the Relevant Period were appreciable as they clearly did not have only an insignificant effect on the market, taking into account among other things CTM's strong market position, the coverage of CTM's network of wide

MFNs, the fact CTM's wide MFNs constrained pricing behaviour (an important parameter of competition), and that the effects on competition were market wide.

9.7 This Section is structured as follows:

- (a) Section 9.A. sets out the CMA's assessment of the constraint on providers subject to CTM's wide MFNs, which is relevant to the assessment of effects of CTM's network of wide MFNs on both competition between PCWs and competition between providers competing on PCWs.
- (b) Section 9.B. sets out the CMA's assessment of the effect of CTM's network of wide MFNs on competition between PCWs.
- (c) Section 9.C. sets out the CMA's assessment of the effect of CTM's network of wide MFNs on competition between providers competing on PCWs.
- (d) Section 9.D. summarises why the effects of CTM's network of wide MFNs on competition were appreciable.

9.A. The constraint on providers subject to CTM's wide MFNs

9.8 The CMA finds that during the Relevant Period, by preventing the relevant providers from offering lower prices on CTM's rival PCWs, CTM's network of wide MFNs restricted the ability of and reduced the incentives on providers subject to CTM's wide MFNs to compete on price by differentiating their prices across PCWs. The CMA also finds that those providers engaged less in differential pricing across PCWs (including promotional deals with CTM's rival PCWs), compared to the counterfactual of no contractual restrictions on pricing on PCWs.¹¹⁹⁵

9.9 During the Relevant Period, CTM's wide MFNs directly and explicitly constrained each relevant provider's ability to engage freely in pricing strategies that were important to the competitive process between the providers competing on PCWs and between PCWs. For example, the relevant providers could not reflect lower commission fees, higher conversion rates or better performance on another PCW by quoting lower retail prices on that PCW compared to CTM. Nor could they conclude a

¹¹⁹⁵ As explained in Section 6, in the counterfactual there would only have been narrow MFNs in providers' contracts with CTM, which affect the prices home insurance providers can quote on their direct channels.

promotional deal with another PCW without also reducing the retail price on CTM to match the retail price on the rival PCW.

- 9.10 This meant that the cost of engaging in differential pricing was higher than it would have been in the absence of CTM's wide MFNs because providers had to self-fund the lower prices on CTM, and as such CTM's wide MFNs reduced providers' incentives to engage in differential pricing. For example, a provider with a wide MFN in its contract is less likely to decide to lower its price on a rival PCW to reflect a reduction in that PCW's commission fee because it would have to absorb the full cost of also reducing its price on CTM.
- 9.11 The impact of CTM's network of wide MFNs on providers' ability and incentives to price differentiate means that providers are likely to have engaged less in differential pricing across PCWs during the Relevant Period (compared to the counterfactual in which there were no contractual restrictions on pricing on PCWs), in circumstances where price was an important parameter of competition. This is confirmed by the evidence set out below on the effect of CTM's wide MFNs on the relevant providers' pricing behaviour and their use of promotional deals.
- 9.12 In the following sub-sections, the CMA sets out its assessment of how CTM's network of wide MFNs constrained providers' pricing on the basis of the evidence on:
- (a) the contractual restraint imposed by CTM's wide MFNs;
 - (b) the operation of CTM's network of wide MFNs in practice; and
 - (c) the use of promotional deals by providers subject to wide MFNs.

9.A.I. *The contractual restraint imposed by CTM's wide MFNs*

- 9.13 As set out in Section 8.A.I, CTM's network of wide MFNs imposed a contractual restriction on the relevant home insurance providers, preventing them from quoting lower prices on rival PCWs than on CTM.
- 9.14 As a result, those providers subject to CTM's wide MFNs were, under their contract with CTM, unable to engage in differential pricing strategies that involved quoting a price on a rival PCW which was lower than the price quoted on CTM. This meant that CTM was protected, as a matter of contract, from being undercut by the prices offered by relevant providers on another PCW.

- 9.15 Furthermore, by preventing the relevant providers from offering lower prices on CTM's rival PCWs, CTM's wide MFN clauses restricted not only the freedom of the relevant providers to price differentiate across PCWs but also the ability of its rival PCWs to reach agreements with the relevant providers to obtain lower prices than, and thus undercut, those being quoted on CTM. The CMA addresses in Section 9.B.I the effect of CTM's network of wide MFNs on rival PCWs' ability and incentives to compete on price.

9.A.II. *The operation of CTM's network of wide MFNs in practice*

- 9.16 The evidence on how CTM's network of wide MFNs operated in practice set out in Section 8 demonstrates that CTM's network of wide MFNs restricted the ability of and reduced the incentives on providers subject to CTM's wide MFNs to compete on price by differentiating their prices across PCWs.
- 9.17 As set out in Section 8.B, the CMA has found that there was widespread compliance with CTM's wide MFNs during the Relevant Period:
- (a) As set out in Section 8.B.I, the relevant home insurance providers had strong incentives to comply with their contractual obligations because failure to do so was a breach of contract, CTM was an important source of business and providers were aware of the importance CTM placed on compliance.
 - (b) As set out in Section 8.B.II, most providers adopted pricing strategies that were consistent with CTM's wide MFNs and, in particular, providers accounting for a significant proportion of sales on PCWs specifically took into account CTM's wide MFN in determining their pricing strategies.
 - (c) As set out in Section 8.B.III, CTM systematically monitored providers' pricing on rival PCWs and escalated its enforcement process against providers when it identified they were offering lower prices on other PCWs in breach of CTM's wide MFN.
- 9.18 Complying with CTM's wide MFNs restricted the ability of and reduced the incentives on providers to compete on price by differentiating their prices across PCWs, and resulted in providers engaging in less differential pricing than they would have absent CTM's wide MFNs. As a result of CTM's wide MFNs, providers rejected promotional deals offered by CTM's rival PCWs and were deterred from using other forms of differential pricing.¹¹⁹⁶ Several providers sought to have the wide MFNs removed from their contracts with

¹¹⁹⁶ See Section 8.B.II., paragraphs 8.83 to 8.109.

CTM, indicating that they viewed these clauses as constraining their pricing, but were refused in each case.¹¹⁹⁷

- 9.19 CTM's systematic monitoring and enforcement of its wide MFNs reinforced the restrictive effect on providers' ability and incentives to engage in differential pricing. As set out in Section 8.B.III, while there was widespread compliance and pricing discrepancies were very often resolved by informal contact, CTM escalated its enforcement action where it identified that home insurance providers were not complying with its wide MFNs and the matter was not resolved. On the occasions when CTM took action to enforce its wide MFNs, this led to the relevant home insurance providers changing or offering to change their pricing behaviour.¹¹⁹⁸
- 9.20 As set out in Section 8.A.II, the CMA has also found that CTM's wide MFNs were integral to CTM's competitive strategy in home insurance and effective in achieving its objectives, and CTM behaved accordingly. The evidence detailed in that Section, on CTM's views on the impact of its wide MFNs and its actions in retaining and enforcing them, clearly shows the importance CTM placed on its wide MFNs. The CMA infers from this that CTM considered that its wide MFNs were effective at constraining the pricing behaviour of the relevant home insurance providers, protecting CTM from being undercut by the prices offered by these providers on other PCWs, and enabling it to maintain growth in commission fees.

9.A.III. The use of promotional deals by providers subject to CTM's wide MFNs

- 9.21 The use of promotional deals by providers subject to CTM's wide MFNs during and after the Relevant Period further supports the CMA's finding that CTM's network of wide MFNs restricted the ability of and reduced the incentives on relevant providers to compete on price by differentiating their prices across PCWs.¹¹⁹⁹ In particular:
- (a) During the Relevant Period, providers that had a wide MFN agreed substantially fewer promotional deals than those that did not.
 - (b) Since CTM stopped enforcing its wide MFNs:

¹¹⁹⁷ See Section 8.A.II.(c).

¹¹⁹⁸ See Section 8.B.III.(b).

¹¹⁹⁹ The CMA has focused on promotional deals rather than other forms of differential pricing such as differential pricing on base retail prices in its analysis. This is because, as set out in Sections 7.C and 7.D, promotional deals were used extensively by PCWs and providers during and since the Relevant Period. In addition, the available data on pricing is inappropriate for robustly analysing any change in the level of differential base retail pricing by home insurance providers, for the reasons set out in Annex O. In particular, observed pricing differences by providers between PCWs can be affected by factors such as variations in question sets across the Big Four PCWs, data mapping issues or other factors that are not controlled by the provider.

- (i) more promotional deals have been agreed by providers previously subject to CTM's wide MFNs when compared to the Relevant Period; and
- (ii) more providers previously subject to CTM's wide MFNs have agreed promotional deals when compared to the Relevant Period.

9.22 As set out in Section 7.E, the CMA has found that promotional deals were an important and effective way for PCWs to compete on the prices quoted on their platforms during and after the Relevant Period, and that the use of promotional deals by one or a group of providers increases the competitive pressure on all providers and thus increases competition between providers on price. The CMA has therefore considered throughout its analysis of the appreciable effects of CTM's wide MFNs whether evidence on the impact of CTM's wide MFNs on the use of promotional deals by PCWs and providers is supportive of its findings.¹²⁰⁰ In this sub-section, 9.A.III, the CMA has considered (i) the number of promotional deals agreed by providers with and without wide MFNs during the Relevant Period and (ii) the number of promotional deals agreed by providers with wide MFNs before and after CTM stopped enforcing its wide MFNs.¹²⁰¹

9.A.III.(a). *Promotional deals during the Relevant Period*

9.23 Table 9.1 shows the number of promotional deals that were agreed during the Relevant Period by providers subject to wide MFNs and providers without wide MFNs.¹²⁰²

¹²⁰⁰ BGL has made a number of representations in response to the CMA's analysis of promotional deals before and after CTM stopped enforcing its wide MFNs. These are considered where relevant in this Section and in detail in Annex Q.

¹²⁰¹ In later sub-sections, the CMA has also considered the number of promotional deals agreed by PCWs before and after CTM stopped enforcing its wide MFNs (in Section 9.B.I.(b)), CTM's changed approach to promotional deals after it stopped enforcing its wide MFNs (in Section 9.B.II.(c)), and the number of promotional deals agreed by providers without wide MFNs before and after CTM stopped enforcing its wide MFNs (in Section 9.C.II).

¹²⁰² The identity of the providers agreeing deals during the Relevant Period reflects the focus of PCWs on agreeing promotional deals with the largest providers, as discussed in Sections 7.C.II and 7.D.II.(b).(i). Of the 24 deals agreed by providers without wide MFNs, 22 were with providers in the top 10 (by 2017 sales made through PCWs). Only three of the providers in the top 10 did not agree promotional deals in the Relevant Period, of which two were subject to CTM's wide MFNs.

Table 9.1: The number of promotional deals agreed by providers subject to wide MFNs and providers without wide MFNs

	<i>Relevant Period Jan 16 to Nov 17</i>
Providers subject to wide MFNs	5
Providers without wide MFNs	24

Source: CMA analysis of the Promotional Deals Dataset (see Annex J), [REDACTED]. (see Annex D)

- 9.24 Table 9.1 shows that, during the Relevant Period, far fewer (roughly a fifth as many) promotional deals were agreed by providers subject to CTM's wide MFNs, which accounted for over 40% [REDACTED] of sales through PCWs in 2017, than by providers not subject to CTM's wide MFNs, which accounted for over 45% [REDACTED].^{1203, 1204}
- 9.25 The CMA has also considered the extent to which CTM's wide MFNs or other factors (such as differences in their underlying willingness to agree deals) contributed to fewer promotional deals being agreed by providers subject to CTM's wide MFNs during the Relevant Period than by providers not subject to wide MFNs.
- 9.26 The CMA considered whether there was any significant difference between (i) the number of providers subject to CTM's wide MFNs and (ii) the number of providers without wide MFNs that were willing in principle to discuss

¹²⁰³ The remaining 5-10% [REDACTED] of sales through PCWs in 2017 were accounted for by BGL's own brands, which are not included in the comparison. This is because as noted in Section 2 (see footnote 18), the CMA has not included in its assessment agreements between BISL and those home insurance providers owned or operated by the BGL Group containing a wide MFN, on the basis that BGL and those home insurance providers constitute a single economic unit and therefore such agreements are not agreements between undertakings.

¹²⁰⁴ BGL submitted that the difference in the prevalence between the two groups of providers identified by the CMA could be driven by a range of factors not related to CTM's wide MFNs. In particular, BGL stated that *'the CMA includes more [home insurance providers] in the group of [providers] without wide MFNs, than in the group with, thus it is only natural that there would be more promotional deals by this group'* and *'the CMA's conclusion [...] is sensitive to the exclusion of [1-2] [providers] from the analysis'*. Generally the CMA has considered the extent to which the difference in the use of promotional deals may be due to the wide MFN or other factors (see paragraphs 1.9.25 to 1.9.281.9.28). In relation to the size of the two groups, even if the number of providers in each group is considered the comparison by the CMA holds. When considering just providers that agreed promotional deals during the Relevant Period, the average number of deals agreed by providers without wide MFNs was roughly two fifths of the number agreed by providers subject to wide MFNs (4 compared to 1.67). In relation to the sensitivity of the CMA's comparison to the removal of providers, the CMA disagrees with the analysis produced by Oxera for two reasons. First, it includes BGL's own brand and as outlined at footnote 1203 the CMA does not consider this is appropriate. Second, Oxera's analysis biases the comparison by selectively picking the providers it excludes. In particular, when excluding providers without wide MFNs, Oxera excludes those with the highest number of deals, whereas for providers subject to wide MFNs, Oxera excludes providers with the lowest number of deals. When providers are excluded on a consistent basis (i.e. both when those agreeing the most deals are excluded from both groups and when those agreeing the lowest number of deals are excluded from both groups) the CMA's comparison holds with providers subject to CTM's wide MFNs agreeing roughly a fifth to a sixth of the number of deals when one provider is removed from each group and a tenth to an eleventh when two providers are removed. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.53 and Table 8.8.

promotional deals with PCWs and consider them on a case by case basis during the Relevant Period. This comprised:¹²⁰⁵

- (a) Six providers without wide MFNs accounting for over 30% of sales made through PCWs in 2017;¹²⁰⁶ and
- (b) Four providers subject to wide MFNs¹²⁰⁷ accounting for approximately 20% of sales made through PCWs in 2017,

that were willing to discuss promotional deals with PCWs and consider them on a case by case basis during the Relevant Period.

9.27 This does not indicate that there was any significant variation in the willingness of these two groups to agree deals with PCWs. This supports the proposition that the significant difference in the number of promotional deals that were actually entered into (see Table 9.1 above) was attributable to CTM's wide MFNs rather than some underlying difference in the willingness of the two groups to enter into such deals. This is further supported by, the following evidence (as set out in more detail in Sections 8.B.II and 8.B.III):

- (a) Large providers ([HIP], [HIP] and [HIP]) rejected several offers of promotional deals from CTM's rival PCWs, MoneySuperMarket and Confused,¹²⁰⁸ during the Relevant Period because of the presence of the wide MFN in their agreements with CTM.
- (b) In four of the five instances in which promotional deals were agreed by providers with a wide MFN during the Relevant Period (i.e. [HIP], two deals agreed by [HIP] and one of the deals agreed by [HIP]),¹²⁰⁹ CTM took steps to enforce its wide MFN to seek to prevent the provider conferring a price advantage on a rival PCW.¹²¹⁰ Indeed, one of the providers ([HIP]) rejected any further deals in 2017 with two of CTM's

¹²⁰⁵ This comparison excludes brands owned and operated by BGL. Evidence on providers' approach to promotional deals is set out in section 7.D.II.(b).(ii).

¹²⁰⁶ The six providers were ([HIP], [HIP], [HIP], [HIP], [HIP] and [HIP]).

¹²⁰⁷ The four providers were ([HIP], [HIP], [HIP] and [HIP]) – see Annex L, which sets out the evidence on the approach to promotional deals of providers with wide MFNs. One additional provider with a wide MFN, [HIP], despite not being supportive of promotional deals, did assess proposals of deals on their merits and trialed two promotional deals during the Relevant Period.

¹²⁰⁸ As explained in Section 7.C.II, promotional deals were a core part of the commercial strategies of MoneySuperMarket and Confused, but not GoCompare.

¹²⁰⁹ In addition, [HIP] agreed a promotional deal with [X] which continued into the Relevant Period. As set out in paragraph P.35 of Annex P, this deal was structured to take advantage of question set differences between CTM and Confused so as not to technically breach the wide MFN and was the only deal of this nature. In particular, when [HIP] proposed such a deal to [X] told [HIP] it was not interested in deals structured in such a way.

¹²¹⁰ See Section 8.B.III.(b).

rivals because of the wide MFN in its contract with CTM and the fact that CTM had previously enforced the wide MFN against it in [X].

- 9.28 Accordingly, the difference in the number of promotional deals agreed during the Relevant Period by providers subject to wide MFNs and providers without wide MFNs supports the CMA's finding that CTM's network of wide MFNs restricted the ability of and reduced the incentives on the relevant providers to compete on price using differential pricing.¹²¹¹

9.A.III.(b). Promotional deals since CTM stopped enforcing its wide MFNs

- 9.29 Table 9.2 shows (i) the number of promotional deals that were agreed by providers subject to wide MFNs during and after the Relevant Period and (ii) the number of providers subject to wide MFNs that agreed promotional deals during and after the Relevant Period. This is shown for periods of the same length to ensure comparability, comparing 19 months of the Relevant Period (January 2016 to July 2017) with the 19 months after CTM stopped enforcing its wide MFNs (December 2017 to June 2019).¹²¹² In doing this the CMA has taken a conservative approach by using the 19 months of the Relevant Period during which the highest number of deals were agreed.¹²¹³

Table 9.2: The number of promotional deals agreed by providers subject to wide MFNs and the number of providers subject to wide MFNs agreeing promotional deals during and after the Relevant Period for comparable periods

	Relevant Period Jan 16 to Jul 17 (19 months)	After the Relevant Period Dec 17 to Jun 19 (19 months)
Number of promotional deals agreed	5	9
Number of providers	3 (over 10% of sales made through PCWs in 2017)	7 (over 20% of sales made through PCWs in 2017)

Source: CMA analysis of the Promotional Deals Dataset (see Annex J), [X] (see Annex D).

¹²¹¹ In the 19 months after CTM stopped enforcing its wide MFNs (ie December 2017 to June 2019) there was an increase in the number of promotional deals agreed both by providers previously subject to wide MFNs and those without wide MFNs, as set out in Table 9.2 and Table 9.4. While this meant that providers previously subject to wide MFNs agreed about a fifth of the number of promotional deals agreed by providers without wide MFNs during the Relevant Period and still only about a quarter in the 19 months after CTM stopped enforcing its wide MFNs, this is not inconsistent with the CMA's theory of harm. In particular, as set out in Section 9.C, the CMA has found that CTM's wide MFNs reduced competition between all providers competing on PCWs such that one would expect the use of promotional deals by both groups of providers would increase after CTM stopped enforcing its wide MFNs.

¹²¹² BGL submitted that the promotional deals data used by the CMA in its analysis was not correct. The CMA disagrees with this for the reasons set out in Annex Q.

¹²¹³ By contrast, if the last 19 months of the Relevant Period is considered, only three deals were agreed between April 2016 to November 2017 compared to eight deals agreed from December 2017 to June 2019.

- 9.30 In relation to the number of promotional deals, Table 9.2 shows that, since CTM stopped enforcing its wide MFNs, providers previously subject to CTM's wide MFNs entered into more promotional deals in the 19 months from December 2017 to June 2019 (nine) than during a comparable 19 months of the Relevant Period (five).¹²¹⁴
- 9.31 Similarly, Table 9.2 shows that the number of providers subject to wide MFNs that agreed promotional deals in the 19 months after the Relevant Period (seven) was just over double the number that agreed such deals during a comparable 19 months of the Relevant Period (three).
- 9.32 Of the seven, six were providers that had not previously agreed a promotional deal during the Relevant Period.¹²¹⁵ The seven providers that entered into deals in the 19 months after the Relevant Period also included the three providers that had rejected promotional deals during the Relevant Period because of CTM's wide MFNs ([HIP], [HIP], [HIP]).
- 9.33 One further provider [HIP] rejected a proposed promotional deal because it believed it had a wide MFN in its agreement with CTM.¹²¹⁶ This provider agreed its first promotional deals after CTM stopped enforcing its wide MFNs ([X]). While the CMA has found that this provider should be treated as having only a narrow MFN in its contract for the purposes of this Decision, because the provider based its behaviour on the belief that it had a wide MFN in its contract this is still informative of the direct impact of CTM's wide MFNs on providers' pricing behaviour.¹²¹⁷
- 9.34 The CMA is also aware that at least a further three providers previously subject to wide MFNs¹²¹⁸ had agreed promotional deals with PCWs between

¹²¹⁴ BGL submitted that it was more appropriate to consider a shorter time frame (such as ten months before and after CTM stopped enforcing its wide MFN). The CMA disagrees with this for the reasons set out in Annex Q.

¹²¹⁵ Two providers ([HIP] and [HIP]) who agreed promotional deals during the Relevant Period did not agree a deal in the 19 months after CTM stopped enforcing its wide MFNs. However, [HIP] went on to agree a promotional deal with CTM which started in [X]. URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [X]; URN 10561, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [X].

¹²¹⁶ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, questions 6(b), 10 and 12; URN 9633, [HIP]'s response to section 26 notice dated 26 July 2019, question 1, document entitled 'Aggregator Trading Action', page 3; URN 9142, [HIP]'s response to section 26 notice dated 19 June 2019, question 1(a).

¹²¹⁷ As explained in Section 4.B.II above, the CMA has treated [HIP]'s agreement with CTM as containing a narrow MFN only, but [HIP] regarded the clause in its agreement with CTM as being a wide MFN during the Relevant Period.

¹²¹⁸ BGL submitted that the deal agreed by [HIP] does not support the CMA's case as [HIP] stated that it considered its wide MFN 'null and void' or that it otherwise did not apply' and agreed a promotional deal during the Relevant Period. For the reasons set out in Section 4.B.I, the CMA has found that the clause in [HIP]'s contract with CTM should be treated as a wide MFN. In addition, while [HIP] agreed two promotional deals during the Relevant Period, it faced enforcement action from CTM for doing so (see Section 8.B.III.(b).(iv) and Annex M). BGL also submitted that the deal agreed by [HIP] – the trading name of a broker, [HIP], with a wide MFN in its contract with CTM (see Annex C) – does not support the CMA's case as there is no evidence on [HIP]'s appetite for promotional deals or its compliance with wide MFNs in the Relevant Period as it was not contacted

[X] and [X].^{1219, 1220} This includes a provider agreeing a deal with CTM having told the CMA it was unwilling to engage in promotional deals during the Relevant Period.^{1221, 1222}

9.35 In addition, two providers previously subject to CTM's wide MFNs (covering approximately 5-10% [X] of sales made through PCWs in 2017) that used uniform base retail pricing during the Relevant Period have invested in updating their pricing models so that differences across PCWs (including differences in commission fees) can be reflected in the retail prices they quote ([HIP], [HIP]).¹²²³

9.36 The CMA therefore finds that after the Relevant Period:

- (a) a materially greater number of promotional deals were agreed by providers subject to CTM's wide MFNs than during the Relevant Period; and

by the CMA. Moreover, [HIP] is very small and the quote was number 21 in the results table. The CMA does not dispute these observations, but does not consider that they undermine the fact that i) [HIP] did not agree any promotional deals during the Relevant Period when it was bound by CTM's wide MFN and ii) it has done so since CTM stopped enforcing its wide MFN. URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 46, first and third bullets.

¹²¹⁹ [HIP] had one or more promotional deals with [X] in [X] (based on the available data it is not possible to determine if this was one continuous deal or multiple deals), [HIP], which agreed promotional deals during the Relevant Period but none in the 19 months after CTM stopped enforcing its wide MFNs, had a promotional deal with CTM from [X] and [HIP] had a promotional deal in place with CTM which was in place [X]. URN 10567, screenshots of quotes and promotional deals taken by the CMA from [X] website on [X]; URN 10568, screenshots of quotes and promotional deals taken by the CMA from [X] website [X]; URN 10561, screenshots of quotes and promotional deals taken by the CMA from [X] website [X] and URN 10563, screenshots of quotes and promotional deals taken by the CMA from [X] website on [X]

¹²²⁰ BGL submitted that as these screenshots are from almost two and a half years after the Relevant Period they are irrelevant to whether these providers were interested in agreeing promotional deals during the Relevant Period and the impact of CTM's decision to stop enforcing its wide MFNs. As set out in section Q.VI.(d) of Annex Q, the CMA disagrees and considers it is more appropriate to focus on a longer period of time rather than a short time period as suggested by BGL. In this instance, these screenshots are informative of what would have occurred in the counterfactual as they are consistent with other evidence that shows that as the prevalence of promotional deals has increased so has the number of providers willing to engage in such deals even among those who explicitly told the CMA they were not willing to do so during the Relevant Period. BGL also submitted that some providers (e.g. [HIP]) who protested strongly against CTM's wide MFNs in initial submissions do not appear to be showing any appetite to run promotional deals more than two years after CTM stopped enforcing its wide MFNs based on these screenshots. The CMA disagrees – these screenshots reflect a snapshot of the deals in place on certain days and are not a comprehensive analysis of the use of promotional deals in 2020 and, therefore, are not informative of all the deals done since CTM stopped enforcing its wide MFNs or the appetite of all providers to engage in such deals. URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 44.

¹²²¹ See paragraph 7.176 and the discussion of [HIP]'s pricing strategy in Annex L. URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [X]; URN 10561, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [X].

¹²²² BGL submitted that the deal agreed by [HIP] does not support the CMA's case as [HIP] stated that it considered its wide MFN 'null and void' or that it otherwise did not apply'. For the reasons set out in section 4.B.I, the CMA considers that the clause in [HIP]'s contract with CTM should be treated as a wide MFN despite the statements made by [HIP]. In any event, [HIP] agreeing a deal when it was not willing to do so during the Relevant Period is consistent with other evidence that shows that as the prevalence of promotional deals has increased so has the number of providers willing to engage in such deals even among those who explicitly told the CMA they were not willing to do so during the Relevant Period. URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 46, first bullet.

¹²²³ See paragraph 7.149.

- (b) a materially greater number of providers subject to CTM's wide MFNs agreed promotional deals with PCWs than during the Relevant Period.

9.37 Alongside the evidence set out above in section 9.A.II, this supports the CMA's finding that CTM's wide MFNs restricted the ability and reduced the incentives of relevant providers to compete on price by differentiating their prices across PCWs during the Relevant Period. Accordingly, the CMA considers that in the absence of CTM's wide MFNs, providers would have entered into more promotional deals and therefore engaged in more differential pricing across PCWs.

9.A.IV. Conclusion on the pricing constraint on providers subject to CTM's wide MFNs

9.38 Based on the above assessment, the CMA finds that during the Relevant Period, by preventing the relevant providers from offering lower prices on CTM's rival PCWs, CTM's network of wide MFNs restricted the ability of and reduced the incentives on providers subject to CTM's wide MFNs to compete on price by differentiating their prices across PCWs. The CMA also finds that those providers engaged less in differential pricing across PCWs (including promotional deals with CTM's rival PCWs), compared to the counterfactual of no contractual restrictions on pricing on PCWs.

9.B. CTM's wide MFNs reduced price competition between PCWs and restricted the ability of rival PCWs to expand

9.39 The CMA finds that, during the Relevant Period, CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting competition between PCWs, by reducing price competition between PCWs and restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power.

9.40 Compared to the counterfactual (i.e. in the absence of contractual restrictions on pricing across PCWs¹²²⁴), price competition between PCWs, which was an important parameter of competition, was reduced during the Relevant Period because:

- (a) Rival PCWs competing with CTM:

¹²²⁴ As explained in paragraph 6.2, in the counterfactual there would only have been narrow MFNs, which affected the prices home insurance providers could quote on their direct channels.

- (i) Were restricted in their ability to engage in competitive strategies that would have resulted in providers accounting for approximately 40% of sales made through PCWs¹²²⁵ pricing lower on their websites than on CTM because those providers were (as described above in Section 9.A.) prevented from participating in such strategies by CTM's network of wide MFNs.
 - (ii) Had reduced incentives to compete for lower retail prices from providers accounting for approximately 40% of sales made through PCWs, even where such providers would have been willing to lower their prices on the rival PCW. This is because the relevant provider would, as a result of CTM's wide MFN, have had to offer the same lower price to CTM, such that the rival PCW would not have secured a competitive advantage over CTM, which was by far their largest rival with a market share of over 50%.
 - (b) CTM itself had reduced incentives to compete on the merits with its rivals for lower retail prices from providers with wide MFNs (for instance, by lowering commission fees), since it could rely primarily on its wide MFNs to ensure it had the lowest (or equal lowest) prices.
- 9.41 These effects of CTM's network of wide MFNs in reducing price competition between PCWs were mutually reinforcing. In particular, CTM's rivals competing less strongly is itself likely to have reduced the incentives for CTM to compete strongly and vice versa. Because of this, the restrictive effects of CTM's network of wide MFNs are also likely to have extended beyond providers subject to wide MFNs, and reduced PCWs' incentives to compete for lower retail prices from all providers.
- 9.42 CTM's network of wide MFNs also had the appreciable effect of restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power. Because rival PCWs were not able to secure a competitive price advantage over CTM with the relevant providers, rather than the structure of the market and the competitive positions of the Big Four PCWs being determined by competition on the merits (as would have been the case in the counterfactual), CTM was able to use its wide MFNs to maintain or strengthen its market power during the Relevant Period.
- 9.43 As price is an important parameter of competition between PCWs, the restriction on price competition and the ability of other PCWs to expand during the Relevant Period was such that negative effects on the level of

¹²²⁵ See Section 8.C for the CMA's findings on the market coverage of CTM's wide MFNs.

PCWs' commission fees and the retail prices offered by providers on PCWs can be expected with a reasonable degree of probability.¹²²⁶ In the absence of CTM's network of wide MFNs, rival PCWs would have had materially greater ability and incentives to compete on price to attract consumers and grow their market share. In turn, CTM would have been under greater pressure to respond to price competition from rival PCWs.

- 9.44 Therefore, the CMA finds that because CTM's wide MFNs had the appreciable effect of reducing price competition between PCWs during the Relevant Period compared to the counterfactual, CTM's network of wide MFNs is likely to have resulted in both less differential pricing across PCWs by providers, because PCWs provided fewer incentives to providers to engage in differential pricing,¹²²⁷ and higher commission fees and, consequently, higher retail prices.¹²²⁸
- 9.45 The CMA's finding of appreciable effects on competition between PCWs is supported by the economic literature¹²²⁹ on wide MFNs.¹²³⁰ According to this, wide MFNs can lead to anti-competitive effects on competition between PCWs¹²³¹ across a range of modelling assumptions.¹²³² In particular, they can both reduce competition between PCWs leading to higher commission

¹²²⁶ As set out in Section 3.B., for an agreement to be restrictive by effect it must affect (or be likely to affect) competition to such an extent that, on the relevant market, negative effects on prices, output, innovation or the variety or quality of goods and services can be expected with a reasonable degree of probability.

¹²²⁷ This is in addition to the CMA's finding that providers subject to wide MFNs engaged less in differential pricing across PCWs (including promotional deals with CTM's rival PCWs), compared to the counterfactual of no contractual restrictions on pricing across PCWs. This is reflected in the general increase in promotional deals and the fact that two PCWs did not engage in promotional deals during the Relevant Period, but did after CTM stopped enforcing its wide MFNs, see Sections 9.B.I.(b) and 9.B.II.(c).

¹²²⁸ As set out in Section 7.D, the evidence from a majority of providers shows that changes in commission fees impact on the base retail prices quoted on PCWs. In addition, promotional deals normally involve a reduction in the PCW's commission fees and, as set out in Section 7.E, the CMA's analysis of promotional deals found that they led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs. The CMA's interpretation of the results of its analysis is supported by the views of providers and PCWs who have entered into promotional deals.

¹²²⁹ When referring to the economic literature, the CMA is referring to papers that include theoretical models exploring the effects of wide MFNs. In its assessment of the effects of CTM's wide MFNs the CMA has used this academic literature as a reference point when identifying the anti-competitive effects that may arise and then assessed whether those anti-competitive effects occurred in the context of this case based on the actual features of the market and the available evidence.

¹²³⁰ See Annex Q for the CMA's assessment of BGL's representations on the economic literature.

¹²³¹ The CMA is not aware of any economic literature that considers the impact on competition between providers on PCWs of wide MFNs.

¹²³² Some of the economic literature also finds that wide MFNs can lead to pro-competitive effects when considering competition between PCWs. As set out in Section 10.A.V., it is for BGL to make submissions and adduce evidence of such pro-competitive effects. However, BGL has not made submissions or adduced evidence to the effect that there are any pro-competitive efficiencies meeting the conditions for exemption under section 9 of the Act or Article 101(3) TFEU. Nor has it submitted that its wide MFNs were objectively necessary such that they should not be considered to restrict competition. In any event, while the economic literature is not determinative, based on its review, the CMA considers that where papers in the economic literature identify situations where the pro-competitive effects of wide MFNs may outweigh their anti-competitive effects, this is based on assumptions that do not hold in this case, as set out in section Q.VIII of Annex Q.

fees and higher retail prices,¹²³³ and reduce the ability of PCWs to enter and expand by pursuing strategies aimed at achieving the lowest price by lowering commission fees.¹²³⁴

9.46 In the following two sub-sections, the CMA sets out its assessment of the effects of CTM's network of wide MFNs on competition between PCWs in terms of effects on:

- (a) the ability and incentives of other PCWs to compete on retail prices and their ability to expand (Section 9.B.I); and
- (b) the incentives of CTM to compete on retail prices and its ability to maintain or strengthen its market power (Section 9.B.II).

9.B.I. CTM's network of wide MFNs reduced the ability and incentives of rival PCWs to compete on retail prices and restricted their ability to expand

9.47 During the Relevant Period, securing competitive retail prices compared to rival PCWs was regarded by each of the Big Four PCWs as critical to their competitive strategies.¹²³⁵ In order for CTM's rival PCWs to obtain a competitive advantage by displaying the lowest prices from providers, they had to invest to secure lower retail prices relative to other PCWs (for example, by reducing their commission fee or providing other benefits to providers). By contrast, CTM's wide MFNs were integral to its competitive strategy; it could rely on the contractual restrictions imposed by its network of wide MFNs which ensured that CTM was not undercut by the prices relevant providers offered on its rival PCWs.¹²³⁶

9.48 Although competitive pricing was important to all of the Big Four PCWs, two of CTM's three main rivals (MoneySuperMarket and Confused) in particular focused their strategies on using promotional deals, rather than longer term commission fee reductions, to attract competitive prices from providers relative to those offered on other PCWs.¹²³⁷ In doing this, CTM's rivals

¹²³³ URN 9866, Wang and Wright (2020), Search platforms: Showrooming and price parity clauses, The RAND Journal of Economics, Vol. 51, Issue 1. URN 9861 Boik and Corts (2016), The Effects of Platform Most-Favoured-Nation Clauses on Competition and Entry, Journal of Law and Economics, vol.59 (February 2016). URN 9862, Johnson (2017), The Agency Model and MFN Clauses; URN 9863, Johansen, B. O. and Verge, T., (2017), Platform price parity clauses with direct sales. University of Bergen Working Papers in Economics 01/17; URN 9864, Larrieu, T., (2019), Most Favoured Nation Clauses on the online booking market. Working Paper. URN 9867, Wang, C. and Wright, J., (2016), Platform Investment and Price Parity Clauses. Working paper no 16-17, September 2016.

¹²³⁴ URN 9861 Boik and Corts (2016), The Effects of Platform Most-Favoured-Nation Clauses on Competition and Entry, Journal of Law and Economics, vol.59 (February 2016).

¹²³⁵ See Section 7.C.I.(c).

¹²³⁶ See Section 8.A.II.

¹²³⁷ See Section 7.C.II.

sought to agree deals with a variety of providers, especially those providers which quoted to many consumers and appeared at the top of the rankings.

- 9.49 The CMA sets out below its assessment of the effects of CTM's network of wide MFNs on the strategies of rival PCWs compared to the counterfactual, taking into account the strategies of rival PCWs during the Relevant Period (Section 9.B.I.(a)) and after CTM stopped enforcing its wide MFNs at the end of November 2017 (Section 9.B.I.(b)).
- 9.50 This assessment shows that CTM's network of wide MFNs affected its rivals' ability to use differential pricing strategies during the Relevant Period. CTM's rival PCWs were therefore unable to gain a competitive price advantage in respect of providers accounting for approximately 40% of sales made through PCWs subject to CTM's wide MFNs, unless those providers breached the wide MFNs (which were terms of their contracts with CTM).
- 9.51 Because CTM's network of wide MFNs meant that rival PCWs were unable to secure a competitive price advantage over CTM in relation to such providers, the incentives of CTM's rivals to engage in competitive strategies, such as promotional deals, were reduced. Accordingly, in the absence of CTM's network of wide MFNs, CTM's rival PCWs would have had a greater ability and increased incentives to compete on price with CTM and with one another, as well as a greater ability to expand and challenge CTM's market position.
- 9.52 Further, as described in paragraph 9.41 above, the CMA finds that CTM competed less strongly during the Relevant Period due to CTM's wide MFNs, which is itself likely to have reduced the incentives on CTM's rivals to compete strongly (including in relation to providers without wide MFNs).

9.B.I.(a). The effect of CTM's wide MFNs on the strategies of rival PCWs during the Relevant Period

- 9.53 CTM's network of wide MFNs restricted rival PCWs from pursuing their competitive strategies during the Relevant Period, in circumstances where (as set out in Section 7.C.), securing competitive prices from providers compared to their rival PCWs was viewed as critical by all the Big Four PCWs.¹²³⁸ Moreover, two of CTM's three main rivals, MoneySuperMarket and Confused, were particularly directly affected by CTM's network of wide MFNs because an important part of their strategies was agreeing

¹²³⁸ See Section 7.C.I.(c).

promotional deals with providers in order to gain lower prices from providers, rather than longer term commission fee reductions.¹²³⁹

- 9.54 The strategies of both MoneySuperMarket and Confused were driven by their understanding of the importance of retail prices to consumers when purchasing home insurance through PCWs. Further, during the Relevant Period both of these PCWs adjusted their strategies in home insurance to focus more on agreeing promotional deals with targeted home insurance providers.¹²⁴⁰
- 9.55 To the extent they were able to implement these strategies focused on promotional deals, both Confused and MoneySuperMarket considered them to be successful during the Relevant Period.¹²⁴¹ Such deals led to the providers lowering the retail price they quoted on the relevant PCW relative to those quoted on rival PCWs.¹²⁴² These deals were therefore an effective way for CTM's rivals to compete with CTM on retail prices.
- 9.56 Both Confused and MoneySuperMarket considered that CTM's wide MFNs restricted their use of promotional deals with relevant providers, including providers they considered to be important to their strategy.¹²⁴³ In particular:
- (a) Confused told the CMA that *'attempts to agree promotional deals with insurers are made during meetings or telephone conversations with them ... in some of these conversations, insurers have declined a promotional deal because of wide MFNs in their agreements with PCWs.'*¹²⁴⁴
 - (b) MoneySuperMarket told the CMA that *'in home insurance, conversations/negotiations with insurers around exclusive deals may not take place or may be very informal because of the presence of wide MFNs in the insurers' agreements.'*^{1245, 1246}

¹²³⁹ As CTM's wide MFNs related to providers not quoting lower prices on rival PCWs for the same risk profile, CTM's rivals may still have been able to gain a competitive price advantage if, for example, differences in question sets meant that for the same consumer the risk information CTM's rivals provided to providers differed to the risk information provided by CTM. As set out in Annex P, the CMA has found limited evidence that in practice providers sought to circumvent the wide MFN clause in these ways (i.e. by using differences in question sets).

¹²⁴⁰ See Sections 7.C.II.(a) and 7.C.II.(b).

¹²⁴¹ See Sections 7.C.II.(a) and 7.C.II.(b).

¹²⁴² See Section 7.E.I.

¹²⁴³ See URN 5397.1, note of CMA call with Confused dated 12 December 2017, paragraphs 7 and 8; URN 4749.1, Confused response to section 26 notice dated 14 November 2017, questions 8, 15, 16 and 24; URN 4934.1, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 13.

¹²⁴⁴ URN 5397.1, note of CMA call with Confused dated 12 December 2017, paragraph 8.

¹²⁴⁵ URN 6619A, note of CMA call with MoneySuperMarket dated 27 February 2018, paragraph 11.

¹²⁴⁶ MoneySuperMarket also told the CMA that there were multiple factors other than the wide MFN which may lead to a provider refusing the offer of a promotional deal. This is consistent with evidence set out in Section 7

- (c) [Employee 1, MSM], told the CMA that:
- (i) *'Some of the insurance providers who had expressed an interest in promotional deals on motor insurance products told us that they could not do the same for home insurance, due to contractual restrictions in place with another PCW. They either referred to CTM expressly or it was clear from what they said that they were referring to CTM. I understood from verbal conversations with the partnerships team that these insurance providers feared, or were told, that they would be delisted by CTM, which would have caused damage to their overall sales performance given that CTM was the largest PCW.'*¹²⁴⁷
 - (ii) *'Among the insurers who declined to negotiate promotional deals with MSM due to wide MFNs, there were some big insurance providers, which, together, accounted for a large proportion of MSM's home insurance business. These included [HIP], [HIP], [HIP] and [HIP]. Not being able to enter into promotional deals with those providers was a lost opportunity for MSM both to increase the competitiveness of its home insurance business and to deliver better prices to a large proportion of its customers. It also meant that the cost to MSM of doing deals was higher than it otherwise would have been because we had to invest with insurers that were lower down the rankings in the first place so had to invest more to make them price competitive'.*¹²⁴⁸
- (d) Confused also explained that it had agreed significantly more promotional deals in private motor insurance than in home insurance over the Relevant Period and that this was partly because Confused had a greater focus on private motor insurance, and partly due to wide MFNs.¹²⁴⁹
- (e) Similarly, MoneySuperMarket explained that, while its approach to negotiating promotional deals has not differed between the home

that providers may decline to agree a PCW's proposition for many reasons including the terms or scope of the deal, the identity of the PCW/overall relationship with the PCW, other promotional deals with a rival PCW, the potential impact on its direct channel sales/preference to maintain uniform pricing between channels including because of narrow MFNs, impact on consumers' lifetime value and/or lack of budget to support the deal or other operational issues. However, this does not undermine the fact that, as set out in Section 8, three large providers (accounting for approximately 18% of sales made through PCWs) refused to enter into promotional deals with both MoneySuperMarket and Confused during the Relevant Period because of CTM's wide MFNs. URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 16, lines 17 to 26 and page 17, lines 1 to 13.

¹²⁴⁷ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 23.

¹²⁴⁸ URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 26.

¹²⁴⁹ URN 4749.1, Confused's response to section 26 notice dated 14 November 2017, question 25.

insurance and private motor insurance sectors since the PMI Order 2015, it had found it easier to agree deals in private motor insurance than home insurance,¹²⁵⁰ although, as noted by BGL,¹²⁵¹ MoneySuperMarket said it was not clear if this *‘was to do with MFNs or not because motor insurance is a whole different market’*.¹²⁵²

- 9.57 Both MoneySuperMarket and Confused told the CMA that CTM’s wide MFNs were a barrier to expansion¹²⁵³ with Confused specifically stating that in its view its *‘growth in the Home Insurance market has been restricted due to the Wide MFN clauses imposed by another PCW. HIP [home insurance providers] / Brokers have been unable to return a cheaper price to [Confused.com] customers [consumers] due to this contractual restriction.’*¹²⁵⁴
- 9.58 The evidence from MoneySuperMarket and Confused, contrary to BGL’s submissions,¹²⁵⁵ is consistent with the following:
- (a) The CMA’s findings in Section 8.B.II that there was widespread compliance with CTM’s wide MFNs during the Relevant Period. Such compliance included specific refusals by three large providers, accounting for approximately 18% of sales made through PCWs in 2017, to enter into promotional deals with both MoneySuperMarket and Confused during the Relevant Period because of CTM’s wide MFNs.¹²⁵⁶ Consistent with this, during the Relevant Period, providers without wide MFNs agreed many more promotional deals than providers subject to wide MFNs.¹²⁵⁷
 - (b) The CMA’s findings in Section 8.B.III that, following CTM’s systematic monitoring of providers’ pricing on other PCWs, CTM took action when it considered it necessary to resolve providers’ non-compliance with its wide MFNs. This included CTM enforcing its wide MFN in four out of five instances in which promotional deals were agreed by a provider

¹²⁵⁰ URN 4934.1, MoneySuperMarket’s response to section 26 notice dated 14 November 2017, question 23.

¹²⁵¹ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 284.

¹²⁵² URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 22, lines 16 to 26 and page 23, lines 1 to 3.

¹²⁵³ URN 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 6; URN 4934.1, MoneySuperMarket’s response to section 26 notice dated 14 November 2017, question 6.

¹²⁵⁴ URN, 4749.1, Confused’s response to section 26 notice dated 14 November 2017, question 6.

¹²⁵⁵ See CMA’s assessment of BGL’s representations on the impact of CTM’s wide MFNs on MoneySuperMarket and Confused in Annex Q.

¹²⁵⁶ In addition to the specific refusals, an internal [HIP] briefing pack [§] and produced ahead of a senior strategic meeting with [§] refers to the fact that [HIP] wanted to enter into a promotional deal with [§] could not hold the slot unless [HIP] was confident it would go ahead with the deal even if CTM’s wide MFN remained in place (i.e. putting [HIP] in breach of the wide MFN with the associated risk of de-listing). [HIP] did not go ahead with the deal. URN 5315.45, [HIP]’s response to section 26 notice dated 24 November 2017, Annex 23, slide 5.

¹²⁵⁷ See Section 9.A.III.(a).

subject to a wide MFN during the Relevant Period.¹²⁵⁸ It also included CTM enforcing its wide MFN to prevent a price increase on its platform to reflect an increase in CTM's commission fees.

- (c) The CMA's findings in Section 8.A.II that CTM's wide MFNs were integral to CTM's competitive strategy in home insurance and effective in achieving its objectives. CTM believed that, in the absence of its network of wide MFNs, it would be subject to greater price competition, increasing pressure on commission fees and reducing its profits. For example, CTM's internal documents expressed concerns that without wide MFNs, CTM's rivals would have a greater ability and incentive to attract lower prices from providers through lowering their commission fees, including engaging in promotional deals.¹²⁵⁹

9.59 Finally, while GoCompare did not agree any promotional deals in home insurance during the Relevant Period, its evidence is consistent with that of MoneySuperMarket and Confused. In particular, GoCompare noted that it was not aware of any promotional deals before the PMI Order 2015 and that other PCWs such as MoneySuperMarket had effectively driven the increase in the number of such deals after the implementation of the PMI Order 2015.¹²⁶⁰ In addition, GoCompare told the CMA that, if it had sought to agree promotional deals in home insurance, '*GoCompare expects that its ability to agree any such deals would be affected by any wide MFN clause the relevant HIPs [home insurance providers] are subject to with other PCWs.*'¹²⁶¹

9.60 Consistent with this, GoCompare was conscious of CTM's wide MFN when seeking to agree a promotional deal with [HIP] in the context of its tiered commission structure.¹²⁶² In June 2017, GoCompare contacted [HIP] as follows:

'To provide a bit of support to this [the tiered commission structure] I would suggest we do a co-fund in August/September, with both parties contributing [X] to an offer or price discount if you are able to do this (MFN dependent I guess!)'¹²⁶³ (emphasis added).

¹²⁵⁸ See paragraph 9.27(b)..

¹²⁵⁹ See section 8.B.II.(a).

¹²⁶⁰ URN 5012, GoCompare's response to section 26 notice dated 14 November 2017, question 26, paragraph 26.1.

¹²⁶¹ URN 4868, GoCompare's response to section 26 notice dated 14 November 2017, question 18, paragraph 18.3.

¹²⁶² GoCompare's tiered commission structure is discussed in paragraphs 7.94 to 7.96.

¹²⁶³ In response to this email [HIP] proposed an alternative type of deal which would involve [HIP] giving a device to help identify water leaks to a certain number of GoCompare's consumers. URN 9256.16, [HIP]'s response to section 26 notice dated 19 June 2019, question 3(b), Annex 06(b), document entitled '[X] Account meeting pack - Read-Only'.

9.B.I.(b). The strategies of providers after the Relevant Period

- 9.61 The strategies of CTM's rival PCWs since CTM stopped enforcing its wide MFNs also support the finding that CTM's wide MFNs restricted the ability and reduced the incentives of other PCWs to compete on retail prices, as well as restricting their ability to expand, during the Relevant Period. As set out below, since the end of the Relevant Period (when CTM stopped enforcing its wide MFNs):
- (a) PCWs (including CTM) have agreed promotional deals with more providers, including those which had previously declined deals because of CTM's wide MFN; and
 - (b) PCWs have agreed more promotional deals overall since CTM stopped enforcing its wide MFNs.
- 9.62 The fact that, since the end of the Relevant Period, PCWs (including CTM) have agreed promotional deals with more providers (including those which had previously declined deals because of CTM's wide MFN) is relevant because it is important for PCWs to agree deals with a variety of providers. It is especially important for PCWs to agree deals with those providers that provide quotes to many consumers and appear at the top of the rankings (see Sections 7.C.II.(a) and 7.C.II.(b)).
- 9.63 Both MoneySuperMarket and Confused told the CMA that since CTM stopped enforcing its wide MFNs their pricing strategies, which were focused on promotional deals, had been easier to implement. Since the Relevant Period, providers have been more open to discussing promotional deals and ultimately the number of providers willing to agree deals has increased.¹²⁶⁴ For example,
- (a) MoneySuperMarket told the CMA that *'[...] during H1 2018, our experience was that contractual arrangements with other PCWs were no longer inhibiting the arranging of pricing investments'*¹²⁶⁵ and that, since the end of 2017, *'we've been able to [...] invest with people more*

¹²⁶⁴ URN 8983, Confused's response to section 26 notice dated 31 May 2019, question 2(a); URN 8978, Confused's response to section 26 notice dated 31 May 2019, question 4; URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 4; URN 9318, Transcript of CMA interview with [Employee 1, MSM] held on 14 June 2019, pages 30 to 31 and page 34; URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 19 lines 3 to 18.

¹²⁶⁵ URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 1.

and work on pricing – well, have more offers come our way from insurance partners’; ^{1266, 1267} and

- (b) Confused submitted that ‘*many more HIPs and Brokers* [collectively referred to in this Decision as home insurance providers] *have been more willing to run Promotional Deals*’ ¹²⁶⁸.

9.64 The evidence of these two PCWs is supported by the following:

- (a) As described in paragraph 9.32, since CTM stopped enforcing its wide MFNs, the three providers (accounting for approximately 18% of sales made through PCWs in 2017) that declined promotional deals with MoneySuperMarket and Confused during the Relevant Period due to CTM’s wide MFNs have concluded promotional deals with [§]. ¹²⁶⁹
- (b) Based on comparable periods the number of providers with which these two PCWs have agreed deals has increased from 9 providers during 19 months of the Relevant Period (accounting for over 45% of sales made through PCWs in 2017) to 16 providers in the 19 months after CTM stopped enforcing its wide MFN (accounting for over 55% of sales made through PCWs in 2017). ^{1270, 1271}

9.65 In addition, while the CMA has found that [HIP]’s contract with CTM did not contain a wide MFN, ¹²⁷² [HIP] believed in the Relevant Period that it was subject to a wide MFN and this had prevented it from engaging in

¹²⁶⁶ URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 19 lines 3 to 5.

¹²⁶⁷ Similarly, [Employee 1, MSM], told the CMA that when the wide MFNs were taken out of contracts some providers who had previously rejected proposed deals ‘*came back to the table wanting to do deals.*’ See URN 9318, Transcript of CMA interview with [Employee 1, MSM] held on 14 June 2019, page 11, lines 25 to 26 and page 12, lines 1 to 8.

¹²⁶⁸ URN 8978, Confused’s response to section 26 notice dated 31 May 2019, question 4(b).

¹²⁶⁹ ([HIP], [HIP] and [HIP]).

¹²⁷⁰ CMA analysis of the Promotional Deals Dataset (see Annex J), URN 9615, MoneySuperMarket’s response to follow up questions to section 26 notice dated 23 July 2019, question 5, spreadsheet entitled ‘Copy of Appendix 3 MSM ATL Campaigns.xlsx’; URN 9859 MoneySuperMarket’s response to follow-up questions to section 26 notice dated 8 November 2019; URN 6159, [HIP]’s response to section 26 notice dated 16 April 2018, question 8, document entitled ‘CMA return slide pack Appendix 2’, slides 9 to 18; URN 9712, [HIP]’s response to section 26 notice dated 26 July 2019, question 1, document entitled ‘MSM Home Co-fund’. URN 6292, [HIP]’s response to section 26 notice dated 16 April 2018, question 12(b) and the Commission Fees dataset. (See Annex D).

¹²⁷¹ The CMA is also aware that in 2020 [§] has been able to agree promotional deals with at least one other provider previously subject to CTM’s wide MFNs that did not agree a deal in the Relevant Period, specifically [HIP]. [HIP] had one or more promotional deal with [§] in [§] (based on the available data it is not possible to determine if this was one continuous deal or multiple deals), URN 10567, screenshots of quotes and promotional deals taken by the CMA from [§] website on [§] and URN 10563, screenshots of quotes and promotional deals taken by the CMA from [§] website on [§].

¹²⁷² As explained in Section 4.B.I, the CMA has treated [HIP]’s agreement with CTM as containing a narrow MFN only for the purposes of this Decision, but [HIP] regarded the clause in its agreement with CTM as being a wide MFN during the Relevant Period.

promotional deals with rival PCWs.¹²⁷³ [HIP] agreed its first promotional deal (including one with [X]) after the Relevant Period.¹²⁷⁴ The fact that, like other providers, it was only after CTM informed [HIP] that it was no longer enforcing its wide MFN¹²⁷⁵ that [HIP] entered into a promotional deal supports the CMA's finding that CTM's wide MFNs restricted the use of promotional deals by two of CTM's rivals.

9.66 As noted above, PCWs have also agreed more promotional deals overall since CTM stopped enforcing its wide MFNs. This includes GoCompare (and CTM) agreeing promotional deals when neither of them agreed any promotional deals during the Relevant Period.

9.67 Confused and GoCompare told the CMA that since CTM stopped enforcing its wide MFNs they had observed that the number of deals had increased in home insurance:

(a) Confused told the CMA that, since CTM stopped enforcing its wide MFNs, '*Confused has been able to secure a much bigger volume of cheapest [retail prices] by increasing the number of Promotional Deals it runs with its panel*'.¹²⁷⁶ Further, Confused submitted that '*[c]ompetition between PCWs for home insurance customers has increased since late 2017*' and that '*[o]ther PCWs have also increased the number of Promotional Deals that they have offered*'.¹²⁷⁷

(b) GoCompare told the CMA that '*MoneySupermarket and Confused have pursued promotional deals more fervently during the course of 2018 and into 2019*'.¹²⁷⁸

9.68 In addition, while MoneySuperMarket told the CMA that it did not track the number of promotional deals offered by other PCWs, it told the CMA that providers have become more receptive to agreeing promotional deals after

¹²⁷³ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, questions 6b, 10 and 12; URN 9633, [HIP]'s response to section 26 notice dated 26 July 2019, question 1, page 2, document entitled 'Aggregator Trading Action'; URN 9142, [HIP]'s response to section 26 notice dated 19 June 2019, question 1.

¹²⁷⁴ URN 9636, [HIP]'s response to section 26 notice dated 26 July 2019, question 2(a).

¹²⁷⁵ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 13(b) and 13(c).

¹²⁷⁶ URN 8978 Confused's response to section 26 notice dated 31 May 2019, question 4(a). Confused also told the CMA that its retail prices relative to other PCWs have improved, due to the increased promotional activity after the Relevant Period (see URN 8978 Confused's response to section 26 notice dated 31 May 2019, question 4(e)). To substantiate its response, Confused submitted a chart depicting the number of cheapest quotes available each month on each of the Big Four PCWs over the period from April 2017 to April 2019 prepared by Consumer Intelligence. The CMA notes that the analysis results are consistent with Confused's response by showing an increase in the number of cheapest quotes available on Confused from around March 2018; however, due to the limitations with the pricing data discussed in Annex O, the CMA does not attribute significant evidential weight to this analysis.

¹²⁷⁷ URN 8978 Confused's response to section 26 notice dated 31 May 2019, questions 4(a) and 4(c).

¹²⁷⁸ URN 8950, GoCompare's response to section 26 notice dated 31 May 2019, question 4, paragraph 4.2.

CTM stopped enforcing its wide MFNs and that the number of promotional deals MoneySuperMarket agreed increased from 2017 to 2018, albeit not significantly.¹²⁷⁹

- 9.69 This evidence is supported by the CMA's analysis of the number of promotional deals, set out below.
- 9.70 Table 9.3 shows the number of promotional deals that were agreed during 19 months of the Relevant Period (i.e. from January 2016 to July 2017) compared to 19 months after CTM stopped enforcing its wide MFNs (i.e. from December 2017 to June 2019). As outlined above at paragraph 9.29, the CMA has done this for comparable periods to take into account the fact that it has four months more data for the Relevant Period than for the period since CTM stopped enforcing its wide MFNs and has also taken a conservative approach by using the 19 months of the Relevant Period over which the highest number of deals was agreed.¹²⁸⁰

Table 9.3: The number of promotional deals agreed by PCWs during and after the Relevant Period for comparable periods

	<i>Relevant Period Jan 16 to Jul 17 (19 months)</i>	<i>After the Relevant Period Dec 17 to Jun 19 (19 months)</i>
MoneySuperMarket	15	22
Confused	11	11
GoCompare	0	3
CTM	0	2
All PCWs	26	38

Source: CMA analysis of the Promotional Deals Dataset (see Annex J), URN 9615, MoneySuperMarket's response to follow up questions to section 26 notice dated 23 July 2019, document entitled 'Copy of Appendix 3 MSM ATL Campaigns.xlsx'; [redacted] URN 9859 MoneySuperMarket's response to follow-up questions to section 26 notice dated 8 November 2019; [redacted]; URN 6159, [HIP]'s response to section 26 notice dated 16 April 2018, question 8, document entitled 'CMA return slide pack Appendix 2', slides 9 to 18; URN 9711, [HIP]'s response to section 26 notice dated 26 July 2019 and URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 12(b).

- 9.71 Table 9.3 shows that, the number of promotional deals has increased since the Relevant Period. In particular, the number increased from 26 during 19 months of the Relevant Period compared to 38 for the 19 months after CTM stopped enforcing its wide MFNs. This represents a 46% increase in the number of promotional deals and includes CTM's largest rival, MoneySuperMarket, increasing its number of deals and GoCompare agreeing deals in home insurance for the first time. This demonstrates an

¹²⁷⁹ URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 4(b).

¹²⁸⁰ For example, if the last 19 months of the Relevant Period were considered then there were 22 deals from April 2016 to November 2017 compared to 38 deals agreed from December 2017 to June 2019.

increase in price competition between PCWs since CTM stopped enforcing its wide MFNs.

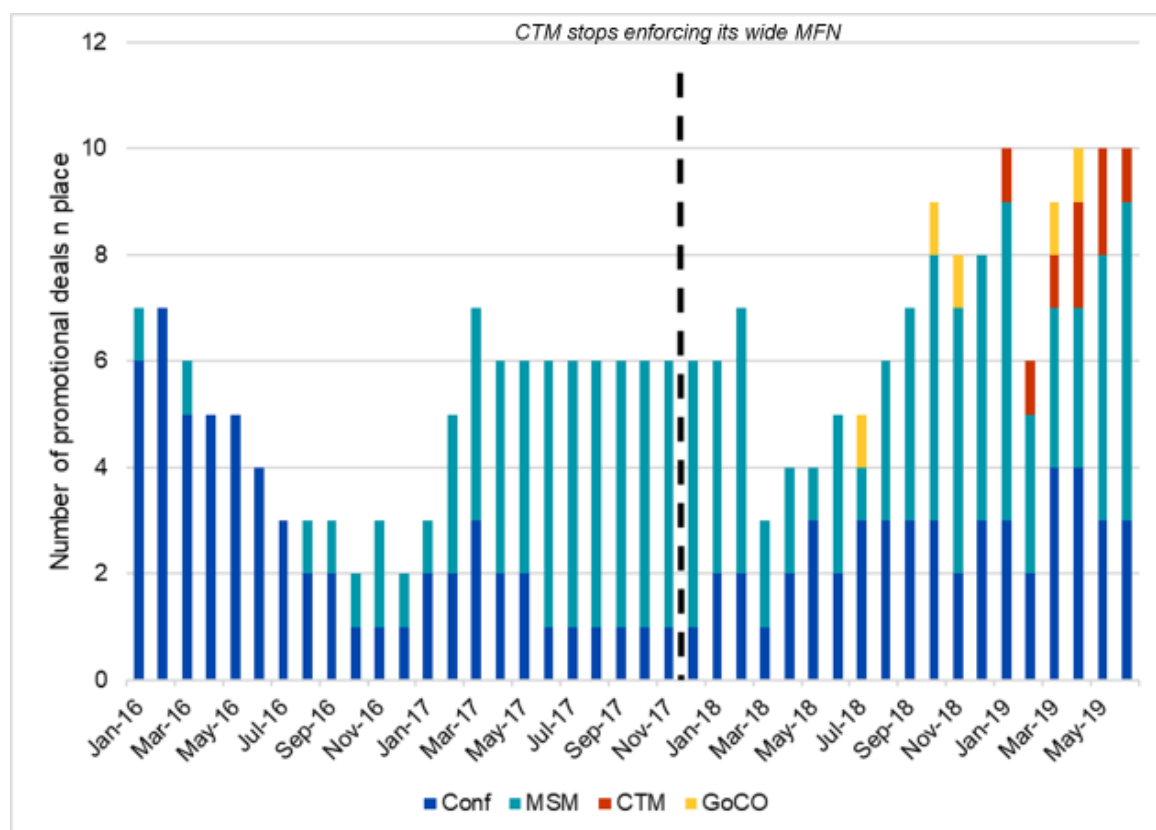
- 9.72 While Table 9.3 shows that the number of promotional deals Confused has agreed has remained constant when comparing comparable periods, Confused told the CMA that, since CTM stopped enforcing its wide MFNs, *‘Confused has been able to secure a much bigger volume of cheapest [retail prices] by increasing the number of Promotional Deals it runs with its panel’*.¹²⁸¹ The lack of change in the number of deals agreed by Confused is driven by a spike in deals right at the start of 2016 and Confused’s statement is consistent with the evolution seen in Figure 9.1 below.¹²⁸² In particular, in 2017 Confused had on average 1.5 promotional deals in place per month compared to 2.4 deals in 2018 and 3.2 deals in the first 6 months of 2019.
- 9.73 As promotional deals last for different lengths of time, the CMA has also considered the extent to which the number of promotional deals available to consumers at any one point in time has changed since CTM stopped enforcing its wide MFNs. Therefore, Figure 9.1 shows the number of promotional deals available in each month during and after the Relevant Period.¹²⁸³

¹²⁸¹ URN 8978, Confused’s response to section 26 notice dated 31 May 2019, question 4(a). Confused also said to CMA that its retail prices relative to other PCWs have improved, thanks to the increased promotional activity after the Relevant Period (see URN 8978, Confused’s response to section 26 notice dated 31 May 2019, question 4(e)). To substantiate its response, Confused submitted a chart depicting the number of cheapest quotes available each month on each of the Big Four PCWs over the period from April 2017 to April 2019 prepared by Consumer Intelligence. The CMA notes that the analysis results are consistent with Confused’s response by showing an increase in the number of cheapest quotes available on Confused from around March 2018, however, due to the limitations with the pricing data discussed in Annex O, the CMA does not attribute significant evidential weight to this analysis.

¹²⁸² As outlined above, the CMA took a conservative approach by choosing the 19 months during the Relevant Period in which the most deals were agreed. If the last 19 months of the Relevant Period are considered then the number of promotional deals agreed by Confused increased from six in the last 19 months of the Relevant Period to 11 in the 19 months after CTM stopped enforcing its wide MFNs.

¹²⁸³ A promotional deal is counted as being available in a given month if it is available for at least half of the days in that month.

Figure 9.1: Promotional Deals available each month through PCWs during and after the Relevant Period (Data covers period January 2016 to June 2019)



Source: CMA analysis of the Promotional Deals Dataset (see Annex J), URN 9615, MoneySuperMarket's response to follow up questions to section 26 notice dated 23 July 2019, document entitled 'Copy of Appendix 3 MSM ATL Campaigns.xlsx'; URN 9859 MoneySuperMarket's response dated to follow-up questions to section 26 notice dated 8 November 2019; URN 6159, [HIP]'s response to section 26 notice dated 16 April 2018, question 8, document entitled 'CMA return slide pack Appendix 2', slides 9 to 18; URN 9711, [HIP]'s response to section 26 notice dated 26 July 2019 and URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 12(b).

- 9.74 Figure 9.1 shows that the average number of promotional deals available in any given month has increased in the 19 months after CTM stopped enforcing its wide MFNs, especially when considering the period from October 2018 to June 2019. In particular, while there were on average 5 deals in place per month during the Relevant Period, this increased to 6.9 deals per month in the 19 months after CTM stopped enforcing its wide MFNs and to 8.8 deals per month for the period October 2018 to June 2019.
- 9.75 This trend is consistent with an increase in price competition between PCWs since CTM stopped enforcing its wide MFNs and is also consistent with the nature of competition in the Relevant Market. In particular, the market is gradually moving to a more competitive equilibrium as would be expected given it takes time for providers and PCWs to adjust their strategies (for the reasons set out in Annex Q).¹²⁸⁴ The CMA considers that the time taken for

¹²⁸⁴ See Section Q.VI of Annex Q.

providers and PCWs to adjust their strategies, following a significant period (at least 8 years) during which wide MFNs were a feature of the market, is reflected in the fact that the number of promotional deals available in any given month increased in the period from October 2018 to June 2019.

9.76 Finally, since CTM stopped enforcing its wide MFNs, all of CTM's rivals have invested in exploring other ways of attracting lower prices to their platforms including alternative commission fee structures and improved data provision, further indicating that price competition between PCWs has increased after the Relevant Period. In particular, as described in Section 7.C:

- (a) MoneySuperMarket¹²⁸⁵ told the CMA that, while still engaging in promotional deals, it '[redacted]'.¹²⁸⁶
- (b) Confused¹²⁸⁷ has continued to work with providers to improve their retail pricing through the provision of more detailed data to incentivise lower prices on its platform.¹²⁸⁸
- (c) GoCompare¹²⁸⁹ has been exploring with providers the feasibility of alternative structures for its commission fees (in addition to the tiered structure described in paragraphs 7.94 to 7.96), [redacted].^{1290, 1291}

9.B.I.(c). Conclusion on the ability of and incentives on other PCWs to compete on retail prices and their ability to expand

9.77 During the Relevant Period, CTM's network of wide MFNs restricted rival PCWs from pursuing their competitive strategies, in circumstances where securing competitive prices from providers compared to their rival PCWs was viewed as critical by all the Big Four PCWs. Since the end of the Relevant Period (when CTM stopped enforcing its wide MFNs):

- (a) PCWs (including CTM) have agreed promotional deals with more providers, including those which had previously declined deals because of CTM's wide MFN; and

¹²⁸⁵ See paragraph 7.80.

¹²⁸⁶ URN 9116, MoneySuperMarket's response to section 26 notice dated 25 June 2019, question 2 and URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 2.

¹²⁸⁷ See paragraph 7.90.

¹²⁸⁸ URN 8978, Confused's response to section 26 notice dated 31 May 2019, question 4.

¹²⁸⁹ See paragraph 7.99.

¹²⁹⁰ [redacted]. URN 8950, GoCompare's response to section 26 notice dated 31 May 2019, question 2.

¹²⁹¹ GoCompare explained that [redacted]. See URN 9251, GoCompare's response to section 26 notice dated 25 June 2019, question 2.

(b) PCWs have agreed more promotional deals overall.

9.78 The CMA therefore finds that, compared to the counterfactual (i.e. in the absence of contractual restrictions on pricing across PCWs¹²⁹²), price competition between PCWs, which was an important dimension of competition, was reduced during the Relevant Period because rival PCWs competing with CTM:

(a) Were restricted in their ability to engage in competitive strategies that would have resulted in providers accounting for approximately 40% of sales made through PCWs¹²⁹³ pricing lower on their websites than on CTM because those providers were (as described above in Section 9.A.) themselves prevented from participating in such strategies by CTM's network of wide MFNs.

(b) Had reduced incentives to compete for lower retail prices from providers accounting for approximately 40% of sales made through PCWs, even where relevant providers would have been willing to lower their prices on the rival PCW. This is because the relevant provider would, as a result of the wide MFN, have had to offer the same lower price to CTM such that the rival PCW would not have secured a competitive advantage over CTM, which was by far their largest rival with a market share of over 50%.

9.79 The CMA also finds that during the Relevant Period CTM's network of wide MFNs also had the appreciable effect of restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power.

9.B.II. CTM's network of wide MFNs reduced its own incentives to compete on retail prices

9.80 The CMA finds that, during the Relevant Period, CTM's network of wide MFNs appreciably reduced CTM's own incentives to compete on the merits with its rivals for lower retail prices, particularly from providers with wide MFNs (for instance, by lowering commission fees), since it could rely primarily on its wide MFNs to ensure it had the lowest (or equal lowest) prices. By appreciably restricting the ability of CTM's rival PCWs to expand because they could not gain a competitive price advantage, CTM's network of wide MFNs also enabled CTM to maintain or strengthen its market power.

¹²⁹² As explained in paragraph 6.2, in the counterfactual there would only have been narrow MFNs, which affected the prices home insurance providers could quote on their direct channels.

¹²⁹³ See section 8.C for the CMA's findings on the market coverage of CTM's wide MFNs.

- 9.81 By making it harder for CTM's rivals to gain a competitive advantage over CTM, CTM's network of wide MFNs reduced the need for CTM to invest in securing lowest retail prices from providers and allowed CTM to maintain growth in commission fees. This is because:
- (a) CTM could 'free ride' on the investments made by its rival PCWs to attract lower quotes from relevant providers and in doing so ensure it was not undercut. For providers accounting for 40% of sales through PCWs during the Relevant Period, CTM typically benefitted from any reduction in the retail prices achieved by another PCW which, absent CTM's wide MFNs, would have resulted in such prices being lower on its rival's PCW than on CTM. However, unlike its rival PCWs, CTM did not have to lower its own commission fee (or provide any other benefit) in return for the reduction in retail price.
 - (b) CTM was not subject to the same constraints as its rivals as when negotiating commission fees in annual negotiations with providers. If CTM increased its commission fees compared to its rival PCWs, the relevant providers could not respond to CTM's commission fee increase by setting a higher price on CTM than on its cheaper rival PCWs.¹²⁹⁴
- 9.82 In addition, by making it harder for CTM's rivals to gain a competitive advantage over CTM, CTM's wide MFNs allowed CTM to maintain or strengthen its market power.
- 9.83 Further, as described in paragraph 9.41 above, the CMA finds that CTM's competitors competed less strongly during the Relevant Period due to CTM's wide MFNs which is itself likely to have reduced the incentives for CTM to compete strongly (including in relation to providers without wide MFNs).
- 9.84 The CMA sets out below its assessment of the effects of CTM's network of wide MFNs on CTM's incentives to compete compared to the counterfactual absent CTM's wide MFN. In doing this CMA considers: (i) the importance of wide MFNs to CTM's competitive strategy and the extent to which CTM considered its network of wide MFNs was effective in achieving its objective; (ii) CTM's systematic monitoring and enforcement of its wide MFNs; and (iii) CTM's broader competitive strategies.

¹²⁹⁴ The restrictive effect of wide MFNs could also apply if a provider occasionally sets a lower price on CTM. While in this case the provider may have some room for increasing prices on CTM without increasing prices on other PCWs, the wide MFN constrains the extent to which a provider could do this in case of a significant commission fee increase by CTM.

9.B.II.(a). CTM's wide MFNs were integral to its competitive strategy and reduced its incentives to respond to rivals

- 9.85 The CMA has found, as described in Section 8.A.II, that CTM's wide MFNs were integral to its competitive strategy and effective in achieving its objectives. CTM's network of wide MFNs strengthened its competitive position by ensuring it was not undercut by rival PCWs, helping it maintain growth in commission fees. Because CTM considered that its network of wide MFNs was integral to its competitive strategy and effective in achieving its objectives, it had reduced incentives to respond to the pricing strategies of its rivals by investing in attracting the lowest priced quotes (for example, by reducing its commission fees). Indeed, the more important and more effective CTM considered its network of wide MFNs to be in achieving its objectives, the greater the reduction in CTM's incentives to respond to the pricing strategies of its rivals.
- 9.86 The evidence supporting this finding is set out in Section 8.A.II. In summary:
- (a) As set out in Section 8.A.II.(a), CTM's contemporaneous internal documents on the potential implications of a ban on the use of wide MFNs in private motor insurance show that, at that time, CTM considered that its wide MFNs were integral to its competitive strategy and effective in achieving its objectives. In particular these documents show that at the relevant time CTM believed that its network of wide MFNs helped it to secure the lowest prices on its platform and reduced the need for it compete on price by lowering its commission fees.¹²⁹⁵ For example, such documents record concerns at a senior level that, in the absence of the wide MFNs, insurance providers would offer '*lower premiums to [CTM's] competitors*' and engage in '*differential pricing across PCWs*' in private motor insurance, leading to '*attempts [by insurers] to drive competition among PCWs*' and '*increased resistance to [commission fee] increases*'.¹²⁹⁶ The documents also show the impact of the removal of wide MFNs in private motor insurance on CTM's competitive strategy and that it had previously '*relied more on wide MFNs*', rather than lowering commission fees.¹²⁹⁷ Moreover, BGL's submissions to the CMA in the PMI Market Investigation and

¹²⁹⁵ As set out in paragraph 8.15, although they were created in the context of the CMA's PMI Market Investigation, these documents are relevant as they, in particular, reflect CTM's common objectives in introducing and using wide MFNs across all insurance products up until the PMI Order 2015, namely balancing the need to secure the lowest prices whilst maintaining growth in commission fees. See Annex P where the CMA addresses BGL's reps on the use of these documents.

¹²⁹⁶ See paragraphs 8.18, 8.22 and 8.25.

¹²⁹⁷ See paragraph 8.29.

DCTs Market Study confirm that, before and during the Relevant Period, CTM considered that its wide MFNs were an integral part of its competitive strategy.¹²⁹⁸

- (b) As set out in Section 8.A.II.(b), CTM's decision, following detailed internal consideration, to retain wide MFNs for products other than private motor insurance (including home insurance) demonstrates that CTM's wide MFNs were an integral part of CTM's competitive strategy and that it regarded them as effective in achieving its objectives. CTM's internal documents clearly indicate it was aware of the legal risks of retaining wide MFNs across other products.
- (c) As set out in Section 8.A.II.(c), despite increasing pressure, CTM resisted requests from providers (including large providers such as [HIP], [HIP] and [HIP]) for wide MFNs to be removed from their contracts. This also demonstrates that CTM regarded its network of wide MFNs as an integral and effective part of its competitive strategy in home insurance.

9.B.II.(b). CTM's systematic monitoring and enforcement of its wide MFNs reduced its incentives to respond to rivals

- 9.87 The CMA has found that CTM systematically monitored compliance and took enforcement action during the Relevant Period.¹²⁹⁹ Such monitoring and enforcement action was effective in securing compliance with its wide MFNs, which reduced its need, and therefore its incentives, to respond to its rivals by competing on the merits to attract the lowest price (for example, by reducing its own commission fees). CTM's systematic monitoring and enforcement of its wide MFNs also demonstrates the importance CTM placed on having wide MFNs in its agreements with providers, as well as the importance to CTM of ensuring compliance by providers with their contractual obligations not to offer prices on other PCWs that undercut CTM.¹³⁰⁰
- 9.88 As described in Section 8.A.II.(d) and 8.B.III, CTM systematically monitored the prices providers were offering on other PCWs and, more specifically, whether providers were offering lower prices on other PCWs.¹³⁰¹ When a

¹²⁹⁸ For example, BGL expressed the view to the CMA that without wide MFNs, providers could charge higher prices on the 'most popular' PCWs, with the most popular PCW in home insurance at that time (2017) being CTM. See paragraph 8.32.

¹²⁹⁹ See Sections 8.A.II.(d). and 8.B.III.

¹³⁰⁰ See Section 8.A.II.(d).

¹³⁰¹ CTM also typically monitored the prices offered to consumers on providers' online direct channels for the purpose of ensuring providers complied with its narrow MFNs, see paragraphs 5.172.

pricing difference outside of CTM's compliance tolerance threshold was identified (i.e. when CTM's systematic monitoring meant '*discrepancies were noticed, in particular on trends, with the consequence that quotes on CTM were less competitive*'), CTM contacted the relevant insurance provider to identify the reason for the apparent higher prices on its platform.¹³⁰² In particular, providers were provided with data extracts identifying periods in which the data suggested that they had priced lower on a rival PCW.¹³⁰³ This was frequently sufficient to secure compliance: BGL stated that '*[v]ery often as a result of these informal contacts the problem is resolved*'.¹³⁰⁴

- 9.89 As described in Section 8.B.III, CTM escalated its enforcement action where it identified that home insurance providers were not complying with its wide MFNs and the matter was not resolved.¹³⁰⁵ In particular, CTM escalated its enforcement action with six providers during the Relevant Period, referring specifically to the provider's contractual obligations under CTM's wide MFN clause, in order to resolve the concerns (in one instance this included threatening delisting).¹³⁰⁶
- 9.90 As set out below, these episodes of escalated enforcement action show that CTM was able to use its wide MFNs to prevent it being put at a competitive disadvantage such that it could free-ride on other PCWs' investments and maintain higher commission fees. Accordingly, CTM's incentives to respond to its rivals by making investments (for example, reducing its commission fees) were reduced because it instead relied on its wide MFNs to avoid being undercut on other PCWs.
- 9.91 First, as described in Section 8.B.III.(b).(i) and Section M.I of Annex M, CTM was able to use its wide MFN to free ride on the investment made by [X] to secure the best price from [HIP] (which accounted for over [X] [0-5%] of PCW sales in 2017). Specifically, [HIP] engaged in a promotional deal with [X] in [X] and this deal involved [HIP] reducing its price by [X] on [X] in return for [X] including the deal in its [X].¹³⁰⁷
- 9.92 CTM then took steps to enforce its wide MFN against [HIP] and in doing so was able to secure three price discounts from [HIP] (two in home insurance and one in motor insurance) without having to invest anything to secure these discounts (ie these were self-funded by [HIP]). [HIP] told the CMA that

¹³⁰² See paragraph 8.117.

¹³⁰³ See paragraph 8.117.

¹³⁰⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 188.

¹³⁰⁵ See paragraph 8.121 and Section 8.B.III.(b).

¹³⁰⁶ See paragraph 8.121 and Section 8.B.III.(b).

¹³⁰⁷ [X]

‘Comparethemarket received their first equivalent discount on Home Insurance in [X] achieving [X] from [HIP] without the significant investment towards marketing the Exclusive Deal [undertaken by [X]]’ (emphasis added).¹³⁰⁸

- 9.93 Second, as described in Section 8.B.III.(b).(iii) and Section M.III of Annex M, CTM was able to use its wide MFN to ensure that [HIP] (which accounted for less than 1% [X] of sales made through PCWs in 2017) did not reflect CTM’s higher commission fees by quoting higher prices on CTM than other PCWs. Specifically, having previously engaged in uniform pricing, [HIP] in [X] applied a temporary increase of £[X] on its quotes on CTM in home insurance to reflect CTM’s higher commission fees. This meant that the prices quoted by [HIP] on CTM were higher than those on other PCWs (and was based on [HIP]’s erroneous belief that the PMI Order 2015 removed wide MFNs across all insurance products).
- 9.94 CTM then took steps to enforce its wide MFN against [HIP]. [HIP] told the CMA that as a direct result of the action by CTM described in section 8.B.III.(b).(iv) and Annex M, it removed the £[X] price increase on CTM and *‘continued to price consistently across all PCWs for Home Insurance.’*¹³⁰⁹
- 9.95 Therefore, CTM was able to use its wide MFN with [HIP] to ensure that the higher commission fee it charged [HIP] compared to other PCWs did not lead to CTM being put at a competitive disadvantage on price by [HIP].
- 9.96 Third, as described in Section 8.B.III.(b).(v) and Section M.IV of Annex M, CTM enforced its wide MFN to ensure that it was not put at a price disadvantage by [HIP] (which accounted for approximately [X] [5-10%] of sales made through PCWs in 2017). Specifically, in [X], [HIP] engaged in a promotional deal with [X] such that it was quoting a lower price on [X] than on CTM.
- 9.97 When CTM observed that [HIP] was quoting lower prices on [X] than on CTM it took steps to enforce its wide MFN against [HIP]. In particular, CTM threatened to delist [HIP] from its panel of insurance providers if [HIP] did not comply with CTM’s wide MFN. As a result of the delisting threat, [HIP] cut short its promotional deal with [X] and reduced its prices by 1% on CTM, at its own cost, to comply with CTM’s wide MFN.¹³¹⁰

¹³⁰⁸ URN 5080, [HIP]’s response to section 26 notice dated 24 November 2017, question 10.

¹³⁰⁹ This is supported by CTM’s snapshots, see Annex M, Section M.III. URN 9174, [HIP]’s response to section 26 notice dated 24 June 2019, question 10.

¹³¹⁰ See paragraph 8.152 and Annex M, Section M.IV.

9.98 These escalated enforcement episodes are also consistent with the CMA's finding that there was widespread compliance by the relevant providers with CTM's wide MFNs (as described in Section 8.B.II) including evidence obtained by the CMA from providers confirming that CTM's wide MFNs enabled CTM to secure the lowest (or joint lowest) prices and maintain its commission fees without having to invest. In particular, as described in Section 8.B.II.(b):

- (a) Evidence from [HIP] (which accounted for nearly [REDACTED] [10-20%] of sales made through PCWs in 2017) shows that due to CTM's wide MFN, any increase in CTM's commission fee during the Relevant Period would not have led to CTM being put at a competitive disadvantage on price. Specifically, [REDACTED], a [HIP employee] explained to a CTM relationship manager that [HIP] would have to pass on CTM's proposed commission fee increase of 5-10% [REDACTED]% to policyholders '[REDACTED]'.¹³¹¹ A subsequent internal [HIP] email exchange including with [Senior Executive, HIP], states that *'they won't back off from MFN so expect us to either absorb this cost or to pass onto customers across the whole market, instead of just them.'*¹³¹²
- (b) Evidence from [HIP] (which accounted for over [REDACTED] [0-5%] of sales made through PCWs in 2017) shows that due, at least in part, to CTM's wide MFNs any increase in commission fee by CTM during the Relevant Period would not have led to CTM being put at a competitive disadvantage on price. Specifically, [HIP] explained to the CMA that *'[o]perating under wide MFNs has meant that variability in commission by PCW has not been accounted for at the channel level, but at the product portfolio level.'* [HIP] went on to explain that this means commission fees *'can be increased by PCWs [with wide MFNs] knowing that the prices offered to their consumers will not be adversely impacted relative to other PCWs. Essentially this is tantamount to removing competition between PCWs in respect of price'* [emphasis added].¹³¹³
- (c) Evidence from [HIP] (which accounted for over [REDACTED] [0-5%] of sales made through PCWs in 2017) shows that due to CTM's wide MFNs any increase in commission fees by CTM during the Relevant Period would

¹³¹¹ URN 5719, [HIP]'s response to section 26 notice dated 24 November 2017, question 21, email chain entitled 'RE: [HIP] Pet Commercials'.

¹³¹² URN 5716, [HIP]'s response to section 26 notice dated 24 November 2017, question 21, internal email between [Employee, HIP], [Senior Executive, HIP] and [Employee, HIP] entitled 'CTM CPA update in readiness for our meeting at 11', dated 2 July 2017.

¹³¹³ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

not have led to CTM being put at a price disadvantage. Specifically, [HIP] explained that CTM's wide MFN has meant that '*pricing could not be lower for any other PCW which restricted [HIP]'s ability to provide any kind of offer that allowed the option to pass savings onto customers*'.¹³¹⁴ Therefore, its pricing model used a '*predicted PCW factor that allows [HIP] to price to consistent levels across the PCWs*'.¹³¹⁵

9.B.II.(c). CTM's broader competitive strategy shows it had a reduced incentive to compete on retail prices by investing in attracting the lowest price

- 9.99 CTM's reduced incentive to respond to the pricing strategies of its rivals by investing in attracting the lowest priced quotes is also reflected in its broader commercial strategy. CTM did not engage in promotional deals during the Relevant Period, but relied primarily on its wide MFNs to secure lower prices and supplemented these with measures that were less effective and lower cost than promotional deals as a means of incentivising providers to quote lower prices (i.e. volume-based discounts). In addition, since it stopped enforcing its wide MFNs, CTM has entered into at least five promotional deals.
- 9.100 As described in Section 7.C.II.(d).,¹³¹⁶ during the Relevant Period, CTM did not agree any promotional deals with providers in home insurance.¹³¹⁷ Rather, as described in Section 8.A.II.(a). CTM believed that its network of wide MFNs helped it to secure the lowest prices on its platform, reducing the need for it compete with other PCWs by lowering its commission fees.
- 9.101 For example, CTM stated in an internal presentation from August 2017 (considering the result of a trial promotional deal in motor insurance) that, rather than discounting commission fees, it had '*chosen*' previously to rely on wide MFNs to obtain lowest prices as it did not want to reduce profitability¹³¹⁸ or start a commission fee '*discounting war*'.

¹³¹⁴ URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 19.

¹³¹⁵ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16.

¹³¹⁶ See paragraphs 7.102 to 7.104.

¹³¹⁷ As set out in Section 8.B.III.(b).(i), [HIP] agreed to offer three price discounts on CTM (two in home insurance and one in motor insurance, however, the CMA has not classified the one price discount that occurred as a promotional deal as [HIP] agreed to provide the price discounts '*under a level of duress*' following enforcement action taken by CTM and CTM did not contribute towards this price discount such that it was self-funded by [HIP]. See paragraph, 8.125 to 8.129. URN 9153, [HIP]'s response to section 26 notice dated 19 June 2019.

¹³¹⁸ Which BGL considered to be likely given the high level of single homing by CTM customers. See URN 1965, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q17 Pricing parity results v3 [Autosaved]_Redacted', slide 2.

- 9.102 In contrast, since it stopped enforcing its wide MFNs, and despite BGL maintaining that promotional deals are not attractive to PCWs¹³¹⁹ or to providers¹³²⁰, it has entered into promotional deal discussions with several providers and has entered into at least five such deals with both large and small providers in home insurance.
- 9.103 In particular, in June 2019, CTM told the CMA that it had agreed promotional deals in home insurance with two large providers ([HIP] and [HIP]) and had proactively approached other providers with the possibility of agreeing promotional deals in home insurance, including [HIP], [HIP] and [HIP], all three of which had wide MFNs in the Relevant Period.¹³²¹ In addition, the CMA is aware that CTM agreed several further promotional deals in home insurance in early 2020 as can be seen in Figures 9.2, 9.3 and 9.4.¹³²² This

¹³¹⁹ As set out in Section 7.C.II.(d) and Annex K, during and since the end of the Relevant Period (including in representations made as part of this case) BGL has raised concerns about promotional deals including that it has limited confidence that providers would pass the commission fee reduction into lower retail prices. BGL's internal documents confirm CTM's view that it did not consider promotional deals to be a viable strategy for itself, this is in contrast to its view that its rivals would use this strategy – as set out in Section 8.A.II.(a). In terms of BGL's internal documents one presentation on the impact of promotional deals states that CTM would only break-even on a deal if it co-funded '[X]'. Similarly, an internal email dated 11 October 2016 from [Employee 8, CTM] to [Employee 1, CTM] and [Employee 2, CTM] (copying in [Employee 12, CTM]) stated that *'we firmly believe that co funding does not work because you need to sell such a large number of incremental policies just to cover the discounts on the policies they would have sold anyway'*. In addition, an internal presentation on the impact of the ban on wide MFNs in motor insurance raises such profitability concerns as it states that CTM has previously trialled *'CPA discounting'* and *'[i]n all instances the outcome has been negative for CTM with the incremental income from new sales not covering the discount given on existing sales.'* This presentation also stated that in the PMI Market Investigation the CMA had not substantiated its assumption that commission fee reductions would be passed on to consumers through lower prices. URN 3027, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Impact of Brand Exclusivity', pages 1 to 3; URN 3446, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee 8, CTM], [Employee 1, CTM] and [Employee 2, CTM] ([Employee 12, CTM] in copy) entitled 'Re: Pricing Parity trial deck for 11am', dated 11 October 2016, page 2; URN 3139, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Impact of ban on Wide MFN', pages 3 and 6.

¹³²⁰ For example, URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 181.

¹³²¹ URN 9227, BGL's response to a follow up question to section 26 notice dated 10 May 2019, Annex 16A document entitled 'Cases 50505 presentation referred to in Annex 16A' and URN 9247, BGL's response to follow up questions to section 26 notice dated 10 May 2019, Annex 24; URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 4; URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 5(a)(i).

¹³²² BGL submitted that as these screenshots are almost two and a half years after the Relevant Period they are irrelevant to whether these providers were interested in agreeing promotional deals during the Relevant Period and the impact of CTM's decision to stop enforcing its wide MFNs. BGL also submitted that some of the providers did not have wide MFNs in place during the relevant period so it is not clear any price reduction would have been inhibited by CTM's wide MFN. As set out in Annex Q, the CMA disagrees and considers it is more appropriate to focus on a longer period of time rather than a short time period as suggested by BGL. In this instance, these screenshots are informative of what would have occurred in the counterfactual as they are consistent with other evidence that shows that since CTM stopped enforcing its wide MFNs its appetite for promotional deals has increased. In addition, the fact CTM has agreed another promotional deal with [HIP] is not consistent with its statement that its previous deal was a *'flop'* (see paragraph 1.9.105). URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraphs 44 and 45.

included deals with providers that were subject to wide MFNs during the Relevant Period ([HIP] and [HIP]).^{1323, 1324}

Figure 9.2: Screenshot of a promotional deal between CTM and [HIP]

[REDACTED]

Source: URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED].

Figure 9.3: Screenshot of a promotional deal between CTM and [HIP]

[REDACTED]

Source: URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED].

Note: CTM had a promotional deal with [HIP]'s [REDACTED].

Figure 9.4: Screenshot of a promotional deal between CTM and [HIP]

[REDACTED]

Source: URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED].

9.104 While BGL has submitted that it does not consider its agreement of promotional deals after the Relevant Period as a '*significant or sustained change in its competitive strategy*',¹³²⁵ the CMA considers that it is highly relevant that CTM has had discussions with several providers and entered into at least five promotional deals following removal of its wide MFNs. Such behaviour is consistent with CTM's wide MFNs having reduced the need and incentives for CTM to invest to secure the lowest prices across PCWs in the Relevant Period. It is also consistent with CTM's own views expressed internally at the potential impact a ban on the use of wide MFNs in private motor insurance that removal of wide MFNs would have on its competitive position, as well as its objective in imposing wide MFNs.¹³²⁶

¹³²³ The CMA is aware that CTM has agreed three promotional deals during 2020 based on screenshots of CTM's website. This includes deals with [HIP], [HIP] and [HIP]. URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED]; URN 10561, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED].

¹³²⁴ BGL submitted that the deals agreed by [HIP] and [HIP] do not support the CMA's case as these providers stated that they considered their wide MFNs null and void/otherwise did not apply and [HIP] agreed a promotional deal during the Relevant Period. As set out in paragraph 4.27, the CMA considers that the clauses in the contracts between BGL and both [HIP] and [HIP] should be treated as wide MFNs, and therefore included in the assessment of effects of CTM's network of wide MFNs. In addition, the CMA disagrees with BGL and considers these screenshots are informative of what would have occurred in the counterfactual as they are consistent with other evidence that shows that since CTM stopped enforcing its wide MFNs its appetite for promotional deals has increased. URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 46, first bullet.

¹³²⁵ BGL stated that its preference remains for volume-based discounts over promotional deals because it '*considers that these are more likely to result in actual cost savings being passed on to customers, as opposed to being absorbed by [home insurance providers]*.' URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 18(a)(i).

¹³²⁶ See section 8.A.II, paragraphs 8.8 to 8.13 and section 8.A.II.(a).

- 9.105 Further, while BGL has stated that at least one of the two deals agreed in 2019 was ‘a flop’,¹³²⁷ this has not deterred CTM from agreeing further promotional deals in 2020, including a further deal with the provider [HIP] whose previous deal was said to be ‘a flop’.
- 9.106 Finally, that CTM had a reduced incentive to respond to the price strategies of its rivals by investing in attracting the lowest priced quotes is also reflected in the fact that it used volume-based discounts in home insurance during the Relevant Period and not, like its rivals, promotional deals.
- 9.107 As described in Section 7.C.II.(d),¹³²⁸ volume-based discounts involved a smaller investment in terms of commission fee reduction by CTM than promotional deals as the reduction only applied to a provider’s sales over a certain target, rather than all sales. In addition, and contrary to BGL’s submissions,¹³²⁹ volume-based discounts were a less effective means of securing a lower retail price from a provider when compared to promotional deals because promotional deals involved providers reducing the retail price they quoted on the relevant PCW (see Section 7.E).¹³³⁰
- 9.108 BGL has submitted that CTM offered more volume-based discounts before it stopped enforcing its wide MFNs which suggests that CTM’s wide MFNs did not reduce CTM’s incentives to compete.¹³³¹ The CMA disagrees.

¹³²⁷ BGL stated that the promotional deal with [HIP] was inconclusive as while the deal coincided with an improvement in the relevant brand’s performance (in terms of sales and its appearance as the top result), this upward trend ‘*was already in train several months before the promotional deal started*’ and the improvement levelled off during the deal and declined after the deal. BGL also submitted that the provider appeared to fund this deal by increasing prices on its other brands (see Section 7.E for a discussion of the impact of retail prices on promotional deals). BGL stated that the promotional deal with [HIP] ‘*did not appear to produce promising results at all; it was a flop*’. BGL said that this was because the relevant brands ‘*both declined against peers in terms of top of screen and sales performance throughout the trial, which then only stabilised once the deal had ended.*’ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 308 and 309. The CMA notes that BGL has not provided any evidence in support of these statements.

¹³²⁸ See paragraph 7.105 and 7.106.

¹³²⁹ For the length of these volume-based discounts, CTM only reduced its commission fee on sales made by a provider that were above a certain threshold, rather than all sales made by the provider as in most promotional deals. Further, volume-based discounts were structured to incentivise the provider to lower its retail price on CTM (to achieve the threshold and benefit from the lower commission fee), but there was no agreed reduction in the retail price as with a promotional deal. This means that the volume-based discounts agreed by CTM had a lower impact on the revenue it generated from commission fees (when compared to a promotional deal), but also had a lower likelihood of a provider lowering its retail price on CTM. In this regard, the CMA has received evidence from six providers which suggests that on several occasions they did not lower their retail prices on CTM during the volume-based discount period (see paragraph 7.106), which contrasts with the evidence that promotional deals typically led to a reduction in retail prices on the PCW relative to other PCWs, see Section 7.E and Annex J.

¹³³⁰ URN 8872, BGL’s response to section 26 notice dated 10 May 2019, question 18(a)(i).

¹³³¹ The CMA understands that CTM agreed 14 volume based discounts during the 24 months of the Relevant Period and that it agreed up to two in the 13 months after it stopped enforcing its wide MFNs (December 2017 to December 2018) – Data provided by BGL shows that one volume-based discount was in place in each of November 2017, December 2017 and January 2018, and it is not clear if this represents one volume-based discount that started in November 2017 and lasted for three months, or two to three separate volume-based discounts. As the Relevant Period ended in November 2017, the former would imply that no volume-based discounts were agreed in the 13 months after CTM stopped enforcing its wide MFNs, whereas the latter would

- 9.109 First, the CMA does not consider that CTM had no incentive to compete on retail prices during the Relevant Period and therefore had no incentive to agree volume-based discounts. Rather, as set out above, the CMA considers that CTM had a reduced incentive to compete on retail prices.
- 9.110 Second, that CTM had a reduced incentive to compete on retail prices is supported by the fact that CTM has agreed promotional deals since it stopped enforcing its wide MFNs, but only agreed volume-based discounts during the Relevant Period. In particular, volume-based discounts involve a smaller investment in terms of commission fee revenue by the PCW and were less likely to lead to a reduction in the provider's price (see Section 7.C.II.(d)).¹³³² Figure 10.2 in the Third Oxera report also shows that CTM reduced the number of volume-based discounts from July 2017, which was two months before the CMA launched this Investigation and four months before CTM's decision not to enforce its wide MFNs. Therefore, it is not clear how the two events are linked and whether CTM was planning to reduce its use of volume-based discounts anyway.¹³³³
- 9.111 The fact that, during the Relevant Period, CTM only used a less effective and lower cost means of incentivising a lower price from providers when compared to its rivals, as well as its change in approach since the Relevant Period, is consistent with CTM's wide MFNs having reduced the need and incentives for CTM to invest to secure the lowest price across PCWs.

9.B.II.(d). Conclusion on the reduced incentives of CTM to compete on retail prices

- 9.112 Based on the above assessment, the CMA finds that, during the Relevant Period, CTM's network of wide MFNs appreciably reduced CTM's incentives to compete on the merits with its rivals for lower retail prices, particularly from providers with wide MFNs (for instance, by lowering commission fees), since it could rely primarily on its wide MFNs to ensure it had the lowest (or equal lowest) prices. By appreciably restricting the ability of CTM's rival PCWs to expand because they could not gain a competitive price

imply that either one or two volume-based discounts were agreed in this period. The reduction in the number also holds when considering comparable periods as the number of volume-based discounts agreed during the Relevant Period ranges from six volume-based discounts in the 13 months from November 2016 to November 2017 to ten volume-based discounts from January 2016 to January 2017). See URN 10460 Fourth Oxera report dated 14 February 2020, paragraphs 7.5 and 7.10, bullet (iv); URN 8484.3, Third Oxera Report dated 22 February 2019, figure 10.2; URN 1975, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q18 – VBD history'; URN 8502.10, BGL's response to the SO dated 22 February 2019, spreadsheet entitled '10 CTM's volume base discounts'.

¹³³² See paragraphs 7.105 and 7.106.

¹³³³ URN 8484.3, Third Oxera Report dated 22 February 2019, figure 10.2 and URN 10460, Fourth Oxera report dated 14 February 2020, paragraph 7.5.

advantage, CTM's network of wide MFNs enabled CTM to maintain or strengthen its market power.

9.B.III. Conclusion on the reduction of price competition between providers competing on PCWs

9.113 Based on the above assessment, the CMA finds that, during the Relevant Period, CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting competition between PCWs, by reducing price competition between PCWs and restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power.

9.114 Compared to the counterfactual (i.e. in the absence of contractual restrictions on pricing across PCWs), price competition between PCWs, which was an important dimension of competition, was reduced during the Relevant Period because:

- (a) Rival PCWs competing with CTM:
 - (i) Were restricted in their ability to engage in competitive strategies that would have resulted in providers accounting for approximately 40% of sales made through PCWs¹³³⁴ pricing lower on their websites than on CTM because those providers were (as described above in Section 9.A.) themselves prevented from participating in such strategies by CTM's network of wide MFNs.
 - (ii) Had reduced incentives to compete for lower retail prices from providers accounting for approximately 40% of sales made through PCWs even where relevant providers would have been willing to lower their prices on the rival PCW. This is because the relevant provider would, as a result of the wide MFN, have had to offer the same lower price to CTM such that the rival PCW would not have secured a competitive advantage over CTM, which was by far their largest rival with a market share of over 50%.
- (b) CTM itself had reduced incentives to compete on the merits with its rivals for lower retail prices from providers with wide MFNs (for instance, by lowering commission fees), since it could rely primarily on its wide MFNs to ensure it had the lowest prices.

¹³³⁴ See section 8.C for the CMA's findings on the market coverage of CTM's network of wide MFNs.

9.115 The CMA considers that the effect of CTM's network of wide MFNs on competition between PCWs was appreciable for the reasons summarised in Section 9.D.

9.C. CTM's wide MFNs reduced price competition between providers competing on PCWs

9.116 In addition to finding that CTM's network of wide MFNs restricted competition between PCWs, the CMA also finds that CTM's network of wide MFNs had (when compared to the competitive situation that would have existed in its absence)¹³³⁵ the appreciable effect of reducing price competition between all home insurance providers competing on PCWs.

9.117 All providers competing on PCWs would have been under greater competitive pressure to compete on price in the absence of CTM's network of wide MFNs. Because providers with wide MFNs (which accounted for approximately 40% of sales made through PCWs) competed less strongly on price during the Relevant Period, other providers were subject to less competitive pressure and therefore also competed less strongly than would have been the case in the absence of CTM's network of wide MFNs.

9.118 By preventing providers subject to wide MFNs from offering lower prices on rival PCWs than on CTM during the Relevant Period, CTM's network of wide MFNs reduced the ability and incentives of providers with wide MFNs to engage in differential pricing (as described in Section 9.A), which meant that providers accounting for approximately 40% of sales made through PCWs competed less strongly on retail prices on PCWs than in the absence of CTM's wide MFNs.

9.119 As a result, the competitive pressure on providers without wide MFNs was reduced. The reduction in the competitive pressure from providers subject to wide MFNs meant these other providers needed to compete less strongly on price than would have been the case in the counterfactual. This in turn will have further reduced the competitive pressure on the providers subject to wide MFNs. Further, although not necessary for the CMA's findings, the CMA considers that the effects of CTM's network of wide MFNs in (i) restricting competition between PCWs and (ii) restricting competition between providers competing on PCWs are likely to have reinforced each other.

¹³³⁵ As set out in paragraph 6.2, the CMA finds that in the likely and realistic counterfactual CTM would only have had narrow MFNs, as the other Big Four PCWs did, instead of its network of wide MFNs.

- 9.120 As price is an important parameter of competition between providers competing on PCWs, the reduction of price competition between providers competing on PCWs was such that negative effects on the retail prices offered by providers on PCWs in the Relevant Period can be expected with a reasonable degree of probability. In the absence of CTM's network of wide MFNs, providers subject to wide MFNs would have had materially greater ability and incentives to compete on price on PCWs by differentiating their prices across PCWs. In turn, other providers would have been under greater pressure to respond to price competition from providers subject to wide MFNs.
- 9.121 Therefore, the CMA finds that because CTM's wide MFNs had the appreciable effect of reducing price competition between providers competing on PCWs during the Relevant Period compared to the counterfactual, CTM's network of wide MFNs is likely to have resulted in higher retail prices.
- 9.122 The CMA sets out below its assessment of the effects of CTM's network of wide MFNs on competition between providers compared to the counterfactual absent CTM's network of wide MFNs, first explaining the effect of CTM's wide MFNs in reducing the competitive pressure from providers subject to wide MFNs during the Relevant Period (see Section 9.C.I.) and, second, setting out how the behaviour of all providers since CTM stopped enforcing its wide MFNs supports the finding that CTM's wide MFNs reduced competitive pressure on all providers during the Relevant Period (see Section 9.C.II.).

9.C.I. *The reduction in competitive pressure from providers subject to CTM's wide MFNs during the Relevant Period*

- 9.123 By preventing providers subject to wide MFNs from offering lower prices on rival PCWs than on CTM during the Relevant Period, CTM's network of wide MFNs reduced the ability and incentives of providers with wide MFNs to price differentiate (as described in Section 9.A), which meant that providers accounting for approximately 40% of sales made through PCWs competed less strongly on retail prices on PCWs than in the absence of CTM's wide MFNs. Further, the restriction of price competition between PCWs (as described in Section 9.B) also reduced the ability and incentive of PCWs to invest in securing lower prices from the significant proportion of providers subject to CTM's wide MFNs.
- 9.124 The CMA has found that retail prices were a particularly important dimension of competition between providers competing through PCWs during (and

after) the Relevant Period, as described in Section 7.D.I. It is clear that the price strategies employed by one provider are responsive to the pricing strategies of other providers. Providers monitored their rankings on PCWs relative to their competitors as well as the retail prices or promotional activities of their competitors. Most providers responded to competitive dynamics, including a worsening of their rankings on PCWs, by adjusting their retail pricing to maintain a competitive position.

- 9.125 As described in Section 7.D.II, when competing on retail prices providers adopted a variety of strategies during (and after) the Relevant Period including the use of differential pricing. Promotional deals in particular were used by providers tactically, were effective at lowering a providers' retail prices and generally led to an improvement in rankings on the relevant PCW with the promotional deal.
- 9.126 This impact on prices and ranking means that providers compete more strongly when they engage in promotional deals. As such, the use of promotional deals by one group of providers increases the competitive pressure on other providers (with or without wide MFNs) on the relevant PCW thereby increasing competition between all providers on price.
- 9.127 As set out in Section 9.A, the CMA has found that, during the Relevant Period and when compared to the counterfactual, CTM's network of wide MFNs restricted the ability of and reduced the incentives on providers subject to CTM's wide MFNs to compete on price by differentiating their prices across PCWs. The CMA has also found that those providers engaged less in less differential pricing across PCWs (including promotional deals with CTM's rival PCWs), compared to the counterfactual of no contractual restrictions on pricing across PCWs.¹³³⁶
- 9.128 As outlined above in paragraph 9.118, this meant that providers making up a significant proportion of the market competed less strongly on retail prices, a particularly important dimension of competition between providers competing on PCWs (as described in Section 7.D.I). This finding, and the evidence in Section 9.A that underpins it, is supported by the views expressed by three of the largest providers subject to CTM's wide MFN (together accounting for approximately 18% of sales made through PCWs) on the impact of those clauses on their ability and incentives to respond to competitive pressures from other providers:

¹³³⁶ See Section 9.A above.

- (a) one provider subject to a wide MFN ([HIP]) stated that:¹³³⁷

'A barrier which had the potential to impede market pricing by channel was the wide MFN. If [HIP] [the provider] experienced a short-term change in competitiveness on one particular PCW, then if that PCW was not CTM, [HIP] [the provider] would be unable to take specific PCW pricing action without having to also make the same rate change on CTM. This was a suboptimal position if the same competitive pressures were not experienced on CTM during this period.'

- (b) one provider subject to a wide MFN [HIP] told the CMA that:¹³³⁸

'[HIP]'s ability to compete with other [home insurance providers] on premium based promotional deals is restricted by Wide MFN clause and this may not be the case for other [providers] in the market. Because of the Wide MFN clauses in place in the Comparethemarket.com contract, [HIP] [the provider] has not been able to react as fully as another provider without these restrictions in place.'

- (c) in March 2015, the [HIP employee] for one provider subject to a wide MFN stated in an internal email that:^{1339, 1340}

'we know that by keeping the wide MFN clause and taking an increase in [commission fee], we will be worse off compared to our competitors as we have to both keep prices aligned and take a [commission fee] increase. We know that two of our main competitors, [HIP] and [HIP] do not have wide MFN clauses in their agreement, and as a result our position is being harmed on the other aggregator sites as we are unable to compete. [...] Once the wide MFN clause is removed we will reconsider taking an increase in [commission fees].'

¹³³⁷ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9(c).

¹³³⁸ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(c).

¹³³⁹ URN 5714, [HIP]'s response to section 26 notice dated 24 November 2017, question 21.

¹³⁴⁰ This email was sent in the context of commission fee negotiations relating to pet insurance. However, [HIP]'s agreement with CTM related to both pet and home insurance, such that the discussion of the wide MFN in this email is relevant to both pet and home insurance. Further, [HIP] confirmed that its views on the impact of CTM's wide MFN did not differ between home and pet insurance. URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 6, paragraph 29.

9.C.II. Behaviour of providers after the Relevant Period supports the finding that CTM's wide MFNs reduced competitive pressure on all providers

9.129 The CMA's finding that CTM's wide MFNs reduced the competitive pressure on, and therefore competition on retail prices between, all providers is also supported by the evidence about the behaviour of providers since CTM stopped enforcing its wide MFNs.

9.130 In particular, more providers have agreed promotional deals and more promotional deals have been agreed by providers since CTM stopped enforcing its wide MFNs.¹³⁴¹ This is the case both for providers subject to wide MFNs, as the CMA has found in Section 9.A.III.(b)., and for providers without wide MFNs, as set out in the following paragraphs, demonstrating an increase in price competition between *all* providers since CTM stopped enforcing its wide MFNs.

9.131 In relation to providers without wide MFNs,¹³⁴² Table 9.4 shows (i) the number of promotional deals that were agreed by providers without wide MFNs and (ii) the number of providers without wide MFNs that agreed promotional deals. This is shown for periods of the same length to ensure comparability, comparing 19 months of the Relevant Period (January 2016 to July 2017) with the 19 months after CTM stopped enforcing its wide MFNs (December 2017 to June 2019).

Table 9.4: The number of promotional deals agreed by providers who were not subject to wide MFNs during the Relevant Period and the number of providers who were not subject to wide

¹³⁴¹ Consistent with this, Figure 9.1 above shows that the average number of promotional deals available in any given month has increased in the 19 months after CTM stopped enforcing its wide MFNs, especially when considering the period from October 2018 to June 2019.

¹³⁴² As set out in footnote 1203, brands owned and operated by BGL are not included in this group or the group of providers subject to wide MFNs.

MFNs during the Relevant Period agreeing promotional deals during and after the Relevant Period for comparable periods

	<i>Relevant Period Jan 16 to Jul 17 (19 months)</i>	<i>After the Relevant Period Dec 17 to Jun 19 (19 months)</i>
Number of promotional deals agreed	20 5 ¹³⁴³ (approx..28% of sales through PCWs)	29 10 ¹³⁴⁴ (over 40% of sales through PCWs)
Number of providers		

Source: CMA analysis of the Promotional Deals Dataset (see Annex J), URN 9859 MoneySuperMarket's response to follow-up questions to section 26 notice dated 8 November 2019; URN 6159, [HIP]'s response to section 26 notice dated 16 April 2018, question 8, document entitled 'CMA return slide pack Appendix 2', slides 9 to 18 and CMA analysis of the Commission Fees Dataset (see Annex D).

- 9.132 In relation to the number of promotional deals entered into by providers not subject to wide MFNs during the Relevant Period, Table 9.4 shows that, since CTM stopped enforcing its wide MFNs, providers without wide MFNs entered into more promotional deals in the 19 months from December 2017 to June 2019 (29) than during a comparable 19 months of the Relevant Period (20). This is consistent with evidence from Confused and GoCompare that since CTM stopped enforcing its wide MFNs they had observed that the number of deals had increased in home insurance, as described in paragraphs 9.67.
- 9.133 Table 9.4 also shows that the number of providers without wide MFNs that agreed promotional deals in the 19 months after the Relevant Period (10) was double the number that agreed such deals during a comparable 19 months of the Relevant Period (five). This is consistent with evidence from both MoneySuperMarket and Confused that the number of providers willing to agree deals has increased (see paragraph 9.63).
- 9.134 When compared to the Relevant Period, five new providers without wide MFNs agreed promotional deals in the 19 months after CTM stopped enforcing its wide MFNs. This includes three providers (accounting for over 12% of sales made through PCWs in 2017) that told the CMA they were not willing to engage in the deals on offer in home insurance during the Relevant Period. The fact that these providers have now engaged in promotional deals is consistent with them having a greater incentive to engage in such deals due to an increase in competition between providers on PCWs.

¹³⁴³ ([HIP], [HIP], [HIP], [HIP] and [HIP]). [HIP] (accounting for [X] (less than 1%) of sales through PCWs in 2017) agreed a deal during the Relevant Period, but this was in September 2017 so not included in the comparable periods being considered here.

¹³⁴⁴ ([HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP]).

9.135 In relation to the three providers that were not willing to engage in the deals on offer in home insurance during the Relevant Period, in the 19 months after CTM stopped enforcing its wide MFNs:

(a) [HIP] agreed five deals ([REDACTED])¹³⁴⁵ despite telling the CMA during the Relevant Period that generally it was unwilling to undercut its direct channel by setting a lower price on a PCW and that *'if [a promotional deal] was offered, [HIP] would have hesitations as it would mean disadvantaging direct [consumers] with a higher [retail price]'*.¹³⁴⁶

(b) [HIP] agreed 2 deals ([REDACTED])¹³⁴⁷ despite telling the CMA during the Relevant Period that after agreeing a trial promotional deal in [REDACTED] it *'decided as a strategy not to pursue Home Insurance [promotional deals]'* such that while PCWs frequently requested that [HIP] consider such deals during the Relevant Period [HIP] did *'not entertain these requests'*.¹³⁴⁸

(c) [HIP] agreed a deal [REDACTED] despite telling the CMA that during the Relevant Period *'[f]rom time to time, various PCWs will float the possibility of a co-funded [promotional deal] with [HIP], but none of the opportunities explored was considered by [HIP] to be sufficiently commercially attractive'*.¹³⁴⁹

9.136 This reflects the fact that, as set out in section 7.D.II, providers adopt a range of pricing strategies that evolve over time including in response to the competitive dynamics. In particular, two of these three providers told the CMA that they had changed behaviour since CTM stopped enforcing its wide MFNs in response to a change in the competitive dynamics of the market:¹³⁵⁰

(a) [HIP] explained that the deal gave it *'an opportunity to validate through a limited trial whether the commercial assessment of co-funded deals in the past continued to hold in the prevailing market conditions.'*¹³⁵¹ and

¹³⁴⁵ Promotional Deals Dataset (see Annex J).

¹³⁴⁶ URN 5160, [HIP]'s response to section 26 notice dated 24 November 2017, questions 5 and 18 and URN 1432, [HIP]'s response to the Update Paper in the DCTs Market Study dated 28 March 2017, questions 3 and 12.

¹³⁴⁷ The CMA is also aware that [HIP] had a promotional deal in place with [REDACTED] in [REDACTED] URN 10562, screenshots of quotes and promotional deals taken by the CMA from [REDACTED] website on [REDACTED], page 1 and URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

¹³⁴⁸ URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, questions 11 and 12.

¹³⁴⁹ URN 5111.1, [HIP]'s response to section 26 notice dated 24 November 2017, questions 13 and 19.

¹³⁵⁰ The third provider [HIP] stated that previously its strategy had been *'heavily focused toward Motor insurance'*, but that it had *'made sufficient progress with its household product capabilities to be able to consider these opportunities.'* URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

¹³⁵¹ URN 9666, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

- (b) [HIP] told the CMA that '[HIP] noted in 2018 an increasing opportunity to run Promotional Deals with PCW partners in return for a discounted cost per sale fee that increasingly its competitors were participating in. If [HIP] continued to choose not to participate this could lead to loss of market share and put us at a commercial disadvantage'.¹³⁵²

9.137 In addition, one of these two providers agreed a promotional deal with CTM and stated that, as CTM 'accounts for the majority of [its/ [HIP]'s] PCW new business volumes', CTM was a 'good environment' in which to test a promotional deal. This is consistent with wider usage of promotional deals by PCWs since the Relevant Period, in particular by CTM which is by far the largest PCW, encouraging more providers to agree promotional deals and thereby increasing competition between providers on PCWs.

9.C.III. Conclusion on competition between providers competing through PCWs

9.138 Based on the above assessment, the CMA finds that, by preventing providers subject to CTM's wide MFNs from offering lower prices on rival PCWs than on CTM during the Relevant Period, CTM's network of wide MFNs had (when compared to the competitive situation that would have existed in their absence)¹³⁵³ the appreciable effect of reducing price competition between all home insurance providers competing on PCWs.

9.139 The CMA considers that this effect was appreciable for the reasons summarised below in Section 9.D.

9.140 The effects of CTM's network of wide MFNs in (i) restricting competition between PCWs and (ii) restricting competition between providers competing on PCWs are likely to have reinforced each other:

- (a) As described in Section 9.B, the CMA has found that CTM's network of wide MFNs had the effect of reducing price competition between PCWs, reducing their ability and incentives to invest in attracting low retail prices from providers, including by engaging in promotional deals or otherwise lowering commission fees. The resulting reduction in differential pricing across PCWs by providers and increase in commission fees¹³⁵⁴ (by increasing providers' costs) are likely to have

¹³⁵² URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

¹³⁵³ As set out in paragraph 6.2, the CMA finds that in the likely and realistic counterfactual CTM would only have had narrow MFNs, as the other Big Four PCWs did, instead of its network of wide MFNs.

¹³⁵⁴ See paragraph 1.9.44.

reinforced the impact of the wide MFNs on competition between providers competing on PCWs.

- (b) As described in this Section, 9.C, the CMA has found that CTM's network of wide MFNs had the effect of reducing price competition between all providers competing on PCWs. This reduction in competitive pressure on providers meant they had lower incentives to engage in differential pricing than is likely to have been the case in the counterfactual, resulting in a reduction in the ability of PCWs to incentivise differential pricing from providers (including those without wide MFNs), reinforcing the impact of CTM's network of wide MFNs on competition between PCWs.

9.141 The CMA does not consider these reinforcing effects to be necessary for its findings that CTM's network of wide MFNs had the appreciable effects of reducing price competition between PCWs and reducing price competition between providers competing on PCWs. However, the way in which the effects are likely to have reinforced each other supports the CMA's findings by indicating how CTM's network of wide MFNs is likely to have had the further effect of restricting competition when compared to the counterfactual.

9.D. Appreciability of the effects on competition of CTM's network of wide MFNs

9.142 As set out in detail above, the CMA finds that, during the Relevant Period, CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting:

- (a) competition between PCWs, by reducing price competition and restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power (see Section 9.B. above); and
- (b) competition between providers competing on PCWs, by reducing price competition (see Section 9.C. above).

9.143 The evidence and findings that are relevant to the CMA's assessment of appreciability are set out throughout the Decision and form an intrinsic part of the CMA's overall assessment of the effects of CTM's network of wide MFNs.¹³⁵⁵ They are summarised in this sub-section.

¹³⁵⁵ As set out in Section 3, an agreement that restricts competition will fall within the Chapter I prohibition or Article 101(1) TFEU only if its effects on competition are appreciable. Appreciable in this context does not mean substantial; it means more than *de minimis* or insignificant. Accordingly, if an agreement is to fall within the scope

9.144 In summary, the CMA finds that the effects of CTM's wide MFNs in restricting competition in this way were appreciable and did *not* have only an '*insignificant effect on the market*' for the following reasons:

- (a) **Market position of CTM:** As set out in Section 5.E., the CMA has found that that CTM had a strong position in the market for the supply of PCW Services for Home Insurance in the UK during the Relevant Period, such that it had market power. In particular, CTM has had persistently high market shares since at least 2012 and its market share was more than 50% by volume throughout the Relevant Period.¹³⁵⁶ By way of comparison, this was significantly above the 15% threshold in the European Commission's De Minimis Notice and the 30% threshold in VABER.¹³⁵⁷ In addition, CTM is the only PCW to have consistently grown the volume of home insurance sold through its platform and commission fee revenue each year, with materially higher growth rates than all other PCWs throughout the Relevant Period (other than in 2016).¹³⁵⁸
- (b) **Market position of CTM's rival PCWs:** CTM's competitors in the market for the supply of PCW Services for Home Insurance collectively had a market share of less than 50% during the Relevant Period, with

of the prohibition it must have the object or effect of 'perceptibly' restricting competition. An agreement will fall outside the scope of the Chapter I prohibition or Article 101(1) TFEU if it has only an insignificant effect on the market, taking account of the weak position of the parties concerned. See: Article 101(3) Guidelines, paragraph 24; Vertical Guidelines, paragraph 97. The Office of Fair Trading, [Agreements and concerted practices](#) (OFT401), December 2004, adopted by the CMA Board, paragraph 2.15. See also, for example,: Case 5/69 Franz Völk v SPRL Ets J. Vervaecke [1969] ECR 295, paragraph 3; Case C-226/11, Expedia Inc v Autorité de la Concurrence, EU:C:2012:795, paragraph 17; North Midland Construction v The Office of Fair Trading [2011] CAT 14, paragraph 45; and Achilles Information v Network Rail [2019] CAT 20, paragraph 121 (judgment upheld by the Court of Appeal: Network Rail Infrastructure Limited v Achilles Information Limited [2020] EWCA Civ 323, judgment of 5 March 2020)).

¹³⁵⁶ As set out in Section 5.E.I including Figure 5.5, CTM also had a market share of more than 50% in 2017 when considering commission fee revenue ($\approx 1\%$) and the proportion of redirections ($\approx 1\%$). The CMA notes that a significant market share held by the parties to an agreement is sufficient proof that the agreement restricts competition to an appreciable extent. For example, the General Court has held that the fact that the parties to an agreement 'held almost 40 per cent of the relevant market is sufficient proof that the agreement ... is such as to restrict competition to an appreciable extent on that market. A market share of that size cannot reasonably be considered to be insignificant within the meaning of the case law' (see Case T-86/95, Compagnie Generale Maritime v the European Commission, EU:T:2002:50, paragraph 138). Similarly, in Ping Europe Limited v CMA [2020] EWCA Civ 13, the Court of Appeal referred, at paragraph 104, to the CMA's findings on Ping's market share and the fact that Ping had never put forward a defence based on lack of appreciable effect on trade. The Court of Appeal observed that Ping's 'substantial market share would clearly make any such argument unsustainable'. As set out in the CMA's decision, Ping was a leading golf equipment manufacturer in the UK, with a share of supply in woods and irons of 20-30% (See Case 50230, Decision of the CMA in Online sales ban in the golf equipment sector, 24 August 2017, paragraphs 3.12 to 3.15).

¹³⁵⁷ In making these findings regarding CTM's market power and its market share, the CMA has not found, and does not otherwise allege, that BGL had a dominant position within the meaning of section 18 of the Competition Act 1998 (the 'Chapter II prohibition') or Article 102 TFEU. Further, the CMA does not consider that its findings on the specific degree of CTM's market power and market shares during the Relevant Period are a necessary condition for reaching a conclusion that CTM's wide MFNs infringed the Chapter I prohibition or Article 101 TFEU. Rather, the strength of CTM's market position is one of a range of relevant factors that the CMA has taken into account in assessing the appreciability of the effect of CTM's network of wide MFNs on competition.

¹³⁵⁸ See paragraph 2.38 and Table 2.3.

the second largest PCW (MoneySuperMarket) being less than half the size of CTM with a market share of approximately 20% by volume.¹³⁵⁹

- (c) **Market position of the providers:** As explained in Section 5.E.IV., the CMA has found that providers did not (collectively or individually) exert countervailing buyer power to limit the market power of CTM in the provision of PCW Services for Home Insurance in the UK during the Relevant Period. In particular, the CMA has found that, in contrast to CTM's strong market position, the largest provider accounted for less than 15% [X] of sales made through CTM (around 10% [X] for all PCWs) in 2017 and the largest five providers accounted for around 50% [X] of sales made through CTM (around 45% [X] for all PCWs) in the same year. Further, providers did not have an effective choice of an alternative suppliers to CTM for the provision of PCW Services for Home Insurance in the UK during the Relevant Period. This is because, in addition to CTM being the largest PCW during the Relevant Period, the majority of consumers using CTM's platform single-homed and single-channelled (over 65% [X]) between September 2016 and August 2017). As such, providers could not access a significant proportion of consumers that used PCWs without listing on CTM's platform. Individual providers could only reach a small proportion of CTM's consumers through other PCWs (around 20%) [X] and a very small proportion of CTM's consumers through their own websites (which each attracted only around 1% [X] of CTM's users on average).¹³⁶⁰
- (d) **Market coverage:** as explained in Section 8.C, CTM's network of wide MFNs covered a substantial part of the market for PCW Services in Home Insurance in the UK. In particular, CTM's network of wide MFNs covered providers accounting for approximately 40% of home insurance policies sold through PCWs in 2016 and 2017. This included several larger providers (in terms of sales through PCWs) who were willing to and did seek to use differential pricing across PCWs and with which two of CTM's three main rivals were attempting to implement their pricing strategies, as described in Section 9.B.I.(a).

¹³⁵⁹ See Section 5.E.I. This is also the case when considering alternative measures of supply in the provision of PCW Services for Home Insurance in the UK. In particular, the market shares of the other Big Four PCWs ranged from 5-25% when using alternative measures compared to around 60% for CTM, see paragraph 5.200.

¹³⁶⁰ Even [X] [HIP] attracted only [X]% of CTM's users to its brands' online direct channels. See paragraph 5.230.

- (e) **Nature of CTM's wide MFN clauses**¹³⁶¹: CTM's wide MFNs impacted directly on an important dimension of competition between PCWs and between providers competing on PCWs,¹³⁶² namely price. As set out in Section 9.A.I, CTM's wide MFNs contractually prevented the relevant providers from quoting lower prices on CTM's rival PCWs than on CTM. CTM's network of wide MFNs therefore protected CTM, as a matter of contract, from being undercut by the prices offered by relevant providers on another PCW and prevented its rivals from gaining a competitive price advantage over CTM from such providers.
- (f) **Role and importance of CTM's network of wide MFNs in CTM's competitive strategy**: as set out in Section 8.A.II, the CMA has found that CTM's wide MFNs were integral to its competitive strategy and effective in achieving its objectives by strengthening CTM's competitive position throughout the Relevant Period. For example, in addition to using its systematic monitoring of prices backed up by its market power to secure compliance, CTM enforced its wide MFNs against providers that entered into promotional deals with its rivals or which sought to reflect CTM's higher commission fees in their base retail prices.¹³⁶³ CTM also repeatedly refused the removal of the clauses from its contracts.¹³⁶⁴,
- (g) **Widespread compliance by the relevant providers**: as set out in Section 8.B., the CMA has found that there was widespread compliance with CTM's wide MFNs during the Relevant Period. Providers had strong incentives to comply with their contractual obligations not least because of CTM's market power and its actions which emphasised the importance it placed on compliance. In particular, CTM systematically monitored compliance, followed up with providers whose pricing it considered was not compliant with its wide MFNs and where necessary escalated its enforcement actions. The widespread compliance by the relevant providers with CTM's wide MFNs included providers taking specific actions (such as adjusting their

¹³⁶¹ As submitted by BGL, in assessing appreciability, the CJEU at paragraph 21 of its judgment in *Expedia* summarised that '*[r]egard must be had, inter alia, to the content of [the agreement's] provisions, the objectives it seeks to attain and the economic and legal context of which it forms a part It is also appropriate to take into consideration the nature of the goods or services affected, as well as the real conditions of the functioning and the structure of the market or markets in question*' (URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 343).

¹³⁶² See Section 7.C.I and 7.D.I where the CMA has found that prices were an important dimension of competition between PCWs and between providers competing on PCWs.

¹³⁶³ See Section 8.A.II.(d). and 8.B.III.

¹³⁶⁴ See Section 8.A.II.(c). Although CTM's contracts with providers were generally terminable by either party on one month or 30 days' notice (after an initial period of six months), CTM's contracts are rolling contracts and have typically been in place for several years (see Annex C).

prices or rejecting offers of promotional deals from CTM's rivals) in order to comply with their wide MFN obligations.

- (h) **Nature of the competitive effects:** the CMA has found that the effects on competition of CTM's network of wide MFNs were market wide. Competition on price between all PCWs was reduced¹³⁶⁵ as well as between all providers competing on PCWs.¹³⁶⁶
- (i) **Barriers to entry and expansion:** As described in Section 5.E.II, the CMA finds that there were material barriers to entry and expansion in the provision of PCW Services for Home Insurance in the UK both before and throughout the Relevant Period. In addition, as described above, the CMA finds that CTM's wide MFNs acted as a barrier to expansion in the provision of PCW Services for Home Insurance in the UK thus maintaining or strengthening CTM's market power.

9.145 BGL submitted that the CMA has failed to '*undertake a very careful and considered analysis of appreciability*'.¹³⁶⁷ The CMA does not agree with BGL's submission. The CMA's assessment of the evidence that is relevant to appreciability is set out throughout the Decision and summarised in this Section 9.D. The CMA has carefully considered all relevant factors including those highlighted by BGL as being relevant to the assessment of appreciability, in accordance with the legal framework set out in Section 3. The CMA has addressed BGL's more detailed representations on appreciability in Annex Q.

9.E. Conclusion on the appreciable effects on competition of CTM's network of wide MFNs

9.146 For the reasons set out above, the CMA finds that, during the Relevant Period, CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting:

- (a) competition between PCWs, by reducing price competition and restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power; and
- (b) competition between providers competing on PCWs, by reducing price competition.

¹³⁶⁵ See Section 9.B.

¹³⁶⁶ See Section 9.C.

¹³⁶⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 369.

- 9.147 As set out in Section 10 below, BGL has not made submissions or adduced evidence to the effect that there are any pro-competitive efficiencies meeting the conditions for exemption under section 9 of the Act or Article 101(3) TFEU. Nor has it submitted that its wide MFNs were objectively necessary such that they should not be considered to restrict competition.
- 9.148 The CMA therefore finds that during the Relevant Period each of CTM's agreements with providers containing wide MFNs, which formed part of CTM's network of wide MFNs, breached the Chapter I prohibition and Article 101 TFEU.

10. OTHER ASPECTS OF THE LEGAL ASSESSMENT

10.1 This Section sets out the CMA's findings in relation to other aspects of the legal assessment relevant to this Decision namely:

- (a) Effect on trade
- (b) Exclusions under the Act
- (c) Vertical Agreements Block Exemption Regulation
- (d) Individual exemption
- (e) Duration
- (f) Attribution of liability

10.A. Effect on trade

10.2 For the reasons set out below, the CMA finds that CTM's network of wide MFNs affected trade between EU Member States and within the UK.

10.A.I. *Effect on trade between EU Member States*

10.3 Article 101 TFEU applies where an agreement or concerted practice may¹³⁶⁸ affect trade between EU Member States to an appreciable extent.¹³⁶⁹ The CMA is required also to apply Article 101 TFEU when applying national competition law to agreements between undertakings which may affect trade between EU Member States.¹³⁷⁰

10.4 Activities which have an anti-competitive effect on a national market are capable of having effects on other national markets beyond the national market on which the services are provided.¹³⁷¹ The concept of 'trade' also encompasses an effect on the competitive structure of the market, for example where it eliminates or threatens to eliminate a competitor.¹³⁷²

10.5 In order that trade may be affected by an agreement: *'it must be possible to foresee with a sufficient degree of probability on the basis of a set of*

¹³⁶⁸ It is not necessary to demonstrate that an agreement has had an actual impact on trade – it is sufficient to establish that the agreement is capable of having such an effect: joined cases T-202/98 etc, Tate & Lyle plc and Others v Commission, EU:T:2001:185, paragraph 78.

¹³⁶⁹ Case 22/71 Béguelin Import Co. v S.A.G.L. Import Export, EU:C:1971:113, paragraph 16.

¹³⁷⁰ Modernisation Regulation, Article 3.

¹³⁷¹ Joined cases C-125/07 P, C133/07 P, C-135/07 P, C137/07 P Austrian Banks v Commission, [2009] ECR I-08681.

¹³⁷² Effect on Trade Guidelines, paragraph 20 and footnote 12.

*objective factors of law or fact that [the] agreement may have an influence, direct or indirect, actual or potential, on the pattern of trade between Member States.*¹³⁷³

- 10.6 For the purposes of assessing whether an agreement may affect trade between EU Member States, the CMA will have regard to the approach set out in the European Commission's Effect on Trade Guidelines.¹³⁷⁴
- 10.7 The assessment of whether an agreement is capable of affecting trade between EU Member States involves consideration of various factors which, taken individually, may not be decisive.¹³⁷⁵ These factors include the nature of the agreement, the nature of the products covered by the agreement, the position and importance of the undertakings concerned and the economic and legal context of the agreement.¹³⁷⁶
- 10.8 The assessment of whether an agreement has an 'appreciable' effect on trade between EU Member States similarly depends on various factors and the circumstances of each case.¹³⁷⁷ Agreements fall outside the scope of Article 101 TFEU when they affect the market only insignificantly, having regard to the weak position of the undertakings concerned.¹³⁷⁸ The stronger the market position of the undertakings concerned, the more likely it is that an agreement that is capable of affecting trade between Member States can be held to do so appreciably.¹³⁷⁹ In the case of vertical agreements, it may be necessary to have regard to any cumulative effects of parallel networks of similar agreements.¹³⁸⁰
- 10.9 For the following reasons, the CMA finds that CTM's wide MFNs were capable of affecting trade between EU Member States:
- (a) CTM's wide MFNs were featured in agreements that were national in scope and applied throughout the UK.
 - (b) CTM had a high market share throughout the Relevant Period and is a particularly important source of new business for home insurance providers that cannot easily be replicated through other PCWs or

¹³⁷³ Effect on Trade Guidelines, paragraph 23.

¹³⁷⁴ The Office of Fair Trading, [Agreements and concerted practices](#) (OFT401), December 2004, adopted by the CMA Board, paragraph 2.23; and EU Commission, [Commission Notice Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty](#) [2004] OJ C101/07 (Effect on Trade Guidelines).

¹³⁷⁵ Effect on Trade Guidelines, paragraph 28, citing Case C-250/92 Gøtttrup-Klim e.a., Grovvareforeninger v Dansk Landbrugs Grovvareselskab AmbA, EU:C:1994:413, paragraph 54.

¹³⁷⁶ Effect on Trade Guidelines, paragraphs 28 and 32.

¹³⁷⁷ Effect on Trade Guidelines, paragraph 45.

¹³⁷⁸ Effect on Trade Guidelines, paragraph 44.

¹³⁷⁹ Effect on Trade Guidelines, paragraph 45.

¹³⁸⁰ Effect on Trade Guidelines, paragraph 49.

channels.¹³⁸¹ CTM has persistently been the largest PCW since at least 2012 and the only one to grow consistently in the period 2012 – 2018. CTM's market share was more than 50% throughout the Relevant Period.¹³⁸²

- (c) The importance of CTM as a source of new business is further supported by the CMA's finding that a significant majority of consumers ([68]%) that used CTM's platform to search, compare and potentially click-through to purchase home insurance between September 2016 to August 2017 did not use another PCW or the websites of home insurance providers for these activities (i.e. they single-homed and single-channelled).¹³⁸³
- (d) Accordingly, CTM had market power, and home insurance providers that want to enter the UK market, and particularly those wanting to expand their activities in the UK, are likely to need to use CTM as a source of new business.

10.A.II. Effect on trade within the UK

- 10.10 The Chapter I prohibition applies to agreements which may affect trade within the UK.¹³⁸⁴ As regards the question whether the effect on trade within the UK should be appreciable, the CAT has held that there is no need to import into the Act the rule of 'appreciability' under EU law, the essential purpose of which is to demarcate the fields of EU law and UK domestic law respectively.¹³⁸⁵ The CAT has also previously held that it was not necessary to reach a conclusion on that question and there was a close nexus between appreciable effect on competition and appreciable effect on trade within the UK, in that if one was satisfied, the other was likely to be so.¹³⁸⁶
- 10.11 CTM's wide MFNs were clauses in agreements that were national in scope and applied throughout the UK. Moreover, as set out in Section 9.B., 9.C. and 9.D, the CMA has found that CTM's network of wide MFNs appreciably reduced competition between PCWs and between providers competing on PCWs across the UK.

¹³⁸¹ See Section 5.C.IV.(a).(i).

¹³⁸² See Section 5.E.I.

¹³⁸³ See Section 5.E.I.

¹³⁸⁴ The UK includes any part of the UK in which an agreement operates or is intended to operate (the Act, section 2(7)). As is the case in respect of Article 101 TFEU, it is not necessary to demonstrate that an agreement has had an actual impact on trade – it is sufficient to establish that the agreement is capable of having such an effect: joined cases T-202/98, T-204/98 and T-207/98 *Tate & Lyle plc and Others v Commission*, EU:T:2001:185, paragraph 78.

¹³⁸⁵ *Aberdeen Journals v Director of Fair Trading* [2003] CAT 11 at 459 to 461.

¹³⁸⁶ *North Midland Construction plc v The Office of Fair Trading* [2011] CAT 14 at 48 to 51 and 62.

10.12 Accordingly, the CMA finds that the Infringements 1(1) TFEU applies to any of the agreements the subject of this Decision.

10.B. Exclusions and exemptions

10.13 This Section is structured as follows:

- (a) Exclusion under the Act.
- (b) The Vertical Agreement Bloc Exemption Regulation (VABER).
- (c) Individual exemption under section 9 of the Act and Article 101(3) TFEU.

10.B.I. Exclusions under the Act

10.14 The Chapter I prohibition does not apply in any of the cases in which it is excluded as a result of Schedules 1 to 3 of the Act.¹³⁸⁷

10.15 The CMA finds that none of the relevant exclusions applies to any of the agreements subject to this Decision. BGL has not submitted that any of the relevant exclusions in Schedules 1 to 3 of the Act apply.

10.B.II. Vertical Agreements Block Exemption Regulation (the VABER)

10.16 The CMA finds that none of the agreements the subject of this Decision are exempt from the Chapter I prohibition or from the prohibition in Article 101(1) by virtue of the VABER.¹³⁸⁸

10.17 It is for the parties wishing to rely on the VABER to adduce evidence that the exemption criteria in the VABER are satisfied.¹³⁸⁹ BGL submitted, prior to the issue of the SO,¹³⁹⁰ that the VABER applied to its agreements with the relevant providers and therefore its agreements should be presumed to be exempt from the Chapter I prohibition and Article 101 TFEU.¹³⁹¹ In particular

¹³⁸⁷ Section 3 of the Act sets out the following exclusions: Schedule 1 covers mergers and concentrations. Schedule 2 covers competition scrutiny under other enactments. Schedule 3 covers general exclusions.

¹³⁸⁸ Commission Regulation No 330/2010 on the application of Article 101(3) of the Treaty on the functioning of the European Union to categories of vertical agreements and concerted practices [2010] OJ L102/1.

¹³⁸⁹ See by analogy Article 2 of the Modernisation Regulation and section 9(2) of the Act.

¹³⁹⁰ In response to the LoF and DPS, BGL submitted that it was entitled to regard its wide MFNs in home insurance as within the safe harbours of the De Minimis Notice. This is addressed in Section 9.D and 11.C.I.b.ii.

¹³⁹¹ URN 5932, note of CMA meeting with BGL dated 1 March 2018, paragraphs 12 to 19; URN 5266A, First BGL submission dated 21 December 2017, section 3.

BGL submitted that its agreements are vertical in nature¹³⁹² and that its share of supply within the meaning of Article 3 of the VABER is approximately 11% satisfying Articles 101(1)(a) and (h) and Article 3(1) of the VABER respectively. BGL also argued that the agreements also satisfied the ‘dual distribution’ exception under Article 2(4) (b) of the VABER¹³⁹³ as they were vertical agreements between undertakings that compete at the retail level but not at the wholesale level, satisfying the ‘*dual distribution*’ exception.¹³⁹⁴

10.18 The CMA addressed BGL’s representations in the SO¹³⁹⁵ on the application of the VABER when provisionally finding that the VABER did not apply. BGL made no further representations on the application of the VABER to its agreements in response to the SO. However, for completeness, the CMA summarises below its findings on the application of the VABER.

10.19 The CMA considers that an agreement concerning the services provided by a platform (such as CTM) and a partner (such as a home insurance provider) may amount to a vertical agreement for the purposes of the VABER. The CMA finds that, in the present case, each of the agreements between CTM and the 32 providers is a vertical agreement under which CTM is an upstream provider of customer introduction services and refers potential customers using its platform to the relevant providers downstream to supply home insurance.¹³⁹⁶ Each of the agreements sets out the terms and conditions under which CTM provides customer introduction services to providers, including its wide MFNs.

¹³⁹² URN 5932, note of the CMA meeting with BGL dated 1 March 2018. This is on the basis that CTM sells insurance contracts on behalf of home insurance providers. In BGL’s view, CTM is therefore downstream of the providers and is a ‘buyer’ for the purposes of VABER.

¹³⁹³ URN 5266A, First BGL Submission dated 21 December 2017, paragraph 3.7.

¹³⁹⁴ The CMA does not consider the dual distribution exception to be applicable. The ‘*dual distribution*’ exception set out in the VABER does not apply because CTM does not compete with insurance providers for the provision of PCW Services for Home Insurance, which is the relevant market for the purposes of applying the VABER. The CMA considers that even if the relevant providers were regarded as competing with CTM as submitted by BGL, the agreements would not benefit from the VABER. This is because the agreements would fall outside the scope of Article 2(4)(b) as they would be agreements between competing undertakings at the upstream level by virtue of BGL’s Dial Direct and Budget insurance businesses (among others) which are part of the same undertaking as CTM. Both businesses are active in the provision of home insurance contracts direct to consumers and the ‘wholesale’ provision of such contracts to PCWs. See section 2B and URN 1632, BGL’s response to the First BGL Notice dated 26 September 2017, paragraphs 2.13 to 2.14.

¹³⁹⁵ Paragraphs 15.12 to 15.34.

¹³⁹⁶ See for example, the definition of ‘Service’ in URN 0056, CTM’s response to a request for information in the DCTs Market Study dated 23 January 2017, document entitled ‘CTM Template Insurer Partner Agreement’. See also, the definition of ‘Service’ in the agreement between CTM and [HIP] dated 1 December 2011 (URN 1810, BGL’s response to the First BGL Notice dated 26 September 2017, question 30, document entitled ‘BISL and [HIP] Insurance Limited: General terms & conditions for the provision of services agreement (2916)’ and the agreement between CTM and [HIP] dated 28 November 2012 (URN 1801, BGL’s response to the First BGL Notice dated 26 September 2017, document entitled ‘BISL and [HIP] - General Terms & Conditions for the Provision of Services Agreement (3464)’).

- 10.20 However, the CMA does not consider, as submitted by BGL prior to the SO, that CTM is a 'buyer' within the meaning of Article 1(1)(h) of the VABER and for that purpose, the CMA does not consider that the market share threshold of 30% should apply to the market where CTM 'buys' home insurance contracts.¹³⁹⁷ As set out in Section 4.A.II, the CMA has found that CTM does not have the power to negotiate or conclude contracts on behalf of home insurance providers nor does it 'buy' insurance from insurance providers for the purposes of the VABER. Similarly, CTM does not 'sell' insurance to consumers on behalf of home insurance providers within the meaning of Article 1(1)(h) of the VABER.¹³⁹⁸
- 10.21 As set out in Section 5C, the CMA has found that the relevant market in which CTM supplies customer introduction services, which is the appropriate market for the purposes of applying Article 3 of the VABER, is the provision of PCW Services for Home Insurance to home insurance providers and not as submitted by BGL a wider market including direct new business sales by providers and at least a proportion of renewal sales made by providers.¹³⁹⁹ The CMA has also found as set out in Section 5.E that on the relevant market as defined by the CMA, CTM had from 2012 and throughout the Relevant Period a market share of over 50%, consistently exceeding the 30% market share threshold under Article 3 of the VABER.
- 10.22 Accordingly, the CMA finds that none of the 32 agreements fall within the scope of the VABER.

10.B.III. Individual exemption under section 9 of the Act and Article 101(3) TFEU

- 10.23 This section sets out the CMA's assessment of whether CTM's wide MFNs meet the conditions for exemption under section 9 of the Act and Article 101(3) TFEU.
- 10.24 The CMA finds that CTM's wide MFNs do not meet the conditions for exemption under section 9 of the Act and Article 101(3) TFEU. In particular, the CMA has found that BGL failed to demonstrate, by means of convincing arguments and evidence, that the conditions for an exemption are satisfied.
- 10.25 Specifically, BGL failed to demonstrate that CTM's wide MFNs satisfy the first condition for exemption on the basis that it has not shown that they

¹³⁹⁷ URN 5266A, First BGL Submission dated 21 December 2017, paragraph 3.13.

¹³⁹⁸ The definition of 'buyer' under Article 1(1)(h) of the VABER states that this term '*includes an undertaking which, under an agreement falling within Article 101(1) TFEU, sells goods or services on behalf of another undertaking.*'

¹³⁹⁹ The CMA notes that if BGL competed directly with the relevant insurers, its agreements with directly competing providers restricting their pricing freedom would be regarded as horizontal price fixing agreements.

contributed to improving the production or distribution of goods or to promoting technical or economic progress. The CMA has therefore not considered in detail the application of the remaining three criteria on the basis that: (i) the conditions for exemption are cumulative, (ii) the burden of proof is on BGL to show that all the conditions are met, and (iii) BGL has not made submissions regarding the fulfilment of the final three conditions.

- 10.26 In any event, and for completeness, the CMA notes that BGL has not submitted any evidence or argument that CTM's wide MFNs allowed customers a fair share of the resulting benefit (the second condition of the exemption). On the contrary, as set out in Sections 9B and 9C, the CMA has found that CTM's network of wide MFNs are likely to have resulted in higher commission fees and higher retail prices, indicating that customers did not benefit from CTM's wide MFNs. Moreover, BGL has also failed to establish that its wide MFNs were indispensable to the attainment of any efficiencies (the third condition of the exemption), and CTM has been operating its business since the end of the Relevant Period without enforcing the wide MFNs in its contracts.

10.B.III.(a). Legal framework for an individual exemption

- 10.27 An agreement that is found to restrict competition under section 2 of the Act or Article 101(1) TFEU is exempt from, and therefore does not infringe, the Chapter I prohibition or Article 101 TFEU where the conditions set out in, respectively, section 9 of the Act and Article 101(3) are met.¹⁴⁰⁰
- 10.28 Article 1(2) of the Modernisation Regulation provides that agreements caught by Article 101(1) TFEU which satisfy the conditions of Article 101(3) TFEU shall not be prohibited, no prior decision to that effect being required.¹⁴⁰¹ Similarly, those agreements which satisfy the conditions set out in section 9 of the Act benefit from exemption from the Chapter I prohibition, no prior decision to that effect being required.¹⁴⁰²
- 10.29 Section 9(1) of the Act and Article 101(3) TFEU set out four cumulative conditions which must each be satisfied in order for an agreement to be exempted from the Chapter I prohibition or Article 101 TFEU. These are that the agreement must:

¹⁴⁰⁰ See The Office of Fair Trading, [Agreements and Concerted Practices](#), December 2004 (OFT 401), adopted by the CMA Board, paragraphs 5.1 to 5.5.

¹⁴⁰¹ Modernisation Regulation, Article 1(2). See also Article 101(3) Guidelines, paragraph 1.

¹⁴⁰² Section 9 of the Act applies to agreements to which section 2 of the Act applies. Article 101(3) TFEU applies to agreements to which Article 101 TFEU applies.

- (a) contribute to improving the production or distribution of goods or promoting technical or economic progress (in other words, the agreement must give rise to efficiencies or other benefits);¹⁴⁰³
- (b) allow consumers a fair share of the resulting benefit;
- (c) not impose on the undertakings concerned restrictions which are not are indispensable to the attainment of these efficiencies or other benefits; and
- (d) not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the products in question.

10.30 In considering whether an agreement satisfies the conditions set out in section 9 of the Act and Article 101(3) TFEU, the CMA will have regard to the Article 101(3) Guidelines.¹⁴⁰⁴

10.31 The burden of proof is on the undertaking claiming the benefit of individual exemption under section 9 of the Act or Article 101(3) TFEU, not the CMA.¹⁴⁰⁵ The undertaking claiming the benefit must therefore demonstrate, by means of convincing arguments and evidence, that the conditions for an exemption are satisfied.¹⁴⁰⁶ In that regard, in considering whether the agreement in question results in efficiencies or other benefits, only objective benefits can be taken into account. Costs savings resulting from the exercise of power which do not lead to the creation of value but merely allow an undertaking to increase their profits are not considered to be efficiencies.¹⁴⁰⁷

10.B.III.(b). BGL's submissions

10.32 In response to the SO, BGL has not adduced evidence that there are any pro-competitive efficiencies meeting the conditions for exemption under section 9 of the Act or Article 101(3) TFEU. BGL stated that the CMA should have regard to CTM's position as a '*consumer champion*' and its '*pro-*

¹⁴⁰³ The text in section 9(1) of the Act is almost identical to that of Article 101(3) TFEU, except that the phrase 'of goods' is not included in the first condition in section 9(1) of the Act. The omission of these words is intended to make clear that improvements in production or distribution of services may also satisfy the first condition in section 9(1) of the Act (which is consistent with the Commission's application of Article 101(3) TFEU).

¹⁴⁰⁴ See The Office of Fair Trading, [Agreements and Concerted Practices](#) (OFT401), adopted by the CMA Board, paragraph 5.5.

¹⁴⁰⁵ Article 9(2) of the Act and Article 2 of the Modernisation Regulation.

¹⁴⁰⁶ Judgment in *GlaxoSmithKline Services v Commission*, Joined Cases C-501/06 P, C-513/06 P, C-515/06 P and C-519/06 P, EU:C:2009:610; Vertical Guidelines, paragraph 82. Article 101(3) Guidelines, see paragraphs 51 to 58; Guidelines on Vertical Restraints [2010] OJ C130/1, paragraph 47. See also section 9(2) of the Act and the judgment of the UK Supreme Court dated 17 June 2020 in *Sainsbury's Supermarkets Limited v Visa Europe Services LLC and Mastercard Inc* [2020] UKSC 24.

¹⁴⁰⁷ Article 101(3) Guidelines, paragraph 49.

competitive’ objective of relying on wide MFNs to ensure the best prices for its consumers.¹⁴⁰⁸ BGL has not claimed nor established that CTM’s wide MFNs were indispensable to the attainment of these objectives. Moreover, the CMA refers to Section 8.A.II on its assessment of CTM’s competitive strategy in imposing wide MFNs, including BGL’s representations on their ‘pro-competitive’ nature (as set out in Annex P).

10.33 Prior to the SO, BGL submitted that CTM’s wide MFNs give rise to certain efficiencies or other benefits and therefore the CMA should consider the application of section 9 of the Act and Article 101(3) TFEU.^{1409, 1410} BGL stated that there are three reasons why wide MFNs may have had positive effects for consumers:

- (a) They prevent ‘free-riding’ since, in the absence of wide MFNs, consumers could use ‘*quality comparison functionality on one site that invests more, including in a better comparison tool*’¹⁴¹¹ but purchase through another, lower quality and lower price, PCW.
- (b) They enhance the credibility of PCWs, as consumers expect PCWs to offer them the best prices available.¹⁴¹²
- (c) They reduce customer search costs. BGL submitted that having to search on several sites to find the best price may reduce the attractiveness of ‘*comparison shopping*’ (by which the CMA assumes BGL to mean the use of PCWs) for consumers.¹⁴¹³

10.34 The CMA notes that BGL made no further representations on these points in response to the SO and did not prior to, or in response to, the SO adduce any evidence in support of its wide MFNs giving rise to efficiencies or other benefits (or that its wide MFNs were objectively necessary to achieve such efficiencies or other benefits). Moreover, BGL has not adduced and the CMA has seen no evidence to suggest that since CTM stopped enforcing its wide MFNs at the end of November 2017, that there has been an increase in free riding, a reduction in the use of PCWs or an increase in consumer search costs. Indeed BGL submitted that ‘*little if anything*’ has changed in the structure and conditions of competition or the ability of home insurance

¹⁴⁰⁸ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraphs 43 and 454.

¹⁴⁰⁹ URN 5266A, First BGL Submission dated 21 December 2017, paragraphs 4.10 to 4.13.

¹⁴¹⁰ As set out in Annex Q, BGL also stated that the economic literature finds that there can be pro-competitive effects. However, based on its review of the economic literature, the CMA considers that when papers in the economic literature identify situations where the pro-competitive effects of wide MFNs may outweigh their anti-competitive effects, this is based on assumptions that do not hold in this case as set out in Annex Q.

¹⁴¹¹ URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.13.2.

¹⁴¹² URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.13.1.

¹⁴¹³ URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.13.3.

providers to compete on retail prices since removal of CTM's wide MFNs in November 2017.¹⁴¹⁴ This is inconsistent with BGL's pre-SO submission that wide MFNs give rise to efficiencies or other benefits.

- 10.35 The CMA sets out below, in more detail, its assessment of each of the alleged efficiencies or other benefits claimed by BGL. For the reasons set out below, the CMA has found that BGL has not adduced convincing evidence to show on the balance of probabilities that CTM's wide MFNs give rise to efficiencies or other benefits.

10.B.III.(b).(i). The prevention of free-riding

- 10.36 The Vertical Guidelines recognise that vertical restraints may be used to solve a 'free-rider' problem¹⁴¹⁵ where a competitor 'free-rides' on the investment or promotion efforts of a rival which may disincentivise such pro-competitive investments in the first place.
- 10.37 More recently, the European Commission has noted that the use of parity clauses in online markets might be necessary to recoup investments and to avoid free-riding.¹⁴¹⁶ In addition, the CMA in the PMI Market Investigation found that certain types of narrow MFN clauses may protect the business models of price comparison websites and prevent free-riding by private motor insurance companies on the advertising of PCWs.¹⁴¹⁷
- 10.38 The CMA recognises, in principle, the possibility of platforms such as CTM being used as a search tool, whereby consumers use a high-cost,¹⁴¹⁸ high-quality platform to search for and compare insurance contracts and go on to use a lower-cost, lower-quality channel to purchase, meaning that CTM may not be able to recoup a return on its investment. However, in the PMI Market Investigation, the CMA found that wide MFNs did not deliver any additional protection from free-riding over the protection provided by narrow MFNs, and that it was unlikely that one PCW could free-ride on another PCW's

¹⁴¹⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 242:

'Furthermore, Oxera point out that there is no evidence in the LoF (or SO) of any effect of the disapplication of the WMFN on commissions, or on base retail prices.[...] Nor is there any evidence of any change in the growth rates or market shares of PCWs attributable to the removal of the WMFN, or on the ability of HIPs to compete on retail prices generally, indeed the evidence is to the contrary, as shown in sections 7 to 9 of the Fourth Oxera Report. The evidence is all the other way, to the effect that little if anything has changed'.

¹⁴¹⁵ Vertical Guidelines, paragraph 107(a).

¹⁴¹⁶ European Commission Staff Working Document on the E-commerce Sector Inquiry, paragraph 623.

¹⁴¹⁷ The [PMI Market Investigation](#), 24 September 2014, Final Report, paragraph 8.87, 8.102.

¹⁴¹⁸ In this context, by high-cost the CMA means a platform that charges a higher commission fee to providers. All else being equal, a higher commission fee is likely to result in higher retail prices charged to consumers by providers.

investment as it would still need to invest in advertising to attract consumers.¹⁴¹⁹

- 10.39 On the basis of the evidence it has provided to the CMA, BGL has not demonstrated that free-riding by a rival PCW, such as to justify its wide MFNs, is a significant risk in practice. Indeed, BGL's submissions state that its own '*qualitative assessment*' of the benefits of wide MFNs is '*not intended to suggest that wide MFNs are likely to have demonstrable positive effects on competition and consumers.*'¹⁴²⁰ BGL submitted that wide MFNs did not have an appreciable effect on competition,¹⁴²¹ on the basis that the coverage of CTM's wide MFNs was far from '*substantial*', that wide MFNs were often ignored and that wide MFNs were not an active constraint on prices.¹⁴²² These statements, pointing to the inefficiency of wide MFNs, are not consistent with BGL's submissions that wide MFNs allowed CTM to solve a free rider issue.
- 10.40 The CMA also considers that because CTM does not provide a link to any other third-party PCWs on its own platform, it is not clear that there is a material risk of CTM losing out through free-riding in the manner described in paragraph 10.38. The CMA in the PMI Market Investigation found a similar situation to be too remote to justify a wide MFN which applied to all third-party platforms.¹⁴²³
- 10.41 Furthermore, while the evidence indicates that a low proportion of consumers using CTM use more than one PCW to search for home insurance (around 20% [✂]),¹⁴²⁴ the CMA has not seen any evidence of consumers having been introduced to a rival PCW through CTM; rather the evidence shows that consumers use different PCWs independently.¹⁴²⁵ The CMA therefore does not consider that there is a real risk that rival PCWs in home insurance would have free-riden on CTM's investments during the Relevant Period.
- 10.42 BGL has submitted that the use of non-brand-bidding agreements (advertising restrictions related to paid search engine results where one advertiser agrees not to bid on another advertiser's name and potentially

¹⁴¹⁹ The [PMI Market Investigation](#), 24 September 2014, Final Report, paragraph 8.106.

¹⁴²⁰ URN 5266A, First Oxera Report dated 21 December 2017, section 3.3.1.

¹⁴²¹ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 2.4.

¹⁴²² URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 2.29.

¹⁴²³ The [PMI Market Investigation](#), 24 September 2014, Final Report, paragraph 8.106.

¹⁴²⁴ See Section 7.A.

¹⁴²⁵ As discussed in Section 7.C.I, consumer research shows that consumers use a particular PCW based on (i) past experience, (ii) seeing the PCW's adverts, (iii) getting rewards from the PCW or (iv) because that was the first PCW they found online.

other related words) shows a '*potential scope for one PCW to free-ride on another's brand*.'¹⁴²⁶ However, BGL has not provided evidence in support of this contention. In addition, the brand-bidding agreements that the CMA considered in the DCTs Market Study (and to which BGL refers in its submission) were between PCWs and providers, and not between PCWs and other PCWs. Therefore, it is not clear to the CMA how these agreements would be relevant in the context of wide MFNs and their use in preventing free-riding between PCWs.

10.B.III.(b).(ii). Enhancing credibility

- 10.43 BGL has submitted that wide MFNs were introduced and maintained by CTM as a means to gain and ensure consumer trust.¹⁴²⁷ BGL highlighted four internal documents to show that CTM's objective was to offer the best possible prices to its customers and that CTM's belief was that its wide MFNs were supportive of this strategy.¹⁴²⁸ BGL has submitted that it is likely that many consumers expect each PCW to offer the best prices available and the less that CTM is able to do this, the less confidence such consumers will have in CTM, and in comparison shopping (i.e. the use of PCWs) more generally (i.e. undermining its 'credibility' as a price comparison tool).
- 10.44 The CMA agrees, as for many business, that being price competitive and gaining consumer confidence on prices is important to PCWs and also that, as set out in Section 8.A.II, CTM's wide MFNs were an integral and effective part of its competitive strategy, including in securing low prices on its platform. However, BGL has not provided any evidence to support the submission that consumer trust is dependent on CTM being able to offer the lowest prices available on the market for each insurance provider (rather than simply being competitive), such that wide MFNs specifically would enhance consumers' views of the credibility of PCWs.¹⁴²⁹ In any event, using wide MFN clauses is not necessary or indispensable for enabling CTM to offer the lowest prices available. CTM could instead incentivise providers to quote the lowest prices on CTM by, for example, discounting its commission fees below the levels of rival PCWs.

¹⁴²⁶ URN 5266A, First Oxera Report dated 21 December 2017, section 3.3.1.

¹⁴²⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 352.

¹⁴²⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 352 to 353.

¹⁴²⁹ In any event, even if BGL had provided evidence that wide MFNs improve the credibility of the PCW proposition (which the CMA considers it did not), as set out above, BGL has not established that the wide MFNs allowed customers a fair share of this benefit or that wide MFNs were indispensable to achieve this credibility. Moreover, BGL produced no evidence that the PCW proposition or CTM's own credibility were adversely affected as a result of the removal of wide MFNs in either PMI or in home insurance.

10.45 The CMA also concludes that CTM has not demonstrated that CTM's wide MFNs give rise to efficiencies or other benefits because they enhance the credibility of PCWs on the basis that:

- (a) In the PMI Market Investigation, the CMA did not find that the credibility of PCWs would be undermined without the use of wide MFNs, noting PCWs' growth in popularity despite consumers apparently not typically believing that a single PCW was sure to return the best available quote (shown through the fact that many consumers searched on more than one PCW).¹⁴³⁰
- (b) In this Investigation, the evidence shows there is a significant proportion of consumers who do multi-home in home insurance (see Section 7.A), which indicates that many consumers expect to get a better deal by visiting more than one PCW and that this has not undermined the popularity of PCWs in home insurance.
- (c) Since the implementation of the PMI Order 2015, wide MFNs are no longer used by any PCWs in private motor insurance and the CMA has not seen evidence, and BGL has provided no evidence, to suggest that the credibility of the PCW model in private motor insurance has been undermined by this. Moreover, whilst MoneySuperMarket has never used wide MFNs and GoCompare and Confused ceased to use wide MFNs across all insurance products following the PMI Market Investigation, the CMA has not seen any evidence that the absence of wide MFNs undermined the credibility of the PCW proposition or of these PCWs individually.
- (d) Since 2015, CTM has been the only PCW to have wide MFNs in home insurance and the CMA has not seen evidence that the credibility of the PCW proposition (or of CTM's rivals) has been undermined. Similarly, the CMA has not seen evidence, and BGL has not provided any evidence, that since CTM ceased enforcing its wide MFNs in November 2017, the credibility of PCWs (or of CTM) in home insurance has been undermined.

10.B.III.(b).(iii). Reducing customer search costs

10.46 BGL has submitted that, given that consumer inertia is an important issue in home insurance, it is reasonable to consider that increasing the need to search to find a 'good' price may put consumers off.¹⁴³¹ However, BGL has

¹⁴³⁰ The [PMI Market Investigation](#), 24 September 2014, Final Report, paragraph 8.104.

¹⁴³¹ URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.13.3.

not provided any specific evidence to support the submission that CTM's wide MFNs create efficiencies by reducing customer search costs.

- 10.47 The CMA also reached the view in the PMI Market Investigation in relation to customer search costs that, if a single PCW wanted to be a one-stop shop, always providing the lowest possible price for all providers for all products, this would, in practice, require a wide MFN with each provider that lists on it.¹⁴³² However, since no PCW's wide MFNs covered all providers listing on the PCW, the CMA found that wide MFNs did not achieve this benefit and consumers had an incentive to search on more than one PCW to try to secure lower quotes.

10.C. Duration of the Infringements and attribution of liability

- 10.48 Finally, in the following paragraphs the CMA sets out its assessment of the duration of the Infringements and the legal entities within the BGL undertaking that the CMA finds are liable for the Infringements.

10.C.I. Duration of the Infringements

- 10.49 For the purposes of this Decision, the CMA finds that the duration of the Infringements was 1 December 2015 to 1 December 2017, a period of two years.
- 10.50 Although BGL began to include wide MFNs in CTM's contracts with home insurance providers from at least 2008,¹⁴³³ for reasons of administrative priority, the CMA focused its Investigation on CTM's use of wide MFNs in the period shortly after the prohibition of wide MFNs under the PMI Order 2015, at which time BGL decided to retain wide MFNs in other lines of business, including home insurance.¹⁴³⁴ The CMA considered that a period of two years was appropriate in terms of focusing the Investigation in order to strike a balance between achieving effective deterrence, while making the most efficient use of the CMA's resources and limiting burdens on the businesses involved in the Investigation, including as regards costs and management time, for example in relation to responding to information requests.
- 10.51 As explained in Section 2.G.I, following the launch of the Investigation, BGL notified home insurance providers on 30 November 2017 that it would no longer enforce CTM's wide MFNs in their agreements with immediate effect.

¹⁴³² The [PMI Market Investigation](#), 24 September 2014, Final Report, paragraph 8.110.

¹⁴³³ See section 2.G.II.

¹⁴³⁴ See Section 8.A.II.b.

Accordingly, the CMA finds that the Infringements ended on 1 December 2017.

10.C.II. Attribution of liability

- 10.52 The CMA finds that BISL, Compare The Market Limited, BGL Group Limited and BGL (Holdings) Limited should be held jointly and severally liable for the Infringements.
- 10.53 If an undertaking infringes the competition rules, it falls, under the principle of personal responsibility, to that undertaking to answer for that infringement.¹⁴³⁵ Given the requirement to impute an infringement to a legal entity or entities on which fines may be imposed and to which an infringement decision is to be addressed, it is necessary to identify one or more legal persons that form part of the undertaking in question.¹⁴³⁶
- 10.54 Accordingly, in reaching its finding, the CMA has first identified the legal entity directly involved in the Infringements during the Relevant Period. It has then determined whether liability for the Infringements should be shared with other legal entities within that legal entity, in which case each legal entity's liability will be joint and several.
- 10.55 BISL was the legal entity within the BGL undertaking directly involved in the Infringements as it operated the CTM business throughout the Relevant Period. BISL was also the legal entity that entered into the infringing agreements. The CMA therefore finds BISL jointly and severally liable for the Infringements for the whole of the Relevant Period.
- 10.56 As set out in Section 2.B., Compare The Market Limited was incorporated on 23 February 2017. Following its incorporation, Compare The Market Limited was the legal entity involved in the operation of the CTM business and as a consequence was involved in the Infringements from February 2017. The CMA therefore finds Compare The Market Limited jointly and severally liable for the Infringements for the period 23 February 2017 to 1 December 2017.
- 10.57 The conduct of a subsidiary may be imputed to its parent company where, although having a separate legal personality, that subsidiary does not decide independently upon its own conduct on the market, but carries out, in all material respects, the instructions given to it by the parent company, having regard in particular to the economic, organisational and legal links between

¹⁴³⁵ C-97/08 P Akzo Nobel NV and Others v Commission, EU:C:2009:536, paragraphs 54–56.

¹⁴³⁶ C-97/08 P Akzo Nobel NV and Others v Commission, EU:C:2009:536, paragraph 57.

those two legal entities.¹⁴³⁷ This is because, in such a situation, the parent company and its subsidiary form a single economic unit, and therefore a single undertaking for the purposes of the Chapter I prohibition and Article 101 TFEU.¹⁴³⁸

10.58 Where a parent company owns 100% of a subsidiary which has infringed the competition rules, there is a rebuttable presumption that:

- (a) the parent company is able to exercise 'decisive influence' over the conduct of its subsidiary; and
- (b) the parent company does in fact exercise such decisive influence over the conduct of its subsidiary,

such that the two entities can be regarded as a single economic unit and thus jointly and severally liable.¹⁴³⁹

10.59 It is for the party in question to rebut the presumption by adducing sufficient evidence to show that its subsidiary acts independently on the market.¹⁴⁴⁰ The presumption also applies to situations where the parent company indirectly holds 100% of a subsidiary, for example, via one or more intermediary companies.¹⁴⁴¹ BGL has not made any representations rebutting the presumption.

10.60 The CMA therefore also holds BGL Group Limited and BGL (Holdings) Limited jointly and severally liable for the Infringements because:

- (a) BGL Group Limited was the 100% shareholder of BISL throughout the Relevant Period; and
- (b) BGL (Holdings) Limited was, following its insertion into the BGL Group structure on 24 February 2017, the 100% shareholder of BGL Group Limited and therefore the indirect parent company of BISL.

10.61 Accordingly, the CMA holds BGL Group Limited jointly and severally liable for the Infringements for the whole of the Relevant Period (i.e. from 1

¹⁴³⁷ C-155/14 P Evonik Degussa GmbH v Commission, EU:C:2016:446, paragraph 27, citing the judgement in C-93/13 P and C-123/13 P, Commission and Others v Versalis and Others, EU:C:2015:150, paragraph 40; See also Cases C-628/10 P and C-14/11 P Alliance One & Others v Commission, EU:C:2012:479, paragraph 44 citing C-97/08 P Akzo Nobel NV and Others v Commission, EU:C:2009:536, paragraphs 58–59.

¹⁴³⁸ C-155/14 P Evonik Degussa GmbH v Commission, EU:C:2016:446, paragraph 27.

¹⁴³⁹ C-155/14 P Evonik Degussa GmbH v Commission, EU:C:2016:446, paragraph 28 and the case law cited; Cases C-628/10 P and C-14/11 P Alliance One & Others v Commission, EU:C:2012:479, paragraphs 46–48; C-97/08 P Akzo Nobel NV and Others v Commission, EU:C:2009:536, paragraphs 60–61; See also C-107/82 Allgemeine Elektrizitäts-Gesellschaft AEG-Telefunken AG v Commission, EU:C:1983:293, paragraph 50.

¹⁴⁴⁰ C-628/10 P and C-14/11 P Alliance One & Others v Commission, EU:C:2012:479, paragraph 47, citing C-97/08 P Akzo Nobel NV and Others v Commission, EU:C:2009:536, paragraph 61.

¹⁴⁴¹ C-90/09 P General Química SA and Others v Commission, EU:C:2011:21, paragraphs 86–87.

December 2015 to 1 December 2017) and holds BGL (Holdings) Limited jointly and severally liable for the Infringements for the period from 24 February 2017 to 1 December 2017.

- 10.62 In response to the SO, BGL did not make any representations contesting the CMA's approach to attributing joint and several liability as set out above.

11. THE CMA'S ACTION

11.A. The CMA's decision

- 11.1 On the basis of the evidence and analysis set out in this Decision, the CMA has concluded that BGL has committed the Infringements.
- 11.2 The remainder of this Section sets out the enforcement action which the CMA is taking and its reasons for that action.

11.B. Directions

- 11.3 If the CMA has made a decision that an agreement infringes the Chapter I prohibition or Article 101 TFEU it may give to such person or persons such directions as it considers appropriate to bring the infringement to an end.¹⁴⁴²
- 11.4 As explained in Section 2.G.II, BGL notified home insurance providers on 30 November 2017 that it would no longer enforce CTM's wide MFNs in their agreement with immediate effect. As a result, the Infringements have ceased. Therefore, it is unnecessary in the circumstances of this case to give directions to BGL or any home insurance providers to bring the Infringements to an end.

11.C. Financial penalties

- 11.5 For the reasons set out below, the CMA finds that BGL committed the Infringements intentionally or, at the very least, negligently. BGL must have been aware, or could not have been unaware, or at least ought to have known that its network of wide MFNs would result in a restriction or distortion of competition.
- 11.6 Given the seriousness of the Infringements, and in order to deter similar conduct in the future, the CMA has decided that in the circumstances of this case it is appropriate to exercise its discretion under section 36(1) of the Act to impose financial penalties in respect of the Infringements, and, for the reasons set out in Section 10.C, to attribute liability for the penalty to BGL.

11.C.I. The CMA's power to impose a penalty

- 11.7 Sections 36(1) and 36(3) of the Act provide that, on making a decision that an agreement has infringed the Chapter I prohibition or the prohibition in Article 101(1) TFEU (or both), the CMA may require an undertaking which is

¹⁴⁴² The Act, section 32(1).

a party to the agreement to pay the CMA a penalty in respect of the infringement if it is satisfied that the infringement has been committed intentionally or negligently by the undertaking.¹⁴⁴³ Any penalties must be calculated by the CMA in accordance with relevant legislation¹⁴⁴⁴ and, pursuant to section 38(8) of the Act, having had regard to the guidance in force at the time when setting the amount of the penalty (the **Penalties Guidance**).¹⁴⁴⁵

11.C.I.(a). Intention or negligence – Key legal principles

11.8 As set out above, the CMA may impose a penalty on an undertaking which has infringed the Chapter I prohibition or Article 101 TFEU if it is satisfied that the infringement has been committed intentionally or negligently. However, the CMA is not obliged to specify whether it considers the infringement to be intentional or negligent. It is sufficient in order to impose a penalty that the CMA is satisfied that the infringement was committed either intentionally or negligently.¹⁴⁴⁶

11.9 The CAT has defined the terms ‘intentionally’ and ‘negligently’ as follows:

*‘an infringement is committed intentionally for the purposes of section 36(3) of the Act if the undertaking must have been aware, or could not have been unaware, that its conduct had the object or would have the effect of restricting competition. An infringement is committed negligently for the purposes of section 36(3) if the undertaking ought to have known that its conduct would result in a restriction or distortion of competition’.*¹⁴⁴⁷

11.10 This is consistent with the approach taken by the CJEU, which has confirmed:

‘the question whether the infringements were committed intentionally or negligently... is satisfied where the undertaking concerned cannot be unaware of the anti-competitive nature of

¹⁴⁴³ The Act, sections 36(1) and 36(3).

¹⁴⁴⁴ In particular section 36 to 40 of the Act; The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000 (SI 2000/309); and the Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004 (SI 2004/1259). BGL does not benefit from the limited immunity for ‘small agreements’ under section 39 of the Act and the Competition Act 1998 (Small Agreements and Conduct of Minor Significance) Regulations 2000 (SI 2000/262).

¹⁴⁴⁵ [The CMA’s guidance as to the appropriate amount of a penalty](#) (CMA73, April 2018).

¹⁴⁴⁶ *Napp Pharmaceutical Holdings Ltd v Director General of Fair Trading* [2002] CAT 1 (Napp), paragraphs 453 to 457; see also *Argos Limited and Littlewoods Limited v The Office of Fair Trading* [2005] CAT 13, paragraph 221. *Aberdeen Journals Limited v OFT* [2003] CAT 11, paragraphs 484 and 485; See also: Judgment of 25 March 1996, *SPO and Others v Commission*, C-137/95 P, EU:C:1996:130, paragraphs 53-57.

¹⁴⁴⁷ *Argos Limited and Littlewoods Limited v The Office of Fair Trading* [2005] CAT 13, paragraph 221.

its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty'.¹⁴⁴⁸

- 11.11 It is not necessary for the CMA to show that the undertaking knew or ought to have known that it was infringing the Chapter I prohibition and/or Article 101(1) TFEU.¹⁴⁴⁹ Ignorance or a mistake of law does not prevent a finding of infringement, even where such ignorance or mistake is based on independent legal advice.^{1450,1451} Internal documents may provide evidence that the test for imposing a penalty is met, and the CMA may infer that an infringement has been committed intentionally where consequences giving rise to an infringement are plainly foreseeable from the pursuit of a particular policy by an undertaking.¹⁴⁵²
- 11.12 Accordingly, what matters is not whether BGL was aware of any specific legal characterisation but whether it was aware or ought to have been aware of the anti-competitive nature of its conduct.¹⁴⁵³ The relevant question is therefore whether BGL must have been aware, could not have been unaware, or ought to have known that its network of wide MFNs was of such a nature as to result in a restriction or distortion of competition.¹⁴⁵⁴

¹⁴⁴⁸ Case C-280/08 P *Deutsche Telekom v Commission* EU:C:2010:603, paragraph 124.

¹⁴⁴⁹ *Napp Pharmaceutical Holdings Limited v Director General of Fair Trading* [2002] CAT 1, paragraph 456: 'It is sufficient that the undertaking could not have been unaware that its conduct had the object or would have the effect of restricting competition, without it being necessary to show that the undertaking also knew that it was infringing the Chapter I or Chapter II prohibition'. See also Case T-472/13 *Lundbeck v European Commission* EU:T:2016:449 at paragraph 762: 'with regard to whether an offence was committed intentionally or negligently and is therefore liable to be penalised by the imposition of a fine ... it is settled case-law that that condition is satisfied where the undertaking concerned cannot be unaware of the anticompetitive nature of its conduct, whether or not it is aware that it is infringing the competition rules of the Treaty'. See also *Guidance on Enforcement*, paragraph 5.10.

¹⁴⁵⁰ *Ping Europe Ltd v CMA* [2020] EWCA Civ 13, paragraph 117: 'Ignorance or mistake of law does not prevent a finding of intentional infringement'. See the EU Court of Justice's judgment in *Bundeswettbewerbshörde v Schenker & Co. AG ('Schenker')* C-681/11, EU:C:2013:404, paragraph 38: 'the fact that the undertaking concerned has characterised wrongly in law its conduct upon which the finding of the infringement is based cannot have the effect of exempting it from imposition of a fine in so far as it could not be unaware of the anti-competitive nature of that conduct' and at paragraph 41 'It follows that legal advice given by a lawyer cannot, in any event, form the basis of a legitimate expectation on the part of an undertaking that its conduct does not infringe Article 101 TFEU or will not give rise to the imposition of a fine'.

¹⁴⁵¹ In its representations in response to the SO, BGL submitted that the legal test for establishing negligence requires 'no degree of uncertainty as regards the legality of the behaviour in question, and second, that this knowledge was accessible to the undertaking in question'. BGL further submitted that 'the threshold for establishing that an undertaking 'knew' it was contravening competition law is high'. BGL did not repeat these representations in response to the DPS. For the reasons set out in this Decision, the submissions made by BGL in response to the SO are inconsistent with the established position under UK and EU law.

¹⁴⁵² *Napp Pharmaceutical Holdings Limited v Director General of Fair Trading* [2002] CAT 1, paragraph 456: 'While in some cases the undertaking's intention will be confirmed by internal documents in our judgment, and in the absence of any evidence to the contrary, the fact that certain consequences are plainly foreseeable is an element from which the requisite intention may be inferred. If, therefore, a dominant undertaking pursues a certain policy which in fact has, or would foreseeably have, an anti-competitive effect, it may be legitimate to infer that it is acting 'intentionally' for the purposes of section 36(3)'.

¹⁴⁵³ *Royal Mail PLC v Office of Communications* [2019] CAT 27, paragraph 782.

¹⁴⁵⁴ *Napp*, paragraphs 456 and 457. See also Case 100/80, *SA Musique Diffusion Française and others v European Commission*, EU:C:1983:158, paragraph 112: 'the Court finds that Pioneer must have been fully aware that its conduct was of such a nature as to encourage restrictions on competition. That is sufficient for a finding that that undertaking acted intentionally'.

11.C.I.(b). BGL acted intentionally or negligently

- 11.13 The CMA finds that BGL committed the Infringements intentionally or, at the very least, negligently.
- 11.14 For the reasons set out below, BGL must have been aware, or could not have been unaware, or at least ought to have known that CTM's network of wide MFNs would result in a restriction or distortion of competition.

11.C.I.(b).(i). BGL was aware of the nature of CTM's wide MFNs and considered them to be integral to CTM's strategy

- 11.15 As set out in Section 8.A.I, CTM's wide MFNs prevented the relevant home insurers from quoting lower prices on rival PCWs and CTM was therefore protected, as a matter of contract, from being undercut by the prices they offered on other PCWs. Furthermore, as set out in section 8.A.II, CTM considered its network of wide MFNs to be integral to its competitive strategy and effective in achieving its objectives by strengthening its competitive position and CTM behaved accordingly. As set out in the next paragraph, CTM believed that in the absence of its wide MFNs it would be subject to greater price competition, increasing pressure on commission fees and reducing its profits.
- 11.16 CTM was aware that its network of wide MFNs strengthened its competitive position relative to its rivals, and it confirmed in its submissions to the CMA that this was the objective of its wide MFNs.¹⁴⁵⁵ Moreover, as set out in Section 8.A.II.(a), CTM internal documents and its submissions to the CMA in the context of the present Investigation, the PMI Market Investigation, and the DCTs Market Study clearly show that CTM was aware, or at least ought to have been aware, that its network of wide MFNs was of such a nature as to result in a restriction of competition.¹⁴⁵⁶ In particular, BGL's internal documents and submissions show that:
- (a) BGL was aware of the importance of price as a parameter of competition between PCWs and between providers competing on PCWs. CTM recognised that having the lowest prices was 'critical' to the PCW proposition and therefore important to its competitive

¹⁴⁵⁵ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 364.

¹⁴⁵⁶ BGL submitted that its internal documents referring to its commercial strategy regarding the use of wide MFNs that pre-date the Relevant Period or relate to the PMI Market Investigation are irrelevant. The CMA disagrees for the reasons set out in Annex P.I.

position.¹⁴⁵⁷ As such, it cannot have been unaware that rival PCWs also considered price to be important to their competitive positions.

- (b) BGL confirmed, and was therefore aware or at least ought to have known, that CTM's wide MFNs affected the relative prices quoted by providers on CTM and rival PCWs.¹⁴⁵⁸ It therefore cannot have been unaware that CTM's wide MFNs could affect the relative competitive position of CTM and its rivals, or of providers competing on PCWs, given the importance of price to competition between PCWs and between providers competing on PCWs. Indeed, BGL confirmed that the objective of its wide MFNs, in contractually obliging the lowest prices from the relevant providers, was to strengthen its competitive position relative to its rivals.¹⁴⁵⁹
- (c) BGL recognised, in the context of the PMI Market Investigation, that wide MFNs were '*increasingly important*' in preventing insurers differentiating their prices across PCWs and '*may allow insurers (and other suppliers) to price discriminate more effectively*'.¹⁴⁶⁰ It was therefore aware, or at least ought to have known, that its network of wide MFNs affected the ability of providers to price differentiate between PCWs and the ability of other PCWs to compete with CTM on price.
- (d) BGL was concerned, based on its observations of developments in the market, that removal of wide MFNs in private motor insurance would increase attempts by providers to drive competition among PCWs, increase providers' resistance to commission fee increases, and encourage PCWs (including CTM) to reduce commission fees to maintain competitive pricing.¹⁴⁶¹ It was therefore aware, or at least

¹⁴⁵⁷ URN 8484.5, BGL's Response to the SO, dated 22 February 2019, paragraph 72.

¹⁴⁵⁸ See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 42 to 44 and 178. See paragraphs 8.120 to 8.141: BGL stated that a wide MFN links the price displayed on one platform to the price being displayed on competing platforms and that CTM's wide MFNs '*seek to ensure it offered the best possible price to consumers/customers, and hence to strengthen its competitive position vis-à-vis rivals*'. BGL also submitted that '*under a WMFN the supplier is still free to set its price; it just has to set the same prices for each distribution channel*' (See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 364 and 443).

¹⁴⁵⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 364: BGL stated that the '*primary objective*' of CTM's wide MFNs was to '*seek to ensure it offered the best possible price to consumers, and hence to strengthen its competitive position vis-à-vis rivals*'. See Section 8.A.II.

¹⁴⁶⁰ See Section 8.A.II.(a). In particular, URN 9607.2, Transcript of multi-lateral response hearing with PCWs held on 28 February 2014, page 9 (the statement relates to the importance of wide MFNs to protect consumers from price optimisation software) and URN 9857, BGL's Response to the DCTs Update Paper dated 28 March 2017, question 12 page 18.

¹⁴⁶¹ See Section 8.A.II.(a). In particular, URN 3139, BGL's response to section 27 notice dated 26 September 2017, slide deck entitled 'Impact of ban on Wide MFN' dated July 2014, slide 2; URN 4182, BGL's response to section 27 notice dated 26 September 2017, internal document entitled '14/15 strategy and plans,' slide 55; URN 3301, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Relationship

ought to have known, that removal of wide MFNs in home insurance was likely to lead to its rivals competing more strongly by reducing their commission fees to attract lower prices from providers, thereby requiring CTM to respond in order not to be undercut by its rivals.¹⁴⁶²

- (e) BGL's awareness of the potential implications to CTM's business in terms of facing greater competitive pressure from rival PCWs informed its decision to retain wide MFNs in relation to home insurance (and insurance products other than private motor insurance).¹⁴⁶³ This was despite requests from several providers (some of which highlighted the anti-competitive nature of wide MFNs) to remove the wide MFN from their contracts.¹⁴⁶⁴ BGL was therefore aware, or ought to have known, that wide MFNs restricted relevant providers from offering prices that were lower on other PCWs than on CTM and, in turn, restricted the ability of other PCWs to compete on price.

11.17 CTM's actions in systematically monitoring compliance with and where necessary enforcing its wide MFNs is further evidence that CTM regarded its wide MFNs as an integral part of its competitive strategy and effective in achieving its strategy.¹⁴⁶⁵

11.18 Accordingly, BGL was aware, or ought to have known, that its network of wide MFNs gave CTM a significant competitive advantage over rival PCWs because CTM knew that, unlike its rivals, it was able to secure the lowest prices from providers without needing to invest itself (for example by lowering its commission fees) to secure those prices.¹⁴⁶⁶

11.19 BGL submitted that the CMA has wrongly found that CTM's internal documents show that BGL was aware, or at least ought to have been aware, that CTM's network of wide MFNs restricted competition.¹⁴⁶⁷ However,

Management: the way forward in 2014/2015' slide 9; URN 3208, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Partnership Proposition (Jan-15)', slide 5; URN 5750, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices, June 2015', slide 8; URN 3889, BGL's response to section 27 notice dated 26 September 2017, document entitled 'CTM Exec Finance Update, 26 April 2016', slide 30; and URN 1965, BGL's response to section 27 notice dated 26 September 2017, document entitled '[HIP] Pricing parity results – August 2017 v3 [Autosaved]_Redacted', slide 2.

¹⁴⁶² URN 3208, BGL's document entitled 'Partnership Proposition', submitted by BGL in response to the section 27 notice dated 26 September 2017, slide 5.

¹⁴⁶³ See Section 8.A.II.(b).

¹⁴⁶⁴ See Section 8.A.II.(c).

¹⁴⁶⁵ See Section 8.A.II.(d) and Section 8.B.III.

¹⁴⁶⁶ For instance, CTM's enforcement action against [HIP] led to [HIP] having to agree to price discounts on CTM in home insurance and private motor insurance that were fully funded by [HIP], meaning that CTM knew the enforcement of its wide MFN meant that it benefitted from lower prices compared to its rival PCWs without itself having to fund or co-fund the reductions. (see Section 8.B.III.(b).(i) and Annex M.I, and Section 9.B.II.(b)).

¹⁴⁶⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 369 to 379. In particular, BGL submitted that its internal documents '*do not support the proposition that BGL anticipated increased competition as a result of the removal of WMFNs in PMI*' and that its '*internal documents demonstrate*

BGL's submissions are inconsistent with the statements it has made on its objective in imposing wide MFNs and the clear statements made in its internal documents, both before and during the Relevant Period, about the impact of not being able to rely on wide MFN clauses.¹⁴⁶⁸ Its submissions are also inconsistent with CTM's decision to retain its wide MFNs in home insurance (and other products except private motor insurance), despite its awareness of the competition law risks.

11.C.I.(b).(ii). BGL was aware of CTM's strong market position and its importance to providers

11.20 BGL was aware that price was an important parameter of competition between PCWs and providers competing on PCWs, and was aware of CTM's strong market position and its importance to providers. These factors are well recognised as important indicators of whether vertical agreements are likely to have appreciable anti-competitive effects.¹⁴⁶⁹

11.21 In the light of BGL's awareness of the nature of the restraint imposed by CTM's network of wide MFNs, it was plainly foreseeable, or BGL ought to have been aware, that maintaining CTM's network of wide MFNs in such circumstances would result in a restriction of competition.

11.22 In that regard, BGL was aware that:

- (a) Price competition was an important dimension of competition between PCWs and between providers competing on PCWs.¹⁴⁷⁰ As explained above, CTM's awareness of the importance of price competition between PCWs was the reason for it imposing wide MFNs to ensure it

that it agreed WMFNs in order to help it secure good deals for CTM's customers' and '[t]here is no evidence that BGL knew ... that the clauses would indirectly lead to a restriction in competition between [home insurance providers] or PCWs'.

¹⁴⁶⁸ See Section 8.A.II.(a). For example, see URN 5750 BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices, June 2015', slides 8 and 16 in which CTM recorded its observations that 'Partners have used the prohibition of wide MFN s [sic] to try to drive down CPAs in return for best prices ... Despite aggressive CPA discounting from our competitors, CTM's CPAs remain the highest in the market and continue to grow [§<]'. The slides further noted that 'MSM, Confused and Google have been aggressively discounting CPAs in an attempt to steal market share' and '[t]he market has evolved and made achieving best prices more difficult, in particular the prohibition of wide MFNs and an increase in CPA discounting'. See also: URN 1965, BGL's response to First BGL Notice dated 26 September 2017, document entitled '[HIP] Pricing parity results – August 2017 v3 [Autosaved]_Redacted', slide 2 in which CTM explained that 'Other PCWs have increasingly been discounting CPAs to gain lower prices for customers. CTM has chosen not to do this in the past, on the basis that we expected that it would i) reduce profitability; ii) we have previously relied more on WMFNs; and iii) we don't want to start a CPA discounting war'.

¹⁴⁶⁹ See, in particular, Vertical Guidelines, paragraph 114: the greater the market shares of the parties involved, and the greater the coverage of the network of similar agreements, the greater the likelihood that the effect on competition is appreciable. (See Section 3 and Section 9.D). BGL itself recognizes that coverage and market share are important to the assessment of effects (see Section 8.C.II and Annex Q.IX).

¹⁴⁷⁰ See Section 7.C.

was not undercut by rival PCWs, as well as for retaining and enforcing its wide MFNs in home insurance.

- (b) CTM was the largest PCW with at least 50% market share for sales of home insurance on PCWs during the Relevant Period (almost twice the size of its nearest competitor) and used its size to market itself to providers, including by reference to the fact that providers could not access a high proportion of new business customers through other channels.¹⁴⁷¹
- (c) CTM's network of wide MFNs covered a significant proportion of providers, and included several large and well-known providers, such as [HIP], [HIP], [HIP] and [HIP]¹⁴⁷², and, through its systematic monitoring, took enforcement action to resolve concerns it had about compliance when it identified providers were pricing outside its compliance tolerance thresholds.¹⁴⁷³

11.23 BGL submitted that it was entitled to regard CTM's wide MFNs as unlikely to have an appreciable effect on competition because *'CTM believed at the time in good faith that it had a market share of approximately 8% and coverage of at most 10-12%, both cases within the safe harbour limits of the De Minimis Notice'*.¹⁴⁷⁴ In support of this submission, BGL cited, in relation to its market share, a statement made by [Senior Executive, CTM] in a 2013 internal email that CTM's market share was *'a long way off dominant at 8% of sales'*¹⁴⁷⁵ and that it considered itself with good reason as competing not only with PCWs, but also with direct channels and some renewals.¹⁴⁷⁶ In

¹⁴⁷¹ See Section 5.E. CTM, in the Relevant Period, tracked its market position relative to other PCWs and was aware from such tracking that it was by far the largest PCW. See also, regarding CTM's appreciation of its market share: URN 1985, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q20 CTM Strategic Plan August 2014 Presentation (Exec Board strat 2014-22 MASTER_FINAL_Redacted.PDF', slide 8, *'home share, almost 50%'*; URN 1986, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q20 CTM Strategic Plan September 2014 Presentation (Exec Board strat 2014-22 MASTER_FINAL_Redacted', slide 12 (*'home share almost 50%'*); URN 1983, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q20 Board Final 160312 Ex Appendices Redacted', slide 9, *'home [market share has increased] from 42% to 46%'*; URN 6223, [HIP]'s response to section 26 notice dated 16 April 2018, document entitled 'Various 2016 Emails PCWs', page 11, email from CTM to [HIP] dated 29 April 2016: *'our market share on home has been over 50% for some time now and we have seen this grow further since our campaign launched on 1st March. We deliver a high proportion of quality customers that are unique to comparethemarket.com that cannot be reached by our partners through any other distribution channel'*.

¹⁴⁷² See Section 8.C. CTM's network of wide MFNs covered approximately 40% of sales made through PCWs during the Relevant Period, which included several of the largest providers (in terms of sales through PCWs).

¹⁴⁷³ See Section 8.B.III.

¹⁴⁷⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 407.

¹⁴⁷⁵ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 404; URN 2983, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], email entitled 'RE: Amazon has had to withdraw MFN's', dated 30 August 2013, page 1. This email chain discusses the outcome of parallel investigations by the OFT and German Bundeskartellamt, leading to Amazon ending its price parity policy on Amazon.co.uk and more widely in the European Union. See paragraph 11.35 below.

¹⁴⁷⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 404 and 405.

support of its submission in relation to coverage, BGL relied on Oxera's Coverage and Compliance Analysis showing that the coverage of CTM's network of wide MFNs was '*considerably below both the 15% and the 30% thresholds*' in the De Minimis Notice.¹⁴⁷⁷

- 11.24 Where an undertaking can demonstrate that it relied in good faith on the De Minimis Notice, the CMA will not impose a penalty.¹⁴⁷⁸ However, the evidence submitted by BGL does not demonstrate that, at the time of the Infringements, it relied in good faith on the terms of the De Minimis Notice.
- 11.25 BGL has not adduced any evidence that at the relevant time it undertook an assessment of its market position for the purpose of applying the market share safe harbour under the De Minimis Notice or otherwise assessed the compatibility of its wide MFNs with competition law. The CMA does not consider that the single email dated August 2013 is sufficient to demonstrate that BGL assumed in good faith during the Relevant Period that its market share was within the thresholds of the De Minimis Notice, particularly in circumstances where BGL is unable to verify what 'market' [Senior Executive, CTM] was referring to.¹⁴⁷⁹
- 11.26 Moreover, BGL subsequently confirmed at the oral hearing that the statement was not made in the context of the potential application of the De Minimis Notice to CTM's wide MFNs.¹⁴⁸⁰ In fact, contrary to BGL's submissions relating to the De Minimis Notice, as explained above at paragraph 11.22 above, CTM often referred to itself in internal documents and correspondence as having a market share of around 40% to 50%, and it

¹⁴⁷⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 406-408.

¹⁴⁷⁸ OFT, Agreements & concerted practices, (OFT 401, December 2004), paragraph 2.19: '*As a matter of practice the [CMA] is likely to consider that an agreement will not fall within either Article [101] or the Chapter I prohibition when it is covered by the [De Minimis Notice]. Where the [CMA] considers that undertakings have in good faith relied on the terms of the [De Minimis Notice], the [CMA] will not impose financial penalties for an infringement of Article [101] and/or the Chapter I prohibition.*'

¹⁴⁷⁹ URN 10535, transcript of the DPS Oral Hearing with on the Draft Penalty Statement between BGL and the held on CMA dated 9 March 2020, pages 65 and 66. BGL explained that it was unable to identify the market referred to in the email and how to reconcile the market share of 8% with other contemporaneous documents showing CTM's market shares in home insurance as at least above 40%. BGL's representatives commented that '*it is very difficult to comment on what was in someone else's mind at the time*'; and '*those are comments from someone who expresses an opinion on the sector in which they operate. It is not an empirical, evidence-based analysis of the actual market*'. We also note that this position is inconsistent with BGL's assessment of its market share as set out above in paragraph 11.22 (see also URN 1619, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'Q25 - NEW Aug-17 - car home van market estimates.XLSX').

¹⁴⁸⁰ URN 10535, transcript of the DPS Oral Hearing with BGL held on 9 March 2020, pages 67 and 68. At the penalty oral hearing, the CMA asked BGL whether it reviewed the application of the De Minimis Notice in light of the Competition Commission's approach to how it defined the market in the PMI Market Investigation. BGL indicated '*we are not in the business of disclosing privileged advice. If we just refer you to that document [the email chain about the Amazon Marketplace investigation]. You can see [that [Senior Executive, CTM]] is not referring to the De Minimis Notice; he is talking about dominance. So, it is not a specific, 'This is what they thought about the law'. It is just focusing on, 'This is what he thought about market shares in the context of this question*'.

was clearly foreseeable following the PMI Market Investigation that the definition of the relevant market would be the provision of PCW Services.¹⁴⁸¹

- 11.27 Similarly, it is not clear on what basis BGL ‘*assumed in good faith at the relevant time*’ that the coverage of CTM’s network of wide MFNs was ‘*at most 10-12%*’, given that this figure is based on Oxera’s ex-post Coverage and Compliance Analysis. BGL has not adduced any evidence from before or during the Relevant Period to support its submission on good faith and cannot retrospectively rely on an ex-post analysis by its economic advisers prepared in the context of this Investigation to demonstrate that during the Relevant Period it relied in good faith on the fact that its network of wide MFNs was within the safe harbour of the De Minimis Notice.

11.C.I.(b).(iii). BGL was aware that CTM’s wide MFNs risked being found to infringe competition law

- 11.28 BGL was aware, or at least ought to have known, that CTM’s network of wide MFNs risked being found to infringe competition law. Although it is not necessary to demonstrate that BGL knew or ought to have known that CTM’s wide MFNs infringed the Chapter I prohibition or Article 101(1), it is relevant that BGL was aware (including in the light of actions by the CMA and other enforcement agencies) that wide MFNs could have anti-competitive effects and might infringe competition law.¹⁴⁸²
- 11.29 All undertakings, irrespective of their size, are expected to know the basic EU and UK rules on competition.¹⁴⁸³ A particular degree of awareness of competition law is expected from undertakings with large market shares.¹⁴⁸⁴ BGL is a well-resourced company with experienced internal and external legal and economic advisers, which also actively contributed to CMA investigations looking at the potential harmful effects on competition of wide MFNs, namely the PMI Market Investigation and the DCT Market Study.

¹⁴⁸¹ In the PMI Market Investigation, the relevant product market was defined as ‘*a two-sided market where PCWs provide comparisons between PMI policies to consumers and sales opportunities to insurers and brokers*’ (PMI Market Investigation, Final Report, paragraph 4.46).

¹⁴⁸² Genuine uncertainty on the part of an undertaking as to whether an agreement or network of agreements constitutes an infringement may be a mitigating factor in calculating the level of penalty (see Penalty Guidance, paragraph 2.19). The CMA has considered this potential mitigating factor in calculating the level of the proposed penalty (see Annex S.IV).

¹⁴⁸³ Case T-154/09 MRI v Commission EU:T:2013:260, para 264; Case T-386/10 Dornbracht v Commission EU:T:2013:450, para 204 (further appeal Case C-604/13P, not yet decided); Case T-69/10 Industrie Riunite Odolesi (IRO) v Commission EU:T:2014:1030, para 275.

¹⁴⁸⁴ Case T-336/07 Telefónica et Telefónica de España, v Commission EU:T:2012:172, paras 324 to 325 (further appeal dismissed in Case C-295/12P EU:C:2014:2062); and Case T-704/14 Marine Harvest v Commission EU:T:2017:753, para 257.

- 11.30 BGL was closely involved in the PMI Market Investigation from launch and was therefore aware of concerns raised about the use of wide MFNs by PCWs including by CTM in a market closely related to home insurance, including by CTM, from at least December 2013 when the Competition Commission (the CMA's predecessor) published its provisional findings.¹⁴⁸⁵ These findings were confirmed in the CMA's final report.¹⁴⁸⁶ Despite the fact that BGL knew that wide MFNs had attracted the CMA's scrutiny in private motor insurance (where they were found to have an adverse effect on competition), and had been found by competition authorities to raise competition concerns in other sectors because of their capacity to restrict competition,¹⁴⁸⁷ CTM (in contrast to the other Big Four PCWs) decided to continue to include and enforce wide MFNs in its contracts with home insurance providers. Accordingly, BGL's decision to maintain CTM's network of wide MFNs in home insurance was not a result of ignorance of the law, but rather one of calculated risk.
- 11.31 BGL was also closely involved in the DCTs Market Study from launch and was therefore aware, from at least March 2017, of the CMA's concerns about the issue of CTM's use of wide MFNs and the possibility of competition enforcement.¹⁴⁸⁸ Moreover, in November 2016, following a meeting with the CMA in the DCTs Market Study, [Senior Executive, CTM], provided an update to [Senior Executive, BGL], indicating that the CMA was looking at CTM's use of wide MFNs in home insurance. [Senior Executive, CTM] informed [Senior Executive, BGL] that the CMA had raised '*tricky questions on why we still enforced wide MFNs on Home insurance*'.¹⁴⁸⁹

¹⁴⁸⁵ As set out in Section 8.A.II.(a) and Annex P.V, BGL's internal documents and submissions relating to the PMI Market Investigation and the impact of the ban on wide MFNs in private motor insurance are relevant because they provide insight into CTM's views on the importance of wide MFNs to its commercial strategy, both in relation to private motor insurance and more generally (including home insurance). While there are differences between the private motor insurance sector and the home insurance sector, the nature of the services provided by PCWs to providers and consumers in both sectors is the same and the legal and economic context is similar in many respects. For example, the main participants in providing PCW Services in home insurance and private motor insurance are the same, price is an important parameter of competition, and the extent of the use of wide MFNs by the Big Four PCWs was similar.

¹⁴⁸⁶ Documents relating to the PMI Market Investigation are available on [the CMA's case page](#). The CMA's final report in the PMI Market Investigation found that wide MFNs, including those used by CTM, gave rise to an adverse effect on competition under Part 4 of the Enterprise Act 2002 in the PCW market for private motor insurance.

¹⁴⁸⁷ The PMI Market Investigation found that wide MFNs, including those used by BGL, gave rise to an adverse effect on competition under Part 4 of the Enterprise Act 2002 in the PCW market for PMI. The CMA's final report stated that wide MFNs had anti-competitive effects which were not outweighed by efficiencies within the scope of Article 101(3). It also stated that it could not be ruled out that wide MFNs of the kind assessed in the report might be considered to be unlawful and may restrict competition not only by effect but '*by object*'. Example of authorities' findings, see below at paragraph 11.32.

¹⁴⁸⁸ Documents relating to the DCTs Market Study are available on the [CMA's case page](#).

¹⁴⁸⁹ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016', dated 28 November 2016, page 1.

11.32 Prior to and during the Relevant Period, the potential for wide MFNs similar to those used by CTM to have anti-competitive effects were well publicised and clearly identifiable from enforcement actions taken by the CMA and other competition authorities in the EU in other contexts. As a result, the finding that CTM's wide MFNs in home insurance infringed competition law is not 'novel' and was foreseeable. For example:

- (a). In November 2016, the CMA announced that it was investigating suspected breaches of the Chapter I and II prohibitions and Articles 101 and 102 TFEU in respect of the supply of auction services. The CMA's case page explicitly referred to the fact that the restrictive pricing practices under investigation included '*most favoured nation provisions in respect of online sales*'.¹⁴⁹⁰
- (b). Several national competition authorities in EU member states, including the UK, initiated actions against wide MFNs used by online travel agents. The German competition authority found in 2013 that such wide MFNs infringed Article 101 TFEU (and the equivalent German law).¹⁴⁹¹ Other national competition authorities agreed commitments following their investigations to secure removal of such clauses, and between 2015 and 2017 some EU member states also passed legislation banning the use of wide MFNs (and narrow MFNs) in the hotels sector.¹⁴⁹²

¹⁴⁹⁰ *Auction Services*, CMA, case 50408, Commitments Decision dated 29 June 2017. The explanation set out on the CMA's case page at the time the investigation opened stated: 'On 22 November 2016, the CMA launched an investigation into suspected breaches of competition law in respect of the supply of auction services in the UK. The investigation is under Chapters I and II of the Competition Act 1998 (CA98) and Articles 101 and 102 of the Treaty on the Functioning of the European Union (TFEU). The investigation relates to suspected anti-competitive agreement(s) or concerted practice(s) and suspected abuse of dominance in the supply of auction services in the UK, in particular, suspected exclusionary and restrictive pricing practices, including most favoured nation provisions in respect of online sales'. The CMA's Commitments Decision stated that its competition concerns about the wide MFN clauses used by ATG Media (referred to as 'no less favourable terms' or NLFT clauses in the Commitments Decision) included the foreclosure of competing platforms and the softening of competition between them (see paragraph 3.15 of the Commitments Decision). In order to address the CMA's concerns, ATG Media (among other things) agreed to refrain from entering into any such clauses and to amend any existing agreements containing such clauses (see Clauses 6 and 7 of the Commitments). While a commitments decision by the CMA does not make finding of an infringement, it does clearly indicate that the CMA had concerns about that conduct under investigation (which it was satisfied the commitments offered would address in circumstances where the CMA considered it appropriate to accept those commitments).

¹⁴⁹¹ See Federal Cartel Office (Bundeskartellamt), Decision against HRS-Hotel Reservation Service of 20 December 2013 (B9 – 66/10), where the Bundeskartellamt found that HRS's MFNs (both wide and narrow) restricted competition by effect.

¹⁴⁹² In the hotel online bookings sector, the French, Italian, Swedish, and Irish NCAs accepted commitments from online travel agencies (see French Competition Authority [Autorité de la concurrence], Decision 15-D-06 dated 21 April 2015; Italian Competition Authority [Autorità Garante della Concorrenza e del Mercato], Decision dated 21 April 2015; Swedish Competition Authority [Konkurrensverket] Decision 596/2013 dated 15 April 2015; the Irish Competition and Consumer Protection Commission accepted commitments from Booking.com as of 1 October 2015); and the Bundeskartellamt also prohibited Booking.com's narrow MFNs (Decision B 9 – 121/13 dated 22 December 2015). Subsequently, France, Austria, and Italy each passed laws banning the use of wide MFNs in the hotel sectors (Article 133 of the Loi n. 2015-990 du 6 août 2015 pour la croissance, l'activité et l'égalité des

- (c). Competition authorities in the EU, including the UK, also took action in relation to the use of wide MFNs in the e-books sector and by Amazon in respect of its marketplace.¹⁴⁹³

- 11.33 The potential for wide MFNs to raise competition law concerns and the risks of enforcement action by competition authorities were well known by legal and economic advisers and were widely discussed before and during the Relevant Period by commentators, including practitioners and academics¹⁴⁹⁴, as well as within international competition policy forums, such as the OECD.¹⁴⁹⁵
- 11.34 BGL submitted that, although it was aware of the regulatory activity and of the debate in the competition policy literature on the effects of wide MFNs¹⁴⁹⁶, there is *'no basis for suggesting that the various regulatory activity cited should or did alert BGL to any anticompetitive consequences of its wide MFNs'*.¹⁴⁹⁷
- 11.35 The CMA disagrees. BGL's senior management were clearly alert, both before and during the Relevant Period, to the potential for CTM's network of wide MFNs in home insurance to be anti-competitive and to infringe

chances économiques; 99. Bundesgesetz: Änderung des Bundesgesetzes gegen den unlauteren Wettbewerb 1984 – UWG und des Preisauszeichnungsgesetzes; Legge 124/2017, articolo 1, comma 166 del 29 agosto 2017). The sector has since been the subject of monitoring: for example, see the [ECN Report on the EU-wide monitoring exercise](#) in the online hotel booking sector carried out by a group of eleven EU competition authorities in 2016 (the Belgian, Czech, French, German, Hungarian, Irish, Italian, Dutch, Swedish, and UK national competition authorities and DG Competition).

¹⁴⁹³ On *Amazon Marketplace*, see Bundeskartellamt, Decision B 6 – 46/12 dated 26 November 2013 and Decision B 9 – 121/13 dated 22 December 2015 and the [OFT's decision](#) in November 2013 to close its investigation under Chapter I of the Act and Article 101 TFEU into Amazon's price parity policy (CE/9692/12) on administrative priority grounds following Amazon taking steps to implement the removal of its price parity policy. On *E-books*, see Case AT.39847 *Apple E-books*, Decision dated 12 December 2012 (note that the OFT (the CMA's predecessor) opened an investigation into E-books in January 2011, but closed it in December 2011 (see [CE/9440-11, e-books, update 6 December 2011](#)) on the basis of administrative priorities given that the European Commission was also investigating similar conduct) and Case AT.40153 *E-book MFNs and related matters (Amazon)*, Decision dated 28 July 2017 (note that the European Commission's concerns in the Amazon e-books case were under Article 102).

¹⁴⁹⁴ For example, Oxera agenda article [Most-favoured-nation clauses: falling out of favour?](#), November 2014; Slaughter and May briefing [Online hotel bookings – a joint European approach or a most favoured nation?](#), May 2015; [The law and economics of most-favoured nation clauses](#), González-Díaz and Bennett, Competition Law & Policy Debate, Volume 1, Issue 3, August 2015; Osborne Clarke insights article [Latest ruling on Booking.com's 'best price' clauses: Is Narrow the new Wide?](#), 13 January 2016; Fletcher, Amelia and Hviid, Morten (2017) *Broad Retail Price MFN Clauses: Are they RPM 'at its Worst'?* Antitrust Law Journal, 81 (1). pp. 61-98.

¹⁴⁹⁵ See for instance the OECD Executive Summary of the Hearing on Cross-Platforms Parity Agreements stated: *'there is increasing concern at online platforms using agreements that prevent producers from setting lower retail prices on rival platforms that offer more competitive commission rates'* ([Summary record of the 124th meeting of the Competition Committee, held on 27-28 October 2015](#), DAF/COMP/M(2015)2/ANN3/FINAL, page 2); and the CMA's submission outlined the potential significant competition concerns for the CMA arising from the use of retail MFNs in certain circumstances and that this was particularly the case for wide MFNs (see [CMA's submission](#), paragraphs 9, 10 and 13). The CMA notes that its predecessor body, the Office of Fair Trading (OFT), also outlined the potential harm from 'retail-price MFNs' in its paper submitted to the [OECD Roundtable on Vertical Restraints for On-line Sales](#) in 2013.

¹⁴⁹⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 380.

¹⁴⁹⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 399.

competition law. This was not only as a result of BGL's involvement in the PMI Market Investigation and DCTs Market Study, but also from its awareness of other regulatory actions. For example, senior management within BGL discussed as early as August 2013 the implications of the OFT and Bundeskartellamt's *Amazon Marketplace* investigations for CTM's ongoing use of wide MFNs.¹⁴⁹⁸

- 11.36 Following the PMI Order 2015 banning the use of wide MFNs in private motor insurance, BGL sought external advice relating to the risks of retaining its network of wide MFNs in home insurance – and revisited this during the DCTs Market Study.¹⁴⁹⁹ BGL's senior management were therefore clearly alive to the risks of maintaining CTM's network of wide MFNs in home insurance, yet decided to retain them. For example, in November 2016, following a meeting with the CMA in the DCTs Market Study, [Senior Executive, CTM], recognised the competition law risks in terms of continuing to use wide MFNs given the CMA's ongoing scrutiny, stating in an email to [Senior Executive, BGL] that *'it is clearly an area of focus and so we should discuss our approach further to ensure you [ie [Senior Executive, BGL]] are comfortable with the position'*.¹⁵⁰⁰ [Senior Executive, BGL] responded that he was *'not comfortable to accept the risk at this stage'*, thereby clearly

¹⁴⁹⁸ URN 2983, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], email entitled 'RE: Amazon has had to withdraw MFN's', dated 30 August 2013, page 1. This email chain discusses the outcome of parallel investigations by the OFT and German Bundeskartellamt, leading to Amazon ending its price parity policy on Amazon.co.uk and more widely in the European Union. [Senior Executive, CTM] stated: *'The MFN's in question are, to my knowledge, the same as the ones we operate, albeit the situation is very different given Amazons [sic] dominance. [Employee 1, BGL] and I were already clear that the MFN's we operate would not be defensible should we have a dominant market share, albeit of course our share is a long way off dominant at 8% of sales. I still believe we have a good opportunity to maintain the status quo and the development below does not change anything, albeit the timing is unfortunate and this will generate noise from partners'*. BGL submitted that there were *'clear reasons'* why this document shows that BGL should not have read the Amazon marketplace case as suggesting it was aware CTM's wide MFNs could restrict competition (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 396). This appears to be because BGL considered Amazon to be dominant and because [Senior Executive, CTM] suggested that BGL was *'a long way off dominant at 8% of sales'*. However, as explained in Section 5.E. and Section 11.C.I.b.ii, CTM was well aware of its strong market position during the Relevant Period. Furthermore, the OFT's investigation into Amazon marketplace had been opened under Chapter I of the Act and Article 101 TFEU (not the prohibitions relating to the abuse of a dominant position).

¹⁴⁹⁹ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016', dated 28 November 2016, page 1.

¹⁵⁰⁰ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016', dated 28 November 2016, page 1. See also BGL's decision to continue to use wide MFNs in home insurance despite the PMI Order: URN 3298, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Regulatory Change update for ctm – actions 29.07.15', page 2; see also URN 1876, BGL's response to First BGL Notice dated 26 September 2017, document entitled "CMA PMI Quarterly Statement", June 2016, slide 9.

indicating that BGL was aware of the risks of maintaining its network of wide MFNs and the potential implications of the CMA's DCT Market Study.¹⁵⁰¹

- 11.37 It is well-established that undertakings are expected to carry out a 'self-assessment' to ensure that their conduct complies with the requirements of UK and EU competition law. In that regard, even though senior management within BGL recognised the legal risks of CTM retaining wide MFNs in home insurance, BGL has not put forward any evidence about any self-assessment made prior to or during the Relevant Period of the potential effects on competition of its wide MFNs in home insurance. Similarly, BGL has not submitted evidence that it considered prior to or during the Relevant Period that the competition concerns about the effects of wide MFNs identified by relevant authorities, including the CMA, in other sectors and more generally, would not apply in home insurance or were outweighed by any pro-competitive effects.¹⁵⁰²
- 11.38 In addition to these points, BGL has also made various further representations about why it did not commit the Infringements intentionally or negligently, which the CMA has addressed in Annex S.

11.C.I.(c). Conclusion on intention or negligence

- 11.39 For the reasons set out above, the CMA finds that BGL must have been aware, or could not have been unaware, that its network of wide MFNs would result in a restriction or distortion of competition. Alternatively, the CMA finds at the very least that BGL ought to have known that CTM's network of wide MFNs would result in a restriction or distortion of competition. Therefore, the CMA finds that BGL committed the Infringements either intentionally or, at the very least, negligently, within the meaning of section 36(3) of the Act.

11.C.II. The CMA's decision to impose a penalty

- 11.40 Section 36 of the Act provides that the CMA may impose a financial penalty on an undertaking which has committed an infringement intentionally or

¹⁵⁰¹ URN 3919, BGL's response to section 27 notice dated 26 September 2017, email chain between [Senior Executive, CTM] and [Senior Executive, BGL], 'RE: CMA Meeting – Digital Comparison Tools Market Study – 25 November 2016', dated 28 November 2016, page 1.

¹⁵⁰² Despite acknowledging that wide MFNs could have both pro and anti-competitive effects (see for example, URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 363 and 380), BGL has not adduced evidence during the course of the Investigation to support that its network of wide MFNs in home insurance had pro-competitive efficiencies that could outweigh the anti-competitive effects and that meet the conditions for exemption under section 9 of the Act or Article 101(3) TFEU. See further Section 10.B.III where the CMA assesses the application of section 9 of the Act and Article 101(3) to CTM's network of wide MFNs.

negligently. It is therefore for the CMA to determine in a given case whether or not a financial penalty should be imposed.¹⁵⁰³

- 11.41 The CMA has a margin of appreciation when determining the appropriate amount of a penalty under the Act¹⁵⁰⁴ and is not bound by its decisions in relation to the calculation of financial penalties in previous cases.¹⁵⁰⁵ Rather, the CMA makes its assessment on a case-by-case basis,¹⁵⁰⁶ having regard to all the relevant circumstances and the objectives of its policy on financial penalties. In line with statutory requirements and the twin objectives of its policy on financial penalties, the CMA will have regard to the seriousness of the infringement and the desirability of deterring both the undertaking on which the penalty is imposed and other undertakings that may be considering anti-competitive activities from engaging in them.¹⁵⁰⁷
- 11.42 The CMA has decided that it is appropriate in the circumstances of this case to exercise its discretion under section 36(1) of the Act to impose a financial penalty on BGL given the serious nature of the Infringements and to deter similar conduct in the future, as set out in Section 11.D.I below.
- 11.43 BGL submitted that there is no justification for imposing a penalty on the basis that, in BGL's view, CTM's use of wide MFNs was simply a means of striving to seek lower prices for its customers, the evidence in the present case does not support the CMA's general concerns about wide MFNs, and the CMA should not use the setting of a penalty to send '*some kind of exemplary 'signal' to other undertakings that the CMA disapproves of [wide MFNs] in general*'.¹⁵⁰⁸ BGL also submitted that, because '*it was never once suggested to BGL during the DCT Market Study that BGL was at risk of a penalty or that wide MFNs were intrinsically and foreseeably illegal*', the CMA '*lulled BGL into a false sense of security*' such that the CMA is estopped from imposing a penalty, or should exercise its discretion not to do so.¹⁵⁰⁹

¹⁵⁰³ See paragraph 1.7 of the CMA's guidance as to the appropriate amount of a penalty (CMA73, 18 April 2018) (the 'Penalty Guidance').

¹⁵⁰⁴ Provided that any penalty the CMA imposes under the Act: (i) is within the range of penalties permitted by section 36(8) of the Act, calculated in accordance with the Competition Act 1998 (Determination of Turnover for Penalties) Order 2000; and (ii) is calculated having had regard to the Penalty Guidance in accordance with section 38(8) of the Act. *Argos Limited and Littlewoods Limited v Office of Fair Trading* [2005] CAT 13, at [168] and *Umbro Holdings and Manchester United and JJB Sports and Allsports v OFT* [2005] CAT 22, at [102].

¹⁵⁰⁵ See, for example, *Eden Brown and Others v OFT* [2011] CAT 8 (*Eden Brown*), at [78].

¹⁵⁰⁶ Penalties Guidance, paragraphs 2.5 and 2.8. See, for example, *Kier Group and Others v OFT* [2011] CAT 3, at [116] where the CAT noted that '*other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the maxim that each case stands on its own facts is particularly pertinent*'. See also *Eden Brown*, at [97] where the CAT observed that '*[d]ecisions by this Tribunal on penalty appeals are very closely related to the particular facts of the case*'.

¹⁵⁰⁷ Section 36(7A) of the Act and Penalty Guidance, paragraphs 1.3 and 1.4.

¹⁵⁰⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 429.

¹⁵⁰⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 432.

- 11.44 The CMA disagrees with CTM's submissions that there is no justification for imposing a penalty. As set out in this Decision, the CMA has found that CTM's network of wide MFNs infringed the Chapter I prohibition and Article 101 TFEU. The CMA has reached its decision to impose a penalty on BGL in the circumstances of this case based on its assessment (as set out in Section 11.D below) that the Infringements were serious and the need to deter infringements of competition law.
- 11.45 The CMA also disagrees with BGL that the CMA is somehow '*estopped*' from imposing a penalty on the basis of assurances that the CMA allegedly gave during the DCTs Market Study. While the CMA did not specifically inform BGL during the DCTs Market Study that it was at risk of a penalty if CTM maintained its network of wide MFNs in home insurance, the CMA also did not give any assurances to BGL that it would not investigate and take enforcement action in respect of CTM's wide MFNs under the Act. Indeed, given the purpose of the DCTs Market Study, the CMA was not in a position either to suggest to BGL that CTM's wide MFNs infringed competition law or to give comfort that they did not. It is well established that undertakings are required to self-assess to ensure their conduct complies with UK and EU competition law and the Penalty Guidance is clear that both object infringements and infringements by effect may attract fines.¹⁵¹⁰

11.D. The CMA's penalty calculation

- 11.46 When setting the amount of the penalty, the CMA has had regard to the six-step approach for calculating a penalty set out in the Penalty Guidance.
- 11.47 Table 11.1 below sets out, in summary form, the steps in the CMA's penalty calculation underlying the penalty.

¹⁵¹⁰ Penalty Guidance, paragraph 2.6.

Table 11.1: Summary of the CMA's penalty calculations in respect of BGL

Step	Description	Adjustment
	Relevant turnover	[X]
1	Starting point Penalty after Step 1	18% [X]
2	Adjustment for duration Penalty after Step 2	2 [X]
3	Adjustment for aggravating and mitigating factors Penalty after Step 3	Termination of infringement as soon as CMA intervenes -5% [X]
4	Adjustment for specific deterrence and proportionality Penalty after Step 4	None [X]
5	Adjustment to ensure statutory cap is not exceeded and to avoid double jeopardy	N/A
6	Adjustment for leniency and/or settlement discounts	N/A
	Final penalty	£17,910,062

11.D.I. Step 1 – Starting point

11.48 The starting point for determining the level of financial penalty which will be imposed on an undertaking is calculated having regard to (i) the relevant turnover of the undertaking;¹⁵¹¹ and (ii) the seriousness of the infringement and the need for general deterrence.¹⁵¹²

11.49 In this case, the CMA has decided to apply a starting point of 18% to a relevant turnover of £[X], for the reasons set out below.

11.D.I.(a). Relevant turnover

11.50 The 'relevant turnover' is the turnover of the undertaking in the relevant product and relevant geographic market affected by the infringement in the

¹⁵¹¹ Penalty Guidance, paragraph 2.3.

¹⁵¹² Penalty Guidance, paragraph 2.3. This is distinct from the need to deter the specific infringing undertaking from further breaches of competition law ('specific deterrence'), which is addressed at Step 4 (see Section 11.D.IV).

undertaking's last business year.¹⁵¹³ The 'last business year' is the financial year preceding the date when the infringement ended.¹⁵¹⁴

- 11.51 In this Decision, the CMA defines the relevant market as the supply of PCW Services for Home Insurance in the UK.¹⁵¹⁵ Based on the financial data provided to the CMA by BGL,¹⁵¹⁶ the CMA has used as BGL's relevant turnover the figure of £[§].¹⁵¹⁷ This represents BGL's total revenue from the supply of PCW Services for home insurance products in the UK in the year ending 30 June 2017, the last business year preceding the date when the Infringements ended.
- 11.52 BGL submitted that the CMA's 'coverage estimate' in this case is exaggerated including for the purposes of calculating the 'relevant turnover' *'which should not, in any event, include CTM's turnover with HIPs who never had a wide MFN in the first place'*.¹⁵¹⁸ The CMA disagrees, and is unclear on the alleged legal basis for such an argument.¹⁵¹⁹ Based on the definition of 'relevant turnover' above, this includes all home insurance providers that made sales through CTM, whether or not they had a wide MFN.

¹⁵¹³ Penalty Guidance, paragraph 2.11. Relevant turnover is calculated after the deduction of sales rebates, value added tax and other taxes directly related to turnover. The CMA notes the observation of the Court of Appeal in *Argos Ltd and Littlewoods Ltd v OFT and JJB Sports plc v OFT* [2006] EWCA Civ 1318, at paragraph 169 in relation to the calculation of penalties that: '[...] neither at the stage of the OFT investigation, nor on appeal to the Tribunal, is a formal analysis of the relevant product market necessary in order that regard can properly be had to step 1 of the Guidance in determining the appropriate penalty.' The Court of Appeal considered that it was sufficient for the OFT to 'be satisfied, on a reasonable and properly reasoned basis, of what is the relevant product market affected by the infringement' (at paragraphs 170 to 173).

¹⁵¹⁴ Penalty Guidance, paragraph 2.11.

¹⁵¹⁵ Section 5.C.

¹⁵¹⁶ URN 8957, BGL's response to section 26 notice dated 10 May 2019, Annex 2 provided as part of URN 8954, BGL's response to section 26 notice dated 10 May 2019, question 2.

¹⁵¹⁷ Following BGL's representations on the 'relevant turnover' as per the Draft Penalty Statement, the CMA has excluded from the relevant turnover BGL's intragroup revenue with BGL's IDO division (£[§]) consistent with The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, Schedule 'Applicable turnover', paragraph 4; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 426; URN 8955, BGL's response to section 26 notice dated 10 May 2019, Annex 1B.

¹⁵¹⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 454. BGL submitted that the CMA's proposed approach would involve including non-infringing products, contrary to the practice of the European Commission as allegedly demonstrated by the following cases: C-444/11 Team Relocations v Commission, paragraph 76; T-216/13 Telefonica v Commission, paragraph 305; and T-208/13 Portugal v Commission paragraph 239.

¹⁵¹⁹ The CMA notes that the cases cited by BGL in support of its argument appear to show the opposite of such argument: for instance, the paragraph cited in *Team Relocations v Commission* provides that '[w]hile the concept of the value of sales referred to in point 13 of [the Guidelines on the method of setting fines imposed pursuant to Article 23(2)(a) of Regulation (EC) No 1/2003 (OJ 2006 C 210)] admittedly cannot extend to encompassing sales made by the undertaking in question which do not fall within the scope of the alleged cartel, it would however be contrary to the goal pursued by that provision if that concept were understood as applying only to turnover achieved by the sales in respect of which it is established that they were actually affected by that cartel'. The same concept is reiterated in the other two cases cited by BGL.

11.D.I.(b). Assessment of seriousness of the Infringements

- 11.53 For the reasons set out below, the CMA has decided that a starting point of 18% is appropriate in this case.
- 11.54 The CMA will apply a starting point of up to 30% to an undertaking's relevant turnover in order to reflect adequately the seriousness of the particular infringement (and ultimately the extent and likelihood of actual or potential harm to competition and consumers).¹⁵²⁰ The more serious and widespread the infringement, the higher the starting point is likely to be. The CMA will also reflect the need to deter the infringing undertaking and other undertakings generally from engaging in that type of infringement in the future.¹⁵²¹ The CMA will consider several factors in assessing seriousness¹⁵²²:
- (a) first, how likely it is for the type of infringement at issue to, by its nature, harm competition;
 - (b) second, the extent and/or likelihood of harm to competition and consumers in the specific relevant circumstances of the individual case;¹⁵²³ and
 - (c) finally, whether the starting point is sufficient for the purpose of general deterrence.
- 11.55 The CMA finds that the Infringements constitute an infringement of competition law 'by effect'. As set out in the Penalty Guidance, while there is no pre-set 'tariff' of starting points for different types of infringement, a starting point between 10% and 20% is more likely to be appropriate for infringements by effect than a starting point above 20%.¹⁵²⁴
- 11.56 In assessing the nature of the Infringements for the purpose of applying a percentage starting point, the CMA has taken into account the fact that CTM's wide MFNs are restrictions contained in written vertical agreements with home insurance providers. Vertical agreements are, in principle, generally less likely than horizontal agreements to harm competition and

¹⁵²⁰ Penalty Guidance, paragraph 2.4.

¹⁵²¹ Penalty Guidance, paragraph 2.4.

¹⁵²² Penalty Guidance, paragraph 2.5.

¹⁵²³ Under the Penalty Guidance, paragraph 2.8, these circumstances may include, for example, the nature of the product, the structure of the market (including the market shares of the undertaking(s) involved in the infringement), the market coverage of the infringement, the actual or potential effect on competitors and third parties, and the actual or potential harm caused to consumers.

¹⁵²⁴ Penalty Guidance, paragraph 2.6. The CMA will generally use a starting point above 20% for the most serious types of infringement, that is, those which the CMA considers are most likely by their very nature to harm competition such as cartel activities including price-fixing.

may provide substantial scope for efficiencies.¹⁵²⁵ However, as the EU Courts have recognised, vertical agreements (such as resale price maintenance ('RPM')) can nevertheless have a particularly significant restrictive effect on competition and indeed be regarded as harming competition by their very nature.¹⁵²⁶

- 11.57 The CMA considers that wide MFNs of the type comprising the Infringements can have a particularly significant restrictive effect on competition. This is because a wide MFN is a clause that restricts a contractual party's freedom of pricing with third party competitors of the beneficiary of the wide MFN, in the context of price being an important dimension of competition between PCWs and between providers competing on PCWs. Accordingly, the CMA is concerned that wide MFNs can soften competition through reducing PCWs' incentives to compete on commissions, to innovate and to enter or expand in circumstances where there are unlikely to be credible efficiency justifications that cannot be achieved through less restrictive means.¹⁵²⁷ In that regard, the CMA considers that the nature of the restrictive effects of wide MFNs are broadly similar to the way in which RPM may soften horizontal competition between competitors.¹⁵²⁸
- 11.58 The CMA's finding that CTM's network of wide MFNs had the appreciable effect of restricting competition is consistent with those concerns and indicates that wide MFNs are particularly likely, in a similar way to RPM, to soften horizontal competition between competitors.

¹⁵²⁵ See Vertical Guidelines, paragraphs 6 and 98.

¹⁵²⁶ Case C-32/11 Allianz Hungária Biztosító Zrt v Gazdasági Versenyhivatal, EU:C:2013:160, paragraph 43: *'while vertical agreements are, by their nature, often less damaging to competition than horizontal agreements, they can, nevertheless, in some cases, also have a particularly significant restrictive potential. The Court has thus already held on several occasions that a vertical agreement had as its object the restriction of competition'*. This is reflected by the inclusion of RPM and certain restrictions on reselling as a 'hardcore restrictions' in Article 4 of the VABER.

¹⁵²⁷ For example, see DCT Market Study, Final Report, paragraphs 4.91 and 4.92.

¹⁵²⁸ See Vertical Guidelines, paragraph 224. RPM is defined in the Vertical Guidelines as *'agreements or concerted practices having as their direct or indirect object the establishment of a fixed or minimum resale price or a fixed or minimum price level to be observed by the buyer'* (Vertical Guidelines, paragraph 48). The similarity of effects between RPM and wide MFNs is discussed in the academic literature, for example see: Fletcher, Amelia and Hviid, Morten (2017) *Broad Retail Price MFN Clauses: Are they RPM 'at its Worst'?* Antitrust Law Journal, 81(1). pp. 61-98, and was referred to in the CMA's submission to the OECD Hearing on Across Platform Parity Agreements (the OECD paper cited by BGL in paragraph 435 of its Response to the SO): *'The principal theories of harm associated with retail-MFNs for example – such as facilitating collusion, discouraging entry, or changing incentives so as to soften competition between platforms – are similar to those associated with more 'familiar' vertical practices such as RPM'* (Hearing on Across Platform Parity Agreements, [Note by United Kingdom](#), 27-28 October 2015, DAF/COMP/WD(2015)66, paragraph 20). In the Penalty Guidance, RPM is included in the definition of 'cartel activity' for the purposes of leniency as an agreement or concerted practices which involves price-fixing (see Penalty Guidance, paragraphs 2.2 and 3.1).

11.59 In addition to the nature of the Infringements, the CMA has also taken the following factors into account in determining the appropriate starting point in the specific circumstances of this case:

- (a) *The nature of the product:* PCWs have become an increasingly important channel through which home insurance providers make sales, accounting for around 40% of new business sales in 2012 and more than 60% in 2017.¹⁵²⁹ Moreover, as described in Section 7.B.I, the retail prices quoted by providers are a particularly important dimension of competition between PCWs and between providers competing on PCWs.¹⁵³⁰ As described in Section 8.A.I., CTM's network of wide MFNs imposed a contractual restriction on the relevant home insurance providers, which prevented them from quoting a lower retail price on other PCWs than the price they quoted on CTM. CTM's wide MFNs therefore related directly to an important dimension of competition and prevented CTM from being undercut on other PCWs in circumstances where price was an important factor for consumers when choosing between PCWs and when choosing between home insurance products on PCWs.¹⁵³¹
- (b) *The structure of the market including the market share of CTM:* as set out in Section 5.E.I, CTM had a significant market share throughout the Relevant Period. As the market leader, CTM's market share in the supply of PCW Services for Home Insurance in the UK has consistently been over 30% since 2012 and grew to be over 50% in 2017. CTM is materially larger than any other PCW, being more than twice the size of the next largest PCW ([X]). CTM is the only PCW to have consistently grown the volume of home insurance sold through its platform and commission fee revenue year, with its sales growing by [X]% over the period 2012 to 2018, with materially higher growth rates than all other PCWs throughout that period.¹⁵³² The CMA found that CTM had market power during the Relevant Period (see Section 5E and 5F). In addition, the market for PCW services for home insurance in the UK is concentrated, with the Big Four PCWs having a combined share of

¹⁵²⁹ See Section 2.E.III.

¹⁵³⁰ BGL submitted that one reason why CTM's wide MFNs were not appreciable is because 'the chief parameters of competition between PCWs are marketing, advertising and the functionality and ease of use of the website, as customers take for granted the fact that they will be shown the best prices on PCWs, due to the intrinsic nature of their business. Promotional deals play, at most, a small part in that mix, even for the small number of HIPs prepared to enter into them.' The CMA disagrees with this characterisation of competition between PCWs for the reasons set out in Section 7, finding that price is an important parameter of competition. URN 8484.5, BGL's Response to the SO, paragraph 40, bullet (vi).

¹⁵³¹ See Section 7.B.I.

¹⁵³² See section 2.E.III. and in particular paragraph 2.38.

over 90% of the market.¹⁵³³ The CMA has not seen evidence of successful entry by a PCW into the market for PCW Services for Home Insurance in the UK since 2012.¹⁵³⁴ Indeed, the CMA finds that PCWs in the home insurance sector face material barriers to entry and expansion, including because of marketing and advertising spending and the integration costs providers need to incur to list on a PCW, and that CTM's wide MFNs acted as a barrier to expansion in the provision of PCW Services for Home Insurance in the UK thus maintaining or strengthening CTM's market power.¹⁵³⁵

- (c) *The market coverage of the Infringements:* As explained in section 8.C, CTM's network of wide MFNs covered a substantial part of the market for PCW Services in Home Insurance in the UK. In particular, as set out in Section 8.C.I, CTM's wide MFNs were contained in agreements with home insurance providers accounting for approximately 40% of sales of home insurance policies sold through the Big Four PCWs, and over 40% of home insurance policies sold through CTM, in 2016 and 2017.¹⁵³⁶
- (d) *The purpose of the Infringements:* as set out in Section 8.A.II above, CTM considered its network of wide MFNs to be an integral and effective part of its competitive strategy in home insurance, by strengthening its competitive position. Through its network of wide MFNs, CTM ensured that it was not undercut on price by its rival PCWs while being able to maintain growth in commission fees. For example, as described in Section 8.A.II.(a) and Annex P, CTM recognised that removal of its wide MFNs would result in increased discounting and a '*price war*' on commission fees, increasing the competitive pressure on it; it enforced its wide MFNs (Section 8.B.III); refused their removal from its contracts (Section 8.A.II.(c)); and was an outlier in its continued use of wide MFNs following the CMA's PMI Market Investigation in 2015 (Section 8.A.II.(b)).

¹⁵³³ See section 2.E.III. and in particular paragraph 2.38.

¹⁵³⁴ See Section 5.E.II.

¹⁵³⁵ See Section 5.E.II.

¹⁵³⁶ BGL submitted that the CMA has not properly accounted for the relevance of coverage in its proposed penalty calculation, and '*it is very hard to understand how an infringement by effect, covering (even on the CMA's own estimate) such a small part of the relevant market, can attract a starting point so near the top of the available range*', URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 453 The CMA disagrees and considers, on the contrary, that CTM's network of wide MFNs covering a substantial part of the market for PCW Services in Home Insurance in the UK in the figures above supports a starting point of 18% in this case. The CMA further refers to section 8.C.II. where it addresses BGL's wider representations on coverage in the present case.

- (e) *The effect of the Infringements on competitors, third parties and consumers:* as summarised in Section 9.D, the CMA finds that the Infringements had appreciable effects on competition between PCWs and competition between home insurance providers competing on PCWs. In particular, the CMA finds that the Infringements affected an important parameter of competition between PCWs and between home insurance providers competing through PCWs, namely price. The CMA also finds that the ability of CTM's competitors to expand was affected, enabling CTM to maintain or strengthen its market position.¹⁵³⁷ the CMA has found that these adverse effects on competition were market-wide. The Infringements are likely to have resulted in higher retail prices being charged by insurers.¹⁵³⁸

11.60 The CMA has also taken into account whether the starting point is sufficient for general deterrence and, in particular, the need to generally deter other undertakings, whether in the same market or more broadly, from engaging in the same or similar conduct.¹⁵³⁹ In that regard, for example, the CMA considers that the persistence of these practices¹⁵⁴⁰ in online commerce in the past, notwithstanding the considerable scrutiny of the negative effects of wide MFN clauses by the CMA and other competition authorities as described in paragraph 11.32¹⁵⁴¹ reinforces the need for general deterrence to be strengthened regarding conduct of this kind by platforms. The CMA also considers its decision will assist in encouraging compliance with the law by ensuring that undertakings 'self-assess' their conduct to ensure it does not infringe the prohibitions in the Act and the TFEU.

¹⁵³⁷ Section 9B.

¹⁵³⁸ Section 9C.

¹⁵³⁹ Penalty Guidance, paragraph 2.9.

¹⁵⁴⁰ BGL submitted that the CMA has not provided any evidence for its suggestion that wide MFNs are still in widespread use in online commerce (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 461). The CMA disagrees. As set out in this Decision, wide MFNs have been used by large PCWs in the UK across insurance sectors since 2008/09. They were only removed as a consequence of the PMI Market Investigation and/or this Investigation. Confused removed its wide MFNs across all insurance agreements in December 2012 shortly after the start of PMI Market Investigation. GoCompare removed all wide MFNs in March 2015, just before the issue of the PMI Order. CTM only removed its wide MFNs across insurance products following the opening of this Investigation and indeed initially, in its offer of commitments only offered to remove them for five years (URN 9849, Letter from BGL to the CMA dated 19 October 2017). Moreover, the CMA opened an investigation in relation to the use of wide MFNs in the auction services sector in November 2016 which was resolved through commitments. Finally, the e-commerce sector inquiry of the European Commission of 10 May 2017 noted that 'Parity (MFN) clauses (both price and non-price ones) are still used and are more present in particular in agreements between retailers and larger marketplaces' (https://ec.europa.eu/competition/antitrust/sector_inquiry_swd_en.pdf).

¹⁵⁴¹ BGL submitted that the statement that wide MFNs are under considerable scrutiny is misleading since neither the CMA nor the European Commission has ever found a wide MFN to infringe competition law. As set out above, the CMA and other authorities have raised competition concerns about wide MFNs at multiple occasions.

11.61 BGL has made a number of submissions about the appropriate starting point at Step 1.¹⁵⁴² The CMA has considered BGL's submissions and has set out its views on them in Annex S.III.

11.62 Accordingly, BGL's penalty at Step 1 is £[X] (18% of £[X]).

11.D.II. Step 2 – Adjustment for duration

11.63 The starting point may be increased or, in particular circumstances, decreased to take into account the duration of the infringement.¹⁵⁴³ Penalties for infringements which last for more than one year may be multiplied by not more than the number of years of the infringement.¹⁵⁴⁴

11.64 The CMA considers that the duration of the Infringements was two years from 1 December 2015 to 1 December 2017. Accordingly, applying the relevant principles of the Penalty Guidance, the CMA has applied a multiplier of two for duration to the starting point.

11.65 BGL has submitted that the Infringements, even as characterised by the CMA, relate at most to the second half of 2017 (for example [X]) and therefore a multiplier of two is not justified.

11.66 The CMA disagrees with BGL's submissions. The Penalties Guidance sets out that the increase in penalties at Step 2 relates to the total duration of the infringement. As set out in Section 10.C, the Relevant Period was from 1 December 2015 to 1 December 2017. CTM's wide MFNs were implemented, maintained and enforced during the Relevant Period and the CMA found that CTM's wide MFNs had appreciable effects on competition throughout the Relevant Period. The individual incidents of enforcement cited by BGL are not relevant to the determination of the Relevant Period as the wide MFNs had appreciable effects on competition beyond these incidents.

11.67 BGL's penalty at the end of Step 2 is £[X].

11.D.III. Step 3 – Adjustment for aggravating and mitigating factors

11.68 The amount of the penalty, adjusted as appropriate at Step 2, may be increased where there are aggravating factors, or reduced where there are

¹⁵⁴² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 434 to 462.

¹⁵⁴³ Penalty Guidance, paragraph 2.16.

¹⁵⁴⁴ Penalty Guidance, paragraph 2.16.

mitigating factors.¹⁵⁴⁵ A non-exhaustive list of aggravating and mitigating factors is set out in the Penalty Guidance.¹⁵⁴⁶

- 11.69 The CMA considers that there are no relevant aggravating factors.
- 11.70 The CMA may reduce the penalty at Step 3 to reflect termination of an infringement as soon as the CMA intervenes.¹⁵⁴⁷
- 11.71 On 30 November 2017, around two months after the launch of the CMA's investigation, CTM wrote to each home insurance provider with which it had agreed a wide MFN clause, informing them that it would no longer be enforcing the wide MFN in their contract.¹⁵⁴⁸ The CMA considers that, in the circumstances of the present case, a reduction of 5% at Step 3 to BGL's penalty is appropriate to reflect the termination of the Infringements shortly after the CMA intervened.¹⁵⁴⁹
- 11.72 BGL has made a number of submissions regarding other potential mitigating factors.¹⁵⁵⁰ The CMA has considered these, but does not consider it appropriate that any other adjustments are appropriate in the circumstances of the case.
- 11.73 After applying the 5% reduction for terminating the Infringements, the penalty at the end of Step 3 is £[REDACTED].

11.D.IV. Step 4 – Adjustment for specific deterrence and proportionality

- 11.74 At Step 4, the CMA will assess whether, in its view, the overall penalty is appropriate in the round.¹⁵⁵¹ The penalty may be adjusted either to:
- (a) increase it to achieve specific deterrence (namely, ensuring that the penalty imposed on the infringing undertaking will deter it from engaging in anti-competitive practices in the future); or

¹⁵⁴⁵ Penalty Guidance, paragraph 2.17.

¹⁵⁴⁶ Penalty Guidance, paragraphs 2.18 and 2.19.

¹⁵⁴⁷ Penalty Guidance, paragraph 2.19.

¹⁵⁴⁸ See Section 2.G.I.

¹⁵⁴⁹ The CMA recognises that on 19 October 2017, shortly after the commencement of the Investigation, CTM formally offered commitments to the CMA that it would not enter into or enforce wide MFNs with home insurance providers and would not engage in 'equivalent behaviour' for a period of five years (see URN 9849, Letter from BGL to the CMA dated 19 October 2017.). The CMA responded with its decision to reject the offer of commitments by BGL on 3 November 2017 (see URN 9850, CMA's response to BGL's letter of 19 October 2017). The CMA's decision to reject the offer of commitments by BGL reflected its concern that to accept commitments would undermine the CMA's duty to deter anti-competitive behaviour (by BGL or by any other companies) through the effective enforcement of competition law.

¹⁵⁵⁰ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 464 and 465. The CMA has addressed BGL's submissions on other mitigating factors in Annex S.IV.

¹⁵⁵¹ Penalty Guidance, paragraph 2.20.

(b) reduce it to ensure that a penalty is proportionate.

- 11.75 The CMA will consider appropriate indicators¹⁵⁵² of the undertaking's size and financial position at the time the penalty is being imposed as well as any other relevant circumstances of the case in assessing whether an increase or reduction is appropriate at Step 4.
- 11.76 As set out at paragraph 2.21 of the Penalty Guidance, an increase in penalty will generally be limited to situations in which an undertaking has a significant proportion of its turnover outside the relevant market or where the CMA has evidence that the infringing undertaking has made or is likely to make an economic or financial benefit from the infringement that is above the level of penalty reached at the end of Step 3.
- 11.77 Over [X] of BGL's total turnover was generated outside the relevant market. The penalty at the end of Step 3 is therefore relatively low when assessed against several of the financial indicators that the CMA has had regard to and, in particular, the fact that a significant proportion of BGL's turnover was generated outside the relevant market is a factor that would point to a need to increase the penalty reached after Step 3 for specific deterrence. Moreover, BGL is a well-resourced company with experienced internal and external legal and economic advisers. BGL's objective in retaining wide MFNs following the PMI Market Investigation was to strengthen its competitive position by ensuring it was not undercut by its competitors while maintaining commission fee growth. Despite its market position and the clear risks in continuing to use wide MFNs, it retained its wide MFNs, enforced them and refused their removal from its contracts. It was also an outlier in its continued imposition of wide MFNs following the CMA's PMI Market Investigation. These factors suggest that an uplift for specific deterrence may be appropriate.
- 11.78 However, the CMA recognises that BGL engaged with the PMI Market Investigation and the DCTs Market Study, and that it offered commitments and voluntarily ended its use of wide MFNs shortly after commencement of the present Investigation (for which a reduction in penalty at Step 3 has been made). In addition, the CMA is mindful that, at the time of the Infringements, there had been no previous decisions at EU or UK level finding that wide MFNs infringed the Chapter I prohibition or Article 101 TFEU and the CMA considers that this factor is a relevant consideration in the present case for assessing whether it would be appropriate to impose an uplift for specific deterrence at Step 4.

¹⁵⁵² Penalty Guidance, paragraph 2.20.

- 11.79 Taking account of the above factors in the round, the CMA considers that in the specific circumstances of the present case, on balance, no adjustment for specific deterrence at Step 4 is required. The CMA also considers that the penalty at the end of Step 3 is proportionate and not excessive having regard to the size of the penalty at Step 3 and taking into account the nature of the Infringements, the role of BGL and the impact of the Infringements on competition. Accordingly, the CMA considers that the overall penalty is appropriate in the round, while noting that ordinarily in order to account for an undertaking of BGL's size and financial position¹⁵⁵³, which has a significant proportion of its turnover outside the relevant market, an uplift would likely be required.
- 11.80 BGL has disputed the basis for the CMA considering that the imposition of a penalty would not be disproportionate in the present case on the basis of a range of submissions made in its response to other aspects of the proposed penalty. The CMA has considered these submissions in reaching its decision on the proportionality of the penalty, and addresses the points raised by BGL in Annex S.V.¹⁵⁵⁴
- 11.81 For the reasons set out above, the CMA does not consider an adjustment is appropriate at Step 4. The penalty at the end of Step 4 therefore [£17,910,062], namely £17,910,062.

11.D.V. Step 5 – Adjustment to prevent maximum penalty from being exceeded and to avoid double jeopardy

- 11.82 The final amount of the penalty calculated according to the method set out above may not in any event exceed 10% of the worldwide turnover of the undertaking in its last business year.¹⁵⁵⁵

¹⁵⁵³ The CMA has considered a range of financial indicators in this regard, based on published accounting information and information provided by BGL at the time of calculating the penalty. Those financial indicators included relevant turnover; average worldwide turnover (three-year average); average profit after tax (three-year average); profit after tax (for the last financial year); net assets (for the last financial year); and adjusted net assets (assets for the last financial year plus three years' dividends).

¹⁵⁵⁴ BGL refutes the CMA's conclusion that BGL acted at least negligently. The CMA rejects this submission for the reasons set out in Section 11.C.I. BGL submitted that the CMA should take into account the recent and contemporary practices of other competition authorities in setting a penalty. This submission has been addressed in Annex S.III. Finally BGL submitted that the CMA is punishing the wrong player in the insurance market, and that it is wrong from a policy perspective to impose any penalty on CTM, whilst not imposing any fine on '*large and powerful multinational insurance companies*' who also were party to these agreements. Whilst the CMA does not dispute the value to consumers of PCWs in the sector; like any other market participants, BGL is required to comply with competition law and, where it is found not to have done so, to be subject to the consequences.

¹⁵⁵⁵ Section 36(8) of the Act. Calculated in accordance with The Competition Act 1998 (Determination of Turnover for Penalties) Order 2000, SI 2000/309 (the 2000 Turnover Order), as amended by The Competition Act 1998 (Determination of Turnover for Penalties) (Amendment) Order 2004, SI 2004/1259 (the Amended 2000 Turnover Order); see the Penalty Guidance, paragraph 2.25.

- 11.83 Based on worldwide turnover in BGL's latest accounts for the financial year ended 30 June 2019, no adjustment is required at this step as the proposed penalty represents approximately 3% of BGL's applicable turnover.
- 11.84 In addition, the CMA must, when setting the amount of a penalty for a particular agreement or conduct, take into account any penalty or fine that has been imposed by the European Commission, or by a court or other body in another Member State in respect of the same agreement or conduct.¹⁵⁵⁶ As no other EU or Member State body has imposed a penalty in this case, no adjustments to avoid double jeopardy are necessary.

11.D.VI. Step 6 – Application of reductions for leniency and settlement

- 11.85 BGL did not enter into a leniency or settlement agreement with the CMA. The CMA therefore has made no adjustment at Step 6.

11.D.VII. Payment of financial penalty

- 11.86 For the reasons set out above, the CMA has decided that a penalty of £17,910,062 is appropriate in the circumstances of this case.
- 11.87 The CMA therefore requires BGL to pay a penalty of £17,910,062, for which each entity comprising BGL (as listed in paragraph 1.3) is jointly and severally liable.
- 11.88 The penalty will become due to the CMA in its entirety and must be paid to the CMA by the close of banking business, on 20 January 2021.¹⁵⁵⁷
- 11.89 If that date has passed and (a) the period during which an appeal against the imposition, or amount, of that financial penalty may be made has expired without an appeal having been made, or (b) such an appeal has been made and determined, the CMA may commence proceedings to recover from BGL, as a civil debt due to the CMA, any amount payable which remains outstanding.¹⁵⁵⁸

¹⁵⁵⁶ Penalty Guidance, paragraph 2.24.

¹⁵⁵⁷ The next working day two calendar months from the expected date of receipt of the Decision.

¹⁵⁵⁸ Section 37 of the Act.

ANNEX A: GLOSSARY

Term	Definition
ABI	The Association of British Insurers
Act	Competition Act 1998
Article 101(3) Guidelines	Guidelines on the application of Article 101(3) TFEU (formerly Article 81(3) of the Treaty), OJ C101, 27 April 2004
Big Four PCWs	CTM, GoCompare, MoneySuperMarket and Confused collectively
BISL	BISL Limited (UK Company Number: 3231094), a wholly owned subsidiary of BGL Group Limited (UK Company Number: 2593690)
BGL	Collectively BGL (Holdings) Limited (UK Company Number: 10432465), BGL Group Limited, BISL, and Compare The Market Limited (UK Company Number: 10636682). BGL is the undertaking to which this SO is addressed
BGL Group	The group of financial services companies comprising BGL which is active in price comparison (including CTM) and IDO in the UK
BGL's Response to the First LoF and DPS	BGL's response to the Letter of Facts and Draft Penalty Statement of 10 December 2019, dated 14 February 2020 (URN 10459)
BGL's Response to the Second Letter of Facts (or LoF)	BGL's response to the second letter of facts of 29 July 2020, dated 21 August 2020. (URN 10792)
BGL's Response to the SO	BGL's Response to the Statement of Objections, dated 22 February 2019 (URN 8484.5)
CAT	The Competition Appeal Tribunal
Chapter I prohibition	The prohibition imposed by section 2 of the Act
CJEU	The Court of Justice of the European Union
CMA	The Competition and Markets Authority
CMA Rules	Rule 10(2) of the Act (CMA Rules) Order 2014

Commission Fees Dataset	As described in Annex D of this Decision
Confused	The PCW operated under the domain name Confused.com by Inspop.com Limited (UK Company Number: 03857130), authorised by the FCA in January 2005 (Firm Reference Number: 310635)
Consumer Behaviour analysis	As described in Annex I of this Decision.
CPA	Cost Per Acquisition. The commission fee charged by PCWs to providers if a consumer purchases insurance from the provider after 'clicking-through' from the relevant PCW's platform
CTM	The PCW operated under the domain names comparethemarket.com or comparethemeerkat.com by BISL during the Relevant Period until Compare The Market Limited was registered as an authorised firm by the FCA in December 2017 (Firm Reference Number: 778488)
CTM snapshots	The monthly reports prepared by CTM for its internal monthly price parity meetings monitoring the pricing behaviour of the providers
CTM's wide MFNs	The contractual restriction in CTM's agreements that obliged a home insurance provider to ensure that the retail prices it quoted on CTM's PCW platform were no higher than the retail prices it quotes for the same product on rival PCWs' platforms and the provider's direct online sales channels
DCTs Market Study	The CMA's market study into Digital Comparison Tools, the findings of which were set out in the final report dated 26 September 2017
DCTs Survey	The consumer survey conducted as part of the DCTs Market Study, available on the case page
Decision	This decision dated 19 November 2020
De Minimis Notice	EU Commission, Notice on agreements of minor importance which do not appreciably restrict competition under Article 101(1) of the Treaty on the Functioning of the European Union (De Minimis Notice) , June 2014

Draft Penalty Statement (or DPS)	The statement of draft penalty calculation issued to BGL on 10 December 2019.
Effect on Trade Guidelines	Guidelines on the effect on trade concept contained in Articles 81 and 82 of the Treaty [2004] OJ C101/07
EU	The European Union
European Courts	The CJEU and the General Court
FCA	The Financial Conduct Authority
First BGL Notice	Formal notice dated 26 September 2017, sent by the CMA to BGL pursuant to section 26 of the Act (URN 1557)
First BGL Submission	BGL's submission to the CMA dated 21 December 2017 (URN 5266A, pages 1 to 28)
First Letter of Facts (LoF)	Letter of Facts and Draft Penalty Statement of 10 December 2019
First Oxera Report	Report attached to the First BGL Submission entitled "Economic analysis of wide MFNs in home insurance" dated 19 December 2017 (URN 5266A, pages 29 to 136)
FSMA	Financial Services and Markets Act 2000
Fourth Oxera Report	Report attached as Annex 1 to BGL's Response to the First Letter of Facts and Draft Penalty Statement entitled "Economic assessment of the evidence provided in the Letter of Facts" dated 14 February 2020 (URN 10460)
GoCompare	The PCW operated under the domain name Gocompare.com by Gocompare.com Limited (UK Company Number: 05799376), authorised by the FCA in May 2007 (Firm Reference Number: 465053)
HIPs	Home Insurance Provider
Investigation	The administrative procedure under the Act into the application of the Chapter I prohibition and Article 101 TFEU to CTM's wide MFN clauses preceding this Decision. (Case 50505)
Infringements	The finding in this Decision that, during the Relevant Period, BGL was a party to agreements

	with 32 home insurance providers that contained wide MFN clauses, which had the appreciable effect to prevent, restrict or distort competition between PCWs and between home insurers competing on PCWs in breach of the Chapter I prohibition and Article 101 TFEU
LTV	Lifetime Value
MFNs	Most-Favoured-Nation clauses (see section 2.C.(a))
Modernisation Regulation	Article 3(1) of Regulation 1/2003 on the implementation of the rules of competition laid down in Articles 101 and 102 of the TFEU
MoneySuperMarket	The PCW operated under the domain name moneysupermarket.com by Moneysupermarket.com Financial Group Limited, (UK Company Number: 3157344), authorised by the FCA in May 2004 (Firm Reference Number: 303190)
OFT	The Office of Fair Trading, one of the predecessor bodies to the CMA
Oral Hearing	The oral hearing held at the CMA on 4 April 2019 attended by BGL and Counsel.
Oral Hearing on Draft Penalty Statement	The oral hearing held at the CMA on 9 March 2020, attended by BGL and its legal and economic advisors, in response to the draft penalty statement of 10 December 2019
Oxera's Coverage and Compliance Analysis	Oxera's analysis submitted by BGL of the coverage of CTM's wide MFNs and home insurance providers' compliance with this clause. URN 8484.3, Third Oxera Report dated 22 February 2019
Penalties Guidelines	CMA's guidance as to the appropriate amount of penalty CMA73
PCW	Price Comparison Website
PCW Services	The economic activity of offering both customer introduction services to insurance providers and price comparison services to end-consumers
PCW Services for Home Insurance	The supply of PCW Services for home insurance products in the UK, also referred to as the relevant market

PMI	Private Motor Insurance
PMI Market Investigation	The CMA's Private Motor Insurance market investigation, the findings of which were set out in the final report dated 24 September 2014. Following the investigation, the CMA published the PMI Order 2015
PMI Order 2015	The Private Motor Insurance Order 2015 dated 18 March 2015, which prohibited the use of wide MFNs in the private motor insurance sector following the PMI Market Investigation. The prohibition on wide MFNs came into force on 19 April 2015
PPC	Pay per click
Promotional Deals Dataset	As described in Annex J of this Decision
Providers' Sales Dataset	As described in Annex F of this Decision
RAO	The Financial Services and Markets 2000 (Regulated Activities Order) 2001
Retail Price Dataset	As described in Annex O of this Decision
Relevant Period	The period from 1 December 2015 to 1 December 2017
Second BGL Notice	Formal notice dated 3 May 2018, sent by the CMA to BGL pursuant to section 26 of the Act (URN 6227).
Second Oxera Report	Report attached to the Third BGL Submission entitled "Further economic analysis of wide MFNs in home insurance" dated 30 July 2018 (URN 6641, pages 24 to 49)
Second BGL Submission	BGL's submission to the CMA dated 14 March 2018 (URNs 5785 and 5786)
Second Letter of Facts (LoF)	The CMA's second letter of facts dated 29 July 2020
SSNIP	Small but significant non-transitory increase in price
SO	The statement of objections issued on 2 November 2018 to BGL
TFEU	The Treaty on the Functioning of the European Union

Third BGL Notice	Formal notice dated 10 May 2019, sent by the CMA to BGL pursuant to section 26 of the Act
Third BGL Submission	BGL's submission to the CMA dated 31 July 2018 (URNs 6640 and 6641, pages 1 to 23)
Third Oxera Report	Report attached to BGL response to the Statement of Objections entitled "The effects of CTM's wide MFNs" dated 22 February 2020 (URN 8484.3)
UK	The United Kingdom
VABER	The Vertical Agreements Block Exemption Regulation - Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the TFEU to categories of vertical agreements and concerted practices [2010] OJ L102/1
Vertical Guidelines	European Commission's Guidelines on Vertical Restraints (2010/C 130/01)

ANNEX B: THE INVESTIGATION

B.1 In this Annex, the CMA sets out a summary of the main steps and key events in its investigation of the matters that are the subject of this Decision (the 'Investigation').

B.I. Origins and commencement of the Investigation

B.2 The subject matter of this Decision was first brought to the CMA's attention through information obtained during the DCTs Market Study.

B.3 On 26 September 2017, the CMA opened a formal investigation under the Act, having determined that it had reasonable grounds for suspecting that BGL had infringed the Chapter I prohibition or the prohibition in Article 101 TFEU, or both.¹⁵⁵⁹

B.II. Offer of commitments and suspension of enforcement

B.4 On 19 October 2017, BGL made a formal offer of commitments to the CMA to remove wide MFN clauses from its agreements across all product lines for a period of five years.¹⁵⁶⁰ The CMA rejected BGL's offer on 3 November 2017 on the basis that to accept it would be contrary to the CMA's published guidelines since it would undermine deterrence.¹⁵⁶¹

B.5 On 30 November 2017, CTM wrote to each home insurance provider with which it had agreed a wide MFN clause, informing them that it would no longer be enforcing the wide MFN.¹⁵⁶²

B.III. Evidence gathered from BGL prior to the issue of the SO

B.6 On the same day the Investigation was opened, the CMA required BGL to produce documents and to provide information relevant to the Investigation

¹⁵⁵⁹ Prior to opening the Investigation, the Financial Conduct Authority (FCA) and the CMA formally agreed that, under the Competition Act 1998 (Concurrency) Regulations 2014, SI 2014/536 (the Concurrency Regulations) the CMA was the best placed authority to conduct the Investigation. The CMA has cooperated with the FCA during the investigation as envisaged by the [Memorandum of understanding between the CMA and the FCA relating to concurrent competition powers](#) (December 2015, revised July 2019) and the CMA's [Guidance on concurrent application of competition law to regulated industries](#) (CMA10, March 2014). In particular, the CMA shared with the FCA drafts of the SO and the Decision as required by regulation 9 of the Concurrency Regulations.

¹⁵⁶⁰ URN 9849, Letter from BGL to the CMA dated 19 October 2017.

¹⁵⁶¹ CMA, [Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#) (CMA 8), March 2014.

¹⁵⁶² For example, see URN 5315.27, [HIP]'s response to section 26 notice dated 24 November 2017.

under section 26 of the Act. BGL provided responses on 3, 17 and 24 October 2017.¹⁵⁶³

- B.7 The CMA also provided BGL with notice under section 27¹⁵⁶⁴ of the Act that it intended to enter BGL's premises and conduct an inspection for the purposes of the Investigation. BGL was required to produce specified documents and to provide specified information. The CMA conducted the onsite inspection on 9 November 2017.
- B.8 On 21 December 2017, BGL made a submission¹⁵⁶⁵ setting out its views on whether its wide MFNs breached the Chapter I prohibition or Article 101 TFEU. The CMA held a meeting with BGL on 1 March 2018,¹⁵⁶⁶ and on 14 March 2018 BGL made an additional submission¹⁵⁶⁷ to respond to certain questions raised by the CMA during the meeting. Subsequently, the CMA held a State of Play call with BGL on 29 March 2018 to confirm that the Investigation was proceeding.¹⁵⁶⁸
- B.9 Following the State of Play call held with BGL on 29 March, the CMA required BGL, and certain third parties, to produce further specified documents and information under section 26 of the Act and held further meetings with certain third parties (see Section B.IV below). BGL provided responses on 1 June 2018.¹⁵⁶⁹
- B.10 On 31 July 2018, BGL made a further submission¹⁵⁷⁰ setting out its views of the effects of its wide MFNs on competition.

¹⁵⁶³ URN 1573 to URN 1576 and URN 1577A to URN 1577AJ, BGL's responses to the First BGL Notice dated 26 September 2017; URN 1621 to URN 1627, URN 1629, URN 1632, URN 3469 and URN 4798.2, BGL's responses to the First BGL Notice dated 26 September 2017;

URN 0081, URN 1616, URN 1649 to URN 1653, URN 1668, URN 1672, URN 1681, URN 1682, URN 1684 to URN 1687, URN 1701, URN 1702, URN 1709, URN 1829, URN 1767 to 1790, URN 1721, URN 1726, URN 1728, URN 1732, URN 1747, URN 1761 to URN 1764, URN 1793 to URN 1805, URN 1808 to 1821, URN 1831 to URN 1878, URN 1881 to 1884, URN 1887, URN 1891 to 1901, URN 1920, URN 1923 to URN 1925, URN 1954, URN 1955, URN 1958 to URN 1966, URN 1970, URN 1982 to URN 2036, URN 2700, URN 2703, URN 2705, URN 2712 and URN 2714 to URN 2731, BGL's responses to the First BGL Notice dated 26 September 2017.

¹⁵⁶⁴ Under section 27 of the Act the CMA can require the production of any documents that relate to any matter relevant to the investigation, and can take copies of, or extracts from, any document which is produced.

¹⁵⁶⁵ URN 5266A, First BGL Submission dated 21 December 2017.

¹⁵⁶⁶ URN 5932, note of CMA meeting with BGL dated 1 March 2018.

¹⁵⁶⁷ URN 5785 and URN 5786, Second BGL Submission dated 14 March 2018.

¹⁵⁶⁸ URN 5857, note of CMA first State of Play call with BGL dated 29 March 2018.

¹⁵⁶⁹ URN 6438, URN 6438.1 to URN 6438.34, URN 6440 and URN 6634 to URN 6637, BGL's response to the Second BGL Notice dated 3 May 2018.

¹⁵⁷⁰ URN 6640 and URN 6641, BGL's submission ('Third BGL Submission') dated 31 July 2018.

B.IV. Evidence gathered from third parties prior to the issue of the SO

- B.11 The CMA required the production of specified documents and the provision of specified information under section 26¹⁵⁷¹ of the Act from a number of third parties including home insurance providers, PCWs and industry analysts.

B.IV.(a). Evidence gathered from home insurance providers prior to the issue of the SO

- B.12 The CMA obtained specified information and documents from a range of home insurance providers.¹⁵⁷² Having identified that there were at least 46 home insurance providers active on PCWs in the UK, the CMA prioritised its resources by obtaining information from a representative sample of providers. The providers the CMA contacted ranged in terms of size and included providers with wide MFNs and providers either without wide MFNs or which did not list on CTM. The CMA's evidence gathering exercise therefore sought to balance the need for the CMA to operate efficiently and effectively with avoiding unnecessary burdens on businesses.¹⁵⁷³
- B.13 Accordingly, prior to the SO, the CMA obtained specified information from a representative sample of 23 home insurance providers accounting for 82% of sales through PCW and 80% of sales through CTM in 2017. Out of these 23 providers, 13 had wide MFN clauses in their contracts with CTM (accounting for 37% of sales made through PCWs and 38% of sales made through CTM in 2017). The remaining 10 providers either had narrow MFNs in their contracts with CTM or were not listed on CTM. These 10 providers accounted for 44% of sales made through PCWs and 42% of sales made through sales in 2017.
- B.14 The remaining home insurance providers not contacted by the CMA at this stage, excluding BGL's own home insurance brands, accounted for less than 10% of sales through PCWs and through CTM, and represented a tail of smaller providers. 19¹⁵⁷⁴ of these providers had wide MFNs in their contract

¹⁵⁷¹ Under section 26 of the Act the CMA can require any person to produce evidence or documents.

¹⁵⁷² The CMA requested the production of specified documents and the provision of specified information by 23 home insurance providers ([HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] ([HIP]), [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP]). [HIP] ceased offering quotes through CTM in April 2016; [HIP] ceased offering quotes through CTM in May 2016; [HIP] ceased offering quotes through CTM in August 2017.

¹⁵⁷³ See Transparency and disclosure: Statement of the CMA's policy and approach, (CMA6, January 2014), paragraphs 2.6 and 4.2.

¹⁵⁷⁴ As described at paragraph 1.B.22, the CMA obtained information from a further 4 providers with wide MFNs after issue of the SO.

with CTM and accounted for approximately 7% of sales made through PCWs and 8% of sales made through CTM in 2017.

- B.15 In addition to requiring certain specified information under section 26 of the Act from the 23 home insurance providers mentioned above, the CMA held meetings and telephone calls with a number of home insurance providers¹⁵⁷⁵ and obtained a witness statement.¹⁵⁷⁶

B.IV.(b). Evidence gathered from PCWs and other third parties prior to the issue of the SO

- B.16 The CMA obtained specified information and documents under section 26 of the Act from CTM's main competitors (Confused, GoCompare and MoneySuperMarket), which along with CTM comprise the Big Four PCWs¹⁵⁷⁷, as well as industry analysts.¹⁵⁷⁸
- B.17 The CMA also conducted telephone calls and meetings with a number of PCWs¹⁵⁷⁹ and industry analysts.¹⁵⁸⁰

B.V. Issue of the Statement of Objections and appointment of a Case Decision Group

- B.18 On 2 November 2018, the CMA issued a Statement of Objections (SO) to BGL setting out its provisional findings that BGL had infringed the Chapter I prohibition of the Act and/or Article 101 TFEU by using wide MFNs in certain contracts with home insurance providers.
- B.19 Following the issue of the SO, a Case Decision Group (CDG) was appointed within the CMA to decide whether or not, based on the facts and evidence before it and taking account of BGL's representations, the legal test for establishing an infringement had been met, and if so, whether the imposition of a penalty would be appropriate.¹⁵⁸¹
- B.20 BGL submitted written and oral representations on the matters referred to in the SO on 22 February and 4 April 2019 respectively. On 26 April, 1 May

¹⁵⁷⁵ The CMA had meetings with the following three home insurance providers ([HIP], [HIP], [HIP]). The CMA held telephone calls with four home insurance providers [HIP], [HIP], [HIP] and [HIP].

¹⁵⁷⁶ URN 6659, witness statement of [Employee, HIP] dated 26 October 2018.

¹⁵⁷⁷ As set out in Section 2, the CMA estimates that in 2018 the Big Four PCWs accounted for more than 95% (97%) of home insurance policies sold through PCWs.

¹⁵⁷⁸ ABI, eBenchmarkers and Consumer Intelligence.

¹⁵⁷⁹ The CMA held telephone calls with seven PCWs: MoneySuperMarket, Confused, uSwitch, Honcho, Seopa, The Property Insurer and Vast Visibility, Google (which operated the PCW 'Google Compare') and [HIP] [X].

¹⁵⁸⁰ Meeting held with Consumer Intelligence and phone calls with eBenchmarkers and ABI.

¹⁵⁸¹ The role of the Case Decision Group is described in the [Guidance on the CMA's investigation procedures in Competition Act 1998 cases](#) (CMA8, January 2019), paragraphs 9.7 and 11.31 to 11.33

and 2 May, BGL submitted responses to questions asked at the Oral Hearing. Following those responses, a second State of Play call was held on 9 May 2019 to explain the CMA was conducting further evidence gathering and analysis in the light of representations received on the SO.¹⁵⁸²

B.VI. Further evidence gathered by the CMA following representations on the SO

- B.21 Having considered the representations on the SO,¹⁵⁸³ the CMA required the production of certain specified information and documents under section 26 of the Act from BGL and received responses on 17, 24, 31 May and 10 June 2019. Due to the inadequacy of a number of the responses, the CMA requested further detail and issued follow-up questions.¹⁵⁸⁴ Responses were received on 5 and 12 July 2019.
- B.22 The CMA also required the production of specified information and documents from home insurance providers (including a further four providers that had wide MFNs with CTM during the Relevant Period) and the other Big Four PCWs.¹⁵⁸⁵ The CMA also conducted further meetings and obtained an additional witness statement.¹⁵⁸⁶

B.VII. First Letter of Facts and Draft Penalty Statement

- B.23 Further State of Play calls were held with BGL on 17 July 2019 and 15 October 2019 to provide updates on the timetable of the Investigation.
- B.24 On 10 December 2019 the CMA issued the First Letter of Facts and Draft Penalty Statement (the DPS').

¹⁵⁸² URN 8798, note of CMA second State of Play call with BGL dated 9 May 2019.

¹⁵⁸³ URN 8484.1 to 8484.24, BGL's Response to the SO dated 22 February 2019; URN 8419, [HIP]'s response to the SO dated 25 January 2019.

¹⁵⁸⁴ See URN 9094 and URN 9095, follow-up questions to section 26 notice dated 10 May 2019.

¹⁵⁸⁵ The CMA required the production of further specified documents and the provision of specified information by three PCWs: Confused, GoCompare and MoneySuperMarket. The additional four providers that the CMA required the production of specified information and documents from were [HIP], [HIP], [HIP] and [HIP].

¹⁵⁸⁶ The CMA conducted interviews with individuals at one PCW (MoneySuperMarket), a former MoneysuperMarket employee, and individuals from one home insurance provider ([HIP]):

- On 14 June 2019 the CMA held a voluntary interview with [Employee 1, MSM]
- On 5 July 2019 the CMA held voluntary interviews with MoneySuperMarket [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM], [Employee 5, MSM].
- On 17 July 2019 the CMA held a voluntary interview with [Employee, HIP], [Senior Executive, HIP] and [Employee, HIP].
- On 2 June 2020 the CMA held another voluntary interview with [Employee 2, MSM].
- On 4 June 2020 the CMA held another voluntary interview with [Employee 1, MSM].

Whilst the interviews were voluntary, those attending were subject to the requirements of section 44 of the Act which makes it an offence to provide false or misleading evidence to the CMA.

- B.25 The First Letter of Facts put to BGL additional evidence that supported the objections contained in the SO and on which the CMA was considering relying to establish that an infringement had been committed.
- B.26 The DPS set out the key aspects relevant to the calculation of the penalty that the CMA proposed to impose on BGL, along with the CMA's reasoning for its provisional decision to impose a penalty on BGL and its provisional findings on each aspect of the penalty. calculation.
- B.27 BGL was given an opportunity to respond to the First Letter of Facts and DPS. BGL submitted written representations on the matters referred to in the DPS and Letter of Facts on 14 February 2020 and oral representations on 9 March 2020.

B.VIII. Second Letter of Facts

- B.28 On 29 July 2020 the CMA issued the Second Letter of Facts, which put to BGL further additional evidence that supported the objections contained in the SO and on which the CMA was considering relying on to establish that an infringement had been committed.
- B.29 BGL was given an opportunity to respond to the Second Letter of Facts and it submitted written representations on the Second Letter of Facts on 21 August 2020.

B.IX. Rule 10(2)

- B.30 Under Rule 10(2) of the Act (Competition and Market Authority's Rules) Order 2014, SI 2014/458, where the CMA considers that an agreement infringes the Chapter I prohibition or the prohibition in Article 101(1) TFEU, the CMA may address its infringement decision to fewer than all the persons who were a party to that agreement.
- B.31 The evidence provided to the CMA demonstrates that CTM introduced its wide MFNs as part of its standard terms of business with home insurance providers. Under the terms of the agreements with CTM, providers subject to CTM's wide MFNs clauses were contractually obliged to ensure that the retail prices they quoted on the CTM platform could not be higher than the retail prices for the same product on other channels, including other PCWs. The CMA therefore considers it reasonable and proportionate to apply Rule 10(2) in this case and address this Decision to BGL as it was the beneficiary of these agreements.

- B.32 The CMA notified the relevant home insurance providers, which were not addressees¹⁵⁸⁷, upon the issuance of the SO to BGL. The CMA also notified the relevant home insurance providers of the issue of the First Letter of Facts and Second Letter of Facts to BLG. Following requests, a non-confidential version of the SO¹⁵⁸⁸ and First Letter of Facts¹⁵⁸⁹ were provided. All relevant home insurance providers received a non-confidential version of the Second Letter of Facts.
- B.33 [HIP] was the only home insurance provider to provide a written response to the SO¹⁵⁹⁰ and the First Letter of Facts.¹⁵⁹¹ No home insurance providers provided a response to the Second Letter of Facts.

¹⁵⁸⁷ See Rules 5(3) and Rule 10(2) of the CA98 Rules:

https://www.legislation.gov.uk/uksi/2014/458/pdfs/ukxi_20140458_en.pdf.

¹⁵⁸⁸ Provided upon request to [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP].

¹⁵⁸⁹ Provided upon request to [HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP].

¹⁵⁹⁰ URN 8419, [HIP]'s response to the SO dated 25 January 2019.

¹⁵⁹¹ URN 10435, [HIP]'s response to the First LoF dated 14 February 2020.

ANNEX C: LIST OF AGREEMENTS WITH EACH PROVIDER ON CTM'S PANEL IN THE RELEVANT PERIOD

C.I. Agreements containing wide MFNs for the purpose of the Decision

<i>URN</i>	<i>Parties To The Agreement</i>	<i>Date of the Agreement</i>	<i>Relevant Clauses</i>
1812	BISL Limited and [HIP]	25 April 2014	5.11
1808	BISL Limited and [HIP]	2 August 2011	4.11 and 4.12
1798	BISL Limited and [HIP]	15 November 2011	5.11
1817	BISL Limited and [HIP]	12 May 2017 ¹⁵⁹²	4.11 and 4.13
1783	BISL Limited and [HIP]	14 January 2010	4.7
1767	BISL Limited and [HIP]	31 May 2013	4.11
1768	BISL Limited and [HIP]	11 June 2013	2.10 and 2.12
1777	BISL Limited and [HIP]	31 October 2008	4.8
1786	BISL Limited and [HIP]	19 September 2013	5.12
1802	BISL Limited and [HIP]	14 February 2013	4.12
1809	BISL Limited and [HIP]	9 March 2012	4.11
1788	BISL Limited and [HIP]	6 March 2009	4.12
1795	BISL Limited and [HIP]	9 September 2009	4.9
1784	BISL Limited and [HIP]	13 March 2009	4.9
1814	BISL Limited and [HIP]	15 March 2013	5.11
1793	BISL Limited and [HIP]	26 January 2010	4.11
1818	BISL Limited and [HIP]	23 August 2017	4.11
1803	BISL Limited and [HIP]	27 March 2013	4.11
1796	BISL Limited and [HIP]	1 March 2011	4.10

¹⁵⁹² This replaced an earlier agreement dated 1 December 2011, URN 1810, BGL's response to the First BGL Notice dated 26 September, which contained a wide MFN (at clauses 4.11 and 4.12).

1797	BISL Limited and [HIP]	1 November 2011	4.12
1782	BISL Limited and [HIP]	28 October 2009	4.10
1794	BISL Limited and [HIP]	8 July 2010	5.11
1780	BISL Limited and [HIP]	6 May 2009	4.11
1801	BISL Limited and [HIP]	28 November 2012	4.11
1776	BISL Limited and [HIP]	15 October 2008	4.9
1800	BISL Limited and [HIP]	10 August 2012 ¹⁵⁹³	4.11
1813	BISL Limited and [HIP]	11 August 2014	4.10
1790	BISL Limited and [HIP]	26 June 2017	4.11
1774	BISL Limited and [HIP]	16 July 2008	4.7 ¹⁵⁹⁴
1785	BISL Limited and [HIP]	10 May 2013	4.11
1820	BISL Limited and [HIP]	2 October 2017	4.11
1799	BISL Limited and [HIP]	7 March 2012	4.11

C.II. Agreements treated as only containing narrow MFNs for the purpose of the Decision

<i>URN</i>	<i>Parties to the Agreement</i>	<i>Date of the Agreement</i>	<i>Relevant Clauses</i>
1772	BISL Limited and [HIP]	3 June 2008	5.7 and 5.8
1805	BISL Limited and [HIP]	17 July 2013	4.8

¹⁵⁹³ This agreement was amended on 1 June 2017 to include home insurance. See URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, questions 9 and URN 1622, BGL's response to the First BGL Notice dated 26 September 2017, question 29, document entitled 'Q29 – List of HIP Contacts and related information (FINAL).xlsx'.

¹⁵⁹⁴ Clause 4.7 of the agreement was amended on 9 March 2013 to read: '*The Insurance Provider warrants that it will not provide a quotation for a Product to a Target Customer for BISL to display in any price comparison table referred to in clause 2.3 that has a higher premium payable than would be payable by that Target Customer should they have accessed the Insurance Provider Website directly or via a different source of introduction, unless (i) the Target Customer amends or submits different risk data or information used to produce the quotation for the Product, and/or (ii) the quotation is based on a different set of questions and/or criteria to that used by the Insurance Provider Website or any other source of introduction; or (iii) any Target Customer is provided with a lower quotation from one of the Insurance Providers in-branch facilities or as part of any off-line referral from such in-branch facilities.*' See URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 13(a).

1779	BISL Limited and [HIP]	25 March 2009	4.9
1789	BISL Limited and [HIP]	14 January 2010	3.1.4
6636	BISL Limited and [HIP]	18 May 2012	7.4
1770	BISL Limited and [HIP]	19 March 2008	4.7
1778	BISL Limited and [HIP]	8 January 2009	4.11
1781	BISL Limited and [HIP]	18 August 2009	4.9
1769	BISL Limited and [HIP]	8 April 2008	3.7
6635	BISL Limited and [HIP]	13 November 2017	7.4
6637	BISL Limited and [HIP]	15 November 2017 ¹⁵⁹⁵	4.11
1771	BISL Limited and [HIP]	29 May 2008	5.7 and 5.8
1804	BISL Limited and [HIP]	13 July 2011	4.11

C.III. Home insurance brands sold by the providers contacted by the CMA during the Investigation

<i>Home Insurance Providers</i>	<i>Names of brands listing on PCWs</i>
[HIP]	[HIP Brand X, Brand Y]
BGL	BUDGET, DIAL DIRECT, SUNLIFE BRADFORD & BINGLEY, POST OFFICE
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP Brand X, Y, Z] (*)
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP]

¹⁵⁹⁵ This agreement was signed on the date, see URN 6634, BGL's email response to the Second BGL Notice dated 3 May 2018, email entitled 'Case 50505 – BGL Group Limited – Confidential [TLT-TLT.FID4970266]', dated 27 July 2018. Contract provided in PDF form (URN 6637, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'BISL LIMITED AND [HIP] General Terms and Conditions for the Provision of Services').

[HIP]	[HIP]
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP]
[HIP]	[HIP] Brand X, Brand Y]
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP Brand X]
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP]
[HIP]	[HIP Brand X, Brand Y] (**)
[HIP]	[HIP Brand X, Brand Y]
[HIP]	[HIP Brand X]

Source: Commission Fees Dataset (Annex D)

Notes: (*) [§]; (**) [§].

ANNEX D: COMMISSION FEES DATASET

- D.1 The CMA has received data from the Big Four PCWs on the revenues and volume of sales of each home insurance provider using the Big Four PCWs per (calendar) year. To the extent that a home insurance provider sells home insurance products under several different brands, each brand is represented separately in the data set. The CMA computed the effective commission fee paid in relation to each insurance brand every year as revenues divided by volume. This information covers a 7-year period, from 2012 to 2018. The data set is referred to as the “Commission Fees Dataset”.
- D.2 The CMA also requested information from each PCW on the contractual agreements, in particular MFN clauses, that they had in place with home insurance providers, where applicable in relation to each brand, during the period and the dates that these clauses were enforced.¹⁵⁹⁶
- D.3 When compiling the Commission Fee Dataset, the CMA combined the revenues and volume data at brand level for each PCW with the information on the MFN clauses applicable to that PCW at the time and then added together the results for PCWs to have a unique data set for the analysis.
- D.4 The final version of the Commission Fees Dataset relies on the following submissions:¹⁵⁹⁷

¹⁵⁹⁶ See Section 4.B. for a discussion of the cases where the CMA has interpreted BGL’s contractual agreement differently from what was submitted by BGL in the relevant data submission.

¹⁵⁹⁷ The Commission Fees Dataset also relies on information from [X].

BGL

URN 1622, BGL's response dated 17 October 2017 to First BGL Notice, question 29, document entitled "Q29 – List of HIPContacts and related information (FINAL).xlsx".

URN 9170n, BGL's response dated 5 July 2019 to the clarifications sought on BGL's response to the section 26 notice dated 10 May 2019 ('Third BGL notice'), question 34, document entitled "Annex19-Commissions data.xlsx".

Clarifications or other information in relation to the revenues, volume and contractual agreements information provided by BGL and used to compile the commissions data set:

URN 1632, BGL's response dated 17 October 2017 to First BGL Notice, question 9, paragraphs 9.2 and 9.3.

URN 5471, BGL's response dated 17 January 2018 to data cleaning questions dated 8 January 2018, question 1.

URN 5630, BGL's response dated 5 February 2018 to data cleaning questions dated 29 January 2018, questions 1-3.

URN 6438, BGL's response dated 1 June 2018 to section 26 notice dated 3 May 2018, question 2.

Confused

URN 8979, Confused's response dated 14 June 2019 to section 26 notice dated 31 May 2019, question 5, document entitled 'Q5.commissions template home.xlsx'.

URN 6370, Confused's response dated 11 May 2018 to section 26 notice dated 27 April 2018, question 1, document entitled 'Q1._Commission_data_Jan-Dec_17.xlsx'.

URN 6371, Confused's response dated 11 May 2018 to section 26 notice dated 27 April 2018, question 2, document entitled 'Q2._FINAL_Commissions_template_20_12_2016_HOME.xlsx'.

URN 4923, Confused's response dated 11 December 2017 to follow-up questions dated 6 December 2017, question 7, document entitled 'Appendix A (amended) – Q7. Trading names and brands.xlsx'.

URN 5498B, Confused's response dated 19 January 2018 to data cleaning questions dated 8 January 2018, document entitled 'CMA – Data Cleaning – Q4.xlsx'.

Clarifications in relation to the revenues, volume and contractual agreements information provided by Confused and used to compile the commissions data set:

URN 4926, Confused's response dated 11 December 2017 to follow-up questions dated 6 December 2017, question 29.

URN 5498, Confused's response dated 19 January 2018 to data cleaning questions dated 8 January 2018, questions 1-3.

URN 6322, Confused's response dated 11 May 2018 to section 26 notice dated 27 April 2018, question 6 and question 7.

GoCompare

URN 8940, GoCompare's response dated 14 June 2019 to section 26 notice dated 31 May 2019, question 6, document entitled 'Annex 1 – 14.06.2019.xlsx'.

URN 5466, GoCompare's response dated 17 January 2018 to follow-up questions dated 8 January 2018, question 7, document entitled 'Copy of Annex 7 MFNs v2.xlsx'. *Clarifications in relation to the revenues, volume and contractual agreements information provided by GoCompare and used to compile the commissions data set:*

URN 5465, GoCompare's response dated 17 January 2018 to CMA follow-up cleaning questions dated 8 January, questions 1-3.

URN 5657, GoCompare's response dated 12 February 2018 to CMA follow-up cleaning questions dated 31 January, question 1 and question 2.

URN 6304, GoCompare's response dated 10 May 2018 to section 26 notice dated 27 April 2018, question 2.

MoneySuperMarket

URN 6613, MoneySuperMarket's response dated 6 August 2019 to follow-up questions dated 23 July 2019, question 6, document entitled 'Copy of Appendix 10 – Commissions Data corrected 050819.xlsx'.

URN 9621, attachment to MoneySuperMarket's response to follow up questions to section 26 notice dated 25 June 2019 entitled 'Copy of Appendix 10 - Commissions Data corrected 050819.xlsx'.

Clarifications in relation to the revenues, volume and contractual agreements information provided by MoneySuperMarket and used to compile the commissions data set:

URN 5608, MoneySuperMarket's response dated 1 February 2018 to follow-up questions dated 25 January 2018, question 2.

URN 1363, MoneySuperMarket's response dated 18 May 2017 to a request for information in the DCTs Market Study dated 2 May 2017, question 9.

URN 1366, MoneySuperMarket's response dated 18 May 2017 to a request for information in the DCTs Market Study dated 2 May 2017, question 9, spreadsheet titled 'Q9-10 MSM_Contract_terms', tab 'MFNs_HI'.

URN 1310, MoneySuperMarket's response dated 17 July 2017 to a request for information in the DCTs Market Study dated 8 June 2017, question 21(d), point (ii).

ANNEX E: HOME INSURANCE PROVIDERS' SHARES OF SUPPLY ON THE BIG FOUR PCWs

E.1 This Annex sets out:

- (a) Information on the share of sales through PCWs¹⁵⁹⁸ covered by each home insurance provider listing on PCWs during the Relevant Period (see Table 1 and Table 2).
- (b) Information on the share of sales through CTM covered by each home insurance provider listing on Compare the Market during the Relevant Period (see Table 3 and Table 4).

Table E.1: Home insurers providers shares of the total volume of sales made through PCWs in 2017

	<i>Home Insurance Providers listing on PCWs in 2017</i>	<i>Whether subject to CTM's wide MFN</i>	<i>Share of PCW Sales (%) in 2017</i>	<i>Cum. Share</i>
1)	[HIP]	Yes	[X]	[X]
2)	[HIP]	No	[X]	[X]
3)	BGL	No	[X]	[X]
4)	[HIP]	No	[X]	[X]
5)	[HIP]	No	[X]	[X]
6)	[HIP]	Yes	[X]	[X]
7)	[HIP]	No	[X]	[X]
8)	[HIP]	No	[X]	[X]
9)	[HIP]	Yes	[X]	[X]
10)	[HIP]	Yes	[X]	[X]
11)	[HIP]	Yes	[X]	[X]
12)	[HIP]	No	[X]	[X]
13)	[HIP]	Yes	[X]	[X]
14)	[HIP]	No	[X]	[X]
15)	[HIP]	No	[X]	[X]
16)	[HIP]	Yes	[X]	[X]
17)	[HIP]	Yes	[X]	[X]
18)	[HIP]	Yes	[X]	[X]
19)	[HIP]	Yes	[X]	[X]
20)	[HIP]	Yes	[X]	[X]
21)	[HIP]	No	[X]	[X]
22)	[HIP]	Yes	[X]	[X]
23)	[HIP]	Yes	[X]	[X]
24)	[HIP]	Yes	[X]	[X]
25)	[HIP]	No	[X]	[X]
26)	[HIP]	No	[X]	[X]

¹⁵⁹⁸ In this Decision, for convenience, the CMA refers to sales through PCWs rather than sales through the Big Four PCWs.

27)	[HIP]	Yes	[✂]	[✂]
28)	[HIP]	Yes	[✂]	[✂]
29)	[HIP]	Yes	[✂]	[✂]
30)	[HIP]	No	[✂]	[✂]
31)	[HIP]	Yes	[✂]	[✂]
32)	[HIP]	Yes	[✂]	[✂]
33)	[HIP]	Yes	[✂]	[✂]
34)	[HIP]	No	[✂]	[✂]
35)	[HIP]	No	[✂]	[✂]
36)	[HIP]	No	[✂]	[✂]
37)	[HIP]	Yes	[✂]	[✂]
38)	[HIP]	Yes	[✂]	[✂]
39)	[HIP]	No	[✂]	[✂]
40)	[HIP]	No	[✂]	[✂]
41)	[HIP]	No	[✂]	[✂]
42)	[HIP]	Yes	[✂]	[✂]
43)	[HIP]	Yes	[✂]	[✂]
44)	[HIP]	No	[✂]	[✂]
45)	[HIP]	No	[✂]	[✂]
46)	[HIP]	No	[✂]	[✂]
47)	[HIP]	Yes	[✂]	[✂]
48)	[HIP]	No	[✂]	[✂]
49)	[HIP]	No	[✂]	[✂]
50)	[HIP]	No	[✂]	[✂]
51)	[HIP]	No	[✂]	[✂]
52)	[HIP]	Yes	[✂]	[✂]
53)	[HIP]	No	[✂]	[✂]
54)	[HIP]	No	[✂]	[✂]
55)	[HIP]	Yes	[✂]	[✂]
56)	[HIP]	No	[✂]	[✂]

Source: CMA Analysis of the Commission Fees Dataset (Annex D)

Table E.2: Home insurers providers shares of the total volume of sales made through PCWs s in 2016

	<i>Home Insurance Providers listing on PCWs in 2016</i>	<i>Whether subject to CTM's wide MFN</i>	<i>Share of PCW Sales (%) in 2016</i>	<i>Cum. Share</i>
1)	[HIP]	Yes	[✂]	[✂]
2)	[HIP]	No	[✂]	[✂]
3)	[HIP]	No	[✂]	[✂]
4)	BGL	No	[✂]	[✂]
5)	[HIP]	No	[✂]	[✂]
6)	[HIP]	Yes	[✂]	[✂]
7)	[HIP]	No	[✂]	[✂]
8)	[HIP]	No	[✂]	[✂]
9)	[HIP]	No	[✂]	[✂]

10)	[HIP]	No	[X]	[X]
11)	[HIP]	No	[X]	[X]
12)	[HIP]	Yes	[X]	[X]
13)	[HIP]	Yes	[X]	[X]
14)	[HIP]	Yes	[X]	[X]
15)	[HIP]	Yes	[X]	[X]
16)	[HIP]	Yes	[X]	[X]
17)	[HIP]	Yes	[X]	[X]
18)	[HIP]	Yes	[X]	[X]
19)	[HIP]	No	[X]	[X]
20)	[HIP]	Yes	[X]	[X]
21)	[HIP]	No	[X]	[X]
22)	[HIP]	Yes	[X]	[X]
23)	[HIP]	No	[X]	[X]
24)	[HIP]	Yes	[X]	[X]
25)	[HIP]	Yes	[X]	[X]
26)	[HIP]	Yes	[X]	[X]
27)	[HIP]	Yes	[X]	[X]
28)	[HIP]	Yes	[X]	[X]
29)	[HIP]	No	[X]	[X]
30)	[HIP]	Yes	[X]	[X]
31)	[HIP]	Yes	[X]	[X]
32)	[HIP]	Yes	[X]	[X]
33)	[HIP]	No	[X]	[X]
34)	[HIP]	Yes	[X]	[X]
35)	[HIP]	No	[X]	[X]
36)	[HIP]	No	[X]	[X]
37)	[HIP]	No	[X]	[X]
38)	[HIP]	No	[X]	[X]
39)	[HIP]	Yes	[X]	[X]
40)	[HIP]	Yes	[X]	[X]
41)	[HIP]	Yes	[X]	[X]
42)	[HIP]	Yes	[X]	[X]
43)	[HIP]	No	[X]	[X]
44)	[HIP]	Yes	[X]	[X]
45)	[HIP]	No	[X]	[X]
46)	[HIP]	No	[X]	[X]
47)	[HIP]	Yes	[X]	[X]
48)	[HIP]	No	[X]	[X]
49)	[HIP]	No	[X]	[X]
50)	[HIP]	No	[X]	[X]
51)	[HIP]	No	[X]	[X]
52)	[HIP]	Yes	[X]	[X]
53)	[HIP]	No	[X]	[X]
54)	[HIP]	No	[X]	[X]
55)	[HIP]	No	[X]	[X]

56)	[HIP]	No	[✂]	[✂]
57)	[HIP]	No	[✂]	[✂]
58)	[HIP]	No	[✂]	[✂]
59)	[HIP]	No	[✂]	[✂]

Source: CMA Analysis of the Commission Fees Dataset (Annex D)

Table E.3: Home insurers providers shares of the total volume of sales made through CTM in 2017

	Home Insurance Providers listing on CTM in 2017	Whether subject to CTM's wide MFN	Share of CTM Sales (%) in 2017	Cum. Share
1)	[HIP]	Yes	[✂]	[✂]
2)	BGL	No	[✂]	[✂]
3)	[HIP]	No	[✂]	[✂]
4)	[HIP]	No	[✂]	[✂]
5)	[HIP]	Yes	[✂]	[✂]
6)	[HIP]	No	[✂]	[✂]
7)	[HIP]	Yes	[✂]	[✂]
8)	[HIP]	No	[✂]	[✂]
9)	[HIP]	No	[✂]	[✂]
10)	[HIP]	Yes	[✂]	[✂]
11)	[HIP]	No	[✂]	[✂]
12)	[HIP]	No	[✂]	[✂]
13)	[HIP]	Yes	[✂]	[✂]
14)	[HIP]	No	[✂]	[✂]
15)	[HIP]	Yes	[✂]	[✂]
16)	[HIP]	Yes	[✂]	[✂]
17)	[HIP]	Yes	[✂]	[✂]
18)	[HIP]	Yes	[✂]	[✂]
19)	[HIP]	Yes	[✂]	[✂]
20)	[HIP]	Yes	[✂]	[✂]
21)	[HIP]	No	[✂]	[✂]
22)	[HIP]	Yes	[✂]	[✂]
23)	[HIP]	Yes	[✂]	[✂]
24)	[HIP]	No	[✂]	[✂]
25)	[HIP]	Yes	[✂]	[✂]
26)	[HIP]	Yes	[✂]	[✂]
27)	[HIP]	No	[✂]	[✂]
28)	[HIP]	Yes	[✂]	[✂]
29)	[HIP]	Yes	[✂]	[✂]
30)	[HIP]	Yes	[✂]	[✂]
31)	[HIP]	Yes	[✂]	[✂]
32)	[HIP]	Yes	[✂]	[✂]
33)	[HIP]	Yes	[✂]	[✂]
34)	[HIP]	Yes	[✂]	[✂]
35)	[HIP]	Yes	[✂]	[✂]
36)	[HIP]	Yes	[✂]	[✂]
37)	[HIP]	Yes	[✂]	[✂]

Table E.4: Home insurers providers shares of the total volume of sales made through CTM in 2016

	Home Insurance Provider listing on CTM in 2016	Whether subject to CTM's wide MFN	Share of CTM Sales (%) in 2016	Cum. Share
1)	[HIP]	Yes	[X]	[X]
2)	BGL	No	[X]	[X]
3)	[HIP]	No	[X]	[X]
4)	[HIP]	No	[X]	[X]
5)	[HIP]	No	[X]	[X]
6)	[HIP]	Yes	[X]	[X]
7)	[HIP]	No	[X]	[X]
8)	[HIP]	No	[X]	[X]
9)	[HIP]	No	[X]	[X]
10)	[HIP]	No	[X]	[X]
11)	[HIP]	Yes	[X]	[X]
12)	[HIP]	No	[X]	[X]
13)	[HIP]	Yes	[X]	[X]
14)	[HIP]	Yes	[X]	[X]
15)	[HIP]	Yes	[X]	[X]
16)	[HIP]	Yes	[X]	[X]
17)	[HIP]	Yes	[X]	[X]
18)	[HIP]	Yes	[X]	[X]
19)	[HIP]	No	[X]	[X]
20)	[HIP]	Yes	[X]	[X]
21)	[HIP]	Yes	[X]	[X]
22)	[HIP]	No	[X]	[X]
23)	[HIP]	Yes	[X]	[X]
24)	[HIP]	Yes	[X]	[X]
25)	[HIP]	Yes	[X]	[X]
26)	[HIP]	Yes	[X]	[X]
27)	[HIP]	Yes	[X]	[X]
28)	[HIP]	Yes	[X]	[X]
29)	[HIP]	Yes	[X]	[X]
30)	[HIP]	Yes	[X]	[X]
31)	[HIP]	No	[X]	[X]
32)	[HIP]	Yes	[X]	[X]
33)	[HIP]	Yes	[X]	[X]
34)	[HIP]	Yes	[X]	[X]
35)	[HIP]	Yes	[X]	[X]
36)	[HIP]	Yes	[X]	[X]
37)	[HIP]	Yes	[X]	[X]
38)	[HIP]	Yes	[X]	[X]
39)	[HIP]	Yes	[X]	[X]

Source: CMA Analysis of the Commission Fees Dataset (Annex D)

ANNEX F: PROVIDERS' SALES DATASET

- F.1 The CMA has received data from 19 home insurance providers active in the UK on the volumes of home insurance policies sold during the last two completed financial years, separately for each year and split by new business and renewals. This is referred to as the 'Providers' Sales Dataset'.
- F.2 In relation to new business sales, the CMA received information on volumes of sales by the following acquisition channels: direct, PCWs, brokers and others (e.g. cashback).¹⁵⁹⁹
- F.3 In relation to renewal sales, the CMA received a breakdown of the data according to the following categories: 'Automatic Renewals' and 'Renewals agreed by the customer'. However, not all home insurance providers were able to provide this split on a consistent basis and, accordingly, the CMA has assessed renewal sales only in aggregate.
- F.4 The CMA's analysis excluded [HIP] and [HIP] from the Home Insurance Providers' Sales Dataset for the following reasons:
- (a) [HIP] was no longer active in selling home insurance using PCWs.¹⁶⁰⁰
 - (b) During the last two completed financial years, [HIP] has been active selling home insurance as [HIP]'s retail partner.¹⁶⁰¹ Accordingly, the CMA relied on the data submitted by [HIP] which provided the split by retail partners.
- F.5 In April 2018, the CMA contacted two additional home insurance providers, [HIP] and [HIP]. The CMA however did not ask these providers to submit sales volume data due to proportionality considerations. The analysis therefore also excludes [HIP] and [HIP].¹⁶⁰²
- F.6 The final version of the Providers' Sales Dataset contains the following submissions by 19 home insurance providers:

[HIP]

¹⁵⁹⁹ Please note that sales achieved through search engine optimisation (SEO) and pay-per-click advertising (PPC), when provided separately, have been considered as direct sales.

¹⁶⁰⁰ URN 5041B, [HIP]'s response to section 26 notice dated 24 November 2017.

See URN 5288, [HIP]'s response to section 26 notice dated 24 November 2017, question 24; URN 5289, [HIP]'s response to section 26 notice dated 24 November 2017, question 25.

¹⁶⁰² The CMA does not consider that the omission of data from [HIP] and [HIP] is material as, in 2017, [HIP] and [HIP] accounted for less than 0-5% (3%) of policies sold through the Big Four PCWs. The 23 home insurance providers which the CMA contacted represented over 80% (83%) of the policies sold through the Big Four PCWs in the Relevant Period. Source: CMA analysis of the Commission Fees Dataset (Annex D).

URN 5171, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 28, document entitled 'Question 28 (Sales data – New Business) FINAL.xlsx'.

URN 5172, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 29, document entitled 'Question 29 (Sales data – Renewals) FINAL.xlsx'.

[HIP] URN 5103, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 30, document entitled 'Question 30 and 31.xlsx' (Please note information related to New Business only has been used).

URN 6157, response dated 30 April 2018 to section 26 notice dated 16 April 2018, question 5 (Renewals).

[HIP]

URN 5157A, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 24, document entitled 'Copy of CMA Question 24 (Sales data – New Business).xlsx'.

URN 5157B, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 25, document entitled 'Copy of CMA Question 25 (Sales data – Renewals).xlsx'.

[HIP]

URN 5456, response dated 17 January 2018 to section 26 notice dated 24 November 2017, question 23, document entitled 'Question 23 (Sales data – New Business).xlsx'.

URN 5457, response dated 17 January 2018 to section 26 notice dated 24 November 2017, question 24, document entitled 'Question 24 (Sales data – Renewals).xlsx'.

[HIP]

Response dated 15 March 2018 to follow-up questions dated 27 February 2018, question 1, documents entitled:

- (a) URN 5804.1, 'Q29 (Sales data - New Business).xlsx'; and
- (b) URN 5804.2, 'Q30 (Sales data - Renewals).xlsx'.

[HIP]¹⁶⁰³

URN 5085, response dated 15 December 2017 to section 26 notice dated 24 November 2017, questions 24 and 25, document entitled 'Response to CMA Submission – Q.24, Q.25.xlsx' (New Business and Renewals).

Clarifications in relation to the sales information provided by [HIP] and used to compile the home insurance providers sales data set

URN 6236.1, response dated 4 May 2018 to section 26 dated 16 April 2018, question 6.¹⁶⁰⁴

[HIP]

URN 5122, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 25; document entitled 'Question 25 (Sales data – New Business) ([X]).xlsx'.

URN 5123, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 26; document entitled 'Question 26 (Sales data – Renewals) ([X]).xlsx'.

[HIP]

Response dated 30 April 2018 to section 26 notice dated 16 April 2018, question 6:

- (a) URN 6152.11, document entitled 'Annex_27_-_Sales_Data_-_New_Business'.
- (b) URN 6152.12, document entitled 'Annex_28_-_Sales_data_-_Renewals'.

[HIP]

URN 5148, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 27, document entitled 'Question 27 (Sales data – New Business)'.

URN 5149, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 28, document entitled 'Question 28 (Sales data – Renewals)'.

[HIP]

URN 5197B, response dated 19 December 2017 to section 26 notice dated 24 November 2017, question 30, document entitled 'CMA Q30 NB Households Sales 2015_16.xlsx'.

¹⁶⁰³ [HIP] submitted new business and renewal sales data split by [HIP], [HIP], [HIP] and [HIP].

¹⁶⁰⁴ Guidance on how to manipulate the sales data submitted, URN 5085, [HIP]'s response to section 26 notice dated 24 November 2017, document entitled 'Response to CMA Submission – Q.24, Q.25.xlsx'.

URN 6169, response dated 30 April 2018 to section 26 notice dated 16 April 2018, question 5.

URN 5197C, response dated 19 December 2017 to section 26 notice dated 24 November 2017, question 31, document entitled 'CMA Q31 Renewal Sales 2015_16.xlsx'.

[HIP]

URN 5317, response dated 22 December 2017 to section 26 notice dated 24 November 2017, question 32, document entitled 'Annex 30 – Question 32 – (Sales data – New Business).xlsx'.

URN 5318, response dated 22 December 2017 to section 26 notice dated 24 November 2017, question 33, document entitled 'Annex 31 – Question 33 – Sales data - Renewals).xlsx'.

[HIP]

URN 5111.2, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 27, document entitled '[HIP] RFI Q27 (Sales data – New Business).xlsx'.

URN 5111.3, Response to section 26 notice dated 24 November 2017, question 28, document entitled '[HIP] RFI Q28 (Sales data – Renewals).xlsx'.

[HIP]

URN 5205, response dated 19 December 2017 to section 26 notice dated 24 November 2017, question 25, document entitled 'Q25 [HIP] NB Sales (ENC PW).xlsx'.

URN 6178.1, response dated 30 April 2018 to section 26 dated 16 April 2018, question 5.

URN 5206, response dated 19 December 2017 to section 26 notice dated 24 November 2017, question 26, document entitled 'Q26 [HIP] Renewals (ENC PW).xlsx'.

[HIP]

URN 5184C, response dated 18 December 2018 to section 26 notice dated 24 November 2017, question 32, document entitled 'Q32 (Sales data – New business).xlsx'.

URN 5184D, response dated 18 December 2018 to section 26 notice dated 24 November 2017, question 33, document entitled 'Q33 (Sales data – Renewals) xlsx'.

[HIP]

URN 5143, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 30, document entitled 'Question 30 (Sales data – New Business) [X].xlsx'.

URN 6240, response dated 4 May 2018 to section 26 notice dated 16 April 2018, question 6, document entitled 'Question 31 (Sales data - Renewals) Financial year.xlsx'.

[HIP]

URN 5249, response dated 20 December 2017 to section 26 notice dated 24 November 2017, question 22, document entitled '[HIP]– Question 22 data (Sales data – New Business).xlsx'.

URN 5250, response dated 20 December 2017 to section 26 notice dated 24 November 2017, question 23, document entitled '[HIP]– Question 23 data (Sales data – Renewals).xlsx'.

[HIP]

URN 5097, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 24, document entitled 'Question 24 (Sales data – New Business) Document 24.1.pdf'.

URN 5098, response dated 18 December 2017 to section 26 notice dated 24 November 2017, question 25, document entitled 'Question 25 (Sales data – Renewals) Document 25.1.pdf'.

[HIP]

URN 5281, response dated 22 December 2017 to section 26 notice dated 24 November 2017, question 32, document entitled 'Reply – Question 32 (Sales data – New Business) CMA1 (002).xlsx'.

URN 5282, response dated 22 December 2017 to section 26 notice dated 24 November 2017, question 33, document entitled 'Reply – Question 33 (Sales data – Renewals) CMA2.xlsx'.

[HIP]

URN 5408, response dated 15 January 2018 to section 26 notice dated 24 November 2017, question 25, document entitled 'Question 25 (Sales data – New Business).pdf'.

URN 5409, response dated 15 January 2018 to section 26 notice dated 24 November 2017, question 26, document entitled 'Question 26 (Sales data – Renewals).pdf'.

ANNEX G: ASSESSMENT OF BGL'S REPRESENTATIONS ON 'GENUINE AGENCY'

G.I. Introduction

- G.1 The CMA has concluded that CTM does not have the power to negotiate or conclude contracts on behalf of home insurance providers, and therefore finds that CTM is not the 'genuine agent' of those providers (see Section 4.A.II.). In addition, CTM's wide MFNs would not fall within the scope of the 'genuine agency' exception as they restrict the actions of providers (who would in BGL's view be the principal) rather than CTM (who would in BGL's view be the agent).
- G.2 Notwithstanding the CMA's conclusion, in light of BGL's submissions prior to the SO, the CMA has assessed in this Annex whether, if it were the case that CTM negotiated or concluded contracts on behalf of home insurance providers, whether the factors identified in the Vertical Guidelines¹⁶⁰⁵ and the case law of the CJEU are present such that it would be appropriate to treat them as in a relationship of 'genuine agency'. The CMA finds that this would not be the case.

G.II. The single economic unit doctrine and 'genuine agency'

- G.3 The Chapter I prohibition and Article 101 TFEU do not apply to agreements between undertakings which form part of a single economic unit or entity.¹⁶⁰⁶
- G.4 A single economic unit or entity typically exists in the case of a parent/subsidiary relationship. An agreement between a parent company and a subsidiary will fall outside the scope of the Chapter I prohibition and Article 101 TFEU, if the relationship between them is so close that economically they form a single economic unit.¹⁶⁰⁷
- G.5 However, the CJEU has also stated that this situation may arise in other circumstances:¹⁶⁰⁸

'The case law shows that this sort of situation arises not only where the relationship between the companies in question is that of parent and subsidiary, but may also occur, in certain

¹⁶⁰⁵ Guidelines on Vertical Restraints (2010/C 130/01) (Vertical Guidelines).

¹⁶⁰⁶ C-40/73 Cooperative Vereniging 'Suiker Unie' UA v European Commission (*Suiker Unie*), EU:C:1975:174, paragraph 542 and Vertical Guidelines, paragraphs 1 and 12 to 21.

¹⁶⁰⁷ Joined Cases T-71/03 etc Tokai Carbon Co Ltd v European Commission, EU:T:2005:322, paragraphs 59 to 60.

¹⁶⁰⁸ T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 86.

circumstances, in relationships between a company and its commercial representative, or between a principal and its agent [emphasis added].

- G.6 A person (the ‘agent’) with the power to negotiate or conclude contracts for the sale of goods or services on behalf of another (the ‘principal’) will be regarded as forming part of the same economic unit if the agent can be considered to be an auxiliary organ forming an integral part of the principal’s undertaking,¹⁶⁰⁹ so that the principal and agent are not considered separate undertakings for competition law purposes.
- G.7 Unless it can be established that the agent operates as an auxiliary organ forming an integral part of the principal’s undertaking then the agent is to be regarded as an independent undertaking.
- G.8 Typically, for assessments of genuine agency, the risks borne by the agent are a key factor in assessing whether an agent is an auxiliary organ of the principal.¹⁶¹⁰ The CJEU has also identified other relevant factors, in particular: whether the agent acts for multiple principals;¹⁶¹¹ the level of influence which the principal has over the agent’s commercial strategy;¹⁶¹² the unity of conduct on the market between the principal and agent;¹⁶¹³ and whether the agent is perceived by third parties as forming part of the principal.¹⁶¹⁴

G.III. Risks borne by CTM

- G.9 The CMA has found that CTM bears one or more non-negligible risks in relation to the provision of PCW Services for Home Insurance. Therefore,

¹⁶⁰⁹ Vertical Guidelines, paragraph 12, C-40/73 Cooperative Vereniging ‘Suiker Unie’ UA v European Commission (*Suiker Unie*), EU:C:1975:174, paragraph 480, T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 87, and C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (*CEEES*), EU:C:2006:784, paragraph 43.

¹⁶¹⁰ T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 87, C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (*CEEES*), EU:C:2006:784, paragraph 43 and C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (*CEPSA*), EU:C:2008:485, paragraph 36.

¹⁶¹¹ C-311/85 VZW Vereniging van Vlaamse Reisbureaus v VZW Sociale Dienst van de Plaatselijke en Gewestelijke Overheidsdiensten (*Flemish Travel Agents*), paragraph 20.

¹⁶¹² T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 118, and C-40/73 Cooperative Vereniging ‘Suiker Unie’ UA v European Commission (*Suiker Unie*), EU:C:1975:174, paragraph 539.

¹⁶¹³ C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (*CEEES*), EU:C:2006:784, paragraph 44, C-266/93 Bundeskartellamt v Volkswagen AG and VAG Leasing GmbH (*Volkswagen VRG*), paragraph 19, and T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 88.

¹⁶¹⁴ T-66/99 Minoan Lines AG v Commission of the European Communities (*Minoan Lines*), paragraph 129.

CTM should not be treated as an auxiliary organ of the home insurance providers.¹⁶¹⁵

G.III.(a). Legal framework

G.10 In considering the level of risk borne by an agent, the CJEU and Vertical Guidelines¹⁶¹⁶ have included the following types of commercial and financial risks in their assessment:

- (a) Contract-specific risks, related to the contracts concluded and negotiated by the agent on behalf of the principal
- (b) Risks related to market-specific investments;¹⁶¹⁷ and
- (c) Risks related to other activities undertaken in the same product market, to the extent that the principal requires the agent to undertake such activities at the agent's own risk.

G.11 The CJEU has made it clear that the question of risk must be assessed on a case-by-case basis, having regard to the economic reality of the situation rather than the legal form.¹⁶¹⁸ The Vertical Guidelines explain that risks will be regarded as borne by the agent unless it is 'fully reimbursed' by the principal.¹⁶¹⁹

G.12 In a case where it can be established that an agent bears one or more non-negligible risks in relation to the above, the CMA considers that this alone will be sufficient to conclude that the relationship is not one of 'genuine agency'.¹⁶²⁰ The CJEU has also referred, alternatively, to the concepts of

¹⁶¹⁵ The CMA notes that, from a regulatory perspective, an agent is exempted from being authorised by the Financial Conduct Authority as it uses the regulatory permissions of its principal to undertake the regulated activity. BGL/CTM is authorised by the Financial Conduct Authority in its own right. For further information please see the FCA's thematic report available on <https://www.fca.org.uk/publication/thematic-reviews/tr16-06.pdf>

¹⁶¹⁶ Vertical Guidelines, paragraph 14.

¹⁶¹⁷ The CJEU has stated that risks related to market-specific investments are '*risks linked to investments specific to the market, namely those required to enable the [agent] to negotiate or conclude contracts with third parties*', see , *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES)*, EU:C:2006:784, at paragraph 51. The Vertical Guidelines provide supplementary guidance on the concept of market-specific investments, see paragraph 14: '*These are investments specifically required for the type of activity for which the agent has been appointed by the principal, that is, which are required to enable the agent to conclude and/or negotiate this type of contract. Such investments are usually sunk, which means that upon leaving that particular field of activity the investment cannot be used for other activities or sold other than at a significant loss.*'

¹⁶¹⁸ , *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES)*, EU:C:2006:784, paragraph 46.

¹⁶¹⁹ Vertical Guidelines, paragraph 16(f).

¹⁶²⁰ Vertical Guidelines, paragraph 17; *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES)*, EU:C:2006:784, paragraphs 61 and 65; *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEPSA)*, EU:C:2008:485, paragraphs 40 and 44.

‘genuine’, ‘meaningful’ and ‘material’ risks.¹⁶²¹ Additionally, the Vertical Guidelines state that an agent may still form part of the same economic unit as a principal if it bears ‘only insignificant risks’.¹⁶²²

G.III.(b). Legal assessment

G.III.(b).(i). Contract-specific risks

- G.13 As set out in Section 4.A.II., CTM plays no factual or legal role in the actual transaction between the insurance provider and consumer concerning the purchase of home insurance. Accordingly, the CMA finds that CTM does not take on any risks directly related to contracts for home insurance products.¹⁶²³

G.III.(b).(ii). Market-specific risks

- G.14 As regards market-specific investments, the CMA has assessed CTM’s investments in (i) advertising and marketing,¹⁶²⁴ and (ii) IT.¹⁶²⁵
- G.15 The CJEU has stated that risks related to market-specific investments are ‘*risks linked to investments specific to the market, namely those required to enable the [agent] to negotiate or conclude contracts with third parties*’.¹⁶²⁶
- G.16 The Vertical Guidelines provide supplementary guidance on the concept of market-specific investments:¹⁶²⁷

¹⁶²¹ See the judgment of the GC in *T-325/01 DaimlerChrysler AG v European Commission (DaimlerChrysler)*, *EU:T:2005:322*, paragraphs 111 to 112.

¹⁶²² Vertical Guidelines, paragraph 15.

¹⁶²³ However the CMA notes that from a regulatory perspective PCWs are responsible for providing consumers with appropriate information at the right time to make informed decisions, and this information goes beyond price to include cover, benefits, exclusions and other relevant items the consumer may require (see the FCA’s Handbook [ICOB](#) 6.1.5.R and 6.1.6G and 6.1.7G). PCWs are therefore potentially liable for transferring the wrong information on the consumer to the home insurance provider. For example, if a home insurance claim is denied on the basis that the consumer did not provide relevant information to the home insurance provider but the information was provided to CTM but it failed to transfer correctly to the provider, CTM can be held responsible.

¹⁶²⁴ The CJEU has confirmed that market-specific investments include advertising campaigns; *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES)*, *EU:C:2006:784*, paragraph 59 *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEPSA)*, *EU:C:2008:485*, paragraph 53.

¹⁶²⁵ The CJEU and the Vertical Guidelines have confirmed that market-specific investments include, but are not limited to investments by the agent that are ‘specifically linked’ to the sale of the contract goods or services, such as premises (e.g. a petrol station) or equipment (e.g. fuel tanks and petrol pumps) or specific software to sell insurance policies in the case of insurance agents; Vertical Guidelines, at paragraph 16(f); *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES)*, *EU:C:2006:784*, paragraph 59.

¹⁶²⁶ *C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES)*, *EU:C:2006:784*, paragraph 51.

¹⁶²⁷ Vertical Guidelines, paragraph 14.

‘These are investments specifically required for the type of activity for which the agent has been appointed by the principal, that is, which are required to enable the agent to conclude and/or negotiate this type of contract. Such investments are usually sunk, which means that upon leaving that particular field of activity the investment cannot be used for other activities or sold other than at a significant loss.’

G.III.(b).(ii).(1). Marketing and advertising

- G.17 As regards advertising and marketing, CTM has made, and continues to make, significant investments in advertising across its business: between 2013 and 2017 BGL spent, across all products for which it offers PCW Services, [§] on offline and online marketing.¹⁶²⁸
- G.18 CTM engages in certain marketing which is specifically targeted at consumers seeking home insurance. In particular, CTM’s ‘paid search’ activities, i.e. advertising with search engines on a pay-per-click (‘PPC’) basis, are managed on a product specific basis. PPC advertising involves ‘bidding’ against other advertisers to have a link to CTM’s website appear on a search engine results page when a user includes certain ‘keywords’ in their search query. CTM pays a fee to the search engine every time a user clicks on a purchased link (regardless of whether the user subsequently goes on to make a purchase).
- G.19 CTM targets the top [§] keywords it believes are relevant to home insurance, and bids on those terms either when searched for alone or in combination with CTM brand related terms (e.g. both ‘home insurance’ and ‘compare the market home insurance’).¹⁶²⁹
- G.20 BGL has stated that *‘generally speaking, CTM has noted a significant rise, year-on-year (for example over the last three years) on Generic PPC costs (AdWords etc.) relevant to Home (more so than Car, which has remained more static, albeit starting at a higher point).’*¹⁶³⁰
- G.21 CTM’s total spend on home insurance related PPC has increased incrementally from 2014-2017, with the total spend on paid search relating to home insurance rising from roughly [§] over that period (which corresponds

¹⁶²⁸ URN 6438, BGL’s response to the Second BGL Notice dated 3 May 2018, questions 10 and 16. URN 6438.25, BGL’s response to the Second BGL Notice dated 3 May 2018, question 17, document entitled ‘CMA_Marketing_Template’.

¹⁶²⁹ URN 1632, BGL’s response to the First BGL Notice dated 26 September 2017, question 19, paragraph 19.12.

¹⁶³⁰ URN 6438, BGL’s response to the Second BGL Notice dated 3 May 2018, question 18, paragraph 18.1.

with rise from [X]% to [X]% of CTM's total spend on PPC advertising over the same period).¹⁶³¹

Table G.1: PPC advertising costs incurred by BGL specifically related to home insurance products

Year	Total spend on home insurance related PPC advertising	% of overall spend on PPC advertising
2014	[X]	[X]
2015	[X]	[X]
2016	[X]	[X]
2017	[X]	[X]

Source: URN 6438.19, BGL's response to the section 26 notice ('Second BGL Notice') dated 3 May 2018, question 10, document entitled 'CMA Marketing Template'

G.22 The CMA takes the view that market-specific investments cover those things which are necessary in practice for an agent to fulfil its obligations to its principal. This does not necessarily mean that the investment must be required under the terms of the agreement between the agent and principal.¹⁶³²

G.23 The commercial and financial importance (and therefore the practical necessity) of advertising investments is confirmed by CTM's own observations:

*'The PCW category is defined by a number of competitors that offer similar comparison services across insurance and utilities. Brands battle to gain awareness and then aggressively seek volume through search marketing.'*¹⁶³³

G.24 The CMA therefore finds that such investments constitute market-specific investments (as defined in the case law of the CJEU and the Vertical Guidelines).

¹⁶³¹ URN 6438.25, BGL's response to the Second BGL Notice dated 3 May 2018, question 17, document entitled 'CMA_Marketing_Template'.

¹⁶³² See paragraph 51 of the original Spanish version of the CJEU's judgment in, C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (CEEES), EU:C:2006:784, and paragraph 14 of the non-English language versions of the Vertical Guidelines.

¹⁶³³ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, paragraph 19.1.

G.III.(b).(ii).(2). IT

- G.25 As with most PCWs, CTM has confirmed that it makes both one-off and on-going investments in IT activities (including associated staffing costs), in particular ensuring that CTM's IT systems are properly integrated with those of home insurance providers.¹⁶³⁴
- G.26 In particular this includes:
- (a) The '*technical engineering/re-engineering costs associated with putting a brand on CTM's platform, or rebuilding it to accommodate subsequent partner changes (e.g. to the partner's back office systems)*' (so called 'onboarding' costs).¹⁶³⁵ BGL has estimated that CTM incurred £[REDACTED] in onboarding costs between 2010 and 2017.¹⁶³⁶
 - (b) Operational costs, including '*a dedicated resource committed to maintaining and updating the core home insurance product/journey*'.¹⁶³⁷ BGL has indicated that CTM incurred costs of [REDACTED] in the financial year 2016/17 and [REDACTED] in the financial year 2017/2018 in operational costs associated with home insurance comparison.¹⁶³⁸
- G.27 Under its agreements with home insurance providers, CTM is contractually obliged to provide and maintain the technical interface through which quotes are generated and compared, including the transmission of data provided by consumers to home insurance providers, and consumers are redirected to the providers' websites.¹⁶³⁹
- G.28 Not only are such investments a contractual requirement, but they are also a commercial necessity. The ability to generate personalised quotes and ensure a smooth journey to home insurance providers websites is central to CTM's proposition. The CMA considers that the integration between CTM and home insurance providers' systems is, in practice, necessary for CTM to

¹⁶³⁴ These are separate to any integration costs incurred by the provider in order to join a PCW's panel (such as IT-related costs associated with transferring consumer data from the PCW to the insurance provider in order to return quotes).

¹⁶³⁵ URN 6438, BGL's response to the Second BGL notice dated 3 May 2018, question 11, paragraph 11.3.

¹⁶³⁶ URN 6438, BGL's response to the Second BGL notice dated 3 May 2018, question 11, paragraph 11.2 and URN 6438.20 BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Home Onboarding Costs'.

¹⁶³⁷ URN 6438, BGL's response to the Second BGL notice dated 3 May 2018, question 15, paragraph 15.2.

¹⁶³⁸ URN 6438, BGL's response to the Second BGL Notice dated 3 May 2018, question 15, paragraph 15.1 and URN 6438.23, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Home operational spend'.

¹⁶³⁹ See for example, URN 0056, CTM's response to a request for information in the DCTs Market Study document entitled 'CTM Template Insurer Partner Agreement', clauses 2.2 to 2.4. See also, of URN 1810, BGL's response to the First BGL Notice dated 26 September 2017, clauses 2.2 to 2.4, agreement between CTM and [HIP] dated 1 December 2011 and clauses 2.2 to 2.4 of URN 1801, BGL's response to the First BGL Notice dated 26 September 2017 in the agreement between CTM and [HIP] dated 28 November 2012.

market home insurance products to consumers. BGL has stated that a '*high level of customer experience is critically important, delivered through the convenience and functionality of the technologies and the prices presented to consumers.*'¹⁶⁴⁰

- G.29 As such, the CMA concludes that these investments also constitute market-specific investments.

G.III.(b).(iii). Recoupment of market-specific investments

- G.30 Market-specific investments will give rise to risks unless the costs are recouped by the party which is required to make them. The Vertical Guidelines note that market-specific investments are usually sunk (i.e. upon leaving that particular field of activity the investment cannot be used for other activities or sold other than at a significant loss).¹⁶⁴¹
- G.31 CTM is not reimbursed by home insurance providers for any costs incurred in relation to advertising and marketing. Further the CMA considers it is unlikely that such investments could be recouped if CTM were to no longer compare home insurance products. The value of investment in PPC advertising is largely spent at the point at which it is made (i.e. when the consumer clicks on the link). If a consumer does not go on to purchase a home insurance product, the PPC investment is only of further 'value' if the consumer returns to the site in the future.
- G.32 The likelihood of such investments resulting in subsequent revenues is also uncertain. CTM incurs a cost each time a consumer clicks on a paid for link, irrespective of whether that consumer goes on to purchase a home insurance product. As a result, if CTM experiences a reduction in referrals to home insurance providers, its advertising spend will not necessarily decrease in parallel. CTM cannot know, at the time it invests in PPC advertising, whether it will make a positive return on that investment.
- G.33 Similarly, CTM is not reimbursed by home insurance providers for any costs incurred in relation to their integration with CTM's IT systems.
- G.34 The CMA considers it is unlikely that such investments could be recouped if CTM were to no longer compare home insurance products. BGL has confirmed that:

¹⁶⁴⁰ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 24, paragraph 24.2.

¹⁶⁴¹ Vertical Guidelines, paragraph 14.

*'Each product is a separate build for each partner ... From a technical perspective there are individual XML schemas for each product line to reflect the different questions sets and therefore data collection.'*¹⁶⁴²

- G.35 Investments in 'onboarding' and maintaining the link between IT systems is therefore specific to the partner and product, and has no utility in relation to others. The value of the investment is therefore effectively spent when it is made (i.e. when a provider is 'onboarded' or the link between the two is updated).
- G.36 Further, the likelihood of such investments resulting in subsequent revenues is also uncertain. CTM incurs a cost to 'onboard' a home insurance provider, irrespective of whether this will generate any future revenue through commission. CTM cannot know, at the time it onboards a partner, whether it will make a positive return on that investment.
- G.37 The CMA finds that, as a result of bearing the full, unreimbursed responsibility for the costs set out above, CTM also bears a degree of financial and economic risk directly in relation to its home insurance-specific marketing and advertising and IT.

G.III.(b).(iv). Conclusion on the risks borne by CTM

- G.38 In the light of the above, the CMA finds that CTM has made, and continues to make significant investments that are specific to – and commercially required for – the marketing of home insurance products to consumers. CTM makes further investments in home insurance-specific IT activities. Were CTM to cease comparing home insurance, it would be unlikely to be able to use these investments for other activities. This, combined with the uncertainty faced by CTM at the time of making these 'market-specific investments' in relation to the extent to which they would generate revenues going forward, exposes CTM to commercial and financial risks. The investments were not directly reimbursed by home insurance providers, and those risks were therefore retained and borne by CTM.
- G.39 The CMA further considers that the risks borne by CTM are, in aggregate, more than negligible, and it cannot therefore be said that CTM *'does not bear any, or bears only insignificant, risks'* in relation to the marketing of home insurance products on behalf of home insurance providers.

¹⁶⁴² URN 6438, BGL's response to the Second BGL Notice dated 3 May 2018, question 12, paragraphs 12.1 and 12.2.

- G.40 This confirms the CMA's finding that, even if CTM were to negotiate or conclude contracts, CTM and home insurance providers are not a single economic unit. This is consistent with the CMA's wider analysis of the relationship between CTM and home insurance providers, although the CMA's finding in relation to the risks borne by CTM would, in itself, be sufficient to conclude that CTM is not a 'genuine agent'.

G.IV. Other relevant factors

- G.41 In addition to the risks borne by the agent, the CJEU has also identified other factors which are relevant when assessing whether a relationship is one of 'genuine agency'.
- G.42 The CMA finds that, taking into account the factors identified by the CJEU, it would not be appropriate to treat CTM as a 'genuine agent' of home insurance providers.

G.IV.(a). Degree of influence over the commercial strategy

- G.43 In a number of cases, the CJEU has considered that the level of influence of an agent in determining its commercial strategy is relevant to the assessment of whether an agent can be considered an auxiliary organ of its principal.
- G.44 The Vertical Guidelines also suggest that in a case of 'genuine agency', it is the principal that determines the commercial strategy of the agent.¹⁶⁴³

'The following obligations on the agent's part will be considered to form an inherent part of an agency agreement, as each of them relates to the ability of the principal to fix the scope of the activity of the agent in relation to the contract goods or services, which is essential if the principal is to take the risks and therefore to be in a position to determine the commercial strategy.'

- G.45 In *DaimlerChrysler*, the CJEU considered that whether an agent was in a position to determine, or at the very least influence, the terms on which the sales are made was relevant to the assessment of whether an agent can be considered an auxiliary organ of its principal.¹⁶⁴⁴ Similarly, it was relevant

¹⁶⁴³ Vertical Guidelines, paragraph 18.

¹⁶⁴⁴ T-325/01 *DaimlerChrysler AG v European Commission* (*DaimlerChrysler*), EU:T:2005:322, paragraph 118.

that the commercial freedom of the agent was '*extremely limited, so that he is not in a position to influence competition on the market in question.*'¹⁶⁴⁵

- G.46 In *DaimlerChrysler*, it was also held that an agent would form part of the same economic unit as its principal where it did not independently determine its conduct on the market, but carried out the instructions given to it by its principal.¹⁶⁴⁶ Similarly, the GC noted that the agents sold the relevant products under the direction of the principal, with the result that they should be treated in the same way as a 'commercial employee':¹⁶⁴⁷

'it must be held that the [agents] sell Mercedes-Benz vehicles in all material respects under the direction of the applicant, with the result that they should be treated in the same way as employees and considered as integrated in that undertaking and thus forming an economic unit with it.'

- G.47 This suggests that, in the case of 'genuine agency', the principal determines the commercial strategy, with the agent acting under its direction.
- G.48 CTM's character as an independent undertaking (as opposed to a genuine agent) is confirmed by the economic reality of the relationship between it and home insurance providers.
- G.49 Home insurance providers exert no, or limited, influence over CTM's commercial strategy in relation to the marketing of their home insurance products. Rather, it is CTM which typically influences prices of home insurance products and the way in which they are displayed.
- G.50 In particular, through one or more of the following strategies:
- (a) **CTM seeks to influence home insurance providers' prices across channels.** CTM has narrow and wide MFNs in its agreements with home insurance providers, and therefore exerts influence over how home insurance products are priced when marketed on CTM relative to other competing channels, including other PCWs and providers' own websites (i.e. influence on intra-brand commercial strategy and competition). Similarly, PCWs may engage in promotional deals or tiered commission arrangements with home insurance providers, which also affect the prices which appear on CTM; and

¹⁶⁴⁵ T-325/01 *DaimlerChrysler AG v European Commission* (*DaimlerChrysler*), EU:T:2005:322, paragraph 100.

¹⁶⁴⁶ T-325/01 *DaimlerChrysler AG v European Commission* (*DaimlerChrysler*), EU:T:2005:322, paragraph 88.

¹⁶⁴⁷ T-325/01 *DaimlerChrysler AG v European Commission* (*DaimlerChrysler*), EU:T:2005:322, paragraph 102; see also -40/73 *Coöperatieve Vereniging 'Suiker Unie' UA v European Commission* (*Suiker Unie*), EU:C:1975:174, paragraphs 480 and 539.

- (b) **CTM controls ranking criteria.** BGL determines how each home insurance providers' products are **promoted** on CTM relative the products of others (i.e. influence on inter-brand commercial strategy and competition):
- (i) By default, results are ranked by price, with the cheapest appearing first, and *'CTM's supplier relationships do not, in any way, affect the ranking of that supplier's product.'*¹⁶⁴⁸ A home insurance provider cannot require BGL to promote its interests over those of another provider.
 - (ii) CTM allows consumers to filter results by features or additional products¹⁶⁴⁹ and publishes product reviews provided by BazaarVoice¹⁶⁵⁰ and ratings and reviews provided by Defaqto¹⁶⁵¹. Home insurance providers cannot limit or restrict the use of these features, which may cause consumers to select another product over their own.
- (c) **CTM displays multiple quotes from competing insurers.** CTM displays products from a number of competing home insurance providers, which is of itself likely to limit the extent to which BGL promotes one home insurance provider's interests over another: CTM's commercial interest in doing so is not aligned with any home insurance provider, in the way one would normally expect, for example, a commercial employee's interest to be aligned with those of its employer. CTM's own internal documents state that *'our objectives are not always aligned to those of our partners, which can create conflict'* and highlight *'partnership tension ... in the majority of areas we want different things.'*¹⁶⁵²
- (d) **CTM can delist at will.** Under the agreements CTM has the ability to suspend or terminate links to a home insurance provider's website with

¹⁶⁴⁸ URN 0005.1, BGL's response to a request for information in the DCTs Market Study dated 29 September 2016, question 15(c).

¹⁶⁴⁹ URN 0076, BGL's response to a request for information in the DCTs Market Study dated 8 June 2017, question 12.

¹⁶⁵⁰ URN 0005.1, BGL's response to a request for information in the DCTs Market Study dated 29 September 2016, question 16.

¹⁶⁵¹ On CTM, Defaqto star ratings are currently only live for travel insurance. Previously, CTM tested it for car insurance. URN 0076, BGL's response to a request for information in the DCTs Market Study dated 8 June 2017, question 13.

¹⁶⁵² URN 3260, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Partner Management (June-15) v1', page 6.

immediate effect (effectively ‘delisting’ them), both generally¹⁶⁵³ and where the provider’s ‘performance’ falls below a particular level.¹⁶⁵⁴

- G.51 The evidence set out above illustrates the divergence of interests between CTM and home insurance providers, and is at odds with the concept of an agent acting *‘in all material respects under the direction of the principal’*.¹⁶⁵⁵

G.IV.(b). Unity of conduct on the market

- G.52 In *CEEES*, *Minoan Lines* and *DaimlerChrysler*, the CJEU stated that unity in parties’ conduct on the market is another factor in determining whether they can be treated as forming part of the same economic unit.¹⁶⁵⁶

- G.53 In the *Minoan Lines* case, it was held that:¹⁶⁵⁷

‘it tends not to suggest economic unity if, at the same time as it conducts business for the account of its principal, an agent undertakes, as an independent dealer, a very considerable amount of business for its own account on the market for the product or service in question.’

- G.54 In *Volkswagen/VRG*, one of the factors which was taken into account in deciding that the principal and agent did not form a single economic unit was the fact that the agent’s main business (i.e. not the business covered by the agency agreement) was *‘carried on, largely independently, in their own name and for their own account.’*¹⁶⁵⁸

¹⁶⁵³ See, for example, clause 2.9 in the agreement between BSL Ltd and [HIP] dated 1 December 2011 (URN 1810, BGL’s response to the First BGL Notice dated 26 September 2017): *‘[CTM] shall have the right at any time to suspend or terminate the provision of the Links to any Partner Website(s) and/or the provision of the facilities referred to in clause 2.2. via such Partner Website(s), immediately on notice. No such suspension or termination shall affect the provision of the Links or the facilities referred to in clause 2.2 via the CTM Website. Any suspension under the Clause 2.9 may be lifted by [CTM] upon giving notice to the Insurance Provider.’*

¹⁶⁵⁴ See, for example, (URN 1810, BGL’s response to the First BGL Notice dated 26 September 2017, clause 2.11 in the agreement between BSL Ltd and [HIP] dated 1 December 2011): *‘In the event that the Insurance Provider’s cumulative performance in respect of the Performance Measures in any Week in any calendar month is below the average level of cumulative performance of the panel in respect of the Performance Measures for the same period and this has a detrimental commercial impact on [CTM] the following shall apply: ... ‘to the extent that (i) the parties are not able to agree any such corrective action or (ii) the Insurance Provider is not able to implement any agreed corrective action in the 2 working days referred to in 2.22.2, [CTM] shall have the right to suspend the provision of the facilities referred to in clause 2.2 via the [CTM] Website with immediate effect.’*

¹⁶⁵⁵ T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 102.

¹⁶⁵⁶ C-217/05 Confederación Española de Empresarios de Estaciones de Servicio v Compañía Española de Petróleos SA (*CEEES*), EU:C:2006:784, paragraph 41; T-325/01 DaimlerChrysler AG v European Commission (*DaimlerChrysler*), EU:T:2005:322, paragraph 85; -66/99 Minoan Lines AG v Commission of the European Communities (*Minoan Lines*), paragraph 123.

¹⁶⁵⁷ -66/99 Minoan Lines AG v Commission of the European Communities (*Minoan Lines*), paragraph 128, citing - 40/73 Cooperative Vereniging ‘Suiker Unie’ UA v European Commission (*Suiker Unie*), EU:C:1975:174, paragraph 544.

¹⁶⁵⁸ -266/93 Bundeskartellamt v Volkswagen AG and VAG Leasing GmbH, paragraph 19.

- G.55 BGL has three insurance distribution businesses which also offer home insurance; Junction, Frontline and BeagleStreet.com. These businesses are active in the home insurance market in their own right and compete with other home insurance providers appearing on the CTM platform. As noted in *Minoan Lines* and *Volkswagen/VRG* this is a further indication that an agent is not an auxiliary organ of the principal.

G.IV.(c). Number of principals on behalf of whom the agent acts

- G.56 In *Flemish Travel Agents*, the CJEU reached the view that an agent that worked for multiple principals could not be treated as an auxiliary organ of the principal and therefore did not form part of the same economic unit as the principal. The CJEU held that a travel agent of the kind at issue:¹⁶⁵⁹

‘must be regarded as an independent agent who provides services on an entirely independent basis. He sells travel organised by a large number of different tour operators and a tour operator sells travel through a very large number of agents. ... A travel agent cannot be treated as an auxiliary organ forming an integral part of a tour operator’s undertaking.’

- G.57 The Vertical Guidelines state that it is *‘not material for the assessment whether the agent acts for one or several principals.’*¹⁶⁶⁰ However, in *Souris-Topps*¹⁶⁶¹ the Commission cited the CJEU judgement in *Flemish Travel Agents* and stated that the fact that an agent acted for two competing principals: *‘may also indicate that [the agent] is independent and not an integral part of [the principal].’*¹⁶⁶² Previously, in
- G.58 The Commission also applied the reasoning of the EU in *Flemish Travel Agents* when concluding that travel agents selling railway tickets were not auxiliary organs forming an integral part of the principal.¹⁶⁶³
- G.59 In those cases where the CJEU has reached the view that an agent formed part of the same economic unit as a principal, the principal was the agent’s sole supplier of the relevant goods or services.¹⁶⁶⁴

¹⁶⁵⁹ *Flemish Travel Agents*, paragraph 20.

¹⁶⁶⁰ Vertical Guidelines, paragraph 13.

¹⁶⁶¹ Commission decision in *Souris-Topps*, OJ L353, 26 May 2004 (Topps).

¹⁶⁶² *Souris-Topps*, OJ L353, 26 May 2004, paragraph 101.

¹⁶⁶³ Commission decision in *Distribution of railway tickets by travel agents*, OJ L366, 25 November 1992, paragraphs 43 to 46.

¹⁶⁶⁴ See T-325/01 *DaimlerChrysler AG v European Commission (DaimlerChrysler)*, EU:T:2005:322, and -66/99 *Minoan Lines AG v Commission of the European Communities (Minoan Lines)*.

- G.60 In the light of this, the CMA considers that where an agent acts on the same market on behalf of multiple competing principals, this represents a substantial barrier to it being considered as operating as an auxiliary organ forming an integral part of the principal's undertaking.¹⁶⁶⁵
- G.61 As noted above, CTM has agreements with multiple competing home insurance providers. This multiplicity of providers – taken together with the degree of influence CTM has over how home insurance products are displayed on its website and lack of unity of conduct with home insurance providers – is a further indication that CTM cannot be considered to be an auxiliary organ forming an integral part of a home insurance provider. Such multiplicity would, in the CMA's view, of itself appear to necessarily limit the possible unity of conduct between CTM and home insurance providers.

G.IV.(d). Perception of the agent

- G.62 In *Minoan Lines*, it was relevant to the categorisation of the agent as an auxiliary organ of the principal that the agent and the principal were '*perceived by third parties and on the market as forming one and the same economic entity*.'¹⁶⁶⁶
- G.63 Accordingly, whether third parties perceive a principal and agent to form part of the same economic entity is a further factor indicating whether the relationship between principal and agent can be described as one of genuine agency.
- G.64 The way in which CTM acts and presents itself is also at odds with what a consumer might expect to encounter when dealing with an entity which formed an auxiliary organ of the home insurance provider whose product they purchase. The statements on the CTM website and in its terms of use, together with its unbiased approach to ranking and use of reviews and quality metrics, lead consumers to perceive CTM as an independent and impartial undertaking comparing offerings from multiple providers. This contrasts with the circumstances in, for example, *Minoan Lines*, where the principal and agent were perceived by third parties and on the market as forming one and the same economic unit.

¹⁶⁶⁵ Under section 60 of the Act, when enforcing competition law in the UK, the CMA is required to (i) act with a view to securing that there is no inconsistency between its decisions (including the principles it applies in reaching those decisions) and the principles laid down by the TFEU and the CJEU, and any relevant decision of the CJEU; and (ii) have regard to any relevant decision or statement of the Commission.

¹⁶⁶⁶ -66/99 *Minoan Lines AG v Commission of the European Communities (Minoan Lines)*, paragraph 129.

ANNEX H: ASSESSMENT OF EVIDENCE ON THE MARKETING AND ADVERTISING ACTIVITIES OF PROVIDERS AND PCWS

H.I. Introduction

- H.1 BGL submitted that the CMA's approach in assessing the relevant market '*unduly focuses on one dimension of competition on only one side of a two-sided market*'.¹⁶⁶⁷
- H.2 In particular, BGL noted that the CMA's focus on PCW commission fees ignores '*other dimensions of competition that the CMA itself describes as important*' and in doing so does not properly account for competition on the consumer side of the market.¹⁶⁶⁸ BGL argues that, were the CMA to follow the approach set out in the Third Oxera Report of considering the available evidence in relation to (and apply a SSNIP or SSNIP-equivalent test to) the retail prices set by providers on PCWs, the ease of use of PCWs for consumers and the marketing and advertising activities of providers and PCWs, the relevant product market in this case would be wider than that for PCW Services in Home Insurance. Although BGL did not consider that the available data allowed it to quantify the effect of a SSNIP-variant based on the marketing and advertising or usefulness of comparison services dimensions of competition,¹⁶⁶⁹ it stated that evidence on these three factors should be considered within the framework of these SSNIP-variants.¹⁶⁷⁰
- H.3 The CMA considers that, in the context of the agreements under investigation, as set out in Section 4, and the nature of competition, set out in Section 7, it is most appropriate to focus its SSNIP test on the commission fees charged by PCWs to providers. This is because (as set out in Section 5.B.II.):

¹⁶⁶⁷ In this regard, BGL stated that a key question is the extent of competition between PCWs and other channels and focusing only on commission fees does not capture how end-consumers see the various distribution channels as substitutable. Specifically, BGL stated that any assessment of the competitive constraints on CTM should take into account price dispersion in the home insurance sector more generally. The CMA's assessment of the relevant market considers how consumers see the various channels and the price dispersion between channels in Section 5.C.III. See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 121(i); URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 4.5 and 4.21; URN 5786, Second BGL Submission dated 14 March 2018, pages 10 to 13.

¹⁶⁶⁸ See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 122; URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 4.5 and 4.23.

¹⁶⁶⁹ Namely, a small but significant and non-transitory decrease in marketing and advertising, a small but significant and non-transitory decrease in the usefulness of comparison services and a small but significant and non-transitory increase in retail prices.

¹⁶⁷⁰ See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 125; and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.33.

- (a) The CMA's approach in conducting a SSNIP on commission fees considers the possible constraint from both providers and consumers. In particular, the CMA's assessment considers the behaviour of both consumers and providers as well as the pass through of commission fees to retail prices.
- (b) The CMA does not consider that it is appropriate or realistic to consider a SSNIP on retail prices as PCWs do not set the retail prices on their sites. Rather these retail prices are determined by the providers listing on PCWs and an important way in which PCWs can influence, and therefore compete on these retail prices is through the commission fees they charge providers.¹⁶⁷¹
- (c) The CMA agrees with BGL that the available data on the marketing and advertising or usefulness of comparison services does not allow for any effect of a SSNIP-variant to be meaningfully quantified for these dimensions of competition, such that CMA does not consider it is appropriate to conduct a SSNIP on these dimensions in this case. The CMA has, however, considered evidence on (i) providers and PCWs' marketing and advertising activities and (ii) the importance of PCWs' usefulness of comparison services to consumers in its assessment of the relevant market.

H.4 This Annex sets out the CMA's assessment of BGL's submissions in relation to the evidence on the marketing and advertising activities of providers and PCWs.

H.5 BGL submitted, based on evidence it has gathered and analyses conducted by Oxera, that:

- (a) The relevant market in the present case is wider than that for PCW Services in Homsbglgroove Insurance because CTM's marketing and advertising strategy is aimed at competing for a wider group of consumers than current PCW users. BGL submitted that (based on Oxera's analysis of CTM's marketing and advertising expenditure) CTM is required to '*attract the many consumers who do not (yet) buy online, or who purchase directly from [home insurance providers'] websites*'.¹⁶⁷²

¹⁶⁷¹ Similarly, when defining a market involving upstream firms a SSNIP would be conducted on wholesale prices as these are the prices set by the upstream firms. This is the case even though the demand for the products or services of the upstream firms depends on the retail prices charged by downstream firms and wholesale prices are a method through which the upstream firms can influence those retail prices.

¹⁶⁷² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 35.

- (d) There is a *'mutual competitive constraint'* between PCWs and home insurance providers as both compete to attract consumers to their websites in Google AdWords auctions.¹⁶⁷³ BGL submitted that, as the advertising messages of providers are as prevalent in the 'impression share'¹⁶⁷⁴ for home insurance related search terms as CTM and other PCWs, this shows that PCWs compete *'head to head'* and in real time with home insurance providers.
- (e) Home insurance providers and PCWs *'view each other as close competitors'* as they reference each other in their advertising campaigns.¹⁶⁷⁵ The advertising messages collated and submitted by BGL *'leave no doubt as to the competitive pressure exercised by [provider]'s direct sales on PCWs (and vice versa)'* such that the sale of home insurance through providers' online direct channels should be included in the relevant market.¹⁶⁷⁶

H.6 The CMA does not consider that this evidence undermines its finding that sales made on providers' online direct channels and the sale of renewals by home insurance providers form part of the same relevant market as the provision of PCW Services for Home Insurance. In particular:

- (a) An analysis of CTM's marketing and advertising expenditure during the relevant period is not evidence of the relevant market being wider than of PCW Services for Home Insurance, whether or not it is evidence that *'CTM (and other PCWs) spend substantial amounts on trying to appeal to renewal customers (as well as potential customers)'*.¹⁶⁷⁷
- (b) Competition between PCWs and home insurance providers when bidding for home insurance related search terms in Google AdWords auctions is not indicative of the strength of constraint faced by PCWs from the online direct channel of providers overall.
- (c) The observation that home insurance providers and PCWs – either directly or indirectly – reference PCWs' value to consumers in advertising campaigns is consistent with an asymmetric constraint between PCWs and providers, whereby PCWs provide a greater constraint on providers than the providers do on PCWs.

¹⁶⁷³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 137 and 143.

¹⁶⁷⁴ The 'impression share' can be defined as how often a PCW or home insurance providers' branded advert appears in the sponsored search results out of the number of times a Google search user enters a particular search terms or if their search query includes a specific keyword (i.e. the 'impression').

¹⁶⁷⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 146.

¹⁶⁷⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 145.

¹⁶⁷⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 150 (iii).

- H.7 In addition, the CMA does not consider that the evidence submitted by BGL demonstrates whether home insurance providers or consumers who use PCWs would switch to their outside options and hence whether this could constrain a hypothetical monopolist PCW's ability to profitably increase commission fees by 5-10%.
- H.8 The CMA therefore does not consider that BGL's submissions in relation to the marketing and advertising activities of PCWs and home insurance providers, when considered alongside the range of quantitative and qualitative evidence set out in Section 5, demonstrate that providers' online direct channels and their sale of renewals to existing customers form part of the same relevant market as the supply of PCW Services for Home Insurance.
- H.9 In this Annex, the CMA first considers Oxera's analysis of CTM's marketing and advertising expenditure in the Relevant Period before assessing BGL's submissions that (i) competition between PCWs and home insurance providers to attract consumers to their websites in Google AdWords auctions and (ii) providers and PCWs referencing each other in their advertising campaigns is evidence consistent with a wider relevant market in the present case than the supply of PCW Services for Home Insurance.

H.II. CTM's marketing and advertising expenditure

- H.10 BGL submitted that CTM's marketing and advertising expenditure in the Relevant Period is one piece of evidence which suggests *'that there are strong grounds to conclude that [providers'] first year renewal sales compete with PCW sales'*, such that home insurance providers' sales of renewals to existing customers form part of the same relevant market as the supply of PCW Services for Home Insurance.¹⁶⁷⁸
- H.11 BGL argues that this is consistent with Oxera's analysis, which identified the different customer groups CTM aimed to attract through its marketing and advertising expenditure in the period 2015/16 – 2017/18 and shows *'a very significant proportion of CTM's marketing spend is targeted at potential customers'*. BGL submitted that CTM aimed to attract this group of all potential customers to its platform *'regardless of whether or not they have a policy, and regardless of their propensity to switch'*.¹⁶⁷⁹ The proportion of CTM's marketing and advertising expenditure allocated to acquire all

¹⁶⁷⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 149 and 150(iii).

¹⁶⁷⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 150(iii).

potential CTM customers was found by Oxera to be 30-40% [X] in the period 2015/16 – 2017/18.

- H.12 In addition to the group of *'All potential customers'*, Oxera allocated CTM's marketing and advertising expenditure to *'CTM customers'* (i.e. those who purchased a product through CTM) and *'contestable customers'* (who Oxera defined as *'those who searched/shopped around for products but did not necessarily switch'*).¹⁶⁸⁰ The proportion of CTM's marketing and advertising expenditure allocated by Oxera to *'contestable customers'* was 25-45% [X] and the proportion allocated to *'CTM customers'* was 10-20% [X] in the period 2015/16 – 2017/18.
- H.13 The CMA does not, however, consider Oxera's analysis of CTM's marketing and advertising expenditure during the Relevant Period to be evidence of a wider relevant market than PCW Services for Home Insurance when considered alongside the range of quantitative and qualitative evidence set out in Section 5.C.
- H.14 First, while evidence of the marketing and advertising strategies of PCWs (and CTM in particular) could be useful in understanding the closeness of competition between PCWs and home insurance providers, Oxera's analysis does not address the question posed by the hypothetical monopolist test. In particular, an analysis of marketing and advertising expenditure is of limited relevance when understanding whether home insurance providers and/or consumers who use PCWs would switch to one of their outside options in response to a 5-10% increase in commission fees such that it would be rendered unprofitable for a hypothetical monopolist PCW. The CMA has nevertheless carefully considered Oxera's analysis of CTM's marketing and advertising expenditure during the Relevant Period below.
- H.15 Second, the CMA finds CTM did not allocate its marketing and advertising expenditure to target the customer groups used in Oxera's analysis (as set out in H.11 – H.12).¹⁶⁸¹ BGL told the CMA that *'CTM's marketing strategy is based on brand marketing alongside digital marketing across the whole product range'*¹⁶⁸² and that CTM focused *'its advertising investment largely in TV (and paid search ...) in order to drive cost effective reach of our brand advertising.'*¹⁶⁸³ in the Relevant Period. BGL also highlighted this difference

¹⁶⁸⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 150 (iii).

¹⁶⁸¹ BGL noted that the *'nature of offline vs online channels means CTM's audience and targeting approach is different in offline channels (TV, Radio, Cinema and sponsorships/partnerships)'* Source: URN 1632, BGL's response to section 26 notice dated 26 September 2017, paragraph 19.9.

¹⁶⁸² URN 1632, BGL's response to section 26 notice dated 26 September 2017, paragraph 20.1.

¹⁶⁸³ URN 1632, BGL's response to section 26 notice dated 26 September 2017, paragraph 19.3.

between brand and generic (or product specific) advertising in CTM's search engine bidding strategy as well CTM's spend on rewards for its customers.¹⁶⁸⁴

- H.16 BGL's own description of CTM's marketing and advertising strategy is consistent with the internal documents from CTM obtained by the CMA (as set out in 5.178 – 5.180). The CMA's review of these documents finds that CTM almost exclusively benchmarked itself against the other Big Four PCWs when setting its marketing and advertising strategy (such as CTM assessing its competitive position in relation to the other Big Four PCWs with regard to brand loyalty, consumer 'bonding' and marketing performance), only making references to competition from providers' online direct channels in relation to paid search advertising on home insurance related search terms (i.e. 'generic' keywords).¹⁶⁸⁵
- H.17 The CMA has therefore recategorised Oxera's analysis of CTM's marketing and advertising expenditure to understand the difference in spend between CTM's 'Brand focused' and 'Product specific' advertising activities, which is shown in Figure H.1.

Figure H.1: CMA's categorisation of CTM's marketing and advertising expenditure

[X]

Source: URN 8502.13, Third Oxera Report dated 22 February 2019, document entitled 'CTM marketing spend.xlsx'.

Note: The CMA has allocated CTM's marketing and advertising activities as: [X]

- H.18 As can be seen in Figure H.1, CTM's 'Brand focused' activities (such as bidding on branded paid search terms, Television, Media, etc.) accounted for around 50% [X] of CTM's marketing and advertising expenditure in each year of the period 2015/16 – 2017/18.¹⁶⁸⁶ The CMA therefore considers that this is consistent with CTM's own marketing and advertising strategy to compete with other PCWs – rather than home insurance providers – to promote its brand through broad, non-targeted advertising activities that aim to attract consumers to use the price comparison services CTM offers on a range of products.

¹⁶⁸⁴ URN 1632, BGL's response to section 26 notice dated 26 September 2017, paragraph 19.12.

¹⁶⁸⁵ The extent to which competition between PCWs and home insurance providers to attract consumers to their websites when bidding for home insurance related search terms in Google AdWords auctions is indicative of the strength of constraint faced by PCWs from the online direct channel of providers overall is considered in Section H.III.

¹⁶⁸⁶ The CMA notes that its estimate of the proportion of CTM's marketing and advertising expenditure accounted for by 'Brand focused' activities is similar to the 45% estimate provided by BGL. Source: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 147, footnote 131.

- H.19 Third, the observation that CTM and other PCWs are trying to increase the number of consumers who use PCW Services in Home Insurance (by attracting them away from providers' online direct channels and their sale of renewals to existing customers) is likely to further weaken the potential constraint from home insurance providers' alternative acquisition channels. This is because, as more consumers become aware of PCWs and the benefits of using PCWs when searching online for home insurance due to CTM and other PCWs' advertising campaigns, providers would rely more heavily on PCWs for the sale of home insurance unless they undertook significant (and risky) investment in their own marketing and advertising activities. This is consistent with CMA's finding, as set out in Section 5.C.IV., that home insurance providers could not have effectively replicated the sales they make through PCWs through other acquisition channels.
- H.20 The CMA does not therefore consider Oxera's analysis of CTM's marketing and advertising expenditure during the Relevant Period to be evidence of a wider relevant market than PCW Services for Home Insurance.

H.III. Google AdWords

- H.21 BGL submitted that providers' online direct channels do compete with PCWs and that there is a *'mutual competitive constraint exercised on PCWs and on HIPs'*, in part as PCWs compete 'head to head' and in real time with home insurance providers in Google AdWords auctions.¹⁶⁸⁷
- H.22 This submission by BGL is based on the views of two PCWs (as set out in 5.180) and an internal document from CTM (dated 5 February 2019) of the 'impression share'¹⁶⁸⁸ of PCWs and home insurance providers from home insurance related search terms using Google AdWords auctions. The internal document submitted by BGL showed that *'of the four bidders who achieved a 50% or more impression share, two were PCWs (CTM and MSM), and two were HIPs [home insurance providers] ([HIP] and [HIP])'*.¹⁶⁸⁹ BGL considered, in addition to showing that *'CTM directly monitors [providers'] share of impression for generic home insurance search terms'*, that this internal document makes it clear that *'PCWs and HIPs [home insurance providers] compete head to head'* for consumers.¹⁶⁹⁰

¹⁶⁸⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 143.

¹⁶⁸⁸ The 'impression share' can be defined as how often a PCW or home insurance providers' branded advert appears in the sponsored search results out of the number of times a Google search user enters a particular search terms or if their search query includes a specific keyword (i.e. the 'impression').

¹⁶⁸⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 147.

¹⁶⁹⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 147.

- H.23 BGL further submitted that, following CTM increasing its *‘Brand focused’* marketing and advertising activities, CTM noticing *increased efforts from competitors (other PCWs and providers) bidding on Google AdWords (generic home insurance terms, but also in some cases the CTM brand) in order to capitalise on the increased ‘front of mind’ consumer awareness created by CTM’s TV advertisement’* also demonstrates that there is a mutual competitive constraint between PCWs and home insurance providers.¹⁶⁹¹ However, when the CMA requested BGL to evidence these *‘increased efforts from competitors ... to capitalise on the increased ‘front of mind’ consumer awareness created by CTM’s TV advertisement’*, BGL submitted evidence that CTM’s cost-per-click for ‘home brand’ and ‘generic home’ keyword categories increased by around 400% and 18%, respectively, in the period December 2015 – December 2017.¹⁶⁹²
- H.24 In addition, Oxera stated (in the context of conducting SSNIP-equivalent tests on dimensions of competition other than PCW commission fees) that, as approximately 20% of home insurance quotes generated on CTM in 2018 were from consumers who had clicked through an advert shown following a Google AdWords auction for home insurance related search terms, *‘reducing its online marketing spend, and therefore its visibility on Google, would have reduced traffic to CTM’*.¹⁶⁹³ Oxera considered that the competitive dynamic between PCWs and providers’ online direct channels when aiming to attract consumers to their websites through the use of Google AdWords advertising is *‘not captured by the CMA’s SSNIP test on commissions’*.¹⁶⁹⁴
- H.25 The CMA does not, however, consider competition between PCWs and home insurance providers when bidding for home insurance related search terms in Google AdWords auctions to be indicative of the strength of constraint faced by PCWs from the online direct channel of providers overall.
- H.26 First, while an analysis of Google AdWords impressions data would identify the providers that could, in principle, compete with PCWs for consumers that shop around for home insurance, this would only be useful to understand the closeness of competition between PCWs and providers’ online direct

¹⁶⁹¹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 147

¹⁶⁹² URN 8825, BGL’s response to section 26 notice dated 10 May 2019, question 10. In its response to the CMA’s request and subsequent clarifications, BGL also described a model developed by Wavemaker (a third party that managed CTM’s overall Paid search advertising strategy) which, as it estimates that *‘10% decrease in [average CPC spend by CTM on generic home insurance AdWords] would reduce CTM’s home insurance product leads by [X]%, everything else remaining constant’*, could be used to infer that a 10% increase in Google AdWords spend by *‘CTM’s competitors could have a similar negative impact on CTM’s product leads’* [Source: URN 8825, BGL’s response to section 26 notice dated 10 May 2019, question 10 and URN 9162, BGL’s response to follow-up questions to section 26 response dated 10 May 2019, question 20. The CMA considers the model developed by Wavemaker in more detail below in paragraph H.34.

¹⁶⁹³ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.24.

¹⁶⁹⁴ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 4.24.

channel in the absence of any other evidence. In particular, this analysis would not demonstrate whether home insurance providers and/or consumers who use PCWs would switch to the online direct channel and hence whether this channel could constrain a hypothetical monopolist PCW's ability to profitably increase commission fees by 5-10%.

- H.27 Second, the internal document submitted by BGL as evidence of home insurance providers and PCWs competing for consumers in Google AdWords auctions was from after the Relevant Period. This means the internal document may not evidence the competitive interaction between PCWs and providers during the Relevant Period, which is the focus of the CMA's assessment of the relevant market in the present case.¹⁶⁹⁵ The CMA has therefore assessed the prevalence of PCWs and home insurance providers adverts in Google AdWords auctions for home insurance related terms in the Relevant Period by analysing 'impression share' data obtained from BGL, which is shown in Figure H.2.¹⁶⁹⁶

Figure H.2: PCWs and home insurance providers' average 'impression share' for home insurance related search terms in the Relevant Period

[X]

Source: CMA's analysis of URN 8825g BGL's response to section 26 notice dated 10 May 2019, 'Annex 6 - Impression share data (Q11c).xlsx'.

Note: This figure shows the 'impression share' for PCWs and home insurance providers with an average 'impression share' for home insurance related search terms in the Relevant Period of more than 50%.

- H.28 Figure H.2 shows that the PCW or home insurance provider advert that appears most often when a consumer searched for 'home insurance', 'house insurance', 'buildings insurance' or 'buildings and contents insurance' was from [HIP] (a brand owned and operated by [HIP]), appearing on average around 90% [X]% of the time in the Relevant Period. Adverts from three of the Big Four PCWs in home insurance were the next most often to appear in the Relevant Period, with CTM or MoneySuperMarket adverts appearing on average around 80% [X]% of the time and adverts from GoCompare appearing [X]% of the time on average. The only other PCW or home insurance provider advert to appear more than 50% of the time when a

¹⁶⁹⁵ In its review of CTM's internal documents from the Relevant Period, the CMA did find a number of references to home insurance providers in relation to pay-per-click advertising on home insurance related search terms (i.e. 'generic' keywords), where some providers appear to compete with PCWs. The home insurance providers and their brands referenced in these internal documents include [HIP], [HIP], [HIP], [HIP] and Hiscox for example, see URN 2045, BGL's response to the First BGL Notice, document entitled 'Q20 Product Performance by Channel Review 5th May 2017 (05092016) redacted.PDF'pdf page 3.

¹⁶⁹⁶ The CMA focused its analysis on home insurance related search terms at the 'head terms' level. The exact search terms included in the CMA's analysis are 'home insurance', 'house insurance', 'buildings insurance' and 'buildings and contents insurance' URN 8825b, BGL's response to section 26 notice dated 10 May 2019, Annex 1.

consumer searched for a home insurance related terms was [HIP] (another brand owned and operated by [HIP]), appearing on average [X] % of the time in the Relevant Period.

- H.29 While the CMA's analysis shown in Figure H.2 identifies the home insurance providers which could, in principle, compete with PCWs for consumers that shop around for home insurance online, [HIP] told the CMA that although it is *'possible to attract direct business through digital marketing (PPC or SEO), this is expensive'* as PCWs have significant marketing and advertising budgets.¹⁶⁹⁷ This is consistent with other evidence obtained by the CMA and supports its finding (as set out in Section 5.C.IV.) that capturing at least some sales from PCWs by attracting consumers to their online direct channels would likely require significant (and risky) investment by home insurance providers in marketing and advertising (such as Google AdWords), which (all else equal) would be expected to result in higher prices on providers' direct channels than on PCWs during the Relevant Period.
- H.30 Third, the CMA does not consider the evidence submitted by BGL to demonstrate *'increased efforts'* by PCWs and providers to *'capitalise'* on a specific increase of CTM's 'Brand focused' advertising activities, nor to demonstrate that this increase in Google AdWords spending can be attributed to an increase in the competitive constraint on CTM from a number of home insurance providers (and not other PCWs) in the Relevant Period. Further, as the CMA understands that a change in the bidding behaviour or the method used by Google to estimate the relevance and quality of the advert included in the Google AdWords auctions can affect the cost-per-click paid by a firm, evidence that CTM's cost-per-click for its 'home brand' keyword category increased is not evidence in itself that CTM faced greater competition from other PCWs and home insurance providers in Google AdWords auctions.
- H.31 Fourth, the CMA finds that CTM's expenditure on home insurance related search terms in Google AdWords auctions was a small proportion of its overall expenditure on generic search advertising. While Figure H.1 shows that CTM's marketing and advertising expenditure on 'Product specific' activities increased from [X] % in 2015/16 of CTM's overall marketing spend to [X] % in 2017/18, home insurance related search terms accounted for only around [X] % of its non-brand (i.e. generic) search advertising spend in both 2016 and 2017.¹⁶⁹⁸ In contrast, CTM's expenditure on motor insurance

¹⁶⁹⁷ See URN 1461, [HIP]'s response to a request for information in the DCTs Market Study dated 9 January 2017, question 6.

¹⁶⁹⁸ Source: CMA's analysis of URN 6438.18, BGL's response to section 26 notice dated 3 May 2018, document entitled 'CMA Marketing Template.xlsx'.

related search terms accounted for more than 50% [X] of CTM's generic search advertising spend in both 2016 and 2017.

- H.32 This means that, were the CMA to conduct a SSNIP-equivalent test on this dimension of competition, CTM's overall marketing and advertising expenditure would have fallen by around 1% [X] in 2016 and by 1-3% [X] in 2017 following a 5-10% decrease in CTM's non-brand (i.e. generic) search advertising spend on home insurance related search terms. The CMA considers that, were a similar SSNIP-equivalent test applied to a hypothetical monopolist provider of PCW Services for Home Insurance, this is unlikely to lead to a sufficient number of consumers who use PCWs switching away to the online direct channel of a provider who bids in Google AdWords auctions for home insurance related search terms such that a decrease in marketing and advertising spend would be rendered unprofitable.
- H.33 Fifth, the CMA finds that around [X] and [X] of consumers who purchased home insurance through CTM's platform in both 2016 and 2017, respectively, visited the CTM website by clicking-through an advert shown following a Google AdWords auction for a home insurance related search term.^{1699, 1700} This means that a SSNIP-equivalent reduction in CTM's search advertising spend on home insurance related search terms (which would be less than 1% [X] of CTM's overall marketing and advertising expenditure in 2016 and 2017) would only have a minimal impact on the number of consumers who purchased home insurance through CTM's platform after visiting CTM website by clicking-through an advert shown following a Google AdWords auction for a home insurance related search term, which may have been shown alongside an advert for other PCWs or home insurance providers.
- H.34 This is consistent with a model submitted by BGL and developed by Wavemaker (a third party that managed CTM's overall paid search advertising strategy during the Relevant Period). This model estimates that, everything else remaining constant, *'an approximate 10% decrease in*

¹⁶⁹⁹ The CMA has divided the number of CTM's consumers who purchased home insurance through its platform in each year after visiting its website by clicking-through a Google AdWords advert for a 'generic search' term (i.e. 'home insurance') by the total number of CTM's consumers who purchased home insurance through its platform in each year (Source: URN 8825i, BGL's response to section 26 notice dated 10 May 2019, Annex 8.)

¹⁷⁰⁰ The CMA notes that a substantial majority of consumers (around [X] and [X] in 2016 and 2017, respectively) who purchased home insurance through CTM's platform therefore visited the CTM website from other consumer acquisition channels in the Relevant Period (i.e. by clicking-through an advert shown following a Google AdWords auction for branded CTM related search terms). These consumers would not be affected by any SSNIP-equivalent test on this dimension of competition (as suggested by Oxera) but whose behaviour has been considered by the CMA in its assessment of the Relevant Market when applying its SSNIP test on the commission fees charged by PCWs to providers.

average [cost-per-click] spend by CTM on generic home insurance AdWords' would correspond to a [X]% fall in the number of consumers who purchased home insurance through CTM's platform after visiting CTM's website by clicking-through an advert shown following a Google AdWords auction for a home insurance related search term.¹⁷⁰¹ This model therefore indicates that, were CTM to decrease its spending on home insurance related search terms in the Relevant Period by 5-10%, less than 1% of consumers who purchased home insurance through CTM's platform in 2016 [X]% and 2017 [X]% would have potentially clicked through an advert for another PCW or home insurance provider shown following a Google AdWords auction.

- H.35 The CMA considers that, were a similar SSNIP-equivalent test applied to a hypothetical monopolist provider of PCW Services for Home Insurance, this would not lead to a sufficient number of consumers who use PCWs switching away to the online direct channel of a provider who bids in Google AdWords auctions for home insurance related search terms such that a decrease in marketing and advertising spend would be rendered unprofitable.
- H.36 The CMA therefore considers competition between PCWs and home insurance providers when bidding for home insurance related search terms in Google AdWords auctions to be indicative of the strength of constraint faced by PCWs from the online direct channel of providers overall.

H.IV. Home insurance providers' advertising campaigns

- H.37 BGL submitted that home insurance providers and PCWs '*view each other as close competitors*' as they reference each other in their advertising campaigns.¹⁷⁰² The advertising messages collated and submitted by BGL '*leave no doubt as to the competitive pressure exercised by [provider]'s direct sales on PCWs (and vice versa)*' such that the sale of home insurance through providers' online direct channels should be included in the relevant market.¹⁷⁰³

- H.38 The advertising messages submitted by BGL include:¹⁷⁰⁴

¹⁷⁰¹ Source: URN 9162, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, question 20. The estimates submitted by BGL are based on the February 2017 version of the model developed by Wavemaker.

¹⁷⁰² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 146.

¹⁷⁰³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 145.

¹⁷⁰⁴ In addition, BGL noted that '*[HIP] claims on its website that it was cheaper than 84% of competitor quotes for comprehensive car insurance cover on each of the four main PCWs*' but did not submit evidence of [HIP]'s claim

- (a) A [HIP] TV advertisement (which aired after the Relevant Period in January 2019), which encourages consumers to purchase multicover insurance (which includes home insurance) directly from [HIP] in order to get the best deal;¹⁷⁰⁵
- (b) A Confused (a PCW which is part of [HIP] TV advertisement which claims PCWs delivers the best prices for consumers;¹⁷⁰⁶
- (c) A transcript of a [HIP] radio advertisement (which aired after the Relevant Period in January 2019) for home insurance promoting a promotional deal that was not available on any PCW (as [HIP] is a [HIP] brand that it does not list on PCWs);¹⁷⁰⁷
- (d) Another [HIP] advertising message, this time a TV advert (which aired after the Relevant Period in November 2018 and January 2019) that did not promote any particular insurance product [HIP] offers to consumers, which said that consumers could save money if they visited its online direct channel;¹⁷⁰⁸ and
- (e) An [HIP] (a brand which is not listed on PCWs) TV commercial (which aired after the Relevant Period in the period February – May 2018) that includes the message *‘viewers should get a quote, not a quiz’*¹⁷⁰⁹ which BGL argues directly targets *‘PCWs by implying that the question set used by PCWs is too burdensome and that customers should go direct to the [providers’ online direct channels].’*

H.39 The CMA does not, however, consider evidence that home insurance providers and PCWs – either directly or indirectly – reference PCWs’ value to consumers in an advertising campaign to support BGL’s submission that providers and PCWs *‘view each other as close competitors’*.

H.40 In particular, the CMA considers that, as noted in paragraphs 5.66 to 5.70, this evidence cited by BGL (to the extent that it relates to the home insurance sector in the Relevant Period) in fact further demonstrates the asymmetric competitive constraint between home insurance providers’ alternative acquisition channels (i.e. their online direct channel or the renewal offers sent to their existing customers) and a hypothetical monopolist PCW. This is because, by directly or indirectly referencing PCWs

to the CMA, nor how it relates to the provision of PCW Services for Home Insurance [Source: URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 145.

¹⁷⁰⁵ URN 8484.16, BGL’s response to the SO dated 22 February 2019, Annex 12.

¹⁷⁰⁶ URN 8484.17, BGL’s response to the SO dated 22 February 2019, Annex 13.

¹⁷⁰⁷ URN 8484.18, BGL’s response to the SO dated 22 February 2019, Annex 14.

¹⁷⁰⁸ URN 8484.19, BGL’s response to the SO dated 22 February 2019, Annex 15, page 27.

¹⁷⁰⁹ URN 8484.19, BGL’s response to the SO dated 22 February 2019, Annex 15, page 22.

in their advertising campaigns, home insurance providers are acknowledging that they face competition from the PCW channel when attempting to attract consumers to their own website through their marketing and advertising activities. The CMA therefore does not consider BGL's submissions to demonstrate that providers and PCWs '*view each other as close competitors*' such that the sale of home insurance through providers' online direct channels should be included in the relevant market.

ANNEX I: CONSUMER BEHAVIOUR ANALYSIS

I.I. Introduction

- I.1 This Annex sets out the CMA's assessment of consumer behaviour in the Relevant Period.
- I.2 Exploring how consumers behave in practice is relevant to understanding how the Big Four PCWs compete on retail prices, as well as the extent of the incentives for home insurance providers to list on the Big Four PCWs or to rely on any single PCW to target consumers. The analysis set out in this Annex is therefore informative in the CMA's definition of the relevant market (set out in Section 5), its assessment of the nature of competition between PCWs (set out in Section 7) and its assessment of the restrictive effects of CTM's wide MFN on competition (set out in Section 9).
- I.3 The CMA's assessment of consumer behaviour consists of three parts:
 - (a) First, the CMA analysed whether consumers who obtained a home insurance quote from the Big Four PCWs (collectively defined as the PCW channel) also obtained a home insurance quote from another PCW or the online direct channel of a home insurance provider, as well as whether they had received a renewal offer from an existing provider.
 - (b) Second, the CMA analysed whether consumers who obtained a home insurance quote from an individual PCW (i.e. one of the Big Four PCWs) also obtained a home insurance quote from another PCW or the online direct channel of a home insurance provider.
 - (c) Third, the CMA analysed whether consumers who received a renewal offer from an existing home insurance provider also obtained a home insurance quote on the PCW channel or the online direct channel of a provider.

I.II. Data

- (a) The CMA has used consumer quote data provided by the Big Four PCWs and 19 home insurance providers (that accounted for around 80% of home insurance policies sold through the Big Four PCWs in 2017)¹⁷¹⁰ to look at the shopping behaviour of consumers using PCWs

¹⁷¹⁰ CMA analysis of PCWs' sales volume data included in the Commission Fees Dataset (Annex D).

in the period September 2016 to August 2017.¹⁷¹¹ This quote information can be categorised as:

- (a) New business quotes obtained by consumers on a PCW or the home insurance providers' websites; and
- (b) Renewal quotes provided by home insurance providers to their existing customers before their ongoing home insurance policies came to an end and needed to be renewed.

I.4 The new business and renewal information collected by the CMA and any necessary adjustments to that data are described in turn below.

I.II.(a). New business

I.5 The new business quote data provided by the Big Four PCWs and 19 home insurance providers for the period September 2016 to August 2017 included the following information:¹⁷¹²

- (a) The postcode of the consumer that obtained a quote;
- (b) The date of birth of the consumer that obtained a quote;

¹⁷¹¹ Of the other providers contacted by the CMA, one ([HIP]) could not provide consumer quote data as it had exited the market prior to the period considered for analysis and three ([HIP], [HIP] and [HIP]) were not asked to provide this information due to the CMA's proportionality considerations. In particular, [HIP] was no longer active in selling home insurance using PCWs (URN 5041B, [HIP]'s response to section 26 notice dated 24 November 2017) and [HIP] and [HIP] accounted for less than [0-5]% [X]% of policies sold through the Big Four PCWs. Source: CMA analysis of the Commission Fees Dataset (Annex D).

¹⁷¹² This includes the following submissions: URN 4798.2, BGL's response to the First BGL Notice dated 26 September 2017, question 43; URN 5342, Confused's response to section 26 notice dated 14 November 2017, question 32; URN 4868.18, GoCompare's response to section 26 notice dated 14 November 2017, question 34; URN 4934.13, MoneySuperMarket's response to section 26 notice dated 14 November 2017, question 34; URN 5173, [HIP]'s response to section 26 notice dated 24 November 2017, question 30; URN 5567, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5157C, [HIP]'s response to section 26 notice dated 24 November 2017, question 26; URN 5458, [HIP]'s response to section 26 notice dated 24 November 2017, question 25; URN 5256G, [HIP]'s response to section 26 notice dated 24 November 2017, question 31; URN 5081, [HIP]'s response to section 26 notice dated 24 November 2017, question 26; URN 5124, [HIP]'s response to section 26 notice dated 24 November 2017, question 27; URN 5136.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 29; URN 5150, [HIP]'s response to section 26 notice dated 24 November 2017, question 29; URN 5197D, [HIP]'s response to section 26 notice dated 24 November 2017, question 32; URN 5319, [HIP]'s response to section 26 notice dated 24 November 2017, question 34; URN 5207, [HIP]'s response to section 26 notice dated 24 November 2017, question 27; URN 5111.4, [HIP]'s response to section 26 notice dated 24 November 2017, question 29; URN 5184E, [HIP]'s response to section 26 notice dated 24 November 2017, question 34; URN 5182, [HIP]'s response to section 26 notice dated 24 November 2017, question 32; URN 5248, [HIP]'s response to section 26 notice dated 24 November 2017, question 24; URN 5098.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 26; URN 5284, [HIP]'s response to section 26 notice dated 24 November 2017, question 34; URN 5410, [HIP]'s response to section 26 notice dated 24 November 2017, question 27. [X], one home insurance provider ([HIP]) was unable to provide all new business consumer quote information for 2016 (URN 4722, [HIP]'s email response to section 26 notice dated 24 November 2017, email dated 28 November 2017 and URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 10).

- (c) The date at which the consumer obtained the quote;
- (d) The date at which the consumer wanted their new home insurance policy to commence; and
- (e) Whether the consumer purchased a home insurance policy using the quote they had obtained.

I.6 While the data submitted by three of the Big Four PCWs and the 19 home insurance providers did not require any adjustments to be made, the submission of one PCW (MoneySuperMarket) necessitated an adjustment to its data due its use of auto-generated quotes.^{1713,1714,1715}

I.7 Auto-generated quotes are sent to consumers that previously purchased from that PCW ahead of their renewal and contain information on the products currently available to them on its platform. As not all consumers that receive an e-mail containing an auto-generated quote engage with it, including all such quotes in the dataset would overestimate the number of consumers who appear to request a quote from (MoneySuperMarket).¹⁷¹⁶ The CMA has addressed this issue by matching the original submission with a list of consumers that were sent an e-mail containing an auto-generated quote during the period covered by the CMA's analysis, removing the auto-generated quotes where the consumer did not open the e-mail or did not use the e-mail to click-through to the PCW.¹⁷¹⁷

¹⁷¹³ This is outlined in URN 5685, MoneySuperMarket's response to follow-up questions to section 26 notice dated 14 November 2017, question 3. The submission used to exclude consumers that did not engage with auto-generated quotes is: URN 6454.1, MoneySuperMarket's response to follow-up questions to section 26 notice dated 27 April, question 1.

¹⁷¹⁴ While its submission did not require any adjustments, one home insurance provider [HIP] first only submitted information relating to the brands it distributes through PCWs – not the brand it distributes exclusively through its direct channel. The additional information in its 'direct brand' was incorporated into the consumer behaviour dataset as if it was a submission for an additional home insurance provider [URN 5917.1 and URN 6196.1, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, documents entitled 'Question 31 (Single-Homing and Multi-Homing database - New Business) - UKDI.xlsx' and 'question 31 - UKDI (march - August 2017).xlsx'; URN 5917.2, [HIP]'s response to section 26 notice dated 24 November 2017 and URN 6196.2, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 32.

¹⁷¹⁵ One home insurance provider [[HIP]] revised its new business and renewal quote data submissions to exclude cancellations within the first 14 days of the inception date of the policy (termed as the 'cooling off' period). However, as the CMA wished to maintain the comparability of this provider's submission with the new business and renewal quote data submissions of the other 18 home insurance providers, the Consumer Behaviour analysis uses the provider's submissions that included cancellation within the first 14 days of the inception date of the policy.

¹⁷¹⁶ While the CMA removed observations if the consumer did not engage with the email containing the auto-generated quote, in theory, this could also remove consumers from the CMA's dataset that generated a quote on the PCW on the day of receiving the auto-generated quote even without engaging with the email containing such a quote. In addition to underestimating the number of consumers that generated a quote on the PCW, it may affect the CMA's estimates of multi-homing and multi-channelling by consumers.

¹⁷¹⁷ However, it should be noted that consumers who received an auto-generated quote and went on to generate a quote on the PCW on any other date in the twelve-month period are still included in the dataset.

- I.8 Sensitivity checks found that almost none [0.1]% of the observations removed from the quote information provided by [MoneySuperMarket] were generated by unique consumers on the day of receiving the e-mail that contained an auto-generated quote independent of engaging with the e-mail.
- I.9 The CMA therefore considers the impact from the removal of auto-generated quotes to be minimal.

I.II.(b). Renewals

- I.10 The renewals quote data provided by the 19 home insurance providers for the period September 2016 to August 2017 included the following information:¹⁷¹⁸
- (a) The postcode of the consumer;
 - (b) The date of birth of the consumer;
 - (c) The date at which the renewal letter was sent to the consumer (or the date at which the home insurance provider generated the quote);
 - (d) The date at which the new home insurance policy would commence;
 - (e) Whether the consumer renewed their home insurance with that home insurance provider; and
 - (f) Whether the renewal was automatic.

¹⁷¹⁸ This includes the following submissions: URN 5174, [HIP]'s response to section 26 notice dated 24 November 2017, question 31; URN 5568, [HIP]'s response to follow-up questions to section 26 notice dated 24 November, question 2; URN 5519 and URN 5520, [HIP]' response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5493, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5542, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5082, [HIP]'s response to section 26 notice dated 24 November 2017, question 27; URN 5125, [HIP]'s response to section 26 notice dated 24 November 2017, question 28; URN 5136.2, [HIP]'s response to section 26 notice dated 24 November 2017, question 30; URN 5159A and URN 5159B, [HIP]'s response to section 26 notice dated 24 November 2017, question 30; URN 5197E, [HIP]' response to section 26 notice dated 24 November 2017, question 33; URN 5320, [HIP]'s response to section 26 notice dated 24 November 2017, question 35; URN 5208, [HIP]'s response to section 26 notice dated 24 November 2017, question 28; URN 5239.1, [HIP]'s response to section 26 notice dated 24 November 2017, question 30; URN 5184F, [HIP]'s response to section 26 notice dated 24 November 2017, question 35; URN 5183, [HIP]'s response to section 26 notice dated 24 November 2017, question 33; URN 5530, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 25; URN 5562, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5285, [HIP]'s response to section 26 notice dated 24 November 2017, question 35; URN 5411, [HIP]'s response to section 26 notice dated 24 November 2017, question 28. Due to a change in its IT systems, one home insurance provider ([HIP]) was unable to provide all new business consumer quote information for 2016 (URN 4722, [HIP]'s e-mail response to section 26 notice dated 24 November 2017, email dated 28 November 2017 and URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 10.

- I.11 One problem with the renewal submissions of home insurance providers was their interpretation of the CMA's analysis period. Some home insurance providers submitted renewal quotes that started in the period September 2016 – August 2017, not quotes that were generated in this period. Therefore, to ensure that the PCW and direct channel quote data was as comparable as possible with the renewal information of home insurance providers, the CMA requested additional data from 11 of the 19 home insurance providers contacted as part of the investigation.¹⁷¹⁹
- I.12 The interpretation of an automatic renewal also differed between home insurance providers. While four home insurance providers told the CMA that they considered a renewal to be automatic when a consumer did not contact them to discuss their quote or to negotiate a lower premium, four other home insurance providers defined automatic renewals based on the payment method used by the consumer at the point of renewal.¹⁷²⁰ Due to these different approaches, the CMA did not use information on whether the renewal was automatic as part of its analysis of consumer behaviour.

I.II.(c). Dataset

- I.13 The new business and renewal information collected by the CMA has been combined into one dataset for the purposes of its analysis in this Decision, which is referred to as the 'Consumer Behaviour' dataset
- I.14 When creating this dataset, the CMA identified unique consumers by using their postcode and date of birth as unique identifiers which allowed the CMA to match unique consumers across various categories of consumer quote information. The number of unique consumers that were observed in total

¹⁷¹⁹ This includes the following submissions: URN 5524, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5568, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 2; URN 5519, [HIP]' response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5493, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5542, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5500, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5508, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5512, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5638, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5530, [HIP]'s response to follow-up questions to section 26 notice dated 24 November 2017, question 1; URN 5562, [HIP]'s' response to follow-up questions to section 26 notice dated 24 November 2017, question 1.

¹⁷²⁰ This information is taken form the following submissions: URN 6180, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6157, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6161, [HIP]' response to follow-up questions to section 26 notice dated 16 April 2018, question 5; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 5050, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 5407, [HIP]'s response to section 26 notice dated 16 April 2018, question 5.

and for each category of consumer quote information is set out in Table I.1 below.

Table I.1: Unique consumers observed in total and for each category of consumer quote information

	#	%
Total unique consumers	13,156,207	-
<i>Of which...</i>		
- Generated a new business quote online from at least one PCW	4,766,686	36%
- Generated a new business quote online from at least one home insurance provider	2,264,317	17%
- Received a renewal quote from at least one home insurance provider	9,139,862	69%

Source: CMA's analysis of the Consumer Behaviour dataset

- I.15 This table shows that there were more than 10 [13.1] million unique consumers observed to generate (or receive) quotes from the different categories of consumer quote information in the period September 2016 to August 2017. The extent to which some unique consumers were observed to generate (or receive) a quote from more than one category of quote information forms part of the CMA's assessment (set out in section I.IV below).
- I.16 The CMA notes that a small proportion (less than 5% [2]%) of the unique consumers included in the dataset have been observed to make multiple purchases. The CMA understands that this may be due to the underlying information not differentiating between the product types offered by home insurance providers: buildings only insurance, contents only insurance, or combined buildings and contents insurance. As consumers can purchase both buildings only and contents only policies, rather than a single policy for combined buildings and contents insurance, the observed multiple purchases by unique consumers may be for different types of home insurance products. The CMA has, therefore, retained this information in the dataset rather than exclude the unique consumers that made multiple purchase.

I.III. Methodology

- I.17 As set out in paragraph I.3, the CMA's assessment of consumer behaviour consists of three parts.
- I.18 First, the CMA analysed the behaviour of consumers that obtained a home insurance quote on the PCW channel overall (i.e. all of the Big Four PCWs). This analysis considered whether consumers obtained a home insurance

quote from more than one PCW or the online direct channel of a home insurance provider when shopping around, as well as whether they received a renewal offer from an existing provider prior to searching for and comparing home insurance on the PCW channel.

- I.19 Second, the CMA analysed the behaviour of consumers that obtained a home insurance quote on an individual PCW (i.e. one of the Big Four PCWs). This analysis considered whether consumers obtained a home insurance quote from more than one PCW or the online direct channel of a home insurance provider when shopping around.
- I.20 Third, the CMA focused its analysis specifically on the behaviour of consumers who received a renewal offer from an existing home insurance provider. This analysis considered whether consumers who received a renewal offer from an existing provider also obtained a home insurance quote on the PCW channel or the online direct channel of a provider when shopping around.
- I.21 The CMA's approach to each is described in turn below.

I.III.(a). Behaviour of consumers that obtained a home insurance quote on the PCW channel overall

- I.22 The aim of the CMA's analysis is to capture the behaviour of unique consumers who obtained a quote on the PCW channel overall (i.e. all of the Big Four PCWs). In particular, the CMA has identified:
- (a) The proportion of these unique consumers who obtained a home insurance quote from only one PCW (i.e. single-homed) or did so on more than one PCW (i.e. multi-homed);
 - (b) The proportion of these unique consumers who obtained a home insurance quote from only the PCW channel (i.e. single-channelled)¹⁷²¹ or did so on both the PCW channel and providers' online direct channels (i.e. multi-channelled); and
 - (c) The proportion of these unique consumers who obtained a home insurance quote on the PCW channel and received a renewal offer from an existing provider.
- I.23 The CMA's approach has been to disregard the date when a consumer generated a quote on a PCW or the individual website of a home insurance

¹⁷²¹ Since the base considered in this analysis is consumers who used the PCW channel, consumers who single-channelled by only using providers' online direct channels are not captured in the analysis.

provider. For example, a consumer who received a quote from a PCW and a provider's website was considered as a multi-channelling consumer irrespective of the date when the quote was received from each channel.

- I.24 The CMA notes that this methodology is likely to overestimate the true extent of 'multi-homing' and 'multi-channelling' by PCW users. This is because consumers are more likely to be genuinely 'multi-homing' or 'multi-channelling' (i.e. requesting quotes from more than one PCW or channel for the same policy rather than using different PCWs or channels for more than one transaction) when the dates at which the two quotes were generated are closer together. For example, unique consumers that generated a quote on a PCW in September 2016 before doing the same on another PCW (or on the website of a home insurance provider) in August 2017 may have requested these quotes as part of two separate transactions, rather than comparing multiple quotes for the same policy.
- I.25 While the inclusion of such instances will be likely to overestimate the extent of 'multi-homing' and 'multi-channelling' by PCW users, sensitivity checks have shown that the period between a unique consumer generating their first quote and their last quote was less than 30 days for the large majority (over 90%) [96]% of the unique consumers in the dataset.¹⁷²² The CMA therefore does not believe the results of its analysis was materially affected by the inclusion of observations with longer periods between the dates when the first quote and the last quote was generated.

I.III.(b). Behaviour of consumers that obtained a home insurance quote on an individual PCW

- I.26 The aim of the CMA's analysis is to capture the behaviour of unique consumers who obtained a quote on an individual PCW (i.e. one of the Big Four PCWs). In particular, the CMA has identified:
- (a) The proportion of these unique consumers who obtained a home insurance quote from only one PCW (i.e. single-homed) or did so on more than one PCW (i.e. multi-homed); and
 - (b) The proportion of these unique consumers who obtained a home insurance quote from only one of the PCW channel and providers' online direct channels (i.e. single-channelled) or did so on both the

¹⁷²² The CMA selected a 30-day period for its sensitivity analysis, both here and in paragraph I.30, based on the results of one PCW's [30] internal study that showed a large majority (around [30]%) of its customers searched for home insurance up to one month before the start of their renewal policy ([30]).

PCW channel and providers' online direct channels (i.e. multi-channelled).

- I.27 As with its analysis of consumers who obtained a home insurance quote on the PCW channel overall, the CMA's approach has been to disregard the date when a consumer obtained a quote on a PCW and when they received a renewal offer from an existing provider. Although this means that (as set out above at paragraph I.24) this methodology is likely to overestimate the true extent of 'multi-homing' and 'multi-channelling' by users of an individual PCW, the CMA does not believe the results of its analysis was materially affected by the inclusion of observations with longer periods between the dates when the first quote and the last quote was generated.

I.III.(c). Behaviour of consumers that received a renewal offer from an existing home insurance provider

- I.28 The aim of the CMA's analysis is to capture the behaviour of unique consumers that received a renewal offer from an existing provider. In particular, the CMA has identified:
- (a) The proportion of these unique consumers who received a renewal offer from an existing provider and obtained a home insurance quote from at least one PCW.
 - (b) The proportion of these unique consumers who switched home insurance providers after receiving a renewal offer from an existing provider and obtaining a home insurance quote from at least one PCW.
- I.29 As with its analysis of consumers that obtained a home insurance quote on the PCW channel overall and an individual PCW, the CMA's approach has been to disregard the date when a consumer obtained a quote on a PCW and when they received a renewal offer from an existing provider. For similar reasons to those set out above at paragraph I.24, the CMA notes that this methodology is likely to overestimate the true extent of PCW use by consumers that received a renewal offer from an existing provider.¹⁷²³
- I.30 However, sensitivity checks have shown that the period between generating a quote on a PCW and the start date for the renewed policy was less than 30 days for the vast majority (over 90%) [91]% of the unique consumers who received a renewal offer from an existing provider and obtained a quote on a PCW in the Consumer Behaviour dataset. The inclusion of observations with

¹⁷²³ For example, the inclusion of unique consumers that obtained a home insurance quote on a PCW in September 2016 before receiving a renewal offer in August 2017 will be likely to overestimate the proportion of consumers who have used a PCW at the point of renewal.

longer periods between the dates when the PCW quote was obtained by a consumer and the start date of the renewed policy would therefore only have a small impact on the proportion of consumers that engage with a PCW at the point of renewal.

I.IV. Assessment

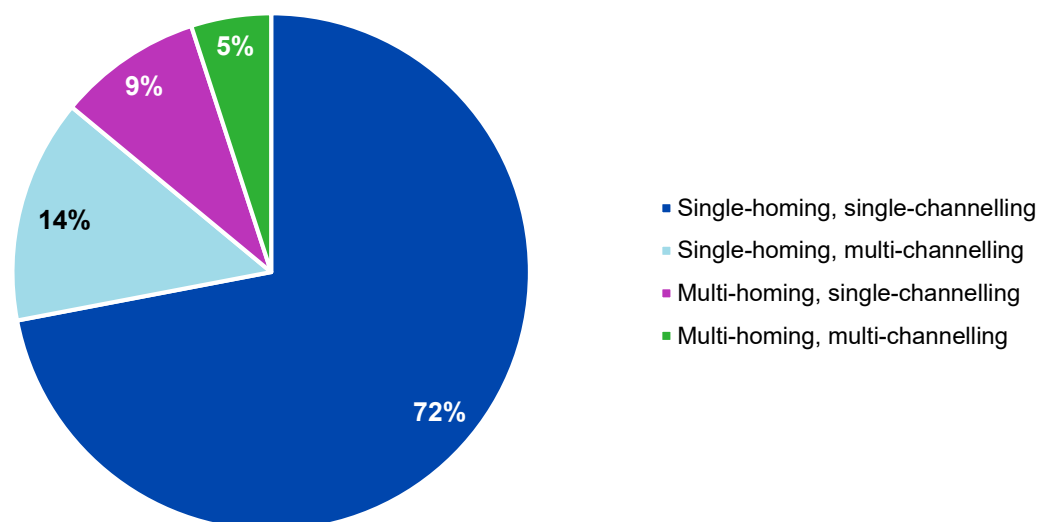
- I.31 The results of the CMA's analysis of consumer behaviour is relevant to its legal assessment of the conduct under investigation in the present case. In particular, the analysis set out in this Annex is informative in the CMA's definition of the relevant market (set out in Section 5), its assessment of the nature of competition between PCWs (set out in Section 7) and its assessment of the restrictive effects of CTM's wide MFN on competition (set out in Section 9).
- I.32 The CMA sets out the results of its analysis and discusses the main findings of its assessment in relation to:
- (a) The behaviour of consumers that obtained a quote on the PCW channel overall (including their use of individual provider's websites and whether received a renewal offer from an existing provider), which can be informative for assessing the extent to which consumers use multiple acquisition channels when shopping around for home insurance (I.IV.(a));
 - (b) The behaviour of consumers on each of the Big Four PCWs (including their use of rival PCWs and providers' online direct channels), which can be informative for assessing the nature of competition between PCWs (I.IV.(b)); and
 - (c) The behaviour of consumers that received a renewal offer from an existing provider and made use of the PCW channel overall or providers' online direct channels, which can be informative for assessing the extent to which PCWs compete with home insurance providers for consumers at the point of renewal (I.IV.(c)).

I.IV.(a). The behaviour of consumers that obtained a quote on the PCW channel overall

- I.33 The CMA finds that around 80% [78]% of consumers who were searching for home insurance online obtained a quote from the PCW channel, whereas less than 40% [37]% obtained a quote from providers' online direct channels.

I.34 Figure I.1 shows the CMA's analysis on the extent to which consumers who obtained a quote on the PCW channel overall did so on more than one PCW (i.e. multi-homed) or providers' online direct channels (i.e. multi-channelled). The CMA finds that the vast majority (around 85% [86]%) of consumers that obtained a quote on the PCW channel only did so on one PCW and less than 15% [14]% of consumers were found to multi-home.

Figure I.1: Behaviour of consumers obtaining a quote on the PCW channel



Source: CMA analysis of the Consumer Behaviour dataset

I.35 This actual behaviour of consumers contrasts with their reported behaviour in the DCTs Survey, with a much higher proportion actually choosing to single-home within the PCW channel during this period than the 35% of respondents who reported that they had used only one comparison site for home insurance in the DCTs Survey.¹⁷²⁴ This difference in behaviour is likely to be because the DCTs Survey focused on whether consumers visited more than one PCW (or providers' own websites) even if they did not go through the process of obtaining a quote. In contrast, the CMA's analysis was based on data collected by PCWs and home insurance providers when consumers obtained a quote on their website. The CMA therefore considers it appropriate to give more weight to the analysis underpinning Figure I.1 on the basis that it provides direct evidence of whether consumers compared quotes across the Big Four PCWs.

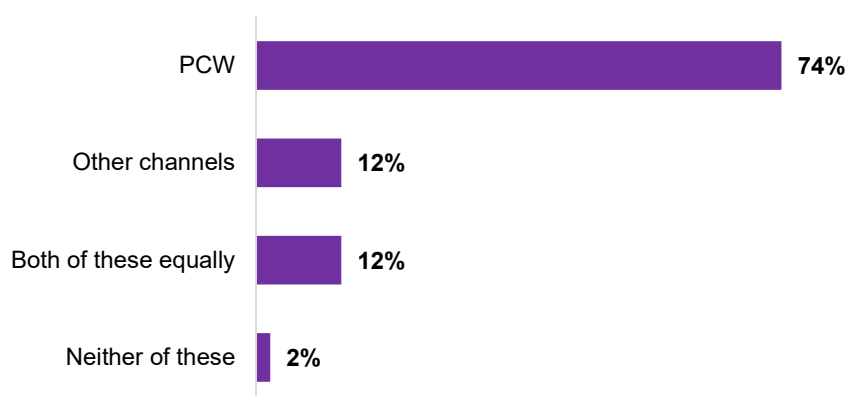
I.36 Figure I.1 also shows that more than 80% [81]% of consumers that obtained a quote on the PCW channel did not also do so on providers' online direct

¹⁷²⁴ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017, question M9: 'When you shopped around for [Home Insurance] did you visit'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

channels. As a further illustration of the difference in consumers' actual and reported behaviour, the CMA's finding that only a small proportion (less than 20% [19%]) of consumers that obtained a quote on the PCW channel were found to multi-channel again differs from the DCTs Survey finding that 37% of consumers who used a comparison site for home insurance also stated that they had consulted the website of an individual provider.¹⁷²⁵

- I.37 Consumers who multi-channel may rely more heavily on one channel than the others they used when shopping around for home insurance. The DCTs Survey found that, among those respondents that used PCWs as well as other sources of information as part of their comparison (e.g. home insurance providers' own websites or phoning providers directly), 74% said that PCWs were their main source of information and only 12% said that they mainly relied upon another source of information (as shown Figure I.2).¹⁷²⁶

Figure I.2: Main source of information when shopping around



Source: Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017. Question E17: 'Would you say that'. Base: All who have used a comparison site for home insurance in the last 3 months and used at least one other source of information in addition to the comparison site (234).

- I.38 The CMA also considered the extent to which consumers who obtained a quote on the PCW channel decided to multi-channel on each provider's online direct channel when shopping around for home insurance. This is shown in Figure I.3.

¹⁷²⁵ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017, question E16: 'In addition to comparison sites, did you use any of these methods to compare what was available'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

¹⁷²⁶ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017, question E17: 'Would you say that...'. Base: All who have used a comparison site for home insurance in the last 3 months and used at least one other source of information in addition to the comparison site (140).

Figure I.3: Consumers who obtained a quote on the PCW channel and individual providers' online direct channels

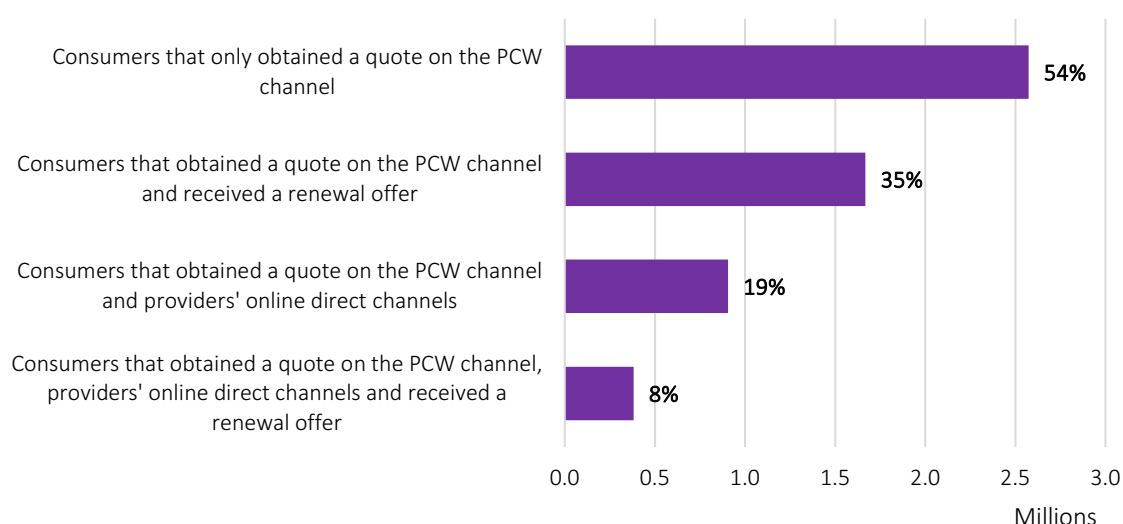
[X]

Source: CMA analysis of the Consumer Behaviour dataset

I.39 The CMA's analysis finds that the average provider can only attract around 1% [X]% of consumers who obtained a quote on the PCW channel. Figure I.3 also shows that even [X], was only able to attract less than 10% [X]% of consumers who obtained a quote on the PCW channel in the period analysed.¹⁷²⁷

I.40 Figure I.4 shows the extent to which consumers who obtained a home insurance quote on the PCW channel also did so on providers' online direct channels or received a renewal offer from an existing provider.

Figure I.4: Shopping behaviour of consumers who obtained a quote on the PCW channel



Source: CMA analysis of the Consumer Behaviour dataset

I.41 The CMA's analysis finds that more than 50% [54]% of consumers who obtained a home insurance quote on the PCW channel did not obtain quotes from providers' online direct channels, nor did they receive a renewal offer from an existing provider. Less than 20% [19]% of these consumers also obtained a quote on a provider's online direct channel (as set out in

¹⁷²⁷ The CMA repeated this analysis focusing on the behaviour of consumers who ultimately made a purchase after obtaining a quote on the PCW channel. The results of the CMA's analysis are consistent with its results for all PCW users who also generated a quote on an individual provider's online direct channel, finding that the proportion of PCW users who also generated a quote on an individual provider's online direct channel and went on to purchase a home insurance policy through the PCW channel is around 1% [X]% on average with [X] [HIP] only able to attract 5-10% [X] of these consumers to its brands' websites.

paragraph I.36) and around 35% [35]% received a renewal offer from an existing provider, while less than 10% [8]% did both.¹⁷²⁸

- I.42 The CMA also finds that around 50% [48]% of all consumers who obtained a quote on the PCW channel also made a purchase through a PCW and only a small minority of consumers went on to purchase through a provider's online direct channel 1-5% [5]% or renewed with an existing home insurance provider 15-20% [17]%.^{1729, 1730} The CMA's analysis again differs to the results of the DCTs Survey, where 69% of respondents that had recently searched for home insurance using a PCW purchased through the link provided by the PCW and 29% made a purchase through a provider's online or offline direct channels.¹⁷³¹

I.IV.(b). The behaviour of consumers on each of the Big Four PCWs

- I.43 While consumers that obtained a home insurance quote on the PCW channel overall are marginally more likely to multi-channel than to multi-home, the CMA's analysis finds this is not the case for the consumers of any individual PCW.
- I.44 For example, as can be seen in Figure I.5, around 40-50% [X]% of consumers who obtained a quote on [X] did so on another PCW as well whereas around 25-35% [X]% of consumers also obtained a quote on the website of a home insurance provider.¹⁷³² This shows that, after obtaining a home insurance quote on [X], consumers are more likely to obtain a quote on another PCW than on a provider's online direct channel.

¹⁷²⁸As set out in 5.77 – 5.78, the CMA repeated this analysis focusing on the behaviour of consumers who ultimately made a purchase after obtaining a quote on the PCW channel. The results of this analysis were not significantly different from those in Figure I.4: more than 50% [55%] of consumers who obtained a home insurance quote on the PCW channel did not obtain quotes from providers' online direct channels, or receive a renewal offer from an existing provider. Around 15% [16%] of these consumers also obtained a home insurance quote on a provider's online direct channel; around 35% [36%] received a renewal offer from an existing provider; and only [7%] did both.

¹⁷²⁹ The remaining consumers who obtained a quote on the PCW channel were not observed to purchase home insurance through any of the acquisition channels included in the CMA's analysis. These consumers may have either not purchased home insurance during the period covered by the analysis or purchased through channels not covered by the analysis.

¹⁷³⁰ The CMA's analysis also finds only around 15% ([16%]) of consumers that purchased through the PCW channel compared a quote obtained from a PCW with one from a provider's online direct channel.

¹⁷³¹ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017, question P3: 'Did you do this...'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

¹⁷³² It is expected that the proportion of consumers who single-homed (or multi-homed) on each individual PCW are lower (or higher) than for consumers in the PCW channel overall. This is because each PCW will have a unique portion of the consumers who single-homed during the period covered by the analysis, but will share its consumers who multi-homed with at least one other PCW. This means that, while the number of consumers who single-homed on each individual PCW will sum to the number of consumers who single-homed in the PCW channel overall, the number of consumers who multi-homed on each individual PCW *will not sum* to the number of consumers who multi-homed in the PCW channel overall as these consumers will be counted more than once in this calculation.

Figure I.5: Behaviour of consumers obtaining quotes on the Big Four PCWs

[REDACTED]

Source: CMA analysis of the Consumer Behaviour dataset

- I.45 Figure I.5 also shows that each PCW has a significant proportion of consumers who do not obtain a quote on any other PCW or providers' online direct channels when shopping around for home insurance. This proportion ranges from more than 40% [REDACTED]% for consumers who obtained a quote on [REDACTED] to around [REDACTED]% for those who did so on CTM. The CMA would therefore expect home insurance providers to use more than one PCW to access the significant proportion of consumers who single-home and single-channel on each of the Big Four PCWs (as set out in Section 7.A).
- I.46 In addition, PCWs that are used by more consumers will be valued more by home insurance providers. This is because PCWs that are used by a greater number of consumers will supply home insurance providers with a greater number of customer introductions that may result in a consumer purchasing home insurance from them. Moreover, PCWs with more single-homing and single-channelling consumers will be particularly valued by home insurance providers because as these PCWs will provide customer introductions that cannot be sourced from other PCWs or providers' own online direct channels.
- I.47 As is shown in Figure I.6, CTM was the most used PCW by the consumers included in the CMA's analysis with around [REDACTED] million consumers obtaining a home insurance quote on its platform – which is around 50% [REDACTED]% of all consumers who obtained a quote on the PCW channel overall.¹⁷³³ Furthermore, around [REDACTED] of these consumers did not obtain quotes from any other PCW or from providers' direct channels (and were therefore unique to CTM's platform). Further to this being around 35% [REDACTED]% of all consumers who obtained a quote on the PCW channel overall, this is more than the total number of consumers found by the CMA to obtain a quote on any other individual PCW. The CMA explores the extent to which this may influence CTM's market power during the Relevant Period in Section 5.E.I.

Figure I.6: Number of consumers obtaining quotes on the Big Four PCWs found to single-home and single-channel

[REDACTED]

¹⁷³³ Although this analysis uses different metrics and sources of data, this finding is consistent with the share of PCW sales outlined in Figure 5.5 – with CTM having the largest share of PCW sales in both 2016 and 2017.

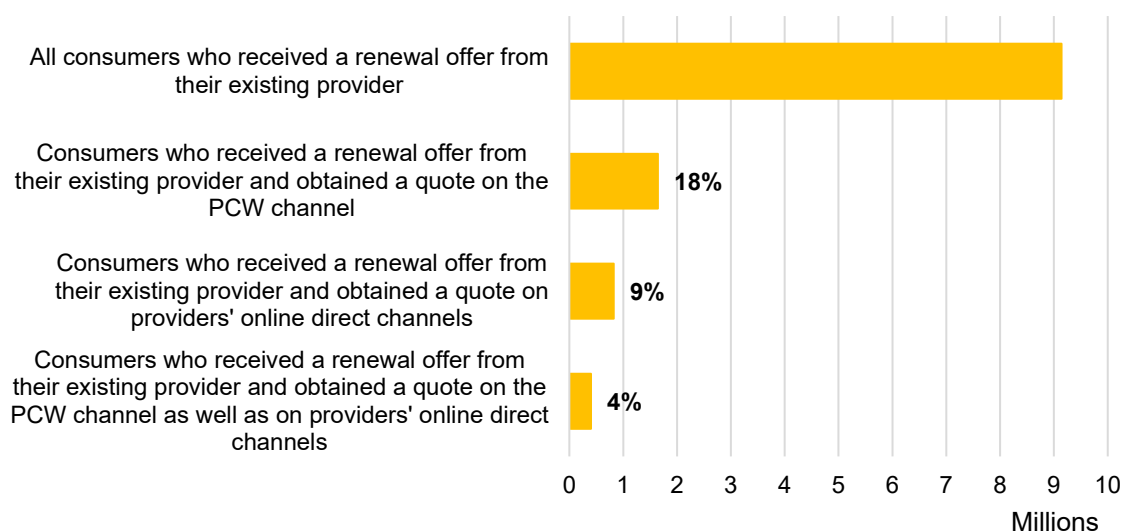
- I.48 The CMA's analysis also considered the proportion of consumers that purchased by clicking through to a provider's website from each individual PCW, finding that around 50% [50%] of consumers that obtained a quote on CTM went on to make a home insurance purchase from a provider. This is greater than the corresponding proportions for the other Big Four PCWs: [50%].

I.IV.(c). The behaviour of consumers that received a renewal offer from an existing provider and who obtained home insurance quotes online

- I.49 The CMA finds that there was a low level of shopping around by consumers at the point of renewing their home insurance with an existing provider, with around 80% [77%] of consumers who received a renewal offer from an existing provider found not to obtain a home insurance quote on either the PCW channel or providers' online direct channels.¹⁷³⁴
- I.50 Figure I.7 shows that less than 20% [18%] of consumers who received a renewal offer from an existing provider also obtained a quote on the PCW channel, with less than 10% (9%) of these consumers obtaining a quote from providers' online direct channels.

¹⁷³⁴ The CMA's analysis finds that around 10% [9%] of consumers that received a renewal offer from an existing provider did not obtain a home insurance quote online and were not observed to renew with an existing provider.

Figure I.7: Shopping behaviour of consumers that received a renewal offer from an existing provider



Source: CMA analysis of the Consumer Behaviour dataset.

- I.51 The CMA's analysis also finds around 35% ([36]%) of consumers that made a purchase through the PCW channel also received a renewal offer from an existing home insurance provider. The CMA considers that its analysis is consistent with the relative importance of renewals within all home insurance policies (as set out in Section 5.C.IV.(b)).
- I.52 The CMA notes, however, that its analysis finds a lower proportion of consumers who used the PCW channel and received a renewal offer from an existing provider than found in the DCTs Survey. In contrast to the CMA's analysis of consumers' actual behaviour, the DCTs Survey found that 49% of respondents who searched for home insurance using a PCW said that they were prompted to do so as they were coming to the end of their current contract and needed to renew.¹⁷³⁵
- I.53 The CMA's analysis is also consistent with Mintel's research, which found that many consumers intended to use comparison sites to compare their renewal quotes against the current prices available from other suppliers, checking how competitive the offer was from an existing provider.¹⁷³⁶ In principle, this large proportion of consumers who obtained a quote on a PCW and went on to renew with an existing provider could use the quote obtained on the PCW to negotiate a better renewal offer with an existing

¹⁷³⁵ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017, question M3: 'What first prompted you to start shopping around for [Home Insurance] on this occasion'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

¹⁷³⁶ URN 6650, Mintel, *Price Comparison Sites in General Insurance*, July 2016, page 44.

provider. This was found to be one of the main reasons in the DCTs Survey that consumers gave for wanting to use PCWs when shopping for home insurance, selected by 31% of respondents.¹⁷³⁷ The CMA explores the extent to which this occurred in practice during the Relevant Period in Section 5.C.III.(c).(ii).

¹⁷³⁷ Kantar, [Digital Comparison Tools: Consumer Research](#), March 2017, question M6: 'Why did you use a comparison site on this occasion'. Base: All who have used a comparison site for home insurance in the last 3 months (234).

ANNEX J: PROMOTIONAL DEALS ANALYSIS

J.I. Introduction

- J.1 This Annex sets out the CMA's analysis of promotional deals.¹⁷³⁸ This analysis uses the Retail Prices Dataset (see Annex O) to assess:
- (a) The extent to which a relative reduction in retail price was observed on the PCW who had a promotional deal (the 'target PCW') at the start of that promotional deal when compared to other PCWs (the 'benchmark PCWs'); and
 - (b) The extent to which a relative improvement in a home insurance provider's ranking was observed on the target PCW at the start of a promotional deal compared to the benchmark PCWs.
- J.2 The CMA notes that its analysis did not consider what would have happened to the provider's retail prices or rankings in the absence of the promotional deal. For example, if the provider would have reduced its price on the relevant PCW even without the deal, the CMA's analysis would overestimate the effect of the deal (and conversely, if the provider would have increased its price in the absence of the deal, the CMA's analysis would underestimate the effect). It is not clear how such a counterfactual would have been constructed.¹⁷³⁹
- J.3 The CMA has therefore considered the results of this analysis alongside other evidence (in particular, qualitative evidence from PCWs and providers) to assess the extent to which promotional deals led to reductions in providers' prices and improvements in their rankings (as set out in Section 7.E).¹⁷⁴⁰

J.II. Promotional deals data

- J.4 In addition to the Retail Prices Dataset,¹⁷⁴¹ the CMA used data provided by the Big Four PCWs and home insurance providers to identify promotional

¹⁷³⁸ The results of this analysis are summarised in Section 7.E.

¹⁷³⁹ Indeed BGL [Oxera] stated that identifying what would have happened to the provider's retail prices in the absence of the promotional deal is a difficult task (see URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.5) and did not include a counterfactual in its own analysis which is discussed in Annex K.

¹⁷⁴⁰ This is also important because in some cases the number of risks on which the CMA's analysis could be conducted was less than 100 such that they should be treated with caution and considered in the wider context alongside other evidence.

¹⁷⁴¹ In Annex G of the SO, the CMA noted that, in the context of the econometrics conducted by Oxera and submitted by BGL, the volatility of the data used in the econometrics could result in finding no statistically significant impact. The CMA formed this view based on Oxera's Second Report which noted the volatility of the

deals which were agreed and implemented in the period January 2016 to June 2019.

- J.5 This combined 'Promotional Deals Dataset'¹⁷⁴² was used by the CMA to assess the pricing behaviour of those providers which agreed a promotional deal with one of the Big Four PCWs. The Promotional Deals Dataset included information on:
- (a) The reduction in commission fee (or other service offered) by the target PCW for the duration of the promotional deal;
 - (b) The reduction in retail price agreed by the home insurance provider for the duration of the promotional deal;¹⁷⁴³ and
 - (c) The months within which the promotional deal operated and, where possible, the start and end date of the promotional.¹⁷⁴⁴
- J.6 Where a home insurance provider that agreed a promotional deal had more than one product, the CMA also identified each product that was involved in the promotional deal and treated each of these as a separate promotional deal in its analysis. The CMA's analysis of promotional deals was therefore conducted at the level of an individual product offered to consumers by providers.

data when explaining the rationale behind the adopted methodology. In response to the SO, BGL submitted that any volatility in the Consumer Intelligence pricing data would also affect the CMA's promotional deals analysis. However, the CMA does not consider this is correct given the different metrics and methodologies being used in the promotional deals analysis when compared to the econometrics. Further, even if the volatility in the data did affect the CMA's promotional deals analysis this would only increase the importance of considering the results of the analysis alongside other evidence which the CMA has done, see paragraph 7.190-7.192. URN 6641, Report attached to the Third BGL Submission ('Second Oxera Report') dated 31 July 2018, page 17 and URN 8484.3, Third Oxera Report dated 22 February 2020, paragraph 9.26, fourth bullet.

¹⁷⁴² This was based on: URN 8906, BGL's response to section 26 notice dated 10 May 2019, question 28; URN 9121, Confused's response to section 26 notice dated 25 June 2019, questions 2 and 3, spreadsheet entitled 'Q2.+(b)+Updated+Home+Offer+Tracker'; URN 8950, GoCompare's response to section 26 notice dated 31 May 2019, question 3; URN 9740, GoCompare's response to follow-up questions to section 26 notice dated 25 June 2019, question 2; URN 8969, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 3, spreadsheet entitled 'Appendix 1 - Pricing Investments 050619'; URN 9860, MoneySuperMarket's response to follow-up questions to section 26 notice dated 25 June 2019, question 2, spreadsheet entitled 'Appendix 2 - Pricing Investments v3 updated (updated Nov 2019)'; URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 2, paragraph 5; URN 9256.5, [HIP]'s response to section 26 notice dated 19 June 2019, question 4; 'Annex 08(e)(xiv. question 4', URN 9636, [HIP]'s response to section 26 notice dated 26 July 2019, question 2; URN 9652b, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9666, [HIP]'s response to section 26 notice dated 26 July 2019, questions 1 and 2; URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 3; URN 9712, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; spreadsheet entitled [REDACTED], URN 9726, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 1; URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 1 and URN 9825, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

¹⁷⁴³ As explained in paragraph 7.187, the promotional deals included in the CMA's analysis typically involved a fixed discount per policy, but in some instances providers agreed a percentage reduction in their retail prices.

¹⁷⁴⁴ For example, Confused explained that information on the exact start and end dates of its promotional deals was not available in most cases so where possible the CMA gathered this information from the relevant provider. See URN 6322, Confused's response to section 26 notice dated 27 April 2018, question 4(a).

- J.7 The information provided to the CMA for a specific promotional deal differed between the relevant provider and the target PCW in some instances. Where this is the case, the CMA used the information provided by the relevant provider in its analysis as it was the provider who was implementing any change in the retail price.
- J.8 While the promotional deal and retail pricing information collected by the CMA covers the period January 2016 to June 2019, the CMA has restricted its analysis to promotional deals that started after June 2016. This is because of a change in the data collection methodology of Consumer Intelligence in April 2016 (as discussed in paragraph O.14 of Annex O).
- J.9 In addition, there were some instances in the Promotional Deals Dataset in which a provider agreed multiple promotional deals with a PCW with different levels of discount but no break in between. For example, the provider and PCW could have had a promotional deal with a discount of £2 in January and then a deal with a discount of £4 in February. In these instances, the CMA has restricted its analysis to the first promotional deal in the series, as analysis of the impact on price or ranking of subsequent deals would be confounded by the fact that the provider had already been discounting in the previous month. This means that the CMA's analysis only assesses the pricing behaviour of providers who did not discount its retail prices on the target PCW (i.e. when the 'agreed' discount was £0) prior to the start of a promotional deal.
- J.10 In total this means that the CMA's analysis covers 59 product-level promotional deals covering the period July 2016 to June 2019. Specifically, the CMA's analysis includes:¹⁷⁴⁵
- (a) 27 product-level promotional deals agreed between MoneySuperMarket and home insurance providers. 12 of these product-level promotional deals were in place with providers who had multiple products included in the same promotional deal (i.e. these providers had at least two products included in the promotional deal).
 - (b) 22 product-level promotional deals agreed between Confused and providers. 15 of these product-level promotional deals were in place

¹⁷⁴⁵ The CMA excluded a deal between MoneySuperMarket and [HIP]'s brand from its analysis. This is because [HIP] told the CMA that it implemented the deal by reducing the retail price on all PCWs. Given this it would not be possible to assess whether there were changes in the relative prices and relative rankings at the time of the promotional deal. URN 9659, [HIP]'s response to section 26 notice dated 26 July 2019, question 1 and URN 8969, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 3, spreadsheet entitled 'Appendix 1 - Pricing Investments 050619'. CMA also excluded MoneySuperMarket's deals with [HIP] and [HIP], as in these cases the discount was provided in the form of a shopping voucher, and so a price reduction would not be visible in the Consumer Intelligence data. Finally, the CMA excluded Confused's deal with [HIP], as at the time of the deal starting [HIP] was [REDACTED] so it would not be possible to assess relative prices or rankings.

with providers who had multiple products and at least two of those products had the same promotional deal.

- (c) Five product-level promotional deals agreed between GoCompare and home insurance providers. Three of these product-level promotional deals were in place with a provider who had multiple products and all three products had the same promotional deal.
- (d) Five product-level promotional deals agreed between CTM and home insurance providers. These product-level promotional deals were in place with two providers who both had multiple products. While all of one provider's products had the same promotional deal, the other provider only included one of its products in the promotional deal.

J.III. Methodology

- J.11 The CMA's analysis focused on the extent to which there were observed relative reduction in the relevant providers' retail prices and relative improvements in the relevant providers' rankings on the target PCWs.
- J.12 First, the CMA describes its general approach to this analysis and sets out the metrics it has used in its analysis. The CMA then explains its approach to promotional deals of different durations.

J.III.(a). General approach

- J.13 The CMA's analysis is substantively the same when looking at the impact of promotional deals on relevant home insurance providers' retail prices and rankings. For relevant providers, the CMA has looked at each metric:
 - (a) in the 'month before', the 'month of' and the 'month after' the start of the promotional deal (quotes were generated throughout each month which has been taken into account in the CMA's analysis, see paragraphs J.30 to J.34 below). This was done to allow the CMA to focus its analysis on the changes in each metric at the time of promotional deal.
 - (b) only for the risk profiles present in the dataset in the month before, the month of and the month after the start of the promotional deal. This was done to ensure any observed changes in the metrics were not driven by changes in the risk profiles included in each of the three months (see Annex O, paragraph O.10).
 - (c) on the target PCW relative to benchmark PCWs. This was done to control for general changes in the providers' metrics over the three

months (e.g. general changes in the cost of supplying home insurance or the competitiveness of rival providers); and

- (d) for risk profiles where the same excesses were used on both the target PCW and the benchmark PCW (these are termed 'comparable quotes'). This was done to ensure that the observations were comparable as differences in excess values can lead to differences in retail prices.¹⁷⁴⁶

- J.14 For each promotional deal the number of risk profiles which had comparable quotes differed. In addition, for each promotional deal the number of comparable quotes differed when looking at each pair of PCWs (i.e. the number of comparable quotes between PCW A and PCW B differed to the number of comparable quotes between PCW A and PCW C).
- J.15 Therefore, for each promotional deal, the CMA's analysis looked at the metric based on pairs of PCWs (e.g. for a MoneySuperMarket promotional deal separate comparisons were made with respect to each of the other Big Four PCWs) where each comparison was made based on a different set and number of risk profiles.
- J.16 As outlined in Annex O, the Consumer Intelligence pricing data used in this analysis is subject to certain limitations. These limitations mean that any analysis conducted with this data should be treated with caution, should be designed with these limitations in mind and the results of such analysis should be considered in the light of other evidence as the CMA has done with its promotional deals analysis (see paragraph J.3).
- J.17 The CMA considers that the impact of the limitations in the data are less likely to impact this analysis because the analysis looks at:
- (a) changes in relative prices and relative rankings across PCWs and not absolute prices and absolute rankings. This means that, absent any changes in the factors that lead to the limitations in the pricing data, these limitations should not affect the analysis.¹⁷⁴⁷

¹⁷⁴⁶ For example, see URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4a; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8b; URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 10, paragraphs 28 and 29; URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(a) and URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

¹⁷⁴⁷ For example, if for a consumer Brand A appeared to be priced £5 more on PCW 1 than PCW 2 due to these limitations and that was fixed in the months before, of and after the deal then it should have no effect on the CMA's analysis. In particular, if Brand A had a £10 promotional deal with PCW 1 then if the relative price on PCW 1 compared to PCW 2 went from -£5 to £5 then that would be consistent with a promotional deal of £10.

- (b) specific events and within a short period of time (two to three months) such that the CMA would expect the factors that lead to the limitations in the pricing data to be constant within the short period of time assessed both on and across PCWs. In contrast, analysis covering longer periods of time, for example Oxera's Promotional Deals analysis is more likely to be affected by these limitations (see section K.III of Annex K).

J.III.(b). Metrics

- J.18 As set out above the CMA's analysis assessed the extent to which there were observed relative reduction in the relevant providers' retail prices and relative improvements in the relevant providers' rankings on the target PCWs.

J.III.(b).(i). Retail prices

- J.19 For each product-level promotional deal and each pair of PCWs, the CMA first calculated the average retail price quoted by the provider on the target PCW and on the benchmark PCW. The CMA then calculated the difference between the average retail price quoted by the provider on the target PCW and the average price quoted by the provider on the benchmark PCW in each of the three months included in the analysis.
- J.20 The CMA then assessed how the difference in average retail prices changed over time to assess the change in relative retail prices at the time of the product-level promotional deal. In particular, if the retail price quoted by the provider on the target PCW with the product-level promotional deal falls relative to the retail price quoted by the provider on the benchmark PCW then there should be a positive impact on the difference in that provider's average retail prices (i.e. there is a relative price improvement between the target and benchmark PCWs).
- J.21 Table J.1 below provides an illustrative example where PCW A had a £5 promotional deal in place with the relevant provider in Month 2.

Table J.1: Retail price example

	<i>PCW A</i>	<i>PCW B</i>	<i>Difference</i>	<i>% passed through</i>
Month 1	£100	£100	£0	-
Month 2	£95	£100	£5	100%
Month 3	£100	£100	£0	-

Source: CMA

- J.22 As can be seen in this example, the difference in average retail prices increases from £0 in Month 1 to £5 in Month 2 and is consistent with the promotional deal leading to a reduction in the retail price quoted by the provider on PCW A relative to PCW B. The difference in average retail prices returns to £0 in Month 3 as the reduction in retail price quoted by the provider on PCW A relative to PCW B is only observed when the promotional deal is active, which is Month 2 in this example.

J.III.(b).(ii). Rankings

- J.23 To assess the changes in relevant home insurance providers' rankings the CMA has considered the change in the proportion of quotes where the provider was ranked: (i) in the top five results, and (ii) as the top result. Below the CMA has outlined how this was done in relation to the top five results. The same process was followed in relation to the top result.
- J.24 For each product-level promotional deal and each pair of PCWs, the CMA first calculated the proportion of the relevant provider's quotes ranked in the top five on the target PCW and on the benchmark PCW. The CMA then calculated the difference between the proportion of quotes ranked in the top five on the target PCW and the proportion of quotes ranked in the top five on the benchmark PCW. Both these steps were done separately in each of the three months.
- J.25 The CMA then assessed how the difference in the proportion of quotes ranked in the top five changed on average over time to assess the change in relative rankings at the time of the product-level promotional deal. In particular, if the proportion of the provider's quotes ranked in the top five on the target PCW increases relative to the proportion of the provider's quotes ranked in the top five on the benchmark PCW, then there should be a positive impact on the difference in proportion of quotes ranked in the top five.
- J.26 The table below provides an illustrative example where PCW A had a promotional deal in place with the relevant provider in Month 2.

Table J.2: Ranking example (proportion of quotes ranked in the top five)

	PCW A	PCW B	Difference
Month 1	20%	15%	5 percentage points (pp)
Month 2	35%	15%	20 pp
Month 3	20%	15%	5 pp

Source: CMA

- J.27 As can be seen the difference increases from 5 percentage points in Month 1 to 20 percentage points in Month 2 which is consistent with the promotional deal leading to an improvement in the provider's ranking on PCW A relative to PCW B.
- J.28 As outlined in paragraph J.6, in some cases relevant providers' brands had multiple products and at least two of those products had the same promotional deal (e.g. [HIP] 's brand X offers both a 'Brand Y' and a 'Brand Y' + product to consumers on PCWs). Generally, these products differ in terms of retail price with the retail price quoted for one of the products being consistently lower than the retail price quoted for the other products. Therefore, this cheaper product appears nearer the top of the rankings than the other products.
- J.29 Given this, where a promotional deal applied to multiple products, the CMA has focused its assessment of rankings on the lowest priced product as this is the product where there is likely to be an impact on the proportion of times the product appears in the top five results or as the top result.¹⁷⁴⁸

J.III.(c). Promotional deals of different lengths

- J.30 The promotional deals included in the CMA's analysis were of varying lengths and started at different points during the month. In addition, the quotes in the dataset were generated throughout the month rather than on one specific day during the month. This means that the CMA had to tailor the exact methodology used based on the nature of each promotional deal and the information it had on each promotional deal.
- J.31 For example, a promotional deal might start on 15 April and end on 15 May. In this case April would be the 'month of' the start of the promotional deal, however, only the quotes generated after 15 April would be subject to the promotional deal. Further, May would be the 'month after', but only those quotes generated 15 May would not be subject to the promotional deal.
- J.32 Therefore, it would not be possible to assess the full impact of such a promotional deal by comparing the relevant metrics between the 'month before' (March) and either the 'month of' or the 'month after'. Therefore, for such a promotional deal the CMA would compare the 'month before' and the 'month of' and, in doing so, restricted its comparison to risk profiles where the quote was generated after 15 April.

¹⁷⁴⁸ While promotional deals may not affect the proportion of quotes ranked in the top five or as the top result for the more expensive products offered by these providers, the promotional deals are likely to improve the ranking of these products.

- J.33 The CMA has, based on their varying lengths and different start points during a month, categorised the promotional deals in its dataset into five different types and conducted its analysis of each type of promotional deal using a different methodology (as well as appropriate sensitivity checks where necessary). This includes:
- (a) **Type 1:** Promotional deals lasting roughly one month where the promotional deal started in the middle of a month. For these deals, only some of the quotes in the 'month of' and 'month after' are subject to the promotional deal. For these deals the CMA has compared the 'month before' and the 'month of' and, in doing so, restricted the comparison to risk profiles where the 'month of' quote was generated after the start of the promotional deal.
 - (b) **Type 2:** Promotional deals lasting roughly one month where the start date is unknown. For these deals it is not possible to control for the start date of the deal so it is not known which quotes in either the 'month of' or 'month after' are subject to the promotional deal. Therefore, the CMA has first compared the 'month before' and the 'month of' and then, as a sensitivity, the 'month before' and the 'month after'. However, this means that the CMA's analysis is unlikely to be able to assess the full impact of the promotional deal.
 - (c) **Type 3:** Promotional deals lasting at least two months where the start date is in the middle of a month or unknown. For these deals, all the quotes in the 'month after' are subject to the promotional deal. Therefore, the CMA has compared the 'month before' and the 'month after'.
 - (d) **Type 4:** Promotional deals lasting at least two months where the start date is on the first of a month. For these deals, all the quotes in the 'month of' the promotional deal should be subject to the promotional deal. Therefore, the CMA has compared the 'month before' and the 'month of' the start of the promotional deal. However, as a sensitivity, the CMA has also compared the 'month before' and the 'month after' the start of the promotional deal.
 - (e) **Type 5:** Promotional deals lasting up to two months where the start and end dates are unknown. For these deals it is not possible to control for the start date and it is not clear that all of the quotes in the 'month after' are subject to the promotional deal. Therefore, the CMA has first compared the 'month before' and the 'month of' and then, as a sensitivity, the 'month before' and the 'month after'. However, this

means that the CMA's analysis is unlikely to be able to assess the full impact of the promotional deal

- J.34 In Table J.3 below the CMA has outlined the number of product-level promotional deals in the dataset for which each of these methods has been used.

Table J.3: Product-level promotional deals and types

<i>Type</i>	<i>Number of product-level promotional deals</i>
1	22
2	3
3	22
4	6
5	6

Source: CMA analysis of Promotional Deals Dataset.

J.IV. Results

- J.35 Below the CMA outlines the results of its analysis for each promotional deal. In doing this the CMA first summaries the results in relation to retail prices and then home insurance providers' rankings. Second, the CMA includes, separately for each PCW, tables with the results at the product-level.
- J.36 The CMA considers BGL's representations on the results of this analysis, as well as analysis conducted by Oxera on promotional deals and changes in providers' prices in Annex K, sections K.III and K.IV.

J.IV.(a). Retail prices

- J.37 Table J.4 shows the relative reduction in home insurance providers' retail prices on the target PCW in comparison to other PCWs for the product-level promotional deals.¹⁷⁴⁹ As these product-level promotional deals vary in their size of discount, Table J.4 shows the relative price improvements on the target PCW using thresholds of 50%, 70% and 100% of the agreed discount for each product-level promotional deal.

¹⁷⁴⁹ Each of the product-level promotional deals included in Table F.4 are analysed between the target PCW and at least two other benchmark PCWs.

Table J.4: Retail price improvements

	Total	<i>Relative price improvement as a proportion of agreed discount when compared to two benchmark PCWs.</i>		
		<i>>=50%</i>	<i>>=70%</i>	<i>>=100%</i>
Number of deals	59	53	50	30
Proportion		90%	85%	51%

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.38 Overall there was a relative improvement in relation to all but one product-level promotional deal and, as can be seen from Table J.4:¹⁷⁵⁰

- (a) For 53 deals the relative price improvement on the target PCW was 50% or more when compared to at least two benchmark PCWs.
- (b) For 50 deals the relative price improvement on the target PCW was 70% or more when compared to at least two benchmark PCWs.
- (c) For 30 deals the relative price improvement on the target PCW was 100% or more when compared to at least two benchmark PCWs.

J.39 In addition, three of the six promotional deals where the relative price improvement on the target PCW was less than 50% when compared to at least two benchmark PCWs were Type 2 or Type 4 promotional deals where the sensitivity results show a relative price improvement of 80% or more.¹⁷⁵¹ Further four out of the five providers involved in these promotional deals told the CMA that they reduced the price on the target PCW during a promotional deal.¹⁷⁵²

J.IV.(b). Rankings

J.40 For the 40 product-level promotional deals included in the CMA's analysis:

- (a) 18 of these deals had a relative improvement of at least 1-2 % [X] percentage points in home insurance providers' appearing as the first result on the target PCW when compared to each benchmark PCW. The relative improvement in the rankings for the providers involved in these 18 deals ranged from 0-5 [X] percentage points to 15-20 [X] percentage points with an average of 5-10 [X] percentage points.¹⁷⁵³

¹⁷⁵⁰ CMA analysis of Retail Prices Dataset and Promotional Deals Dataset

¹⁷⁵¹ There were deals between [X]. CMA analysis of Retail Prices Dataset and Promotional Deals Dataset

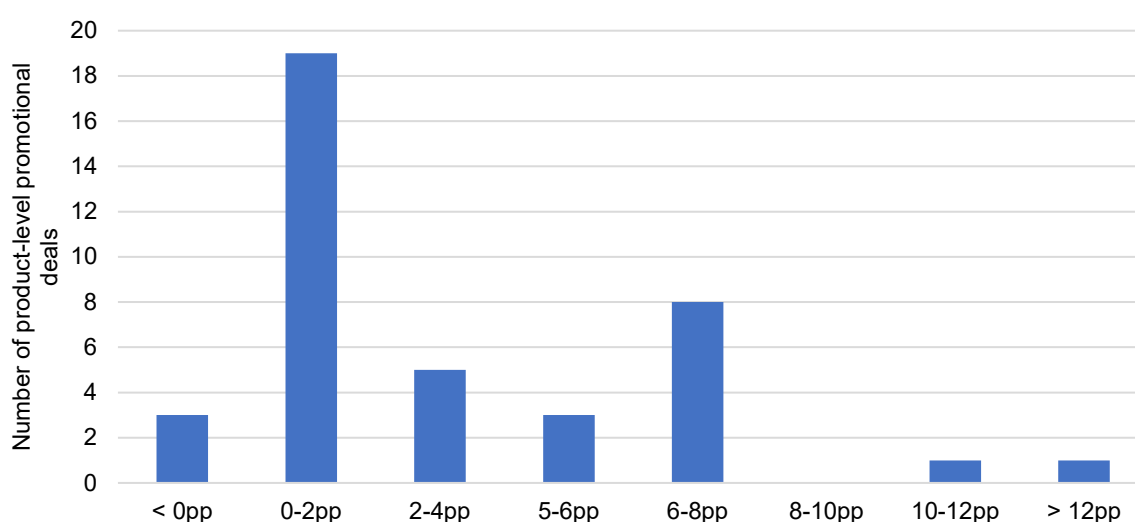
¹⁷⁵² [X].

¹⁷⁵³ The median relative improvement for these deals was 5 to 10 [X] percentage points.

- (b) 32 of these deals had a relative improvement of at least 1.5 percentage points in home insurance providers' appearing in the first five results on the target PCW when compared to each benchmark PCW. The relative improvement in the rankings for the providers involved in these 32 deals ranged from 0-5 [⌘] percentage points to 25-30 [⌘] percentage points with an average of 5-10 [⌘] percentage points.¹⁷⁵⁴

J.41 Figure J.1 shows the average relative improvement in home insurance providers' appearing as the first result (i.e. being the provider offering the lowest price for a comparable quote) on the target PCW in comparison to other PCWs for the product-level promotional deals. As these product-level promotional deals vary in their size of discount and their impact on the pricing behaviour of providers, Figure J.1 categorises the relative improvement in rankings on the target PCW in 2 percentage point ranges between less than 0 percentage points to more than 12 percentage points.

Figure J.1: Change in proportion of provider's quotes appearing as the top result



Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

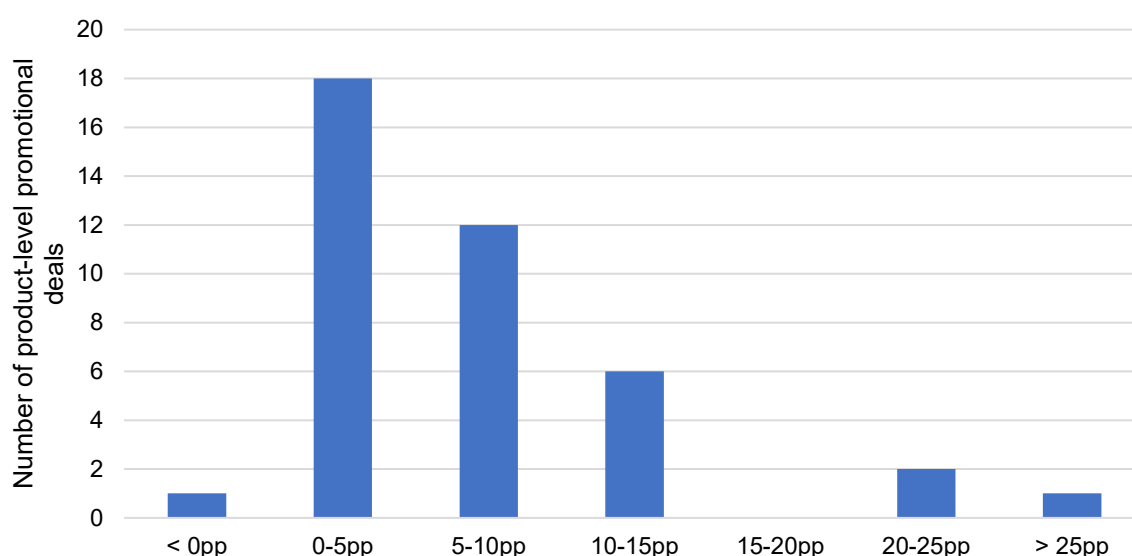
J.42 As shown in Figure J.1, the proportion of quotes appearing as the top result increased for the vast majority (around [90]% [37]) of the 40 product-level promotional deals included in the CMA's analysis after the provider implemented the agreed discount of its retail prices on the target PCW. The CMA found that the relative improvement in the proportion of provider's quotes ranked as the first result in these 40 product-level promotional deals was on average 0-5 [⌘] percentage points.¹⁷⁵⁵

¹⁷⁵⁴ The median relative improvement for these deals was 5 to 10 [⌘] percentage points.

¹⁷⁵⁵ The median relative improvement for these deals was 0 to 5 [⌘] percentage points.

J.43 Figure J.2 shows the average relative improvement in home insurance providers' appearing in the top five results (i.e. being one of the providers offering the five lowest prices for a comparable quote) on the target PCW in comparison to other PCWs for the product-level promotional deals. Figure J.2 categorises the relative improvement in rankings on the target PCW in 5 percentage point ranges between less than 0 percentage points to more than 25 percentage points as these product-level promotional deals vary in their size of discount and their impact on the pricing behaviour of providers.

Figure J.2: Change in proportion of provider's quotes appearing in the top five results



Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.44 As shown in Figure J.2, the proportion of quotes appearing in the top five results increased for the vast majority (more than 90% [39]) of the 40 product-level promotional deals included in the CMA's analysis increased after the provider implemented the agreed discount of its retail prices on the target PCW. The CMA found that the relative improvement in the proportion of provider's quotes ranked in the top five results in these 40 product-level promotional deals increased on average by 5-10 [39] percentage points.¹⁷⁵⁶

J.IV.(c). Product-level results tables

J.45 Table J.5 shows the observed relative price improvements for MoneySuperMarket's promotional deals. In doing this Table J.5 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the target PCW and the observed changes

¹⁷⁵⁶ The median relative improvement for these deals was 5 to 10 [39] percentage points.

in the difference in the retail price between the benchmark PCWs and the target PCW.

Table J.5: MoneySuperMarket and retail prices

<i>Home insurance product</i>	<i>Agreed size of deal</i>	<i>Observed change in the difference in retail price between MoneySuperMarket and ...</i>		
		<i>CTM</i>	<i>Confused</i>	<i>GoCompare</i>
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] (2)	[✂]	[✂]	[✂]	[✂]
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] (2)	[✂]	[✂]	[✂]	[✂]
[HIP] Brand X (1)	[✂]	[✂]	[✂]	[✂]
[HIP] Brand X (2)	[✂]	[✂]	[✂]	[✂]
[HIP] Brand Y (1)	[✂]	[✂]	[✂]	[✂]
[HIP] Brand Y (2)	[✂]	[✂]	[✂]	[✂]
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] (2)	[✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP] Brand X	[✂]	[✂]	[✂]	[✂]
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] ([✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP] Brand X	[✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] (2)	[✂]	[✂]	[✂]	[✂]
[HIP] (3)	[✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP]	[✂]	[✂]	[✂]	[✂]
[HIP] (1)	[✂]	[✂]	[✂]	[✂]
[HIP] (2)	[✂]	[✂]	[✂]	[✂]

J.46 Table J.6 shows the impact of promotional deals on the relative proportion of quotes ranked in the top five results for MoneySuperMarket's promotional deals. In doing this, Table J.6 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked in the top five on the target PCW and the proportion of quotes ranked in the top five on the benchmark PCWs.

Table J.6: MoneySuperMarket and top five

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked in the top five on MoneySuperMarket and ...		
		CTM	Confused	GoCompare
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP] (3)	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]

J.47 Table J.7 shows the impact of promotional deals on the relative proportion of quotes ranked as the top result for MoneySuperMarket's promotional deals. In doing this, Table J.7 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked as the top result on the target PCW and the proportion of quotes ranked as the top result on the benchmark PCWs.

Table J.7: MoneySuperMarket and top result

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked as the top result on MoneySuperMarket and ...		
		CTM	Confused	GoCompare
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]
[HIP] (3)	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP] (1)	[X]	[X]	[X]	[X]
[HIP] (2)	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.48 Table J.8 shows the observed relative price improvements for Confused's promotional deals. In doing this Table J.8 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the target PCW and the observed changes in the difference in the retail price between the benchmark PCWs and the target PCW.

Table J.8 : Confused and retail prices

[illegible]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.49 Table J.9 shows the impact of promotional deals on the relative proportion of quotes ranked in the top five results for Confused’s promotional deals. In doing this, Table J.9 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked in the top five on the target PCW and the proportion of quotes ranked in the top five on the benchmark PCWs.

Table J.9: Confused and top five

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked in the top five on Confused and ...		
		CTM	MoneySuperMarket	GoCompare
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.50 Table J.10 shows the impact of promotional deals on the relative proportion of quotes ranked as the top result for Confused's promotional deals. In doing this, Table J.10 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked as the top result on the target PCW and the proportion of quotes ranked as the top result on the benchmark PCWs.

Table J.10: Confused and top result

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked as the top result on Confused and ...		
		CTM	MoneySuperMarket	GoCompare
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]
[X]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.51 Table J.11 shows the observed relative price improvements for CTM's promotional deals. In doing this Table J.11 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the target PCW and the observed changes in the difference in the retail price between the benchmark PCWs and the target PCW.

Table J.11: CTM and retail prices

Home insurance product	Agreed size of deal	Observed change in the difference in retail price between CTM and ...		
		MoneySuperMarket	Confused	GoCompare
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

Note: * The promotional deal involved half of consumers being quoted a retail price based on a [X] discount and the other half being quoted a retail price based on [X] discount.

J.52 Table J.12 shows the impact of promotional deals on the relative proportion of quotes ranked in the top five results for CTM's promotional deals. In doing this, Table J.12 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked in the top five on the target PCW and the proportion of quotes ranked in the top five on the benchmark PCWs.

Table J.12: CTM and top five

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked in the top five on CTM and ...		
		MoneySuperMarket	Confused	GoCompare
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

Note: * The promotional deal involved half of consumers being quoted a retail price based on a [X] discount and the other half being quoted a retail price based on [X] discount.

J.53 Table J.13 shows the impact of promotional deals on the relative proportion of quotes ranked as the top result for CTM's promotional deals. In doing this, Table J.13 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked

as the top result on the target PCW and the proportion of quotes ranked as the top result on the benchmark PCWs.

Table J.13: CTM and top result

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked as the top result on CTM and ...		
		MoneySuperMarket	Confused	GoCompare
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

Note: * The promotional deal involved half of consumers being quoted a retail price based on a [X] discount and the other half being quoted a retail price based on [X] discount.

J.54 Table Table J.14 shows the observed relative price improvements for GoCompare's promotional deals. In doing this Table J.14 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the target PCW and the observed changes in the difference in the retail price between the benchmark PCWs and the target PCW.

Table J.14: GoCompare and retail prices

Home insurance product	Agreed size of deal	Observed change in the difference in retail price between GoCompare and ...		
		CTM	Confused	MoneySuperMarket
[HIP]	[X]	[X]	[X]	[X]
[HIP] Brand X	[X]	[X]	[X]	[X]
[HIP] Brand Y	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.55 Table J.15 shows the impact of promotional deals on the relative proportion of quotes ranked in the top five results for GoCompare's promotional deals. In doing this, Table J.15 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked in the top five on the target PCW and the proportion of quotes ranked in the top five on the benchmark PCWs.

Table J.15: GoCompare and top five

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked in the top five on GoCompare and ...		
		CTM	Confused	MoneySuperMarket
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

J.56 Table J.16 shows the impact of promotional deals on the relative proportion of quotes ranked as the top result for GoCompare's promotional deals. In doing this, Table J.16 sets out the relevant home insurance products, the size of the promotional deals as agreed between the provider and the PCW and the observed changes in the difference between the proportion of quotes ranked as the top result on the target PCW and the proportion of quotes ranked as the top result on the benchmark PCWs.

Table J.16: GoCompare and top result

Home insurance product	Agreed size of deal	Observed change in difference in the proportion of quotes ranked as the top result on GoCompare and ...		
		CTM	Confused	MoneySuperMarket
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]
[HIP]	[X]	[X]	[X]	[X]

Source: CMA analysis of Retail Prices Dataset and Promotional Deals Dataset.

ANNEX K: ASSESSMENT OF BGL'S REPRESENTATIONS ON PROMOTIONAL DEALS

- K.1 In this Annex the CMA considers BGL's representations on:
- (a) The incentives of PCWs to engage in promotional deals;
 - (b) The incentives of home insurance providers to engage in promotional deals; and
 - (c) The impact of promotional deals on prices and rankings, including Oxera's promotional deals analysis.

K.1. CMA's assessment of BGL's representations on the incentives of PCWs to engage in promotional deals

- K.2 As described in Section 7 at paragraph 7.103, BGL has stated that it is sceptical of the benefits of promotional deals as part of the PCW model. In support, BGL made submissions on:
- (a) a theoretical model by Oxera on PCWs' incentives to engage in promotional deals;
 - (b) evidence that some promotional deals were regarded by PCWs as unsuccessful; and
 - (c) evidence of its rival PCWs' attitudes towards promotional deals.
- K.3 The CMA considers these submissions in turn below. It does not consider that these submissions undermine its findings as set out in Section 7.C that incentivising providers to differentiate their prices across PCWs through promotional deals was an important part of the pricing strategies of two out of three of CTM's rivals.

K.1.(a). Oxera's theoretical model on PCWs' incentives to engage in promotional deals

- K.4 BGL submitted a theoretical model by its economic advisers, Oxera, to support its view that PCWs have limited incentives to engage in promotional deals.
- K.5 BGL also submitted that Oxera's theoretical model shows that, even when deals are attractive, there are limits to the number of promotional deals PCWs would be willing to adopt. This is because the more prevalent

promotional deals are, the less attractive an additional promotional deal becomes to a PCW.¹⁷⁵⁷

- K.6 The CMA recognises, as in any sector, that there is obviously no guarantee that a promotional deal will be successful in increasing revenues from sufficient additional sales to compensate for the lower price obtained under the deal. This will depend on a range of factors including not only the terms of the deal and level of marketing but also, for example, the price sensitivity of consumers and the market position of each of the parties to the deal. The CMA similarly recognises that a further factor in whether a promotional deal does generate sufficient additional sales is the number of promotional deals on the market at any point in time.
- K.7 However, this does not preclude promotional deals being a useful and important aspect of the competitive process. As described in Section 7.C.II, two of CTM's rivals (MoneySuperMarket and Confused) focused in the Relevant Period on incentivising insurers to differentiate their prices through promotional deals in order to gain a competitive pricing advantage over their rivals. Moreover, they have continued to focus on promotional deals as part of their strategies after the Relevant Period and both CTM and GoCompare have started to invest in such deals.
- K.8 In addition, the CMA observes that the predictions of Oxera's theoretical model are mixed because under certain specifications of the model, PCWs (and providers) have the incentive to engage in deals while under other specifications, they do not. Oxera interprets this range of results by concluding that *'under a broad range of circumstances, [home insurance providers] and PCWs do not have incentives to adopt promotional deals.'*¹⁷⁵⁸ The CMA does not dispute that the model as constructed shows that providers and PCWs do not have incentives to use promotional deals in some circumstances. However, in other circumstances, it shows that these incentives are present, and the model does not establish which of these circumstances are likely to exist in the market in practice.
- K.9 Therefore, by itself the model cannot be relied upon to establish what incentives PCWs had (or would have had in the absence of CTM's wide MFNs) to engage in promotional deals during the Relevant Period. In addition, the CMA considers that the assumptions and simplifications made by Oxera in its model are likely to significantly affect the results, as they

¹⁷⁵⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 248 and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 7.3.

¹⁷⁵⁸ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 7.32.

result in the model ignoring factors which are, in reality, likely to be important drivers of insurers' incentives, such as customers' lifetime values.¹⁷⁵⁹

- K.10 Therefore, the CMA considers that little weight can be placed on Oxera's theoretical model in supporting BGL's submissions on the lack of incentives on PCWs (and indeed providers) to engage in promotional deals. Instead, significant weight should be placed on evidence on the actual behaviour and strategies of the PCWs during and after the Relevant Period, as set out in Section 7.C.II.¹⁷⁶⁰ This evidence does not support BGL's submissions.

K.I.(b). Promotional deals viewed by PCWs as unsuccessful

- K.11 In support of its submission on the limited incentives on PCWs to engage in promotional deals, BGL references examples of promotional deals that the relevant PCW regarded as unsuccessful. BGL refers to evidence that CTM viewed two promotional deals it ran after the Relevant Period as unsuccessful or inconclusive¹⁷⁶¹ and that GoCompare also considered one of the deals, out of the three deals it ran, as unsuccessful.^{1762, 1763} As described at paragraphs 7.162 to 7.165, there are many factors which will determine the success or otherwise of an individual promotional deal. The CMA also acknowledges that both CTM and GoCompare did not view

¹⁷⁵⁹ Oxera's model considers one to two home insurance providers and one to two PCWs simultaneously deciding whether to agree promotional deals during a single month. Promotional deals go ahead only if a provider and a PCW both prefer a deal to no deal. Oxera calibrates some of the parameters in its model based on market evidence, varies some to test different 'base cases', and makes a number of simplifying assumptions. The CMA considers that these simplifications could have a significant impact on results. For example, Oxera assumes that providers only consider the immediate revenue from selling a policy, whereas as discussed at paragraph 7.127, providers consider the lifetime value of a consumer, based on the expectation that many consumers will renew and thereby generate additional revenue over the lifetime of their relationship with the provider. As Oxera notes, this simplification is likely to bias the results against providers accepting deals. Although Oxera states that this effect is likely to be outweighed by a bias in the other direction from another simplifying assumption, it provides no evidence to support this. The CMA did not consider that developing a more sophisticated model would be proportionate, given the availability of more direct evidence of the incentives and actual behaviour of PCWs and providers.

¹⁷⁶⁰ As well as the actual behaviour and competitive strategies of the providers as set out at Section 7.D.II, and the analysis of the impact on prices and rankings of promotional deals as set out in Section 7.E.

¹⁷⁶¹ However, internal documents submitted by one of the providers who agreed a deal with CTM [HIP] noted that [X] in relation to the deal. [X].

¹⁷⁶² BGL submitted that CTM's promotional deal with [HIP] was inconclusive, as while the deal coincided with an improvement in ranking and sales performance by the provider this upward trend was already in trend for several months before the deal and the improvement levelled off during the deal and declined thereafter. The other deal, with [HIP] was described as a 'flop' as the relevant brands declined against peers in ranking and sales performance during the deal. URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 308 to 309.

¹⁷⁶³ 'GoCompare determined that the Promotional Deal in question [with [HIP]] was beneficial for both GoCompare's customers and GoCompare. This is because the Promotional Deal in question had the effect of reducing the actual cost of [HIP]'s relevant products via the GoCompare website and hence GoCompare believed that the number of sales made via the GoCompare website would increase.' The benefit of the Promotional Deal from GoCompare's perspective is unclear. Whilst the Promotional Deal appears to have resulted in an increase in sales of the [HIP] home insurance product, the Promotional Deal did not result in an overall increase in sales of home insurance products. URN 9251, GoCompare's response to section 26 notice dated 25 June 2019, question 3. GoCompare did not undertake a full assessment of the impact of the other two deals.

promotional deals as a core part of their strategies in the Relevant Period (in CTM's case in part because of its preference and ability to rely on its wide MFN to obtain the lowest quotes).

- K.12 However, the CMA does not consider that these variations in strategy between PCWs or the perceived success or not of individual promotions mean that promotional deals are '*at most only a marginal part of a much wider picture*' and '*have had very little relevance, if any, during the Relevant Period*'¹⁷⁶⁴. As described in Section 7.C.II, promotional deals formed a core part of the pricing strategies of two of the Big Four PCWs during the Relevant Period, and both of these PCWs considered these strategies to be successful. Moreover, promotional deals have begun to be used by the other two PCWs since the Relevant Period. This reflects the dynamic nature of competition with each PCW and provider adapting their strategies over time in response to competition.

K.I.(c). Individual PCWs' appetites for promotional deals

- K.13 BGL submitted that MoneySuperMarket's evidence shows that it had limited appetite for promotional deals.¹⁷⁶⁵ This is because MoneySuperMarket told the CMA that in home insurance '[X]'¹⁷⁶⁶ and '[X]'¹⁷⁶⁷.
- K.14 The CMA does not consider that MoneySuperMarket's statements above support BGL's representation that PCWs, in particular MoneySuperMarket, have limited incentives to agree promotional deals in home insurance. Promotional deals were a core part of MoneySuperMarket's competitive strategy during the Relevant Period, and this continues to be the case after the Relevant Period, as set out in Section 7.C.II.(a). In assessing the effects of CTM's wide MFN on competition in the Relevant Period, it is highly relevant that MoneySupermarket – the largest of CTM's rivals – not only had the incentive to (and did) agree promotional deals with providers in the Relevant Period, but also that this was a core part of its competitive strategy. The CMA recognises that the use of promotional deals as a long term strategy will depend on each PCW's strategy and assessment of profitability (as well as the provider's strategy and assessment of profitability – see Section 7.D.II) and refers to its findings set out in Section 7.E on the success of promotional deals in the Relevant Period. However, as described in Section 7.C.II.(a), MoneySuperMarket is not planning to change its approach

¹⁷⁶⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 294.

¹⁷⁶⁵ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 278 and 279.

¹⁷⁶⁶ URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 2(c).

¹⁷⁶⁷ URN 9728, Transcript of CMA interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 28.

in home insurance, confirming that promotional deals are now '*business as usual*'.¹⁷⁶⁸

- K.15 BGL submitted that Confused had little appetite for promotional deals in home insurance as its focus was on motor insurance.¹⁷⁶⁹ This submission was based on evidence from Confused that its [X]. It was also based on evidence from three insurers referring to Confused's focus having shifted in 2017 to motor insurance.
- K.16 The CMA does not dispute that Confused's marketing and advertising was [X]. Unlike in private motor insurance, Confused did not feature home insurance in any above-the-line marketing (e.g. TV advertisements) from mid-2016, and so its marketing in home insurance was limited to digital channels and its website. However, this does not mean that it had 'little appetite for promotional deals in home insurance' as stated by BGL. As described at Section 7.C.II.(b), Confused confirmed that its strategy was to differentiate its offer from other PCWs in home insurance and that it focussed on promotional deals throughout the Relevant Period in both private motor insurance and home insurance. Whilst its marketing of such deals may have differed between private motor insurance and home insurance, in particular from mid-2016 onwards, it nevertheless entered into 12 promotional deals in home insurance in the Relevant Period including 5 in 2017. The views of the three insurers to whom BGL refers reflect the fact that Confused focused on private motor insurance but do not undermine the above evidence on the importance of promotional deals to Confused's pricing strategy and competitiveness in home insurance.
- K.17 BGL submitted that GoCompare shared CTM's view that promotional deals are not attractive for PCWs due to the risk that any incremental sales will not compensate for the loss in commission revenue, as GoCompare told the CMA that it did not seek to negotiate promotional deals in home insurance in the Relevant Period, and '*it was not convinced that lowering Commissions in exchange for lower premiums would result in a significant net gain for Gocompare, particularly given the risk that the Exclusive Deal would simply cannibalise sales of other products available on Gocompare's website*'.¹⁷⁷⁰
- K.18 The CMA does not dispute that GoCompare did not view promotional deals as an attractive strategy during the Relevant Period, and that this was reflected in GoCompare's strategy. However, as described in Section

¹⁷⁶⁸ URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 2.

¹⁷⁶⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 245 to 246.

¹⁷⁷⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 255.

7.C.II.(c), GoCompare has run promotional deals in home insurance for the first time since the Relevant Period.

- K.19 The CMA therefore does not consider that BGL's submissions on individual PCW's appetites for promotional deals undermine its findings that for two out of three of CTM's rivals (MoneySuperMarket and Confused) incentivising providers to differentiate their prices across PCWs through promotional deals was an important part of their strategies to secure the best prices during the Relevant Period, and that GoCompare has trialled promotional deals for the first time after CTM stopped enforcing its wide MFNs. Moreover, as set out in Section 9.B.I, in the Relevant Period, CTM's rivals were restricted in their ability and had reduced incentives to compete for lower prices from the providers with wide MFNs, and so evidence of their views on the attractiveness of engaging in promotional deals in the Relevant Period is likely to understate the attractiveness of such deals in the absence of the constraint imposed by CTM's network of wide MFNs.

K.II. CMA's assessment of BGL's representations on the incentives of home insurance providers to engage in promotional deals

- K.20 BGL submitted that '*the incentives for [insurance providers] to offer promotional deals are extremely limited*' because new business sales in home insurance are '*already frequently loss making, and offering promotional deals simply risks increasing those losses*'. According to BGL, this is because a deal increases the risk of cannibalisation of a provider's existing base by retaining at a lower price a consumer who would have been retained anyway. Additionally, there is an added risk of compounding the loss, especially if promotional deals become the norm in the market.¹⁷⁷¹ BGL also argued that by reducing its retail price for new business, the provider sacrifices some profit and there is no guarantee that the consumer will renew with the provider to enable the provider to recoup the lower profit through higher renewal prices over the life of the customer.¹⁷⁷²
- K.21 In support of its views, BGL submitted:

¹⁷⁷¹ URN 8484.5, BGL's Response to the SO dated 22 February 2020, paragraph 202. BGL also stated that '[p]romotional deals in home insurance are unpopular, and [providers] have little incentive to do them', URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, sub-section 3.2.5.

¹⁷⁷² URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 7.44. Similarly, BGL stated that promotional deals involve a 'giveaway' from the point of view of the provider as new business sales are not profitable and there is no guarantee any consumers gained via a deal will renew with the provider such that the provider can recoup those losses by raising the retail price at the point of renewal. BGL stated that this '*naturally made [providers] sceptical of the value of promotional deals and meant that they were reluctant to do them.*' URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 235.

- (a) The theoretical model by Oxera discussed in Section K.I.(a) above on PCWs' and providers' incentives to enter into promotional deals. For the reasons set out above, the CMA considers that little weight can be placed on this model in supporting BGL's submissions on the lack of incentives for PCWs and providers to enter into promotional deals.
- (b) Its interpretation of the evidence from 23 providers, accounting for 57% of sales in 2017 (including 6 with only narrow MFNs) which BGL considers confirms that these providers considered promotional deals to be unimportant or unattractive^{1773,1774}

K.22 As set out in paragraphs 7.173 to 7.175 of Section 7, the CMA acknowledges that promotional deals were not an important part of all providers' strategies given the many factors relevant to the use of promotional deals. Indeed, some providers only had limited opportunities to engage in such deals given that PCWs' promotional deal strategies involve focusing on top ranked providers (as described at paragraph 7.164). For those providers with only limited opportunities to enter promotional deals, such deals are unlikely to be a core part of their pricing strategies.

K.23 In addition, as with discounting in general, promotional deals will not always be profitable and their use will depend on the specifics of the deal and the provider's circumstances at the time. In particular:

- (a) The risk of cannibalisation and full life costing will be relevant factors in a provider assessing the value of an individual promotional deal at any given point in time, as discussed in paragraph 7.165.
- (b) Individual providers may reject individual deals proposed by PCWs due to the lack of profitability of the specific proposal made by the PCW or because they considered previous comparable deals to be unprofitable or less profitable than expected, thus deterring them from future deals (although as discussed in paragraph 7.167 rejecting one promotional deal offer did not mean the provider in question would not consider a deal again in the future). This is why, as would be expected, providers

¹⁷⁷³ Across its responses BGL submitted this was the case for the following providers: [HIP], [HIP] and [HIP]. See URN 8484.5, BGL's Response to the SO dated 22 February 2020, sections 4.8 and 4.9 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 234.

¹⁷⁷⁴ BGL also submitted that evidence from MoneySuperMarket supports its view, as MoneySuperMarket stated that, for providers, '[X]'. See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 278. While the CMA acknowledges that providers may not have the incentive to apply the discounts involved in promotional deals to all of their customer base on a continuous basis, this does not undermine their use of promotional deals as a way of applying targeted and time-limited discounts.

who are willing to consider and have engaged in promotional deals consider them on a case-by-case basis.

- K.24 However, these factors do not in any way undermine the CMA's finding that providers are willing to use promotional deals. In particular, based on the actual behaviour and strategies of providers, as described in Section 7.D, it can be seen that retail prices are a particularly important dimension of competition between providers and that, as a result, providers' strategies include the use of differential pricing such as promotional deals.
- K.25 As regards the 23 providers cited by BGL in support of its representations, the CMA does not dispute that ten of the providers referred to by BGL, accounting for approximately 15% of sales through PCWs in 2017, either prefer to set uniform prices across PCWs or prefer to use differential base retail pricing,¹⁷⁷⁵ and so preferred not to engage in promotional deals either during the Relevant Period or afterwards.
- K.26 However, as set out in Annex L, the CMA disagrees with BGL's characterisation of the evidence from many of these providers that they considered promotional deals to be unimportant or unattractive. In particular, five of the providers cited by BGL ([HIP], [HIP], [HIP], [HIP] and [HIP]) (accounting for over 20% of sales made through PCWs in 2017) considered promotional deals on a case by case basis, engaged in promotional deals either during or since the Relevant Period and generally considered those deals to be successful.
- K.27 In addition, while [HIP] (accounting for 0-5% ([X])% of sales made through PCWs in 2017) told the CMA that promotional deals were not an important part of its strategy, it was willing to consider them on a case-by-case basis, as outlined in paragraph 7.171. A further seven providers [[HIP], [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP]] (accounting for approximately 18% of sales made through PCWs in 2017) which stated that they were not willing to consider promotional deals during the Relevant Period have agreed such deals after the Relevant Period. As set out in Section 9.C, this is consistent with providers having a greater incentive to engage in promotional deals due to an increase in competition between providers after CTM stopped enforcing its wide MFNs.

¹⁷⁷⁵ Of these nine providers, two providers [[HIP], [HIP]] accounting for [X]% of sales engaged in differential base retail pricing.

K.28 The evidence from providers does not therefore support BGL's submission that the incentives for providers to agree promotional deals are '*extremely limited*'.

K.III. CMA's assessment of Oxera's promotional deals analysis

K.29 In Section 8 of the Third Oxera Report and subsequent responses, BGL submitted an analysis of promotional deals carried out by Oxera. This analysis was based on an alternative methodology to the one used by the CMA in Annex F of the SO (the 'CMA's SO analysis') and looked at whether promotional deals lead to a relative price improvement and how promotional deals were implemented by home insurance providers.

K.30 Below, the CMA has set out its assessment of:

- (a) whether the results of Oxera's analysis undermine the CMA's SO analysis; and
- (b) whether, in the light of Oxera's alternative methodology, the CMA should adjust the methodology it employed in its SO analysis.

K.III.(a). Assessment of Oxera's analysis of relative price improvements

K.31 In this sub-section, the CMA sets out its assessment of the results and methodology of Oxera's analysis relating to relative price improvements.

K.32 In doing this the CMA has for ease compared Oxera's analysis to the CMA's SO analysis because Oxera's analysis was submitted by BGL in response to the CMA's SO analysis. However, as the CMA's updated analysis merely extends the CMA's SO analysis to cover additional promotional deals, the same overall conclusions apply when considering the CMA's updated analysis, which is set out in Annex J.¹⁷⁷⁶

K.III.(a).(i). Assessment of Oxera's results

K.33 Based on Oxera's analysis, BGL submitted that the data does not demonstrate that promotional deals resulted in price reductions on the target PCWs, nor that the relative price improvements were always in line with the

¹⁷⁷⁶ The CMA's SO analysis considered 17 deals and the CMA's updated analysis considers 59 deals.

agreed amount. In particular, this is because Oxera's analysis suggests that of the 19 brand-level promotional deals included:¹⁷⁷⁷

(a) 14 resulted in a relative price improvement.

(b) three results in a limited price improvement.

(c) two had no effect on relative prices.¹⁷⁷⁸

K.34 However, the CMA does not consider that these results undermine the CMA's conclusion that promotional deals led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs. This is for three reasons.

K.35 First, the two promotional deals where the results suggested there was no effect on relative prices should not be included in the analysis as they started in August 2015 and therefore, based on the data available, fall outside of the period in which this analysis can be conducted (see paragraph J.8 in Annex J).¹⁷⁷⁹

K.36 Second, for the remaining 17 brand-level promotional deals the results of Oxera's analysis do not substantively differ from the results of the CMA's SO analysis. In particular, for all of these deals Oxera's analysis finds a relative price improvement even if it considers it to be '*limited*' in three cases.¹⁷⁸⁰

K.37 Third, Oxera's analysis defined a limited relative price improvement as a relative price improvement on the target PCW that is '*considerably less*' than the value of the agreed discount.¹⁷⁸¹ This definition is flawed for two reasons:

(a) Oxera did not use a defined threshold although in subsequent responses it stated '[~~§~~]',¹⁷⁸² and

¹⁷⁷⁷ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 8.6, 8.39, 8.41, 8.42 and 8.47 and table 8.7.

¹⁷⁷⁸ In particular, one promotional deal in Oxera's analysis appears to have caused a relative price deterioration on the target PCW.

¹⁷⁷⁹ Oxera's analysis suggested that there was no effect on relative prices in relation to a deal agreed between Confused and [HIP] which [~~§~~]. This was based on the deal starting in [~~§~~]. However, [HIP] clarified that the deal actually started in [~~§~~] and continued [~~§~~]. See URN 9256, [HIP]'s response to section 26 notice dated 9 July 2019, question 2.

¹⁷⁸⁰ URN 8484.3, Third Oxera Report dated 22 February 2019, table 8.7.

¹⁷⁸¹ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.46.

¹⁷⁸² Oxera explained that no threshold was needed for two deals between [HIP] and Confused as there was no '[~~§~~]'. However, as explained above these deals should not be included in the analysis as they started in August 2015 and therefore fall outside of the period in which this analysis can be conducted. Oxera did not explain what threshold was used in relation to the three deals it had identified as leading to a limited relative price improvement (these deals were between [HIP]'s three brands and Confused). URN 8736, BGL's response to

- (b) Oxera states that the ability of its analysis to measure the magnitude of a home insurance provider's price change following a promotional deal could be affected by changes in the sample of risk profiles in the Consumer Intelligence data (see section K.III.(b).(ii) below for the CMA's assessment of the impact of the changes in the risk profiles in the Consumer Intelligence data overall and Oxera's use of a sub-sample of those risk profiles).¹⁷⁸³ If this is the case then it is not clear that one can reliably distinguish between a '*limited*' relative price improvement and a relative price improvement in Oxera's analysis.

K.38 The CMA's position is further supported by the CMA's updated analysis (as set out in Annex J) and the qualitative evidence received from home insurance providers and PCWs (as set out in Section 7.E); indeed all 13 providers who were asked told the CMA that they reduced the price on the target PCW.¹⁷⁸⁴ For the reasons set out in the next sub-section, the CMA considers that where the results of Oxera's analysis differ from those of the CMA's analysis it was appropriate to place weight only on the results of the CMA's analysis.

K.III.(a).(ii). Assessment of Oxera's methodology

K.39 Table K.1 below summarises the key differences and similarities between Oxera's methodology and the methodology used in the CMA's SO analysis.

Table K.1: Summary of methodologies

	<i>CMA's methodology</i>	<i>Oxera's methodology</i>
Time period of analysis	Analysing price changes in the 'month before', the 'month of' and the 'month after' the start of each promotional deal.	Analysing price evolution for the period from May 2016 to October 2017.

Oxera follow-up questions to the Oral Hearing dated 5 April 2019, question 1; URN 8484.3, Third Oxera Report dated 22 February 2019, table 8.7.

¹⁷⁸³ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.34

¹⁷⁸⁴ See paragraph K.84.

Type of comparison	For each month, comparison of average retail prices on each PCW with a promotional deal with each of the other PCWs separately (i.e. PCWs pairings).	Same
Risk profiles included	Risk profiles that remained constant in the month before, the month of and the month after the start of the promotional deal.	Full set of risk profiles from the Retail Prices Dataset, from May 2016 to October 2017.
Approach to control for excess values	Matching of excess values for the relevant risk profiles across each PCW-PCW comparison.	Same
Data used	Consumer Intelligence pricing data and data on promotional deals from PCWs.	Same

Source: Annex F of the CMA's SO dated 2 November 2018, URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 8.22 to 8.37 and URN 8502.4, Annex to BGL's response to the SO dated 22 February 2019, document entitled 'Oxera analysis of retail prices', sub-folder '2. Promotional deals'.

- K.40 The key differences between the methodologies arise from the sample of risks being used and the time period considered.
- K.41 The CMA's SO analysis was limited to a three-month period for each deal and considered exclusively risk profiles present during the whole period. This was done to ensure that any observed changes in relative prices were not driven by changes in the risk profiles,¹⁷⁸⁵ while still allowing us to assess the change in retail prices by looking at the 'month before', the 'month of' and the 'month after' the deal.
- K.42 In contrast Oxera's analysis considers an 18-month period for each deal (May 2016 to October 2017) and allows the basket of risk profiles to change each month. This is because Oxera included all risk profiles from the Retail Prices Dataset (see Annex O) for which the relevant provider quoted on both the target PCW and the relevant benchmark PCW. Oxera's rationale was that such an approach enabled it to assess the direction of price changes at the time of a promotional deal despite at the same time recognising that the ability of its analysis to measure the magnitude of a home insurance provider's price change following a promotional deal could be affected by changes in the sample of risk profiles in the Consumer Intelligence data.
- K.43 Below, the CMA considers the justifications put forward by BGL [Oxera] for adopting this alternative approach and the extent to which Oxera's analysis is affected by the limitations with the Consumer Intelligence pricing data set out in Annex O. The CMA finds that the methodology employed by Oxera is

¹⁷⁸⁵ Consumer Intelligence updates the information included in each risk profile every three months, with one-third of around [X] risk profiles replaced each month.

subject to a number of limitations that affect the robustness of its analysis when compared to the analysis set out in Annex J such that where results differ weight is placed only on the CMA's analysis.

K.III.(a).(ii).(1). Underlying risk of the full sample

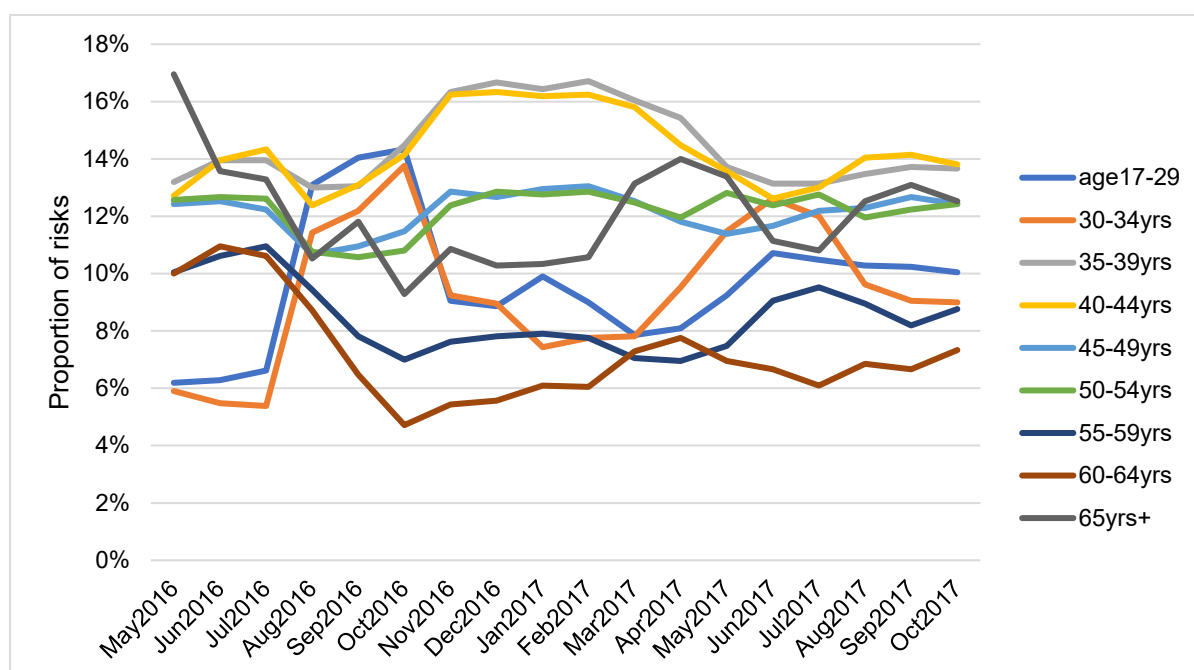
- K.44 Oxera's first justification was that, while the risk profiles in the Retail Prices Dataset are updated every three months, *'[t]he new risks in the sample are intended to be similar to the risks they replace. As such, the underlying risk of the full sample remains consistent across months'*.¹⁷⁸⁶
- K.45 The CMA considers that this justification does not hold for two reasons.
- K.46 First, the underlying risk of the full sample changes over time. To assess this, the CMA has considered how Consumer Intelligence collects pricing information.
- K.47 Consumer Intelligence collects pricing information using [REDACTED].¹⁷⁸⁷
- K.48 This information allows Consumer Intelligence to track changes to the underlying risk of the full sample and Consumer Intelligence [REDACTED]. For example, [REDACTED].
- K.49 The CMA understands that:¹⁷⁸⁸
- (a) Consumer Intelligence updates these optimums over time either proactively or based on feedback from PCWs and providers to ensure its sample accurately reflects UK consumers; and
 - (b) Consumer Intelligence has a tolerance threshold which, for example, means that the percentage of risk profiles in its sample that fall into the age bracket 17-29 can vary around the optimum by +/-3%.
- K.50 Both of these factors mean that underlying risk of the whole sample can change over time as the optimums are updated and the proportion of risks vary around those optimums. This can be seen by looking at KVBs over time.
- K.51 For example, Figure K.1 below shows the KVB for age and how the percentage of risk profiles in each age bracket varies over time.

¹⁷⁸⁶ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.34.

¹⁷⁸⁷ URN 4856.1, Consumer Intelligence's response to section 26 notice dated 30 November 2017, document entitled 'Trended KVBs'.

¹⁷⁸⁸ URN 9135, Consumer Intelligence's response to section 26 notice dated 26 June 2019, question 2.

Figure K.1: KVB for age (May 2016 – October 2017)



Source: CMA analysis of URN 4856.1, Consumer Intelligence's response to section 26 notice dated 30 November 2017, spreadsheet titled 'Trended KVBs'

K.52 As can be seen there is material variation across the age brackets. For example, in May 2016 the bracket 17-29 accounts for 6% of risk profiles and in October 2016 it accounts for 14% of risk profiles. Similarly, the 65+ bracket accounts for 17% of risk profiles in May 2016 and 9% in October 2016.

K.53 The CMA has identified similar variation in 9 out of 17 profile variables¹⁷⁸⁹,¹⁷⁹⁰ and while it is difficult to know the exact impact on retail prices of the changes in each profile variable, these profile variables are all likely to affect pricing to some extent. This indicates that the underlying risk of the full sample does not remain consistent across months and undermines Oxera's first justification.

K.54 In addition, Consumer Intelligence, which provided the pricing data, told the CMA that '[redacted]'.¹⁷⁹¹

¹⁷⁸⁹ Age, number of adults, number of children excess values, contents value, employment status, marital status, NCD (no claims discount) and region. CMA's analysis of URN 4858, Consumer Intelligence's response to section 26 notice dated 30 November 2017, spreadsheet entitled 'Trended KVBs'.

¹⁷⁹⁰ The CMA also considers that there is material variation for the period after Oxera's analysis. In particular, based on information submitted by Consumer Intelligence for the period October 2017 to June 2019 the CMA has found similar variation for [16] out of [57] profile variables. Age, alarm, bedrooms, construction, contents value, five lever locks, garage, market value, neighbourhood watch, patio doors, rebuild cost, sex, smoke detectors, structure, total rooms and years with current insurer. CMA analysis of URN 9136, Consumer Intelligence's response to section 26 notice dated 26 June 2019, question 1.

¹⁷⁹¹ URN 9135, Consumer Intelligence's response to section 26 notice dated 26 June 2019, question 3.

- K.55 This statement suggests that price differences can be considered between two months, a period of time over which the make-up of risks is the same. This reinforces the CMA's view that it is not possible to consider trends over longer periods due to changes in the risk profiles included in the full sample.
- K.56 Second, Oxera does not use the full sample of risks in its analysis. In particular, Oxera uses a sub-sample of risk profiles for its analysis because it controls for excess levels within a month and relevant providers do not quote for each risk profile in each month. Further, as described below the sub-sample of risk profiles used in Oxera's analysis varies in size and thus make-up from month to month. This means that the underlying risk of the sub-sample used by Oxera will change over time and is in contrast to the CMA's approach where the same sub-sample of risk profiles is used in each of the three months included in the assessment.

K.III.(a).(ii).(2). Small change in the sample each month

- K.57 The second justification put forward by Oxera was that *'[o]nly one third of the Consumer Intelligence sample changes each month'*.¹⁷⁹²
- K.58 In this regard the CMA considers that, first, one third is not a low proportion (and as set out above the new risk profiles are not equivalent to the old risk profiles) and, second, while this may be the change at the full sample level Oxera's analysis is not conducted based on the full sample.
- K.59 Oxera's analysis uses a different sub-sample of risk profiles when calculating average premiums in each month,¹⁷⁹³ which means that the proportion of risk profiles that can change from one month to another can be even greater. The CMA has analysed the variation in the size of the sub-samples used in Oxera's analysis over time.
- K.60 For example, Figure K.2. below shows for each month the size of the samples used to assess a deal agreed between MoneySuperMarket and [HIP]. This is done separately for the three PCW pairings (ie MoneySuperMarket and CTM, MoneySuperMarket and Confused and MoneySuperMarket and GoCompare).

Figure K.2: Number of risks used by Oxera to calculate monthly average premiums, [HIP]/MoneySuperMarket deal (May 2016 – October 2017)

[

¹⁷⁹² URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.34.

¹⁷⁹³ They calculate average premiums on each PCW only for risk profiles where the same excesses were used on both the target PCW and the PCW with which it was being compared.

Note: MoneySuperMarket denoted by MSM.

K.61 As can be seen there is material variation in the size of the sub-samples over time in each case ranging from roughly 1,800 risk profiles to 800 risk profiles or less. The CMA has found similar variation for all of the 19 deals that Oxera analysed.¹⁷⁹⁴ This variation undermines Oxera's second justification as it indicates that there is material variation in the sub-samples used by Oxera each month and this can be in excess of a third of the sample.

K.III.(a).(ii).(3). Size of the sub-sample used for the analysis

K.62 The third justification put forward by Oxera to support its methodology was [REDACTED], compared to a smaller number of risks analysed by the CMA.¹⁷⁹⁵

K.63 While it is correct that Oxera's analysis relies on a higher number of risk profiles, the CMA considers that, given the limitations raised above, this does not make the analysis more robust as the risks included in each month are not comparable.

K.III.(a).(ii).(4). Data limitations

K.64 Both the CMA's SO analysis and Oxera's analysis are based on pricing data from Consumer Intelligence. As set out in Annex O, there are certain factors that may affect the prices quoted by providers on different PCWs. For example, these factors may lead to the same consumer generating different risk profiles through different PCWs, which ultimately results in the same consumer receiving different prices for the same product on different PCWs even when a provider intends to quote the same price on different PCWs for the same consumer.

K.65 As set out in Annex O, these factors can and do change over time and, in part, this is why the CMA's SO analysis was restricted to a short period of time. In particular, as set out at paragraph J.17, the CMA would expect these factors to be constant within the short period of time assessed in its analysis (2 to 3 months). In contrast Oxera considers an 18 month period and as such its analysis is more likely to be affected by changes in these factors

¹⁷⁹⁴ For 18 of the deals the sample varied by at least 1,000 risk profiles (out of a possible total of [REDACTED]) on at least one PCW pairing and for the last deal the sample varied by over 900 risk profiles on one PCW pairing. CMA analysis of URN 8502.4, Annex to BGL's response to the SO dated 22 February 2019, document entitled 'Oxera analysis of retail prices', sub-folder '2. Promotional deals'.

¹⁷⁹⁵ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.32.

which would further reduce the robustness of its results when compared to the CMA's SO analysis.

K.III.(a).(ii).(5). Summary

- K.66 For the reasons set out above, the CMA considers that the methodology employed by Oxera is subject to a number of limitations that affect the robustness of its analysis when compared to the CMA's methodology.¹⁷⁹⁶ These limitations arise from Oxera's attempts to extend the analysis to consider more risk profiles and a longer period in its analysis.
- K.67 As such the CMA does not consider it appropriate to adjust the methodology it has used to assess promotional deals (see Annex J) and considers that where the results of Oxera's analysis differ from those of the CMA's SO analysis, it is appropriate to place weight only on the results of the CMA's analysis.

K.III.(b). Summary of the CMA's assessment

K.III.(b).(i). Relative price improvements

- K.68 Based on Oxera's analysis, BGL submitted that, contrary to the CMA's findings in the SO, the data does not demonstrate that promotional deals resulted in price reductions on the PCWs which had those deals, nor that the relative price improvements were always in line with the agreed amount.
- K.69 However, the CMA does not consider that the results of Oxera's analysis substantively differ from those of the CMA's SO analysis, especially as the two deals where Oxera's analysis suggests there was no relative price improvements should not be included in the analysis as they started in August 2015 and are therefore not covered by the available data (see paragraph J.8). As such the CMA does not consider that Oxera's analysis undermines the CMA's conclusion that promotional deals led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs.
- K.70 The CMA's position is further supported by its own updated analysis set out in Annex J (the 'CMA's updated analysis', which uses the same methodology

¹⁷⁹⁶ The methodology used in the CMA's SO analysis does not substantively differ from the methodology used in the CMA's updated analysis. The main difference is the number of deals - the CMA's SO analysis considered 17 deals and the CMA's updated analysis considers 59 deals.

as the CMA's SO analysis but expands it to a greater number of deals) and the qualitative evidence received from home insurance providers and PCWs (all 13 providers who were asked told the CMA they reduced the price on the PCW with which they had the promotional deal (the 'target PCW')).¹⁷⁹⁷

- K.71 Further, the CMA considers that the methodology employed by Oxera is subject to a number of limitations that affect the robustness of its analysis when compared to the CMA's methodology.¹⁷⁹⁸ Therefore, the CMA:
- (a) did not consider it appropriate to adjust the methodology it has used to assess promotional deals (see Annex J); and
 - (b) considered that where the results of Oxera's analysis differed from those of the CMA's SO analysis (and therefore also from the CMA's updated analysis) it was appropriate to place weight only on the results of the CMA's analysis.

K.III.(b).(ii). Implementation of promotional deals

- K.72 BGL also submitted that analysis conducted by Oxera¹⁷⁹⁹ shows that:
- (a) For some promotional deals there was an increase in the absolute price on both the target PCWs and the PCWs with which they were being compared (the 'benchmark PCWs') despite the relative price improvements observed; and
 - (b) Where providers implemented promotional deals by increasing retail prices on the benchmark PCWs, this was not explained by general pricing trends.
- K.73 The CMA does not consider that Oxera's analysis supports these points because:
- (a) Oxera's analysis lacks a counterfactual, i.e. it does not consider how prices may have moved absent the promotional deal, which means

¹⁷⁹⁷ See paragraph K.84.

¹⁷⁹⁸ The methodology used in the CMA's updated analysis does not differ from the methodology used in the CMA's SO analysis. Rather the CMA's updated analysis is merely an extension of the CMA's SO analysis as it considers a greater number of deals (59 compared to 17). See Annex J for the CMA's updated analysis.

¹⁷⁹⁹ Both the analysis set out in the Third Oxera Report and subsequent responses. URN 8484.3, Third Oxera Report dated 22 February 2020, section 8; URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6; URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

that, by itself, it does not show that any increase in price at the time of the promotional deal was due to the promotional deal.¹⁸⁰⁰

- (b) The methodology employed by Oxera to assess general price trends is subject to a number of limitations such that the CMA does not consider Oxera's analysis to be robust. In addition, there is no clear way to address these limitations such that it is not possible to assess whether increases in absolute prices for some promotional deals can be explained by general pricing trends.
- (c) The results of Oxera's analysis are not consistent with the qualitative evidence from providers on how they implemented deals or the qualitative evidence from PCWs on the processes they had in place to check the implementation of promotional deals.

K.74 Finally, the CMA notes that, irrespective of its validity, Oxera's analysis does not undermine the CMA's conclusion that, based on the analysis set out in Annex J and qualitative evidence from providers and PCWs, promotional deals led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs. As set out in Section 7, this means that promotional deals were an important way for providers and PCWs to compete on the price quoted and this is not undermined by evidence of some limited price increases on other PCWs.

K.75 In the rest of this sub-section K.III, the CMA sets out its assessment of Oxera's analysis of relative price improvements before then setting out its assessment of Oxera's analysis of the implementation of promotional deals.

K.III.(c). Assessment of Oxera's analysis of the implementation of promotional deals

K.76 In this sub-section, the CMA sets out its assessment of Oxera's analysis of the implementation of promotional deals by home insurance providers.

K.77 In particular, BGL submitted that Oxera's analysis¹⁸⁰¹ shows that:

¹⁸⁰⁰ As noted by BGL the CMA's analysis also does not have a counterfactual. As set out in Section 7.E, this is why the CMA has considered its analysis alongside other evidence in coming to its findings.

¹⁸⁰¹ Both the analysis set out in the Third Oxera Report and subsequent responses. URN 8484.3, Third Oxera Report dated 22 February 2020, section 8; URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6; URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

- (a) For some promotional deals there was an increase in the absolute price on both the target PCWs and the benchmark PCWs despite the relative price improvements observed; and
- (b) For some promotional deals the provider implemented the deal by increasing retail prices on the benchmark PCWs and these increases were not explained by general pricing trends.

K.78 BGL also submitted that the CMA's own analysis of promotional deals shows that, for 49 out of 59 promotional deals included in the analysis, the deal does not appear to have delivered the expected consumer benefits even to consumers using the relevant PCW as:¹⁸⁰²

- (a) For seven out of the 59 deals there was an increase in the absolute price on the target PCWs.
- (b) For 27 out of the 59 deals the relative price improvement observed was not in line with the size of the agreed deal.¹⁸⁰³
- (c) For 15 out of the 59 deals the price increased on the benchmark PCWs.

K.III.(c).(i). Absolute increases in prices

K.79 Oxera's analysis suggests that for six promotional deals, despite a relative price improvement, absolute prices increased both on the target PCW and the benchmark PCWs.¹⁸⁰⁴ Broadly consistent with this, the CMA's SO analysis found absolute price increases for five of these promotional deals (as outlined above at paragraph K.67, in such situations the CMA puts weight only on the results of the CMA's SO analysis/updated analysis¹⁸⁰⁵). Therefore, both the CMA's SO analysis and Oxera's analysis are potentially consistent with Oxera's view that '*a HIP[home insurance provider] can create a relative price improvement and thus give the impression of delivering a promotional deal [...] by increasing the price on all other PCWs [the benchmark PCWs] and sales channels*'.¹⁸⁰⁶

¹⁸⁰² URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.18 and figure 6.1.

¹⁸⁰³ This would be the case if, for example, the price on the target PCW fell by the agreed amount and the price on the benchmark PCW fell by any amount.

¹⁸⁰⁴ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 8.6, 8.39, 8.41, 8.42 and 8.47 and table 8.7.

¹⁸⁰⁵ The results of the CMA's SO analysis and the results of the CMA's updated analysis are the same for promotional deals included in both analyses, since the CMA's updated analysis uses the same methodology as the CMA's SO analysis but expands it to additional deals.

¹⁸⁰⁶ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.9

- K.80 However, as noted by BGL, the CMA's SO analysis does not consider a counterfactual¹⁸⁰⁷ and the same is true of Oxera's analysis. In the absence of such a counterfactual neither analysis shows that the increases in absolute prices were due to the promotional deals, and so the results need to be considered alongside other evidence.¹⁸⁰⁸ Where in both pieces of analysis there are deals where the price appears to have increased on either the PCW with the deal or other PCWs (as well as where the relative price improvement observed was not in line with the size of the agreed deal), the CMA has considered whether these results are consistent with other evidence.
- K.81 Therefore, the CMA has considered whether there is any evidence to support the view that, in some cases, providers may create a relative price improvement on the target PCW by increasing the price on the benchmark PCWs. This is particularly important as it is not clear what incentive a provider would have to implement a promotional deal by primarily increasing the price on the benchmark PCWs. In particular, all else equal, this would be expected to lead to a reduction of sales on the benchmark PCWs and have no impact on sales on the target PCW.
- K.82 In this regard, BGL:
- (a) stated that providers may have an incentive to implement a promotional deal in this way when the promotional deal included 'brand-specific TV advertising'.¹⁸⁰⁹
 - (b) submitted a theoretical model developed by Oxera which sought to show that giving the impression of a relative price improvement by

¹⁸⁰⁷ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 8.10.

¹⁸⁰⁸ For example, BGL said that it is plausible that the provider would have discounted its prices on the relevant PCW even if they had not agreed a promotional deal or would have discounted its prices across all PCWs rather than just on the PCW with which it had a promotional deal. BGL stated that these counterfactuals were '*plausible as, in CTM's experience as supported by [providers] submissions, providers tend [promotional deals] when they are looking to drive sales growth anyway, and are prepared to sacrifice profits per sale*' such that '*[i]f the provider were to discount on that PCW anyway, the [promotional deal] would have brought no incremental benefits to consumers, and if the [provider] were to discount across all PCWs, even if by a modest amount, the [promotional deal] could have reduced the overall benefits to consumers.*' BGL did not cite any specific evidence to support these statements and the CMA has not seen any evidence to suggest that providers would have discounted prices if there had not been a promotional deal or that the size of the discount (whether on an individual PCW or aggregated across PCWs) would have been the same absent the promotional deal. This is particularly the case when absent the promotional deal the provider would not have benefitted from any kind of commission fee reduction or other benefit such as ATL advertising which are typically agreed as part of a promotional deal. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 8.5, 8.10 and 8.12 and URN 10460, Oxera's Fourth Report dated 14 February 2020, paragraphs 6.29 and 6.30.

¹⁸⁰⁹ URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, paragraph 6.2.

increasing prices on a rival PCW is a credible strategy based on 'realistic market circumstances'.¹⁸¹⁰

- (c) submitted that five providers¹⁸¹¹ [[HIP], [HIP], [HIP], [HIP], [HIP]] increased prices to other consumers (e.g. on other PCWs or before the deal) to fund their deals and one of those providers also reduced the quality of its product.¹⁸¹²

K.83 However, the CMA does not consider that any of these points supports the view that providers are likely to implement a promotional deal by increasing prices on PCWs. First, BGL did not provide any evidence to show that providers increased prices on rival PCWs when there was 'brand-specific TV advertising' and none of the deals identified by the CMA's SO analysis and Oxera's analysis as involving an increase in the price on rival PCWs included 'brand-specific TV advertising'.¹⁸¹³

K.84 Second, the CMA observes that the predictions of Oxera's theoretical model are mixed because under certain specifications of the model, providers have the incentive to implement a promotional deal by reducing the price on the PCW with the promotional deal while under other specifications, they are incentivised to increase the price on other PCWs. Therefore, by itself the model cannot be relied upon to establish the incentives providers had (or would have had in the absence of CTM's wide MFNs) when implementing promotional deals.¹⁸¹⁴ In addition, the CMA considers that the assumptions and simplifications made by Oxera in its model could significantly affect the results.¹⁸¹⁵

¹⁸¹⁰ URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, paragraphs 6.6 to 6.10.

¹⁸¹¹ In the Oral Hearing on the DPS, Oxera cited the pricing behaviour of another provider [HIP] – see URN 10509.1, BGL's slides presented at the DPS Oral Hearing held on 9 March 2020, slide 22. However, the evidence cited by Oxera relates to [HIP]'s pricing behaviour during a Volume Based Discount it agreed with CTM. For further information on Volume Based Discounts and the impact they have on retail prices see paragraphs 7.105-7.106.

¹⁸¹² URN 10459, BGL's response to the Letter of Facts dated 14 February 2020, paragraph 235.

¹⁸¹³ Only MoneySuperMarket included promotional deals in brand-specific TV advertising. See URN 6453, MoneySuperMarket's response to section 26 notice dated 27 April 2018, question 3, spreadsheet entitled 'Appendix 2 - Pricing Investments v3 updated', tab 'Home' and URN 8502.4, Annex to BGL's response to the SO dated 22 February 2019, document entitled 'Oxera analysis of retail prices', sub-folder '2. Promotional deals'.

¹⁸¹⁴ In particular, Oxera's theoretical model is based on a range of assumptions which when changed lead to different results with a provider sometimes preferring to implement a deal by reducing its price on the PCW with which it had a deal and sometimes preferring to increase the price on other PCWs. Consistent with this Oxera stated that the model only shows that providers '*may prefer to deliver the impression of a promotional deal by increasing prices on other channels rather than reducing the price on the target PCW [ie the PCW with the deal]*' [emphasis added]. URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, paragraph 6.10.

¹⁸¹⁵ Oxera's model includes two providers, two PCWs and the direct channel. For one provider the model considers the profitability of engaging in a promotional deal or not based on how the promotional deal is implemented. For example, one scenario considered is that the provider does not engage in a promotional deal, another is that the provider engages in a promotional deal and implements it by reducing the price on the target

K.85 Therefore, the CMA considers that little weight can be placed on Oxera's theoretical model in supporting BGL's submissions on how providers implement promotional deals and instead significant weight should be placed on that fact that the CMA asked 13 home insurance providers about how they implemented promotional deals and found that:

- (a) All 13 home insurance providers that were asked told the CMA that they reduced the price on the target PCW in line with the agreed amount during a promotional deal.¹⁸¹⁶
- (b) while the five providers cited by BGL suggested there were price increases elsewhere they are in the minority and in all of these cases the providers explained that the price on the PCW with the deal was lower than it otherwise would have been:¹⁸¹⁷
 - (i) three of those providers suggested the changes were small and did not prevent a reduction in price on the relevant PCW, for example, ahead of a [redacted] discount on one PCW, one of these providers first increased its prices on all PCWs by [redacted] which means that prices were still [redacted] lower on the relevant PCW than before the deal;¹⁸¹⁸

PCW, and another is that the provider engages in a promotional deal and implements it by increasing the price on other PCWs. Oxera calibrates some of the parameters in its model based on market evidence, but does not provide any justification for the key switching assumptions used in its model (BGL states that "[a]lthough low, these switching rates do not seem unrealistic for at least certain [home insurance providers]"). While the CMA does not have the evidence to calibrate the switching assumptions exactly, those used by Oxera in its base case imply that if a £10 promotional deal was implemented by a £10 reduction in the price on the target PCW, the providers sales on that PCW would increase by just 9.1%. This is inconsistent with providers' estimates of consumers' elasticity of demand on the PCW channel. In particular, as set out in Section 7.B.II.(a), the elasticity of demand measures the percentage change in sales volumes in response to a 1% change in price and providers' estimates range from 5-15%. This means that a 1% reduction in the price on a PCW – equivalent to a £1.80 reduction in Oxera's model – would lead to a 5-15% increase in the provider's sales on that PCW. Therefore, a £10 reduction in price (equivalent to 5.6% reduction in price in Oxera's model) would lead to a substantially large increase in the provider's sales on the target PCW than the 9.1% in Oxera's model.

¹⁸¹⁶ [redacted].

¹⁸¹⁷ In addition to these five, [HIP] told the CMA that it may adjust base retail prices across all channels depending on the scale/duration of a deal, but this would typically be a fraction of a percent and [HIP] told the CMA that during 2016 there were some consumer segments where the additional cost of the cashback it was offering as part of a deal would have meant that it was underwriting the business at a loss, therefore for those consumer segments [HIP] it made minor increases in the retail price (before the cashback was applied to that price) to maintain profitability. URN 6404, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 9652b, [HIP]'s response to section 26 notice dated 26 July 2019, question 2(a).

¹⁸¹⁸ In particular,

- [HIP], who engaged in a [redacted] deal with [redacted], said there were small increases in price on all other channels and an [redacted] reduction in price on the relevant PCW. While these effects balanced out in terms of [HIP]'s overall level of premiums, prices did indeed fall on [redacted] (the CMA notes that this is likely to be because the relevant PCW ([redacted]) only [redacted]).
- [HIP] told the CMA that [redacted].
- [redacted] told the CMA that its [redacted] would have meant underwriting some customer segments at a loss so for those segments it made minor increases in price in order to maintain profitability (i.e. these consumers still got a discount, but it was from a slightly higher initial price) and these changes only applied to the relevant PCW.

- (ii) the other two appear to have implemented separate, more long-term price increases at the same time as the deal, and so the deal still resulted in lower prices on the relevant PCWs than would have been offered otherwise;¹⁸¹⁹ and
- (iii) evidence from the one provider that adjusted the quality of its product at around the time of its promotional deal suggests that the decision to remove certain product features was taken before it agreed the promotional deal or even decided on the size of the discount it planned to propose to the PCW with which it had the deal.¹⁸²⁰

K.86 Consistent with the evidence from providers, the two PCWs that focused on agreeing promotional deals during the Relevant Period (MoneySuperMarket and Confused) told the CMA that they have processes in place to ensure that the agreed reductions in retail prices occurred during the promotional deal.¹⁸²¹ One of these PCWs also submitted an analysis of one of its promotional deals showing a reduction in the retail price.¹⁸²²

K.87 Therefore, this evidence supports the view that, while in some instances a provider may slightly increase the retail prices on other PCWs at the start of the promotional deal, this is not the primary way in which they implement such deals. In particular, in every instance the providers told the CMA that they reduced the price on the target PCW during the promotional deal.

K.III.(c).(ii). General pricing trends

K.88 Following the Oral Hearing, BGL also submitted a revised analysis by Oxera which looked at promotional deals where the price on the benchmark PCWs increased at the start of the deal and whether these increases were explained by general pricing trends. In doing this, Oxera considered not only deals where there were absolute increases in price on both the target PCW and the benchmark PCWs, but also deals where there was a decrease in the retail price on the target PCW.¹⁸²³

¹⁸¹⁹ In particular,

- [HIP] told the CMA that [REDACTED] so the CMA considers this to be a more long-term change in pricing.
- [HIP] information suggests that there was a long-term increase in retail prices generally (there was a price increase before the deal across all PCWs and this was not removed after the deal).

¹⁸²⁰ The CMA analysis of internal [REDACTED].

¹⁸²¹ [REDACTED]

¹⁸²² [REDACTED]

¹⁸²³ URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, paragraphs 6.11 to 6.13 and URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

K.89 In this sub-section, the CMA first sets out Oxera's revised analysis before then setting out its assessment of that methodology.

K.III.(c).(ii).(1). Oxera's revised analysis

K.90 In its revised analysis, Oxera considered that a promotional deal was implemented by an increase in the price on the benchmark PCWs and this was not explained by general pricing trends if:

- (a) the relevant provider's price on each of the benchmark PCWs increased compared with the benchmark PCWs' average price (i.e. the average price of all quotes on that PCW); and
- (b) the relevant provider's price on the target PCW did not fall faster than the average price on the target PCW (ie the average price of all quotes on the target PCW).¹⁸²⁴

K.91 For example, Figure K.3 shows the analysis of a deal between [X] when using [X] as the benchmark PCW (first dotted vertical line). Here the purple line labelled [X] is the average price of [X] on target PCW ([X]) and the grey line labelled '[X]' is the average price of [HIP] on the benchmark PCW ([X]). Similarly, the average prices of all quotes on [X] and [X] are shown by the red and brown lines labelled '[X]' and '[X]' respectively

Figure K.3: [HIP] average premium for MSM and CON

[X]

Note: [X]. Source: URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis', page 3.

K.92 The figure suggests that:

- (a) the price on the benchmark PCW increased at the start of the deal (the grey line increased from December 2016 to January 2017) while the average prices on the benchmark PCW fell at the same time; and
- (b) the price on the target PCW fell slightly at the start of the deal (purple line) while there was a larger fall in average prices on the target PCW (red line).¹⁸²⁵

¹⁸²⁴ URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

¹⁸²⁵ URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

- K.93 Based on this chart and those for the other benchmark PCWs, Oxera considered that [HIP]'s promotional deal might have been delivered through an increase in its prices on the benchmark PCWs, which is not justified by general price trends.¹⁸²⁶
- K.94 Overall, Oxera's revised analysis identified seven¹⁸²⁷ promotional deals where it considered that the promotional deal might have been delivered through an increase in the prices on the benchmark PCWs which were not justified by general pricing.¹⁸²⁸ Further, as five of these deals involved absolute price increases, Oxera considered that its revised analysis was consistent with its original analysis (see paragraph K.79 above) and that the increases in absolute prices at the start of promotional deals it identified were not explained by general price trends on PCWs.¹⁸²⁹

K.III.(c).(ii).(2). CMA's assessment

- K.95 The CMA considers that the methodology employed by Oxera in its revised analysis is subject to a number of limitations. Consequently, the CMA does not consider Oxera's revised analysis to be sufficiently robust to support the view that, where providers appeared from the pricing data to have implemented promotional deals by increasing retail prices on the benchmark PCWs, those increases were not explained by general pricing trends.
- K.96 First, this is because the sub-samples of risk profiles used in each month are unlikely to be comparable and therefore it is not clear whether the trends that Oxera identifies are due to changes in providers' actual pricing or due to changes in the sub-sample of risk profiles used in each month.
- K.97 As set out in paragraphs K.44 to K.53, the underlying risk of the full sample of risk profiles does not remain consistent across months. This means that while, as stated by Oxera, its analysis is based on a large and stable number

¹⁸²⁶ URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

¹⁸²⁷ BGL's response with which the Oxera analysis was submitted refers at one point to Oxera identifying eight deals for which this was the case, and at another point to there being seven deals. From the Oxera analysis, it is clear that the actual number of deals identified is seven. URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, paragraphs 6.13 and 6.5 and URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

¹⁸²⁸ For two deals, while the provider's retail prices on the target PCW decreased at the start of the deal, this decrease was not as large as the decrease in the average retail price on the target PCW for the same period. For the other five deals the retail prices increased on both the target and benchmark PCWs.

¹⁸²⁹ URN 8667, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6, document entitled 'Appendix 2 – Oxera empirical analysis'.

of risk profiles,¹⁸³⁰ the underlying risk of the risk profiles used will change over time.

- K.98 In addition, as set out in paragraph K.54 to K.55, statements made by Consumer Intelligence reinforce the CMA's view that it is not possible to consider trends over longer periods due to changes in the risk profiles included in the full sample.
- K.99 Second, the CMA has found that there is variation in the number of risk profiles each provider quotes for over time and this might be the cause of any variation in the time trends (both for individual providers and for all quotes on a PCW). In particular, the CMA has found material variations for at least a third of brands on each PCW. For example, for at least a third of providers on each PCW the range between the maximum and minimum number of risks included was at least 25% of the average number of risks included.¹⁸³¹
- K.100 This means that:
- (a) any variation in an individual provider's time trend on a PCW may be due to changes in the composition of risk profiles a provider provides quotes for (for example, if the underlying risk of the profiles a provider quotes for increases between two months this is likely to lead to an increase in the average price for that provider); and
 - (b) any variation in the time trends for all quotes on a PCW may be due to:
 - (i) changes in the composition of risk profiles a provider provides quotes for (for example, if the underlying risk of the profiles a provider quotes for increases between two months this is likely to lead to an increase in the average price for that provider and consequently lead to an increase in the average price for all quotes on a PCW); and/or
 - (ii) changes in the number of risk profiles a provider provides quotes for (for example, if providers with higher prices increase the number of risk profiles they quote for from one month to the next then, all else equal, the average price for all quotes on a PCW is likely to increase).

¹⁸³⁰ URN 8665, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, question 6.

¹⁸³¹ CMA analysis of URN 8672, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, document entitled 'Triple difference promotional deal' and URN 8502.4, Annex to BGL's response to the SO dated 22 February 2019, document entitled 'Oxera analysis of retail prices', sub-folder '2. Promotional deals', sub-sub-folder '2.Dta', data file 'brand level plots'.

- K.101 Third, the number of risk profiles can be seen as representing the weight placed on each provider when calculating the average price for all quotes on a PCW. The greater the number of risk profiles a provider quotes for, the greater its weight in the average. Generally, a price trend will be constructed by weighting the price of various products based on each product's share of sales.
- K.102 However, the number of risk profiles and hence the weights for each provider do not reflect each provider's shares of sales on each PCW. For example, [HIP] accounted for [X]% of sales made through PCWs in 2016 and 2017¹⁸³² but an average weight of between [X]% and [X]% in Oxera's analysis while, for the same period, [HIP]'s [X] brand accounted for a much larger share of sales made through PCWs at [X]% but a similar average weight of between [X]% and [X]%.¹⁸³³ As such it is not clear that the average price for all quotes on a PCW generated by Oxera is an accurate reflection of the average price on that PCW.
- K.103 Finally, the CMA does not consider that it is possible, with the data available, to address the limitations set out above such that it would be possible to assess price trends over time.
- K.104 For example, in line with the methodology set out in Annex J, the CMA could restrict the analysis to a three-month period for each deal and only include risk profiles that were present in each month to ensure variation in the price trends was not due to changes in risk profiles. However, while these assumptions would allow the CMA to assess the effect of promotional deals on retail prices by looking at the 'month before', the 'month of' and the 'month after' the deal, it would be difficult to use such analysis to assess general price trends. In particular:
- (a) a three-month period might not be informative enough when assessing price trends; and
 - (b) these assumptions would require applying a large number of restrictions as, for example, only providers who quoted for the same risk profiles in all three months on both the target PCW and the benchmark PCW would be included and it is not clear that this would

¹⁸³² That is, looking at 2016 and 2017 collectively.

¹⁸³³ The average weight is calculated by comparing the average number of risk profiles included for that brand to the total average number of risks. This is done for each PCW separately. CMA analysis of URN 8672, BGL's response to follow-up questions to the Oral Hearing dated 5 April 2019, document entitled 'Triple difference promotional deal' and URN 8502.4, Annex to BGL's response to the SO dated 22 February 2019, document entitled 'Oxera analysis of retail prices', sub-folder '2. Promotional deals', sub-sub-folder '2.Dta', data file 'brand level plots'. In this case market shares has been calculated at the brand level as Oxera's analysis of price trends looks at prices at the brand level. CMA's analysis of Commission Fees Dataset and Retail Prices Dataset.

produce an accurate reflection of trends in the average prices on those PCWs.

K.IV. CMA's assessment of BGL's representations on the CMA's analysis of the impact of promotional deals on rankings

K.105 In relation to the CMA's analysis of the impact of promotional deals on a provider's relative ranking, BGL has submitted that the CMA's analysis does not show that promotional deals improved rankings – in particular, over half (22) of the 40 promotional deals did not lead to a relative improvement of 1.5 percentage points or more in the proportion of the provider's quotes ranked as the top result.^{1834, 1835}

K.106 In addition, BGL submitted that the CMA's analysis is flawed as:

- (a) A 1.5 percentage point increase may not be a material improvement (although it did not suggest any alternative threshold) – whether or not it is a material improvement depends on the providers' prevailing visibility on each PCW before the deal.
- (b) The CMA only considers relative ranking changes so providers could have become less visible on the target PCW during the deal (i.e. if their ranking position on the target PCW had worsened, but their position on other PCWs worsened more, this would be treated as a relative ranking improvement in the CMA's analysis).^{1836, 1837}

K.107 The CMA does not consider that these points undermine its findings that promotional deals, when they occurred, led to an improvement in the ranking of relevant home insurance providers on the relevant PCW, which would in turn have reduced the ranking of rival providers on that PCW and increased the competitive pressure on these providers. This is because:

¹⁸³⁴ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.25.

¹⁸³⁵ BGL also submitted that improvements in providers' rankings do not necessarily mean that promotional deals are a success in terms of sales or profitability. See URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.27. The CMA has not used this analysis to assess whether promotional deals were a success in terms of sales or profitability, rather the CMA, as set out in Section 7.E, has found that promotional deals were generally successful for providers, based on evidence obtained from providers and PCWs.

¹⁸³⁶ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.26.

¹⁸³⁷ BGL also submitted that the CMA's analysis was flawed as it does not establish whether a provider lowered its price on the target PCW and/or increased its price on other PCWs. The CMA does not consider this is relevant as the CMA has not used its analysis of the impact of promotional deals on providers' rankings to establish the impact of promotional deals on providers' retail prices. Rather, as set out in Section 7.E.I., the CMA has found that promotional deals led to a decrease in providers' retail prices on the relevant PCW and an improvement in the retail price quoted by the provider on the relevant PCW relative to rival PCWs based on the CMA's analysis of the impact of promotional deals on providers' retail prices as well as evidence obtained from providers and PCWs.

- (a) As discussed in Section 7, paragraphs 7.25 to 7.26, evidence from both providers, on their competitive strategy, and PCWs, on the proportion of sales made by providers ranked in the top five results, shows the importance of appearing in the top five, not just as the top result. Therefore, it is important to consider the CMA's results on the impact of promotional deals on how often the provider appears in the top five positions, which show that promotional deals lead to a relative ranking improvement of over 1.5 percentage points for three quarters of deals.
- (b) Even when doubling the threshold used to 3 percentage points, the CMA's analysis still finds that there was a relative ranking improvement for over half [24] of the 40 deals when considering the proportion of quotes ranked in the top five results and over a third of deals when considering the top result; and
- (c) As set out in Annex J, the CMA's analysis does not identify how rankings would have changed in the absence of the deal. This means that any observed reduction in the visibility of a provider with a promotional deal could have several potential causes beyond the deal itself. For example, a reduction in visibility could be due to changes in the competitive offerings of other providers. Therefore, the analysis should be considered alongside other evidence. In this regard, the fact that the CMA has found that relevant providers' prices were lower than they otherwise would have been (absent the promotional deals) supports the CMA's view that this analysis of rankings shows that providers' rankings were higher than they otherwise would have been (absent the promotional deals). Therefore, the CMA considers that where it has observed a relative improvement in a provider's rankings, there was also likely to be an absolute improvement in rankings – and if there are cases in which a provider's ranking did fall during a deal, observing a relative improvement implies that this fall would have been even greater absent the deal.

ANNEX L: TABLE OF PROVIDERS PRICING STRATEGIES AND APPROACH TO PROMOTIONAL DEALS

This Annex provides further detail on the pricing strategies of the 17 home insurance providers contacted by the CMA during the Investigation¹⁸³⁸ that had a wide MFN in their contract with CTM. It sets out the key evidence on their pricing strategies during the Relevant Period, including their appetite for engaging in promotional deals. BGL's representations on the strategies of the individual providers are also considered.¹⁸³⁹

For the reasons explained in Section 8.C, the CMA considers that each provider's behaviour in the Relevant Period and their preferred pricing strategy reflects the competitive dynamics that existed with CTM's network wide MFNs in place. It cannot be assumed that the competitive dynamics between providers and between PCWs or the behaviour of individual providers would have been the same absent CTM's wide MFN. The CMA has found that absent CTM's wide MFNs, providers would have had a greater ability and stronger incentives to price differentiate across PCWs, including through promotional deals (see Section 9.A). The CMA has also found that there would have been stronger price competition between PCWs (Section 9.B) and stronger price competition between providers competing on PCWs (Section 9.C) absent CTM's network of wide MFNs. The evidence summarised below about providers' pricing strategies during the Relevant Period, along with the CMA's assessment of BGL's representations, should therefore be considered in that context.

¹⁸³⁸ The CMA obtained information during the course of the Investigation from 27 providers, 17 of which had wide MFNs during the Relevant Period. These 17 providers accounted for over 35% of sales made through PCWs in 2017 and over 90% of sales made through PCWs by providers with wide MFNs. Details of these 17 providers' pricing strategies are set out in this Annex. The remaining 15 providers with wide MFNs that were not contacted by the CMA accounted for less than 5% of sales made through PCWs in 2017. For the reasons set out in section 8.II.B, the CMA considers that these 15 providers are likely to have had pricing strategies that were consistent with CTM's wide MFNs. For example, none of the 15 providers entered into promotional deals in the Relevant Period and none were subject to CTM's escalated enforcement process in the Relevant Period.

¹⁸³⁹ BGL's more general submissions on compliance with its wide MFN clauses are primarily addressed in Annex P.

Provider	% PCW sales (2017)	Provider Pricing Strategies		BGL's Representations on the strategies of providers with wide MFNs
		Base Retail Prices	Promotional Deals	
[HIP]	[REDACTED]	<p>1. Operating awareness of its obligations under its wide MFN and typically abided by its obligations under CTM's wide MFN (see Section 8.B.II)</p> <p><i>[HIP] has always had a general operating awareness of the MFN and did not want to be in a position of being in breach of contract with its key distributor. [...] everyone within the business knew about the clause and that CTM was not willing to remove it from the contract, despite various attempts by [HIP]'.¹⁸⁴⁰</i></p> <p>2. Differential pricing strategy during the Relevant Period but generally priced lowest on CTM such that its pricing was consistent with its MFN obligations (see Section 7.B.II.(a))</p>	<p>1. Willing to engage in promotional deals (see Section 7.D.II.(b) and Section 8.B.II)</p> <p><i>'[HIP] is keen to do these deals in general [...] MSM have been very keen to do offers with it.'¹⁸⁴⁵</i></p> <p><i>'[...] there is always an element of uncertainty with how a promotional deal will perform. However, [HIP] would like to try and test promotional deals to see if they would work for [HIP] as they have noticed that others are doing it'.¹⁸⁴⁶</i></p> <p>2. Entered into a promotional deal with [REDACTED] between [REDACTED] and [REDACTED], structured to comply with CTM's wide MFNs. Proposed similarly</p>	<p>1. BGL submitted that its wide MFN had no material effect on [HIP]'s strategy relying on submissions made by [HIP] in response to the SO and First LoF.¹⁸⁵¹ In those submissions [HIP] stated, for example, that (i) the wide MFN 'only constrained [HIP] on the edges of its actions'; (ii) [HIP] 'does not consider that absent the wide MFN, it would have had a greater incentive to enter into promotional deals'; (iii) the possibility of engaging in differential pricing does not suggest that prices would have been lower absent the wide MFN; and (iv) 'any impact on retail pricing would have been minimal'.</p> <p>The statements made by [HIP] in response to the SO and First LoF are</p>

¹⁸⁴⁰ URN 6626, note of CMA Meeting with [HIP] [REDACTED], paragraph 12.

¹⁸⁴⁵ URN 6626, note of CMA Meeting with [HIP] [REDACTED], paragraph 8.

¹⁸⁴⁶ URN 6626, note of CMA Meeting with [HIP] [REDACTED], paragraph 6.

¹⁸⁵¹ URN 10459, BGL's responses to the First LoF and DPS dated 14 February 2020, paragraphs 140 to 147 and Supplementary Document 2 and 10509.2 – 'DPS/Gravity – Supplementary Document 2', provided by BGL at the DPS Oral Hearing held on 9 March 2020.

		<p><i>'There are a number of reasons why the same premium may not be quoted on each PCW for the same risk profile [...] The difference in commission rate between PCW may affect the premium as it would be incorporated into the pricing of the product'.</i>¹⁸⁴¹</p> <p><i>'The nature [of] CTM's business was such that it naturally led to slightly lower prices than other routes to market and given [HIP]'s technical pricing approach it meant that the Wide MFN and [HIP]'s commercial strategy did not conflict'.</i>¹⁸⁴²</p> <p>3. Considered increasing its price on CTM to reflect CTM's higher commission fee but decision put on hold because of CTM's wide MFN (see Section 8.B.II).</p> <p><i>[...] [X] increase on CTM is recommended. In light of the conversation regarding the 'Most Favoured Nation' clause, a differential</i></p>	<p>structured deal with [X] (see Annex P).</p> <p>3. Rejected four deals during the Relevant Period due, at least in part, to CTM's wide MFN (see Section 8.B.II)</p> <p><i>'The wide MFN in the CTM agreement prevents us from being able to work with MSM on exclusive pricing offers'.</i>¹⁸⁴⁷</p> <p><i>'It prevents us from doing other deals or changing rates with other partners'.</i>¹⁸⁴⁸</p> <p>4. Agreed one promotional deal after the Relevant Period with [X] in [X] (see Table 9.5)</p> <p><i>'[HIP] remains open to discussing Promotional Deals with PCWs and it is likely that this will continue to be an ongoing conversation between the [HIP] aggregator relationship team and the PCWs'.</i>¹⁸⁴⁹</p>	<p>inconsistent with [HIP]'s response to its Section 26 statutory notices and with contemporaneous documentary evidence. The CMA places greater weight on the contemporaneous documents submitted by [HIP] during the course of this Investigation together with its responses to the CMA's statutory notices requesting information and documents (see Section 8.B.II.(b)).</p> <p>The evidence demonstrates that at the relevant time CTM's wide MFN was consistently raised and discussed internally as part of [HIP]'s pricing strategy including as a constraining factor in not proceeding with several deals (see Section 8.B.II.(b)). The impact on its strategy also prompted requests to CTM to remove its wide MFN (see Section 8.A.II.(d)).</p> <p>2. BGL also referred to a promotional deal that [HIP] agreed with [X] between [X] and [X] as evidence</p>
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¹⁸⁴¹ URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8.

¹⁸⁴² URN 6626, note of CMA Meeting with [HIP] [X], paragraph 14.

¹⁸⁴⁷ URN 5315.45, Annex 23 of [HIP]'s response to section 26 notice dated 24 November 2017, slide 5.

¹⁸⁴⁸ URN 5729, [HIP]'s response to section 26 notice dated 24 November 2017, page 4.

¹⁸⁴⁹ URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 5(a).

		<p><i>rating approach to the [PCWs] based on their performance against plan has been put on hold’.</i>¹⁸⁴³</p> <p>4. Sought on several occasions to agree removal of wide MFN from its contract (see Section 8.A.II.(d))</p> <p>5. Concerned that CTM’s wide MFN affected its ability to respond to competitive pricing from its largest rivals, particularly those that did not have wide MFNs (see Section 8.A.II.(a))</p> <p>6. No significant change in pricing strategy but removal of wide MFN viewed as positive in enabling it to proceed with a promotional deal (see Section 9.B)</p> <p><i>‘As stated [...] the removal of the Wide MFN in the Comparethemarket.com agreement would have a positive impact on any Promotional Deal being considered by [HIP] going forward, as the risk of breaching the Comparethemarket.com agreement</i></p>	<p>5. Promotional deal considered successful in terms of sales volumes and gross premium (see Section 7.D.II.(b).(ii))</p> <p><i>‘The [HIP] Pricing team have completed an analysis of the [X]. This demonstrates that the deal had a positive impact on both the overall volume of sales and the gross premium’.</i>¹⁸⁵⁰</p>	<p>that [HIP] felt able to disregard CTM’s wide MFN.¹⁸⁵²</p> <p>This deal was structured so as to ensure compliance with CTM’s wide MFN, demonstrating, on the contrary, that [HIP] did not consider that it could ‘disregard’ CTM’s wide MFN, quite the contrary. In addition, [X] and [HIP] did not agree any further promotional deals in the Relevant Period (see Annex P)</p> <p>3. BGL also relied on the fact that [HIP] had only agreed one promotional deal after the Relevant Period which BGL also questioned whether it was a promotional deal.¹⁸⁵³</p> <p>The CMA does not dispute that [HIP] has not materially changed its strategy since removal of its wide MFN. However, it confirmed that it is open to discussing promotional deals with PCWs and that in the Relevant Period a substantial contributory factor in it not doing such deals was CTM’s wide MFN (see Section 8.II.B).</p>
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¹⁸⁴³ URN 5720, internal email from [Employee, HIP] to [Employee, HIP], and others of [HIP] entitled ‘Trading agenda and pack - week 6’, dated 14 February 2017, page 1.

¹⁸⁵⁰ URN 9256, [HIP]’s response to section 26 notice dated 19 June 2019, question 4(b).

¹⁸⁵² URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 142.

¹⁸⁵³ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 145.

		<i>has been removed. However, this has not resulted in any formal change in strategy which it documented as such</i> . ¹⁸⁴⁴		
[HIP]	[X]	<p>1. Differential pricing strategy during the Relevant Period (see Section 7.D.II)</p> <p><i>'Each one of these aggregators has its own particular dynamics around customers or potential customers and mix. So each one of them is, more or less, a market on its own [...] LTVs, lifetime values, based on the mix of customers that we acquire through each one of the channels. So when it comes to pricing, they are all slightly different'</i>.¹⁸⁵⁴</p> <p><i>'[HIP] prices differently per product and per distribution channel, in line with the dynamics of each channel'</i>¹⁸⁵⁵</p>	<p>1. Whilst [HIP] assessed proposals from PCWs on a case by case basis, following two trials considered that promotional deals are not profitable.</p> <p>[PCWs] <i>'constantly have conversations with our marketing team [about promotional deals]. And the marketing team assess each one on its merits and there hasn't been an offer to date that has attracted us to participate in the offer'</i>.¹⁸⁵⁸</p> <p>2. Trialed two promotional deals with [X] during the Relevant Period and had several discussions regarding proposals but did not follow through</p>	<p>1. BGL submitted that CTM's wide MFN had no effect on [HIP]'s pricing strategy prior to [X]. In support, BGL relies on statements made by [HIP] that:</p> <p><i>'It never was until we were informed that we had breached the contract with CTM. It was never a factor until that point, which was [X]. It was certainly in the contract but we had never regarded it as such. We'd never particularly followed it. [...] We felt that the MFN, like most other home insurance providers, was unfair, but we didn't take it into account'</i>.¹⁸⁶³</p> <p>The CMA acknowledges that until [X] CTM's wide MFN was generally not a factor in [HIP]'s pricing strategy. In</p>

¹⁸⁴⁴ URN 9256, [HIP]'s response to section 26 notice dated 19 June 2019, question 5(a).

¹⁸⁵⁴ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 8, lines 24 to 26 and page 9, lines 2 to 4.

¹⁸⁵⁵ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(b).

¹⁸⁵⁸ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 29, lines 18 to 20.

¹⁸⁶³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 182 and 10509.2 – 'DPS/Gravity – Supplementary Document 2', provided by BGL at the DPS Oral Hearing held on 9 March 2020. BGL also relies on further statements made by [HIP] in the same interview with the CMA on 17 July 2016 (URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 10, lines 25 to 26 and page 11, lines 1 to 2 and lines 7 to 8.)

		<p>2. Whilst generally not a factor in [HIP]'s pricing, CTM's wide MFN was a relevant consideration when price testing and on other occasions</p> <p><i>'all price testing that we did sat within the tolerance ranges that we knew about'</i>¹⁸⁵⁶</p> <p>3. CTM systematically challenged [HIP]'s pricing up until [§] (see Annex M).</p> <p>4. CTM enforced its wide MFN against [HIP] in [§] for entering into a promotional deal with [§] resulting in the early termination of the promotional deal and a self-funded price reduction on CTM (see Annex M)</p> <p>5. No change to its strategy after the Relevant Period.¹⁸⁵⁷</p>	<p>as they were deemed economically unattractive.</p> <p>[§].¹⁸⁵⁹</p> <p>[§].¹⁸⁶⁰</p> <p>3. Not supportive of promotional deals since the two trials did not provide the benefits [HIP] was hoping to realise.</p> <p><i>'we haven't done any [promotional deals] and won't entertain doing any; because it's just not good. It's good for volume but good for volume isn't necessarily good for your business'</i>.¹⁸⁶¹</p> <p><i>'[HIP]'s approach to VBD's and Promotional Deals hasn't changed since the April Notice. We find them unprofitable and have not entered into any such agreements with any of the PCWs since the April Notice. We would in principle be open to a</i></p>	<p>addition, the CMA does not dispute that [HIP] considered promotional deals, in particular following the trial deals that it undertook with Confused, to be unprofitable.</p> <p>However, CTM systematically challenged [HIP] on its pricing prior to [§], and required [HIP] to remove a pricing banner from a rival PCW and sought confirmation (which was given on several occasions) that [HIP]'s pricing would revert to within CTM's compliance tolerance thresholds (see Annex M). [HIP] sought clarification from CTM as to whether it was permitted under CTM's wide MFN to differentiate its prices across PCW demonstrating that it was at least mindful of its obligations. It also enquired as to removal of its wide MFN following the PMI Order 2015 (see Section 8.A.II.(d) and Annex M). [HIP] also ensured that its price testing was within CTM's compliance tolerance thresholds (see Section 7.D.II.).</p>
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¹⁸⁵⁶ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 31, lines 11 to 12. See also Annex M and the impact that CTM's escalated enforcement action had on [HIP].

¹⁸⁵⁷ URN 9139, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(i).

¹⁸⁵⁹ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 10(d).

¹⁸⁶⁰ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 27, lines 24 to 25 and page 28, lines 7 to 8.

¹⁸⁶¹ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 29 lines 5 to 8.

			<i>discussion if it delivers the right expected outcome but we have not found a deal that does’.</i> ¹⁸⁶²	2. BGL also submitted extensive representations on the enforcement action it took against [HIP] in [X] which are considered at Annex M.
[HIP]	[X]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN (see Section 7.D.II and 8.B.II).</p> <p><i>‘The clause has become part of the landscape, and [HIP]’s pricing strategy has therefore proceeded on the basis that the clause will remain in place. As a result, [HIP]’s current pricing model does not differentiate between PCWs’.</i>¹⁸⁶⁴</p> <p>2. Pricing strategy affected by the wide MFN (see Section 8.B.II)</p> <p><i>‘The wide MFN in relation to home insurance has meant that all pricing has had to be in line with CTM. This has meant that pricing for home</i></p>	<p>1. Willing to engage in promotional deals (see Section 7.D.II.(b))</p> <p><i>‘Although [HIP]’s general pricing strategy is to offer the same prices across all PCWs, it has always been open to short-run promotional deals’.</i>¹⁸⁶⁸</p> <p>2. Rejected at least two deals during the Relevant Period due to CTM’s wide MFN (see Section 8.B.II)</p> <p><i>‘[HIP]’s ability to offer exclusive deals on Home Insurance is restricted due to a Wide MFN clause that has been enforced since the contract was executed’.</i>¹⁸⁶⁹</p>	<p>1. BGL submitted that because [HIP] managed its home insurance pricing at a portfolio level in the Relevant Period this negated the need for it to differentiate its prices across PCWs.¹⁸⁷³</p> <p>The CMA does not disagree that [HIP]’s strategy was to adopt uniform pricing across PCWs and various factors influenced that decision. However, as [HIP] confirmed, its uniform pricing strategy was predicated on the existence of CTM’s wide MFN. It also stated that it considered differentiating its prices across PCWs but recognised that CTM’s wide MFN restricted its ability to do so. It was also willing to engage in promotional deals but rejected at least two such deals in the Relevant Period because of CTM’s wide MFN (see Section 8.B.II).</p>

¹⁸⁶² URN 9139, [HIP]’s response to section 26 notice dated 19 June 2019, question 2(i).

¹⁸⁶⁴ URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 16.

¹⁸⁶⁸ URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 17.

¹⁸⁶⁹ URN 5256A, [HIP]’s response to section 26 notice dated 24 November 2017, question 11.

¹⁸⁷³ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 86 to 88.

		<p><i>insurance could not be lower for any other PCW, which restricted [HIP]'s ability to enter into promotional deals or provide other offers that could have resulted in savings being passed on to customers'.¹⁸⁶⁵</i></p> <p>3. Willing to engage in differential pricing (see Section 7.D.II)</p> <p><i>'Differential pricing is a consideration for all PCW's and something we may look at in the future as part of a more sophisticated pricing strategy'.¹⁸⁶⁶</i></p> <p><i>'We have seen in modelling that there are several metrics that we know differ between the PCWs and if the MFN clause was removed in its entirety as we update the pricing sophistication on an ongoing basis we would consider using PCW as a factor within the models'.¹⁸⁶⁷</i></p>	<p>3. Agreed one promotional deal after the Relevant Period with [X] in [X].</p> <p><i>'Following removal of the clause [HIP] felt able to explore options for differentiated pricing however we didn't act or agree on any financial promotions which provided differential pricing until mid 2018'.¹⁸⁷⁰</i></p> <p>4. Deal with [X] resulted in a [X] increase [X].</p> <p>The deal with [X] resulted in 'a [X] uplift on sale share for MSM [X]'.¹⁸⁷¹</p> <p>5. [HIP] entered into discussions with CTM after the Relevant Period on promotional deals</p>	<p>2. BGL also argued that the real reason that [HIP] did not enter into promotional deals in the Relevant Period was the lack of profitability of such deals, irrespective of what [HIP] may have told CTM's rivals.¹⁸⁷⁴</p> <p>The CMA addresses these representations in Annex P. In summary, the CMA disagrees with BGL's unsupported view of the 'real' reason for [HIP] declining to enter into promotional deals. The contemporaneous documents and the evidence submitted by [HIP] and [X] as described in Section 8.B.II. demonstrate that CTM's wide MFN restricted [HIP]'s ability to enter into promotional deals.</p> <p>3. BGL also submitted that Oxera's analysis of prices in the Relevant Period¹⁸⁷⁵ demonstrates that [HIP] priced a significant proportion of risks more expensively on CTM,</p>
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¹⁸⁶⁵ URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 20.

¹⁸⁶⁶ URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4(b)(ii).

¹⁸⁶⁷ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 16.

¹⁸⁷⁰ URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4(a).

¹⁸⁷¹ URN 9711, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

¹⁸⁷⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 89 to 92.

¹⁸⁷⁵ Referred to in this Decision as Oxera's Coverage and Compliance Analysis.

		<p>4. No material change to strategy after the Relevant Period but has updated its pricing models to enable it to differentiate its prices across PCWs to reflect PCW-specific commission fees (see Section 9.A.III.(b).)</p>	<p><i>'CTM have offered 2019 co-funds (price discount funded by [X] by PCW and Insurer)'.¹⁸⁷²</i></p>	<p>contradicting [HIP]'s evidence that it considered its wide MFN as binding and that it rejected promotional deals because of CTM's wide MFN.¹⁸⁷⁶</p> <p>For the reasons set out in Annex N, the CMA does not consider that Oxera's pricing analysis is sufficiently robust to be relied upon in the absence of corroborating evidence, in determining the extent of an individual providers' compliance with CTM's wide MFNs in the Relevant Period. In relation to [HIP] specifically, Oxera's Coverage and Compliance analysis is not supported by other evidence as set out in this Annex and in Section 8.B.II.(b). Furthermore, when the CMA shared a similar pricing analysis with [HIP], [HIP] stated that its <i>'premium models do not take into consideration the PCW that the quote is generated from and therefore do not use this to change premiums. Changes we make to rating do not target any PCW specifically but apply equally to all PCWs. [...] there were no changes that aimed to price PCWs differently'</i> during the Relevant Period.¹⁸⁷⁷</p>
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¹⁸⁷² URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 5(a)(i).

¹⁸⁷⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 310.

¹⁸⁷⁷ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 9(b).

[HIP]	[✂]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN (see Section 7.D.II.(a)).</p> <p><i>'The existence of wide MFN clauses for every PCW combined with our stance that it would be unfair to price [HIP] business more expensive than PCW business means that we have not opted to price business differentially across PCWs'.¹⁸⁷⁸</i></p> <p>2. Pricing strategy affected by CTM's wide MFN (see Section 8.B.II.(b)).</p> <p><i>'[HIP] pricing models have therefore always needed to account for this [CTM's wide MFN]'.¹⁸⁷⁹</i></p> <p><i>'[A]s a consequence of MFN clauses we incorporate an allowance for each</i></p>	<p>1. Willing to engage in differential pricing through promotional deals (see section 7.D.II)</p> <p><i>[HIP] is willing to agree specific promotional deals to 'drive specific commercial objectives' and to exploit 'tactical commercial opportunities'.¹⁸⁸⁶</i></p> <p>2. CTM's wide MFN prevented [HIP] from entering into promotional deals and from assessing the effectiveness of such deals (see section 8.B.II.(b)).</p> <p><i>'PCWs would work with [HIP] to get the best prices for customers but [HIP] would not have been able to alter the prices' due to CTM's wide MFN.¹⁸⁸⁷</i></p> <p><i>'the ultimate value to [HIP] of Exclusive Deals for Home Insurance is not understood due to the prevalence of</i></p>	<p>1. BGL argued that [HIP]'s expressed concerns with its wide MFN clause is inconsistent with [HIP]'s agreement to the clause in its contracts, unlike several of its competitors.¹⁸⁹² Moreover, if [HIP] felt commercially constrained by its wide MFN clause or considered it illegal, BGL argued that it could have renegotiated its contract.¹⁸⁹³</p> <p>The CMA is unclear as to the relevance of these arguments as to the impact of CTM's wide MFN clause on [HIP]'s pricing strategy. Merely because a party enters into an agreement does not mean that such an agreement will not impact on its behaviour or indeed on competition. Moreover, [HIP] in fact sought removal of its wide MFN clause in 2012, 2013, 2016 and again in 2017. On each occasion CTM refused. On at least two such occasions [HIP] raised concerns with CTM as to the anticompetitive effects of</p>
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¹⁸⁷⁸ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.

¹⁸⁷⁹ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 8(a).

¹⁸⁸⁶ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 3; URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 6(b) and URN 1444B, [HIP]'s response to follow-up questions during the DCT's Market Study dated 9 January 2017, question 5.

¹⁸⁸⁷ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 13.

¹⁸⁹² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 98.

¹⁸⁹³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 315.

	<p><i>customer that is equal across all PCW and direct pricing</i>¹⁸⁸⁰</p> <p><i>‘Operating under wide MFNs has meant that variability in commission by PCW has not been accounted for at the channel level’.</i>¹⁸⁸¹</p> <p><i>‘with wide MFNs...any variance in underlying performance of rating factors by channel could not be expressed in differential price by channel’</i>¹⁸⁸²</p> <p>3. Repeated requests to CTM to remove its wide MFN (see section 8.A.II.(e).</p> <p>4. Willing to differentiate its prices across PCWs (see Section 7.D.II.</p> <p><i>‘[HIP] would like to set different prices if there was a difference in the cost of supply or a difference in the data</i></p>	<p><i>wide MFNs and the continued enforcement (until recently)’.</i>¹⁸⁸⁸</p> <p>3. Entered into a promotional deal with [X] during the Relevant Period (see Section 8.B.II.(b).(i))</p> <p>4. CTM took enforcement action securing three price discounts which [HIP] considered it could not refuse and which it had to self-fund (see Section 8.B.II.(b).(i))</p> <p>5. Rejected at least two deals following CTM’s enforcement action (see Section 8.B.II.(b).)</p> <p><i>‘no further Exclusive Deals have been considered since comparethemarket made their position in enforcing wide MFN clear’</i>¹⁸⁸⁹</p> <p>6. Willing to explore ‘tactical commercial opportunities’ following</p>	<p>the clause (see section 8.A.II.(c)). In addition, the CMA refers to section 5.E. and its findings on CTM’s market power and to section 8.B.I on the strong incentives on insurers including large insurers such as [HIP] to comply with their wide MFN obligations.</p> <p>2. BGL also argued that whilst [HIP] claims that its wide MFN constrained its pricing strategy, its evidence is vague, anecdotal and unsupported by internal strategy documents.¹⁸⁹⁴ BGL submitted:</p> <p>‘[HIP] has not denied that as a matter of fact it priced significantly more expensive [sic] on CTM than on other PCWs throughout the Relevant Period, although it asserts that any variation will have been “as a result of operational inconsistency between PCWs”’.¹⁸⁹⁵</p>
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¹⁸⁸⁰ [HIP] also explained that this fixed allowance ‘reflects average per-policy acquisition costs across the portfolio, [X]’. URN 5080, [HIP]’s response dated to section 26 notice dated 24 November 2017, question 5.

¹⁸⁸¹ URN 5080, [HIP]’s response to section 26 notice dated 24 November 2017, question 5.

¹⁸⁸² URN 1443, [HIP]’s response dated 26 June 2017 to a request for information in the DCTs Market Study dated 9 June 2017, question 1.

¹⁸⁸⁸ URN 5080, [HIP]’s response to section 26 notice dated 24 November 2017, question 10.

¹⁸⁸⁹ URN 5080, [HIP]’s response to section 26 notice dated 24 November 2017, question 17.

¹⁸⁹⁴ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 98.

¹⁸⁹⁵ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 108 and URN 9155, [HIP]’s response to section 26 notice dated 19 June 2019, question 13.

		<p><i>capture across PCWs' as 'there is no policy of setting the same prices'</i>¹⁸⁸³</p> <p>5. Strategy unchanged since the Relevant Period although confirmed may change in light of increased pricing flexibility following removal of CTM's wide MFN.</p> <p><i>'[HIP] does not today actively vary price by PCW. With wide MFNs being removed by CTM this could change in the future [...]'</i>¹⁸⁸⁴</p> <p><i>'[W]ide MFN' is ingrained within [HIP]'s pricing principles [and] will take time to unwind and consider how this increased pricing flexibility can be most effectively deployed'.</i>¹⁸⁸⁵</p>	<p>removal of its wide MFN and agreed one promotional deal with [X] in [X]¹⁸⁹⁰ (see Section 9.A.III.(b).)</p> <p><i>'the removal of wide MFNs may well at least create some tactical commercial opportunities – most easily exploited via Promotional Deals'</i>¹⁸⁹¹</p> <p>7. Promotional deal with [X] in [X] considered successful in terms of increased sales and conversion rates and brand promotion (see Section 7.II.D.(b))</p>	<p>The CMA disagrees. The evidence submitted by [HIP] in response to the CMA's statutory notices is consistent and unambiguous as to the impact of CTM's wide MFNs on its strategy. It is also supported by contemporaneous documents. This includes correspondence with CTM regarding its requests to remove CTM's wide MFN (see Section 8.A.II.(c)), and notes of meetings with CTM and internal documents relating to the escalated enforcement action taken by CTM against [HIP] for entering into a promotional deal with [X] (see Annex M).</p> <p>In terms of [HIP]'s statement, this statement needs to be read in the context that [HIP]'s strategy was to price uniformly across PCWs in the Relevant Period. BGL does not dispute this and indeed has submitted that [HIP] was reluctant to differentiate its prices across PCWs irrespective of CTM's wide MFN (see further below). Moreover, as BGL</p>
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¹⁸⁸³ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 11.

¹⁸⁸⁴ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(b)(i).

¹⁸⁸⁵ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 17.

¹⁸⁹⁰ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 3, 4, 5 and 8(a).

¹⁸⁹¹ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 3.

				<p>recognised, [HIP] explained that when it priced lower on CTM's rivals this was for technical reasons (which it termed 'operational inconsistency[ies] between PCWs')¹⁸⁹⁶ rather than a deliberate strategy of non-compliance with CTM's wide MFN. [HIP] stated that:</p> <p>'any variances in pricing [in the Relevant Period] between PCWs are unintentional on [HIP]'s part'¹⁸⁹⁷ and '[HIP] prioritises working with its partners upfront to rectify any issues in order to comply with its regulatory and contractual obligations' including CTM's wide MFN.¹⁸⁹⁸</p> <p>3. In addition, BGL submitted that it is unclear that in the absence of CTM's wide MFN, [HIP] would not have priced uniformly given its concerns over pricing on its direct channel higher than on PCWs and the role of its narrow MFNs. BGL relies on the following statement from [HIP] in support:¹⁸⁹⁹</p> <p>'given narrow MFNs still persist, [HIP] is still commercially restricted from increasing prices for higher cost business</p>
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¹⁸⁹⁶ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 13.

¹⁸⁹⁷ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(b)(i).

¹⁸⁹⁸ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 16.

¹⁸⁹⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 99 to 102.

				<p>and relatively more expensive PCWs as such increases would also be required for [HIP] to site quotes. Such 'price parity' between highest price PCW and [HIP] would undoubtedly create sub-optimal commercial outcomes in the long-term for [HIP]'.</p> <p>The CMA finds that the evidence from [HIP] is clear and unambiguous that a factor in its pricing strategy was CTM's wide MFN including in [HIP]'s refusal to enter into promotional deals. The CMA does not dispute that other factors, including the existence of narrow MFN clauses in its contracts, are also relevant as discussed in section 7.D.II. The CMA also refers to statements made by [HIP] in the previous column on its willingness to differentiate its prices including by entering into promotional deals and the evidence that it has entered into a further promotional deal since removal of its wide MFN.</p> <p>4. BGL also submitted that Oxera's Coverage and Compliance analysis in the Relevant Period does not support the evidence submitted by [HIP] on the impact on its pricing strategy of CTM's wide MFN.¹⁹⁰⁰</p>
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¹⁹⁰⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 317 to 319.

				<p>For the reasons set out in Annex N, the CMA does not consider that Oxera's pricing analysis is sufficiently robust to be relied upon in the absence of corroborating evidence in determining the extent of an individual providers' compliance with CTM's wide MFNs in the Relevant Period. In addition, and in relation to [HIP] specifically, Oxera's analysis is not supported by other evidence as set out in the previous columns and in Section 8.B.II.(b). The CMA also refers to the statements made by [HIP] and quoted above that, in practice, differences in prices were not deliberate but due to technical reasons.¹⁹⁰¹ Moreover, the lack of escalated enforcement action against [HIP], other than in respect of the promotional deal with [X] in [X], is consistent with [HIP]'s submissions on its pricing strategy being to comply with its wide MFN obligations.</p> <p>5. BGL also made extensive representations on the enforcement action it took against [HIP] following [HIP]'s promotional deal with [X] in</p>
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¹⁹⁰¹ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(b)(i); URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 317 to 319 and URN 8933, BGL's oral representations on the SO dated 4 April 2019, page 26, lines 24 to 25 and page 27, lines 1 to 11.

				[X]. These representations are considered in detail at Annex M.
[HIP]	[X]	<p>1. [HIP] is a broker. Its quotes on PCWs are generally determined by (i) the price it is offered by the panel insurer which will not vary across PCWs, (ii) the acquisition costs of the PCW and (iii) its overheads/profits. (i) and (iii) are generally fixed unless the PCW provides enhanced data enabling the panel insurer to offer more effective prices. (ii) is the only element [HIP] is generally able to flex.</p> <p><i>'When working via PCW's pricing is generally determined by three factors (i) price from the panel insurer (ii) acquisition cost via the PCW (since the CMA notice) and (iii) our overheads/profit. If we are able to flex any of these then it results in a different price being offered to the consumer. However, in reality the only difference as regards PCW's is</i></p>	<p>1. Willing to engage in promotional deals (see Section 7.D.II)</p> <p><i>'With regards to Exclusive and Promotional deals, we would offer them to all aggregators leaving the decision with them to accept/decline depending on their appetite'.¹⁹⁰⁶</i></p> <p><i>'Having the wide MFN in place has made it so [HIP] couldn't successfully complete any promotional campaigns'.¹⁹⁰⁷</i></p> <p>2. Engaged in two promotional deals during the Relevant Period, one with [X] and one with [X].¹⁹⁰⁸ CTM challenged [HIP] in respect of both deals (see Annex M)</p> <p><i>'We find exclusive promotional deals to be valuable on home insurance to ensure we provide the best offers and pricing to our consumers. Although we</i></p>	<p>1. The CMA has addressed BGL's representations on CTM's systematic challenges to [HIP]'s prices in Annex M.</p> <p>2. BGL submitted that [HIP]'s evidence that it was prevented from entering into promotional deals by CTM's wide MFN is contradictory, equivocal and cannot be relied upon. In particular [HIP] entered into two promotional deals in the Relevant Period and the statements in the previous column contradict one another. BGL submitted that it is also contradicted by Oxera's Coverage and Compliance Analysis which, in BGL's view, demonstrates extended periods when CTM was priced higher by [HIP] compared to its rivals. CTM's wide MFN therefore, BGL argued, had no effect on [HIP]'s strategy as [HIP] widely disregarded it.¹⁹¹⁴ BGL considered this was further confirmed</p>

¹⁹⁰⁶ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 5(c).

¹⁹⁰⁷ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018 question 16.

¹⁹⁰⁸ This promotional deal also coincided with changes to question sets on [X] enabling [HIP] to be provided with enhanced data on consumer risk, potentially lowering prices quoted on some risks on [X].

¹⁹¹⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 177 to 178.

		<p>acquisition costs as (i) and (iii) are essentially fixed and do not differ between PCW's unless the PCW is providing us with enhanced data which allows the panel insurer to offer more effective pricing. Some insurers on our panel have been known to price differently on the source of the business (including PCW) however we wouldn't always be aware of this differential as it's hosted in the insurers pricing models which are not available to us as the broker'.¹⁹⁰²</p> <p>2. Uniform prices across PCWs, but from the end of 2015 [X], resulting in differential base pricing.</p> <p>'Outside of any promotional deals, [HIP]'s pricing will generally be the same across PCWs'.¹⁹⁰³</p> <p>'Due to the presence of the wide MFN in our contract, regardless of what commission we paid aggregators, we</p>	<p>believe that with home insurance, the quality of the product on offer is the most important factor, the market is still highly competitive, small price differences and special offers can make a big difference, especially as home business tends to have a lower average premium'.¹⁹⁰⁹</p> <p>3. Confirmed that since removal of CTM's wide MFNs this has enabled [HIP] to negotiate with PCWs lower commission fees which it can pass on in the form of lower prices.</p> <p>'What the review and notice from the CMA has enabled us to achieve however, is the ability to negotiate with PCW's to lower their commercial costs to us in return for us passing those savings on to the consumer. Since the review this has been a major focus for our business'.¹⁹¹⁰</p> <p>4. Since November 2017, moved to a new dynamic pricing tool and has [X] for promotional deals but as at</p>	<p>by the fact, since removal of its wide MFN. [HIP] has not entered into any promotional deals'.¹⁹¹⁵</p> <p>For the reasons set out in Annex N, the CMA does not consider that Oxera's Coverage and Compliance analysis is sufficiently robust to be relied upon, in the absence of corroborating evidence in determining the extent of an individual providers' compliance with CTM's wide MFNs in the Relevant Period.</p> <p>As regards the alleged contradictory statements made by [HIP], the CMA acknowledges that [HIP] entered into two promotional deals in the Relevant Period that resulted in it being in breach of its wide MFN. CTM took enforcement action against both (see Annex M). The CMA does not consider that there is any contradiction between [HIP]'s statements that it sought promotional deals but that CTM's wide MFN prevented it from successfully completing such deals. This is confirmed by [HIP]'s responses to the escalated enforcement action that CTM</p>
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¹⁹⁰² URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a).

¹⁹⁰³ URN 6642, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 1.

¹⁹⁰⁹ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018 question 9.

¹⁹¹⁰ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 1(a).

¹⁹¹⁵ 10509.2 – 'DPS/Gravity – Supplementary Document 2', provided by BGL at the DPS Oral Hearing held on 9 March 2020.

		<p><i>have had to offer the same prices to our consumers</i>¹⁹⁰⁴</p> <p><i>'Due to a [X] resulting in cheaper prices for a cross section of consumers'.</i>¹⁹⁰⁵</p> <p>3. [HIP] systematically challenged by CTM over its prices (see Annex M)</p> <p>4. As a result of enforcing its wide MFN, CTM was offered the same pricing methodology as the one agreed with MoneySuperMarket (see Annex M)</p>	<p>June 2019 none had been successfully agreed</p> <p><i>'[HIP] have yet to agree any new promotional agreements in the home insurance sector. [X] to date have been unable to agree any promotions in the household market'.</i>¹⁹¹¹</p> <p>5. Since June 2019, entered into a promotional deal with CTM.¹⁹¹²</p> <p>6. Promotional deals considered successful in terms of sales volumes.</p> <p><i>'We have found the promotional deals to be a success. In one example, a small shared discount that was passed onto our consumers generated increased sales volumes [X] on one PCW'.</i>¹⁹¹³</p>	<p>took in respect of the two promotional deals [HIP] entered into (see Annex M).</p> <p>The CMA also acknowledges that since the Relevant Period, [HIP] did not enter into any promotional deals until after June 2019 when it entered into a promotional deal with CTM. However, this does not undermine the evidence that [HIP] was willing to engage in promotional deals and has sought to do so since removal of CTM's wide MFN and in fact has done so with CTM itself.</p> <p>3. BGL also argued that [HIP] stated that it considered its wide MFN to be 'null' or otherwise did not apply relying on [HIP]'s response to a section 26 notice.¹⁹¹⁶</p> <p>The CMA considers that this statement must be read in light of the other evidence provided by [HIP] including that due to the presence of its wide MFN it had to offer the same prices to consumers across PCWs and that it was prevented from entering into promotional</p>
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¹⁹⁰⁴ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, questions 15 and 16.

¹⁹⁰⁵ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a)(i).

¹⁹¹¹ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 1(a).

¹⁹¹² URN 10568, screenshot of quotes and promotional deals taken by the CMA from CTM's website on [X], page 4.

¹⁹¹³ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 10.

¹⁹¹⁶ URN 10460, Fourth Oxera Report dated 22 February 2019, paragraph 1.19 relying on URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.

				<p>deals by CTM's wide MFN. In addition, the statement also needs to be considered in light of the escalated enforcement action CTM took against [HIP] against the two promotional deals it sought to enter into in the Relevant Period, the express reliance on its wide MFN when taking such action and [HIP]'s response to such enforcement action. [HIP] did not dismiss such enforcement actions. In particular, [HIP] offered to replicate the question set differences agreed with MoneySuperMarket to enable CTM to benefit from the same lower rates [HIP] had been quoting on MoneySuperMarket (see Annex M). The CMA also refers to Section 4.B.I where it addresses BGL's related representations as to whether [HIP] had a wide MFN in its agreement with CTM.</p>
[HIP]	[✂]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN.</p> <p><i>'We have also looked at the economics of differential PCW pricing supported</i></p>	<p>1. 'Promotional Deals not a core part of pricing strategy and did not engage in promotional deals during the Relevant Period or after.</p>	<p>1. BGL submitted that the evidence set out in the previous columns demonstrated that CTM's wide MFNs had no effect on [HIP]'s pricing strategy.¹⁹¹⁹</p>

¹⁹¹⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 149 to 155 and 10509.2 – 'DPS/Gravity – Supplementary Document 2', provided by BGL at the DPS Oral Hearing held on 9 March 2020.

		<p><i>by commission offsets [...] we have strategically decided to avoid participating in any discounted commission deal, unless CPA's were substantially lower than the current levels'.¹⁹¹⁷</i></p> <p>2. No material change to strategy but has updated its pricing models to enable it to adjust retail prices to reflect PCW-specific commission fees.</p> <p><i>'the removal of a wide MFN (and replacement with narrow MFN) has not affected the premiums for Home insurance set by [HIP]. This is because we do not have an appetite at this time to offer cheaper prices (than [HIP] prices) on other PCWs.'¹⁹¹⁸</i></p>	<p><i>'[HIP] does not participate in Exclusive Deal arrangements. Our assessment is that offering a chosen PCWs' customers a cheaper price (for a lower Fee) would detract from [HIP] Direct Sales (generally subject to higher retention / LTV benefits). We consider the net outcome contrary to [HIP]'s best interest from an overall marketing efficiency perspective. That said, internally we have not dismissed Exclusive Deals for future consideration. They are likely to be more attractive for PCW's with smallest market shares or when CPA's are substantially lower than current levels'.</i></p> <p><i>'[HIP] has not engaged in Exclusive Deals – but of course has had sight of opportunities. Whilst we may have sought additional information to evaluate a proposal, we have not entered into negotiations to agree an initiative. The PCW's are aware of our stance and so we may not be approached as frequently as other HIP's'.</i></p>	<p>The CMA does not dispute that [HIP] had a uniform pricing strategy because it did not want to price lower on PCWs than on its direct channel. In addition, promotional deals were not part of [HIP]'s strategy in the Relevant Period. Therefore, CTM's wide MFN did not have a directly observable impact on [HIP]'s behaviour in the Relevant Period.</p> <p>Similarly, the CMA does not dispute that since the end of the Relevant Period [HIP] has maintained the same pricing strategy. However, it has invested in updating its pricing model to enable it to differentiate its prices across PCWs, demonstrating a willingness since the end of the Relevant Period to differentiate its prices across PCWs.</p>
[HIP] ¹⁹²⁰	[✂]	1. From October 2016, differential pricing strategy.	1. Promotional deals not part of pricing strategy during the Relevant	1. BGL's representations on CTM's monitoring of [HIP]'s prices including

¹⁹¹⁷ URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

¹⁹¹⁸ URN 5158A, [HIP]'s response to section 26 notice dated 24 November 2017, question 16.

¹⁹²⁰ The CMA refers to section 4.B on whether [HIP] had a wide MFN in its contracts and BGL's representations on this point.

		<p><i>'At new business we price on a range of risk factors and also take account of channel of acquisition. We set discounts so as to optimise our sales in a very competitive environment on PCWs's'.¹⁹²¹</i></p> <p><i>'We questioned internally the enforceability of wide MFN clauses and were of the view that it did not apply to home insurance; our reasoning was that the Motor Insurance investigation as regards the Competition Act applied equally to home insurance. [REDACTED], when functionality was available to us, we based our pricing on a range of factors including differential fees and the quality of business from different PCWs's'.¹⁹²²</i></p> <p>[REDACTED]¹⁹²³</p> <p>2. Systematically challenged by CTM over its pricing and subject to</p>	<p>Period and did not engage in promotional deals during the Relevant Period.</p> <p><i>'We receive [REDACTED]'¹⁹²⁴</i></p> <p>2. Agreed a promotional deal after the Relevant Period with CTM in February 2020.¹⁹²⁵</p>	<p>escalated enforcement action are addressed in Annex M.</p> <p>2. BGL submitted that [HIP] was reluctant to entertain promotional deals as [HIP] stated:</p> <p><i>'[REDACTED] As such, we have only had one such offer'.</i></p> <p><i>'...[REDACTED]'.¹⁹²⁶</i></p> <p>The CMA acknowledges that a number of factors will affect whether or not a provider enters into an individual promotional deal (see section 7.D.II) and that promotional deals were not part of [HIP]'s strategy in the Relevant Period. However, since the end of the Relevant Period, [HIP] has entered into a promotional deal with CTM itself.</p> <p>3. BGL also submitted that [HIP] regarded its wide MFN clause as 'null' or otherwise did not apply referring to [HIP]'s response to the CMA's section</p>
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¹⁹²¹ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 4a.

¹⁹²² URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 18.

¹⁹²³ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

¹⁹²⁴ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 12.

¹⁹²⁵ URN 10561, screenshot of quotes and promotional deals taken by the CMA from CTM's website on [REDACTED], page 5.

¹⁹²⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 207 and 208.

		escalated enforcement action by CTM (see Annex M)		<p>26 notice as described in the first column.¹⁹²⁷</p> <p>The CMA refers to Section 4.B.I. where it addresses BGL's representations on [HIP]'s views as to its wide MFN being null.</p>
[HIP]	[X]	<p>1. Differential pricing strategy during the Relevant Period until April 2017¹⁹²⁸ when it changed its strategy to uniform pricing.</p> <p><i>'[HIP] provided different pricing for each PCW between the introduction of [HIP]'s aggregator-traded product in 2013 and April 2017. During these years, the maximum difference in premium across PCWs was approximately [X]. In April 2017 [HIP] decided to adopt a more consistent approach across PCWs and removed</i></p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during or after the Relevant Period.</p> <p><i>'Exclusive Deals are not important to [HIP]'s Home insurance business' and '[...] [it] has not been targeted with the offer of any Exclusive Deals, nor has it proposed any Exclusive Deals'.¹⁹³⁰</i></p>	<p>1. BGL infers from the evidence in the previous columns and the following statement that [HIP]'s strategy was unaffected by CTM's wide MFN:¹⁹³¹</p> <p><i>'[HIP]'s approach regarding pricing by a PCW has not changed over the Relevant Period. It has not been affected by the decision of a PCW to introduce or remove a Wide MFN or replace it with a narrow MFN'.¹⁹³²</i></p> <p>The CMA does not dispute based on [HIP]'s evidence that CTM's wide MFN</p>

¹⁹²⁷ URN 10460, Fourth Oxera Report dated 22 February 2019, paragraph 1.19.

¹⁹²⁸ As set out in section 8.B.II, The CMA's analysis of CTM's monthly monitoring snapshots does not reveal instances where CTM identified that [HIP]'s prices during the Relevant Period until [X] were outside of its compliance tolerances threshold. The CMA therefore considers that, whilst [HIP] differentiated its prices across PCW until [X], it is likely that [HIP]'s prices were generally consistent with its wide MFN obligations. In particular, [HIP] did not enter into any promotional deals in the Relevant Period, CTM's monitoring did not identify [HIP]'s pricing as being non-consistent and it did not face any escalated enforcement action unlike other providers, both large and small.

¹⁹³⁰ URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 11.

¹⁹³¹ The CMA notes that BGL stated that *'[HIP] does not mention CTM as a PCW with whom it had a wide MFN'* (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 220). However, [HIP] responded that it had a wide MFN with CTM which *'[a]pplies to all other sources of introduction'*, meaning that it covered not only the direct channel of introduction. URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 14(a).

¹⁹³² URN 5407, [HIP]'s response to section 26 notice dated 24 November 2017, question 16; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 220 and 10509.2 – 'DPS/Gravity – Supplementary Document 2', provided by BGL at the DPS Oral Hearing held on 9 March 2020.

		<i>the differences in premiums between PCWs in its pricing’.</i> ¹⁹²⁹		did not have a directly observable impact on its behaviour in the Relevant Period.
[HIP] ¹⁹³³	[✂]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN.</p> <p><i>‘Currently [HIP] look at this as an overall Home PCW life time pricing model rather than separately by each individual PCW, so irrespective of any differing commissions by PCW prices are charged as if each PCW receives the same commission currently’.</i>¹⁹³⁴</p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during or after the Relevant Period.</p> <p><i>‘During the Relevant Period [HIP] has not engaged in any discussions connected to Exclusive Deals relating to Home Insurance’.</i>¹⁹³⁵</p>	<p>1. BGL submitted that CTM’s wide MFN did not affect [HIP]’ strategy in the Relevant Period based in particular on the evidence in the previous columns and additional evidence on how [HIP] viewed its wide MFN clause (see section 4.B).¹⁹³⁶</p> <p>BGL’s representations on [HIP]’ views on the nature of its obligations under its wide MFN are considered in Section 4.B. In addition, the CMA does not dispute that because [HIP] had a uniform pricing strategy and did not engage in promotional deals, CTM’s wide MFN did not have a directly observable impact on its behaviour in the Relevant Period.</p>
[HIP] [✂]	[✂]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent</p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during the Relevant Period.</p>	<p>1. BGL submitted that CTM’s wide MFNs had no impact on [HIP]’s pricing strategy as reflected in the evidence summarised in the previous</p>

¹⁹²⁹ URN 6167, [HIP]’s response to section 26 notice dated 16 April 2018, question 6.

¹⁹³³ The CMA refers to section 4.B on whether [HIP] had a wide MFN in the Relevant Period and BGL’s representations on this issue.

¹⁹³⁴ URN 5157, [HIP]’ response to section 26 notice dated 24 November 2017, question 5.

¹⁹³⁵ URN 5157, [HIP]’ response to section 26 notice dated 24 November 2017, question 10.

¹⁹³⁶ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.14 and URN 8484.5 BGL’s Response to the SO dated 22 February 2019, paragraphs 208 and 355.

		<p>with its obligations under its wide MFN</p> <p><i>'Given the [REDACTED] [HIP] prefers to retain uniform selling pricing across Channels subject to the online discount'.</i>¹⁹³⁷</p>	<p><i>'Exclusive deals are not generally important to [its] Home Insurance business'.</i>¹⁹³⁸</p> <p>2. Engaged in a promotional deal with [REDACTED] immediately prior to the Relevant Period in [REDACTED].</p> <p><i>'The Exclusive Deal was made because [HIP] wanted to understand the commercial effect of this kind of promotion, particularly whether the investment was justified by the sales uplift it generated'.</i>¹⁹³⁹</p> <p><i>'Otherwise no Exclusive Deals have been proposed to, or requested by, PCWs over the Relevant Period'.</i>¹⁹⁴⁰</p> <p>[REDACTED]¹⁹⁴¹</p>	<p>columns in particular.¹⁹⁴² This was also supported by a statement by [HIP] that:</p> <p>[REDACTED]¹⁹⁴³</p> <p>The CMA does not dispute that because [HIP] had a uniform pricing strategy and did not engage in promotional deals in the Relevant Period, CTM's wide MFN did not have a directly observable impact on its behaviour in the Relevant Period.</p>
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¹⁹³⁷ URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

¹⁹³⁸ URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 12.

¹⁹³⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 219 to 220; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 172 to 173; URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

¹⁹⁴⁰ URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 12.

¹⁹⁴¹ URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 13.

¹⁹⁴² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 194 (iv) and 219 to 221; URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 7.43; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 171 to 174.

¹⁹⁴³ URN 5651, [HIP]'s response to section 26 notice dated 24 November 2017, question 15.

[HIP] [X] ¹⁹⁴⁴	[X]	<p>1. [X]</p> <p><i>'[HIP] has one Home Insurance product across our Direct and PCW Channels. [X] Our premiums are consistent and consequently there is [X] difference between PCW's'.¹⁹⁴⁵</i></p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during the Relevant Period.</p> <p><i>'We are unable to engage in any Exclusive Price Deals with PCW's on Home Insurance as we do not have a separate PCW product and [X].¹⁹⁴⁶</i></p> <p>2. Agreed one promotional deal with [X] in [X] (after leaving CTM's panel). This took the form of a £40 food voucher rather than a direct discount.¹⁹⁴⁷</p>	<p>1. BGL submitted that CTM's wide MFNs had no impact on [HIP]'s pricing strategy as reflected in the evidence summarised in the previous columns in particular.¹⁹⁴⁸</p> <p>The CMA does not dispute that because [HIP] [X] generally did not engage in promotional deals, CTM's wide MFN did not have a directly observable impact on its behaviour in the Relevant Period.</p>
[HIP]	[X]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN</p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during or after the Relevant Period.</p> <p><i>'As a business we have never provided a Promotional Deal for Home</i></p>	<p>1. BGL submitted that [HIP]'s strategy was not affected by CTM's wide MFN because it priced uniformly, did not enter into and did not consider entering into promotional deals and has not changed its strategy since removal of CTM's wide MFN.¹⁹⁵³</p>

¹⁹⁴⁴ The CMA addresses BGL's representations on the nature of [HIP]'s wide MFN clause in section 4.B.

¹⁹⁴⁵ URN 5121, [HIP]'s response to section 26 notice dated 24 November 2017, question 21.

¹⁹⁴⁶ URN 5121, [HIP]'s response to section 26 notice dated 24 November 2017, question 13.

¹⁹⁴⁷ URN 9860, MoneySuperMarkets's response to follow-up questions to section 26 notice dated 27 April 2018, spreadsheet entitled 'Appendix 2 - Pricing Investments v3 updated (updated Nov 2019)'.

¹⁹⁴⁸ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.14 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 118 to 120. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.14

¹⁹⁵³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 133 to 135.

		<p><i>'[HIP] had always maintained consistent pricing across all PCW for Home Insurance'.¹⁹⁴⁹</i></p> <p>2. Willing to engage in differential pricing (see Section 7.D.II) and has the technical capability to do so.</p> <p><i>'When the Wide MFN ruling was adjusted in 2017 my pricing team updated pricing on Motor but also applied a temporary [X] on CTM in relation to Home Insurance. This action was applied without my pricing team being aware of the MFN ruling only relating to PMI (CAR) and was withdrawn April 2017 after a CTM review reporting our pricing differences across Van and Home insurance'.¹⁹⁵⁰</i></p> <p>3. Enforced against when sought to differentiate its prices to reflect CTM's higher commission fees (see Section 8.B.III.(b).(iii). and Annex M).</p> <p>4. Pricing strategy unchanged since removal of CTM's wide MFN.</p>	<p><i>Insurance or considered doing so on any PCW Website...On no occasion have any Promotional Deals or tiered Commission Model deals been discussed or put forward with a PCW regarding Home Insurance in the Relevant Period'.¹⁹⁵²</i></p>	<p>The CMA does not dispute BGL's submission that [HIP]'s strategy was generally to price uniformly and that it did not consider entering into promotional deals during and after the Relevant Period. Its evidence is consistent with the evidence from CTM's rivals on how they target promotional deals.</p> <p>However, the CMA refers to the enforcement action taken against [HIP] in March 2017 (see Annex M). [HIP] believed erroneously that wide MFNs had been removed from all products enabling it to price differentiate and pass on CTM's higher commission fees into its prices on CTM. [HIP] removed the price increase following CTM's enforcement action.</p>
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¹⁹⁴⁹ URN 9174, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.

¹⁹⁵⁰ URN 9174, [HIP]'s response to section 26 notice dated 19 June 2019, question 2.

¹⁹⁵² URN 9174, [HIP]'s response to section 26 notice dated 19 June 2019, questions 11 and 12.

		<i>'Since Dec 2017 we have continued with the same consistent pricing strategy across all PCW's [sic] for Home Insurance'.</i> ¹⁹⁵¹		
[HIP]	[X]	<p>1. [HIP] is a broker and had a differential pricing strategy during the Relevant Period.</p> <p><i>'[HIP] has always applied different charges on the PCWs, product lines'.</i>¹⁹⁵⁴</p> <p>2. [HIP] was subject to close monitoring throughout the Relevant Period. It was also subject to escalated enforcement action in 2015 and in March-June 2016. Such monitoring and direct enforcement impacted on [HIP]'s pricing strategy (see Section 8.B.III.(b).(ii) and Annex M).</p> <p>3. Pricing strategy unchanged since the Relevant Period.</p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during or after the Relevant Period.</p> <p><i>'[HIP] has never offered exclusive deals as far as I am aware. No PCW has ever offered [HIP] a reduction in their 'commission' for a promotional deal [...] In the main [HIP] responds to prices of other HIPs on PCW by [X]'.¹⁹⁵⁵</i></p> <p><i>'we do not have any promotional deals, or volume based discounts set up with any PCW'</i>¹⁹⁵⁶</p> <p><i>'The PCW have never agreed to reduce their commissions so we can</i></p>	<p>1. The CMA has addressed BGL's representations on the monitoring and enforcement action taken by CTM against [HIP] in Annex M. This includes the impact such action had on [HIP]'s pricing strategy.</p> <p>2. BGL submitted that [HIP] never sought to enter into promotional deals and has not done so since removal of CTM's wide MFN and therefore CTM's wide MFN had no impact on [HIP].¹⁹⁵⁸</p> <p>The CMA does not dispute that [HIP] did not engage in promotional deals during or after the Relevant Period. Its evidence is consistent with the evidence from CTM's rivals on how they target promotional deals.</p>

¹⁹⁵¹ URN 9174, [HIP]'s response to section 26 notice dated 19 June 2019, question 7.

¹⁹⁵⁴ URN 6215, [HIP]'s response to section 26 dated 16 April 2018, question 15.

¹⁹⁵⁵ URN 6215, [HIP]'s response to section 26 dated 16 April 2018, question 3.

¹⁹⁵⁶ URN 9124, [HIP]'s response to section 26 dated 16 April 2018, question 1(a).

¹⁹⁵⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 123 to 124.

			<i>put a promotional deal on their websites'.¹⁹⁵⁷</i>	
[HIP] [X]	[X]	<p>1. Uniform pricing strategy in the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN.</p> <p><i>'We ran regular price checks throughout the Relevant Period across all PCWs to ensure prices were consistent for the same risks. We have no records of finding non-compliance [...] We had an ongoing two way dialogue with the PCWs during the Relevant Period, who informed us that they were also carrying out checks of their own as to our compliance with the [wide] MFN'.¹⁹⁵⁹</i></p>	<p>1. Promotional deals not part of pricing strategy and did not engage in promotional deals during or after the Relevant Period</p> <p><i>'We saw no impact of the presence of Wide MFNs as we did not engage in Exclusive Deals and used promotions solely to boost sales volumes. We do recognise that the opportunity for Exclusive Deals may have been limited by the presence of MFN clauses, however as these were in almost all of our agreements and this was never a major focus for us we did not see it as a hindrance'.¹⁹⁶⁰</i></p> <p>2. Willing to consider promotional deals on a case-by-case basis</p> <p><i>'We do not have any corporate memory of Exclusive Deals as defined and can find no evidence of any in the records we have available. However, we did enter into other trading deals</i></p>	<p>1. BGL submitted that CTM's wide MFNs had no impact on [HIP]'s pricing strategy, as reflected in the evidence summarised in the previous column in particular.¹⁹⁶²</p> <p>The CMA does not dispute that because [HIP] had a uniform pricing strategy and did not engage in promotional deals CTM's wide MFN did not have a directly observable impact on its behaviour in the Relevant Period. The CMA notes however that [HIP]'s strategy in part reflected its belief that it had wide MFNs <i>'in almost all of [[HIP]] agreements'</i>, which would include CTM's rivals during the Relevant Period when this was not in fact the case. An insurer subject to wide MFNs with multiple PCWs would not be able to price differentiate or engage in any promotional deals as [HIP] confirms.</p>

¹⁹⁵⁷ URN 6215, [HIP]'s response to section 26 dated 16 April 2018, question 9.

¹⁹⁵⁹ URN 5365, [HIP] response to section 26 notice dated 24 November 2017, question 20.

¹⁹⁶⁰ URN 5365, [HIP] response to section 26 notice dated 24 November 2017, question 19.

¹⁹⁶² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 194(i) and 209.

			<i>with the PCWs on the Household portfolio, and discussions regarding potential promotions happened as part of normal trading meetings’.</i> ¹⁹⁶¹	
[HIP] ¹⁹⁶³	[X]	<p>1. It is not clear whether [HIP] priced uniformly during the Relevant Period.¹⁹⁶⁴</p> <p>2. After the Relevant Period, [HIP] [X], but overall pricing strategy has not changed.</p> <p>[...] <i>since [X] [HIP] have [X].</i></p>	<p>1. Entered into a trial promotional deal with CTM in May 2015, before the Relevant Period:</p> <p>[X]¹⁹⁶⁵</p> <p>2. Entered a promotional deal with [X] after the Relevant Period in [X].</p> <p><i>[HIP] entered into a promotional deal with [X] for the sale of home insurance products in [X].</i>¹⁹⁶⁶</p> <p><i>‘Metrics used were clicks [X].’</i>¹⁹⁶⁷</p>	<p>1. BGL submitted that CTM’s wide MFNs had no impact on [HIP]’ pricing strategy as reflected in the evidence summarised in the previous columns in particular. This was further supported by the fact that it can be inferred to have been unsuccessful since [HIP] decided not to pursue further promotional deals during the Relevant Period.¹⁹⁶⁸</p> <p>The CMA does not dispute that the evidence submitted by [HIP] that it did not engage in promotional deals during the Relevant Period or materially change its pricing strategy afterwards. However, after the Relevant Period and the</p>

¹⁹⁶¹ URN 5365, [HIP] response to section 26 notice dated 24 November 2017, question 12.

¹⁹⁶³ The CMA addresses BGL’s representations on the nature of [HIP]’s wide MFN clause in section 4.B

¹⁹⁶⁴ The CMA only sent a section 26 notice to [HIP] following the issue of the SO for the purpose of its promotional deals analysis, having identified that [HIP] had entered into a promotional deal following the end of the Relevant Period. The CMA therefore has obtained more limited information from [HIP] than from other providers with wide MFNs contacted prior to the SO. However, for the reasons set out in section 8.B.II, the CMA considers that it is likely that [HIP]’s prices were generally consistent with its wide MFN obligations.

¹⁹⁶⁵ URN 9825, [HIP]’ response to section 26 notice dated 26 July 2019, question 3(a).

¹⁹⁶⁶ URN 9825, [HIP]’ response to section 26 notice dated 26 July 2019, question 1.

¹⁹⁶⁷ URN 9825, [HIP]’ response to section 26 notice dated 26 July 2019, question 1(g).

¹⁹⁶⁸ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 112 to 117. URN 10509.2 – ‘DPS/Gravity – Supplementary Document 2’, provided by BGL at the DPS Oral Hearing held on 9 March 2020.

				disapplication of CTM's wide MFN, [HIP] entered into a further promotional deal, [§] (see previous column).
[HIP]	[§]	<p>1. It is not clear whether [HIP] priced uniformly during the Relevant Period.¹⁹⁶⁹</p> <p><i>'Our pricing strategy has always been to quote our best price where we can. CTM did however carry out periodical rate testing on our brand on other PCW's & query any cheaper price differentials – this no longer occurs'.</i></p> <p>2. No change to pricing strategy since November 2017.</p> <p><i>'There have been no changes to our aggregator pricing strategy at all'.</i>¹⁹⁷⁰</p>	<p>1. Did not enter into any promotional deals during the Relevant Period.</p> <p><i>'There has been no occasions where a promotional deal was discussed / proposed but not taken forward'.</i>¹⁹⁷¹</p> <p>2. Entered into a promotional deal after the Relevant Period.</p> <p><i>'Our firm entered into a joint promotion with Confused.com [§].'</i>¹⁹⁷²</p>	<p>1. BGL submitted that CTM's wide MFNs had no impact on [HIP], as it has not changed its pricing strategy since November 2017.¹⁹⁷³ BGL also submitted that [HIP]'s promotional deal was [§].¹⁹⁷⁴</p> <p>The CMA does not dispute that [HIP] did not engage in further promotional deals or change its pricing strategy after November 2017. However, after the Relevant Period and disapplication of its wide MFN with CTM, [HIP] entered into a promotional deal with Confused. It also confirmed that there were no promotional deals proposed to [HIP] between</p>

¹⁹⁶⁹ Like [HIP], the CMA only sent a section 26 notice to [HIP] following the issue of the SO for the purpose of its promotional deals analysis, having identified that [HIP] had entered into a promotional deal following the end of the Relevant Period. The CMA therefore has obtained more limited information from [HIP] than from other providers with wide MFNs contacted prior to the SO. For the reasons set out in section 8.II.B, the CMA considers that it is likely that [HIP]'s prices were generally consistent with its wide MFN obligations.

¹⁹⁷⁰ URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 3(c).

¹⁹⁷¹ URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 2.

¹⁹⁷² URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 1(a).

¹⁹⁷³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 215.

¹⁹⁷⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 214; URN 9735, [HIP]'s response to section 26 notice dated 26 July 2019, question 1(h).

				December 2015 and August 2019 that it did not take forward. ¹⁹⁷⁵
[HIP]	[X]	<p>1. Uniform pricing strategy during the Relevant Period such that its prices were generally consistent with its obligations under its wide MFN.</p> <p><i>[HIP] has always structured its pricing and distribution channels separately, with its pricing managers acting independently, especially from any commercial relationships with PCWs or insurers.</i></p> <p><i>[HIP]’s pricing strategy is built independently within the business so to avoid any potential influence by commercial arrangements.</i></p> <p><i>[HIP]’s pricing strategy, during the period identified as well as more generally has therefore not been influenced by CTM’s MFN clause’.</i></p>	<p>1. Engaged in its first promotional deal after the Relevant Period [X].</p> <p><i>‘The scheme proposed in [X] was the first time that [HIP] has chosen to undertake such a promotion, with a PCW or otherwise’.</i>¹⁹⁷⁷</p> <p><i>[HIP] have not previously run or planned to run any promotional deals with any PCW or of its own accord’.</i>¹⁹⁷⁸</p> <p>2. The promotional deal resulted in a pricing change applied across all online channels</p> <p><i>‘The discount was available to all customers across all online distribution channels’.</i>¹⁹⁷⁹</p> <p>3. The promotional deal was withdrawn due to its economic performance</p>	<p>1. BGL submitted that the evidence set out in the previous columns demonstrates that the promotional deal entered into in [X] was structured to impact all channels therefore would not have been prevented by the wide MFN and does not support the CMA’s position that providers would have had a greater incentive to price differentiate.¹⁹⁸¹</p> <p>The CMA does not dispute that [HIP] had maintained a uniform pricing strategy during and after the Relevant Period. However, after the Relevant Period [HIP] explored a new pricing strategy through the introduction of a Promotional Deal.</p>

¹⁹⁷⁵ URN 9735, [HIP]’s response to section 26 notice dated 26 July 2019, questions 1 and 2.

¹⁹⁷⁷ URN 9659, [HIP]’s response to section 26 notice dated 26 July 2019, question 2.

¹⁹⁷⁸ URN 9659, [HIP]’s response to section 26 notice dated 26 July 2019, question 2.

¹⁹⁷⁹ URN 9659, [HIP]’s response to section 26 notice dated 26 July 2019, question 1(f).

¹⁹⁸¹ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 71 to 77.

		<p><i>[there] have not been any changes to pricing strategy since November 2017’.</i>¹⁹⁷⁶</p>	<p><i>[...] a decision was taken to withdraw due to the reduction in income versus the negligible uplift in case volume’.</i>¹⁹⁸⁰</p> <p><i>‘The scheme proposed in [X] was the first time that [HIP] has chosen to undertake such a promotion, with a PCW or otherwise’.</i></p>	
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¹⁹⁷⁶ URN 9659, [HIP]’s response to section 26 notice dated 26 July 2019, question 3(b) and 3(c).

¹⁹⁸⁰ URN 9659, [HIP]’s response to section 26 notice dated 26 July 2019, question 1(g).

ANNEX M: ENFORCEMENT ACTION BY CTM

M.1 This Annex sets out in more detail the evidence obtained by the CMA in relation to the escalated enforcement action taken by CTM against [HIP], [HIP], [HIP], [HIP], [HIP] and [HIP].

M.I. [HIP]

M.2 [HIP] is an important insurer and a household name and accounted for approximately 0-5% ([X]%) of home insurance sales on PCWs and 0-5% ([X]%) of home insurance sales on CTM in 2017.¹⁹⁸²

M.3 As described in Section 7.D.II and Annex L,¹⁹⁸³ [HIP]'s pricing strategy in the Relevant Period was generally to quote the same base retail price across the Big Four PCWs in the Relevant Period. [HIP] submitted that in setting its PCWs pricing strategy it was mindful of the impact on sales of any pricing strategy on its direct channel but also its legal obligations under its wide MFN with CTM. It explained that CTM's wide MFN was '*ingrained in [HIP]'s pricing principles*'¹⁹⁸⁴ and that '*[price] parity*'¹⁹⁸⁵ is a well understood concept within [HIP]'¹⁹⁸⁶ and that it was '*enforced through CTM's terms of trade*'¹⁹⁸⁷. In addition, [HIP] explained '*as a consequence of MFN clauses we incorporate an allowance for each customer that is equal across all PCWs and direct pricing*'.¹⁹⁸⁸

M.4 [HIP] submitted to the CMA that CTM's wide MFNs had a '*detrimental effect on competition*' because of a '*(i) reduced incentive for insurers to lower prices by limiting flexibility of pricing across sales channels; and (ii) the network of MFNs prevent[ing] PCWs from providing special offers*'.¹⁹⁸⁹ As a result commission fees were higher as well as premiums.¹⁹⁹⁰ [HIP] explained that CTM's decision to retain wide MFNs in home insurance notwithstanding the PMI Order 2015 banning wide MFNs in car insurance prevented the benefit of the PMI Order 2015 being leveraged across insurance products.¹⁹⁹¹ Following the PMI Order 2015, [HIP] started to agree

¹⁹⁸² Annex E, Home insurance providers' shares of supply on the Big Four PCWs, tables E.1 and E.3.

¹⁹⁸³ Paragraph 7.152.

¹⁹⁸⁴ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 17.

¹⁹⁸⁵ As described in Section 2.G. wide MFNs are often referred to as price parity clauses as they require that the prices quoted on the PCW benefitting from the wide MFN clause are at least on a par with, i.e. no higher than, those quoted on rival PCWs.

¹⁹⁸⁶ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 18.

¹⁹⁸⁷ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

¹⁹⁸⁸ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 5.

¹⁹⁸⁹ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017 question 6(b).

¹⁹⁹⁰ URN 1442, [HIP]'s response to the Update Paper in the DCT's Market Study, page 1, paragraph 3.

¹⁹⁹¹ URN 1442, [HIP]'s response to the Update Paper in the DCT's Market Study, page 1, paragraph 3.

promotional deals in motor insurance, reflecting the greater appetite from PCWs MoneySuperMarket and Confused to use the ban on wide MFNs in order to challenge other market PCWs through price competition, in particular CTM.¹⁹⁹²

- M.5 In the Relevant Period, [HIP] wanted to engage in promotional deals in home insurance (see Section 7.D.II). However, due to CTM's wide MFN and CTM's enforcement action, it was restricted in its ability to do so.¹⁹⁹³ It only agreed one promotional deal in the Relevant Period, which resulted in CTM taking enforcement action against it. Thereafter [HIP] did not engage in any further discussions with PCWs for promotional deals, despite being approached by both MoneySuperMarket and Confused, as a result of the enforcement action taken by CTM (see Section 8.B.II.(b)). Following CTM's decision to stop enforcing its wide MFN, [HIP] entered into active discussions for promotional deals and, having had the previous deal with [X], it was able to agree a promotional deal in [X].
- M.6 The CMA sets out below the enforcement action that CTM took in response to [HIP] entering into a promotional deal with [X] in [X]. The CMA then sets out the effect of the CMA's Investigation on [HIP]'s behaviour.

M.I.(a). CTM's enforcement action in 2017

- M.7 CTM enforced its wide MFN against [HIP] when [HIP] entered into a promotional deal with [X] in [X]. As a result of the enforcement action by CTM against [HIP], [HIP] did not enter into any further promotional deals until after CTM stopped enforcing its wide MFNs.
- M.8 In [X], [X] approached [HIP] with an offer to run a promotional deal in home insurance consisting of a [X]% price reduction in return for approximately £[X] [X].¹⁹⁹⁴ [HIP] agreed to this offer as it was an opportunity to increase sales [X].¹⁹⁹⁵ In addition, [HIP] also considered a deal outside of motor insurance to be strategically important.¹⁹⁹⁶

¹⁹⁹² URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 6.

¹⁹⁹³ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 4.

¹⁹⁹⁴ URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP] entitled 'Re: CTM Briefing - For Awareness' [X], page 2.

¹⁹⁹⁵ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 6.

¹⁹⁹⁶ URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'RE: CTM Wide MFN' [X], page 2

- M.9 However, [HIP] was concerned that the deal would put it in breach of its wide MFN with CTM. Nevertheless, it decided to proceed with the deal because it considered that:
- (a) Following the PMI Order 2015, [HIP] assumed that CTM would not be in a position to enforce its wide MFN in non-motor products;¹⁹⁹⁷
 - (b) The increased focus by the CMA on wide MFNs in the DCT Market Study meant there was a good chance that [HIP] could negotiate the clause out of its contract;¹⁹⁹⁸
 - (c) There was a possibility that the structure of the deal against the wording of the MFN clause in the agreement between BISL and [HIP] would not involve a breach of CTM's wide MFN.¹⁹⁹⁹
- M.10 In [REDACTED] [HIP] repeated its request²⁰⁰⁰ to CTM to remove the wide MFN from its contract on the basis that CTM's wide MFN was preventing providers from entering into commercially advantageous promotional deals across PCWs. As described in Section 8.A.II.(c). CTM refused the request.²⁰⁰¹
- M.11 At the end of [REDACTED] as terms were finalised with [REDACTED], [HIP] recognised that the deal would involve a breach of its wide MFN clause. It decided to contact CTM to explain that it was planning to discount its home insurance product for a period of 4 weeks within the next six weeks [REDACTED]. [HIP] considered that CTM might be willing to give it '*[a] special dispensation for this one off activity*' pending the outcome of the DCTs Market Study and because [HIP] believed that the impact on CTM would be minimal [REDACTED].²⁰⁰²
- M.12 In [REDACTED], [HIP] internally assessed its options. It concluded that it was unable to back out of the deal with [REDACTED] and that if it were to price match on CTM this would destroy '*the concept of a promotional offering*'. It considered whether it might be possible to agree with [REDACTED] that [HIP] be allowed to [REDACTED] but in addition to adversely affecting their commercial relationship with CTM,

¹⁹⁹⁷ URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'RE: CTM Wide MFN' [REDACTED], page 2.

¹⁹⁹⁸ URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP] entitled 'Re: CTM Briefing - For Awareness' [REDACTED], page 2.

¹⁹⁹⁹ URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'RE: CTM Wide MFN' [REDACTED], pages 3 and 4.

²⁰⁰⁰ As described in section 8.A.II.(c) above, [HIP] requested removal of CTM's wide MFN in 2012, 2013, 2016 and 2017 citing that it considered the clause to be anti-competitive and was refused on each occasion.

²⁰⁰¹ As noted in section 8.A.II, [HIP] was at that time in discussion with CTM regarding the applicability of wide MFNs in home insurance given the PMI Order 2015 and the CMA DCTs market study. URN 5402, [HIP]'s response to section 26 notice dated 24 November 2017, document entitled [REDACTED].

²⁰⁰² URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'RE: CTM Wide MFN' [REDACTED], page 2.

[REDACTED].²⁰⁰³ It identified that one possibility was to agree with CTM that [HIP] would match the [REDACTED] deal later in the year if CTM refused the '*special dispensation*'. It concluded that its only option was to enter into '*intensive negotiations*' with CTM [REDACTED].²⁰⁰⁴ A call was arranged on 8 June 2017 involving senior personnel from both [HIP] and CTM.²⁰⁰⁵

- M.13 Contrary to BGL's submissions,²⁰⁰⁶ the evidence does not therefore show that [HIP] was '*quite prepared to disregard CTM's WMFN*'.²⁰⁰⁷ [HIP]'s internal documents as described above demonstrate that [HIP] was very conscious of its obligations under its wide MFN and of the consequences of CTM taking enforcement action. However, for the reasons set out at paragraph M.9 it had incorrectly assumed that CTM would not enforce its wide MFN against [HIP]. When it became apparent during the course of [REDACTED] that CTM was not only not prepared to remove its wide MFN in home insurance but was likely to enforce the clause against [HIP], [HIP] sought to agree terms with CTM to enable it to go ahead with the strategically important deal with [REDACTED].
- M.14 Indeed, [HIP] was so concerned to comply with its contractual obligations that it internally considered abandoning the deal with [REDACTED]. It also considered the need to '*make a compelling offer to CTM*'.²⁰⁰⁸ This included the option to [REDACTED]²⁰⁰⁹ [REDACTED], such were its concerns as to the action that CTM might take against [HIP] for entering into the deal with [REDACTED]. This was notwithstanding that [HIP] viewed the impact of the deal on CTM as minimal, confirming that [HIP] considered that CTM would always seek to enforce its wide MFN.
- M.15 [HIP]'s concerns at CTM's likely response were well-placed. According to [HIP], CTM requested that [HIP] offer CTM's customers three temporary price discounts '*by way of consideration to waive the wide MFN effective on Home insurance, allowing [HIP] to proceed with MSM unrestricted*'.²⁰¹⁰ All three discounts were to be fully funded by [HIP], in return for CTM to temporarily '*waive*' its rights under its wide MFN to enable [HIP] to go ahead

²⁰⁰³ URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'FW: CTM Wide MFN' [REDACTED], page 1.

²⁰⁰⁴ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10 and 18.

²⁰⁰⁵ [Employee, HIP] and [Employee, HIP] and [Employee 1, CTM] and [Employee 2, CTM]. URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 21; URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 5.

²⁰⁰⁶ URN 8484.5, BGL's Response to the SO, dated 22 February 2019, paragraph 320.

²⁰⁰⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 104.

²⁰⁰⁸ URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'FW: CTM Wide MFN' [REDACTED], page 1.

²⁰⁰⁹ URN 9152, [HIP]'s response to section 26 notice dated 19 June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] entitled 'FW: CTM Wide MFN' [REDACTED], page 1.

²⁰¹⁰ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 5.

with the [X] deal without also applying an equivalent discount on CTM at the same time.²⁰¹¹

- M.16 [HIP] further explained to the CMA that it had agreed these terms as it *'felt it had no basis on which to refuse comparethemarket'*²⁰¹² and that *'Comparethemarket received their first equivalent discount on Home Insurance in [X] achieving [X] from [HIP] without the significant investment towards marketing the Exclusive Deal [undertaken by MSM]'*.²⁰¹³ (emphasis added).
- M.17 BGL has submitted that it was [HIP] which proposed running three discounts on CTM and that the three discounts were the result of normal *'commercial negotiation'* and not *'enforcement'* of its wide MFN.²⁰¹⁴ BGL argued in particular that given [HIP]'s significant bargaining power, *'it is implausible that a multinational insurance provider like [HIP] would have been forced to agree to terms that were not of commercial benefit to them.'*²⁰¹⁵
- M.18 However, BGL has not submitted any contemporaneous documentary evidence to support its account and the CMA considers that BGL's account is inconsistent with the contemporaneous documentary evidence from [HIP]. While [HIP] is unable to recall why exactly three price discounts were requested by CTM *'as a minimum for acceptance'*, it maintains that this was CTM's proposal and that it had little option but to acquiesce to CTM's demands.²⁰¹⁶
- M.19 [HIP]'s account is corroborated by a number of internal contemporaneous documents. In advance of the call on [X] referred to in paragraph M.12, [HIP] did not identify as an option offering three price discounts to CTM in order to persuade CTM to give it a *'dispensation'*. In addition, in an internal [HIP] email dated [X] to [Senior Executive of HIP] and [Senior Executive, HIP], [Employee, HIP] summarised what had occurred earlier in the year. [Employee, HIP] explained that [X] for the promotion and CTM had *'refused to reconsider its position on wide MFNs.'*²⁰¹⁷ [Employee, HIP] went on: *'[a]t this stage, CTM demanded that in order to allow [HIP] to operate outside of*

²⁰¹¹ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 5.

²⁰¹² URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 10; URN 5079, [HIP]'s response to section 26 notice dated 24 November 2017, document entitled [X].

²⁰¹³ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 10.

²⁰¹⁴ URN 8872, BGL's response to section 26 notice dated 10 May 2019, questions 21, 24 and 25.

²⁰¹⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 320.

²⁰¹⁶ URN 9155, [HIP]'s response to section 26 notice dated 19 June 2019, question 5.

²⁰¹⁷ URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP], entitled 'Re: CTM Briefing - For Awareness' [X], page 2.

*the contract that we would could [sic] simply match the [X] offer, but that we had to offer at least three promotions in [X] [...].*²⁰¹⁸

M.20 The same internal email also stated that these terms were ‘*agreed under a level of duress*’²⁰¹⁹ reflecting the position that [HIP] was in breach of its wide MFN by entering into the promotional deal with [X] and it genuinely feared the consequences.²⁰²⁰ The language used to describe events does not suggest a ‘*commercial negotiation*’ between equal parties, nor does the outcome under which [HIP] had to fund all three price discounts with no contribution from CTM. [HIP] also explained that one of the three discounts was in motor insurance rather than home insurance, showing the wider implications of CTM’s enforcement of its wide MFNs even outside of home insurance.²⁰²¹ The nature and outcome of the negotiations with CTM is further supported by the internal documents described below surrounding [HIP]’s decision not to proceed with two of the price discounts it had been required to agree with CTM.

M.21 As described more fully in Section 8 at paragraphs 8.99-8.100, as a result of the enforcement action taken by CTM in response to [HIP]’s deal with [X], [HIP] did not enter into any further promotional deals until after the Relevant Period.

M.I.(b). [HIP]’s behaviour following the launch of the Investigation

M.22 Following the launch of the CMA’s Investigation on the conclusion of the DCTs Market Study but before CTM’s decision not to enforce its wide MFNs, [HIP] decided not to deliver the remaining two price discounts on CTM because they were uneconomic for [HIP]. Senior [HIP] individuals ([Senior Executive of HIP] at the time, [Senior Executive of HIP] and [Employee, HIP]) were informed of this approach by the UK [Senior Executive, HIP]:

‘Given the change in landscape, and our fundamental belief that the removal of WMFNs is in the best interest of UK consumers and competition, we aim to renege on our commitments to CTM in relation to the other 2x remaining discounts. Such promotions are not in our best interest commercially and were forced upon by applying

²⁰¹⁸ URN 9153, [HIP]’s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP], entitled ‘Re: CTM Briefing - For [X]’, page 2

²⁰¹⁹ URN 9153, [HIP]’s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP], entitled ‘Re: CTM Briefing - For Awareness’ [X], page 2.

²⁰²⁰ This is supported by the internal email described at paragraphs M.12 – M.14 above setting out [HIP]’s concerns at the action CTM might take if it refused to deliver the two outstanding deals.

²⁰²¹ URN 9155, [HIP]’s response to section 26 notice dated 19 June 2019, question 5.

contractual terms which we have always believed to be unfair and are now potentially in breach of competition law.

*CTM will probably escalate this quickly given our change in stance and may use the fact that the investigation is ongoing as a reason why [HIP] should not rely upon it.'*²⁰²² (emphasis added)

M.23 The email further set out the commercial implications and risks, in [HIP]'s view, of not delivering the remaining two price discounts on CTM:

- (a) *'CTM resist sighting [sic] breach of contract – which technically we are and bring a claim against [HIP]*
- (b) *CTM resist and threaten to remove [HIP] from its panels*
- (c) *CTM concede and accept [HIP] position*
- (d) *CTM concede but request some other mechanism by way of compensation*
- (e) *CTM concede but penalise [HIP] operationally – i.e. stop changes, data sharing arrangements*
- (f) *CTM concede but penalise [HIP] commercially – CTM have already made aggressive overtures relating to the next round of commission negotiations which could be exacerbated'.*²⁰²³

In response, [HIP]'s Chief Counsel noted that ***'under 1 [...] any normal person wouldn't do this as the WMFN clause is highly likely to be held legally unenforceable by the court, [X].'*** (emphasis added).²⁰²⁴

M.24 [HIP]'s [Senior Executive] supported the decision not to deliver the two remaining price discounts but noted that she expected CTM to ***'threaten 2 below [delisting [HIP]] with some vigour'*** (emphasis added).²⁰²⁵

M.25 These contemporaneous documents clearly demonstrate that [HIP] was very concerned at the action CTM might take against it for breach of its wide MFN

²⁰²² URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP], entitled 'Re: CTM Briefing - For Awareness' [X], page 3.

²⁰²³ URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP], entitled 'Re: CTM Briefing - For Awareness' dated 13 November, page 3.

²⁰²⁴ URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP], entitled 'Re: CTM Briefing - For Awareness' dated 14 November, page 1.

²⁰²⁵ URN 9153, [HIP]'s response to section 26 notice dated June 2019, question 5, internal email from [Employee, HIP] to [Employee, HIP], entitled 'Re: CTM Briefing - For Awareness' dated 14 November, page 1.

not only in [X] but also throughout the Relevant Period. This included not only potential damages claims and delisting (such concerns being consistent with those of other providers faced with enforcement action by CTM)²⁰²⁶ but also concerns at the impact on commercial negotiations more generally including annual commission fee negotiations.²⁰²⁷

- M.26 The three price discounts agreed with CTM were not considered by [HIP] to be in its commercial interest corroborating [HIP]'s account that it felt '*under a level of duress*' to agree all three discounts. It was not until the CMA had issued its findings in the DCTs Market Study and launched the Investigation, that [HIP] considered that it could take the risk and not implement the two price discounts still outstanding that it had been obliged to agree as compensation for breaching CTM's wide MFN. This evidence also undermines BGL's argument that [HIP] had strong bargaining power and the CMA also refers in this regard to Section 5.D. with regard to its findings that CTM had market power and that no individual insurance provider would be likely to exert countervailing buyer power in this regard.
- M.27 BGL has also argued that '*These price reductions from [HIP] which CTM negotiated in [X], were potentially of substantial benefit to consumers, given that most users of the CTM website would otherwise have been unaware of them.*'²⁰²⁸ The CMA does not dispute that by obliging [HIP] to agree to three price discounts, some consumers using CTM's platform may have benefitted in the short term. However, the action taken by CTM to enforce its wide MFN and the price extracted by CTM from [HIP] for entering into the promotional deal with [X], directly resulted in [HIP] refusing to enter into any further promotional deals until after the Relevant Period.²⁰²⁹

M.II. [HIP]

- M.28 [HIP] is an insurance broker²⁰³⁰ accounting for less than 1% [X] of sales of home insurance on PCWs in the Relevant Period. Notwithstanding its relative size, [HIP]'s compliance with the wide MFN was systematically monitored by CTM before and during the Relevant Period.²⁰³¹ In addition, CTM took steps to enforce its wide MFN in March 2016 when it observed [HIP] quoting lower prices on GoCompare than on CTM.

²⁰²⁶ See for example paragraphs M.80 to M.97 below regarding [HIP].

²⁰²⁷ This is also consistent with the evidence relating for example to [HIP] described at paragraphs M.46 to M.53 below, where compliance with CTM's wide MFN was a factor in negotiations on commission fees.

²⁰²⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 321.

²⁰²⁹ See paragraphs 8.109.

²⁰³⁰ In section 2.C.II the CMA describes the difference between insurance brokers and other insurance providers.

²⁰³¹ [HIP] featured frequently in CTM's price parity snapshots in the period 2015-2017. See, among others, [X].

- M.29 [HIP] implemented a differential pricing strategy since 2007^{2032,2033} which consisted of applying '[X]' of its '*commission*' (i.e. its broker margin) on particular premiums/risks in order to remain competitive on prices. [HIP] explained that '*If our rates are not competitive against other HIP[insurers] [X] to see if we can get any further discounts off [X] so we can pass onto the customers*'.²⁰³⁴ It also explained that market dynamics affect the extent to which a premium gets a discount or not.²⁰³⁵ [HIP] told the CMA [X]²⁰³⁶ included in its contracts with each PCW, including CTM.²⁰³⁷
- M.30 The CMA first sets out the evidence that CTM systematically monitored [HIP]'s pricing immediately prior to the Relevant Period. This evidence is helpful in understanding the commercial relationship between [HIP] and CTM and the systematic monitoring and enforcement actions taken by CTM in the Relevant Period, described subsequently.

M.II.(a). CTM's enforcement action in 2015

- M.31 CTM's monitoring snapshot for [X] shows that at this time [HIP] appeared to be offering lower prices on GoCompare and on MoneySuperMarket than on CTM. In accordance with its standard monitoring, CTM raised the matter with [HIP].²⁰³⁸ The [X] snapshot records that [HIP] confirmed to CTM that it had a deal in place with [X] and that CTM asked it to replicate the price discounts under the deal with [X] on CTM. It appears that [HIP] decided not to apply the same discounts on CTM as price discrepancies compared to [X] continued in [X].
- M.32 CTM's monitoring snapshot for [X] records that [HIP] had been offering lower prices on [X]. However, it also records that CTM had '*gained agreement*' from [HIP] that it would align its pricing such that it would be in compliance with CTM's wide MFN.²⁰³⁹ Subsequent correspondence demonstrates that this realignment was to be achieved by [HIP] offering the same discounts on CTM that it was offering on [X] and other PCWs at [HIP]'s cost.

²⁰³² URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 15.

²⁰³³ URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 13.

²⁰³⁴ URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3.

²⁰³⁵ URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 4.

²⁰³⁶ Under a 'conversion floor' or 'sales floor', the commission fee paid to the PCW is linked to the provider achieving a minimum conversion rate or minimum sales.

²⁰³⁷ URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 9.

²⁰³⁸ URN 4795.15, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Issues Log'.

²⁰³⁹ URN 4795.36, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Snapshot Best Prices Apr-15'.

M.33 In particular, in exchange for [HIP] lowering its prices on CTM, [HIP] and CTM agreed that, as of 1 June 2015, [HIP]'s conversion floor would be reduced from [X]% to [X]% for a trial three month period.²⁰⁴⁰ In addition, CTM also increased its commission fees to [HIP].²⁰⁴¹ CTM recorded:

*'[...] after many conversations [...] in May 15 about prices and conversion floors we assisted [HIP] by lowering the conversion floor to [X]% in return [HIP] addressed [its] performance by giving ctm customer between £5-£10 discount.'*²⁰⁴²

M.34 CTM reserved the right to increase the conversion floor at any time if [HIP] failed to improve its pricing performance on CTM:

*'We reserve the right to amend the floor back to [X]% at any time providing 30 days notice should the Insurance Provider performance fall below an acceptable level.'*²⁰⁴³

M.35 CTM considered at the relevant time that its wide MFN required [HIP] to offer CTM the same discounts as those offered to its rivals. In an internal email of 28 August 2015, CTM noted that:

*'what we have agreed with the insurance provider is to improve the competitiveness which in turn improves performance. **The way in which the Insurance provided [sic] might do this is to offer us the same discounts that another aggregator is getting which we calculated from CI data to be £5-£10. [HIP] already have a wide MFN so should be doing this anyway [...].'***²⁰⁴⁴ (emphasis added)

M.36 CTM requested monthly calls with [HIP] *'to discuss performance over the next three months whilst we trial these new terms'*.²⁰⁴⁵ [HIP] did not appear in CTM's monthly snapshots until December 2015, suggesting that [HIP]'s pricing between June and December 2015 had been within CTM's compliance tolerance thresholds and therefore viewed as compliant with its

²⁰⁴⁰ This was beneficial to [HIP] because it meant that if [X] consumers clicked through from CTM but only [X] made purchases then CTM would no longer charge [HIP] as if it had made [X] sales rather than the [X] actual sales.

²⁰⁴¹ URN 3288, BGL's response to section 27 notice dated 26 September 2017, internal email from [Employee 3, CTM] to [Employee 2, BGL] entitled 'RE [HIP] Amendment', dated 28 August 2015, page 1.

²⁰⁴² URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled 'FW: Sales Floor', dated 12 February 2016, page 3.

²⁰⁴³ URN 3288, BGL's response to section 27 notice dated 26 September 2017, internal email from [Employee 3, CTM] to [Employee 2, BGL] entitled '[X]', dated 28 August 2015, page 1.

²⁰⁴⁴ URN 3288, BGL's response to section 27 notice dated 26 September 2017, internal email from [Employee 3, CTM] to [Employee 2, BGL] entitled '[X]', dated 28 August 2015, page 1.

²⁰⁴⁵ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP] entitled 'RE: Sales Floor', dated 28 May 2015, page 3.

wide MFNs. This is supported by the email from CTM to [HIP] described in the following paragraph.

M.II.(b). CTM's enforcement actions in the Relevant Period

M.37 Between December 2015 and May 2016, CTM's snapshots show an increase in price differences between home insurance products appearing on CTM and [X], which CTM again raised with [HIP].²⁰⁴⁶ In particular, on [X], in response to a [X] discount that had been identified on [X] 'as part of [CTM's] market monitoring', CTM emailed [HIP] to raise concerns about the price differential.²⁰⁴⁷

*'Since [the conversations in 2015 about prices and subsequent lowering of the conversion floor] I have been pleased with your performance but when this pricing change went in on [X] we have seen a negative impact on conversion and in November it fell to [X]% which is way below the benchmark, I feel it may be time to review these commercials once more as there appears to no longer be any mutual benefit.'*²⁰⁴⁸

M.38 [HIP] told the CMA that it interpreted CTM's email as saying that [HIP] was in breach of contract and requiring [HIP] to explain itself. [HIP]'s interpretation of the email is further confirmed by subsequent correspondence in which CTM made clear that it regarded [HIP] as in breach of contract.²⁰⁴⁹

M.39 BGL in its response to the SO characterised the above email as merely querying price differences as it did with any insurers, with or without wide MFNs. BGL also submitted that this exchange confirms that its wide MFN clauses were the subject of bilateral 'commercial negotiations' as in 2015 it had agreed to renegotiate the conversion levels that [HIP] was required to achieve under its contract with CTM in return for compliance with its wide MFN.²⁰⁵⁰

M.40 The CMA disagrees. As explained in Section 8.B.III., CTM's 'querying price differences' is against the backdrop of a contractual term, breach of which can have serious consequences for the provider. In the case of [HIP], such

²⁰⁴⁶ URN 4795.28, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Jan-16_redacted'.

²⁰⁴⁷ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled 'FW: Sales Floor', dated 12 February 2016, page 3.

²⁰⁴⁸ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled 'FW: Sales Floor', dated 12 February 2016, page 3.

²⁰⁴⁹ Specifically, [HIP] stated that 'When we apply [X] of various amounts, we have had the PCW contacting us saying we are breaking their contracts and to explain ourselves. See email dated: [X]'. URN 6215, [HIP]'s response to section 26 notice dated 16 April 2018, question 3

²⁰⁵⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 292.

an email must be read in the context of previous interaction on the need for [HIP] to ensure compliance and the outcome of those previous episodes where CTM regarded [HIP]'s pricing as non-complaint. As described above, whilst CTM had agreed a reduction in [HIP]'s conversion floor levels in 2015 for a three month trial period, this was on condition that [HIP] would lower its prices on CTM at its cost to ensure it complied with its wide MFN combined with an increase in its commission fees.²⁰⁵¹

M.41 In response to CTM's email of 12 February 2016, on 16 February 2016, [HIP] informed CTM that the low level of price parity was not deliberate, but resulted from the type of risk being quoted.²⁰⁵² [HIP] offered to reduce its quotes on CTM if CTM was *'unhappy that there may be a few quotes whereby [X] get a slightly better rate than Compare the Market'*.²⁰⁵³

M.42 In response on 2 March 2016, CTM stated that [HIP] was required to offer CTM pricing parity under the terms of its contract with CTM:

*'[CTM] now have the situation where 60% of [X] quotes are cheaper compared with only 14% of quotes cheaper on ctm [...] **How do we get back to pricing parity here as per the agreement we have in place?** I attach a small sample of risks where we are priced against. [...] Please can you investigate and advise why these are priced differently.'*²⁰⁵⁴ (emphasis added)

M.43 CTM followed-up on this email on 15 March 2016. [HIP] had requested that CTM produce the relevant quote references and dates to enable it to verify the price differences alleged by CTM. In an internal CTM email dated 16 March 2016, a [HIP employee] stated *'The partner is unable to trace the risks provided without a quote reference, I feel this is to stall things so I have*

²⁰⁵¹ The CMA considers that the explicit references to *'review these commercials once more'* and to there appearing to be no longer being *'any mutual benefit'* in the commercial relationship clearly indicates that CTM was taking the matter of compliance with its wide MFNs seriously and CTM was not simply *'querying price differences'*.

²⁰⁵² URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee, HIP] to [Employee 3, CTM] entitled 'FW: Sales Floor', dated 16 February 2016, pages 1 to 2.

²⁰⁵³ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee, HIP] to [Employee 3, CTM] entitled 'FW: Sales Floor', dated 16 February 2016, page 2. In response to the SO, BGL submitted that CTM took this as a *'threat'* by [HIP] to reduce its volumes on CTM. However, this did not prevent CTM from continuing to take enforcement action against [HIP]. as subsequent correspondence confirms, CTM appeared to consider that the level of non-compliance was more than *'a few quotes'*. URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 294.

²⁰⁵⁴ URN 3348, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP] entitled 'FW: Sales Floor', dated 2 March 2016, page 1.

sent an advice request to compliance for my next email referring to wide MFN, as per new procedure [...].²⁰⁵⁵ (emphasis added)

M.44 In response to [HIP]'s request for further information, CTM provided the dates for the quotes the following day on 16 March but emphasised to [HIP] that:

'At this point I would like to remind you that the contractual arrangement between us includes an agreement to provide us with price parity across all distribution channels. We want the best deals for our customers and currently this is not being achieved because they are able to achieve a better deal elsewhere. Please confirm your plans to resolve this, I look forward to hearing from you shortly.'²⁰⁵⁶ (emphasis added)

M.45 It is clear from this exchange, not only that CTM regarded [HIP] to be in breach of the wide MFN, but also that it was for [HIP] to 'resolve' the situation and to confirm to CTM how it was going to do so. The CMA has not seen any evidence to suggest that at this time CTM was in 'negotiation' with [HIP] to obtain better prices for consumers using its platform for example by offering volume-based discounts to secure lower prices or otherwise incentivising [HIP] to lower its prices. On the contrary, the evidence shows that, rather than engaging in a commercial negotiation, CTM was invoking and relying on the wide MFN to prevent [HIP] from quoting prices on other PCWs that undercut the prices it was quoting on CTM and threatening to increase commission fees for non-compliance with its wide MFN.

M.46 On 29 April 2016, CTM wrote to [HIP] proposing new commercial terms noting that *'Our market share on home has been over 50% for some time now [...]. We deliver a high proportion of quality customers that are unique to comparethemarket.com that cannot be reached by our partners through any other distribution channel'* and proposing an increase in the conversion floor and a further increase in commission fees.²⁰⁵⁷

M.47 [HIP] responded on 13 May 2016 stating that due to consistently increasing commission fees ([✂] from June 2012 up to and including June 2016) *'it will be with great regret that [HIP] will come off' CTM's panel.*²⁰⁵⁸

²⁰⁵⁵ URN 3847, BGL's response to section 27 notice dated 26 September 2017, internal email from [Employee 3, CTM] to [Employee 9, CTM] entitled 'Best Prices Actions' dated 16 March 2016, page 1. See Section 8.B.III. for an explanation of CTM's revised internal monitoring and enforcement escalation processes.

²⁰⁵⁶ URN 3349, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 3, CTM] to [Employee, HIP] entitled 'RE: Sales Floor', dated 16 March 2016, page 1.

²⁰⁵⁷ URN 6223, [HIP]'s response to section 26 dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP] and [Employee, HIP], ([Employee, HIP] in copy) entitled 'Commercial Review', dated 29 April 2016, page 11.

²⁰⁵⁸ URN 6223, [HIP]'s response to section 26 dated 16 April 2018, email from [Employee, HIP] to [Employee 3, CTM] entitled 'EXTERNAL: FW Commercial Review', dated 13 May 2016, page 9.

- M.48 This email shows that [HIP] considered CTM's proposed further worsening of its commercial terms to be directly linked to compliance with its CTM's wide MFN. [HIP] stated that it had *'constantly reduced the prices [it] return[s] with Compare the Market'* and *'every day we monitor the prices we return on Compare the Market to ensure the prices are the best on the market.'* [HIP] reiterated its position in previous correspondence that any episodes of price disparity were due to mapping issues as a result of changes in the CTM infrastructure. It also added that *'[HIP] also want to continue driving down insurance prices for your customers to ensure they are getting the best on the market.'* Finally, [HIP] pointed out that *'if you want us to continue to provide Compare the Market with the best prices and increased sales the only way we can achieve this is by keeping the current CPA in place. If these are increased we have already reached the limit of where [HIP] can absorb the costs to ensure it is not making a financial loss and unfortunately any increase in the CPA will have to be passed onto the customer thus increasing the prices.'*²⁰⁵⁹
- M.49 The link between the new less favourable commercial terms and [HIP]'s compliance with its wide MFN was also reflected in CTM's monthly snapshot for May 2016. CTM noted that *'comms'* should be sent to [HIP] *'once commercials [were] resolved and [a] decision made on whether [HIP] wishes to] remain on the panel'*.²⁰⁶⁰
- M.50 The CMA has seen no evidence that CTM was concerned at the prospect of [HIP] coming off its panel. Rather, in response to [HIP]'s position that it could not accept CTM's revised commercial terms, on 3 June 2016, CTM explained to [HIP] that that there had been an ongoing issue with [HIP] offering higher prices on CTM than other PCWs and it could not agree to no increase in commission fees:

'Every month we do consistently see that some of our customers are not getting the best prices on the market which is contrary to what you are suggesting below, this would be an area I would be interested in investigating further but attempts to do this so far have not been successful as you have not been able to trace the example risks provided.'

²⁰⁵⁹ URN 6223, [HIP]'s response to section 26 dated 16 April 2018, email from [Employee, HIP] to [Employee 3, CTM] entitled 'EXTERNAL: FW Commercial Review', dated 13 May 2016, pages 9 to 11.

²⁰⁶⁰ URN 4795.22, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Actions May-16_redacted'.

We will not be able to move forward with no [commission fee] increase this year, I can be flexible with the floor however.

I suppose my question to you is, are these areas worth discussing further based on the fact that we will not agree to keep the same commercial terms or will you be choosing to come off the panel?’²⁰⁶¹

- M.51 In addition, in a subsequent email dated 14 June 2016 in the context of the ongoing discussions, CTM further stated that the minimum commission fee increase it could accept did not take into account *‘any additional increase for the low performance, but I would like to pick this [HIP]’s poor performance] up with you and look again at the price differences we have exchanged emails over in the past’.*²⁰⁶²
- M.52 This is also reflected in CTM’s snapshot for June 2016 which reported that CTM’s relationship management team had internally escalated [HIP]’s compliance with its wide MFN to BGL’s legal department. This resulted in compliance with its contractual obligations under CTM’s wide MFN being again formally raised with [HIP]. In particular, the relevant snapshot indicates that *‘[w]ritten approval sought from legal regarding application of the wide MFN for home which has been issued the partner [sic] for feedback’*²⁰⁶³ and an internal email dated 13 June 2016 noted that CTM *‘Pushed back to [HIP] and [HIP] on them not meeting their non-car wide MFN obligations. Real progress with the help of Legal.’*²⁰⁶⁴
- M.53 On 21 June 2016 revised commercial terms were agreed between CTM and [HIP]. Under these revised terms, CTM further increased its commission fees but retained [HIP]’s lower conversion floor threshold [§] agreed in 2015.²⁰⁶⁵
- M.54 By August 2016, according to CTM’s snapshots, [HIP]’s pricing had moved to within CTM’s compliance tolerance thresholds and, although some further instances of pricing differences were queried, these were attributed to mapping issues until December 2016.²⁰⁶⁶ The CMA infers from this that, in

²⁰⁶¹ URN 6223, [HIP]’s response to section 26 dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP] and [Employee, HIP] entitled ‘RE: Commercial Review’, dated 3 June 2016, page 9.

²⁰⁶² URN 6223, [HIP]’s response to section 26 dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled ‘RE: Commercial Review’, dated 14 June 2016, pages 7 to 8.

²⁰⁶³ URN 4795.32, BGL’s response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled ‘Pricing Snapshot Jun-16_redacted’.

²⁰⁶⁴ URN 3400, BGL’s response to section 27 notice dated 26 September 2017, internal email from [Employee 11, CTM] to [§] entitled ‘Highs and Lows’, dated 13 June 2016, page 3.

²⁰⁶⁵ URN 6223, [HIP]’s response to section 26 dated 16 April 2018, email from [Employee 3, CTM] to [Employee, HIP] entitled ‘RE: Commercial Review’, dated 21 June 2016, page 6.

²⁰⁶⁶ URN 4795.23, BGL’s response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled ‘Pricing Parity Snapshot August-16_redacted’; URN 4795.35, BGL’s response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled ‘Pricing Parity Snapshot Sep-16_redacted’; URN 4795.34, BGL’s response to follow-up questions to the First BGL Notice

this period, CTM regarded [HIP]'s pricing as sufficiently compliant with its wide MFN that no further action was required.

- M.55 The issue of pricing differences between CTM and [X] was again raised with [HIP] by CTM in December 2016 and subsequently in a telephone call on (or around) 18 January 2017.²⁰⁶⁷ CTM also provided [HIP] with risk data by email on (or around) 23 February 2017,²⁰⁶⁸ and 'risk IDs' (i.e. risk profiles from Consumer Intelligence) on (or around) 20 March 2017.²⁰⁶⁹ However, given the lack of any follow up action by CTM, the CMA infers that the pricing differences identified were not of such a nature or level as to require escalation in terms of enforcement action and indeed may have arisen for technical reasons rather than part of a deliberate strategy.
- M.56 BGL submitted that [HIP]'s compliance with CTM's wide MFN did not improve after revised commercial terms were agreed in June 2016. This is based solely on Oxera's Coverage and Compliance Analysis. According to Oxera's analysis, [HIP] was pricing more than 40% of its risks more expensively on CTM relative to [X] throughout 2016 and until the summer of 2017, [X]% above its tolerance thresholds.²⁰⁷⁰ As set out in Annex N, the CMA has found that Oxera's analysis is not sufficiently robust to draw conclusions on the level of compliance by individual providers in the Relevant Period in the absence of corroborating evidence.
- M.57 The CMA recognises that CTM's monitoring snapshots show that, following CTM's enforcement action culminating in revised terms in June 2016, on at least three occasions between December 2016 and March 2017, CTM queried [HIP]'s pricing on CTM relative to [X]. However, the CMA disagrees that [HIP]'s compliance did not improve based on CTM's monitoring of [HIP]'s prices at the relevant time. As explained in paragraphs M.54 to M.55 above, according to CTM's snapshots, by August 2016 [HIP]'s pricing had moved to within CTM's tolerance thresholds until December 2016.
- M.58 [HIP] is absent from CTM's monthly snapshots from March 2017 for the remainder of the Relevant Period or, where it is mentioned, CTM records

dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Oct-16_redacted'; URN 4795.33, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Nov-16_redacted'.

²⁰⁶⁷ URN 4795.25, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Dec-16_redacted'.

²⁰⁶⁸ URN 4795.29, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Jan-17-Copy_redacted'.

²⁰⁶⁹ URN 4795.27, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Feb-17_redacted'.

²⁰⁷⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 296; URN 8484.3, Third Oxera Report dated 22 February 2019, figure 5.2; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 122.

that no further action is required or only ongoing monitoring. The CMA infers from this that, at the relevant time, CTM regarded [HIP]'s pricing as within its compliance tolerance thresholds or that any differences identified were likely to be for technical reasons such that it regarded [HIP] as compliant with its wide MFN.^{2071 2072}

M.III. [HIP]

M.59 [HIP] is an insurer accounting for less than 1% ([X]%) of sales of home insurance on PCWs in the Relevant Period. [HIP] adopted a uniform pricing strategy during the Relevant Period such that its prices were generally compliant with its obligations under its wide MFN.²⁰⁷³ However, [HIP] was willing to engage in differential pricing and had the technical ability to do so. [HIP] explained that:

'When the Wide MFN ruling was adjusted in 2017 my pricing team updated pricing on Motor but also applied a temporary [X] on CTM in relation to Home Insurance. This action was applied without my pricing team being aware of the MFN ruling only relating to PMI (CAR) and was withdrawn April 2017 after a CTM review reporting our pricing differences across Van and Home insurance.' ²⁰⁷⁴

²⁰⁷¹ URN 6438.26, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Presentation re 'Pricing Parity - A High Level Overview' (201703 Best Prices)'; URN 6438.10, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Presentation re 'Pricing Parity - A High Level Overview' (201703 Best Prices)'; URN 4795.1, BGL's response to follow up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Parity'; URN 6438.28, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Presentation re 'Pricing Parity' - 201705 Best Prices'; URN 6438.29 BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Presentation re 'Pricing Parity' - 201706 Best Prices'; URN 4795.30, BGL's response to follow up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Parity Snapshot Jul-16_redacted'; URN 4795.24, BGL's response to follow up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Parity Snapshot Aug-17_redacted'; URN 4795.18, BGL's response to follow up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Competitiveness Snapshot Sep-17 (last month completed)_Redacted'; URN 6438.30, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Pricing Competitiveness (201710 Pricing Competitiveness)'; URN 6438.31, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Pricing Competitiveness (201711 Pricing Competitiveness)'; URN 6438.32, BGL's response to the Second BGL Notice dated 3 May 2018, document entitled 'Q21 - Pricing Competitiveness (201712 Pricing Competitiveness)'.

²⁰⁷² In addition, on the three occasions where CTM followed up its monitoring with [HIP] no further action was taken by CTM. The CMA considers that this suggests that the pricing differences identified were not of such a nature as to require enforcement action and indeed may well have arisen for technical reasons. The CMA also considers in light of the immediate action CTM took in 2015 and again in 2016 when it identified price disparities between the prices [HIP] was quoting on rival PCWs in particular GoCompare compared to CTM, that had [HIP]'s pricing remained in breach of CTM's wide MFN, CTM would have taken further action against [HIP].

²⁰⁷³ URN 9174, [HIP]'s response to section 26 notice dated 24 June 2019, question 2.

²⁰⁷⁴ URN 9174, [HIP]'s response to section 26 notice dated 24 June 2019, question 2.

- M.60 CTM took steps to enforce its wide MFN against [HIP] in March 2017 when it observed that [HIP] was quoting lower prices on other PCWs than on CTM, having applied a price increase on CTM.
- M.61 In or around [REDACTED], [HIP] applied a [REDACTED] price increase on CTM which resulted in higher prices on CTM than other PCWs. Prior to [REDACTED], [HIP]'s pricing strategy had been to generally maintain uniform pricing across PCWs in home insurance.²⁰⁷⁵ However, in early 2017 its pricing team believed, erroneously, that the PMI Order 2015 had removed the wide MFN across all insurance products thus enabling it to price differentiate between PCWs. In particular, the pricing team believed that [HIP] was, following the PMI Order 2015, free contractually to increase its prices on CTM relative to CTM's rivals whose commission fees were lower.
- M.62 [HIP] told the CMA that the decision to apply the increase was based on the higher commission fee that CTM was charging [HIP] compared to its rivals and was applied '*when the Wide MFN ruling was adjusted in 2017*'²⁰⁷⁶ and '*without [the] pricing team being aware of the MFN ruling only relating to PMI*'.²⁰⁷⁷
- M.63 [HIP] also told the CMA that as a result of its decision to price differentiate reflecting CTM's higher commission rates '*questions were raised by CTM*'. These queries '*included a spreadsheet that showed test quotes done and highlighted prices that [HIP] had applied to both the CTM and [REDACTED] websites in relation to Home Insurance*'.²⁰⁷⁸ This is corroborated by CTM's snapshot dated 20 March 2017 which states: '*Risk data sent for home and van, meeting arranged for 24th March - Follow up with wide MFN notice for non PMI, obtain sign off from [REDACTED]*'.^{2079,2080} This confirms that, at the relevant time, CTM regarded [HIP] to be in breach of its wide MFN and that it regarded the matter as sufficiently serious as to require escalation to BGL's legal department and the issuing of a formal communication referencing compliance with its wide MFN.
- M.64 At a subsequent meeting on 24 March 2017 between senior management from both CTM and [HIP] to discuss the issue, [Senior Executive, HIP]

²⁰⁷⁵ URN 9174 [HIP]'s response to section 26 notice dated 24 June 2019, question 2 and Annex L.

²⁰⁷⁶ Given that the PMI Order 2015 came into force in April 2015, it is not clear which '*Wide MFN ruling*' this is referring to but the correspondence with CTM described at paragraph M.64 refers to the PMI Order 2015.

²⁰⁷⁷ URN 9174, [HIP]'s response to section 26 notice dated 24 June 2019, question 2.

²⁰⁷⁸ URN 9174, [HIP]'s response to section 26 notice dated 24 June 2019, question 10.

²⁰⁷⁹ URN 4795.27, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Feb-17_redacted'.

²⁰⁸⁰ The CMA infers that the reference to '[REDACTED]' is to [Employee 3, BGL] [REDACTED] who attended CTM's monthly price parity meetings.

questioned the application of the PMI Order 2015.²⁰⁸¹ To follow up that same day and address [HIP]'s querying as to the legality of CTM's wide MFN, the relevant CTM Relationship Manager sent an email to [HIP], along with Consumer Intelligence data and the PMI Order 2015 as attachments. In that email he explained that he had raised the matter with BGL's inhouse legal team and CTM's position was that *'[t]he prohibition in the [PMI] Order refers to PMI Products only and therefore does not extend to other insurance products.'* The email concluded with the statement: *'I trust this clarifies our position regarding the need to adhere to clause 4.9 of the agreement [the wide MFN clause].'*²⁰⁸²

- M.65 [Senior Executive, HIP] forwarded this email to their colleagues and explained that CTM was *'[b]asically giving us a ticking off for applying different pricing on BIKE, VAN and HOME across other aggregators. Car is fine as this has legally been challenged and quashed!'* They also noted their expectation that [HIP] would be subject to monthly monitoring going forward: *'[...] it is on their radar now, so I would imagine this will be reviewed monthly from now on.'*²⁰⁸³
- M.66 [HIP] told the CMA that as a direct result of the action by CTM described above, it removed the £[~~£~~] price increase on CTM and *'continued to price consistently across all PCW for Home Insurance.'*²⁰⁸⁴ This is supported by CTM's snapshots in which [HIP] does not appear after April 2017. The CMA infers that this indicates that CTM regarded [HIP] as pricing within CTM's tolerance thresholds and therefore sufficiently compliant with its wide MFN.²⁰⁸⁵
- M.67 BGL in response to the LoF²⁰⁸⁶ did not make any representations on the evidence of the enforcement action taken by CTM against [HIP] which resulted in [HIP] removing the £[~~£~~] price increase on CTM to reflect CTM's higher commission fees. BGL only made representations that [HIP]'s uniform pricing strategy during and after the Relevant Period and attitude towards

²⁰⁸¹ URN 9174.1 [HIP]'s response to section 26 notice dated 24 June 2019, question 10, email from [Employee 7, CTM] to [Employee, HIP] entitled 'CMA PMI Final Order', dated 24 March 2017, pages 1 and 2.

²⁰⁸² URN 9174.1 [HIP]'s response to section 26 notice dated 24 June 2019, question 10, email from [Employee 7, CTM] to [Employee, HIP] entitled 'CMA PMI Final Order', dated 24 March 2017, page 2.

²⁰⁸³ URN 9174.1 [HIP]'s response to section 26 notice dated 24 June 2019, question 10, internal email entitled 'FW:CMA PMI Final Order', page 1.

²⁰⁸⁴ URN 9174 [HIP]'s response to section 26 notice dated 24 June 2019, question 10.

²⁰⁸⁵ See, for example, URN 4795.32, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Jun-16_redacted'.

²⁰⁸⁶ The evidence relating to the enforcement action taken against [HIP] by CTM in March 2017 was not available at the time of the SO and was therefore disclosed to CTM in the LoF and CTM was invited to make representations on it.

promotional deals and the negotiation of commission fees did not support the CMA's case.²⁰⁸⁷

- M.68 The CMA does not dispute that prior to March 2017 (or indeed after CTM's enforcement action), [HIP]'s policy was to price uniformly across PCWs. However, the CMA infers that this policy was affected by the existence of CTM's wide MFN given that when it believed CTM's wide MFN no longer applied in home insurance, it sought to price differentiate to reflect CTM's higher commission fees. When it did so, CTM took enforcement action and confirmed to [HIP] that legally it regarded its wide MFN in home insurance as enforceable. [HIP] as a result of such enforcement by CTM removed the price increase on CTM and thereafter reverted back to a uniform pricing strategy across PCWs, to avoid any further breaches of its wide MFN obligations. This was notwithstanding that in March 2017 it had developed a new pricing tool which enabled it to price differentiate:

*'Although I haven't confirmed yet that we are applying different pricing across different aggs I did suggest that we now have a pricing tool which enables us to do so, [REDACTED].'*²⁰⁸⁸

- M.69 Similarly, the CMA does not dispute that [HIP] did not offer any promotional deals in the Relevant Period (or subsequently) or discuss the possibility of entering into such deals with any PCWs. This is consistent with the evidence referred to in Section 7.D.II from the relevant PCWs regarding their strategies on promotional deals and in particular given the size of [HIP] in terms of sales made through PCWs.
- M.70 However, it is clear from the evidence above that [HIP] sought to reflect CTM's higher commission fees relative to its rivals in the retail prices it was quoting on CTM when it believed it was no longer subject to its wide MFN obligations. Moreover, following CTM's enforcement action [HIP]'s pricing strategy reverted to pricing uniformly to avoid breaching its wide MFN obligations.

M.IV. [HIP]

- M.71 [HIP] was, during the Relevant Period, [REDACTED]. However, under its brand [HIP], it had become by the Relevant Period an important provider accounting for [REDACTED]% [5 -10%] of sales on PCWs in 2017. BGL confirmed in its response to

²⁰⁸⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 133 to 135.

²⁰⁸⁸ URN 9174.1 [HIP]'s response to section 26 notice dated 24 June 2019, question 10, internal email from [Employee, HIP] to [Employee, HIP], [Employee, HIP] and [Employee, HIP] in copy) entitled 'FW: CMA PMI Final Order', dated 24 March 2017, page 1.

the SO that [HIP] was an *'important and growing customer of CTM'*²⁰⁸⁹ in home insurance in the Relevant Period.

M.72 As described in Section 7.D.II., [HIP]'s pricing strategy in the Relevant Period was to differentiate its prices across PCWs. It stated that up until CTM's enforcement action in [REDACTED], [HIP] did not generally observe its wide MFN clause²⁰⁹⁰ and it was never taken into account in its pricing strategy.²⁰⁹¹ However, notwithstanding these statements by [HIP], CTM's wide MFN was a relevant consideration when [HIP] price tested and on other occasions, as summarised below:

- (a) In March 2015, [HIP] sought clarification from CTM as to the extent to which it was permitted under its wide MFN to vary prices between PCWs. CTM confirmed it was able to do so provided CTM had an equal or lower price than its rivals.²⁰⁹²
- (b) A month later in April 2015, [HIP] sought clarification as to whether CTM, like GoCompare, would remove the wide MFN from its contract as it *'wanted to know where [it] stood'*.²⁰⁹³ CTM confirmed in response that the PMI Order 2015 only applied to motor insurance and therefore CTM was retaining its wide MFN in home insurance contracts. In a note of a meeting at the end of April 2015 between CTM and [HIP], [HIP] recorded that CTM and [HIP] had discussed compliance with CTM's wide MFN and that CTM had confirmed to [HIP] that *'[it] will rely on [the] agreement [CTM's wide MFN clause]'*.²⁰⁹⁴
- (c) In [REDACTED], [HIP] removed a [REDACTED] platform which stated [REDACTED]. CTM had contacted [HIP] stating that it considered the [REDACTED] to be a breach of its wide MFN and requiring its removal.²⁰⁹⁵
- (d) [HIP] confirmed that when price testing on other PCWs it took into account CTM's compliance tolerance thresholds.²⁰⁹⁶

²⁰⁸⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 283.

²⁰⁹⁰ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, question 18.

²⁰⁹¹ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 10 lines 25 to 26 and page 11 lines 1 to 2.

²⁰⁹² URN 3220, BGL's response to section 27 notice dated 26 September 2017, email chain between [Employee, HIP] and [Employee 2, CTM] entitled 'Re: Catch-up', dated May 2015.

²⁰⁹³ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 16, line 4.

²⁰⁹⁴ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 14, lines 21 to 26 and URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', page 100.

²⁰⁹⁵ URN 6582.1, note of the CMA meeting with [HIP] dated 14 May 2018, paragraph 15.

²⁰⁹⁶ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 31, lines 4 to 12.

- (e) [HIP] sought repeatedly when challenged by CTM to explain that its prices were compliant with its wide MFN obligations. [HIP] reassured CTM on several occasions that the discrepancies identified by CTM were not deliberate but due to technical issues such as mapping or question set differences.²⁰⁹⁷
- (f) In response to CTM's systematic monitoring before and during the Relevant Period, [HIP] confirmed to CTM on several occasions that it would amend its pricing to revert to its standard level of price differentiation between CTM and its rivals, which was within CTM's tolerances thresholds.²⁰⁹⁸
- (g) Following the threat of delisting in [§], [HIP] adjusted its prices and ensured that its pricing until the end of the Relevant Period was within CTM's tolerance thresholds.²⁰⁹⁹

M.73 The CMA finds that [HIP]'s compliance with the wide MFN was consistently monitored by CTM before and during the Relevant Period.²¹⁰⁰ CTM took steps to ensure compliance with its wide MFN clause in 2015, 2016 and finally [§]. In particular, in [§], as described below, CTM threatened to delist [HIP] from its panel of insurance providers if [HIP] did not comply with CTM's wide MFN. As a result of the delisting threat, [HIP] cut short a promotional deal with [§] and reduced its prices on CTM, at its own cost, to comply with CTM's wide MFN.

M.74 The CMA first sets out the evidence of CTM's monitoring and enforcement action in 2015, immediately prior to the Relevant Period. Such action is relevant in understanding the background to the monitoring and enforcement action taken by CTM during the Relevant Period. The CMA then considers

²⁰⁹⁷ See for example paragraph M.79 below.

²⁰⁹⁸ See for example paragraphs M.76 and M.78 below.

²⁰⁹⁹ See paragraphs M.86 and M.91 below.

²¹⁰⁰ [HIP] featured frequently in CTM's price parity snapshots in the period 2015-2017. See URN 4795.9, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Aug-15'; URN 4795.13, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Sep-15 _completed'; URN 4795.12, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Oct-15'; URN 6438.34, BGL's response to the Second BGL Notice dated 3 May 2018, question 21, document entitled 'Best Prices Summary November 15'; URN 4795.28, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Jan-16 _redacted'; URN 4795.26, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Feb-16 _redacted'; URN 4795.21, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Actions Mar-16 _redacted'; URN 4069, BGL's response to the section 27 notice of 26 September 2017, internal email from [Employee 7, CTM] to [Employee 9, CTM] entitled 'Pricing Parity Notes', page 3.

the monitoring and enforcement action that CTM took first in 2016 and then in [REDACTED] 2017.

M.IV.(a). CTM's monitoring and enforcement in 2015 and 2016

- M.75 Following clarifying its obligations under its wide MFN and CTM's intentions in light of the PMI Order in Spring 2015, as described at Section 8.A.II (d), CTM's monthly snapshots show that the extent to which [HIP] differentiated its prices between PCWs gradually increased in the latter half of 2015. However, such differentiation was attributed by CTM at the time to question set issues and was not therefore identified as requiring further action.²¹⁰¹
- M.76 CTM continued to closely monitor [HIP]'s pricing in 2016. Following a review meeting between CTM and [HIP] on 16 February 2016, [HIP] provided to CTM on 4 March 2016 a summary of topics covered at that meeting, which included: *'Discrepancy in pricing should be back to Sep-Nov levels in March.'*²¹⁰²
- M.77 CTM's snapshot for May 2016 records that risk data should be sent to [HIP], this time in relation to MoneySuperMarket only, and that [HIP] was pricing within CTM's compliance tolerance thresholds on Confused and GoCompare, consistent with the assurances it had provided to CTM in February 2016.²¹⁰³
- M.78 In the email exchange that followed, CTM noted that [HIP] had told CTM that [HIP] expected *'differences would return to the 'Typical' level prior to the question set changes and [CTM] would review again post live'*.^{2104,2105}

²¹⁰¹ See URN 4795.9, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Aug-15'; URN 4795.13, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Sep-15 _completed'; URN 4795.12, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Oct-15';

²¹⁰² URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', page 72.

²¹⁰³ URN 4795.22, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Actions May-16_redacted'.

²¹⁰⁴ URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', email from [Employee 4, CTM] to [Employee, HIP], [REDACTED], pages 67 to 68. The CMA infers that the reference to *'post live'* relates to the period following the implementation of the question set changes.

²¹⁰⁵ The August and September 2016 snapshots indicate that further CI data was sent to [HIP] on account of an increase in the frequency of pricing differences observed as compared to MoneySuperMarket and GoCompare. This was subsequently attributed, in the October and November snapshots, to a mapping issue which was fixed by December 2016 in respect of MoneySuperMarket. However, the same snapshot recorded a further action to *'send risk data [ie CI data] for GoCo [GoCompare]'* to clarify. URN 4795.23, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Aug-16_redacted'; 4795.35, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Sep-16'; URN 4795.34, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Oct-16_redacted'; URN 4795.33, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Nov-

'Typical' differences were noted as [REDACTED]% versus GoCompare, [REDACTED]% versus MoneySuperMarket and [REDACTED]% versus Confused, i.e. within CTM's [REDACTED]% compliance tolerance threshold.²¹⁰⁶

- M.79 The August and September 2016 snapshots indicate that further Consumer Intelligence data was sent to [HIP] on account of an increase in the frequency of pricing differences observed as compared to MoneySuperMarket and GoCompare (although none were outside CTM's [REDACTED]% compliance tolerance threshold).²¹⁰⁷ The discrepancies were subsequently attributed, in the October and November 2016 snapshots, to a mapping issue which was fixed by December 2016, rather than deliberate non-compliance with its wide MFNs. CTM's December 2016 snapshot noted that pricing on MoneySuperMarket had improved but that discrepancies remained versus GoCompare. These were later attributed to temporary price testing.²¹⁰⁸

M.IV.(b). Monitoring and enforcement action in 2017

- M.80 In the Spring of 2017, CTM identified price differences on [REDACTED] which were recorded by CTM's snapshots in [REDACTED].²¹⁰⁹ Whilst no follow-up action was recorded on CTM's snapshots, other evidence, as described below, confirms that CTM raised queries with [HIP] in respect of these price discrepancies at the time. These queries culminated in CTM escalating its enforcement action in [REDACTED] when it considered that [HIP] had not explained the reasons for the discrepancies or, importantly, assured CTM that they would be 'rectified'.
- M.81 [HIP] told the CMA that CTM contacted [HIP] initially 'verbally' and then by email on [REDACTED]:

'As you have not been able to explain the reasons for these price differences or give any assurances that the differences

16_redacted'; URN 4795.25, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Dec-16_redacted'.

²¹⁰⁶ URN 4795.23, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Aug-16_redacted' and URN 4795.20, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Actions Apr-16_redacted'.

²¹⁰⁷ This is confirmed by an email dated 10 October 2016 in which CTM provided to [HIP] Consumer Intelligence data for MoneySuperMarket and GoCompare, with the same email text as referred to above for May 2016. The CMA has not seen any further email correspondence between CTM and [HIP], subsequent to this email. URN 5184A1 [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', email from [Employee 4, CTM] to [Employee, HIP], [REDACTED], page 61.

²¹⁰⁸ URN 4795.25, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Dec-16_redacted' and URN 4795.27, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Feb-17_redacted'

²¹⁰⁹ [REDACTED]

have been rectified, I [Employee 4, CTM] have to assume that this approach forms part of your overall pricing strategy.

This practice is in breach of clause 4.11 of your agreement dated 28 November 2012.

For clarity, I refer to the CMA review of the Wide MFN clause in 2015. The CMA makes it clear that the PMI order only applies to private motor insurance (cars).

[...]

Please confirm when this will be remedied and clause 4.11 of the agreement will be adhered to.²¹¹⁰ (emphasis added)

- M.82 The next day, on [REDACTED], [Employee, HIP] emailed [Senior Executive, HIP] to make him aware that CTM had been chasing him *‘incessantly re pricing by environment [by PCW]’* and that he had received an email from CTM which *‘essentially says [[HIP] is] in breach of contract’*.²¹¹¹
- M.83 A call was subsequently arranged between [Employee 1, CTM] and [Senior Executive, HIP], to take place on [REDACTED] *‘to deal with the matter at a senior management level.’*²¹¹² [HIP] explained to the CMA that it *‘had to take the matter very seriously at this stage because of the escalation process now involved and [REDACTED].’*²¹¹³
- M.84 [HIP] has stated that, during the telephone call on [REDACTED], [Employee 1, CTM] made an *‘explicit’* and *‘specific’* threat to delist [HIP] due to its failure to comply with CTM’s wide MFN.²¹¹⁴ [HIP] *‘genuinely believed’* that it would be delisted from CTM’s panel, particularly as CTM had not used the term *‘delist’* explicitly before.²¹¹⁵
- M.85 [HIP] considered that the implications of being delisted from CTM would have been significant and detrimental to its business:
- (a) *‘CTM were, and still are, the dominant provider of customers to [[HIP]’s] business ([REDACTED]) so therefore, had [we] been delisted, it would have been*

²¹¹⁰ URN 5184A1, [HIP]’s response to section 26 notice dated 24 November 2017, ‘Appendix C’, page 27.

²¹¹¹ URN 6293, [HIP]’s response to section 26 notice dated 16 April 2018, ‘Appendix E’, page 21.

²¹¹² URN 6292, [HIP]’s response to section 26 notice dated 16 April 2018, question 19.

²¹¹³ URN 5184B, [HIP]’s response to section 26 notice dated 24 November 2017, question 19.

²¹¹⁴ URN 6292, [HIP]’s response to section 26 notice dated 16 April 2018, questions 12(iii) and 21; URN 5184B, [HIP]’s response to section 26 notice dated 24 November 2017, question 19 and URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 20, line 11.

²¹¹⁵ URN 6582.1, Note of CMA meeting with [HIP] dated 14 May 2018, paragraph 15.

a significant loss to [[HIP]'s] business. In particular, given the volume that CTM produced, it would not have been possible for [HIP] to recoup that volume elsewhere'.²¹¹⁶

- (b) *'[HIP] is a top 10 seller of household insurance on CTM and therefore it would not have been in the interest of competition if consumers had one less competitive quote to choose from'.²¹¹⁷*
- (c) *'Compare The Market are the most powerful of the four aggregators. [...] Compare The Market have substantially outstripped all other three aggregators in terms of their ability to generate leads into our business and, therefore, a delisting, or to be removed, from Compare The Market would have would have hit the business very hard at that point'.²¹¹⁸*

M.86 In response to CTM's threat to delist [HIP] from its panel, [HIP] took immediate action and agreed to comply with CTM's '*ultimatum*' by terminating the promotional deal with [X] and reducing the price [HIP] quoted on CTM by approximately 1% so that the price disparity was within CTM's tolerance:

- (a) *'[HIP] terminated the Exclusive Deal that was running with [X]. [X]. Based on its previous experience of Exclusive Deals and the performance of the one that was in progress, [HIP] believes that it would have terminated this deal shortly after [X] on economic grounds anyway.*
- (b) *[HIP] reduced the price which it was quoting on CTM by approximately [X] in order to bring down the price disparity to a level which was within CTM's tolerance'.²¹¹⁹ (emphasis added)*

M.87 [Senior Executive, HIP] confirmed in interview that '*this was, in my opinion, one of the instances where we needed to make changes quickly because I did not want to go -- I did not want to be on a list that went to the CTM board threatening us with delisting*'.²¹²⁰

²¹¹⁶ URN 6582.1, Note of CMA meeting with [HIP] dated 14 May 2018, paragraph 14.

²¹¹⁷ URN 6582.1, Note of CMA meeting with [HIP] dated 14 May 2018, paragraph 14.

²¹¹⁸ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 20, lines 16 to 17, and lines 23 to 26 and page 21, line 1.

²¹¹⁹ URN 5184B, [HIP]'s response to section 26 notice dated 24 November 2017, questions 19 and 24. See also URN 6582.1, Note of CMA meeting with [HIP] dated 14 May 2018, paragraph 6 and URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 21, lines 25 to 26 and page 22, lines 1 to 6.

²¹²⁰ URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 21, lines 18 to 20.

- M.88 [HIP] confirmed the action taken to CTM at a lunch between [Employee 1, CTM] and [Senior Executive, HIP] on [REDACTED].²¹²¹ [Senior Executive, HIP] recalls that at that lunch [Employee 1, CTM] explained that he was being instructed by the CTM Board to talk to [Senior Executive, HIP] and that he was uncomfortable at having to have the conversation.²¹²²
- M.89 The outcome of these events was recorded in an email exchange between [HIP] and CTM dated [REDACTED],²¹²³ in which [Senior Executive, HIP] confirmed to [Employee 1, CTM] that [HIP] would address the pricing issue:
- 'I've just had my guys together and instructed them in no uncertain terms the pricing parity issues need to be fixed no later than [REDACTED].*
- M.90 CTM's Relationship Manager sought further confirmation of [HIP]'s return to pricing within CTM's compliance tolerance thresholds from [HIP] by email on [REDACTED] asking *'have all the prices been aligned now?'*²¹²⁴ This was confirmed by return email: *'they have indeed, this was completed on [REDACTED].'*²¹²⁵
- M.91 The result of the enforcement action against [HIP] was also recorded in an internal CTM presentation of [REDACTED] which stated: *'Overall pricing parity stands at 55% down by 1.5%. This was predominantly due to [HIP] issue which has subsequently been resolved.'*²¹²⁶ In addition, CTM's snapshots do not identify any price discrepancies in [HIP]'s pricing after [REDACTED] outside of its compliance tolerance thresholds.
- M.92 BGL has submitted that *'more than a year went by'* between CTM's initial contact with [HIP] in February 2016 and CTM's more formal email in [REDACTED] referring to the wide MFN.²¹²⁷ According to BGL, this shows that CTM tolerated [HIP]'s *'deviation from the WMFN'* and there was no *'enforcement action'* by CTM.
- M.93 The CMA does not agree that the evidence set out above shows that CTM *'tolerated'* [HIP] breaching its wide MFN or that it waited *'more than a year'* before taking any enforcement action. On the contrary, the evidence

²¹²¹ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 20.

²¹²² URN 9729, Transcript of CMA interview with [Senior Executive, HIP] held on 17 July 2019, page 26.

²¹²³ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix F', page 56. A copy of this email was also provided as part of URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', page 19.

²¹²⁴ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix G', page 59. A copy of this email was also provided as part of URN 5184A1, [HIP]'s response to section 26 notice dated 24 November 2017, 'Appendix C', pages 24 to 25.

²¹²⁵ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix G', page 59.

²¹²⁶ URN 4077, BGL's response to section 27 notice dated 26 September 2017, document entitled 'V.O.C. Core commercial update', slide 6.

²¹²⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 280 and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.35, first bullet.

demonstrates that CTM immediately challenged [HIP] on its pricing in March 2016. In response, [HIP] reassured CTM that it would adjust its prices to bring its prices back into line. CTM believed at the relevant time through its monitoring that [HIP]'s prices on Confused had realigned to within CTM's tolerances and that [HIP]'s prices on [X] were also in line.

M.94 When CTM, shortly thereafter, identified that [HIP]'s prices on MoneySuperMarket and Confused were not within CTM's compliance tolerances, CTM again challenged [HIP] in May 2016. [HIP] again confirmed to CTM that its pricing would revert to within CTM's tolerances once discrepancies in question sets had been resolved. After each episode, CTM's own monitoring did not suggest that [HIP] was not pricing within CTM's compliance tolerances, tolerances that CTM had communicated to [HIP]. Similarly, in early 2017, when it identified disparity between [HIP]'s prices on Confused relative to CTM, it immediately and in [HIP]'s words at the relevant time '*incessantly*'²¹²⁸ challenged [HIP].

M.95 BGL also submitted that [Employee 1, CTM] '*does not believe*' that he ever made a threat to delist [HIP] in [X].²¹²⁹ Whilst not material to the CMA's findings that CTM took enforcement action against [HIP] given the contemporaneous documentary evidence described above, the CMA considers that it is more likely than not that [Employee 1, CTM] did make this threat. This is because:²¹³⁰

- (a) In documented correspondence with [HIP], CTM explicitly referred to [HIP] being '*in breach*' of contract, the need for [HIP] to '*rectify*' and '*remed[y]*' the breach and to '*adher[e]*' to its agreement with CTM. The natural contractual consequence of a breach of contract and non-rectification and non-adherence is delisting through termination of the contract and/or a potential damages claim.²¹³¹
- (b) The prompt querying of price discrepancies and, where sufficient explanations were not forthcoming, '*incessantly*' following up and the involvement of senior personnel at CTM emphasising the importance CTM placed on [HIP]'s compliance with its wide MFN.²¹³²

²¹²⁸ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix E', email from [Employee, HIP] to [Senior Executive, HIP] and [Employee, HIP], entitled '[HIP] Pricing', dated [X], page 20.

²¹²⁹ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraph 283.

²¹³⁰ In this context the CMA also notes that [Employee 1, CTM] has not denied that he made this threat only that he does not recall making it.

²¹³¹ URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix E', email from [Employee 4, CTM] to [Employee, HIP], entitled 'FW: [HIP] Pricing', dated [X], page 20.

²¹³² URN 6293, [HIP]'s response to section 26 notice dated 16 April 2018, 'Appendix E', email from [Employee, HIP] to [Senior Executive, HIP] and [Employee, HIP], entitled '[HIP] Pricing', dated [X], page 20.

- (c) [HIP]'s prompt response including the involvement of its [Senior Executive] together with its subsequent actions to comply with its wide MFN obligations (as supported by CTM's pricing snapshots) are consistent with [HIP]'s account that the threat of delisting was made, was likely to have been made by a senior individual at CTM, and that it was taken seriously by [HIP]. This is consistent with the evidence, not disputed by BGL, that [Employee 1, CTM] had a call followed by a lunch with the [Senior Executive] of [HIP] at which CTM's concerns regarding [HIP]'s pricing and compliance with its wide MFN were discussed. The involvement of [Employee 1, CTM] is also consistent with the importance to CTM's business of [HIP] at the relevant time.
- (d) BGL has also submitted that it would not be in CTM's interest to delist [HIP] given the large volume of policies sold by [HIP] via CTM, with [HIP] being one of CTM's best and fastest growing partners.²¹³³ In the CMA's view, what matters is not whether BGL genuinely intended to proceed with delisting [HIP], but that the threat of delisting was credible. In light of the documentary evidence, in particular the email of [X] in which CTM stated that [HIP] was in breach of its contract and requiring [HIP] to take remedial action to adhere to CTM's wide MFN and the seniority of the individuals involved, together with [HIP]'s immediate response and the action it took to remedy the situation, the CMA considers that the threat was credible. [HIP]'s evidence is also consistent with that of other providers, including larger well-known providers, including [HIP]²¹³⁴ and [HIP]²¹³⁵ who considered that delisting for breach of CTM's wide MFN was a credible and a plausible possibility, and the CMA's findings that CTM had market power in the Relevant Period.

M.96 As regards [HIP]'s decision to terminate the promotional deal with [X] following CTM's delisting threat, BGL pointed to [HIP]'s statement that the promotional deal with [X] would have ended shortly after [X] on economic grounds, irrespective of the wide MFN.²¹³⁶ The CMA considers that, even if that were the case, the evidence above demonstrates that the promotional deal with Confused was cut short by several days (from [X]) due to CTM's enforcement of its wide MFN and [HIP] has stated that it would otherwise have stopped the deal in order to avoid being delisted by CTM.²¹³⁷ In

²¹³³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 281.

²¹³⁴ See Section 8.B.II.(b) (i).

²¹³⁵ See Section 8, paragraph 8.106.

²¹³⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 284.

²¹³⁷ URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 11.

addition, [HIP] '*reluctantly*' reduced its price on CTM to fall within CTM's tolerated parity levels of £[X] and comply with the wide MFN.²¹³⁸

M.97 BGL similarly submitted that [HIP] never took into account CTM's wide MFN in determining its pricing.²¹³⁹ BGL relies on the evidence of [Senior Executive, HIP] and his colleagues in an interview with the CMA on 17 July 2019. In that interview [Senior Executive, HIP] stated that CTM's wide MFN had not been a relevant factor in [HIP]'s pricing strategy up until the moment at which [HIP] was informed by CTM that it had breached the contractual terms. BGL therefore argues that no effects could therefore have arisen from CTM's wide MFN earlier than [X] as far as [HIP] is concerned. The CMA disagrees for the following reasons:

- (a) As set out in Section 8.C.II (a), the effect on competition needs to be assessed by reference to the network of agreements containing wide MFNs and not on an agreement by agreement basis as against the counterfactual.
- (b) As set out in Section 8.C.II.(b), whilst relevant an insurers' directly observed behaviour is not determinative of whether an agreement has affected competition.
- (c) [HIP]'s observable behaviour was affected by the existence of its wide MFN. [HIP] repeatedly responded to CTM's challenges to confirm that any price discrepancies identified by CTM were not deliberate but due to technical issues. It also reassured CTM on several occasions that it would revert to pricing within CTM's tolerances. It confirmed that its price testing was within CTM's compliance tolerance thresholds. It clearly was also concerned about the consequences of CTM enforcing its wide MFN as evidenced by its behaviour in [X]. Furthermore, had [HIP] sought to implement greater price differentiation across PCWs outside of CTM's compliance tolerances in the Relevant Period, it is likely CTM would have enforced its wide MFNs as it did in [X].

M.V. [HIP]

M.98 [HIP] is an insurance broker²¹⁴⁰ accounting for [X]% 0-5% sales of home insurance on PCWs in the Relevant Period. [HIP] generally had uniform

²¹³⁸ URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraph 11.

²¹³⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 182.

²¹⁴⁰ Section 2, C, II describe the difference between insurance brokers and other insurance providers.

prices across PCWs, but from the end of 2015 [X], resulting in differential retail base pricing. [HIP] told the CMA that:

*'Outside of any promotional deals, [HIP]'s pricing will generally be the same across PCWs'.*²¹⁴¹

*'Due to the presence of the wide MFN in our contract, regardless of what commission we paid aggregators, we have had to offer the same prices to our consumers'.*²¹⁴²

*'Due to [X] resulting in cheaper prices for a cross section of consumers'.*²¹⁴³

M.99 Furthermore, during the Relevant Period, [HIP] was willing to enter into promotional deals as set out in more detail below. [HIP] stated that *'With regards to Exclusive and Promotional deals, we would offer them to all aggregators leaving the decision with them to accept/decline depending on their appetite'.*²¹⁴⁴ It stated that:

*'Having the wide MFN in place has made it so [HIP] couldn't successfully complete any promotional campaigns'.*²¹⁴⁵

M.100 [HIP]'s compliance with its wide MFN was consistently monitored by CTM before and during the Relevant Period.²¹⁴⁶ CTM took steps to enforce the clause in [X] and again in [X] when [HIP] entered into promotional deals with rival PCWs, [X] and [X].

²¹⁴¹ URN 6642, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 1.

²¹⁴² URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, questions 15 and 16.

²¹⁴³ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a)(i).

²¹⁴⁴ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 5(c).

²¹⁴⁵ URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018 question 16.

²¹⁴⁶ [HIP] featured frequently in CTM's price parity snapshots in the period 2015 to 2017. See, among others, [X]

M.V.(a). CTM's monitoring and enforcement in 2016

- M.101 At the [X], [HIP] agreed a promotional deal with [X], [X].²¹⁴⁷ [HIP] [X].²¹⁴⁸ This allowed [HIP] to run [X], resulting in lower prices for a cross-section of consumers throughout the Relevant Period.²¹⁴⁹
- M.102 This resulted in a pricing disparity between CTM and Confused in breach of CTM's wide MFN which was identified by CTM within a month, in [X], through CTM's systematic monitoring. In particular, CTM's [X] snapshots show that CTM decided to take action and *'[c]hase up home on Confused due to fixed price difference rather than question set.'*²¹⁵⁰ CTM was therefore concerned that the price disparity with Confused was due to a promotional deal between [HIP] and Confused resulting in a fixed price difference, rather than a technical issue such as differences in question sets.
- M.103 An internal CTM email of [X] also noted that the *'Pricing Parity meeting highlighted Confused became the outlier in terms of pricing for in February. Relevant RM [Relationship Managers] picking up with brands via legal for a view. Some partners [including [HIP]] have exclusive pricing banners on Confused.'*²¹⁵¹
- M.104 According to CTM's snapshots, CTM provided Consumer Intelligence data to [HIP] in order to address price differences with [X] and in [X] also noted that price disparity should be discussed with [HIP] *'separately from VBD conversations'*.²¹⁵²
- M.105 CTM's snapshots for [X] confirm that *'Home differences have been challenged'* and an internal email dated [X] noted that CTM *'[p]ushed back*

²¹⁴⁷ [X]

²¹⁴⁸ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a)(i). As set out in Section 5, consumers use PCWs to compare home insurance and in many cases, to link through to the provider to purchase home insurance. When a consumer links through to a provider it is called a 'click-through' as the consumer clicks on a link and is redirected to the provider's website. In home insurance a provider is usually charged by a PCW when consumers purchase a product having clicked through from a PCW and this is called a cost per acquisition model as the provider is charged by the PCW for acquiring those consumers. However, there are alternative charging models that PCWs can employ which include charging a provider every time consumers 'click-through' to the that provider's website, this is called a cost per click model.

²¹⁴⁹ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a)(i).

²¹⁵⁰ [X]

²¹⁵¹ URN 3380, BGL's response to section 27 response dated 26 September 2017, internal email from [Employee 10, CTM] to [Employee 1, CTM] entitled 'High's and Low's from [Employee 9, CTM] and [Employee 12, CTM]' dated 30 March 2016, page 1.

²¹⁵² URN 4795.20 BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Snapshot Apr-16 redacted' and URN 4795.22, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Actions May-16 redacted'.

*to [HIP] and [HIP] on them not meeting their non-car wide MFN obligations. Real progress with the help of Legal’.*²¹⁵³

- M.106 In [X], [HIP]’s deal with [X] ended as expected. As a result, price disparity between [HIP]’s prices on [X] and CTM temporarily decreased and then stabilised at around 40-45% until the end of the Relevant Period.²¹⁵⁴
- M.107 BGL has submitted, based on pricing analysis conducted by Oxera, that [HIP] continued to price between 45-55% of risks more expensively on CTM relative to [X] for the remainder of the Relevant Period and that there is no evidence of any reaction on the part of CTM.²¹⁵⁵ As set out in Annex N, the CMA does not consider that Oxera’s analysis is sufficiently robust to draw conclusions on the level of compliance by individual providers in the Relevant Period in the absence of other corroborating evidence. In this regard, [HIP] told the CMA that [X].²¹⁵⁶ However, it is not the case that no action was taken by CTM as CTM’s snapshots show that CTM asked [HIP] to explain the reasons for the price disparity in relation to specific customer quotes on Confused (i.e. *‘Home differences have been challenged and partner requires quote reference numbers to review’*).²¹⁵⁷
- M.108 BGL has also referred to a statement made by [HIP] to the CMA that there was no contact from CTM regarding the wide MFN between [X] to [X], only the narrow MFN.²¹⁵⁸ The CMA considers that [HIP] referred to the narrow MFN in error as the contemporaneous evidence in the form of CTM’s pricing snapshots and internal emails in this period refer to a price disparity between CTM and [X] and not to disparities between CTM and [HIP]’s direct channel and to contact having been made with [HIP] in respect of the pricing disparities identified as described above.²¹⁵⁹

²¹⁵³ URN 3400, BGL’s response to section 27 notice dated 26 September 2017, internal email from [Employee 11, CTM] to [X] entitled ‘Highs and Lows’, dated 13 June 2016, page 3.

²¹⁵⁴ [X]

²¹⁵⁵ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 302.

²¹⁵⁶ [HIP] agreed [X]. URN 9193, [HIP]’s response to section 26 notice dated 19 June 2019, question 2(a)(i).

²¹⁵⁷ [X]

²¹⁵⁸ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 300 and URN 6252, [HIP]’s response to section 26 notice dated 16 April 2018, question 18.

²¹⁵⁹ For completeness, the CMA also considers that [HIP] was mistaken in its comments that *‘Having the wide MFN in place has made it that so [HIP] couldn’t successfully complete any promotional campaigns’*. URN 6252, [HIP]’s response to the section 26 notice dated 16 April 2018, question 15. As pointed out by BGL, this statement is inconsistent with the evidence that [HIP] engaged in two promotional deals during the Relevant Period. URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 307.

M.V.(b). CTM's monitoring and enforcement action in 2017

- M.109 In early 2017, [HIP] agreed a promotional deal with [X].²¹⁶⁰ In addition to the commission discount, [X] provided [HIP] with [X].²¹⁶¹
- M.110 The resulting pricing disparity between CTM and [X] was identified by CTM as part of its monitoring by [X]. An internal CTM email dated [X] noted that one of the priorities for that month was to understand [HIP]'s reasons for setting a lower retail price on [X]: *'They [[HIP]] are pricing against us on [X] at £10 CPD. Will send an email pointing out and asking them to confirm what's happening – will send through legal as [it] will refer to wide MFN'*.²¹⁶² (emphasis added)
- M.111 As anticipated in the [X] internal email mentioned above, CTM requested an explanation from [HIP] for the price differences and requested assurance that [HIP] would rectify the price differences. When CTM was not satisfied with [HIP]'s responses, CTM wrote on [X] to confirm that it regarded [HIP] as in breach of contract and seeking confirmation as to when [HIP] would remedy the breach and comply with its contractual obligations:²¹⁶³

'I refer to our discussion regarding customers being able to receive cheaper prices for your home products on other Price Comparison Websites. As you have not been able to explain the reason for these price differences or give any assurance that the differences have been rectified, I have to assume that this approach forms part of your overall pricing strategy.

This practice is in breach of clause 5.11 of our agreement dated 8 July 2010.

For clarity, I refer to the CMA review of the Wide MFN clause in 2015. The CMA makes it clear that the PMI Order only applies to private motor insurance (cars).

[...]

²¹⁶⁰ [X]

²¹⁶¹ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 2(a)(ii).

²¹⁶² URN 3512, BGL's response to the section 27 notice dated 26 September 2017, internal email from [Employee 4, CTM] to [Employee 7, CTM] and [Employee 2, CTM] entitled, 'Price Parity', dated [X], page 1.

²¹⁶³ [X]. The [X] snapshot indicated that on [X] that 'Letter for home risks with legal to review and sign off'. This is confirmed by [HIP], which told the CMA that in [X] 'CTM attempted to enforce the wide MFN in regards to [our discount with [X]]'. URN 6252, [HIP]'s response to section 26 notice dated 16 April 2018, question 18.

*Please confirm when this will be remedied and clause 5.11 of the agreement will be adhered to.'*²¹⁶⁴

- M.112 [HIP] replied and noted that the price disparity was due to the fact that '*our insurer relations team have managed to agree discounted rates with our panel*' [X].²¹⁶⁵ [HIP] proposed to CTM '*to mirror the question set on*' [X] in order to allow CTM to benefit from the same rates.²¹⁶⁶
- M.113 BGL submitted²¹⁶⁷ that according to the CMA it took CTM four months to identify the resulting pricing disparity at which point CTM wrote to [HIP] to inform [HIP] that it was in breach of contract. This misrepresents the CMA's assessment of the evidence. As set out above, [HIP]'s promotional deal with [X] began in [X] and at least by [X], CTM had already identified the level of price disparity and in the following weeks in the lead up to its email of [X] alleging breach of contract, had raised the issue with [HIP] and requested assurances that the price differences would be rectified.
- M.114 The email exchanges between CTM and [HIP] above mentioned demonstrate that [HIP] was concerned to reassure CTM that it would comply with its wide MFNs or at least price within CTM's compliance tolerance thresholds.
- M.115 BGL has submitted, based on Oxera's empirical analysis, that [HIP] continued to price up to 100% of risks more expensively on CTM than on [X] from [X] to the end of the Relevant Period and that there is no evidence that CTM took any action against this.²¹⁶⁸ As set out in Annex N, the CMA does not consider the results from Oxera's analysis are sufficiently robust to draw conclusions on the level of compliance by individual providers in the Relevant Period in the absence of other corroborating evidence. In this regard, [HIP] acknowledged that the price disparities observed between CTM and [X] were due to a promotional deal [X].
- M.116 In relation to any further action being taken by CTM, the DCTs Market Study was published on 26 September 2017 the same day as the CMA launched the present investigation. CTM offered the CMA commitments to cease

²¹⁶⁴ URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 2, email from [Employee 4, CTM] to [Employee, HIP], ([Employee, HIP] in copy) entitled 'RE: [EXTERNAL] FW: [HIP] Home Price Differences', [X], page 3.

²¹⁶⁵ URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 2, email from [Employee, HIP] to [Employee 4, CTM], ([Employee, HIP] in copy), entitled 'RE: [EXTERNAL] FW: [HIP] Home Price Differences', dated [X], page 2.

²¹⁶⁶ URN 6643, [HIP]'s response to follow-up questions to section 26 notice dated 16 April 2018, question 2, email from [Employee, HIP] to [Employee 4, CTM], ([Employee, HIP] in copy), entitled 'RE: [EXTERNAL] FW: [HIP] Home Price Differences', [X], page 2.

²¹⁶⁷ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.35.

²¹⁶⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 305 to 306.

enforcing its wide MFNs on 14 October 2017. It is therefore unsurprising that in this period CTM did not enforce its wide MFNs.

M.VI. [HIP]

M.117 [HIP] is a home insurance provider that accounted for about [REDACTED]% [0-5%] of sales of home insurance through PCWs in 2016 and [REDACTED]% 0-5% in 2017. [HIP] was systematically challenged by CTM before and during the Relevant Period with requests to explain pricing differences and, on one occasion, expressly to comply with CTM's wide MFN.²¹⁶⁹

M.118 [HIP]'s pricing strategy in the Relevant Period was to price differentiate between PCWs. [HIP] explained that *'At new business we price on a range of risk factors and also take account of channel of acquisition. We set discounts so as to optimise our sales in a very competitive environment on PCW's'* and *'At new business we consider the PCW fee as well as what we know of the customer.'*²¹⁷⁰

M.119 Between [REDACTED] and [REDACTED] [HIP]'s price disparity oscillated between 30-40% across all PCWs, lower than previously. During this [REDACTED] period CTM took action regarding this disparity twice by sending [HIP] risk data relating to its PCW activity for it to review and explain and take action to address as necessary.²¹⁷¹

M.120 There was a noticeable change in [HIP]'s pricing from [REDACTED] onwards. Between [REDACTED] and [REDACTED], the snapshots show that [HIP] priced equal to or higher on CTM than on other PCWs, significantly above CTM's compliance tolerance threshold at the time.²¹⁷² At the monthly price meeting in [REDACTED], CTM actioned this by considering raising an *'advice query'*, given that common prices were being displayed on PCWs.²¹⁷³ An email dated [REDACTED], from

²¹⁶⁹ For example, in 2015 and 2016, CTM's snapshots show that CTM took action regarding price disparities by sending [HIP] risk data for it to review in August, October and December 2015. In addition, an email dated 28 June 2016 from a CTM representative to [HIP], asked [HIP] to explain why its policies were cheaper on other PCWs than on CTM, referring to a Consumer Intelligence report on its pricing on CTM as compared to Confused, MoneySuperMarket and GoCompare. The standardised email stated (see URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, questions 10 and 20 and URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, document 20.1): *'Please find attached a report produced by Consumer Intelligence, an independent third party research company. We are always striving to achieve the best deals for our customers, hence we have provided to you a copy of the Consumer Intelligence report, which shows that we are not achieving the best deal for our customers and that they are able to achieve a better deal elsewhere...'*

²¹⁷⁰ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 4(a).

²¹⁷¹ URN 4795.12, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Best Pricing Snapshot Oct-15'.

²¹⁷² URN 4795.22, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Parity Actions May-16_redacted' and URN 4795.32, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled 'Pricing Snapshot Jun-16_redacted'

²¹⁷³ [REDACTED]

[Employee 4, CTM] to [Employee, HIP], asked [HIP] to explain why their policies were cheaper on other PCWs than on CTM, attaching its Consumer Intelligence data on their pricing as compared to other PCWs.²¹⁷⁴

M.121 Snapshots from [X] illustrate that this trend of pricing differences against all other PCWs continued.

M.122 In August 2016, [HIP] operated a volume based discount with CTM.²¹⁷⁵ This temporarily brought [HIP]'s pricing on CTM relative to [X] and [X] down to 40% and 34% respectively, albeit its pricing on [X] remained at a level of 87%.²¹⁷⁶ These price disparity levels increased again to 77%, 50% and 92% respectively in the first half of September.

M.123 After [X] to a new software supplier.²¹⁷⁷ Following the [X], [HIP] started to offer two brands across the PCWs.²¹⁷⁸

M.124 [X], it priced slightly above CTM's compliance tolerance threshold ([X]% on both) but this was not actioned by CTM.²¹⁷⁹

M.125 In February 2017, CTM's snapshots recorded sending risk data to [HIP] relating to home insurance and '*provide advice request for a stronger email to obtain a reply from partner*'.²¹⁸⁰

M.126 On 13 February 2017, [HIP] received CTM's standard email querying apparent price differentials outside of its tolerances attaching Consumer Intelligence data.²¹⁸¹ This was followed up with a further standard email on 13 April 2017,²¹⁸² followed by, according to [HIP], several chaser emails.²¹⁸³ According to [HIP], these included an email dated 26 April 2017 stating '*Did you get an answer from your pricing team regarding this?*' and an email dated 11 May 2017 which attached further Consumer Intelligence data.²¹⁸⁴

M.127 On 24 July 2017, CTM sent an email to [HIP] advising that it was in breach of the wide MFN clause, referring to clause 4.7 of their agreement and

²¹⁷⁴ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, question 20, document 20.1.

²¹⁷⁵ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 10. [HIP] submitted that this deal provided [HIP] with a [X] CPA discount on any incremental sales to CTM above a certain threshold.

²¹⁷⁶ [X]

²¹⁷⁷ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 8.

²¹⁷⁸ [HIP] and [HIP] (the two products were launched in [X]). URN 4722, email from [Employee, HIP] to the CMA dated 28 November 2017, entitled 'information request to [HIP] regarding CMA investigation'

²¹⁷⁹ [X]

²¹⁸⁰ [X]

²¹⁸¹ URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, question 20, document 20.2.

²¹⁸² URN 5096, [HIP]'s response to section 26 notice dated 24 November 2017, question 20, document 20.3.

²¹⁸³ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 20.

²¹⁸⁴ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 20.

requesting that [HIP] comply.²¹⁸⁵ Additionally, the August snapshot noted that CTM was considering its next steps in terms of what if any further action to take as [HIP] had responded that question sets were causing the underlying pricing difference between CTM and other PCWs.²¹⁸⁶

- M.128 On 1 September 2017, CTM sent a further chaser stating: *‘Following our recent discussion I understand that this email is with your Legal team and I need a response urgently.’*²¹⁸⁷ [HIP] replied on 15 September 2017 noting that it was taking the issue seriously: *‘we have been taking some time here to look into this issue carefully.’*²¹⁸⁸ [HIP] explained that several factors could explain the pricing differences between various PCWs.²¹⁸⁹
- M.129 [HIP] subsequently responded on 6 October 2017, shortly after the CMA published its report in the DCTs Market Study and opened the present Investigation, stating that in the light of the CMA’s findings it *‘wanted now to put the issue of the wide MFN to bed once and for all’*. [HIP] expressed its view that *‘given the CMA’s clear concerns, the wide MFN in the contract between us cannot be enforced’*.²¹⁹⁰
- M.130 BGL has submitted that CTM’s emails to [HIP] are largely benign and did not amount to *‘enforcement’*.²¹⁹¹ Moreover, BGL has submitted that the wide MFN had no effect on [HIP],²¹⁹² with Oxera’s analysis showing that between March and November 2017 (the period for which data on [HIP] was available) [HIP] priced more than [X]% of risks more than [X] more expensively on CTM relative to other PCWs.²¹⁹³
- M.131 The CMA does not consider that correspondence stating that CTM considers a provider to be in breach of contract *‘benign’* given the potential consequences to [HIP]. The CMA also considers that an allegation of breach of contract with a request in writing to remedy the breach amounts to enforcement action, particularly in the context in which such a letter is issued as part of an escalation process including following internal legal clearances and in circumstances where CTM is a significant trading partner (and itself internally characterised at the relevant time such action as *‘enforcement’*). [HIP] clearly, as set out above, took the matter seriously. It sought to

²¹⁸⁵ URN 5096, [HIP]’s response to section 26 notice dated 24 November 2017, question 13, document 13.3.

²¹⁸⁶ URN 4795.24, BGL’s response to follow-up questions to the First BGL Notice dated 26 September 2017, question 23, document entitled ‘Pricing Parity Snapshot Aug-17_redacted’.

²¹⁸⁷ URN 5096, [HIP]’s response to section 26 notice dated 24 November 2017, question 20, document 20.4.

²¹⁸⁸ URN 5096, [HIP]’s response to section 26 notice dated 24 November 2017, question 20, document 20.5.

²¹⁸⁹ URN 5096, [HIP]’s response to section 26 notice dated 24 November 2017, question 20, document 20.5.

²¹⁹⁰ URN 5096, [HIP]’s response to section 26 notice dated 24 November 2017, question 20, document 20.6.

²¹⁹¹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 333.

²¹⁹² URN. 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 329.

²¹⁹³ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 9.10.

reassure CTM that the differences were technical in nature and not part of a deliberate pricing strategy notwithstanding '*intense challenge from CTM*' over the summer of 2017.²¹⁹⁴ It also sought legal advice to clarify the legality of CTM's wide MFN.

M.132 The CMA recognises that [HIP] generally priced differently across the Big Four PCWs²¹⁹⁵ and that at least in 2017 it did not adjust its pricing following receipt of queries from CTM regarding compliance with its wide MFN. In particular, following the formal email in July 2017 stating that CTM regarded [HIP] to be in breach of its wide MFN, [HIP] continued to maintain that the price differences were technical reflecting different question sets before challenging the legality of CTM's wide MFN. As set out in Annex N, the CMA does not consider the results from Oxera's analysis are sufficiently robust to draw conclusions on the level of compliance by individual providers in the Relevant Period in the absence of corroborating evidence. In this regard, the CMA has found no evidence to suggest, and BGL has not adduced evidence, that at least between July and September 2017, the pricing differences identified by CTM were not, as alleged by [HIP], due to question set differences.

M.133 However, whether or not CTM's steps to enforce the wide MFN were always successful, the evidence demonstrates that CTM's steps to enforce the wide MFN was considered by CTM as a worthwhile and effective strategy in order to address [HIP]'s cheaper prices on other PCWs. Indeed, BGL accepts that CTM referred [HIP] to the contractual wide MFN during the Relevant Period²¹⁹⁶ and [HIP] was clear that it had been subject to '*intense challenge from CTM*'.²¹⁹⁷

²¹⁹⁴ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, question 18.

²¹⁹⁵ [HIP] featured frequently in CTM's price parity snapshots in the period 2016 to 2017. See, among others, URN 4795.22, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Parity Actions May-16_redacted'; URN 4795.32, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Parity Snapshot Jun-16_redacted'; URN 4795.27, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017, document entitled 'Pricing Parity Snapshot Feb-17_redacted'; URN 6438, BGL's response to the Second BGL Notice dated 3 May 2018, question 21; price parity snapshots relating to March 2017 to June 2017; See URN 6438.26 to URN 6438.29, BGL's responses to the Second BGL Notice dated 3 May 2018.

²¹⁹⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 332.

²¹⁹⁷ URN 5095, [HIP]'s response to section 26 notice dated 24 November 2017, Question 18.

ANNEX N: ASSESSMENT OF OXERA'S COVERAGE AND COMPLIANCE ANALYSIS

N.1 As part of its response to the CMA's SO, BGL submitted an ex-post analysis of the coverage of CTM's wide MFNs and home insurance providers' compliance with this clause carried out by Oxera ('Oxera's Coverage and Compliance analysis'). In this Annex, the CMA sets out its assessment of whether the results of Oxera's Coverage and Compliance analysis undermine the CMA's conclusion that there was widespread compliance with CTM's wide MFNs during the Relevant Period.

N.1. Summary of the CMA's assessment

N.2 BGL submitted that, contrary to the CMA's findings in the SO, Oxera's ex-post analysis of providers' compliance with CTM's wide MFNs showed that there was a '*situation of widespread disregard of [CTM's] WMFN*'.²¹⁹⁸ Oxera's Coverage and Compliance analysis includes two distinct pieces of analysis:

- (a) A 'proportion of brands' analysis, which assessed the proportion of brands subject to CTM's wide MFNs that are found by Oxera to be 'non-compliant' in each month of the period January 2016 – November 2017.²¹⁹⁹
- (b) A 'proportion of risks' analysis, which assessed the proportion of risks priced more expensively on CTM than on other PCWs by brands with wide MFNs in each month of the period January 2016 – November 2017.²²⁰⁰

N.3 Oxera revised the estimated of the coverage of CTM's wide MFNs by applying the results of its analysis to the CMA's estimates (as set out in the SO) of [X]% in 2016 and [X]% in 2017.²²⁰¹ BGL submitted that, based on the CMA's market definition, Oxera's analysis shows that CTM's wide MFNs covered between 25-32% of policies sold through the Big Four PCWs in 2016 and 2017.

²¹⁹⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 267.

²¹⁹⁹ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 5.19 to 5.21.

²²⁰⁰ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.24.

²²⁰¹ As noted in Section 4.B.II, the CMA has found that the MFNs in [HIP] and the [HIP]'s contracts with CTM, which in the SO the CMA treated as wide MFNs, should on balance be treated as narrow MFNs for the purposes of this Decision. This means that, as set out in Section 8.C.I, CTM's wide MFNs covered providers that accounted for 38% and 44% of sales through PCWs in 2016 and 2017 respectively.

- N.4 Based on these estimates of the coverage of CTM's wide MFNs, BGL submitted that CTM's wide MFN could not have had an appreciable effect on competition in this market as they were *'easy to evade and [providers] who wished to do so had no difficulty in ignoring and/or circumventing'* CTM's wide MFN.²²⁰²
- N.5 The CMA does not agree with BGL that Oxera's Coverage and Compliance analysis shows a *'situation of widespread disregard of [CTM's] WMFN'*. In particular, even if the results of the analysis are taken at face value, the proportion of brands subject to CTM's wide MFNs that Oxera consider to be 'compliant' is between 57-72% and the average brand-level proportion of risks considered to be 'compliant' is between 70-80%. Similarly, the analysis suggests that more than one quarter of policies distributed through the PCW channel in 2016 and 2017 were distributed by brands subject to CTM's wide MFN and found by Oxera to be 'compliant' with this contractual clause.
- N.6 The CMA does not therefore consider that these estimates are inconsistent with its view that CTM's wide MFNs covered a significant proportion of the relevant market or that the analysis supports BGL's view that there was widespread non-compliance with CTM's wide MFNs.
- N.7 Further, the CMA does not consider it is appropriate to place any weight on the results of Oxera's Coverage and Compliance analysis as it is subject to a number of significant limitations that affect its robustness. In particular:
- (a) the quality of the data provided by Consumer Intelligence;
 - (b) the methodology in BGL's own analysis of the data provided by Consumer Intelligence;
 - (c) the inclusion of brands owned and operated by BGL;
 - (d) the failure to use CTM's own 'tolerance thresholds'; and
 - (e) the failure to account for the frequency and duration of individual brands' 'non-compliance'.
- N.8 This section first summarises the two pieces of analysis (i.e. Oxera's 'proportion of brands' analysis and 'proportion of risks' analysis) that together comprise Oxera's Coverage and Compliance analysis (section N.II) before setting out limitations of Oxera's Coverage and Compliance analysis

²²⁰² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 175(v).

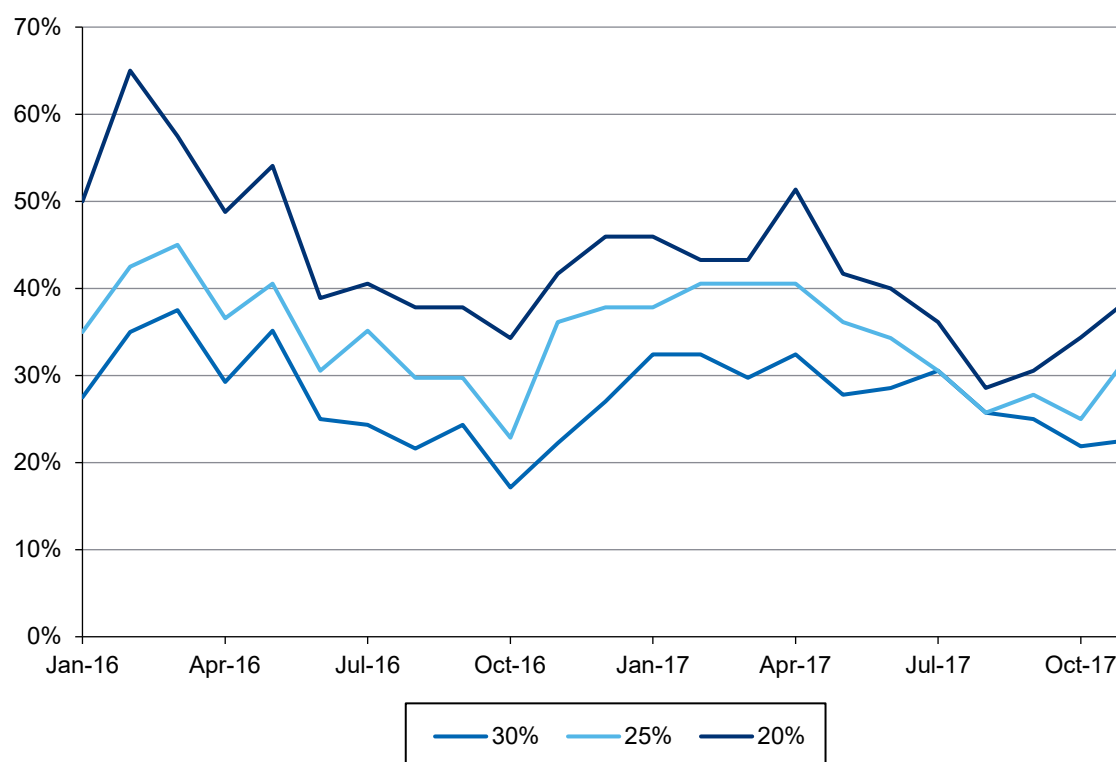
identified by the CMA and which affect the robustness of Oxera's results (section N.III).

N.II. Oxera's Coverage and Compliance analysis

N.9 Oxera's Coverage and Compliance analysis includes two distinct pieces of analysis.

N.10 First, as set out in paragraphs 5.19 to 5.21 of the Third Oxera Report, Oxera carried out a 'proportion of brands' analysis. This analysis assessed the proportion of brands subject to CTM's wide MFNs that are found by Oxera to be 'non-compliant', which Oxera variously considers as being any brand pricing more than 20%, 25% or 30% of risks more expensively by any amount on CTM relative to other PCWs in each month of the period analysed. This is shown in Figure N.1.

Figure N.1: Oxera's 'proportion of brands' analysis



Source: URN 8484.3, Third Oxera Report dated 22 February 2019, Figure 5.1.

N.11 The results of Oxera's analysis shown in Figure N.1 indicate that the average proportion of brands found to be 'non-compliant' (based on Oxera's own thresholds) between January 2016 and November 2017 ranged between 28-43%. In particular, Oxera considered that this analysis of brands' 'compliance' demonstrates that, on average between January 2016 and November 2017:

- (a) *'[M]ore than a quarter of brands covered by a wide MFN priced more than 30% of risks more expensively on CTM'.²²⁰³*
- (b) *'34% of brands covered by a wide MFN priced more than 25% of risks more expensively on CTM each month'.²²⁰⁴*
- (c) *'43% of brands covered by a wide MFN were pricing more than 20% of risks more expensively on CTM each month'.²²⁰⁵*

N.12 Second, as set out in paragraph 5.24 of the Third Oxera Report, Oxera carried out a *'proportion of risks'* analysis. This analysis assessed the *'proportion of risks'* priced more expensively on CTM than on other PCWs by brands covered by CTM's wide MFN in the Relevant Period.

N.13 Oxera claims that this analysis demonstrates that *'a stable and substantial proportion of risks were priced more expensively on CTM by brands that were covered by wide MFNs'.²²⁰⁶* Oxera specifically states that some brands priced *'up to 45% of risks more expensively on CTM in certain months, with the mean proportion of risks fluctuating between 20% and 30%, and the median between c. 10% and 25%'.²²⁰⁷*

N.14 Figure N.2 shows Oxera's *'proportion of risks'* analysis and plots the mean, median, and interquartile range of the brands in each month found to price a proportion of its risks priced more expensively on CTM in comparison to the other Big Four PCWs in each month of the period analysed.

²²⁰³ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.19.

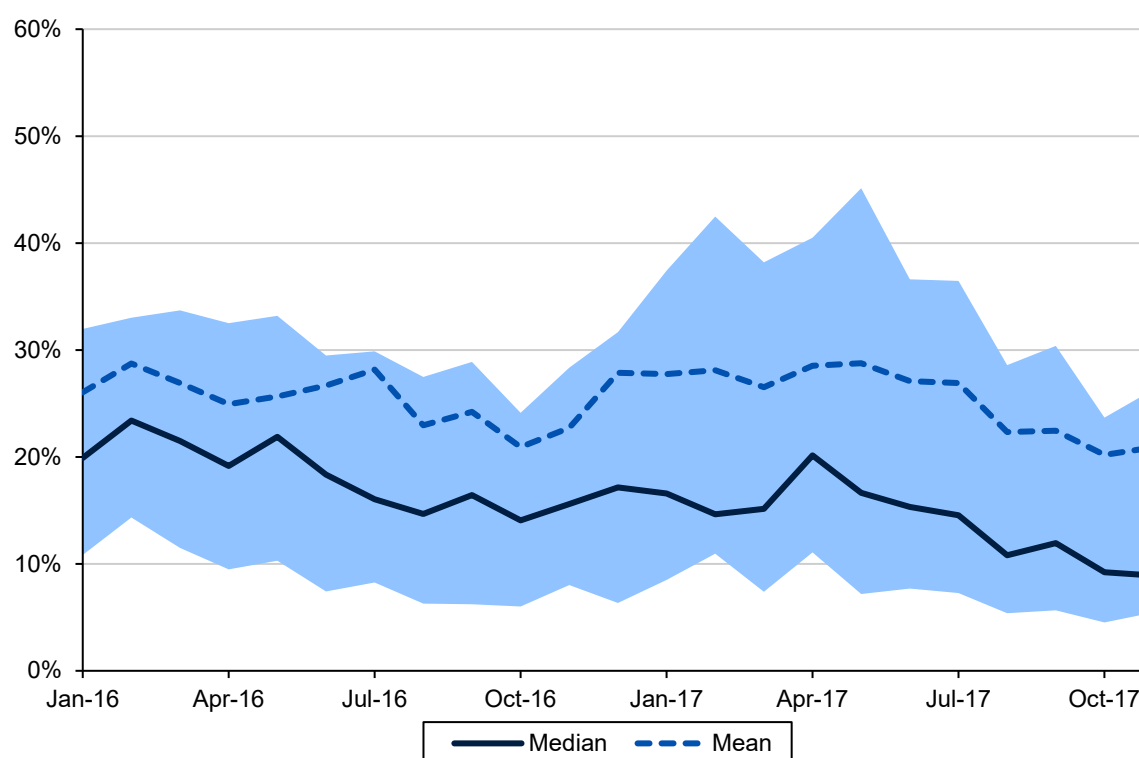
²²⁰⁴ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.21.

²²⁰⁵ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.21.

²²⁰⁶ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.24.

²²⁰⁷ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 5.24.

Figure N.2: Oxera's 'proportion of risks' analysis



Source: URN 8484.3, Third Oxera Report dated 22 February 2019, Figure 5.2.

- N.15 The CMA considers that, even when taken at face value, the results of Oxera's Coverage and Compliance analysis are not inconsistent with the CMA's view that CTM's wide MFNs covered a significant proportion of the relevant market during the Relevant Period.
- N.16 In particular, the proportion of brands subject to CTM's wide MFNs that Oxera considers to be 'compliant' is between 57-72% and the average brand-level proportion of risks considered to be 'compliant' is between 70-80%. Similarly, Oxera's Coverage and Compliance analysis suggests that more than 25% of policies distributed through the PCW channel in 2016 and 2017 were done so by brands subject to CTM's wide MFN and found by Oxera to be 'compliant' with this contractual clause.

N.III. Assessment of Oxera's methodology

- N.17 The CMA does not consider it is appropriate to place any weight on the results of Oxera's Coverage and Compliance analysis because it is subject to a number of significant limitations that affects its robustness. These are discussed in turn below and include:
- (a) The quality of the data provided by Consumer Intelligence (section N.III.(a));

- (b) The methodology in BGL's own analysis of the data provided by Consumer Intelligence (section N.III.(b));
- (c) The inclusion of brands owned and operated by BGL (section N.III.(c));
- (d) The failure to use CTM's own 'tolerance thresholds' (section N.III.(d)); and
- (e) The failure to account for the frequency and duration of individual brands' 'non-compliance' (section N.III.(e)).

N.III.(a). The quality of the data from Consumer Intelligence

- N.18 Oxera's Coverage and Compliance analysis uses BGL's own internal analysis of data provided by Consumer Intelligence.²²⁰⁸ BGL used the data provided by Consumer Intelligence to produce a number of 'price parity' metrics on a monthly basis as part of its assessment of CTM's 'pricing competitiveness' relative to the other Big Four PCWs.
- N.19 However, as set out in Annex O, the CMA considers the data provided by Consumer Intelligence to be subject to a number of limitations that makes it inappropriate for robustly analysing home insurance providers' pricing strategies across the Big Four PCWs. In particular, observed pricing differences by providers between PCWs can be affected by factors such as variations in question sets across the Big Four PCWs, data mapping issues or other factors that are not controlled by the provider and may lead to periods of what Oxera has deemed to be 'non-compliance' with CTM's wide MFN.
- N.20 The CMA notes that BGL is aware of these limitations with the data provided by Consumer Intelligence. In particular, BGL submitted that observed price differences across PCWs may not be '*as a result of any conscious decision to price more expensively on CTM on the part of the [provider]*'²²⁰⁹ and that it was because of these limitations that '*it has been CTM's policy to operate an internal "tolerance" level, i.e. to generally ignore any [price] differences below the tolerance*'²²¹⁰.
- N.21 The CMA considers that these limitations with the data provided by Consumer Intelligence render it impossible to distinguish to what extent a provider's observed 'non-compliance' with CTM's wide MFN is intentional (as argued by Oxera) or as a result of the limitations with the data provided by

²²⁰⁸ URN 8954, BGL's response to section 26 notice dated 10 May 2019, question 4(a).

²²⁰⁹ URN 8954, BGL's response to section 26 notice dated 10 May 2019, question 4(vi).

²²¹⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 187.

Consumer Intelligence that were recognised by home insurance providers and the Big Four PCWs (including CTM). The CMA has therefore placed less weight on Oxera's Coverage and Compliance analysis relied upon by BGL when the qualitative evidence obtained from providers and PCWs in relation to the pricing behaviour of providers subject to CTM's wide MFN contradicts Oxera's results.

N.III.(b). Use of BGL's own analysis of data from Consumer Intelligence

- N.22 As Oxera's Coverage and Compliance analysis makes use of BGL's own internal analysis of data provided by Consumer Intelligence, the CMA considers that any limitations in BGL's methodology will also affect Oxera's results.
- N.23 The CMA obtained evidence from BGL on the methodology it used when analysing the data provided by Consumer Intelligence, finding that BGL did not control for differences in compulsory excess values in the prices collected by Consumer Intelligence when estimating the 'price parity' metrics used by Oxera.²²¹¹ As set out in section O.III of Annex O, a robust analysis at the very least requires that only prices collected by Consumer Intelligence using the same risk profile information and excess values to be compared. This is because the same consumer obtaining a quote on multiple PCWs will (all else equal) receive varying prices if different excess values are specified when requesting a quote on each platform.
- N.24 In addition, as Oxera's Coverage and Compliance analysis makes use of the 'price parity' metrics estimated by BGL, the CMA is unable to assess the number of observations used by BGL in its monthly analysis of the data provided by Consumer Intelligence. This means that the CMA cannot verify whether the underlying sample size used by BGL to estimate these 'price parity' metrics is large enough to allow for Oxera to conduct a robust analysis of providers' pricing across PCWs and any observed 'non-compliance' with CTM's wide MFNs.²²¹²

²²¹¹ BGL stated that '*compulsory excess values were not controlled for in the data provided to Oxera*' but only voluntary excess values as '*BGL understood that this was the only form of excess that could vary between sales channels*' URN 9170a, BGL's response to the clarifications sought on BGL's response to the section 26 notice dated 10 May 2019, question 16.

²²¹² In particular, the CMA has observed that the number of observations in the Retail Prices Dataset that used the same compulsory and voluntary buildings and contents excess values when generating a home insurance quote for a given risk profile increased substantially between April 2016 and June 2016 (as set out in paragraph O.14). Consumer Intelligence told the CMA that this was due to a change in how it generated its risk profiles, which led to a change in the excess values used to request a quote on a PCW or the individual website of a home insurance provider and increased the number of 'like-for-like' observations for home insurance providers that had previously been underrepresented in its pricing data.

- N.25 The CMA notes that this limitation particularly affects Oxera's 'proportion of risks' analysis. This is because, rather than assessing the overall proportion of 'non-compliant' observations in the data collected by Consumer Intelligence across all brands subject to CTM's wide MFNs in each month, Oxera only assess the various brand-level 'price parity' metrics estimated by BGL in each month. Oxera therefore calculate the mean, median and interquartile range of the brand-level 'price parity' metrics estimated by BGL and not the actual number of observations in the data collected by Consumer Intelligence across all brands subject to CTM's wide MFNs in each month.²²¹³

N.III.(c). The inclusion of brands owned or operated by the BGL Group

- N.26 Oxera's Coverage and Compliance analysis classifies brands owned or operated by the BGL Group as being subject to a wide MFN.²²¹⁴ In contrast, the CMA has not included such agreements in the scope of its investigation because it considers BGL and brands owned or operated by BGL to constitute a single economic unit (as set out in the footnotes to paragraph 2.5).
- N.27 The CMA finds it inconsistent that Oxera included brands owned or operated by the BGL Group in its Coverage and Compliance analysis but did not also include the sales made through PCWs by these brands in its estimated coverage of CTM's wide MFNs. Rather than using the CMA's estimates (as set out in the SO) of the coverage of CTM's wide MFNs of over 40% [43%] in 2016 and around 45% [45%] in 2017, BGL should for consistency have applied the results of Oxera's analysis to estimate coverage figures that included the 8.5% in 2016 and 9.0% in 2017 of sales made through PCWs by brands it owns or operates. Failing to make this adjustment leads to Oxera's Coverage and Compliance analysis showing a lower proportion of sales made through the Big Four PCWs in 2016 and 2017 being covered by CTM's wide MFNs than would otherwise be the case.

²²¹³ That is the total number of 'non-compliant' observations from all brands subject to CTM's wide MFN divided by the total number of observations for all brands subject to CTM's wide MFNs.

²²¹⁴ Specifically, Oxera has classified the following brands as being subject to a wide MFN: Bradford & Bingley; Budget; Dial Direct; Sunlife Insurance. The CMA notes that Oxera's classification of BGL owned or operated brands as being subject to a wide MFN has also been applied inconsistently. Post Office, Post Office Premium and Post Office Premier are categorized by Oxera as not being subject to a wide MFN, despite being BGL owned/operated. These brands are also listed as being subject to the same contractual agreements, until 13/09/2017, as Bradford & Bingley, Budget, Dial Direct and Sunlife. See URN 1621, BGL's second response to the First BGL Notice dated 26 September, document entitled 'Q29 – List of HIP Contacts and related information (FINAL)'.

N.28 In addition, while the CMA has not repeated Oxera's Coverage and Compliance analysis with the brands owned or operated by the BGL Group excluded from the underlying data, the CMA considers that the inclusion of these will likely inflate the 'proportion of brands' and 'proportion of risks' found by Oxera to be 'non-compliant' with CTM's wide MFNs. For example: one brand owned or operated by the BGL Group [X] was found to price over 30% of risks more expensively on CTM relative to other PCWs in 19 of the 23 months included in Oxera's Coverage and Compliance analysis.

N.III.(d). Failure to use CTM's own tolerance thresholds

N.29 Oxera's Coverage and Compliance analysis variously considers a brand pricing more than [X]%, [X]% or [X]% of risks more expensively by any amount on CTM relative to other PCWs to be 'non-compliant' with CTM's wide MFNs. This is, however, inconsistent with the tolerance thresholds used by BGL when monitoring providers' compliance with CTM's wide MFNs before and throughout the Relevant Period.

N.30 BGL explained to the CMA that, when identifying home insurance providers that did not comply with CTM's wide MFNs: *'CTM will identify those partners who price differently on CTM >[X]% of the time. [X]% is CTM's pricing competitiveness [sic] target where a partner could be considered non-compliant, as CTM appreciates that there can be a number of reasons why a partner may price differently in a given month, such as price testing, which is essential for insurers, mapping errors, question set differences etc'*.²²¹⁵

N.31 BGL further stated that, because of the generally acknowledged issues with the data provided by Consumer Intelligence: *'[I]t has been CTM's policy to operate an internal "tolerance" level, i.e. to generally ignore any differences below the tolerance, which was an internal guide not generally disclosed to the [providers]. If CTM was priced more expensively by more than £[X] in respect of [X] per cent of the risks during the month in question ([X]% in 2016 increased to [X]% in 2017), CTM might contact the [provider] in question to try to understand the reason, although these tolerances were not always strictly applied'*.²²¹⁶

N.32 In contrast to BGL's own approach to monitoring providers' compliance with CTM's wide MFNs before and throughout the Relevant Period, Oxera claimed that CTM's own tolerance thresholds *'does not reflect what CTM would consider consistent with full compliance to its wide MFNs'* when

²²¹⁵ URN 1632, BGL's response to the section 26 notice dated 26 September 2017, question 36.

²²¹⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 187.

justifying the use of lower thresholds in its Coverage and Compliance analysis.²²¹⁷ The CMA consequently considers that the use of lower thresholds in Oxera's Coverage and Compliance analysis than used by BGL when monitoring providers' compliance with CTM's wide MFNs will inflate the 'proportion of brands' and 'proportion of risks' found by Oxera to be 'non-compliant' with CTM's wide MFNs.

N.III.(e). Failure to account for the frequency and duration of individual brands' 'non-compliance'

- N.33 Oxera's 'proportion of brands' analysis treats equally any brand observed to be 'non-compliant' with CTM's wide MFNs in one month of the period analysed by Oxera to brands that are observed to do so frequently or for an extended period. The CMA, however, considers it is relevant to understand the frequency and duration of brands' 'non-compliance' with CTM's wide MFNs by Oxera. This is because infrequent instances of 'non-compliance' that did not continue for multiple months would not be consistent with BGL's submission that there was a *'situation of widespread disregard of [CTM's] [wide MFN]'* by providers.²²¹⁸
- N.34 The CMA notes that this is consistent with BGL's own approach to contacting providers about 'non-compliance' with CTM's wide MFNs observed in BGL's analysis of the data provided by Consumer Intelligence. BGL submitted that providers were contacted in relation to the proportion of risks priced more expensively on CTM relative to other PCWs *'[i]f particular discrepancies were noticed, in particular on trends, with the consequence that quotes on CTM were less competitive'*.²²¹⁹
- N.35 The CMA's assessment of Oxera's Coverage and Compliance analysis found a small number (around 12% [6]) of outlier brands (accounting for less than 5% of all sales made through PCWs in 2016 and 2017) that priced more than 50% of risks more expensively on CTM relative to other PCWs on average over the full period analysed. This is shown in Figure N.3.

Figure N.3: Proportion of risks priced more expensively on CTM relative to other PCWs on average over the full period analysed

[✂]

Source: CMA's analysis of URN 8502.6, Proportion of risks priced cheaper and more expensively by brands covered by wide MFNs.xlsx (as submitted with URN 8484.3, Third Oxera Report dated 22 February 2019).

²²¹⁷ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 5.20 and 5.21.

²²¹⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 267.

²²¹⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 188.

N.36 This small number of outlier brands which are part of Oxera's Coverage and Compliance analysis includes:

- (a) One brand [HIP] which priced more than 80% of risks more expensively on CTM relative to other PCWs in every month of the period analysed;
- (b) [X] brands listed on PCWs over the Relevant Period by one provider [HIP], each of which priced more than 60% [X]% of risks more expensively on CTM relative to other PCWs in the vast majority (over 90% [X]) of months in the period analysed;
- (c) A brand owned and operated by BGL itself [X] which priced around 60% [60]% of risks more expensively on CTM relative to other PCWs in over 80% ([20] of 23) of the months in the period analysed; and
- (d) One brand [HIP] which, relative to other PCWs, priced over 50% [X]% of risks more expensively on CTM on average and priced 30% of risks more expensively on CTM in over 80% ([X] of 23) of the months in the period analysed.

N.37 Figure N.3 also shows that [31] brands (around two thirds [65]% of the brands included in Oxera's Coverage and Compliance analysis), which account for around 35% [36]% of all sales made through PCWs in the period analysed, were found by Oxera to price an average of less than 30% of risks more expensively on CTM relative to other PCWs. In addition, the CMA notes that [19] of these [31] brands (accounting for more than 20% [22]% of all sales made through PCWs) did not price more than 30% of risks more expensively on CTM in any month during the period analysed. Given that Oxera's [X]% threshold for its ex-post analysis of brands' compliance with CTM's wide MFN is similar to [X], the CMA concludes that Oxera's Coverage and Compliance analysis shows that a majority of brands typically complied with CTM's wide MFNs during the Relevant Period.

ANNEX O: RETAIL PRICES DATASET

O.I. Introduction

- O.1 During the course of its investigation the CMA obtained retail pricing data from Consumer Intelligence which forms the basis of the CMA's Retail Pricing Dataset.
- O.2 The CMA has also identified certain factors that affect the pricing data provided by Consumer Intelligence. In particular, these factors may lead to the same consumer generating different risk profiles through different PCWs and the direct channel, which may ultimately result in the same consumer receiving different prices for the same provider's product even if that is not the provider's intention.
- O.3 The presence of these factors and the fact that they can change over time means that there are limitations in how the data provided by Consumer Intelligence should be used. The CMA has considered these factors in the design and implementation of its analysis of the data provided by Consumer Intelligence to take the factors into account where possible. For example, in Annex J the CMA sets out how it has taken into account these factors, to the extent possible, in its analysis of promotional deals and changes in providers' prices and rankings.
- O.4 Where these factors are not considered in the analysis of data provided by Consumer Intelligence then it is unlikely to be robust. Even when these factors are considered in the design and implementation of any analysis then its results should be treated with caution and considered alongside other evidence. For example, the CMA's analysis of promotional deals and changes in providers' prices and rankings and the CMA's analysis of prices across PCWs and the direct channel are both considered alongside qualitative evidence from PCWs and providers and found to be consistent with that qualitative evidence. This is because it may not be possible to account for all of the limitations with the data provided by Consumer Intelligence, such that limited weight can be placed on the results of any analysis not supported by corroborating qualitative evidence.
- O.5 The CMA's assessment of the implications of the limitations with the Consumer Intelligence data for each relevant piece of analysis are set out separately when discussing those pieces of analysis. The purpose of this Annex is to, first, provide background on the structure and construction of the CMA's Retail Prices Dataset (Section O.II) and, second, set out in detail

the factors that affect the retail pricing data provided by Consumer Intelligence (Section O.III).

O.II. Retail prices dataset

- O.6 In this sub-section the CMA describes the structure of the CMA's 'Retail Prices Dataset' which is based on the data collected from Consumer Intelligence and the steps taken by the CMA to prepare the dataset for the CMA's analysis of the retail prices quoted by home insurance providers on PCWs and their direct channels to assess:
- (a) differences in the absolute prices set by providers on PCWs and their online direct channels, which is set out in Section 5.C.III.(b); and
 - (b) the extent to which promotional deals led to a relative reduction in the price set by providers and led to an improvement in a provider's ranking on the relevant PCW compared to rival PCWs, which is set out in Annex J.

O.II.(a). Data

- O.7 The CMA has used retail pricing data provided by Consumer Intelligence to assess the price of home insurance quoted by home insurance providers on both PCWs and the providers' online direct channels in the period February 2015 to October 2017.²²²⁰
- O.8 Consumer Intelligence's pricing data was collected from each of the Big Four PCWs (capturing the price quoted for each provider individually) and the websites of approximately 40 providers (including some who do not list on PCWs).²²²¹ This data was collected using around [X] risk profiles.
- O.9 For each risk profile, the following information was recorded:
- (a) A unique code for each risk profile used to generate a home insurance quote;

²²²⁰ The data provided by Consumer Intelligence to the CMA includes the period November 2014 – January 2015. However, the CMA observed that the information for these months did not categorise the compulsory and voluntary excesses used to generate a quote by buildings and contents cover separately, unlike the excess information provided for risk profiles in the period February 2015 to October 2017 (URN 5379, Consumer Intelligence's response to follow-up questions to section 26 notice dated 14 November 2017, question 1). Therefore, the CMA has not included pricing data for the months November 2014 – January 2015 in the Retail Prices Dataset.

²²²¹ URN 4519.1, Consumer Intelligence's response to section 26 notice dated 14 November 2017, question 1 and URN 4856.1, Consumer Intelligence's response to follow-up questions to section 26 notice dated 14 November 2017, question 1.

- (b) The date the home insurance quote was generated;
 - (c) The home insurance retail price generated for each product available to consumers from home insurance providers on the Big Four PCWs and the providers' websites; and
 - (d) The compulsory and voluntary buildings and contents excesses used when generating the home insurance quote.
- O.10 The pricing data also included a 'recurring profile' variable that denotes the 'first', 'middle' or 'last' month of its use. This is because the information included in each of these risk profiles was renewed every three months, with one-third of the around [X] risk profiles replaced each month.²²²²
- O.11 Additionally, the CMA understands that Consumer Intelligence was unable to provide quote data for each risk profile and home insurance product combination every month. This means that the dataset obtained by the CMA from Consumer Intelligence contains missing values for the retail price of some home insurance products. The CMA understands that this is likely to be due to the home insurance provider not returning a quote for the risk profile used by Consumer Intelligence. Accordingly, the CMA has excluded from its analysis observations that included missing values for the retail price generated by each home insurance provider.

O.II.(b). Structure of the dataset

- O.12 The pricing data obtained by the CMA from Consumer Intelligence for each of the Big Four PCWs and the online direct channel of approximately 40 home insurance providers has been compiled by the CMA into one dataset for the purposes of its analyses.
- O.13 The CMA constructed the dataset in order to look at the quotes generated for each risk profile and home insurance product combination in each month on all PCWs and home insurance providers' direct channels. The CMA considered this monthly aggregation to be the right approach because the quotes for each risk profile were not generated on the same date by Consumer Intelligence, but instead were often generated on different dates of the same month.²²²³

²²²² URN 4856, Consumer Intelligence's response to follow-up questions to section 26 notice dated 14 November 2017.

²²²³ URN 5379, Consumer Intelligence's response to follow-up questions to section 26 notice dated 14 November 2017.

- O.14 The CMA has observed that the number of observations in the Retail Prices Dataset that used the same compulsory and voluntary buildings and contents excess values when generating a home insurance quote for a given risk profile increased substantially between April 2016 and June 2016. Consumer Intelligence told the CMA that this was due to a change in how it generated its risk profiles, which led to a change in the excess values used to request a quote on a PCW or the individual website of a home insurance provider.²²²⁴ This change was introduced to increase the number of 'like-for-like' observations for home insurance providers that had previously been underrepresented in its pricing data.

O.III. Limitations of the retail pricing data

O.III.(a). Summary

- O.15 In this sub-section, the CMA sets out in detail the evidence on the factors that affect the retail pricing data provided by Consumer Intelligence. The factors cited most commonly by the Big Four PCWs and home insurance providers from which the CMA obtained information included:
- (a) **Differences in PCWs' default excesses.** If a PCW specifies a higher default excess than other PCWs, the retail price returned for a given consumer, for a given policy, will be lower on that PCW. This may create the appearance that a provider is pricing differentially when it is not doing so intentionally. Indeed, CTM noted a limitation of the Consumer Intelligence data was the following: '*Go Compare has different excess meaning the comparative base is small*'.²²²⁵ Robust analysis of the Consumer Intelligence data therefore requires that the quotes considered have matching excesses across each distribution channel.
 - (b) **Differences in PCWs' question sets.** There may exist some variation in the questions used by different PCWs to generate a quote, leading to the same consumer generating different risk profiles across different PCWs. These variations are caused by some PCWs neglecting to ask questions included by others or by the format of the questions differing on each PCW. For example: [HIP] told the CMA that the overwhelming majority (more than 95% [99.998%]) of the quote requests it receives

²²²⁴ URN 5681, Consumer Intelligence's response to follow-up questions to section 26 notice dated 14 November 2017, question 1.

²²²⁵ See URN 3128, BGL's response to section 27 notice dated 26 September 2018, document entitled 'Management of best prices', slide 4.

from PCWs have different risk profiles, with this variation typically being driven by question set and answer differences between PCWs or consumers inputting different risk information on different PCWs (whether intended by the consumer or not).²²²⁶

- (c) **Inconsistencies caused by data mapping.** There may be differences in the data mapping used to collect information on consumers by each PCW and transfer this to providers for the purposes of generating a quote. Data mapping rules applied inconsistently across PCWs will result in pricing differences for the same customer on each PCW. For example, [HIP] said that in February 2016 CTM had queried pricing variances between CTM and other PCWs, which were found to have been caused by a fault on CTM's website.²²²⁷

- O.16 As outlined below these factors also change over time – for example, PCWs have changed their default excess over time,²²²⁸ updated their question sets over time²²²⁹ and when PCWs and providers have identified issues with data mapping they have taken action to resolves those data mappings.²²³⁰

O.III.(b). Causes of pricing inconsistency across distribution channel

O.III.(b).(i). Differences in PCWs' default excesses

- O.17 Different PCWs may use different default excesses. If a given PCW specifies a higher default excess than other PCWs, the retail price returned for a given consumer, for a given policy, will be lower on that PCW.²²³¹ As explained by Confused, this is because the excess represents the consumer's contribution to a claim. The higher the consumer's contribution to the cost of a claim, the more likely the home insurance provider is to return a lower retail price.²²³²
- O.18 The use of different default excesses by different PCWs may therefore create the appearance that providers are pricing differentially across PCWs even in instances where the providers are seeking to price the same.

²²²⁶ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(a).

²²²⁷ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 18 and URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

²²²⁸ For example, one provider told us that CTM changed its default voluntary excess levels on Buildings & Contents combined home insurance quotations in 2016. See paragraph O.20(b).

²²²⁹ For example, CTM introduced a new question set for home insurance in April 2016, see paragraph O.23(b).

²²³⁰ For example, CTM would seek to correct mapping errors. See URN 1876, BGL's response to the First BGL Notice dated 26 September 2017, document entitled 'CMA PMI Quarterly Statement', slide 13.

²²³¹ All else being equal.

²²³² URN 6322, Confused's response to section 26 notice dated 27 April 2018, question 16.

- O.19 This was broadly recognised by both providers and PCWs. Evidence sourced from all of the Big Four PCWs indicated that varying default excesses may undermine providers' ability to quote the same retail price across different PCWs. For example:
- (a) In an internal document, CTM noted a limitation of the CI data as the following: '*Go Compare has a different excess meaning the comparative base is small*'.²²³³
 - (b) GoCompare submitted that it did not set excesses for consumers.²²³⁴ Consistent with this, [HIP] identified in its submission that GoCompare does not default their choice for voluntary excess, but that it offers the option to choose '*in line*' with the other PCWs.²²³⁵
- O.20 Similarly, the submissions of seven out of the nine providers asked indicated that differences in default excesses may affect their ability to quote the same premium across different PCWs.²²³⁶ For example:
- (a) [HIP] submitted that one PCW '*until recently*' did not ask for voluntary excess, with the first quote being generated using a default value. This value may not have been consistent with the value selected by the consumer through other PCWs. [HIP] noted that this would have affected prices in any situation where a voluntary excess of [£] was not used; approximately [£] of quotes.²²³⁷
 - (b) [HIP] submitted that the use of different default levels by the different PCWs can create pricing inconsistencies, noting that CTM had changed the default voluntary excess levels on Buildings & Contents combined home insurance quotations in 2016 from £100 to £250.²²³⁸
 - (c) [HIP] also commented during its meeting with the CMA that factors such as [£].²²³⁹

²²³³ URN 3128, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Management of best prices', slide 4.

²²³⁴ Despite the potential for this practice to result in cheaper premiums being quoted via GoCompare's website. URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 7 paragraph 7.2.

²²³⁵ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(b).

²²³⁶ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(b); URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(b); URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 10; URN 6292, [HIP] response to section 26 notice dated 16 April 2018, questions 7(a) and 7(b); URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 5 and URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

²²³⁷ URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 8(b).

²²³⁸ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(b).

²²³⁹ URN 6624, note of CMA meeting with [HIP] dated 29 May 2018, paragraph 15.

- (d) [HIP] submitted that in 2017, CTM, Confused and MoneySuperMarket defaulted total excess to £350, whereas GoCompare did not have a default value for voluntary excess.²²⁴⁰ [HIP] further submitted that consumers tend to gravitate towards the defaulted excess value.²²⁴¹ [HIP] also provided data illustrating the percentage premium difference for various excess levels versus the £350 excess level, which indicated a [X] increase when a consumer uses an excess level of £250.²²⁴²

O.III.(b).(ii). Differences in PCWs' question sets

- O.21 Both home insurance providers and PCWs identified variations in the content and format of the questions used by PCWs to generate a quote as being a factor affecting providers' ability to offer a customer the same price, for the same policy, across PCWs.

O.III.(b).(ii).(1). Content of the questions

- O.22 As a result of being asked different questions, a consumer may submit slightly different information and therefore appear to have a different risk profile on different PCWs. The consumer would therefore receive different quotes for the same product through different PCWs.
- O.23 All of the Big Four PCWs identified this as being a factor potentially creating differences in pricing across PCWs. For example:
- (a) CTM stated in an internal presentation that '*Home question set expected to produce 11% further TOS [Top of Screen^{2243,2244}] when*

²²⁴⁰ Voluntary excess was defaulted to £250 and compulsory excess was defaulted to £100 URN 6292, [HIP] response to section 26 notice dated 16 April 2018, questions 7(a).

²²⁴¹ In 2017: [X] of CTM quotes had an excess level of £350; [X] of Confused quotes had an excess level of £350; [X] of MoneySuperMarket quotes had an excess level of £350; [X] of GoCompare quotes had an excess level of £350. URN 6292, [HIP] response to section 26 notice dated 16 April 2018, questions 7(a).

²²⁴² URN 6292, [HIP] response to section 26 notice dated 16 April 2018, questions 7(a) and 7(b).

²²⁴³ CTM used the percentage of the time that CTM's TOS price is better or the same as competitors' as an internal benchmark. See URN 3523, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices', slide 12.

²²⁴⁴ CTM told the CMA that, for each risk in the Consumer Intelligence data, they record the best price returned by each PCW (TOS price) and compare CTM TOS price results to each PCW in turn. '*For each PCW (i.e. CTM v Confused, CTM v GoCompare, CTM v MSM) CTM can then calculate: (a) How many risks did CTM have the best TOS price (wins) compared to the comparator PCW; (b) How many risks did CTM have exactly the same TOS price (draws) compared to the comparator PCW; and (c) How many times did CTM have a lower TOS price (losses) compared to the comparator PCW. CTM adds the TOS wins to the draws to come up with a percentage of risks that CTM has the best or equal price when compared to the comparator PCW (the pricing competitiveness score). CTM then takes the pricing competitiveness score for each PCW and calculates a weighted average based on estimated quote share. CTM looks at TOS price competitiveness this way for two reasons: (a) It wants actionable outputs and it needs to see which PCW is securing better prices for its customers compared to CTM; and (b) It also wants to recognise that a PCW with lower quote share will mean that visibility of different prices will be reflective of their quote share*'. URN 4794.1, BGL's response to follow-up questions to the First BGL Notice dated 26 September 2017 question 22 paragraph 22.3 to 22.6

launched in Q4 2015.²²⁴⁵ Within the same presentation CTM also listed 'Further development to ensure question sets are delivering' as a 'Next Step'.²²⁴⁶

- (b) In addition to this, CTM submitted that 'the new 'home' question-set', introduced in April 2016 gave providers more relevant data enabling them to underwrite policies more effectively. CTM gave the example of providers having to assume whether a consumer smoked prior to the new question set, as CTM had not previously explicitly asked this question in the 'home journey'.²²⁴⁷
- (c) GoCompare submitted that its question set included a question asking consumers if they have any part time employment in addition to a full-time occupation. GoCompare further submitted that other PCWs only ask consumers if they are employed and, if so, what their occupation is. GoCompare stated that its understanding was that part-time employment may be relevant to insurance providers in their assessment of a customer's risk profile, with consumers declaring part-time employment potentially being quoted higher retail prices via GoCompare versus other PCWs.²²⁴⁸

O.24 All of the nine providers asked by the CMA indicated that differentiation between PCWs' question sets may result in different retail prices being generated for the same customer via different PCWs.²²⁴⁹ For example:

- (a) [HIP] submitted an example from 2017 where [redacted].²²⁵⁰
- (b) [HIP] submitted that 99.99% of the quote requests that it receives from PCWs have different risk profiles, with variation typically being driven by question set/answer differences or consumers inputting different information on different PCWs.²²⁵¹ [HIP] therefore expressed some uncertainty that the CMA would be capable of finding enough identical risk profiles in the data to carry out its analysis of the extent to which

²²⁴⁵ URN 3523, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices', slide 12.

²²⁴⁶ URN 3523, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices', slide 17.

²²⁴⁷ URN 6438, BGL's response to the Second BGL Notice dated 3 May 2018, questions 7(c) and 12.

²²⁴⁸ URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 6.

²²⁴⁹ However, [HIP] submitted that variation in question set would drive pricing inconsistency to only a minor extent. URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(a).

²²⁵⁰ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(a(ii)). See also URN 6236.2, [HIP]'s response to section 26 notice dated 16 April 2018, document entitled 'Pack 1 - Presentation in relation to Q7(a)(ii)', question 8(a), slide 5.

²²⁵¹ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(a).

the same premiums are quoted on each PCW for the same risk profile using the retail pricing data.²²⁵²

- (c) [HIP] also commented that it is not '*allowed by law and/or by contract with the PCWs to "cross-pollenate" consumer data between the different [PCWs]*', even though it may receive different information about a consumer from different PCWs.²²⁵³
- (d) [HIP] submitted that whilst most PCWs now have '*broadly aligned*' questions, some questions are asked by one (or some) and not by others. [HIP] further submitted of these questions, the only one it uses for its own ratings is the question assessing whether there are pets at the property. [HIP] noted that this can have an impact of up to 10% of the premium where it is provided, with 40% of quote requests giving 'Yes' as a response. [HIP] further noted that all quotes are potentially impacted as all quotes will have some response to the question which will give a different result as compared to the 'unknown' status returned by other PCWs.²²⁵⁴

O.III.(b).(ii).(2). Question format

O.25 In addition to variation in the content of the questions, the format of the questions asked across PCWs may vary and affect the answers available to consumers across different PCWs. Moreover, question format may plausibly have some impact on customer behaviour.²²⁵⁵ For example:

- (a) [HIP] submitted that the format in which certain information is inputted into different PCWs may cause differences in premiums e.g. if on one PCW the consumer selects from a drop-down menu whilst on another the customer inputs a free-text response.²²⁵⁶
- (b) [HIP] speculated that if a consumer selecting excess options can see that there is a lower concentration of excess options below a certain value, '*it [the consumer] might consider that to be more representative*

²²⁵² URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraphs 4 to 11. The analysis referred to is the CMA's analysis of the premiums quoted on the Big Four PCWs between April 2016 and October 2017. The results of this analysis indicated that [HIP] was pricing inconsistently across PCW channels, and this was queried by the CMA in URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 12.

²²⁵³ URN 6292, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(a).

²²⁵⁴ URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 8.

²²⁵⁵ See: URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 6; URN 6292, [HIP] response to section 26 notice dated 16 April 2018, question 6(a); URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, question 23.

²²⁵⁶ URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 8.

*of what is “market” – and therefore be tempted to opt for a higher figure’.*²²⁵⁷

O.III.(b).(iii). Data Mapping

- O.26 There may be inconsistencies in the data mapping used to transfer information collected on consumers from the PCW to providers in the process of generating a quote. If data mapping rules are applied inconsistently between PCWs, it may result in pricing differences across PCWs.
- O.27 GoCompare explained the role of data mapping as being the following: *‘Where PCWs do not ask exactly the same questions as [home insurance providers] or Brokers, PCWs may provide the “nearest possible” answer in accordance with defined mapping rules.’*²²⁵⁸ Where different mapping rules are used across different PCWs this may result in variances in pricing.
- O.28 Evidence received from three out of the Big Four PCWs supports the role of data mapping inconsistencies creating pricing differences across PCWs.²²⁵⁹ For example:
- (a) CTM referenced an example relating to [HIP]’s motor insurance in an internal document, where [HIP] had been observed to be *‘pricing against’* CTM on GoCompare, MoneySuperMarket and their direct channel. CTM identified two reasons for this: an error by [HIP] relating to the question on years licence held; a mapping error relating to the payment method question.²²⁶⁰
 - (b) GoCompare provided an illustrative example relating to the options consumers face in choosing their excess, for which *‘it is common for the choice to be made from a range of excesses which increase incrementally’*. If a consumer selects an excess of £150 via a PCW, but providers or brokers only offer excesses of £100 or £250, one PCW’s

²²⁵⁷ URN 6262, [HIP]’s response to section 26 notice dated 16 April 2018, question 5(c).

²²⁵⁸ URN 6304, GoCompare’s response to section 26 notice dated 27 April 2018, question 8.

²²⁵⁹ URN 8665, BGL’s response to follow-up questions to the Oral Hearing held on 5 April 2019, question 3 paragraph 3.11.3, URN 1632, BGL’s response to the First BGL Notice dated 26 September 2017, question 36, paragraph 36.2; URN 6438, BGL’s response to the Second BGL Notice dated 3 May 2018, questions 24 and 31; URN 3252, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Pricing Competitiveness’, slide 5; URN 3523, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Best Prices’, slide 3; URN 4032, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘[HIP] Workshop’, slide 4; URN 3870, BGL’s response to section 27 dated 26 September 2017, document entitled ‘Insurance Pricing (Draft), June 2016’, slide 2; URN 6304, GoCompare’s response to section 26 notice dated 27 April 2018, question 8 and URN 6335, MoneySuperMarket’s response to section 26 notice dated 27 April 2018, question 19.

²²⁶⁰ URN 3252, BGL’s response to section 27 notice dated 26 September 2017, document entitled ‘Pricing Competitiveness’, slide 10.

mapping rules may translate the input as £100, whilst another's may translate it as £250. GoCompare also noted that where PCWs do not ask questions that are asked by providers/brokers, the PCW may populate the answer to these questions with a default response.²²⁶¹

O.29 Six out of the nine providers asked to list reasons why the same consumer may receive different premiums for the same product across different PCWs identified inconsistencies in the data mapping as a potential cause.²²⁶² For example:

- (a) [HIP] submitted a number of examples, including one [REDACTED].²²⁶³ In relation to data mapping inconsistencies, [HIP] commented that *'Depending on the factor, these operational bugs can drive significant price changes but are held by the PCWs themselves'*.²²⁶⁴
- (b) [HIP] informed the CMA that its excess range for Buildings or Contents separately is £0-£300 in £50 intervals up to £300, or alternatively £2550. However, the PCWs all have their own range of excess options, which differ between the PCWs and do not necessarily match [HIP]'s. [HIP] noted that this can drive pricing differences because [HIP] does not control the options that each PCW presents. [HIP] outlined two examples:
 - (i) The case where a customer can select an excess of £500 on CTM, to which [HIP] would return a premium based on an excess of £300 as this is the closest option it offers.
 - (ii) The case where a customer seeking to compare prices across PCWs could select an excess of £200 on CTM but could not select the same excess value on [REDACTED], with the closest option for comparison being an excess of £250.²²⁶⁵
- (c) [HIP] also submitted that in February 2016, CTM queried pricing variances between CTM and other PCWs for [HIP]'s Home Insurance.

²²⁶¹ URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 8 paragraph 8.2 and 8.3.

²²⁶² URN 5256A, [HIP]'s response to section 26 notice dated 24 November 2017, questions 22 and 23; URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraphs 8 and 10; URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7; URN 6241, [HIP]'s response to section 26 notice dated 16 April 2018, question 8; URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 5; URN 6167, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

²²⁶³ For further examples see URN 6236.2, [HIP]'s response to section 26 notice dated 16 April 2018, document entitled 'Pack 1 - Presentation in relation to Q7.a.ii'.

²²⁶⁴ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 7(c).

²²⁶⁵ URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 5(b).

These pricing variances were ultimately found to be caused by a fault on CTM's website, via its software.²²⁶⁶

O.III.(b).(iv). Additional Factors

- O.30 The factors previously discussed were those cited most consistently by both the providers and the PCWs as being a cause of unintentional pricing inconsistency across PCWs. These factors are therefore likely to be of the greatest relevance when assessing any analysis that compares prices between PCWs or between PCWs and the direct channel.
- O.31 However, a number of other factors were also less frequently reported as contributing to inconsistencies in pricing across PCWs that may be relevant when considering such. These include:
- (a) Inconsistency in product offering between PCWs/providers' direct channels;
 - (b) Price testing by providers;
 - (c) Timing; and
 - (d) Use of enrichment data.

O.III.(b).(iv).(1). Inconsistency in product offering

- O.32 CTM noted in an internal document that pricing differences may occur as a result of product differences across PCWs, and across PCWs and providers' direct channels.²²⁶⁷
- O.33 The CMA notes that it has seen only one example of this in practice, relating to differences in [HIP]'s product offering across PCWs. Specifically, [HIP] submitted that the most likely reason for its observed pricing differentiation in the Consumer Intelligence data, for the period between April 2016 and October 2017, was its introduction of '*a new policy administration system (and associated pricing capability and product changes)*'. [HIP] stated that

²²⁶⁶ URN 5243, [HIP]'s response to section 26 notice dated 24 November 2017, question 18 and URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 6.

²²⁶⁷ URN 3523, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices', slide 7. The case team notes that only differences in product offering across PCWs, rather than across PCWs and providers' direct channels, would affect the analysis

this was a 'phased introduction' of the new system across the four PCWs, between February 2016 and June 2017.²²⁶⁸

O.III.(b).(iv).(2). Price testing by providers

O.34 CTM's internal documents consistently listed price testing as being a reason that price parity across PCWs may not be achieved. For example:

- (a) In a presentation CTM commented that '*Price parity has a ceiling of 85% due to price testing and white noise*'.²²⁶⁹
- (b) In a presentation on management of best prices CTM listed one limitation of the CI data as '*Price testing by partners will introduce natural variations*'.²²⁷⁰
- (c) In a presentation on 'Best Prices' dated June 2015, price testing was identified as a reason that pricing differences might occur.²²⁷¹

O.35 [HIP] noted during its meeting with the CMA that it has employed a [X] and that this has driven some pricing disparity.²²⁷²

O.III.(b).(iv).(3). Timing

O.36 The time at which a quote is requested was identified as a factor affecting pricing consistency across PCWs by two providers and in CTM's internal documents.²²⁷³

O.37 Timing was submitted to affect pricing consistency for the following reasons:

- (a) [HIP] submitted that it changes the rate of quotes a couple of times per week.²²⁷⁴ The time at which a quote is requested therefore affects the price.

²²⁶⁸ URN 6325.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 15, paragraph 40 to 42. Specifically, the new system was introduced on: 3rd Feb. 2016 for CTM; 16th June 2016 for Confused; 10th August 2016 for GoCompare; 8th June 2017 for Money Supermarket.

²²⁶⁹ URN 2947, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices May v2', slide 4.

²²⁷⁰ See URN 3128, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Management of best prices', slide 4.

²²⁷¹ URN 3523, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices', slide 3.

²²⁷² URN 6582.1, note of CMA meeting with [HIP] dated 14 May 2018, paragraphs 8 to 11.

²²⁷³ In an internal document CTM noted that Consumer Intelligence not being able to run all the risks on the same day as a limitation of the Consumer Intelligence data. See URN 3128, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Management of best prices', slide 4.

²²⁷⁴ URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 10.

- (b) [HIP] noted that timing may affect pricing consistency because:
 - (i) Underwriters change their pricing '*from time-to-time*'. The same person, answering the same questions, may therefore be quoted different prices at different times.
 - (ii) [REDACTED].
 - (iii) [REDACTED] It further noted that this data can vary for the same consumer '*from time-to-time*'.²²⁷⁵

O.38 Providers and PCWs may use external data in addition to the information provided by consumers to deliver a more accurate assessment of risk. This was identified as a potential source of variation in pricing for the following reasons:

- (a) If a consumer 'mis-keys' a response then the enrichment data may be unable to detect that two quotes are for the same person, in turn impacting price. [HIP] submitted the example of a consumer called 'Stephen' inputting their name as 'Steve' or 'Stephen' across different PCWs.²²⁷⁶
- (b) [HIP] told us that formatting inconsistencies between PCWs may result in differing success rates for external database lookups.²²⁷⁷
- (c) As explained at [O.37(b)], the enrichment data available may be affected by the timing of the quote request.
- (d) Confused stated that pricing variation may be driven by '*Additional data that a PCW may be able to provide to a [home insurance provider]/Broker at point of quote that means the [home insurance provider] or Broker is able to provide a more accurate premium for that customer*'.²²⁷⁸
- (e) GoCompare noted that providers/brokers may use '*inferred data*' to inform their pricing, which may result in what otherwise appears to be the same consumer receiving a different price. For example, varying premiums on the basis of the day of the week/time it is requested and

²²⁷⁵ URN 6262, [HIP]'s response to section 26 notice dated 16 April 2018, question 5(c).

²²⁷⁶ URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 10.

²²⁷⁷ URN 6236.1, [HIP]'s response to section 26 notice dated 16 April 2018, questions 7(c) to 7(f). [HIP] noted '*address level data*' formatting inconsistencies specifically.

²²⁷⁸ URN 6322, Confused's response to section 26 notice dated 27 April 2018, question 17.

how many previous quotes the consumer has generated through a PCW.²²⁷⁹

²²⁷⁹ URN 6304, GoCompare's response to section 26 notice dated 27 April 2018, question 8.

ANNEX P: BGL's REPRESENTATIONS ON THE ROLE OF CTM's WIDE MFNs IN ITS COMPETITIVE STRATEGY AND COMPLIANCE BY PROVIDERS

P.I. Introduction

P.1 BGL has made a significant number of representations on the role of CTM's wide MFNs in its competitive strategy, as well as in relation to compliance by home insurance providers with its wide MFNs.

P.2 The CMA has addressed some of these representations where appropriate in Section 8 and sets out its more detailed consideration of BGL's representations in this Annex.

P.II. BGL's representations on the CMA suggesting that CTM's wide MFNs imposed a relative retail price floor

P.3 BGL submitted that its wide MFNs did not restrict a rival PCW from offering any price it chose or restrict providers from making a deal with another PCW.²²⁸⁰ It objected to the CMA's description in the SO of CTM's wide MFNs creating a '*relative retail price floor across PCWs, with the price on CTM[s] [website] as the lowest, or equal lowest, price*'.²²⁸¹ BGL regarded this as the CMA seeking to suggest that wide MFNs were '*necessarily anti-competitive*' and '*by their very nature impose a price floor, driving up prices*'.²²⁸²

P.4 The CMA has not made a finding (and nor did it make such a provisional finding in the SO) that CTM's network of wide MFNs was '*necessarily anti-competitive*' or that its wide MFNs restricted competition '*by their very nature*' by imposing a price floor and driving up prices. The CMA also does not suggest that home insurance providers were not free to decide the absolute price they chose to offer on CTM and other PCWs. The key point is that the contractual restraint under CTM's wide MFNs prevented the prices offered by providers on other PCWs being lower than those offered on CTM –

²²⁸⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 178.

²²⁸¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 42 to 43 and 178; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 321 and 361. See paragraph 10.13 of the SO.

²²⁸² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 42 to 43 and 178; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 361 and 362. BGL also submitted that its position was supported by CTM's wide MFNs being '*typically expressed in terms of prohibiting higher quotes on CTM (rather than prohibiting lower quotes elsewhere)*' (see URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 362). Although most wide MFN clauses were expressed in terms of prohibiting higher quotes on CTM, the corollary of such a restraint is obviously prohibiting lower quotes by providers on other PCWs than on CTM.

meaning that the relative price offered by a provider on another PCW could not be lower than that offered on CTM.²²⁸³

- P.5 Not every agreement between undertakings that restricts the freedom of action of the parties or of one of them necessarily restricts competition within the meaning of the Chapter I prohibition or Article 101(1).²²⁸⁴ However, the terms of the restraint and the restriction that it imposes on the conduct of one or both parties are clearly very relevant to the assessment of its effect (if any) on competition. It is therefore a highly relevant factor in the CMA's assessment that the restraint imposed by CTM's wide MFNs directly constrained the freedom of providers on an important dimension of competition between PCWs and between providers, namely price. In any event, while disputing there was an effect on competition, BGL accepts that CTM's network of wide MFNs contractually imposed a relative price constraint on the relevant providers, consistent with BGL's objectives in imposing wide MFNs, discussed in the Section 8.A.II.²²⁸⁵

P.III. BGL's representations on the pro-competitive objective of its wide MFNs

- P.6 BGL submitted that its objective in using wide MFNs was to secure the lowest prices for consumers using its platform in order to preserve consumer trust in its PCW proposition.²²⁸⁶ In BGL's view, this meant that its network of wide MFNs had a pro-competitive objective because it ensured that consumers using its platform obtained the best prices from the relevant insurers. For example, in the oral hearing, BGL stated that *'from [BGL's] point of view, [wide MFNs] were only a pro-competitive, pro-consumer measure – to basically ensure that we could establish the right price for our*

²²⁸³ See paragraph 10.13 of the SO. In the interests of clarity, the CMA has not in this Decision described CTM's wide MFNs as requiring a relative price floor, even though the CMA considers that this is an appropriate characterisation on a plain reading of CTM's wide MFN clauses. Because providers are restricted from offering lower prices on other PCWs than on CTM, the price offered on CTM becomes the relative 'floor' price for all PCWs: if a provider subject to CTM's wide MFN wants to lower its price on another PCW to below the price it is quoting on CTM, it must also lower its price on CTM.

²²⁸⁴ Case C-519/04P Meca-Medina and Majcen v Commission [2006] ECR I-6991, EU:C: 2006:492, paragraph 42.

²²⁸⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 42 to 44 and 178. See also URN 8484.6, BGL's response to the SO dated 22 February 2019, Annex 2, paragraph 2.2.3. BGL also submitted that, because CTM sought to ensure providers also offered the lowest price on CTM (rather than requiring providers to raise prices on other PCWs to ensure parity with CTM), CTM's network of wide MFNs is better characterised as operating as a 'price ceiling' rather than a 'price floor'. See: URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 44; URN 8484.3, Third Oxera Report dated 22 February 2019, section 9 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 354. The CMA has addressed BGL's submissions regarding the effect of CTM's network of wide MFNs acting as a 'price ceiling' in section Q.I of Annex Q.

²²⁸⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 38 and 176.

customers'.²²⁸⁷ BGL also submitted that there is not in its view anything objectionable in a company such as CTM having as an objective to secure the best prices for its customers or '*to balance*' commission fee growth.²²⁸⁸

P.7 By way of background to the introduction of its wide MFNs clauses, BGL explained that in the mid-to-late 2000s, PCWs were criticised in the media for offering inconsistent results to consumers, with consumers feeling the need to go to different PCWs to compare prices for the same risk.²²⁸⁹ To address this perceived '*lack of consumer trust*' in PCWs, PCWs began to use wide MFNs in 2007/2008.^{2290,2291} CTM therefore decided to introduce wide MFNs across all insurance products from 2008 onwards at a time when it was '*still struggling to establish itself in the market*'²²⁹² in order to:

- (a) build a proposition that placed consumer benefit, notably price savings, at the heart of its proposition; and
- (b) formulate a competitive response to its larger PCW rivals and to the home insurance providers.²²⁹³

P.8 Naturally, the CMA agrees that it is perfectly rational for CTM, and indeed its rival PCWs, to pursue a pricing strategy of securing the lowest quotes on their respective platforms. Similarly, the CMA does not dispute that it is perfectly rational for CTM to seek to achieve this pricing strategy in such a way as to minimise the impact on profits, for example, by seeking to maintain growth in commission fee revenue. However, the CMA disagrees that this means that CTM's network of wide MFNs was therefore '*legitimate*' and '*pro-competitive*' as submitted by BGL. There are lawful and unlawful ways of pursuing a low price strategy and maximising profits. An undertaking's commercial strategy, no matter how rational, must be achieved through

²²⁸⁷ URN 8933, Transcript of the Oral Hearing with BGL held on 4 April 2019, page 11, lines 8 to 10. See also URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 38; URN 10535, Transcript of the DPS Oral Hearing with BGL held on 9 March 2020, page 70, lines 15 to 17.

²²⁸⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 179. BGL further submitted at URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 377 to 379, that it is not clear how the documents quoted in the SO at paragraphs 10.17 and 10.26 relating to commission growth and 'price parity' support the conclusion that BGL '*knew (or had the building blocks from which it ought to have concluded) that the clauses would indirectly lead to a restriction in competition between HIPs or PCWs.*'. As they relate to the imposition of penalty these representations are considered in detail in Section 11.

²²⁸⁹ URN 8933, Transcript of the Oral Hearing with BGL held on 4 April 2019, page 22, lines 18 to 24.

²²⁹⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 74 and 75.

²²⁹¹ MoneySuperMarket however has never used wide MFNs. URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraphs 5 to 6.

²²⁹² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 176.

²²⁹³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 78.

competition on the merits and undertakings are required to self-assess to ensure their conduct is in compliance with competition law.²²⁹⁴

- P.9 Moreover, whether or not CTM believed at the relevant time that its network of wide MFNs and its commercial strategy was ‘*pro-competitive*’ and ‘*pro-consumer*’, it is clear from its internal documents and submissions to the CMA (as set out in detail in Section 8.A.II.) that CTM also understood the nature of the contractual restriction its wide MFNs imposed on providers. It was also concerned about the risks to its competitive strategy of the removal of its wide MFNs, in particular that, in the absence of its wide MFNs, it would be subject to increased competitive pressure and reduced profits (as set in detail in Section 8.A.II.(a)).
- P.10 Similarly, while building consumer trust may, as for most businesses, be important for a PCW in ensuring the success of its business, BGL has not submitted evidence that there are pro-competitive efficiencies arising from its network of wide MFNs that meet the conditions for exemption under section 9 of the Act or Article 101(3) TFEU.²²⁹⁵

P.IV. BGL’s representations on the relevance of documents pre-dating the Relevant Period or relating to private motor insurance

- P.11 BGL submitted that many of BGL’s documents relied on by the CMA to demonstrate the role and importance of wide MFNs to its competitive strategy either pre-date the Relevant Period or relate to private motor insurance. In particular, BGL submitted that there are inherent differences between private motor insurance and home insurance. BGL considers that therefore such documents are irrelevant and too far removed chronologically and from a product market perspective to support any inferences or conclusions on the effects of CTM’s wide MFNs in home insurance during the Relevant Period.²²⁹⁶
- P.12 The CMA considers, to the contrary, that – provided they are read in their proper context – documents detailing CTM’s views as regards its own use of wide MFNs in the insurance sector, whether before or during the Relevant Period, and whether related to private motor insurance, home insurance or

²²⁹⁴ See, for example, Case C-209/07 *Competition Authority v Beef Industry Development Society Ltd*, EU:C:2008:643, paragraph 21, cited by the Court of Appeal in Case C3/2018/2863 *Ping Europe v CMA* [2020] EWCA Civ 13, paragraph 94: ‘*An agreement may be regarded as having a restrictive object even if it does not have the restriction of competition as its sole aim, but also pursues other legitimate objectives*’. This proposition directly refers to restrictions of competition ‘by object’; however, it is also relevant to the assessment of whether an agreement has the effect of restricting competition.

²²⁹⁵ See Section 10.C.

²²⁹⁶ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 298 to 302; URN 10465, BGL’s response to the First LoF and DPS dated 14 February 2020, Annex 6 and URN 8484.5 BGL’s Response to the SO dated 22 February 2019, paragraphs 416 to 421.

both, may be probative evidence of its objectives and motivations in imposing and enforcing its wide MFNs in home insurance in the Relevant Period. They may also be probative as to CTM's views at the relevant time of the role played by, and the effectiveness or otherwise of, its network of wide MFNs in achieving its competitive strategy.

- P.13 As a general principle, the CMA's ability to rely on evidence pre-dating an infringement in order to describe the wider context of the unlawful conduct and to interpret subsequent facts correctly is established in case-law.²²⁹⁷
- P.14 In the present case, CTM's internal documents – including those from before the Relevant Period – provide a clear indication of CTM's views at that time about the role and effectiveness of its network of wide MFNs in its competitive strategy. In particular, they show that, following the PMI Market Investigation, the impact of the PMI Order 2015 was considered across CTM's insurance products by senior individuals within BGL and CTM.
- P.15 As set out below, while there are differences between the private motor insurance sector and the home insurance sector, the nature of the services provided by PCWs to providers and consumers in both sectors is the same²²⁹⁸ and the legal and economic context is similar in many respects:
- (a) PCWs are important in both private motor insurance and home insurance, with the Big Four PCWs being the largest PCWs in both sectors (with CTM being the largest).²²⁹⁹ The dimensions of competition between PCWs are also similar in both private motor insurance and home insurance, with PCWs competing on price, the usefulness of their comparison services, and marketing and advertising.²³⁰⁰
 - (b) While some providers only operate in one sector or the other, many home insurance providers also operate in private motor insurance and use PCWs in both sectors. The structure of contractual arrangements between insurers and PCWs are similar; indeed the same contracts (apart from the use of wide MFNs, which were banned by the PMI Order 2015, in private motor insurance) are usually agreed across both

²²⁹⁷ Joined Cases T 458/09 and T 171/10, *Slovak Telekom v Commission*, paragraphs 51 to 62.

²²⁹⁸ As set out in Section 2.D, PCWs serve and connect consumers seeking to compare and purchase home insurance with home insurance providers who use PCWs to attract consumers so the provider can sell home insurance to them. PCWs serve the same role in private motor insurance, connecting consumers with private motor insurance providers.

²²⁹⁹ See, for example: Section 5.E; CMA, PMI Market Investigation: Final report dated 24 September 2014, paragraph 2.24; CMA, DCTs Market Study: [Final report](#) dated 26 September 2017, paragraphs 3.7 to 3.8.

²³⁰⁰ See Section 7.C.I; CMA, PMI Market Investigation: Final report dated 24 September 2014, paragraphs 8.10 to 8.17; CMA, DCTs Market Study: [Final report](#) dated 26 September 2017, [Paper E](#), section 2.

sectors and negotiations reflect the wider contractual relationship between the parties.²³⁰¹ The use of narrow MFNs is also extensive in private motor insurance and, until the PMI Order 2015, so were wide MFNs.²³⁰²

- (c) Evidence obtained during the DCTs Market Study shows that the majority of consumers using PCWs single-home (i.e. use one PCW) in both sectors and that the most common reason for using a PCW in both sectors was to save money.²³⁰³
- (d) BGL submitted that consumers of private motor insurance are more price-sensitive than consumers of home insurance.²³⁰⁴ Irrespective of whether or not this is the case, as set out in Section 7.B.I, the CMA has found that, similarly to consumers of private motor insurance, consumers of home insurance are also price-sensitive. The retail prices quoted by home insurance providers on PCWs are therefore an important dimension of competition between both the Big Four PCWs and between providers when competing on PCWs to acquire consumers in both private motor insurance and home insurance.²³⁰⁵
- (e) The terms of CTM's wide MFNs were the same in both private motor insurance and home insurance and BGL's explanation of why it introduced and used wide MFNs apply equally to private motor and home insurance,²³⁰⁶ reflecting the fact that wide MFNs were integral to CTM's competitive strategy in both home insurance and in private motor insurance.

P.16 The CMA therefore considers that it is appropriate to give weight in its assessment of CTM's wide MFNs in home insurance to views expressed by CTM in its internal documents or in BGL's submissions to the CMA (or its predecessors) on the role and importance of wide MFNs, both generally and specifically in private motor insurance. This is particularly the case where such views are consistent with the views BGL has expressed on its use of wide MFNs in home insurance and its behaviour.

P.17 The CMA recognises that there are differences between the private motor insurance sector and the home insurance sector in terms of, for example,

²³⁰¹ For example, BGL confirmed that '*most HIPS are multi-product and commission negotiations for home insurance are not done in isolation*'. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 107.

²³⁰² CMA, DCTs Market Study: [Final report](#) dated 26 September 2017, paragraph 4.90.

²³⁰³ CMA, DCTs Market Study: [Final report](#) dated 26 September 2017, section 3(c).

²³⁰⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 301.

²³⁰⁵ See Section 7.C.I.(c).

²³⁰⁶ See section 8.A.II.

their relative size and the nature of the insurance products, including the former being a compulsory purchase for consumers. The CMA also acknowledges that the relative importance of PCW channels differs between the two sectors – with PCW sales being materially larger both in absolute and relative terms in private motor insurance – and at least one of the Big Four PCWs has a greater focus on private motor insurance than on home insurance.

- P.18 The CMA accepts that these differences need to be considered when relying on evidence of, for example, CTM's views on the scale of the effects of its wide MFNs (or the scale of the effect of removal of its wide MFNs would have on the competitive process), and the CMA has done so in its assessment. However, the CMA considers that these differences are not of such a nature that evidence about CTM's use of wide MFNs in private motor insurance is not relevant in understanding the role and importance of wide MFNs to CTM's competitive strategy in home insurance.

P.V. BGL's representations on the CMA's interpretation of BGL's internal documents

- P.19 BGL submitted that the CMA's interpretation of many of its internal documents is incorrect and not borne out by the documents when read in their appropriate context.²³⁰⁷
- P.20 BGL stated that many of the documents referred to by the CMA in the SO, the First Letter of Facts and the DPS in which BGL refers to wanting to, for example, avoid a '*CPA discounting war*' or which record CTM's awareness of the pro-competitive impact of short run promotional deals, are merely internal discussions of the pros and cons of CTM entering into promotional deals.²³⁰⁸ It stated that the risk it identified internally of price wars on commission fees was merely identified as a possible disadvantage of investing in short term discounting. BGL submitted that the CMA incorrectly and with no reasoning infers from BGL's internal documents a connection between CTM's assessment of the effectiveness of promotional deals as a competitive strategy and the role of wide MFNs.²³⁰⁹
- P.21 BGL also submitted that other internal documents allegedly discussing the anticipated impact of the removal of the wide MFNs in private motor insurance do not suggest that the authors anticipated that the PMI Order

²³⁰⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 298 to 302 and Annex 6.

²³⁰⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 370 to 379, in particular paragraph 374 where internal documents avoiding a '*CPA war*' are discussed.

²³⁰⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 375.

2015 would result in increased competition between insurance providers or PCWs in private motor insurance. In BGL's view, these internal documents suggest PCWs would react in the short term to the ban on wide MFNs by increasing commission fee discounting to secure promotional deals, and that some providers would seek to '*drive competition*' for such opportunities. However, BGL submitted that CTM did not consider that this was a sustainable long-term strategy for its rivals, consistent with BGL's general view that promotional deals are not a viable long-term strategy.²³¹⁰

- P.22 The CMA disagrees with BGL's characterisation of its internal documents. BGL's internal documents referring to a desire to avoid a '*CPA discounting war*' explicitly relate to the impact of wide MFNs on its discounting strategy and how CTM operated a trade-off between relying on wide MFNs and discounting commission fees. For example, CTM stated in plain terms that:

'Other PCWs have increasingly been discounting CPAs [commission fees] to gain lower prices for customers.

CTM has chosen not to do this in the past, on the basis that we expected that it would i) reduce profitability; ii) we have previously relied more on WMFNs; and iii) we don't want to start a CPA discounting war'.²³¹¹

- P.23 BGL relies on a document from 2013 to support the fact that during the Relevant Period its general view was that promotional deals were not a viable long term strategy, on the basis that a pricing advantage gained by promotional deals is likely to be '*short lived*' or '*unsustainable*'.²³¹² However, these statements do not show that promotional deals are likely to be abandoned quickly, but rather that competitors were likely to enter into promotional deals in response to BGL itself entering into promotional deals (and therefore the price advantage gained by CTM would be '*short lived*'). The document states: '*competitors unlikely to tolerate long-term price disadvantages*' and '*there is a risk that the short-term gains of Better Prices would be unsustainable, and lead to a CPA war*'.²³¹³ The CMA does not dispute the fact that promotional deals were not part of CTM's competitive

²³¹⁰ URN 10459, BGL's response to the first LoF and DPS dated 14 February 2020, paragraph 370 to 372.

²³¹¹ URN 1965, BGL's response to First BGL Notice dated 26 September 2017, document entitled '[HIP] Price Test, Results & Analysis (Aug-17)', slide 2.

²³¹² See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 371. BGL refers to an internal document dated 2013 (URN 5751, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices: Into 2013/14') noting that the price advantage gained by promotional deals are likely to be '*short lived*' and short term gains are likely to be '*unsustainable*'.

²³¹³ URN 5751, BGL's response to section 27 notice dated 26 September 2017, entitled 'Best Prices: Into 2013/14', slide 9 and 11.

strategy in the Relevant Period. However, as set out in Section 7, throughout the Relevant Period and since, promotional deals have been a core part of the competitive pricing strategies of two of the Big Four PCWs, and CTM itself has entered into promotional deals since the end of the Relevant Period.²³¹⁴

- P.24 In addition, BGL also relies on a document stating '*competitors will lose income in short term and may reduce ad spend*' and that the CMA's assumption that '*CPA reductions will pass to better customer pricing is not substantiated in their [the CMA's] report*', to demonstrate that promotional deals are not sustainable.²³¹⁵ However, such statements are part of a table recording detailed consideration of how a ban on wide MFNs would increase competition.
- P.25 As described in Section 8.A.II., CTM identified extensive concerns at the impact that removal of wide MFNs would have on its competitive strategy and on the impact on its rivals' ability to compete more effectively on price. Whilst recognising the potential cost to CTM, the table does not identify discounting commission fees as '*only viable in the short term*' for either CTM or its rivals.²³¹⁶ Moreover, CTM recognised the long term impact of its rivals being able to position themselves through a '*proliferation of offers*' as cheaper in consumers' minds as being an outcome that would be '*difficult to undo*'.²³¹⁷ CTM's concern at the relevant time was about the cost implications of remaining competitive on price by responding to its rivals' discounting of their commission fees to secure lower prices, absent its wide MFNs.²³¹⁸

²³¹⁴ MoneySuperMarket for example confirmed to the CMA that promotional deals were now, following removal of CTM's wide MFNs, '*business as usual*' URN 8968, MoneySuperMarket's response to section 26 notice dated 31 May 2019, question 2(a). See further Section 7.C.II.(a) and 9.B.I.(b). In this regard, in its response to the First LoF and DPS (paragraph 370) BGL seeks to rely on a BGL internal document (URN 5750, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Best Prices, June 2015', slide 8) that states '*[CPA discounting by competitors] is continuing, but MSM has resorted to now only offering discounts on specific customer segments*' to argue that promotional deals are not sustainable. However, the document quoted by BGL illustrates BGL's general concern that the removal of wide MFNs led its rivals to compete on prices: '*MSM, Confused and Google have been aggressively discounting*'. See Section 7.C.II.(d) in respect of CTM's pricing strategy.

²³¹⁵ See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 371. BGL refers to document URN 3139, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Impact of ban on Wide MFN', July 2014, slide 5.

²³¹⁶ In this context, whilst noting a loss of income from '*a proliferation of offers*' by rivals, CTM recognises that its rivals may reduce their spend on marketing and advertising to compensate.

²³¹⁷ URN 3139, BGL's response to section 27 notice dated 26 September 2017, document entitled 'Impact of ban on Wide MFN', July 2014, slide 5. See also URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 88.

²³¹⁸ The CMA has addressed BGL's representations on the role of promotional deals, including the effects of promotional deals on retail prices and rankings, in Annex K. In URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 377 to 379, BGL also sought to argue that documents quoted in the SO at paragraphs 10.26 referring to general discounting by other PCWs restricting the ability of those PCWs to grow

- P.26 Moreover, the CMA's interpretation of CTM's internal documents in the round is consistent with BGL's stated objectives in using wide MFNs, to secure lower prices whilst retaining growth in commission fees, and its submissions to the CMA during the course of the PMI Market Investigation and the DCTs Market Study. They clearly demonstrate that BGL was concerned that removal of wide MFNs would increase competitive pressure on CTM from its rivals competing more strongly on price by reducing their commission fees to secure lower prices from the relevant providers. These internal documents demonstrate CTM's belief at the time of the role CTM's wide MFNs had in reducing the competitive pressures from its rivals and its concern at providers differentiating their prices across PCWs, which it viewed as detrimental to its competitive position.
- P.27 Finally, BGL submitted that *'the CMA has made no attempt to argue that the PMI Order had a positive impact on competition in PMI, or that there is any read across from PMI into home insurance'*.²³¹⁹ The CMA does not consider that it is necessary to demonstrate the impact of the ban on wide MFNs in private motor insurance in order for it to rely on CTM's internal documents in relation to its findings in the present Investigation. The CMA is relying on BGL's internal documents to support its finding that CTM's wide MFNs were integral to CTM's competitive strategy across insurance products in the Relevant Period. Such documents reflect BGL's views at the time on the role of wide MFNs in its pricing strategy and its view on their impact on the competitive process. Its behaviour – including its decision to retain wide MFNs in home insurance, its refusal to remove them from its contracts (despite numerous requests from providers) and its monitoring and enforcement of its wide MFNs – reflects and is consistent with those views.²³²⁰

CTM's commission fee revenue (URN 1964 BGL's response to the First BGL Notice, question 17, document entitled 'Q17 Insurance Pricing (Feb-17)') bear no relation to the case and simply *'reflect the obvious fact that there is some relationship between CPAs [commission fees] and price parity, and the even more obvious one reducing CPAs [commission fees] in pursuit of promotional deals leads to lower CPAs [commission fees]'*. However, contrary to BGL's assertion, the fact that CTM had the highest commission fees is relevant given, as BGL accepts, there is a relationship between commission fees and 'price parity'. As set out in Section 8.A.II, CTM the CMA has found that CTM's wide MFNs were integral to CTM's strategy in home insurance. By ensuring that CTM was not undercut by prices offered by providers with wide MFNs on rival PCWs, CTM did not itself have to react to lower prices being offered on rival PCWs by reducing its own commission fees in order to incentivise providers to match such lower prices. As BGL recognised, the *'primary objective of CTM's WMFNs was to use it as one tool to seek to ensure it offered the best possible price to consumers, and hence to strengthen its competitive position vis-à-vis rivals (other PCWs and HIPs [home insurance providers])'* (URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 364). BGL's reference to its rivals as including home insurance providers, is inconsistent with the characterisation of providers as 'partners' in CTM's internal documents (for example, in URN 1964 referred to above). It is also inconsistent with the CMA's findings in relation to the relevant product market (see Section 5). Moreover, the CMA notes that if providers were indeed CTM's 'rivals' as BGL states, then CTM's wide MFNs (and its narrow MFNs) would have operated as clauses in agreements between competing 'rival' undertakings that prevented them from undercutting one another.

²³¹⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 369.

²³²⁰ See Section 8.A.II.

P.VI. BGL's additional representations on compliance

P.28 In this sub-section the CMA addresses other representations made by BGL relating to compliance by the relevant providers with its wide MFNs.

P.29 BGL also submitted detailed written representations on the instances of enforcement action it took which the CMA has addressed in Annex M. BGL's representations on the pricing behaviour of individual providers with wide MFNs are addressed in Annex L.

P.VI.(a). BGL's submissions on its ability to monitor and enforce compliance with its wide MFNs

P.30 BGL has made representations regarding its views that:

- (a) Monitoring of home insurance providers' pricing offers was difficult and its wide MFNs could be easily circumvented.²³²¹
- (b) There was nothing inherently anti-competitive in its monitoring of the relevant providers' prices on rival PCWs and the actions it took cannot be described as '*enforcement*'.²³²²
- (c) Any threats to delist a relevant provider were not credible.²³²³

P.31 The CMA addresses each of these points below.

P.VI.(a).(i). BGL's representations on the difficulty of monitoring providers' pricing offers

P.32 BGL submitted that wide MFNs are '*intrinsically ineffective*' in most cases because of the difficulty in comparing offers, differences in question sets, mapping difficulties, time lags and changes in the underlying pricing policies of the providers.²³²⁴ In BGL's view a wide MFN can therefore be '*easily circumvented*' by the provider offering slightly different terms, for example on excess or legal cover or by using different brands.²³²⁵ In addition, BGL '*maintained significant tolerances, the level of which was generally unknown to the providers, that gave the providers flexibility to price on CTM higher*

²³²¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 185 to 190 and 265 to 269.

²³²² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 182 to 184 and 189 to 190.

²³²³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 111.

²³²⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 40(viii).

²³²⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 40, 268 to 269.

than on its rivals for considerable periods of time and to a material extent.²³²⁶

- P.33 As set out in Section 8.A.II, the CMA has found that CTM's wide MFNs were integral to its strategy, effective in achieving CTM's objectives and that CTM acted accordingly. The CMA considers that BGL's representations that its wide MFN's were '*intrinsically ineffective*' and could be '*easily circumvented*' are inconsistent with its actions in the Relevant Period including its decision to retain wide MFNs across other lines of insurance following the PMI Order 2015, despite the legal risks. If, as BGL suggests, CTM's network of wide MFNs was ineffective then it is not clear why BGL persisted in retaining them in circumstances where CTM's internal documents show that CTM invested significant resources and time in reaching a decision to continue to use and enforce wide MFNs, and BGL continued to make submissions to the CMA defending its use of wide MFNs. Moreover, CTM also invested time and resources in monitoring providers' pricing on rival PCWs and contacting providers that were not within its compliance tolerance thresholds. This is again inconsistent with CTM considering that such monitoring, which was used to enforce its wide MFNs, as being a waste of time either because of the difficulties inherent in such monitoring, or the ability of providers to easily circumvent their wide MFN obligations.
- P.34 The CMA agrees with BGL that, as set out in Annex N, the Consumer Intelligence data used by CTM to monitor providers' prices on rival PCWs was imperfect. As confirmed by BGL, there were reasons why CTM's pricing analysis using Consumer Intelligence data might suggest a lower price on a rival PCW where there was no difference in price in practice, for example where the difference was not deliberate but due to a technical issue or, otherwise, did not involve a breach of its wide MFN. However, CTM's systematic monitoring processes during the Relevant Period took this into account by including compliance tolerance thresholds and follow-up discussions with the relevant provider as described in Section 8.A.II.(d).
- P.35 CTM's compliance tolerance thresholds reflected the imperfect nature of the Consumer Intelligence data and the complexity in comparing providers' pricing across PCWs. The CMA does not consider that the fact that CTM applied internal compliance tolerance thresholds undermines the evidence that there was widespread compliance with CTM's wide MFNs or that CTM used its systematic monitoring to enforce its wide MFNs. On the contrary, CTM's compliance tolerance thresholds were a practical means of ensuring

²³²⁶ URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraphs 40(ix) and 268.

that providers were pricing sufficiently consistently with CTM's wide MFNs, notwithstanding the imperfect nature of the Consumer Intelligence data.

- P.36 In addition, as described in Sections 8.A.II.(d) and 8.B.III.(a), CTM's monitoring and enforcement processes provided for initial communications with the relevant provider to verify their pricing and the causes of the identified price differentials. CTM would require explanations from the relevant providers of their pricing and, where appropriate, require remedial action to be taken. The delay in obtaining pricing data and the difficulties in comparing prices highlighted by BGL did not therefore prevent CTM using the Consumer Intelligence data and its systematic monitoring to secure compliance with its wide MFNs.
- P.37 In support of BGL's submissions that its wide MFNs could be easily circumvented, BGL provided several examples of home insurance providers referring to technical reasons in correspondence with CTM as an explanation for price discrepancies between PCWs.²³²⁷ However, the examples provided by BGL do not show that the home insurance providers in question were referring to technical issues in order to deliberately circumvent their wide MFN obligations, as opposed to such issues being the genuine reason, either in whole or in part, for the pricing discrepancies identified by CTM.²³²⁸ Where CTM was not satisfied with the explanation received from the provider, CTM would persist in requiring explanations and remedial action to be taken and would escalate its enforcement actions.²³²⁹ Therefore, the CMA considers that it would have been difficult in practice for a provider to consistently use technical excuses to conceal from CTM persistent, deliberate breaches of CTM's wide MFN outside of CTM's compliance tolerance thresholds such as entering into a promotional deal with a rival PCW.
- P.38 This is supported by the fact that susupermarket one example of a provider apparently deliberately trying to circumvent its wide MFN obligations in order to enter into a promotional deal with a rival PCW. Prior to the Relevant Period, [HIP] designed a promotional deal with Confused that sought to take advantage of differences in the question sets used by Confused and CTM as

²³²⁷ [HIP], [HIP], [HIP], [HIP], [HIP]. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 268.

²³²⁸ For example, [HIP]'s reference to question set differences being the reason for its non-compliance was at least partially true, albeit that it had also entered into a promotional deal with [X]. However, in any event, CTM continued to pursue this point with [HIP], writing in [X] to tell [HIP] that it regarded it as being in breach of contract (see Annex M).

²³²⁹ See section 8.B.II and III and Annex M. For example, CTM continued to question [HIP] over its price testing on rival PCWs and escalated its enforcement action against [HIP] and [HIP] when it was not satisfied with their responses that differences in prices were due to technical reasons.

a 'work-around'.²³³⁰ [HIP] subsequently tried to use similar question set differences to agree a promotional deal with [X].²³³¹ However, [X] at that time [X] a similarly structured approach for promotional deals in the future.²³³² Therefore, the CMA does not consider that CTM's wide MFN was subject to widespread circumvention by home insurance providers, as suggested by BGL.

P.39 Finally, the CMA is not aware of any relevant providers listing different brands on CTM and rival PCWs to circumvent their wide MFNs obligations. In that regard, BGL cited providers such as [HIP], [HIP], [HIP] and several smaller providers such as [HIP] and [X]²³³³ in support of its submission that a significant number of home insurance providers did not agree to wide MFNs or only did so for certain brands.²³³⁴ However, such providers only had narrow MFNs in their contracts with CTM in the Relevant Period and therefore did not have any brands listed on CTM that were subject to wide MFNs.²³³⁵ Accordingly, it is unclear how these examples suggest that the relevant providers circumvented their wide MFNs by listing different brands on rival PCWs than on CTM.

P.VI.(a).(ii). BGL's representations on CTM's monitoring being unobjectionable

P.40 BGL also submitted that its monitoring was standard and unobjectionable and there was nothing inherently anticompetitive in CTM monitoring providers' pricing offers. In BGL's view this is because:

- (a) CTM monitored all relevant providers' prices on rival PCWs irrespective of whether they had a wide MFN or not.²³³⁶

²³³⁰ URN 6626, note of CMA meeting with [HIP] [X], paragraph 13.

²³³¹ URN 5315, [HIP]'s response to section 26 notice dated 24 November 2017, question 22, paragraph 99. See also, URN 5724, [HIP]'s response to section 26 notice dated 24 November 2017, internal email from [Employee, HIP] to [Employee, HIP] and [Employee, HIP] entitled 'RE: Home performance', dated 9 March 2015, page 1.

²³³² URN 5315.18, [HIP]'s response to section 26 notice dated 24 November 2017, question 16, Annex 8(c).

²³³³ The CMA notes that, in the Relevant Period, [X] was a provider of car and van insurance and not home insurance. URN 3434, BGL's response to section 27 notice dated 26 September 2017, internal email from [Employee, CTM] to [Employee 1, CTM], ([Employee, CTM] in copy), entitled 'RE: Narrow MFN', dated 26 September 2016, pages 5 and 7.

²³³⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40(ii).

²³³⁵ The CMA is aware that for example [HIP] have brands that are only listed on PCWs and other brands which are only sold through their direct channels. The CMA understands that providers may have different brands on the PCW channel than on their direct channels in order to enable them to position, including on price, such brands differently on each channel which would not be possible given the existence of narrow MFNs.

²³³⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 184.

- (b) All the Big Four PCWs monitored providers' prices on their rival PCWs in the same way as CTM.²³³⁷
- (c) CTM continued to monitor prices in the same way after it stopped enforcing its wide MFNs in home insurance in November 2017.²³³⁸

P.41 The CMA does not dispute these points. However, while the CMA agrees that monitoring prices on rival PCWs is not itself inherently anti-competitive, it can be used to facilitate anti-competitive behaviour.²³³⁹ In the present case, CTM considered it worthwhile to expend the time and resources in systematically monitoring insurance providers' offerings on rival PCWs as a core part of its pricing strategy of which its wide MFNs were an integral part. Importantly, the CMA finds that CTM's systematic monitoring of the prices providers were offering on other PCWs:

- (a) incentivised and motivated the relevant providers to comply with CTM's wide MFNs (see Section 8.B.I); and
- (b) enabled CTM to take action to secure compliance with its wide MFNs where necessary (see Sections 8.B.II and III).

P.42 BGL also submitted that its actions cannot be characterised as '*enforcement action*'.²³⁴⁰ It stated that in a few cases CTM drew the relevant provider's attention to its contractual obligations. However, BGL submitted that was different to enforcing its wide MFNs. In BGL's view, CTM was merely drawing the relevant providers' attention to a valid contractual commitment freely entered into.

P.43 The CMA disagrees. As described in Section 8.A.II.(b)., CTM itself internally referred to its escalation process as '*enforcing*' its wide MFNs and sought legal advice to ensure that it could '*enforce*' its wide MFNs in home insurance following the PMI Order 2015. Moreover, for the reasons set out in Section 8.B.I., providers had strong incentives to comply with CTM's wide MFNs and could not '*freely*' vary or terminate their commercial relationship with CTM without doing significant damage to their business, given CTM's importance as a source of new business. In addition, as described in Section

²³³⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 183 to 184 and URN 8484.6, BGL's response to the SO dated 22 February 2019, Annex 2, paragraph 2.5.

²³³⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 240.

²³³⁹ For example, the Vertical Guidelines refer, in paragraphs 48 and 50 respectively, to the relevance, and potential effectiveness, of a monitoring system in the context of resale price maintenance (RPM) and restrictions on the territory into which or the customers to whom the buyer may sell goods or services.

²³⁴⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 190.

8.A.II.(c), CTM refused requests from providers to remove its wide MFNs from its contracts.

P.VI.(a).(iii). BGL's representations on CTM threatening providers with delisting not being credible

- P.44 The CMA disagrees with BGL's submission that any threat of delisting was not credible given the damage that it would do to CTM.²³⁴¹ As set out in Section 8.B.I., relevant providers had strong incentives to comply with their wide MFNs obligations and, in particular, the evidence from even the largest providers shows that there was concern at the possibility of being de-listed for non-compliance with their wide MFN obligations.
- P.45 For example, [Senior Executive, HIP] explained that '*Compare The Market are the most powerful of the four aggregators. [...] a delisting, or to be removed, from Compare The Market would have hit the business very hard at that point*'.²³⁴² Similarly, [HIP] was sufficiently concerned about the consequences of being in breach of its wide MFN that it agreed to fully fund three price discounts on CTM, and was concerned at the action CTM might take if it were not to honour the two outstanding discounts that had been agreed.²³⁴³ Accordingly, providers took their contractual obligations seriously because failure to comply could lead to potentially significant consequences, or at least adversely affect a provider's commercial relationship with CTM.
- P.46 BGL submitted that even when there was an obvious breach by a home insurance provider of its wide MFN, CTM may not have taken enforcement action as it needed to maintain a good coverage of home insurance providers to attract customers.²³⁴⁴ BGL submitted that resorting to discussing contractual terms with partners was rarely a successful approach.²³⁴⁵ BGL explained that its relationships with providers are complex and symbiotic relationships and '*it does not do well to talk about contracts as a matter of course*'.²³⁴⁶
- P.47 The CMA does not dispute that CTM, at its discretion, could have decided not to take enforcement action in a particular case. However, given the strong incentives and widespread compliance by providers with their

²³⁴¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 111, 272.

²³⁴² URN 9729, Transcript of interview with [Senior Executive, HIP] held on 17 July 2019, page 20, lines 16 to 17 and 25 to page 21, line 1.

²³⁴³ See Section 8.B.I.(a). and Annex M.

²³⁴⁴ See URN 5266A, First BGL Submission dated 21 December 2017, page 14, paragraph 4.7(a)(ii); URN 5786, Second BGL Submission dated 14 March 2018, question 6.2, page 22.

²³⁴⁵ URN 8933, Transcript of the Oral Hearing with BGL held on 4 April 2019, pages 25 and 26.

²³⁴⁶ URN 8933, Transcript of the Oral Hearing with BGL held on 4 April 2019, page 26 lines 2 to 3.

contractual obligations, the CMA has only identified six providers in the Relevant Period with which CTM was not able to resolve pricing issues through initial discussions following up on CTM's systematic monitoring. As set out above in Section 8.B.III.(b)., CTM escalated its enforcement of its wide MFNs against the providers in each of these instances. These six providers included both large and relatively small providers in terms of sales through CTM and across PCWs. As described in Annex M, such enforcement action was generally successful in changing the relevant providers pricing to CTM's advantage.

P.VI.(b). BGL's representations on Oxera's Coverage and Compliance analysis showing widespread disregard for CTM's wide MFNs

- P.48 BGL submitted that there was '*a situation of widespread disregard*' of its wide MFNs.²³⁴⁷ The main evidence provided by BGL in support of its view is an ex-post analysis undertaken by its economic advisers in the context of this investigation (Oxera's Coverage and Compliance analysis). Oxera's Coverage and Compliance analysis sought to assess (using data provided by Consumer Intelligence) the extent to which home insurance providers had complied with CTM's wide MFNs during the Relevant Period.
- P.49 As set out in Annex N, Oxera's Coverage and Compliance analysis includes two distinct pieces of analysis that separately consider the 'proportion of brands' and 'proportion of risks' covered by CTM's wide MFNs that were found to price more expensively on CTM relative to other PCWs during the Relevant Period. According to BGL '*the Oxera Report at 5.19 shows that on average a quarter of brands covered by a WMFN were priced above the [X] % tolerance in the period January 2016 to September 2017. This shows again lack of any action by CTM and a situation of widespread disregard of the WMFN*'²³⁴⁸
- P.50 The CMA does not consider that Oxera's Coverage and Compliance analysis does shows a '*a situation of widespread disregard*' of CTM's wide MFNs, as claimed by BGL. In particular, even if the results of the analysis are taken at face value, the proportion of brands, risks and policies that Oxera considered to be 'compliant' with CTM's wide MFNs are significant:
- (a) the proportion of brands subject to CTM's wide MFNs deemed 'compliant' is between 57-72%;

²³⁴⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, section 4.15.

²³⁴⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 267.

- (b) the average brand-level proportion of risks considered to be 'compliant' is between 70-80%;
- (c) more than one quarter of policies distributed through the PCW channel in 2016 and 2017 were under brands subject to CTM's wide MFN and found by Oxera to be 'compliant' with CTM's wide MFNs.

P.51 However, while the CMA has given it careful consideration in its assessment, the CMA does not consider that it is appropriate to place any weight on the results of Oxera's Coverage and Compliance analysis as it is subject to a number of significant limitations that affect its robustness. These limitations include (as set out in Annex N):

- (a) the quality of the data provided by Consumer Intelligence;
- (b) the methodology in BGL's own analysis of the data provided by Consumer Intelligence;
- (c) the inclusion of brands owned and operated by BGL;
- (d) the failure to use CTM's own 'tolerance thresholds';
- (e) the failure to account for the frequency and duration of individual brands' 'non-compliance'.

P.52 In addition, BGL's interpretation of the results of the Oxera Coverage and Compliance analysis is inconsistent with the evidence on CTM's own views at the relevant time about the effectiveness of its wide MFNs during the Relevant Period, for example as shown by its internal documents, as set out in Section 8.A.II²³⁴⁹, as well as the evidence from the relevant providers on their compliance with CTM's side MFNs, as described in Section 8.B.II.

P.53 Finally, in generating the Oxera Coverage and Compliance analysis, Oxera also produced charts for specific providers showing for the provider in question the proportion of risks priced more expensively on CTM relative to other PCWs in each month from January 2016 to September 2018.²³⁵⁰ These charts are subject to the limitations set out at paragraph P.50 above and as such the CMA does not consider these charts to be sufficiently robust

²³⁴⁹ The CMA also considers that BGL's interpretation of the results of Oxera's analysis as showing '*widespread disregard*' for CTM's wide MFNs is not consistent with BGL's submissions that the relevant providers' pricing strategies were compliant with CTM's wide MFNs because the relevant providers wanted to price consistently across PCWs irrespective of CTM's wide MFNs.

²³⁵⁰ For example, see URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 5.35, 9.7, 9.9 and 9.10 and Figures 5.4, 5.5, 9.1, 9.2 and 9.3. For some of these providers the charts show the proportion of risks priced more than [] more expensively on CTM relative to other PCWs in each month from January 2016 to September 2018.

to be relied upon in the absence of supporting evidence. In particular, this is because, as explained in Annex N, even if the data used to produce these charts suggests a provider is pricing lower on a rival PCW than on CTM, such differences may be due to the limitations in the data used or may be legitimate or unintentional, for example because they arise from mapping or question set differences. The CMA has therefore considered these charts where relevant in its assessment of BGL's specific representations on the compliance by individual providers with CTM's wide MFN in Annex L and CTM's enforcement action in Annex M.

P.VI.(c). BGL's further representations on the impact of CTM's wide MFNs on the behaviour of providers

P.54 BGL submitted that a '*fundamental weakness*' in the CMA's case was the failure of the CMA '*to analyse why HIPs [home insurance providers] were apparently complying with the WMFN*' and '*to prove a clear causal link between HIPs' [home insurance providers'] pricing practices and the WMFN, ie that it was the existence of the wide MFN that determined the HIP's actions*'.²³⁵¹ BGL submitted that, in particular, this was because:

- (a) A significant number of relevant providers had a policy of offering the same prices across all PCWs, whether there was a wide MFN in place or not.²³⁵²
- (b) The appetite of the relevant providers to differentiate their prices by entering into promotional deals was extremely limited and, even from the point of view of the PCWs, the incentives for promotional deals are more limited than the CMA supposes.²³⁵³

P.55 As set out in Section 8.B.II.(a)., the CMA disagrees with BGL that it is necessary to prove that CTM's wide MFNs constrained all providers from acting differently than they otherwise would have done in the Relevant Period. In the absence of CTM's network of wide MFNs, the need to comply with a contractual obligation and the risk of facing enforcement action as a result of breaching CTM's wide MFNs would not have constrained any home insurance providers from behaving differently, for example using differential

²³⁵¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 40 and 191 to 193.

²³⁵² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 194 to 200.

²³⁵³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 40(iv) and 40(v), and paragraphs 201 to 235. The CMA disagrees with BGL's submissions regarding the limited importance of promotional deals to providers and PCWs. As set out in Section 7.D.II.(b)., the CMA has found that during and since the Relevant Period promotional deals have been used by many providers. Furthermore, as set out in Section 7.E., the CMA has found that promotional deals were an important and effective way for PCWs to compete on the prices quoted on their platforms during and after the Relevant Period. In Annex K, the CMA has considered BGL's representations regarding the incentives of PCWs and providers to engage in promotional deals, as well as the impact of promotional deals on prices and rankings.

pricing strategies that involved pricing lower on other PCWs than on CTM. Accordingly, although the observable behaviour of individual providers in terms of their compliance with CTM's wide MFNs (and CTM's own behaviour in maintaining, monitoring and enforcing its wide MFNs) during the Relevant Period is clearly informative and relevant in assessing the effects on competition of CTM's network of wide MFNs, it is also necessary to consider the extent to which that behaviour and competition more generally would have been different in the absence of CTM's network of wide MFNs.

- P.56 The CMA therefore agrees with BGL to the extent that BGL submits that the observable behaviour of the relevant providers in the Relevant Period is relevant to the CMA's assessment; however, the CMA also considers that it is necessary to consider not only whether the behaviour of each provider individually would have been different absent the wide MFN in that provider's contract, but also whether competition generally would have been stronger absent the wide MFNs in all 32 providers' agreements with CTM.
- P.57 As set out in Section 8.C.II.(a)., the CMA considers that it is relevant to take into account not only the behaviour of individual insurers (and indeed PCWs) in the Relevant Period, but also the way in which they are likely to have behaved in the competitive situation in the absence of CTM's network of wide MFNs. In particular, the fact that an individual provider may, for example, state that its own behaviour was unaffected by the wide MFN in its agreement does not of itself mean that its behaviour would have been the same if there had been both (i) no such clause in its agreement, and (ii) the entire network of CTM's wide MFNs had been absent.
- P.58 Similarly, the CMA disagrees that it can be assumed from the relevant providers' preferred strategies in the Relevant Period what their strategies would have been absent CTM's network of wide MFNs. The providers' preferred strategies in the Relevant Period in part reflected and were facilitated by the competitive pressure (or indeed reduced competitive pressure) to which such providers were subject in the presence of CTM's network of wide MFNs (as explained in Section 9).
- P.59 The CMA has addressed BGL's more detailed representations on the impact of its wide MFNs on the pricing strategies of individual providers in Annex L. The CMA has also addressed BGL's representations on the impact that its enforcement actions had on the behaviour of the six providers against which it escalated its enforcement action in the Relevant Period in Section 8.B.II. and in Annex M. For completeness, the CMA addresses below additional representations made by BGL in respect of [HIP] and [HIP], and in relation to

the witness evidence obtained from [Employee 1, MSM] and [Employee 2, MSM].

P.VI.(d). BGL's representations on [HIP]'s refusal to enter into promotional deals

- P.60 BGL submitted that *'whatever [HIP] may have said to other PCWs, the likelihood is that the real reasons for its rejection of promotional deals would have been a combination of its portfolio pricing policy and fears of loss of profitability'*.²³⁵⁴ This is based on [HIP]'s statements to the CMA, including that promotional deals do not always improve profitability.²³⁵⁵
- P.61 The CMA considers that the contemporaneous documents set out in Section 8.B.II.(b)., supported by the evidence provided by [HIP] to the CMA during the investigation, are to be preferred to BGL's conjecture as to the *'real reasons'* for [HIP] refusing to enter into promotional deals. In particular, there is clear contemporaneous email evidence that [HIP] was unable to enter into promotional deals with other PCWs because of CTM's wide MFN.²³⁵⁶ The CMA also considers that the fact that [HIP] has engaged in promotional deals since CTM ceased enforcing its wide MFN supports the CMA's position.²³⁵⁷
- P.62 Moreover, [HIP] in addition stated that CTM's wide MFN stopped it participating in deals offered by PCWs during the Relevant Period²³⁵⁸, and the relevant [Employee, HIP] has also confirmed in a witness statement provided to the CMA that CTM's wide MFN restricted [HIP]'s ability to enter into promotional deals.²³⁵⁹ This is also consistent with the evidence from [X] described in Section 8.B.II.(b).²³⁶⁰ Finally, the CMA considers that if the *'real reasons'* were, as claimed by BGL, related to concerns about profitability of the proposed deals, it is unclear why [HIP] would not have stated these reasons to the PCWs rather than referring to CTM's wide MFNs, in particular where such reasons may have encouraged the relevant PCW to consider and potentially improve the terms of its offer.

²³⁵⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 86 to 92.

²³⁵⁵ URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 4; URN 9207, [HIP]'s response to section 26 notice dated 19 June 2019, question 5(c).

²³⁵⁶ See URN 6323.4, [HIP]'s response to section 26 notice dated 16 April 2018, question 14 and URN 6323.3, [HIP]'s response to section 26 notice dated 16 April 2018, email chain between [HIP] and Confused.com, email entitled '[HIP] home – co-fund', dated July to October 2017.

²³⁵⁷ See Section 7.D.II.(b).(ii).

²³⁵⁸ URN 6459B, note of CMA meeting with [HIP] dated 10 May 2018, paragraph 5; URN 6323.1, [HIP]'s response to section 26 notice dated 16 April 2018, question 6(c).

²³⁵⁹ URN 6659, witness statement of [Employee, HIP] dated 26 October 2018, paragraph 20.

²³⁶⁰ The CMA addresses in Section 8.B.II.(b) BGL's representations on the evidence of MoneySuperMarket on providers' reasons for not progressing promotional deals.

P.VI.(d).(i). BGL's representations on the lack of effect of CTM's wide MFN on [HIP]'s pricing strategy

- P.63 BGL submitted, in the light of [HIP]'s statements in response to the SO²³⁶¹, that, it is *'likely that [HIP] was simply referring to the WMFN as a reason for not doing what it did not intend to do in the first place'*.²³⁶² BGL also submitted that [HIP] had previously felt able to disregard CTM's wide MFN when it entered into a promotional deal with [X], which ran [X].²³⁶³
- P.64 The CMA disagrees, and considers that it is appropriate to give more weight to the contemporaneous documentary evidence as described in Sections 8.A.II.(c) and 8.B.II.(b), as well as [HIP]'s response to the CMA's section 26 notices. This evidence shows that, at the relevant time, CTM's wide MFN was consistently raised and discussed internally within [HIP] and, in particular, contributed to [HIP]'s decisions not to proceed with promotional deals in 2017. Moreover, the fact that [HIP] subsequently agreed a promotional deal with [X] demonstrates that, once CTM's wide MFN had been removed, it had been able to overcome the other commercial issues that it cited as having previously also deterred it from entering into a deal.
- P.65 By contrast, the deal between [HIP] and [X] that BGL referred to, sought to use questionnaire differences to avoid breaching CTM's wide MFN.²³⁶⁴ However, the fact that [HIP] sought to use question set differences as a means of trying to avoid breaching CTM's wide MFN demonstrates that [HIP] wanted to engage in promotional deals, but considered itself constrained by its wide MFN obligations in doing so. In that regard, [X].²³⁶⁵

P.VI.(d).(ii). BGL's representations on witness evidence from MoneySuperMarket

- P.66 BGL submitted that the CMA should prefer evidence from [Employee 2, MSM] given in an interview with the CMA, rather than that of [Employee 1, MSM]²³⁶⁶,

²³⁶¹ For example, that *'at most, the wide MFN constrained [HIP] only on the edges of its actions and has had no material impact on pricing strategy or profitability'* and that *'[HIP] does not consider that, absent the wide MFN, it would have had a greater incentive to enter into promotional deals with other PCWs'* (See: URN 8419, [HIP]'s response to the SO dated 25 January 2019, paragraphs 3.2.1 and 3.2.2).

²³⁶² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 258. Similarly, at URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 143 and 144, BGL quoted [HIP]'s response to the First LOF in which [HIP] stated that *'the wide MFN was a relatively minor factor when considering promotional deals'* and that *'the wide MFN had no perceptible impact on its pricing strategy and therefore had minimal, if any impact on prices to consumers'* (See URN 10435, [HIP]'s response to the First LoF dated 31 January 2020)

²³⁶³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 142.

²³⁶⁴ See paragraph P.38.

²³⁶⁵ See paragraph P.38.

²³⁶⁶ [Employee 1, MSM] [X]. (See: URN 10621, witness statement of [Employee 1, MSM] dated 28 July 2020, paragraph 2).

on the basis that the [Employee 2, MSM] had more direct knowledge of the issues.²³⁶⁷

- P.67 In that regard, in response to a question from the CMA about whether MoneySuperMarket was aware of any examples of a provider refusing to discuss a promotional deal because of a contractual restriction in their agreement with CTM, [Employee 2, MSM], stated that:

*'No. So if I'm being honest, it was hard to determine, because the responses we would get were quite blunt in terms of, "No. We can't work with you on that initiative". Yeah, there was never a time where I could honestly say that somebody had mentioned, anything about CompareTheMarket, specifically. It was more to do with what I was offering on the table as an initiative'.*²³⁶⁸

- P.68 In a follow up interview, at which the CMA put to [Employee 2, MSM] emails that MoneySuperMarket had provided to the CMA from home insurance providers indicating that they were unable to enter into promotional deals either specifically because of CTM's wide MFNs or for contractual reasons²³⁶⁹, [Employee 2, MSM] confirmed that the arrangements with CTM appeared to be the reason for the providers not being able to enter into deals with MoneySuperMarket.²³⁷⁰

- P.69 As BGL submitted, [Employee 2, MSM] indicated that these instances were *'probably the exception because they were few and far between in terms of conversations, which was why [she] could not recall them [in her previous interview]'* and that she could not *'recall [a conversation] with an insurer that specifically mentioned clauses in other contracts'*.²³⁷¹ However, [Employee 2, MSM] also noted *'if I am being honest, that probably is because the conversations I was having were at more senior levels; and at a more junior level, account manager-level conversations maybe a little bit more relaxed,*

²³⁶⁷ [Employee 1, MSM] suggested to the CMA that it speak to [Employee 2, MSM] (See: URN 9318, transcript of CMA interview with [Employee 1, MSM] held on 14 June 2019, pages 35 and 36.)

²³⁶⁸ URN 9728, transcript of interview with [Employee 3, MSM], [Employee 2, MSM], [Employee 4, MSM] and [Employee 5, MSM] held on 5 July 2019, page 18, lines 20 to 24.

²³⁶⁹ URN 4934.5, MoneySuperMarket's internal email in response to section 26 notice dated 14 November 2017 between [Employee, HIP] and [Employee, MSM] entitled 'RE: Quick Question – ATL', dated 24 March 2017; URN 4934.6, MoneySuperMarket's internal email submitted in response to section 26 notice dated 14 November 2017 between [Employee, MSM] and [Employee, HIP] entitled '[REDACTED]', dated 14 November 2017; URN 4934.7, MoneySuperMarket's internal email submitted in response to section 26 notice dated 14 November 2017 between [Employee, MSM] and [Employee, HIP] entitled 'RE: Home', dated 4 September 2017.

²³⁷⁰ URN 10574, transcript of CMA interview with [Employee 2, MSM] held on 4 June 2020, page 14, lines 15 to 25.

²³⁷¹ URN 10574, transcript of CMA interview with [Employee 2, MSM] held on 4 June 2020, page 15, lines 3 to 4 and lines 17 to 18 (as referred to by BGL in URN 10792, BGL's response to the second LoF dated 21 August 2020, paragraph 34).

and account managers may be a little more open to it, and also acknowledged that she was recollecting events from memory.²³⁷²

- P.70 Overall, the CMA considers that [Employee 2, MSM]'s evidence is not inconsistent with the contemporaneous documentary evidence that clearly shows that three home insurance providers ([HIP], [HIP] and [HIP]) informed MoneySuperMarket that a reason for not progressing promotional deals with MoneySuperMarket was CTM's wide MFN or otherwise referred to a '*major hurdle*' in a contract being a '*showstopper*'.²³⁷³ In that respect, the CMA notes that [Employee 2, MSM], like [Employee 1, MSM], was not directly involved in conversations with providers about CTM's wide MFNs or direct recipients of the relevant emails from providers. Both had roles at a more senior level and, in providing oral evidence to the CMA, have relied upon their recollection of reporting from more junior colleagues.²³⁷⁴

²³⁷² URN 10574, transcript of CMA interview with [Employee 2, MSM] held on 4 June 2020, page 15, lines 7 to 10.

²³⁷³ URN 4934.5, MoneySuperMarket's internal email in response to section 26 notice dated 14 November 2017 between [Employee, HIP] and [Employee, MSM] entitled 'RE: Quick Question – ATL', dated 24 March 2017; URN 4934.6, MoneySuperMarket's internal email submitted in response to section 26 notice dated 14 November 2017 between [Employee, MSM] and [Employee, HIP] entitled 'Black Friday/ Cyber Monday', dated 14 November 2017; URN 4934.7, MoneySuperMarket's internal email submitted in response to section 26 notice dated 14 November 2017 between [Employee, MSM] and [Employee, HIP] entitled 'RE: Home', dated 4 September 2017.

²³⁷⁴ For example, in replying to [HIP] regarding a proposed deal in [X], a [HIP employee] notes that he had '*caught up*' with [X] before responding. See: URN 5315.18, [HIP]'s response to section 26 notice dated 24 November 2017, question 16, Annex 8(c).

ANNEX Q: ASSESSMENT OF BGL'S OTHER REPRESENTATIONS ON THE EFFECTS OF CTM'S WIDE MFNs

Q.1 In this Annex the CMA considers BGL's representations on:

- (a) CTM's wide MFNs acting as a price ceiling rather than as a price floor;
- (b) whether CTM's wide MFNs were '*economically binding*';
- (c) monitoring, enforcement, and small price disparities;
- (d) BGL's views on why providers agreed to include wide MFNs in their contracts with CTM.
- (e) the impact of CTM's wide MFNs on its rival PCWs;
- (f) the CMA's analysis of promotional deals before and after CTM stopped enforcing its wide MFNs including Oxera's analysis of the value of promotional deals;
- (g) competition between providers competing on PCWs;
- (h) the economic literature;²³⁷⁵ and
- (i) appreciability.

Q.1. CMA's assessment of BGL's representations that CTM's wide MFNs operated as a price ceiling rather than a price floor

Q.2 BGL submitted that the only effect a wide MFN can have, if adhered to, is to affect the relative price between CTM and its rival PCWs quoted by a provider.²³⁷⁶ The relevant home insurance providers were not obliged to raise prices on another PCW. If the relevant providers wanted to quote a cheaper price on a rival PCW, they were merely required also to offer that lower price to consumers using CTM's platform.²³⁷⁷ As a result, BGL argued, CTM's wide MFNs could have the effect of either reducing or increasing prices to consumers. In CTM's case their effect, if any, was to reduce prices reflecting its objective of securing the lowest prices on its platform.

²³⁷⁵ When referring to the economic literature, the CMA is referring to papers that include theoretical models exploring the effects of wide MFNs.

²³⁷⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 42 to 44 and 178. See also URN 10460, Fourth Oxera Report dated 14 February 2020, section 1D.

²³⁷⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 42 to 44 and 178.

- Q.3 Moreover, BGL submitted that CTM did not seek to persuade the relevant providers to end promotional deals or to raise prices on its rival PCWs but to replicate deals or ‘*good pricing*’ on CTM’s platform.²³⁷⁸ This positive effect on prices on its platform was also confirmed, BGL stated, by various pieces of empirical analysis undertaken by Oxera demonstrating that CTM’s wide MFNs did not act as a price floor. In addition, BGL argued that various examples show that the relevant providers reduced prices to more consumers in response to CTM’s communications. BGL therefore submitted that CTM’s wide MFNs operated not as a price floor as alleged by the CMA but as a price ceiling, reflecting CTM’s pro-competitive objective in its use of wide MFNs of securing the lowest prices for consumers using its platform.²³⁷⁹
- Q.4 The CMA considers that BGL has misinterpreted the CMA’s characterisation in the SO of wide MFNs as requiring a relative price floor.²³⁸⁰ As set out in Annex P, the CMA does not dispute that a wide MFN links the price being displayed on one platform (CTM’s) with the prices being displayed on rival platforms (CTM’s rival PCWs). The prices quoted on the platform *benefitting* from the wide MFN are as a result the lowest prices available from the relevant provider on PCWs.²³⁸¹ In other words, being the lowest available prices, the prices on CTM’s platform are a relative price floor as its rivals are unable to quote prices from the relevant insurers that are lower.²³⁸² This, on a plain reading of a wide MFN, is its purpose.
- Q.5 Finally, the CMA does not dispute that the relevant providers could determine how they complied with their wide MFN obligations and that CTM, as set out in Section 8.A.II, was through its wide MFNs seeking to secure the lowest prices for consumers using its platform (whilst also seeking to maintain commission fee growth). Moreover, the CMA also agrees with BGL

²³⁷⁸ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 354.

²³⁷⁹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 44 and URN 8484.3, Third Oxera Report dated 22 February 2019, Section 9. Oxera’s empirical analysis consisted of two pieces of econometric analysis, one looking at relative prices and one looking at absolute prices, and an analysis of compliance by providers subject to wide MFNs (as well as a collective analysis Oxera produced charts for specific providers). The CMA addresses Oxera’s econometric analysis in Annex R and addresses Oxera’s analysis of compliance in Annex N (the charts for specific providers are considered in general at footnote 1178 in Section 8 and where relevant in the CMA’s assessment of BGL’s specific representations in Annexes L and M).

²³⁸⁰ See paragraph 10.13 of the SO. In the interests of clarity, the CMA has not in this Decision described CTM’s wide MFNs as requiring a relative price floor although as set out, the CMA considers that this is an appropriate characterisation on a plain reading of a wide MFN clause.

²³⁸¹ Due to the existence of narrow MFNs, such prices will also be the lowest available prices relative to those on the relevant insurers’ direct online sales channels and possibly other channels depending on the scope of the narrow MFN. CTM had narrow MFNs in its contracts with all providers.

²³⁸² Assuming compliance by the relevant provider with its wide MFN obligations.

that in some cases providers reduced their prices on CTM as a result of CTM enforcing its wide MFNs.

Q.6 However, even if in certain instances CTM's enforcement actions resulted in providers lowering their prices on CTM,²³⁸³ this does not mean that CTM's wide MFN did not prevent its rival PCWs from gaining a competitive price advantage over CTM. Indeed, on the contrary, its enforcement actions meant that its rival PCWs were denied such a pricing advantage. BGL's focus on the impact of its enforcement actions on the prices to consumers using its platform also ignores the impact on competition of the widespread compliance with its wide MFNs that resulted from the relevant providers having strong incentives to comply with their contractual obligations.²³⁸⁴ These incentives prevented the relevant providers from lowering their prices on CTM's rival PCWs without the need for any enforcement action. It also ignores the impact on the willingness and incentives of the relevant provider to lower its prices in the future.

Q.7 For the reasons set out in Section 9, the CMA has found that CTM's network of wide MFNs reduced price competition between PCWs and between providers competing on PCWs and restricted the ability of CTM's rivals to expand, enabling CTM to maintain or strengthen its market power. As price is an important dimension of competition between PCWs and between providers competing on PCWs, these restrictions on price competition and the ability of other PCWs to expand during the Relevant Period were such that negative effects on the retail prices offered by providers on PCWs can be expected with a reasonable degree of probability. The CMA addresses in this Annex, and Annexes N and R, BGL's submissions on the effects of CTM's wide MFNs on prices quoted by the relevant providers, including Oxera's empirical analysis.

Q.II. CMA's assessment of BGL's representations on whether CTM's wide MFNs were 'economically binding'

Q.8 BGL submitted that '*[t]he mechanism underpinning the potential theories of harm identified in the literature assumes that wide MFNs result in suppliers setting uniform prices across distribution channels—i.e. the wide MFN is*

²³⁸³ Which BGL submits means that CTM wide MFN acted as a '*price ceiling*' in that specific instance of enforcement. In making this argument BGL also assumes that absent such enforcement action, CTM would not have secured such lower prices for consumers using its platform by other means including by investing in incentivising the provider to offer such lower prices.

²³⁸⁴ See Sections 8.B.I-8.B.II.

*adhered to and constrains suppliers' pricing across other distribution channels.'*²³⁸⁵

- Q.9 Given this, BGL submitted analysis conducted by Oxera which considered whether CTM's wide MFNs were an '*economically binding*' constraint on providers by looking at the proportion of risks priced more cheaply on CTM than on other PCWs.²³⁸⁶ According to Oxera, if providers choose to price more cheaply on CTM than on other PCWs, that is not consistent with the theory that wide MFNs soften competition between PCWs on commission fees (and foreclose entry and expansion). This is because with cheaper retail prices on CTM, providers are not prevented from '*disciplining*' a commission fee increase by CTM by increasing their retail prices on CTM.
- Q.10 Based on an analysis of retail pricing data from Consumer Intelligence, Oxera submitted that during the period from January 2016 to April 2018, the average proportion of risks that were priced more cheaply on CTM than on other PCWs by providers covered by CTM's wide MFNs ranged between 20% and 50%.²³⁸⁷ According to Oxera, this indicates that CTM's wide MFNs did not bind '*economically*' when they were in place.²³⁸⁸
- Q.11 For the reasons set out below, the CMA does not consider that Oxera's analysis undermines the relevance of the economic literature or the CMA's finding that CTM's network of wide MFNs restricted the ability of and reduced the incentives on providers subject to CTM's wide MFNs to compete on price by differentiating their prices across PCWs.
- Q.12 First, the CMA does not consider that the results of Oxera's analysis are reliable evidence as the pricing data used in the analysis is subject to a number of issues acknowledged by providers and CTM itself²³⁸⁹ and set out elsewhere in the Decision.²³⁹⁰ In particular, pricing differences across PCWs

²³⁸⁵ URN 6641, Second Oxera Report dated 31 July 2018, paragraph 1.2, first bullet.

²³⁸⁶ BGL submitted several other pieces of data analysis focused on the prices quoted on PCWs. These include an econometric analysis of prices which the CMA considers in Annex R, an analysis of coverage and compliance which the CMA considers in Annex N, an analysis of promotional deals (in terms of the extent to which prices change at the time of promotional deals) which the CMA considers in Annex K and an analysis of prices quoted by providers on PCWs relative to the prices providers quote on their direct channels which the CMA considers in paragraph 5.104 to 5.107.

²³⁸⁷ In the Second Oxera Report, Oxera also present a chart showing how the average proportion of risks that were priced more cheaply on CTM than on other PCWs changed over time. This shows that there was a marked decrease in the proportion of risks priced cheaper on CTM than on other PCWs by brands covered by wide MFNs in the last quarter of 2016. It is not clear whether this is a result of data issues or some other external factors. URN 6641, Second Oxera Report dated 31 July 2018, figure 3.2, paragraph 3.4.

²³⁸⁸ See URN 6641, Second Oxera Report dated 31 July 2018, paragraph 3.4.

²³⁸⁹ Specifically, the factors which cause providers to be observed as pricing differentially across distribution channels when this is not their intention.

²³⁹⁰ See Annex N in relation to Oxera's Coverage and Compliance analysis and for a more general discussion in Annex O.

can be affected by factors such as question set or mapping issues that are not controlled by the provider and may lead to periods where price differences appear across PCWs despite that not being the intention of the provider.²³⁹¹

- Q.13 As set out in Annex N, the CMA considers it is not possible to meaningfully control for the majority of the factors affecting the quality of the underlying data (e.g. such as observed price differences across PCWs due to the differences in each PCW's question sets) without understanding the detailed reasons for any such observed price differences from the relevant home insurance providers. The CMA did not, therefore, consider the available data to be sufficient to conduct a robust quantitative analysis involving a true comparison of base retail prices and such an analysis would not determine the true extent to which CTM's wide MFNs were 'economically binding', to use Oxera's terminology, in the Relevant Period.
- Q.14 Second, even if taken at face value, the results of Oxera's analysis are not probative in terms of calling into question the relevance of the economic literature. This is because the academic literature does not identify what difference it would make to the results of the models if the wide MFNs were not always '*economically binding*'. The CMA considers that it is likely that the extent to which CTM's wide MFNs were '*economically binding*' influences the magnitude of the effects with the magnitude of the effects being greater, the greater the extent to which CTM's wide MFNs were '*economically binding*'.
- Q.15 In addition, CTM's wide MFNs could have an effect on relevant providers' pricing despite not always being or not always appearing to be '*economically binding*'. For example:
- (a) The behaviour of [HIP] (see Section 7, paragraphs 7.142 to 7.143 and Section 8, paragraph 8.106) shows that a provider may charge a lower base retail price on CTM but would be willing to offer a promotional deal on a rival PCW in the absence of wide MFNs.
 - (b) While a provider that sets lower prices on CTM than on other PCWs may have some room for increasing prices on CTM without increasing prices on other PCWs, the wide MFNs constrain the extent to which providers can do this in case of a significant commission fee increase

²³⁹¹ The CMA also understands that the underlying data used by Oxera is BGL's own internal analysis of the Consumer Intelligence pricing data which does not control for differences in compulsory excess values between PCWs and therefore does not assess price differences between comparable quotes (that is, price differences may be driven by differences in excess values). URN 9170a, BGL's response to clarifications to section 26 notice dated 10 May 2019, question 16.

by CTM. This is also confirmed by evidence obtained from [HIP], set out in paragraph 7.157.

- Q.16 Separately BGL stated that in the SO the CMA relied '*on the views expressed by five [home insurance providers] that CTM's wide MFNs constrained the prices they offered on other PCWs.*' BGL stated that Oxera had examined the data on relative pricing by these five brands ([HIP], [HIP], [HIP], [HIP] and [HIP]) and found that '*all five [home insurance providers] did not adhere to the wide MFN, at least some of the time.*' On this basis BGL stated that the '*the evidence does not support the CMA's provisional findings on the effect of the wide MFN on [home insurance provider's] pricing behaviour*'.
- Q.17 First, the CMA has not relied on evidence from just five providers. Rather in Section 9 the CMA has considered evidence relating to all the providers subject to CTM's wide MFNs in coming to its findings on the effect of CTM's wide MFNs. This includes evidence from 27 providers (accounting for 80-90% of sales made through PCWs) and the Big Four PCWs (accounting for over 95% [97%] of sales made through PCWs).
- Q.18 Second, the CMA has not claimed that all five of these providers adhered to CTM's wide MFNs all of the time. Rather in relation to these five providers the CMA has found that:
- (a) [HIP] and [HIP]: (i) factored CTM's wide MFN into their pricing strategies; (ii) rejected several offers of promotional deals from CTM's rival PCWs; and (iii) were deterred by CTM's wide MFNs from using other forms of differential pricing.²³⁹²
 - (b) While [HIP], [HIP], [HIP] and [HIP] each fell out of compliance with CTM's wide MFNs at some point during the Relevant Period, CTM took steps to enforce its wide MFNs against each of these providers and this led to the providers changing or offering to change their pricing behaviour including by:²³⁹³
 - (i) immediately adjusting at their own cost their base retail prices or removing a promotional deal with a rival PCW, or both, to comply with their obligations ([HIP]).
 - (ii) agreeing to compensate CTM by self-funding three price discounts on CTM and refusing any further promotional deals with

²³⁹² See Section 8.B.II.(b).

²³⁹³ See Section 8.B.III.(b) and Annex M.

CTM's rivals to avoid the risks of further enforcement action by CTM ([HIP]).

- (iii) offering not to quote on CTM if CTM identified quotes it was 'unhappy' about on a rival PCW ([HIP]).
- (iv) adapting their pricing going forward following CTM's enforcement action to ensure that it was generally within CTM's compliance tolerance thresholds ([HIP]).

Q.19 In coming to its findings on the pricing constraint on providers subject to CTM's wide MFNs, as set out in Section 9.A, the CMA has considered all the available evidence in the round rather than placing any weight on the pricing analysis produced by Oxera. In particular, as set out in Annex N, Oxera's analysis is subject to limitations due to the quality of the underlying data from Consumer Intelligence and the methodology used by BGL in generating the data used by Oxera in its analysis. As such the CMA does not consider Oxera's analysis is sufficiently robust to be relied upon in the absence of corroborating evidence – as explained at Section N.III.(a) of Annex N, even if the data used to produce these charts suggests a provider may not be complying with a wide MFN that provider may in fact be complying, or seeking to comply, with a wide MFN. The CMA has considered Oxera's analysis in relation to these five providers where relevant in its assessment of BGL's specific representations on the compliance by individual providers with CTM's wide MFN in Annex L and CTM's enforcement action in Annex M.²³⁹⁴

Q.III. CMA's assessment of BGL's representations on monitoring, enforcement and small price disparities

Q.20 BGL submitted that the CMA's theory of harm relies on either:

- (a) Wide MFNs being '*an effective constraint on HIPs' [home insurance providers'] pricing behaviour and that even small pricing disparities could be detected by CTM and acted upon*';²³⁹⁵ or
- (b) '*that small pricing disparities that might go unnoticed / unenforced would not be sufficient for customers to switch*.'²³⁹⁶

²³⁹⁴ The CMA considers in Annex M Oxera's analysis in relation to [HIP], [HIP] and [HIP], and considers in Annex L Oxera's analysis in relation to [HIP], [HIP] and [HIP].

²³⁹⁵ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.22.

²³⁹⁶ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.23.

Q.21 BGL stated that neither of these conditions hold in this case:

- (a) In relation to the former, BGL submitted that it *'was not the case with even large pricing disparities and [promotional deals] occurring without effective enforcement by CTM, and HIPs [home insurance providers] sometimes even lied to CTM about what was driving the discrepancy'*.
- (b) In relation to the latter, BGL submitted that *'given the price sensitivity of PCW customers, and the material degree of multi-homing, this is unlikely to be true'*.

Q.22 The CMA disagrees with the premise of BGL's contention. BGL implies that the impact of wide MFNs on competition is binary – either they are fully effective²³⁹⁷ and there is an effect on competition, or they are not fully effective (even if there is just one instance of non-compliance) and there is no effect on competition.

Q.23 In contrast, the greater the effectiveness of CTM's wide MFNs the greater their likely effect on competition and this is discussed in more detail in relation to the economic literature below, see Section Q.VIII.(b) below. This is supported by the evidence set out in Section 8 that demonstrates that:

- (a) There was widespread compliance by relevant providers and in a number of cases where CTM identified providers that were not complying (and hence where CTM's wide MFN may have been considered not be fully effective) CTM took enforcement action which had a clear impact on providers' pricing behaviour (see Sections 8.B.II and 8.B.III).
- (b) CTM had an internal tolerance threshold in its monitoring process because it recognised the limitations of using Consumer Intelligence data to identify when providers may not be offering CTM *'price parity'*, but it still spent considerable time and effort in monitoring quotes on rival PCWs. The resources committed by CTM demonstrate that, despite these data limitations, CTM considered that monitoring was an important and worthwhile exercise. In this regard, if BGL only considered wide MFNs to have an effect on competition when there was full effectiveness then it is unclear why CTM maintained its wide MFNS following the PMI Order 2015 despite the risks and invested time and resources in systematically monitoring prices, questioning providers and escalating its enforcement action, as described in

²³⁹⁷ Because all instances of non-compliance are identified and resolved or because the non-compliance that is not identified or resolved does not lead to consumers switching between PCWs because the price differentials are so small.

Section 8, when it was aware of the limitations of its monitoring and enforcement process (see Section 8.A.II.(d)).

Q.24 The CMA has considered the specific examples cited by BGL to support its statement that in this case ‘*even large pricing disparities and [promotional deals] [occurred] without effective enforcement*’ in Annexes M and P.²³⁹⁸ As set out in Section 8.B.III, the CMA has found that while the widespread compliance by providers subject to CTM’s wide MFNs limited the need for action by CTM to enforce the clauses, CTM nevertheless systemically monitored compliance and took enforcement action during the Relevant Period where it identified that providers were not complying and had not resolved the problem through initial discussions (which, BGL confirmed, in most instances it was able to do). CTM’s action to enforce its wide MFNs led to the relevant home insurance providers changing or offering to change their pricing behaviour – contrary to BGL’s claim that enforcement was not effective. In addition, the CMA has found that CTM’s wide MFNs were integral to its competitive strategy and effective in achieving its objectives, as set out in Section 8.A.II.

Q.25 Finally, for the avoidance of doubt, the CMA does not dispute that small pricing disparities that might go unnoticed or unenforced would be sufficient for some consumers to switch. However, the CMA does not consider that this undermines its findings, for the reasons set out at paragraph Q.23. In particular, such instances of non-compliance would not mean that CTM’s wide MFNs had no effect on competition or undermine the evidence and findings set out in this Decision.

Q.IV. CMA’s assessment of BGL’s representations on why providers agreed to include wide MFNs in their contracts

Q.26 BGL submitted that providers subject to wide MFNs may have agreed to the inclusion of these clauses in their agreements with CTM:

(a) because they had little or no intention of engaging in differential pricing in the first place;²³⁹⁹ and

²³⁹⁸ The CMA considers the example of [HIP] in Section M.V of Annex M, the example of [HIP] in section M.VI of Annex M and [HIP] in Section P.VI.III.(b) of Annex P. URN10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.22 and related footnotes.

²³⁹⁹ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 105.

(b) in return for concessions on other terms including lower commission fees or the inclusion of non-resolicitation clauses.²⁴⁰⁰ In the case of a lower commission fee, BGL explained that this benefit would filter into future years as negotiations would start from a lower commission fee and that this was what happened when a wide MFN was included in CTM's agreement with [HIP] in April 2013.²⁴⁰¹

- Q.27 In relation to whether providers subject to wide MFNs had the intention of engaging in differential pricing, the CMA has set out in Section 7.D that many providers (including those subject to CTM's wide MFNs) were willing to engage in and did engage in differential pricing and in Section 9.A how CTM's wide MFNs restricted the ability and reduced the incentive of relevant providers to engage in differential pricing. In addition as set out in Section 8.C, whilst informative, evidence on a provider's pricing intentions or preferred pricing strategy ignores the fact that the CMA has to assess how such providers would have behaved absent CTM's network of wide MFNs. Absent CTM's network of wide MFNS there would have been greater pressure on providers to respond to price competition.
- Q.28 In relation to wide MFNs being agreed in return for other concessions, the CMA does not consider that the above example, or the general proposition put forward by BGL, contradicts the CMA's finding as set out in Section 9.B that overall, CTM's network of wide MFNs is likely to have resulted in higher commission fees and, consequently, higher retail prices. As set out in Section 8.A.II, CTM's competitive strategy was to balance commission fee growth with a pricing position that was competitive with other PCWs.
- Q.29 While BGL's example of [HIP] indicates that, despite this commercial objective, lower commission fees may have been discussed in conjunction with wide MFNs on occasion, this is the only evidence submitted by BGL (no examples of other concessions were provided)²⁴⁰² and, as set out in Section

²⁴⁰⁰ URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, questions 31 and 32, paragraphs 31.8 and 32(b) and URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 105.

²⁴⁰¹ In CTM's contemporaneous documents the CMA has also observed an example of CTM informing a provider that the offered commission fee was conditional on price parity. For example, in one email exchange with the provider, [Employee 1, CTM] stated that '[f]or the avoidance of doubt, these CPAs are agreed on the basis that *ctm continue to receive your best prices*'. See URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, questions 31 and 32, paragraphs 31.8 and 32(b); URN 3542, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 1, CTM] to [Senior Executive, CTM] entitled 'FW: [HIP] CTM Commercial Review', dated 23 January 2013, page 1 and URN 3599, BGL's response to section 27 notice dated 26 September 2017, email from [Employee 1, CTM] to [Employee, HIP] entitled 'RE: [HIP] CPAs', dated 12 September 2013, page 1.

²⁴⁰² Indeed, elsewhere in its response BGL has submitted that it was unable to identify any relationship between the commission fee paid by a providers and whether the provider had a wide MFN which is inconsistent with its submission that providers may have agreed to wide MFNs in return for lower commission fees. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 110. The CMA also refers to the evidence in

9.B, the CMA has found that CTM's wide MFNs reduced competition between PCWs which means that, compared to the counterfactual of no contractual restrictions on pricing across PCWs, CTM's network of wide MFNs is likely to have resulted in higher commission fees overall.

- Q.30 As set out in Annex R, the CMA does not consider that it is possible to conduct a quantitative analysis of the impact of CTM's wide MFNs on commission fees in this case. However, to inform its assessment of BGL's submission, the CMA has used data on commission fees to carry out a descriptive analysis to assess whether the available evidence is consistent with BGL's submission that wide MFNs may have been agreed in return for a lower commission fee.
- Q.31 In particular, Figure Q.1. shows, separately for providers with wide MFNs and those without, the weighted average commission fee paid by providers to CTM for customer introduction in home insurance.

Figure Q.1: Weighted average commission fee paid by home insurance providers with and without wide MFNs to CTM

[X]

Source: CMA analysis of the Commission Fees Dataset (Annex D). Note: The providers [HIP] and [HIP] and the brand [HIP]²⁴⁰³ have been removed as their wide MFN status changed over the period covered by this analysis.

- Q.32 Figure Q.1 shows that the weighted average commission fee of providers subject to wide MFNs is higher than the weighted average commission fee of providers without wide MFNs, with the difference increasing over time. Although this comparison has certain limitations,²⁴⁰⁴ at the very least, it indicates that BGL's claim that wide MFNs are linked to lower commission fees is inconsistent with the observable evidence of trends in commission fees.²⁴⁰⁵

Section 5.E.III on CTM's approach to negotiation including on the inclusion of wide MFNs in its contracts. In this context as set out in Annex C, the CMA is not aware of any provider joining CTM's panel or entering into a new agreement for home insurance between mid-2013 and November 2017 that did not include a wide MFN in its contract.

²⁴⁰³ [HIP] had a partnership with [HIP] that ended in February 2017 such that on CTM the [HIP] brand fell under the [HIP] contract at the start of the Relevant Period which did not contain a wide MFN. From June 2017 the [HIP] brand moved to its own contract with CTM which contained a wide MFN (this was an existing contract between BGL and [X] and BGL which originally covered pet insurance). URN 6651, Mintel, *UK Home Insurance Report*, December 2016, page 32 and URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 9, paragraphs 9.2 and 9.3.

²⁴⁰⁴ In particular, it does not adequately control for differences between the home insurance providers listing on CTM or other general factors which may lead to differences in commission fees.

²⁴⁰⁵ Oxa stated that these commission fee increases have been accompanied by growing investment in advertising and a rise in total number of consumers using PCWs and BGL submitted that CTM's average increase in commission fees was '*well below the trend rate of CTM's brand and marketing expenditure*'. However, as set out in Section 5.E.III, this is based on a comparison of CTM's income per sale to the overall increase in CTM's total marketing and advertising expenditure, not its marketing and advertising expenditure per

Q.33 Finally, in relation to non-resolicitation clauses, CTM had these clauses in its contracts with both large providers subject to CTM's wide MFNs and large providers without wide MFNs such that, in the absence of any evidence submitted by BGL in support of its point, it is not clear that these clauses were agreed in exchange for a wide MFN.²⁴⁰⁶

Q.V. CMA's assessment of BGL's representations on the impact of CTM's wide MFNs on its rival PCWs

Q.34 BGL made submissions on:

- (a) the lack of evidence of material adverse effects on other PCWs from Confused, GoCompare or MSM;
- (b) an assessment by Oxera based on which BGL submitted the CMA has not shown that CTM's wide MFNs restricted entry and expansion; and
- (c) an analysis by Oxera based on which BGL submitted the CMA has not shown that CTM's wide MFNs had had an adverse effect on commission fees.

Q.35 These are discussed in turn below.

Q.V.(a). Assessment of BGL's representations on evidence of the impact of CTM's wide MFNs from BGL's rival PCWs

Q.36 BGL stated that if '*CTM's [wide MFNs] had had material adverse effects on other PCWs during the Relevant Period, one would expect to find strong evidence from Confused, GoCompare or MSM to that effect, particularly as regards promotional deals which the CMA contends to be such an essential feature of competition between PCWs.*' BGL submitted that '*such evidence is lacking*' and that '*[t]here is nothing to show that 'but for' CTM's [wide MFNs]*

sale. Based on information provided by BGL, the CMA has estimated that CTM's marketing and advertising expenditure per sale remained [£] with the figure at £[£] and £[£]. As most of BGL's marketing and advertising is at the brand level and it does not as a matter of course split its marketing and advertising by product line the CMA has calculated this based on CTM's total marketing and advertising and an estimate of the total number of consumers introduced to suppliers through CTM's platform in each year. CMA analysis of Commission Fees Dataset and URN 6438.18, BGL's response to the Second BGL Notice dated 3 May 2018, question 9, spreadsheet entitled 'CMA_Marketing_Template (CTM)'; URN 1632, BGL's response to the First BGL Notice dated 26 September 2017, question 21, paragraphs 21.2 and 21.3; URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 10.21 and URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 112.

²⁴⁰⁶ URN 0075.1, BGL's response to a request for information in the DCTs Market Study, question 11, document entitled 'Contract Terms – Question 10, 11 and 12', tab 'Non-resolicitation_HomeInsurance'.

*there would have been more promotional deals on any of these PCWs than in fact occurred.*²⁴⁰⁷

- Q.37 First, as set out in Section 3, in reaching a conclusion on the effect of CTM's wide MFNs on competition, it is necessary to assess whether the body of evidence viewed as a whole (referred to by the CAT as the '*totality of the evidence*') meets the required standard of proof, not each piece of evidence or evidence from each individual market participant.²⁴⁰⁸ In any event, as set out in Section 9.B.I.(a), two of CTM's main rivals (Confused and MoneySuperMarket) told the CMA that CTM's wide MFNs restricted their use of promotional deals with relevant providers and CTM's wide MFNs were a barrier to expansion. In doing this both PCWs provided evidence of the effects of CTM's wide MFNs which are supported by other evidence obtained by the CMA as set out in Section 9.B.I.
- Q.38 Second, the CMA does not consider BGL's specific representations in relation to Confused, MoneySuperMarket and GoCompare undermine its finding that CTM's wide MFNs reduced competition between PCWs and restricted the ability of CTM's rivals to expand, enabling CTM to maintain or strengthen its market power. The CMA's assessment of these specific representations is set out below.

Q.V.(a).(i). Confused

- Q.39 BGL stated that the evidence for Confused does not support the CMA's case as:²⁴⁰⁹
- (a) '*Confused had less interest in promotional deals in home insurance*' when compared to motor insurance²⁴¹⁰ and since the removal of CTM's wide MFNs Confused's appetite for promotional deals has remained muted;²⁴¹¹
 - (b) Confused was able to agree deals with numerous providers subject to wide MFNs during the Relevant Period ([HIP], [HIP] and [HIP]);²⁴¹²

²⁴⁰⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 244 and URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 261.

²⁴⁰⁸ See paragraph 3.6.

²⁴⁰⁹ See URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 251 to 254 and 261 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 244 to 253.

²⁴¹⁰ See URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 251.

²⁴¹¹ See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 245, 246 and 250

²⁴¹² BGL also listed [[HIP]] as a provider subject to wide MFNs that Confused was able to agree deals with. However, as set out in Section 4.B.II, the CMA has treated CTM's agreement with [HIP], for the purposes of this

- (c) Confused only provided one example of a provider [HIP] rejecting a promotional deal due to CTM's wide MFN and this example is '*unsound*' as evidence shows the provider rejected the deal due to its policy of uniform pricing;²⁴¹³
- (d) Confused's statements on changes in its competitiveness and the willingness of providers to do deals since CTM stopped enforcing its wide MFNs are not confirmed by evidence on the promotional deals it has done and no link with CTM's wide MFNs has been established. In particular, BGL stated that:
 - (i) there has been no statistically significant increase in the number of deals agreed by Confused and the size and duration of Confused's promotional deals decreased; and
 - (ii) None of the evidence establishes a link between Confused's policy on promotional deals and CTM's wide MFNs as the deals Confused has agreed have mainly been with providers who never had a wide MFN or [REDACTED];²⁴¹⁴ and
- (e) Since CTM stopped enforcing its wide MFNs Confused's market share has [REDACTED].²⁴¹⁵

Q.40 The CMA disagrees that evidence relating to Confused does not support its findings on the effects on competition of CTM's wide MFNs, which are set out in Section 9.

Q.41 First, the CMA disagrees that Confused had '*little appetite for promotional deals in home insurance*' or that its appetite '*has remained muted*'. As set out in Section 7.C.II.(b), the CMA has found that promotional deals were an important part of Confused's competitive strategy in the Relevant Period and since. Similarly, as set out in Section 7.D.II.(b), the CMA has found that during and since the Relevant Period promotional deals were used by many providers.

Q.42 Second, while Confused was able to agree some deals with providers subject to wide MFNs which it regarded as successful, the CMA does not consider that this undermines its finding that competition between PCWs was reduced and that the ability of CTM's rivals, including Confused, to

Decision, as containing only a narrow MFN. See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 247.

²⁴¹³ See URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 253 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 248 and 249.

²⁴¹⁴ See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 251 to 253.

²⁴¹⁵ See URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 253.

expand was restricted. As explained in Section 3.C., the CMA is required to compare the nature of competition in the Relevant Period with the situation that would have prevailed absent CTM's wide MFN. The CMA has found that providers engaged in less differential pricing across PCWs (including promotional deals with CTM's rival PCWs) compared to the counterfactual of no contractual restrictions on pricing on PCWs.²⁴¹⁶

Q.43 The CMA also disagrees with BGL's interpretation of the evidence relating to Confused. CTM's wide MFN affected Confused's ability to engage in promotional deals with providers it sought to target which included providers with wide MFNs:

- (a) Confused was not able to agree promotional deals with at least two large providers due to CTM's wide MFNs ([HIP] refused at least two deals proposed by [X]) and [HIP] refused a deal in [X]).²⁴¹⁷
- (b) The deal with [HIP] was agreed prior to the Relevant Period and was specifically designed to take advantage of differences in question sets between Confused and CTM so as not to breach the wide MFN.²⁴¹⁸
- (c) CTM took enforcement action against the other deals Confused was able to agree with providers subject to wide MFNs, [HIP] and [HIP]. [X].²⁴¹⁹

Q.44 Third, the CMA disagrees with BGL's interpretation of the evidence relating to [HIP]'s rejection of the promotional deal with [X]. As set out in Section P.VI.(d) of Annex P, the CMA considers that the contemporaneous documents set out in Section 8.B.II supported by the evidence provided by [HIP] to the CMA that CTM's wide MFNs stopped it participating in promotional deals are to be preferred to BGL's conjecture as to the 'real' reason for [HIP] refusing to enter into promotional deals.²⁴²⁰ Moreover, whether Confused was or was not informed by a provider that the reason for rejecting a promotional deal was CTM's wide MFN is not relevant to the question of the impact on competition of CTM's wide MFNs. Unlike [HIP], [X].

²⁴¹⁶ See Section 9.A.

²⁴¹⁷ See Section 8.B.II.(b).

²⁴¹⁸ See paragraph P.38 of Annex P.

²⁴¹⁹ [HIP] told the CMA that it believed that it would have ended this deal shortly afterwards anyway on economic grounds. See section M.IV of Annex M.

²⁴²⁰ BGL also noted that [HIP] has not agreed a deal with [X] since CTM stopped enforcing its wide MFNs. This does not undermine the evidence that [HIP] rejected a promotional deal during the Relevant Period due to CTM's wide MFNs and [HIP] has agreed at least two promotional deals with [X], [X], since CTM stopped enforcing its wide MFNs.

- Q.45 Fourth, the CMA does not disagree that Confused agreed the same number of promotional deals in the 19 months between January 2016 and July 2017 and the 19 months between December 2017 to June 2019. However, as set out in paragraph 9.67, Confused told the CMA that, since CTM stopped enforcing its wide MFNs, *'Confused has been able to secure a much bigger volume of cheapest [retail prices] by increasing the number of Promotional Deals it runs with its panel'*.²⁴²¹ The lack of change in the number of deals agreed by Confused is driven by a spike in deals right at the start of 2016 and Confused's statement is consistent with the evolution seen in Figure 9.1.²⁴²² In particular, in 2017 Confused had on average 1.5 promotional deals in place per month compared to 2.4 deals in 2018 and 3.2 deals in the first 6 months of 2019.
- Q.46 Further, it is important to consider this in the wider context because evidence from after the Relevant Period is not determinative on the effects on competition during the Relevant Period, especially when it only relates to one PCW. There are a range of factors other than the presence of CTM's wide MFNs that could affect the absolute number of deals agreed by Confused²⁴²³ and the number of deals a PCW has in place is only one aspect of competition. As set out in Section 9.B.I.(b), PCWs also compete to agree deals with a range of providers and in this regard Confused considered that its strategy was easier to implement after CTM stopped enforcing its wide MFNs. In particular, while the number of deals agreed by Confused may have remained constant, Confused agreed promotional deals with an increased number of providers after CTM stopped enforcing its wide

²⁴²¹ URN 8978, Confused's response to section 26 notice dated 31 May 2019, question 4(a). Confused also said to CMA that its retail prices relative to other PCWs have improved, thanks to the increased promotional activity after the Relevant Period (see URN 8978 Confused's response to section 26 notice dated 31 May 2019, question 4(e)). To substantiate its response, Confused submitted a chart depicting the number of cheapest quotes available each month on each of the Big Four PCWs over the period from April 2017 to April 2019 prepared by Consumer Intelligence. The CMA notes that the analysis results are consistent with Confused's response by showing an increase in the number of cheapest quotes available on Confused from around March 2018, however, due to the limitations with the pricing data discussed in Annex O, the CMA does not attribute significant evidential weight to this analysis.

²⁴²² As outlined in Section 9, the CMA took a conservative approach by choosing the 19 months during the Relevant Period in which the most deals were agreed. If the last 19 months of the Relevant Period are considered then the number of promotional deals agreed by Confused increased from six in the last 19 months of the Relevant Period to 11 in the 19 months after CTM stopped enforcing its wide MFNs.

²⁴²³ For example, the absolute number of deals agreed by Confused could be affected by the willingness of the providers they approach and, as set out in paragraph 7.165, providers may decline to agree a PCW's proposition for several reasons. These reasons include the terms or scope of the deal, the identity of the PCW/overall relationship with the PCW, other promotional deals with a rival PCW, the potential impact on its direct channel sales/preference to maintain uniform pricing between channels including because of narrow MFNs, impact on consumers' lifetime value and/or lack of budget to support the deal or other operational issues

MFNs,²⁴²⁴ including deals with providers which were previously contractually restricted from doing so or unwilling to engage in such deals.

- Q.47 Fifth, as noted by Oxera (see paragraph Q.64 below), it is difficult to assess what the growth rates of any PCW would have been in the counterfactual and therefore what Confused's market share would have been in the counterfactual. Given this, the CMA has put little weight on evidence that Confused's [X] after CTM stopped enforcing its wide MFNs as it is not possible to assess what the trend in Confused's market share would have been in the counterfactual.²⁴²⁵

Q.V.(a).(ii). *MoneySuperMarket*

- Q.48 BGL stated that the evidence for MoneySuperMarket does not support the CMA's case as:²⁴²⁶
- (a) MoneySuperMarket has '*limited appetite for entering into promotional deals*' and the appetite among providers '*is extremely limited*'.²⁴²⁷
 - (b) While [HIP] told the CMA that the wide MFN was a reason for not entering into promotional deals with MoneySuperMarket in a small number of instances, [HIP] told the CMA that the '[wide MFN] *had no material effect on its actions*' and that '*it is more likely that [HIP] was simply referring to the [wide MFN] as a reason for not doing what it did not intend to do in the first place*' as [HIP] did do a deal when it wanted to in August 2015.²⁴²⁸
 - (c) In general, evidence from MoneySuperMarket suggests that '*commercial drivers were by far the major cause of exclusive deal negotiations breaking down*' and even in the three instances MoneySuperMarket gives where the wide MFN was cited as a reason '*it is equally plausible that the [provider] in question simply preferred not to do the deal for perfectly understandable commercial reasons*'. In

²⁴²⁴ Based on comparable periods Confused agreed deals with six providers during 19 months of the Relevant Period and eight providers in the 19 months after CTM stopped enforcing its wide MFNs.

²⁴²⁵ In addition, [X] is not inconstant with increased price competition between PCWs following removal of its wide MFNs.

²⁴²⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 244, 274 and 292; URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 255 to 261. BGL also submitted that MoneySuperMarket could not say whether the difference between the ease of agreeing promotional deals in motor insurance and home insurance '*was to do with MFNs or not because motor insurance is a whole different market*'. URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 284.

²⁴²⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 255 to 257 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 278 and 279.

²⁴²⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 258.

particular, [Employee 2, MSM], said she could not remember providers ever mentioning the wide MFN when rejecting deals and evidence from MoneySuperMarket shows that [HIP] and [HIP] rejected deals due to uniform pricing policies rather than CTM's wide MFNs.²⁴²⁹

- (d) MoneySuperMarket did not confirm any changes in the prevalence of promotional deals since CTM stopped enforcing its wide MFNs and evidence on the change in the number of promotional deals agreed by MoneySuperMarket does not seem to substantiate any link with the wide MFN;²⁴³⁰
- (e) MoneySuperMarket attributes its relative success to the fact that MoneySuperMarket was *'able to 'invest with people more and work on pricing', without referring to the [wide MFN]'* and that MoneySuperMarket explained *'in some detail how they [sic] had worked hard to improve 'quotability', having apparently discovered that [MoneySuperMarket] was more expensive than other PCWs, but [MoneySuperMarket] does not seem to link this to promotional deals, let alone CTM's [wide MFNs].'*²⁴³¹
- (f) Evidence from MoneySuperMarket suggests there has not been a change in the tone of negotiations and *'[t]here is thus no link between the presence or absence of a [wide MFN] and the annual negotiation of commissions'*;²⁴³² and
- (g) MoneySuperMarket's [✂].²⁴³³

Q.49 The CMA disagrees that the evidence relating to MoneySuperMarket does not support its findings on the effects on competition of CTM's wide MFNs, as set out in Section 9.

Q.50 First, the CMA disagrees that MoneySupermarket had *'limited appetite for promotional deals'* and the appetite among providers *'is extremely limited'*. As set out in Section 7C.II.(a), the CMA has found that promotional deals were an important part of MoneySuperMarket's strategy in the Relevant Period and since. Similarly, as set out in Section 7.D.II.(b), the CMA has

²⁴²⁹ URN 8484.5 BGL's Response to the SO dated 22 February 2019, paragraph 259 to 260 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 280 to 283 and 287.

²⁴³⁰ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 288 and 291.

²⁴³¹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 289.

²⁴³² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 290.

²⁴³³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 291.

found that during and since the Relevant Period promotional deals were used by many providers.

- Q.51 Second, the CMA has found that CTM's wide MFN was effective in preventing [HIP] from quoting lower prices on CTM's rival PCWs including entering into promotional deals with CTM's rivals.²⁴³⁴
- Q.52 Third, while providers may decline to agree to a promotional deal proposed by a PCW for different or a combination of factors, as described in Section 7.D.II.(b).(i), this does not mean that CTM's wide MFN was not a relevant factor for several providers. In particular, the CMA has found that for three large providers (including [HIP] and [HIP]), accounting for approximately 18% of sales made through PCWs, CTM's wide MFN was an important factor in the providers refusing to enter into promotional deals with MoneySuperMarket during the Relevant Period.
- Q.53 The CMA has addressed BGL's representations on [HIP]'s and [HIP]'s refusals to do promotional deals because of CTM's wide MFN in section P.VI of Annex P. In summary the CMA disagrees with BGL's interpretation of the evidence and finds that both providers rejected promotional deals because of CTM's wide MFN. In addition, while it is true that in her first interview [Employee 2, MSM] could not remember providers mentioning the wide MFN when rejecting deals, in a further interview [Employee 2, MSM] acknowledged the contemporaneous documentary evidence confirming that both [HIP] and [HIP] informed MoneySuperMarket that at least one factor in not progressing promotional deals with MoneySuperMarket at the relevant time was CTM's wide MFN.²⁴³⁵
- Q.54 Fourth, in relation to MoneySuperMarket's use of promotional deals:²⁴³⁶
- (a) MoneySuperMarket told the CMA that since CTM stopped enforcing its wide MFNs its pricing strategy has been easier to implement (see Section 9.B.I.(b)).
 - (b) MoneySuperMarket agreed more promotional deals (22) in the 19 months after CTM stopped enforcing its wide MFNs than in a comparable 19 months of the Relevant Period (15) (see Table 9.3).

²⁴³⁴ See Section 8.B.II.(b).

²⁴³⁵ See section P.II.(c).(ii) of Annex P.

²⁴³⁶ BGL stated that MoneySuperMarket had told the CMA there had been no change in who initiates discussions on promotional deals which it suggests is '*dictated purely by commercial considerations*'. The CMA notes that it has not stated that there has been any change in who initiates discussions on promotional deals and its findings as set out in this Section do not rely on who initiates discussions on promotional deals. URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 288.

- (c) it is important for PCWs to agree deals with a variety of providers and especially those providers who provide quotes to many consumers and appear at the top of the rankings.²⁴³⁷ Therefore, the fact that MoneySuperMarket has been able to agree a deals with an increased number of providers including large providers who previously rejected promotional deals due to wide MFNs or were unwilling to engage in such deals is consistent with an increase in price competition between PCWs since CTM stopped enforcing its wide MFNs (see Section 9.B).
- Q.55 Fifth, the CMA does not agree with BGL's interpretation of the evidence from MoneySuperMarket. The evidence cited by BGL is part of a description by MoneySuperMarket of its Best Price Strategy which, as described in Section 7.C.II.(a), involved both improving providers' quotability on MoneySuperMarket and strengthening its reliance on promotional deals. Indeed the passage quoted by BGL was part of a discussion about promotional deals as shown by the full passage where MoneySuperMarket stated that it had *'been able to, or were, invest with people more and work on pricing – well, have more offers come our way from insurance partners'*.
- Q.56 As described in Section 7.C.II.(a), MoneySuperMarket considered its strategy (including promotional deals) to be successful during the Relevant Period but, as described in Section 9.B.I, MoneySupermarket considered that CTM's wide MFNs impacted on its ability to implement its Best Price Strategy in the Relevant Period.
- Q.57 Sixth, as compared to other evidence obtained by the CMA, the CMA places little weight on evidence on the tone of annual negotiations due to its low probative value. In particular, evidence of this nature is speculative and less direct compared to other evidence, especially given that MoneySuperMarket's strategy was not focussed on [§] in order to incentivise lower base retail prices on its platform, but rather was focused on temporary promotional deals which were agreed separately from these annual negotiations.²⁴³⁸
- Q.58 Seventh, for the same reasons as discussed above in relation to Confused's growth rate, CMA has put little weight on evidence on MoneySuperMarket's growth rate since CTM stopped enforcing its wide MFNs.

²⁴³⁷ See Sections 7.C.II.(a) and 7.C.II.(b).

²⁴³⁸ See paragraph 7.79

Q.V.(a).(iii). GoCompare

Q.59 BGL stated that the evidence for GoCompare does not support the CMA's case as:²⁴³⁹

(a) GoCompare has never been in favour of promotional deals as it '*did not consider promotional deals to be an effective marketing strategy*' and, while the CMA suggests that GoCompare ran three promotional deals in the 19 months after CTM stopped enforcing its wide MFNs, the evidence shows no link (and GoCompare makes no link) to CTM's wide MFNs as:²⁴⁴⁰

(i) the three providers all previously had narrow MFNs [[HIP], [HIP] and [HIP]/[HIP]],²⁴⁴¹

(ii) GoCompare states that its deal with [HIP] was not a success;²⁴⁴²

(iii) GoCompare did not even classify the arrangement with [HIP] as a promotional deal or provide evidence of a deal with [HIP].²⁴⁴³

(b) GoCompare's share of PCW services has declined since CTM stopped enforcing its wide MFNs from [X] to [X].²⁴⁴⁴

Q.60 The CMA disagrees that the evidence relating to GoCompare does not support its findings on the effects on competition of CTM's wide MFNs, as set out in Section 9. Taking each point in turn.

Q.61 First, the CMA does not dispute that GoCompare did not view promotional deals as an attractive strategy during the Relevant Period, and that this was reflected in GoCompare's strategy. However, since CTM stopped enforcing its wide MFNs, GoCompare has run promotional deals in home insurance for the first time. In particular, while GoCompare may not have classified them all as promotional deals, based on the structure of the deals, it is clear that

²⁴³⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 244 and 255 to 273. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 249 and 250. While BGL also made representations on GoCompare's tiered commission structure the CMA does not consider them here as it has not found that CTM's wide MFNs had an appreciable effect on the use of tiered commission structures. For example, URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 261 to 269, 271 and 272.

²⁴⁴⁰ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 270.

²⁴⁴¹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 257 and 260.

²⁴⁴² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 258.

²⁴⁴³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 259 and 260.

²⁴⁴⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 273.

GoCompare had agreed three promotional deals with three different providers ([HIP], [HIP] and [HIP]) as of June 2019.²⁴⁴⁵

- Q.62 Further as set out above, GoCompare agreeing promotional deals for the first time after CTM stopped enforcing its wide MFNs is consistent with an increase in competition between PCWs, even if GoCompare considered that the benefit to itself of an individual deal was unclear²⁴⁴⁶ and its deals were with providers without wide MFNs (although [HIP] considered itself to have a wide MFN in its contract with CTM, and rejected a proposed promotional deal on this basis, despite this not being the case).²⁴⁴⁷
- Q.63 Second, for the same reasons as discussed above in relation to Confused's growth rate, CMA has put little weight on evidence on GoCompare's growth rate since CTM stopped enforcing its wide MFNs.

Q.V.(b). Assessment of BGL's representations on the impact of wide MFNs on entry and expansion

- Q.64 Based on an assessment by Oxera, BGL submitted that the CMA has not shown that CTM's wide MFNs '*restricted entry and expansion*'.²⁴⁴⁸ In particular, Oxera noted that:²⁴⁴⁹
- (a) The CMA's evidence is largely based on the views expressed by other PCWs which have not been validated by estimating '*the growth that these PCWs would have achieved but for CTM's wide MFNs*'.
 - (b) While it is difficult to assess what the growth rate of these PCWs would have been in the counterfactual, the fact that '*CTM has grown faster in home insurance than other PCWs is to be expected to some extent given the positive network effects in these markets*.' In particular, Oxera stated that, as recognised by the CMA in the DCTs market study, it is a

²⁴⁴⁵ They were all structured as promotional deals as they involved GoCompare temporarily reducing its commission fee in return for the provider temporarily lowering the retail price it quoted on GoCompare – consistent with this [HIP] and [HIP] recorded each of the arrangements as a promotional deal. See [38]; URN 8950, GoCompare's response to section 26 notice dated 31 May 2019, question 3; URN 9740, GoCompare's response to follow-up questions to section 26 notice dated 31 May 2019, question 2.

²⁴⁴⁶ URN 8950, GoCompare's response to section 26 notice dated 31 May 2019, question 3.

²⁴⁴⁷ As explained in Section 4.B.II, the CMA, for the purposes of this Decision, has treated [HIP]'s agreement with CTM as containing a narrow MFN only, but [HIP] regarded the clause in its agreement with CTM as being a wide MFN during the Relevant Period.

²⁴⁴⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 264.

²⁴⁴⁹ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 10.25 and 10.26. Oxera also stated that despite '*differences in market dynamics between PMI and home insurance [...] the fact that the removal of wide MFNs in PMI did not slow CTM's growth carries some informational power*.' The CMA notes that this statement is based on analysis submitted by BGL in the First Oxera Report which the CMA does not place any weight on due to: (i) the fact that the trends identified are consistent with CTM having started to compete more strongly following the prohibition of wide MFNs in PMI; and (ii) the material methodological issues set out in Annex R. These concerns hold irrespective of the differences between PMI and home insurance sector noted by Oxera.

‘common trend [...] for larger PCWs to continue to grow at a faster rate than smaller PCWs.’

- Q.65 The CMA does not consider that BGL’s submissions undermine its conclusion that CTM’s wide MFNs restricted other PCWs’ ability to expand, because:
- (a) The views of other PCWs relied on by the CMA have been considered in the round along with other corroborating evidence as set out in Section 9.B.I, including contemporaneous documents, that show that these PCWs were restricted in their ability to employ certain pricing strategies and thus compete on retail prices and expand.
 - (b) The CMA disagrees that CTM’s growth rate can be largely attributed to positive network effects as the CMA has found that during the Relevant Period indirect network effects were not strong in relation to the Big Four PCWs in home insurance (see Section 5.B.III). In addition, CTM growing faster than other PCWs during the Relevant Period is consistent with CTM’s wide MFNs restricting the ability of other PCWs to expand and of CTM *‘strengthening its competitive position’* (its objective in imposing wide MFNs – see Section 8.A.II) enabling it to maintain or strengthen its market power. However, as noted by Oxera, it is difficult to assess what the growth rates of other PCWs would have been in the counterfactual, and given this, the CMA has placed little weight on evidence on the growth rates of PCWs (including of CTM).

Q.V.(c). Assessment of BGL’s representations on the impact of CTM’s wide MFNs on commission fees

- Q.66 BGL submitted that the CMA had not shown that CTM’s wide MFNs had had an adverse effect on commission fees.²⁴⁵⁰ This was based on analysis conducted by Oxera which BGL stated shows that over the period 2012 to 2017 the average commission fees of providers without wide MFNs *‘increased at a similar, if not slightly faster, rate’* than the average commission fees of providers subject to wide MFNs (with both growing at a similar rate to the Retail Price Index).²⁴⁵¹
- Q.67 The CMA does not consider that Oxera’s analysis undermines the CMA’s finding, as set out in Section 9.B, that CTM’s wide MFNs reduced the

²⁴⁵⁰ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 264.

²⁴⁵¹ URN 8484.3, Third Oxera Report dated 22 February 2019, sub-section 10B.2. BGL also submitted an econometric model conducted by Oxera which considered the impact of CTM’s wide MFNs on the commission fees charged by PCWs to providers. This is considered in Annex R, alongside other econometric models by Oxera submitted by BGL.

incentive of all PCWs to compete and, therefore, are likely to have resulted in higher commission fees compared to the counterfactual. In particular:

- (a) As with the CMA's descriptive statistics set out in Figure Q.1 this analysis has limitations as it does not control for possible confounding factors so is not determinative (as set out in Annex R the CMA does not consider that it would be possible to conduct a quantitative analysis that would adequately control for such confounding factors in this case).
- (b) Oxera's analysis is sensitive to the years included. Considering the period 2013 to 2017 (rather than 2012 to 2017) would increase the proportion of sales covered by the analysis,²⁴⁵² and produce the opposite result to that reported by Oxera. In particular it would show that the average commission fees of providers subject to wide MFNs increased at a faster rate than the average commission fees of providers without wide MFNs.²⁴⁵³
- (c) As can be seen above in Figure Q.1, the weighted average commission fee of providers subject to wide MFNs is higher than the weighted average commission fee of providers without wide MFNs. This is consistent with Oxera's analysis which also shows that providers subject to wide MFNs had higher average commission fees than providers without wide MFNs based on both the time period used by Oxera and the slightly shorter time period of 2013 to 2017 (which increases the number of providers included).²⁴⁵⁴

Q.VI. CMA's assessment of BGL's representations on the CMA's analysis of promotional deals before and after CTM stopped enforcing its wide MFNs

- Q.68 As set out in Section 9 of this Decision, the CMA has considered quantitative evidence on the use of promotional deals during the Relevant Period and since CTM stopped enforcing its wide MFNs. In doing this the CMA has found that after the Relevant Period the use of promotional deals increased both in terms of the absolute number of promotional deals being agreed and in terms of the number of providers and PCWs agreeing promotional

²⁴⁵² Restricting the analysis to 2013 to 2017 would increase the proportion of sales covered from between 63% and 78% in each year to between 81% and 86%. CMA analysis of URN 8502.16, BGL's response to the SO dated 22 February 2019, Oxera's analysis of CTM's income per sale.

²⁴⁵³ CMA analysis of URN 8502.16, BGL's response to the SO dated 22 February 2019, Oxera's analysis of CTM's income per sale.

²⁴⁵⁴ This is also the case if Oxera's analysis is updated to take into account the revisions that occurred to the Commission Fees Dataset after the CMA issued its SO. CMA analysis of Commission Fees Dataset and URN 8502.16, BGL's response to the SO dated 22 February 2019, Oxera's analysis of CTM's income per sale.

deals.²⁴⁵⁵ In relation to providers this is the case for both providers subject to CTM's wide MFNs and those without wide MFNs during the Relevant Period.

- Q.69 BGL submitted that the CMA has no evidence that *'there has been a material change since November 2017, particularly with regard to those [providers] who previously had a [wide MFN]'*²⁴⁵⁶ and that *'there is no evidence that the wide MFNs constrained [promotional deals] from progressing, or, that there is reason to believe that, absent the wide MFN, the value of [promotional deals] in the market would have increased'*.²⁴⁵⁷ In particular, with regards the CMA's analysis, BGL submitted that:

*'as regards an apparent small numerical increase in promotional deals since the Relevant Period: (i) this is largely driven by [home insurance providers] who previously had [narrow MFNs] and no causal link to the [wide MFN] is shown; (ii) the CMA's results are not statistically significant; (iii) taking a more relevant time period, there is no increase in promotional deals; (iv) there is no increase in the value of promotional deals; and (v) only one out of a possible 32 [home insurance providers] that only engaged in promotional deals post-disapplication has expressed a desire to engage in promotional deals in the future ([HIP]). That [home insurance provider] has done so only once, as far as is known to BGL'.*²⁴⁵⁸

- Q.70 In support of these views BGL submitted two pieces of analysis conducted by Oxera: (i) an analysis of the total value of promotional deals; and (ii) statistical tests to check whether CTM's decision to stop enforcing its wide MFNs had a statistically significant impact on the number and size of promotional deals. BGL and Oxera also submitted that the promotional deals data used by the CMA in its analysis was not correct and as a result Oxera made some adjustments to the dataset it used in its own analysis of the value of promotional deals.
- Q.71 The CMA does not consider that BGL's representations undermine the CMA's findings in Section 9 and sets out its detailed assessment of BGL's representations below (including on whether it is *'necessary'* to identify *'a material change since November 2017'*).

²⁴⁵⁵ The CMA's findings on the increased use of promotional deals after the Relevant Period are set out in Section 9.A.III (for providers with wide MFNs), 9.B.I. (for PCWs) and 9.C.II (for providers without PCWs).

²⁴⁵⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 240.

²⁴⁵⁷ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.33.

²⁴⁵⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 241 and 332. See URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 6.32 to 6.64

Q.VI.(a). Assessment of BGL's representations on the promotional deals dataset

Q.72 BGL and Oxera submitted that the promotional deals dataset used by the CMA in its analysis was not correct as it should:

- (a) include a promotional deal that [HIP] did with [X]²⁴⁵⁹;
- (b) exclude a promotional deal that [HIP] offered to [X] combined policies consumers in [X] as it was on top of an ongoing promotional deal which involved a [X] discount for all consumers to avoid double-counting;²⁴⁶⁰
- (c) exclude a promotional deal that [HIP] did with [X] since [HIP] lowered the prices on all online channels meaning that the deal would not have represented a breach of the wide MFN;²⁴⁶¹ and
- (d) exclude three of the five promotional deals that [HIP] ran with [X] after CTM stopped enforcing its wide MFNs as these deals do not conform to the CMA's definition of a promotional deal as the PCWs do not appear to have contributed towards the price discount in any way.²⁴⁶²

While BGL and Oxera raised all of these points, Oxera's analysis was based on a dataset that only took into account points (a) and (b).

Q.73 The CMA does not consider it appropriate to modify its analysis in any of these ways. In particular, taking the four points in turn:

- (a) As described in Section 8 and Section 9 of this Decision, [HIP] only agreed to offer a price discount on CTM in 2017 following enforcement action taken by CTM. In particular, [HIP] stated that it agreed the price discount '*under a level of duress*' and it was fully-funded by [HIP], as such the CMA does not consider that this price discount constituted a promotional deal agreed as part of the usual negotiation process or that the price discount was reflective of the competitive dynamics at the time.
- (b) Both [HIP] and [X] presented the original promotional deal to all consumers and the temporary additional [X] discount to consumers purchasing combined policies as separate promotional deals and, given the majority of consumers purchase combined policies, a significant set

²⁴⁵⁹ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs A2.9 and 6.35, first bullet.

²⁴⁶⁰ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs A2.9 and 6.35, second bullet.

²⁴⁶¹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 71.

²⁴⁶² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 194.

of consumers had access to a larger retail price discount as a result of this promotion. Therefore, the CMA does not consider that including the additional promotional deal agreed between [HIP] and [X] would result in double counting;

- (c) The CMA disagrees that the deal between [HIP] and [X] should be excluded due to the unusual implementation by [HIP] given the deal was proposed by a PCW and agreed by the provider according to what the relevant parties consider standard practice; and
- (d) While the PCWs may not have contributed through a commission fee reduction to the three promotional deals agreed by [HIP] since the Relevant Period, the CMA considers it is not appropriate to exclude these deals as:
 - (i) Both [HIP] and the relevant PCWs classified these deals as promotional deals; and
 - (ii) these promotional deals involved a reduction in the price on the relevant PCW and therefore will have facilitated price competition both between PCWs and between providers competing on PCWs as set out in Section 7.E.

Q.74 Therefore, the CMA has not adjusted the dataset it uses in its own analysis, which is set out in Section 9 and, where necessary, has assessed Oxera's analysis based on the CMA's dataset.

Q.VI.(b). Assessment of BGL's representations on the changes in the number of promotional deals

Q.75 BGL submitted that:²⁴⁶³

- (a) *'One of the many factors necessary for the CMA to succeed in this case is that the CMA needs to produce convincing evidence that there has been a material change since November 2017, particularly with regard to those HIPs who previously had a [wide MFN]';*
- (b) any increase in the number of promotional deals is small and driven by providers without wide MFNs who were never constrained; and

²⁴⁶³ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 6.41 to 6.45 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 240 to 241.

- (c) there are factors other than CTM stopping enforcement of its wide MFNs that could have driven the changes from July 2018 onwards.

The CMA considers each of these points in turn.

- Q.76 First, the CMA disagrees that it is '*necessary*' for there to be a '*material change*' in the number of promotional deals. The observable behavior of the providers previously subject to wide MFNs (as well as that of other market participants) after the Relevant Period is not determinative of the effects on competition of CTM's wide MFNs. Rather, such evidence is indicative and needs to be considered alongside the whole body of evidence, as done by the CMA in Section 9. In doing this the CMA considers that the changes seen after CTM stopped enforcing its wide MFNs support the CMA's findings in this case as set out in Section 9.
- Q.77 Second, as set out in Section 9, when considering comparable periods there has been an increase in the overall number of promotional deals in home insurance from 26 to 38 (see Table 9.3) which the CMA does not consider to be a small increase. There has also been an increase in the number of promotional deals agreed by providers subject to CTM's wide MFNs (see Table 9.2). This includes particularly large promotional deals such as [HIP]'s [X] discount on [X] and long-lasting deals such as [HIP]'s deals with [X] which were in place for [X].²⁴⁶⁴ As described in Section 9.A.III, there has also been an increase in the number of providers previously subject to wide MFNs agreeing such deals after the Relevant Period (including large providers in terms of sales through PCWs) and, as described below, BGL's analysis of the value of promotional deals also shows that the value of deals among providers subject to wide MFNs has increased after the Relevant Period when considering the full period of data available.
- Q.78 Further, the CMA considers that the gradual increase in the use of promotional deals by providers previously subject to wide MFNs reflects the context and the nature of competition in the Relevant Market as:
- (a) Wide MFNs were a feature of the market for a significant period (at least 8 years), during which time they shaped the competitive landscape. As described in Section 8.B.II.(b), large providers subject to CTM's wide MFN had developed their pricing strategies around the existence of wide MFNs with multiple PCWs: for example, [HIP] told the CMA that the wide MFN was '*ingrained within [HIP]'s pricing principles.*', while [HIP] said it had become '*part of the landscape*'. In addition, one large provider told the CMA that after CTM stopped

²⁴⁶⁴ Promotional deals dataset (see Annex J).

enforcing its wide MFNs it took a cautious approach,²⁴⁶⁵ in part, because of the CMA's ongoing investigation into wide MFNs.²⁴⁶⁶

- (b) As described in Section 7.C.II, PCWs target only a subset of providers on their panel with promotional deal offers, which limits the number of promotional deals undertaken at any one time. Moreover, MoneySuperMarket, which agreed the majority of the promotional deals both during and since the Relevant Period,²⁴⁶⁷ told the CMA that it typically does not re-engage with providers that had previously consistently rejected promotional deals.²⁴⁶⁸
- (c) As further described in Section 7.D, for a promotional deal to go ahead, the insurance provider's financial assessment of the deal and commercial reasons need to align with those of the PCW, and there may be a number of reasons beyond wide MFNs for a provider to reject a deal at a particular point in time.²⁴⁶⁹

Q.79 In this context, it takes time for providers to adjust their strategies and begin agreeing promotional deals. As explained by [HIP], each provider needs to develop an understanding of the value promotional deals reflecting their particular strategy and requirements. CTMs wide MFNs prevented such understanding developing in the Relevant Period, at a time when two of its rivals focused on promotional deals as a core part of their strategies in home insurance.²⁴⁷⁰ This is further reflected in the fact that in 2020, the CMA has observed additional providers subject to wide MFNs engaging in promotional deals including some who were unwilling to engage in such deals during the Relevant Period, as set out in Section 9.A.III.(b).

Q.80 Finally, the observed increase in promotional deals by providers without wide MFNs is consistent with the CMA's theory of harm. In particular,

- (a) as set out in Section 9.B, CTM's wide MFNs reduced competition between PCWs during the Relevant Period and only two of the Big Four PCWs engaged in promotional deals (CTM did not engage in deals but relied primarily on its wide MFNs to secure lower prices). In

²⁴⁶⁵ [HIP] also told the CMA that after CTM informed it that it was no longer enforcing wide MFNs it took a cautious approach because the clause was still in its contract. As explained in Section 4.B.II, the CMA has treated [HIP]'s agreement with CTM as containing a narrow MFN only, but [HIP] regarded the clause in its agreement with CTM as being a wide MFN during the Relevant Period. URN 6423.1, note of CMA call with [HIP] dated 25 April 2018, paragraph 9.

²⁴⁶⁶ URN 6626, note of CMA meeting with [HIP] [§], paragraph 8.

²⁴⁶⁷ See Table 9.3

²⁴⁶⁸ See paragraph 7.168

²⁴⁶⁹ See paragraph 7.165

²⁴⁷⁰ URN 5080, [HIP]'s response to section 26 notice dated 24 November 2017, question 10.

contrast since CTM stopped enforcing its wide MFNs all of the Big Four PCWs have agreed promotional deals including CTM which is consistent with an increase in competition between PCWs even if some of these new deals are with providers without wide MFNs.²⁴⁷¹

- (b) as set out in Section 9.C, CTM's wide MFNs softened competition between providers, therefore the fact that since CTM stopped enforcing its wide MFNs more deals have been agreed by providers without wide MFNs is consistent with those providers facing a greater competitive constraint since CTM stopped enforcing its wide MFNs.

Q.81 Third, BGL has not provided a plausible alternative explanation for the changes in promotional deals that have been observed since CTM stopped enforcing its wide MFNs. In particular:²⁴⁷²

- (a) BGL stated that the changes may be due to a general hardening of the market and in doing so cited evidence that the demand for insurance was likely to slow due to a reduction in housing transactions and that there are affordability issues due to rising costs. However, it is not clear that such changes in the market will necessarily lead to more promotional deal activity in the market. For example, while some providers may react by discounting their prices in light of the reduction in demand, others may decide to increase their prices to maintain their margins in light of increasing marginal costs.
- (b) BGL stated that the changes may be due to scrutiny from watchdogs and regulators, but did not explain why this might be the case or adduce evidence to support this view. In addition, it is not clear why the scrutiny of watchdogs and regulators would increase price discounting on the sale of new business given that concerns raised by watchdogs and regulators²⁴⁷³ near the time of CTM stopping enforcement of its

²⁴⁷¹ As set out at paragraphs Q.45 to Q.46 above, while the number of deals Confused agreed in comparable periods during and after the Relevant Period remained the same, i) this is driven by a spike in deals at the start of 2016, whereas Confused had significantly more deals per month in place in 2018 and the first 6 months of 2019 than in 2017; ii) Confused considered that its strategy was easier to implement after CTM stopped enforcing its wide MFNs; and iii) Confused agreed promotional deals with an increased number of providers after CTM stopped enforcing its wide MFNs, including deals with providers which were previously contractually restricted from doing so or unwilling to engage in such deals.

²⁴⁷² URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.45.

²⁴⁷³ For example, in the press release announcing the CMA's work on the 'loyalty penalty' super-complaint, which was cited by BGL, the CMA said that it would *'investigate concerns raised that people who stay with their provider - often on default or roll over contracts - can end up paying significantly more than new customers. Citizens Advice refers to this as a 'loyalty penalty'.*' CMA (2018), ['CMA to investigate 'loyalty penalty' super-complaint'](#), 28 September 2018. Similarly, in the terms of reference for the FCA's market study into General Insurance Pricing Practices, which was cited by BGL, the FCA stated *'General insurance pricing practices can lead to different consumers paying different prices for the same insurance product, even if the cost to supply the product may be the same. Our diagnostic work found that some consumers who stay with their home insurance*

wide MFNs relate to providers consistently raising prices at the point of renewal which contrasts with the practice of selling new policies at a discount.

- (c) BGL stated that the changes may be due to '*firm specific changes in pricing strategy*' but has not explained why this would undermine the CMA's findings when the CMA's analysis is trying to identify changes in providers' pricing strategies.²⁴⁷⁴

Q.82 In addition, none of BGL's explanations have been supported by providers or its rival PCWs. In contrast, the CMA's assessment as set out in this Decision is based on a comprehensive assessment of the evidence obtained from the Big Four PCWs and providers making up over 80% of sales made through PCWs in 2017.

Q.VI.(c). Assessment of BGL's representations on the statistical significance of the change in promotional deals

Q.83 BGL submitted that the results of the CMA's analysis on the number and characteristics of promotional deals are not statistically significant. In doing this BGL submitted statistical testing conducted by Oxera which suggests that CTM's decision to stop enforcing its wide MFNs had no statistically significant impact on the size and number of promotional deals.

Q.VI.(c).(i). Methodology

Q.84 The CMA's promotional deals dataset consists of a series of observations where each observation was a single promotional deal containing information about the promotional deal (including, but not limited to, the identity of the relevant provider and PCW, the size of the deal and the start and end date of the deal).

Q.85 To conduct its statistical testing, Oxera converted the dataset into a time-series. This means that instead of every observation in the dataset corresponding to a single promotional deal, every observation in the dataset corresponded to a single month containing information about the promotional deals in place that month (including, but not limited to, the total number of

provider for a long time pay prices that are much higher than those paid by new consumers. The market study will consider whether pricing practices are leading to competition working well in these markets for all consumers. In doing so we will consider the fairness of these pricing practices.' FCA (2018), '[General Insurance Pricing Practices: Terms of reference](#)', October 2018.

²⁴⁷⁴ In addition, in supporting this point, BGL did not cite evidence from providers explaining changes in their pricing strategies but cited evidence from [Senior Executive, HIP] who was explaining his view on the strategies employed by other home insurance providers not those of [HIP]. URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.45.

deals in place that month, the total value of the retail price discounts in place that month and the total value of the commission fee discounts in place that month).

- Q.86 Oxera/BGL submitted that this change addresses the fact that the CMA's approach means that each promotional deal has the same impact on the calculated statistics regardless of the duration or value of that deal (e.g. a £1 deal in place for a day would have the same impact as a £15 deal in place for three months).
- Q.87 Using its time series dataset, Oxera then regressed each of the outcome variables (namely, the number of promotional deals, the total retail discount and the total commission fee discount) on an indicator for whether the month in question was after CTM stopped enforcing its wide MFN. In doing this, Oxera included the value of the outcome variable from the previous time period as a control variable in its regression to control for autocorrelation. However, Oxera did not provide evidence on why this adjustment adequately corrects for the underlying issue of autocorrelation in this case.

Q. VI.(c).(ii). Results and the CMA's assessment

- Q.88 The results of the analysis submitted by BGL and presented in the Fourth Oxera Report suggest that CTM's decision to stop enforcing its wide MFNs is positively associated with the number and size of promotional deals (this is consistent with both the CMA's analysis of the number of promotional deals²⁴⁷⁵ and the CMA's assessment of Oxera's analysis of the value of promotional deals²⁴⁷⁶). However, none of these results was statistically significant and as such BGL submitted that CTM's decision to stop enforcing its wide MFNs had no statistically significant impact on the number and size of promotional deals.
- Q.89 The CMA does not consider that the results of the regressions undermine its findings in relation to the use of promotional deals after CTM stopped enforcing its wide MFNs (see Section 9). The CMA considers that the small sample size means that it is not appropriate to interpret a statistically insignificant result as evidence that CTM's decision to stop enforcing its wide MFNs had no effect on the number and size of promotional deals.

²⁴⁷⁵ See Tables 9.2, 9.3 and 9.4.

²⁴⁷⁶ See Section Q.VI.(e) below.

Q.VI.(d). Assessment of BGL's representations on the time period covered by the analysis

- Q.90 BGL has stated that there is no evidence of wide MFNs having a persistent effect on the market after CTM stopped enforcing them and that therefore in order to assess the impact of CTM's decision to stop enforcing its wide MFNs a shorter time period than the one used by the CMA should be considered. In particular, BGL considers that there is no persistent effect as:
- (a) providers previously subject to wide MFNs knew that the wide MFNs were void from 1st December 2017 because they all received written communication from CTM setting out that CTM would no longer enforce its wide MFNs;²⁴⁷⁷
 - (b) two of CTM's three main rivals [Confused and MoneySuperMarket] found out that CTM had stopped enforcing its wide MFNs relatively quickly;²⁴⁷⁸
 - (c) evidence from a former employee of a rival PCW [Employee 1, MSM] shows that it does not take longer than a few weeks to implement a promotional deal;²⁴⁷⁹ and
 - (d) one provider previously subject to wide MFNs ([HIP]) promptly re-engaged in promotional deal discussions with [X] following CTM's decision to stop enforcing its wide MFNs which led to a promotional deal in [X] ([X] after CTM stopped enforcing its wide MFNs).²⁴⁸⁰
- Q.91 On this basis BGL stated that it was more appropriate to consider a shorter time period than the one considered by the CMA and that when '*taking a more relevant time period, there is no increase in promotional deals*'.²⁴⁸¹
- Q.92 The CMA considers that BGL's conclusions on the appropriate time period to consider are inconsistent with a significant part of the evidence obtained by the CMA during this investigation. BGL's conclusions disregard the context and the nature of competition in the Relevant Market which, as described at paragraph Q.78 above, are consistent with a gradual increase in the use of promotional deals by providers previously subject to wide MFNs. In particular, providers developed their pricing strategies around the existence of wide MFNs, which were a feature of the market for an extended period; PCWs target only a limited number of providers for promotional deals at any

²⁴⁷⁷ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.48.

²⁴⁷⁸ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.49.

²⁴⁷⁹ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.50.

²⁴⁸⁰ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.51.

²⁴⁸¹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 241.

one time; and there may be a number of reasons beyond wide MFNs for a provider to reject a deal at a particular point in time.

- Q.93 In this context, it takes time for providers to adjust their strategies and begin agreeing promotional deals. This is further reflected in the fact that in 2020 the CMA has observed additional providers subject to wide MFNs engaging in promotional deals including some who were unwilling to engage in such deals during the Relevant Period.
- Q.94 Therefore, when considered in the round, the evidence supports the view that CTM's wide MFNs had a persistent impact on the Relevant Market and that a longer time period should be considered to fully appreciate the effect of CTM's decision to stop enforcing its wide MFN on competition in the Relevant Market.
- Q.95 Further, BGL did not justify why the longest appropriate period to consider is a window of 12 months before and after CTM stopped enforcing its wide MFNs.²⁴⁸² Indeed:
- (a) The results of Oxera's analysis show that only when a short time window around CTM's decision to stop enforcing its wide MFNs is considered does the total daily value of promotional deals fall after CTM stopped enforcing its wide MFNs (further details in the next section); and
 - (b) This timeframe ignores the fact that CTM itself has started to agree promotional deals since it stopped enforcing its wide MFNs and that, while CTM started discussing promotional deals with some providers in July 2018, it did not agree any until the start of 2019.
- Q.96 Finally, it is unclear why in the absence of a valid reason which would suggest otherwise (as in this case) the assessment should disregard a substantial part of the evidence that provides valuable information about the competitive dynamics in the Relevant Market.
- Q.97 In light of the above, the CMA considers it is appropriate to focus on a longer time period which, as set out in Section 9, gives results which are consistent with the view that CTM's decision to stop enforcing its wide MFNs has led to an increase in the number of promotional deals (and the value of promotional deals, see the next sub-section).

²⁴⁸² BGL makes no reference to any evidence indicating that an assessment of the competition dynamics over an interval no longer than 12 months before and after CTM stopped enforcing its wide MFNs would be more appropriate in this case.

Q.VI.(e). Assessment of Oxera's analysis of the daily value of promotional deals across all PCWs

- Q.98 BGL has stated that there has been '*no increase in the value of promotional deals*' since the end of the Relevant Period.^{2483, 2484} In support of this view BGL submitted analysis conducted by Oxera which looked at the daily agreed value of promotional deals.²⁴⁸⁵ Oxera submitted that this analysis shows that when considering a time period of no longer than 12 months before and after CTM stopped enforcing its wide MFNs, the daily average value of promotional deals decreased. This was the case both when considering promotional deals on offer from all providers in aggregate²⁴⁸⁶ and when only considering those on offer from providers subject to wide MFNs.²⁴⁸⁷
- Q.99 The CMA does not consider that Oxera's analysis supports the view that there has been no increase in the value of promotional deals. In particular, as set out above the CMA considers that Oxera's analysis is based on an incorrect dataset²⁴⁸⁸ and that it is more appropriate to consider a longer time period.²⁴⁸⁹ Therefore, Table Q.1 and Table Q.2 below show the results of Oxera's analysis based on the CMA's dataset for each of Oxera's preferred shorter time period and the CMA's preferred full time period.

²⁴⁸³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 241 and 332. See URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6B.2v.

²⁴⁸⁴ Oxera submitted that the value of the discount was one of a number of characteristics that could affect the impact a promotional deal and was not taken into account in the CMA's analysis, but Oxera's analysis only covered value and it made no arguments that the CMA's findings would be affected by consideration of any of the other characteristics it cited (such as quotability of the provider or breadth of brands/products covered by the deal). URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.54.

²⁴⁸⁵ Oxera calculated this '*by taking the total agreed value of PDs on each day over the period 1st January 2016 to 30th June 2019 (inclusive)*'. For instance, if HIP A had agreed a £10 PD with PCW A over the period 1st January to 31st January and HIP B had agreed a £5 PD with PCW B over the period 1st January to 1st March, then the total agreed value would be £15 in January and £5 in February.' URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 6.55.

²⁴⁸⁶ URN 10460, Fourth Oxera Report dated 14 February 2020, table 6.3.

²⁴⁸⁷ URN 10460, Fourth Oxera Report dated 14 February 2020, table 6.4.

²⁴⁸⁸ See section Q.VI.(a) above.

²⁴⁸⁹ See section Q.VI.(d) above.

Table Q.1: Average daily value of promotional deals for all providers

	Pre	Post	Change
Time periods considered by the CMA			
Full Period (23m pre and 19m post)	[REDACTED]	[REDACTED]	[REDACTED]
Oxera's time periods			
24-month window (12m pre and 12m post)	[REDACTED]	[REDACTED]	[REDACTED]
18-month window (9m pre and 9m post)	[REDACTED]	[REDACTED]	[REDACTED]
12-month window (6m pre and 6m post)	[REDACTED]	[REDACTED]	[REDACTED]
6-month window (3m pre and 3m post)	[REDACTED]	[REDACTED]	[REDACTED]

Source: URN 10460, Fourth Oxera Report dated 14 February 2020, table 6.3.

Table Q.2: Average daily value of promotional deals for providers subject to wide MFNs

	Pre	Post	Change
Time periods considered by the CMA			
Full Period (23m pre and 19m post)	[REDACTED]	[REDACTED]	[REDACTED]
Oxera's time periods		[REDACTED]	[REDACTED]
24-month window (12m pre and 12m post)	[REDACTED]	[REDACTED]	[REDACTED]
18-month window (9m pre and 9m post)	[REDACTED]	[REDACTED]	[REDACTED]
12-month window (6m pre and 6m post)	[REDACTED]	[REDACTED]	[REDACTED]
6-month window (3m pre and 3m post)	[REDACTED]	[REDACTED]	[REDACTED]

Source: URN 10460, Fourth Oxera Report dated 14 February 2020, table 6.4.

Q.100 These tables show that when a longer time period is used Oxera's analysis shows that the average daily value of promotional deals has increased by about [REDACTED] since the Relevant Period among all providers and by about [REDACTED] for providers previously subject to wide MFNs.

Q.101 In addition, Oxera's analysis in relation to all providers excluded deals by [HIP] which were agreed in 2017 before CTM stopped enforcing its wide MFNs but ended after CTM stopped enforcing its wide MFNs. There is no explanation for this, and it is not clear to the CMA why these deals should be excluded.²⁴⁹⁰ Therefore, Table Q.3 below presents the results of Oxera's analysis based on the CMA's full dataset including these deals.²⁴⁹¹

²⁴⁹⁰ Excluding these deals underestimated the value of promotional deals in place after CTM stopped enforcing its wide MFNs.

²⁴⁹¹ In doing this the CMA has also corrected for the fact that when conducting its analysis Oxera excluded deals by [HIP]'s and [HIP] in which the discount was in the form of a [REDACTED]. Excluding these deals underestimated the value of promotional deals in place before and after CTM stopped enforcing its wide MFNs.

Table Q.3: Average daily value of promotional deals for all providers

	Pre	Post	Change
Time periods considered by the CMA			
Full Period (23m pre and 19m post)	[REDACTED]	[REDACTED]	[REDACTED]
Oxera's time periods			
24-month window (12m pre and 12m post)	[REDACTED]	[REDACTED]	[REDACTED]
18-month window (9m pre and 9m post)	[REDACTED]	[REDACTED]	[REDACTED]
12-month window (6m pre and 6m post)	[REDACTED]	[REDACTED]	[REDACTED]
6-month window (3m pre and 3m post)	[REDACTED]	[REDACTED]	[REDACTED]

Source: CMA's analysis of URN 10467, BGL submission entitled 'Oxera analysis of the value of promotional deals, sub-folder '5. Prevalence of PDs', the Promotional Deals Dataset, attached to the Fourth Oxera Report dated 14 February 2020 (see Annex J); URN 9615, MoneySuperMarket's response to follow-up questions to section 26 notice dated 31 May and 5 June 2019, spreadsheet titled 'Copy of Appendix 3 MSM ATL Campaigns.xlsx'; URN 9859 MoneySuperMarket's response dated to follow-up questions dated 8 November 2019; [REDACTED] and URN 5488.2, BGL's response to follow-up questions dated 11 January 2018, question 4, spreadsheet entitled 'Response to Q4' follow-up questions dated 11 January 2018, spreadsheet titled 'Response to Q4').

Q.102 This table shows that when a longer time period and a corrected dataset is used Oxera's analysis shows an even larger increase in the value of promotional deals when considering all providers (about [REDACTED], compared to an average retail price of £135 on CTM in 2017²⁴⁹²).

Q.103 Therefore, the CMA does not consider that Oxera's analysis of the value of promotional deals undermines its findings as set out in Section 9. In fact, when based on a more appropriate longer time period and corrected dataset, Oxera's analysis is consistent with the CMA's findings.

Q.VI.(f). Assessment of BGL's representations on the willingness of providers to engage in promotional deals in the future

Q.104 BGL submitted that out of a possible 32 providers there was just one provider [HIP] that had:

- (a) agreed a promotional deal after CTM stopped enforcing its wide MFNs having not agreed one during the Relevant Period; and
- (b) expressed a desire to engage in promotional deals in the future.²⁴⁹³

Q.105 Further, BGL noted that this one provider had only engaged in one promotional deal as far as it was aware, and of the other seven providers subject to wide MFNs that agreed a deal either during the Relevant Period or in the 19 months after CTM stopped enforcing its wide MFNs:

²⁴⁹² This is the weighted average per policy sold, see footnote 257.

²⁴⁹³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 241 and 332; URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 1.25, 6.41, fifth bullet, and 6.58 to 6.63.

- (a) two providers [[HIP] and [HIP]] only pursued promotional deals before CTM stopped enforcing its wide MFNs.
- (b) two providers [[HIP] and [HIP]] engaged in deals before and after CTM stopped enforcing its wide MFNs questioning whether the wide MFN had any impact on their behaviour.
- (c) the remaining three providers [[HIP], [HIP] and [HIP]] only engaged in deals after CTM stopped enforcing its wide MFNs [X].

Q.106 BGL submitted that this suggests that providers previously subject to wide MFNs would not have engaged in more promotional deals absent CTM's wide MFNs.²⁴⁹⁴

Q.107 The CMA disagrees with BGL's interpretation of the evidence on providers subject to wide MFNs. In particular, the CMA has found that since CTM stopped enforcing its wide MFNs at least ten providers (accounting for approximately 27% of sales made through PCWs in 2017) have engaged in promotional deals.²⁴⁹⁵ This includes four providers (accounting for 20% of sales made through PCWs in 2017) who have explicitly told the CMA that they are willing to engage in promotional deals and consider proposals on a case-by-case and includes one other provider (accounting for [X] [0-5%] of sales made through PCWs in 2017) who previously told the CMA that they were unwilling to engage in promotional deals during the Relevant Period.

Q.108 More specifically:

- (a) [HIP] (accounting for [X]% [0-5%] of sales made through PCWs in 2017) rejected promotional deals proposed by [X] during the Relevant Period due to CTM's wide MFNs,²⁴⁹⁶ agreed at least three deals [X] after CTM stopped enforcing its wide MFNs²⁴⁹⁷ and told the CMA that it

²⁴⁹⁴ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraphs 6.41 and 6.58 to 6.59.

²⁴⁹⁵ This includes seven providers who agreed promotional deals during the 19 months following the Relevant Period (December 2017 to June 2019, see Table 9.2) and three providers who agreed deals during 2020 (see paragraph 3.7.176 and footnote 1215 of Section 9).

²⁴⁹⁶ See Section 8.B.II.(b).

²⁴⁹⁷ As well as agreeing two deals in the 19 months after CTM stopped enforcing its wide MFNs, [HIP] also had a deal with [X]. URN 9712, [HIP]'s response to section 26 notice dated 26 July 2019, question 1 and URN 10567, screenshots of quotes and promotional deals taken by the CMA from [X] website on [X]. BGL submitted that this promotional deal does not support the CMA's case as there is nothing to support the proposition that [HIP]'s promotional deal are related to CTM's decision to stop enforcing its wide MFNs. The CMA disagrees, as set out in Section 9.A CTM's wide MFNs clearly had a direct impact on the pricing behaviour of [HIP] and this includes the fact that [HIP] rejected promotional deals during the Relevant Period due to CTM's wide MFNs and has now engaged in promotional deals since CTM stopped enforcing its wide MFNs. BGL also submitted previous [HIP] promotional deals involved [HIP] increasing its price on other channels which suggest that its promotional deals may be harmful to consumers. The CMA disagrees that promotional deals, including [HIP]'s, lead to higher prices for the reasons set out in section K.III of Annex K. URN 10792, BGL's response to the Second LoF dated 21 August 2020, paragraph 46, fourth bullet.

is willing to engage in promotional deals considering proposals on a case-by-case basis.²⁴⁹⁸ In addition, [HIP] had a deal in place with [X] in [X].²⁴⁹⁹

- (b) While [HIP] and [HIP] had deals in place during the Relevant Period and separately in the 19 months after CTM stopped enforcing its wide MFNs, these two providers (accounting for [X]% [10-15%] of sales made through PCWs in 2017) also rejected additional promotional deals proposed by Confused and MoneySuperMarket during the Relevant Period due to CTM's wide MFNs,²⁵⁰⁰ agreed deals with [X] after CTM stopped enforcing its wide MFNs²⁵⁰¹ and have told the CMA that they are willing to engage in promotional deals considering proposals on a case-by-case basis.²⁵⁰² In particular:
 - (i) one of these providers, [HIP] rejected proposed deals [X] because of the wide MFN in its contract with CTM and the fact that CTM had previously enforced the wide MFN against the provider [HIP] in [X].²⁵⁰³
 - (ii) the other provider's one deal in place during the Relevant Period was structured to take advantage of question set differences [X] so as not to technically breach the wide MFN and was the only deal of this nature.²⁵⁰⁴ In particular, when [HIP] proposed such a deal [X].²⁵⁰⁵
- (c) While [HIP] (accounting for [X]% [0-5%] of sales made through PCWs in 2017) agreed two deals during the Relevant Period, it faced enforcement action from CTM.²⁵⁰⁶ In addition, [HIP] was actively seeking promotional deals with all of the Big Four PCWs after CTM stopped enforcing its wide MFNs and agreed a deal with [X] showing it is still willing to agree deals.²⁵⁰⁷

²⁴⁹⁸ See Section 7, paragraph 7.171.

²⁴⁹⁹ URN 9712, [HIP]'s response to section 26 notice dated 26 July 2019, question 1 and URN 9207, [HIP]'s response to section 26 notice dated 26 July 2019, question 5.

²⁵⁰⁰ See Section 8.B.II.(b).

²⁵⁰¹ See Section 9, paragraph 9.64.

²⁵⁰² See Section 7, paragraph 7.171.

²⁵⁰³ See Section 8.B.II.(b).

²⁵⁰⁴ This promotional deal was agreed before the Relevant Period in [X]. Therefore, the deal is not included in the CMA's analysis of the number of deals agreed during the Relevant Period in Section 9. However, this deal is included in the CMA's analysis when considering the deals in place during the Relevant Period (see Figure 9.1).

²⁵⁰⁵ See paragraph P.38 of Annex P.

²⁵⁰⁶ See Section 8.B.III.(b).(iv) and Annex M.

²⁵⁰⁷ URN 9193, [HIP]'s response to section 26 notice dated 19 June 2019, question 1 and URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [X].

- (d) A further two providers previously subject to wide MFNs (together accounting for [X]% [0-5%] of sales made through PCWs in 2017) agreed promotional deals with PCWs in 2020.²⁵⁰⁸ This includes a provider agreeing a deal with CTM having told the CMA it was unwilling to engage in promotional deals during the Relevant Period ([HIP]).²⁵⁰⁹ This is consistent with the fact that providers' strategies change over time and that since CTM stopped enforcing its wide MFNs competition between providers has increased as described in Section 9.C.

Q.109 In addition, while three providers previously subject to wide MFNs did not find the promotional deals they engaged in after CTM stopped enforcing its wide MFNs to be successful,²⁵¹⁰ this does not undermine the fact that these three providers would have been contractually prevented from engaging in such deals during the Relevant Period or mean that they would not agree further promotional deals.²⁵¹¹ This means that since CTM stopped enforcing its wide MFNs these providers have been able to at least experiment with a strategy that was not contractually allowed during the Relevant Period.

Q.110 Finally, while [HIP] may have engaged in promotional deals during the Relevant Period but not engaged or been willing to engage in any promotional deals since CTM stopped enforcing, [HIP] is continuing to engage in differential base retail pricing as described in Section 7.

Q.VII. CMA's assessment of BGL's representations on competition between providers competing on PCWs

Q.111 In relation to competition between providers on PCWs, BGL submitted that providers '*compete vigorously on price*' and the CMA has not explained '*why differential pricing across different PCWs would enhance this process of*

²⁵⁰⁸ [HIP] had one or more promotional deal with [X] (based on the available data it is not possible to determine if this was one continuous deal or multiple deals) and [HIP] had a promotional deal in place with [X] which was in place [X]. URN 10568, screenshots of quotes and promotional deals taken by the CMA from CTM's website on [X]; URN 10561, screenshot of quotes and promotional deals taken by the CMA from CTM's website on [X] and URN 10563, screenshot of quotes and promotional deals taken by the CMA from [X] website on [X].

²⁵⁰⁹ See paragraph 7.173 and the discussion of [HIP]'s pricing strategy in Annex L. URN 10568, screenshot of quotes and promotional deals taken by the CMA from CTM's website on [X] and URN 10561, screenshot of quotes and promotional deals taken by the CMA from CTM's website on [X].

²⁵¹⁰ See Section 7, paragraph 7.177(b).

²⁵¹¹ As set out in Section 9, [HIP] agreed two deals ([X]) despite telling the CMA during the Relevant Period that after agreeing a trial promotional deal in September 2014 it '*decided as a strategy not to pursue Home Insurance [promotional deals]*' such that while PCWs frequently requested that [HIP] consider such deals during the Relevant Period [HIP] did '*not entertain these requests*'. URN 5151, [HIP]'s response to section 26 notice dated 24 November 2017, questions 11, 12 and 14; URN 9743, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

competition further’ or demonstrated ‘that CTM’s [wide MFNs] materially impacted the ability or incentive to pursue such strategies’.^{2512, 2513, 2514}

Q.112 The CMA does not dispute that providers competed vigorously on price to the extent that they were able to in the Relevant Period; this does not, however, mean that competition would not have been more intense in the counterfactual without CTM’s network of wide MFNs. As explained in Section 7.E, the nature of competition in the Relevant Market means that the use of differential pricing, and in particular promotional deals, by one or a group of providers increases the competitive pressure on all providers on the relevant PCW and thus increases competition between providers on price. CTM’s wide MFNs restricted this competitive process by restricting the ability and incentive of providers to compete on price by differentiating their prices across PCWs, as described in detail in Sections 9.A and 9.C.

Q.113 BGL has also submitted that providers are unlikely to respond to the promotional deals of other providers. In particular, BGL has submitted that there are two ways in which a provider might respond to a promotional deal agreed by a rival provider:²⁵¹⁵

- (a) First, the provider may reduce their price on the same PCW – however, BGL submitted that the incentive for the provider to offer a discount is lower than that for the rival with the original promotional deal.²⁵¹⁶

²⁵¹² URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraphs 390 and 391 and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 10.28 to 10.30.

²⁵¹³ Oxera noted that, based on its theoretical analysis, the incentives to introduce promotional deals decrease as the prevalence of promotional deals increases. The CMA accepts that there may be a limit to the number of promotional deals that will occur in the market, for example, it is in the interest of PCWs to maintain the value of promotional deals by focusing on selecting the right partners and obtaining sizeable discounts rather than agreeing them in large numbers. However, this does not mean that CTM’s wide MFNs did not reduce the number of promotional deals in the market and, as set out in Table 9.3, it can be seen that the number of promotional deals in the market has increased since CTM stopped enforcing its wide MFNs. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 10.30.

²⁵¹⁴ Oxera noted that, although retail prices are an important dimension of competition among providers, there is evidence that some providers choose to focus on showing quality and ‘*ticking all the boxes*’. The CMA notes that while at least some providers are seeking to compete on the quality of their products this does not mean that they are not also competing on retail prices or do not have the incentive to engage in differential pricing. In particular, as set out in Section 7.D, retail prices are a particularly important dimension of competition between providers and providers have an incentive to engage in differential pricing. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 10.30.

²⁵¹⁵ URN 8872, BGL’s response to section 26 notice dated 10 May 2019, question 30(c)(ii).

²⁵¹⁶ BGL submitted that this was because:

- (i) the provider’s discount would not be funded (unless it secured a promotional deal with the same PCW which the PCW may not have an incentive to do);
- (ii) *‘the second insurer offered a price reduction similar to that of the insurer with the Promotional Deal, the two insurers would share any volumes gained (market share ‘stolen’) from other insurers. Although the second insurer could offer a greater discount to try to win the lion’s share of the switching volumes, the fact that another insurer is also offering a discount in the market at the same time reduces the volumes that the second insurer would be likely to gain compared to those available to the first insurer’*; and
- (iii) the provider would cannibalise some sales made via its direct channels and (unless it secured a promotional deal) this would be without the benefit of a reduction of its commission fee.

- (b) Second, the provider may agree a promotional deal on a different PCW – however, BGL submitted that this would require both the provider and another PCW to agree to a promotional deal and there are a number of reasons why either side may not be willing to do so.²⁵¹⁷

Q.114 The CMA considers that providers are likely to face strong incentives to respond to the promotional deals of other providers. As set out in Section 7 at paragraphs 7.122 to 7.124, the nature of competition between providers on PCWs necessitates that providers be particularly responsive to changes in their competitors' pricing strategies, as small changes in relative prices can (through their impact on rankings) have a significant impact on sales. As set out in Section 7.E, the CMA's analysis of promotional deals finds that promotional deals led to a decrease in price and a relative improvement of the provider's ranking on the relevant PCW. Therefore, a provider facing a competitor's promotional deal is incentivised to respond (whether by reducing its price or agreeing its own promotional deal) in order to avert a loss of sales.

Q.115 These incentives are reflected in comments by providers. For example, one provider [[HIP]] told the CMA that the market is *'arguably approaching the point at which, if an insurer is not running one [promotional deal] with at least one PCW, then it will be at a detriment,'* and because that provider ran deals less often than key competitors, it was *'at risk of a commensurate reduction in sales'.*²⁵¹⁸ Similarly, another provider [HIP] told the CMA that if it *'continued to choose not to participate [in promotional deals] this could lead to loss of market share and put us at a commercial disadvantage.'*²⁵¹⁹

URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 30(c)(ii).

²⁵¹⁷ BGL submitted that on the provider side these include: (i) a general disincentive to discount prices for new business due to the impact on renewal prices; (ii) the margins can be quite tight in home insurance; (iii) diverting consumers to another PCW may not be profitable, for example, due to higher commission fees or fraud levels; and (iv) the provider may not want to risk diverting sales away from its own direct channels. BGL submitted that on the PCW side these include: (i) that the expected increase in incremental sales may not be sufficient to compensate it for the lost margin on existing sales; (ii) the provider might lower its price on the PCW anyway; (iii) the PCW may be concerned that the provider would not follow through with the promised discount; and (iv) the PCW may already have a promotional deal in place with other providers and the value for a PCW of a promotional deal with an extra provider falls as the number of providers that the PCW already has a promotional deal with increases. The CMA considers the general incentives for both PCWs and providers to engage in promotional deals and BGL's representations on these points in Section 7 and Annex K. URN 8872, BGL's response to section 26 notice dated 10 May 2019, question 30(c)(ii).

²⁵¹⁸ URN 5142, [HIP]'s response to section 26 notice dated 24 November 2017, question 15.

²⁵¹⁹ URN 9668, [HIP]'s response to section 26 notice dated 26 July 2019, question 1.

Q.VIII. CMA's assessment of BGL's representations on the economic literature

- Q.116 In relation to the economic literature,²⁵²⁰ BGL submitted that the literature finds *'that there can be both pro and anti-competitive effects of the wide MFN, which vary according to the underlying assumptions regarding market characteristics. As such, it is not possible to conclude a priori based on the existing literature that the adverse effects of wide MFNs outweigh their positive effects.'*²⁵²¹ BGL also stated that this means that *'one must assess the actual features of the market and evidence of the effect (if any) that CTM's wide MFNs may have had on market outcomes'*.²⁵²²
- Q.117 BGL also submitted that the economic literature on wide MFNs tends to be based on assumptions that do not apply in the home insurance market. Specifically, the literature assumes:²⁵²³
- (a) *'Wide MFNs cover the entire market'*²⁵²⁴.
 - (b) *'Wide MFNs are effective (i.e. not disregarded/ignored)'*²⁵²⁵.
 - (c) *'Wide MFNs results in a relative price floor'*²⁵²⁶ and *'set a minimum price floor with no tolerances'*²⁵²⁷.
 - (d) *'Lower platform fees are passed through to customers in the form of lower retail prices'*²⁵²⁸.
- Q.118 In addition, BGL submitted that anti-competitive effects also only arise in the economic literature in situations where PCWs *'are not subject to competition from direct providers'*.²⁵²⁹
- Q.119 The CMA agrees that the literature finds that wide MFNs can have both anti-competitive and pro-competitive effects and therefore based on the economic literature alone it is not possible to determine if wide MFNs are

²⁵²⁰ When referring to the economic literature, the CMA is referring to papers that include theoretical models exploring the effects.

²⁵²¹ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.10 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 339.

²⁵²² URN 6641, Second Oxera Report dated 31 July 2018, paragraph 1.2.

²⁵²³ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11; URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 339 and URN 10509, Power Point presentation submitted by BGL for the DPS Oral Hearing held on 9 March 2020 between BGL and the CMA, slide 16.

²⁵²⁴ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11, second bullet.

²⁵²⁵ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11, first bullet.

²⁵²⁶ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11, third bullet.

²⁵²⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 339.

²⁵²⁸ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11, fourth bullet.

²⁵²⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 339.

anti-competitive in any particular instance. However, this does not mean the economic literature is uninformative.

- Q.120 The economic literature on wide MFNs identifies the key mechanisms and economic forces at play when wide MFNs are used. In doing this it uses various simplifying assumptions for reasons of tractability to help identify the key mechanisms and economic forces. However, this does not imply that any deviation from these assumptions when considering a particular market would negate identified anti-competitive effects. As set out below with regard to each of the assumptions BGL identifies, the CMA does not consider that the differences between assumptions in the economic literature and features of the Relevant Market prevent CTM's wide MFNs from having anti-competitive effects similar to those identified in the literature.
- Q.121 Moreover, according to the economic literature on wide MFNs, wide MFNs can lead to anti-competitive effects on competition between PCWs across a range of modelling assumptions. In particular, they can both:
- (a) Reduce competition between PCWs leading to higher commission fees and higher retail prices;²⁵³⁰ and
 - (b) Reduce the ability of PCWs to enter and expand by pursuing strategies aimed at achieving the lowest price by lowering commission fees.²⁵³¹
- Q.122 In its assessment of the effects of CTM's wide MFNs, as set out in Section 9, the CMA has used the economic literature as a reference point when identifying the anti-competitive effects that may arise and has then assessed whether those anti-competitive effects occurred in this case based on the actual features of the market and the available evidence. As described in Section 9, the CMA has found that some of the anti-competitive effects identified in the economic literature did arise in this case.
- Q.123 In relation to the potential pro-competitive effects of wide MFNs identified in the literature, as set out in Section 10, it is for BGL to claim and provide evidence of such pro-competitive effects. However, BGL has not made submissions or adduced evidence to the effect that there are any pro-

²⁵³⁰ Wang and Wright (2020), 'Search Platforms: Showrooming and Price Parity Clauses', *The RAND Journal of Economics*, vol. 51, issue 1; URN 9861, Boik, A and Corts, K.S (2016), 'The Effects of Platform Most-Favoured-Nation Clauses on Competition and Entry', *Journal of Law and Economics*, vol.59, page 107; URN 9862, Johnson, J.P. (2017), 'The Agency Model and MFN Clauses', *Review of Economic Studies*, vol. 84(3), page 6; URN 9863, Johansen, B. O. and Verge, T. (2017), 'Platform Price Parity Clauses with Direct Sales', *University of Bergen Working Papers in Economics*, no. 01/17; URN 9864, Larrieu, T. (2019), 'Most Favoured Nation Clauses on the Online Booking Market', *mimeo*; URN 9867, Wang, C. and Wright, J. (2016), 'Platform Investment and Price Parity Clauses', *NET Institute Working Paper*, no.16 to17.

²⁵³¹ URN 9861, Boik, A and Corts, K.S. (2016), 'The Effects of Platform Most-Favoured-Nation Clauses on Competition and Entry', *Journal of Law and Economics*, vol.59, page 107.

competitive efficiencies meeting the conditions for exemption under section 9 of the Act or Article 101(3) TFEU. Nor has it submitted that its wide MFNs were objectively necessary such that they should not be considered to restrict competition. In any event, while the economic literature is not determinative, based on its review the CMA considers that where papers in the economic literature identify situations where the pro-competitive effects of wide MFNs may outweigh their anti-competitive effects this is based on assumptions that do not hold in this case.

- Q.124 In particular, Johansen and Verge (2017) finds that the pro-competitive effects of wide MFNs outweigh the anti-competitive effects when suppliers could credibly delist from platforms.²⁵³² However, based on the CMA's findings as set out in Section 5, this is not the case in home insurance as providers cannot credibly threaten to delist from PCWs generally or CTM specifically.²⁵³³ Larrieu (2019) finds that the pro-competitive effects of wide MFNs outweigh the anti-competitive effects when suppliers have most of the bargaining power in their relationship with platforms. However, as set out in Section 5.E, in home insurance it is the PCWs (i.e. platforms), and particularly CTM, that have most of the bargaining power and in such a situation Larrieu (2019) finds that the anti-competitive effects outweigh the pro-competitive effects.²⁵³⁴
- Q.125 In the remainder of this sub-section the CMA considers the specific points on the economic literature that were raised by BGL.

Q.VIII.(a). Coverage

- Q.126 BGL submitted that the economic literature on wide MFNs generally assumes full market coverage and that *'[i]f there are gaps in coverage, even if small, price competition between suppliers can be expected to emerge, thus unravelling the effects of wide MFNs, good or bad, on competition.'*²⁵³⁵
- Q.127 The economic literature does not directly test the implications of a gap in coverage. However, the CMA disagrees that any gap in coverage means the

²⁵³² See URN 9863, Johansen, B. O. and Verge, T. (2017), 'Platform Price Parity Clauses with Direct Sales', *University of Bergen Working Papers in Economics*, no, 01/17.

²⁵³³ As set out in Section 5.C.IV, the CMA has found that delisting from (or withdrawing from certain risk segments on) the PCW channel would lead to a significant loss in sales volumes and profits for home insurance providers that would be impossible or very costly for providers to replicate through the sale of new business on the direct channel, the sale of renewals to existing customers or the use of brokers to acquire consumers. In addition, as set out in Section 5.E, the CMA has found that home insurance providers did not have an effective choice of alternative suppliers to CTM for the provision of PCW Services for Home Insurance in the UK during the Relevant Period.

²⁵³⁴ See URN 9864, Larrieu, T. (2019), 'Most Favoured Nation Clauses on the Online Booking Market', *mimeo*.

²⁵³⁵ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 1.15.

effects would unravel and BGL does not explain why this would be the case.²⁵³⁶ Indeed elsewhere BGL makes submissions that are inconsistent with the view that any gap in coverage means the effects would unravel, and instead are consistent with a view that lower coverage will simply reduce the effect of wide MFNs. In particular, BGL states that:²⁵³⁷

- (a) *'the greater the share of the market to which the agreements in question apply, the more significant their effects are likely to be' and 'coverage of the wide MFNs is an important indicator, and driver, of the potential effects on competition.'*²⁵³⁸
- (b) *'[t]he greater the number and size of unrestricted HIPs, the greater the scope for PCWs to pursue competitive strategies based on promotional deals/tiered commission structures. Similarly, the greater the number and size of unrestricted HIPs, the greater their scope to compete on the basis of promotional deals, and to generate any consumer benefits available from such a strategy.'*²⁵³⁹

Q.128 Rather than a gap in coverage leading to the effects of wide MFNs unravelling, the CMA considers the effect on competition is expected to be greater the greater the coverage of CTM's network of wide MFNs, for two reasons.

- (a) First, the greater the coverage of wide MFNs, the more widely providers' retail prices are restricted and the greater the reduction in (i) rival PCWs' ability and all PCWs' incentives to compete on retail prices; and (ii) rival PCWs' ability to expand.
- (b) Second, as described in Section 9.C, by reducing the ability and incentives on providers subject to wide MFNs to price differentiate, CTM's network of wide MFNs had the effect of reducing price competition between all providers competing on PCWs, compared to the counterfactual. The effect of this reduction in competition between

²⁵³⁶ BGL relies on the following statement from the CMA's DCTs market study: *'even a few suppliers without a wide MFN may be sufficient to maintain some competitive pressure on commissions and consequently prices'*. The CMA notes that this statement does not say that the anti-competitive effects would fully unravel without full coverage, but that a lack of full coverage **may** be sufficient to maintain **some** competitive pressure. Hence the quote is fully consistent with wide MFNs leading an appreciable reduction in competition despite a lack of full coverage. URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 1.16 and CMA, DCTs Market Study: [Appendices to update paper](#) dated 28 March 2017, 'Appendix 5: Competition (Chapter 7)', paragraph 12.

²⁵³⁷ In addition, if wide MFNs were only expected to have an effect on competition, either good or bad, when there was full coverage as suggested by BGL then it is unclear why CTM would have sought to proactively enforce its wide MFNs, as described in Section 8.B.III, when it did not have wide MFNs with all providers listing on its platform.

²⁵³⁸ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 1.4, second bullet and 5.1.

²⁵³⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 394.

providers increases the greater the coverage of the wide MFNs (e.g. because they discourage the use of promotional deals more widely).

Q.129 Therefore, the coverage of CTM's wide MFNs affects the magnitude of the effects with the magnitude of the effects being greater the greater the coverage of CTM's wide MFNs. This is supported by the evidence set out in Section 9 that, despite the lack of full coverage, CTM's wide MFNs had the appreciable effect of: (i) reducing price competition between PCWs; (ii) restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power; and (iii) reducing price competition between home insurers competing on PCWs in the supply of PCW Services for Home Insurance.

Q.130 The CMA's assessment of BGL's representations on the calculation of coverage of CTM's network of wide MFNs is in Section 8.C.

Q.VIII.(b). Effectiveness

Q.131 BGL submitted that the economic literature on wide MFNs generally assumes that wide MFNs are effective. That is, it is assumed that providers do not disregard or ignore the wide MFNs in their contracts.²⁵⁴⁰

Q.132 The economic literature does not directly test the implications of wide MFNs falling short of full effectiveness and even if CTM's wide MFNs were not always fully effective this does not mean that they had no anti-competitive effect.

Q.133 For example, while [HIP] and MoneySuperMarket agreed one promotional deal during the Relevant Period which was in breach of the wide MFN [HIP] had in its contract with CTM, this does not undermine that:

(a) CTM's wide MFNs had an effect on [HIP]'s behaviour outside of that one promotional deal – indeed as set out in Section 8.B.II, [HIP] factored CTM's wide MFN into its pricing strategies; rejected several offers of promotional deals from CTM's rival PCWs in light of enforcement action taken by CTM; and was deterred by CTM's wide MFNs from using other forms of differential pricing.

(b) CTM's wide MFNs more generally restricted the use of promotional deals by MoneySuperMarket (as well as other rival PCWs), for reasons

²⁵⁴⁰ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11.

including the fact that some providers specifically refused proposed promotional deals as set out in Section 9.B.

- Q.134 For the same reasons as set out above in relation to coverage, the greater the effectiveness of CTM's wide MFNs the greater their likely effect on competition.
- Q.135 The CMA's assessment of BGL's more general representations on the effectiveness of CTM's wide MFNs (in terms of the extent to which providers complied with their wide MFNs) is in section P.III of Annex P.

Q.VIII.(c). Price floor

- Q.136 BGL submitted that the economic literature on wide MFNs generally assumes that wide MFNs result in a relative price floor.²⁵⁴¹
- Q.137 The economic literature does not consider what would occur in situations where a wide MFN was not being complied with by providers and the relevant PCW took action to enforce its wide MFNs.²⁵⁴² Therefore, the literature does not consider whether, in such situations, wide MFNs would operate as a price floor or, as BGL argues in this case, a price ceiling.
- Q.138 Rather, the economic literature has considered the long-term outcomes when a PCW, due to its wide MFN, cannot be put at a competitive disadvantage on price when compared to its rivals. In considering the long-term outcomes the economic literature on wide MFNs finds the outcomes to be anti-competitive across a range of modelling assumptions as set out above.
- Q.139 Therefore, examples of individual cases where non-compliance was remedied by a provider, at least in the short term, lowering its price on CTM (i.e. examples of the wide MFN apparently acting as a 'price ceiling') are not at odds with the economic literature and do not undermine its relevance.
- Q.140 Indeed, one of the examples cited by BGL shows how, while in the short-term prices quoted on CTM might be lower due to the wide MFN, it reduces competition between PCWs and between providers competing on PCWs. In particular, as described in Section 8.B.III.(b).(i), [HIP] breached its wide MFN [X] when it entered into a promotional deal with [X] and while CTM might have received a temporarily lower price from [HIP] when it enforced its wide

²⁵⁴¹ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11. Similarly, BGL stated that '*the adverse effects of wide MFNs are dependent on wide MFNs creating a price floor between PCWs*'. URN 6641, Second Oxera Report dated 31 July 2018, paragraph 2.1.

²⁵⁴² As set out above, the literature assumes that wide MFNs are fully effective.

MFN, the long term outcome was that [HIP] subsequently rejected further offers of promotional deals from CTM's rivals.

- Q.141 This supports the view that, while in the short term some providers in some instances achieved compliance by lowering their retail prices on CTM, in the long term CTM's wide MFNs reduced the extent to which relevant providers engaged in differential pricing strategies involving quoting a lower price on CTM's rivals than on CTM when compared to the competitive situation in the counterfactual. As explained in Sections 9.B and 9.C, this in turn restricted competition between PCWs and competition between providers competing on PCWs likely leading to higher commission fees and retail prices.
- Q.142 The CMA's assessment of BGL's more general representations on CTM's wide MFNs acting as a price ceiling is in Annex P.

Q.VIII.(d). Pass through

- Q.143 BGL submitted that the economic literature generally assumes that lower commission fees are passed through to retail prices.²⁵⁴³
- Q.144 The economic literature assumes at least some, but not necessarily full, pass through of lower commission fees.²⁵⁴⁴ Therefore, examples of individual cases where there was not full pass through are not at odds with the economic literature and do not undermine its relevance.
- Q.145 Further, as described in Section 7.D, there is evidence that providers pass through changes in commission fees. In particular, promotional deals were an important part of two of CTM's rivals' strategies and as part of a promotional deal, providers often pay a lower commission fee to the relevant PCW and in turn reduce the retail prices they quote on that PCW. Indeed for promotional deals where a reduction in the commission fee was agreed, the agreed reduction in the retail price was generally larger and often twice as large.
- Q.146 The CMA's assessment of BGL's more general representations on pass through is in Section 7, paragraphs 7.135 to 7.138.

²⁵⁴³ URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.11.

²⁵⁴⁴ For example, Boiks and Corts (2016) and Johansen and Verge (2017) both find that wide MFNs can lead to anti-competitive effects in models where the level of pass through is allowed to vary. URN 9861, Boik, A and Corts, K.S (2016), 'The Effects of Platform Most-Favoured-Nation Clauses on Competition and Entry', *Journal of Law and Economics*, vol.59 and URN 9863, Johansen, B. O. and Verge, T. (2017), 'Platform Price Parity Clauses with Direct Sales', *University of Bergen Working Papers in Economics*, no. 01/17.

Q.VIII.(e). Competition from the direct channel

- Q.147 BGL submitted that anti-competitive effects only arise in the economic literature in situations where PCWs '*are not subject to competition from direct providers*'.²⁵⁴⁵
- Q.148 Three of the papers identified by the CMA do not include a direct channel and therefore these papers are not informative when considering the implications of competition from the direct channel.^{2546, 2547}
- Q.149 Three of the papers identified by the CMA do include a direct channel. In particular:
- (a) Wang and Wright (2016 and 2020) both include a direct channel and find that when the prices on PCWs and the direct channel are the same consumers will always choose PCWs due to lower search costs and the convenience benefits of PCWs. As such in these papers, PCWs do not face competition from the direct channel when either narrow MFNs or wide MFNs are in place
 - (b) Wang and Wright (2020) also considers the implications of providers being able to delist from PCWs. The paper finds that while under wide MFNs '*[commission] fees may be constrained by the ability of firms to delist, the level of [commission] fees and prices is still always higher than without [wide MFNs]. Thus, [wide MFNs] can be viewed as anticompetitive, with the onus on platforms to justify what efficiency-enhancing benefits [wide MFNs] deliver that can't be delivered with less restrictive alternatives.*'²⁵⁴⁸

²⁵⁴⁵ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 339.

²⁵⁴⁶ URN 9861, Boik, A and Corts, K.S (2016), 'The Effects of Platform Most-Favoured-Nation Clauses on Competition and Entry', *Journal of Law and Economics*, vol. 59, page 106; URN 9862, Johnson, J.P. (2017), 'The Agency Model and MFN Clauses', *Review of Economic Studies*, vol. 84(3); URN 9864, Larrieu, T. (2019), 'Most Favoured Nation Clauses on the Online Booking Market', *mimeo*.

²⁵⁴⁷ As noted by BGL, '*Larrieu (2019) finds that MFN clauses are detrimental to consumers if platforms have greater bargaining power, but leads to lower prices and higher consumer surplus when hotels have greater bargaining power and the competition between hotels is high.*' In this regard and as set out in Section 5.E, the CMA has found that CTM has market power and that providers do not have sufficient countervailing bargaining power. Therefore, in terms of bargaining power, the facts of this case are similar to the situation in which Larrieu (2019) find wide MFNs to have anti-competitive effects. URN 9864, Larrieu, T. (2019), 'Most Favoured Nation Clauses on the Online Booking Market', *mimeo*. URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 5.15.

²⁵⁴⁸ Wang and Wright (2020), 'Search Platforms: Showrooming and Price Parity Clauses', *The RAND Journal of Economics*, vol. 51, issue 1.

- (c) Johansen and Verge (2016) considers the implications of providers being able to credibly delist from platforms. In doing this it finds that:²⁵⁴⁹
 - (i) When providers cannot credibly delist from PCWs (i.e. the direct channel is not a credible alternative) wide MFNs can have anti-competitive effects; and
 - (ii) When providers can credibly delist from PCWs (i.e. the direct channel is a credible alternative) whether the overall effect of wide MFNs is pro- or anti-competitive depends on the level of competition between providers.²⁵⁵⁰

Q.150 Therefore, contrary to BGL's assertion, the economic literature has found anti-competitive effects in a situation where the direct channel competes with PCWs.

Q.151 As set out in Section 5, the CMA has found in this case that: (i) the direct channels of providers provide only a weak constraint on PCWs such that the CMA has found that they are not part of the Relevant Market for reasons including the presence of narrow MFNs and the fact that consumers use and value PCWs for a number of reasons that are specific to the PCW channel and cannot be replicated by the alternative acquisition channels of home insurance providers (which is consistent with the conditions in Wang and Wright (2016 and 2020));²⁵⁵¹ and (ii) providers' direct channels do not provide a credible alternative such that providers could delist from PCWs or CTM specifically (which is consistent with the situation in which Johansen and Verge (2016) finds anti-competitive effects).²⁵⁵² Therefore, in relation to the direct channel the conditions in home insurance are consistent with the conditions under which Wang and Wright (2016 and 2020) and Johansen and Verge (2016) find anti-competitive effects.

Q.152 The CMA's assessment of BGL's more general representations on competition from the direct channel are in Section 5.C.

Q.IX. CMA's assessment of BGL's representations on appreciability

Q.153 BGL submitted in response to the SO that the CMA had failed to '*undertake a very careful and considered analysis of appreciability*'²⁵⁵³ and set out the

²⁵⁴⁹ URN 9863, Johansen, B.O. and Verge, T. (2017), 'Platform price Parity Clauses with Direct Sales', *University of Bergen Working Papers in Economics*, no. 01/17.

²⁵⁵⁰ Johansen and Verge (2016) find that wide MFNs are more likely to have pro-competitive effect the stronger the competition between providers.

²⁵⁵¹ See Section 5.

²⁵⁵² See Section 5.

²⁵⁵³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 369.

following factors as a summary of what is required in order to assess appreciability:

- (a) *'Establishing that any effect on competition is appreciable is an essential part of the CMA's case;*
- (b) *The CMA must demonstrate appreciability to the balance of probabilities standard based on strong and compelling evidence;*²⁵⁵⁴
- (c) *Doing so requires a full, context-based analysis, taking into account all of the relevant circumstances;*
- (d) *A wide range of factors may be relevant to appreciability, depending on the market circumstances and the theory of harm concerned;*
- (e) *In relation to certain theories of harm, market coverage will be a critical factor. The European Courts and Commission have indicated that in such cases there is unlikely to be an appreciable effect where less than 30% of the relevant market is covered; and*
- (f) *The Commission's De Minimis Notice also establishes a safe harbour for agreements between parties whose market shares do not exceed certain thresholds.'*²⁵⁵⁵

Q.154 BGL also submitted that *'it is uncontroversial that, in competition cases, the appreciability of the effects is often analysed as a function of three factors'* with the three factors cited by BGL being: (i) the coverage of the agreements;²⁵⁵⁶ (ii) the market share of the parties to an agreement;²⁵⁵⁷ and (iii) any evidence on the actual or likely effects on competition.²⁵⁵⁸

Q.155 In BGL's view, based on these factors, CTM's network of wide MFNs did not have an appreciable adverse effect on competition as the evidence:²⁵⁵⁹

²⁵⁵⁴ The CMA sets out in Section 3 the nature of the standard of proof the CMA is required to apply, namely the civil standard of proof.

²⁵⁵⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 363.

²⁵⁵⁶ BGL stated that *'the greater the share of the market to which the agreements in question apply, the more significant their effects are likely to be'* and *'coverage of the wide MFNs is an important indicator, and driver, of the potential effects on competition'*. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 1.4 and 5.1.

²⁵⁵⁷ BGL stated that *'the market share of the parties concerned in the relevant market'* was a factor analysed to assess appreciability and that *'the higher this market share, the more significant the effects of the agreements in question are likely to be'*. URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 1.4.

²⁵⁵⁸ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 1.4.

²⁵⁵⁹ URN 8484.3, Third Oxera Report dated 22 February 2019, section 2.

- (a) *'is consistent with the relevant market being wider than PCW services for HIPs and the coverage of CTM's wide MFNs being limited'*,²⁵⁶⁰ and
- (b) *'does not support the CMA's provisional findings regarding the effects of CTM's wide MFNs on competition'*.²⁵⁶¹

Q.156 The CMA does not agree with BGL's submission that it has failed to undertake a careful and considered analysis of the appreciability of the anti-competitive effects of CTM's wide MFNs. The CMA's assessment of the evidence that is relevant to appreciability is set out throughout the Decision and summarised in section 9.D. The CMA has carefully considered all relevant factors including those highlighted by BGL as being relevant to the assessment of appreciability, in accordance with the legal framework set out in Section 3.²⁵⁶²

Q.157 As set out in Section 3, an agreement will fall outside the scope of the Chapter I prohibition or Article 101(1) TFEU if it only has an insignificant effect on the market, taking account of the weak position of the parties concerned.²⁵⁶³ The CMA therefore agrees with BGL's submission that *'agreements with only insignificant or negligible effects on competition ... do not breach the Chapter I prohibition or Article 101 TFEU'*.²⁵⁶⁴ The CMA also agrees with BGL that the greater the coverage of the network of similar agreements²⁵⁶⁵ and the greater the market share of the parties involved, the

²⁵⁶⁰ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 2.4. Similarly, BGL stated in its first submission that the CMA's theory of harm, as set out in the DCTs Market Study is unlikely to be a material concern for reasons including the coverage of CTM's wide MFNs in terms of sales. URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.7(a), pages 15 and 16. The CMA considers BGL's specific representations on the Relevant Market in Section 5 and its representations on the coverage of CTM's wide MFNs in Section 8.C.

²⁵⁶¹ URN 8484.3, Third Oxera Report dated 22 February 2019, paragraphs 2.4. The CMA considers BGL's specific representations on the effects of CTM's wide MFNs on competition where relevant in Section 9 as well as in Annexes Q and R.

²⁵⁶² This is the same as the approach that was taken by the CMA in the SO, where the evidence and findings most relevant to appreciability were summarised in section 12 of the SO. This approach reflects that the fact that, although it is necessary for a finding of an infringement of the Chapter I prohibition and Article 101 TFEU to show that the anti-competitive effects identified are appreciable (see Section 3), the factors and evidence relevant to the assessment of effects are also relevant to the assessment of whether those effects were appreciable.

²⁵⁶³ See Section 3.E.

²⁵⁶⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 341. BGL cites *Expedia* in support of its submission on this point. The CMA notes that, as referred to in paragraph 3.19, the CJEU in *Expedia* held that *'if it is to fall within the scope of the prohibition under art.101(1) TFEU, an agreement of undertakings must have the object or effect of perceptibly restricting competition within the common market and be capable of affecting trade between Member States'* (paragraph 17, emphasis added).

²⁵⁶⁵ The greater the coverage of CTM's network of wide MFNs the greater their likely effect on competition for two reasons. First, the greater the coverage of wide MFNs, the more widely providers' retail prices are restricted and the greater the reduction in (i) rival PCWs' ability and all PCWs' incentives to compete on retail prices; and (ii) rival PCWs' ability to expand. Second, as described in Section 9.C, by reducing the ability and incentives of providers subject to wide MFNs to price differentiate, CTM's network of wide MFNs had the effect of reducing price competition between all providers competing on PCWs, compared to the counterfactual. The effect of this reduction in competition between providers increases with greater coverage of wide MFNs (e.g. because they discourage the use of promotional deals more widely). Consistent with this, BGL stated that the effect is smaller the smaller the coverage as: *'[t]he greater the number and size of unrestricted HIPs, the greater the scope for*

greater the likelihood that the effect on competition is appreciable.²⁵⁶⁶ As set out in this Decision and summarised in section 9.D., the CMA finds that the effects of CTM's wide MFNs on competition were neither insignificant nor negligible.²⁵⁶⁷

Q.158 BGL refers to the *Delimitis* line of cases and the European Commission's De Minimis Notice as providing support for the fact that '*a foreclosure theory is unlikely to give rise to an appreciable effect on competition unless the agreement or agreements concerned cover 30% of the relevant market.*'²⁵⁶⁸ It also submitted that CTM's agreements containing wide MFNs fall within the '*safe harbour*' of the De Minimis Notice²⁵⁶⁹ and that this '*should, at the very least, have prompted the CMA to undertake a very careful and considered analysis of appreciability.*'²⁵⁷⁰

Q.159 Contrary to BGL's assertions, the CMA has undertaken a '*careful and considered analysis*' of appreciability in this Decision, as summarised in Section 9.D. In particular, the CMA has assessed the market coverage of CTM's network of wide MFNs and has applied the *Delimitis* line of cases in so doing.²⁵⁷¹ As regards the De Minimis Notice, the CMA has found that CTM accounted for more than 50% of sales made through PCWs by volume throughout the Relevant Period²⁵⁷² and that the market coverage of CTM's network of wide MFNs was approximately 40%,²⁵⁷³ both well above the thresholds in the De Minimis Notice.²⁵⁷⁴ The CMA therefore disagrees that CTM's network of wide MFNs fell within the safe harbour of the De Minimis Notice.

Q.160 Furthermore, as set out in Sections 9.B and 9.C, the CMA has found that CTM's wide MFNs had an effect on competition between PCWs and

PCWs to pursue competitive strategies based on promotional deals/tiered commission structures. Similarly, the greater the number and size of unrestricted HIPs, the greater their scope to compete on the basis of promotional deals, and to generate any consumer benefits available from such a strategy'. URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 394.

²⁵⁶⁶ See, in particular, Vertical Guidelines, paragraph 114 (referred to at paragraph 3.20).

²⁵⁶⁷ As stated by the CAT in *Achilles* in this context: 'Appreciable does not mean substantial; it means more than de minimis or insignificant'. See paragraph 3.19.

²⁵⁶⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 348 to 362.

²⁵⁶⁹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraphs 364 to 368. In that context the CMA notes that BGL wrongly submitted that '*Article 8 [of the De Minimis Notice] specifies that an agreement is not appreciable where the aggregate market shares of the parties to the agreement does not exceed 15% on any of the relevant markets affected by the agreement*' (URN 8484.5, BGL's Response to SO dated 22 February 2019, paragraph 357). However, paragraph 8 of the De Minimis Notice is clear that, in the case of a vertical agreement, each party's market share must not exceed 15% in order for that provision to apply.

²⁵⁷⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 369.

²⁵⁷¹ See section 8.C.

²⁵⁷² See section 5.E.I.

²⁵⁷³ See section 8.C.

²⁵⁷⁴ Moreover, as set out in section 3, paragraph 3.21, the thresholds in the De Minimis Notice are merely guidelines and are not binding. The CMA is not precluded therefore from finding that a vertical agreement infringes Chapter I or Article 101 TFEU below the thresholds. See: the Court of Appeal judgment in *Network Rail Infrastructure Limited v Achilles Information Limited*, [2020] EWCA Civ 323, paragraph 93.

between providers competing on PCWs that went beyond the 40% of sales made through PCWs by providers subject to wide MFNs. It is also particularly relevant in the circumstances of this case that the effect of CTM's wide MFNs was to reduce price competition between PCWs and between providers competing on PCWs, meaning that the CMA's findings are not limited to concerns about foreclosure (which is the focus of the *Delimitis* line of case law referred to by BGL). Accordingly, the CMA considers that the 30% coverage threshold in the De Minimis Notice (under which the European Commission considers cumulative foreclosure effects are unlikely to exist) is of limited relevance when considering the appreciability of the effect on price competition between PCWs and between providers competing on PCWs. The extent of the coverage of CTM's network of wide MFNs, including the fact that this network included several larger providers (in terms of sales through PCWs) is a highly material factor that clearly indicates that those agreements were liable to have an appreciable adverse impact on one of the key parameters of competition, namely price.

Q.161 BGL also refers in its Response to the SO to three judgments, which it submits demonstrate the breadth of analysis required in carrying out an appreciability assessment.²⁵⁷⁵ However, it is not clear, beyond providing examples of the CJEU and the CAT considering the issue of appreciability, how BGL considers these cases are relevant to the specific assessment of CTM's network of wide MFNs:

- (a) BGL submitted that in *Salonia v Poidomani* the CJEU '*excluded an appreciable effect on the basis that alternative distribution channels were available*'. However, in the judgment the CJEU did not in fact do this. The CJEU simply stated that the assessment of appreciability for newspapers and periodicals is stricter than for other products, and referred to the fact that it is was necessary for the relevant national court, when assessing whether there was an appreciable restriction of trade between EU Member States, to take into account, among other things, that there may be '*channels of distribution other than those governed by the agreement*'.²⁵⁷⁶ As set out in Section 5, among other relevant factors, the CMA has carefully assessed the relevant market and taken into account constraints from other channels, including

²⁵⁷⁵ URN 8484.5, BGL's Response to SO dated 22 February 2019, paragraph 346. The judgments referred to are: Case C-126/80, *Maria Salonia v Giorgio Poidomani and Franca Baglieri (née Giglio)*, EU:C:1981:136 ('*Salonia v Poidomani*'), paragraphs 15 to 17; Case C-180/98, *Pavlov v Stichting Pensioenfonds Medische Specialisten*, EU:C:2000:428 ('*Pavlov*'), no paragraph identified by BGL; *Independent Media Support v Ofcom* [2008] CAT 13, paragraph 112.

²⁵⁷⁶ *Salonia v Poidomani*, paragraph 17.

providers' direct channels, and has also taken into account the market coverage of CTM's network of wide MFNs.

- (b) BGL referred to the CJEU concluding in *Pavlov* that an '*arrangement had no appreciable effect because it had only a marginal and indirect influence on the final cost of the services concerned*'.²⁵⁷⁷ The CMA notes that the '*arrangement*' BGL refers to was a decision by the members of the medical profession to set up a pension fund entrusted with the management of a supplementary pension scheme.²⁵⁷⁸ The restriction in question was found by the CJEU not to be appreciable on the basis that the cost to the members of the medical profession of the pension scheme was insignificant when compared to other factors such as medical fees or the cost of medical equipment.²⁵⁷⁹ Moreover, the CJEU observed that the pension scheme allowed risk-sharing and achieved economies of scale.²⁵⁸⁰ By contrast, as explained in Section 8.A.I, CTM's wide MFNs imposed a contractual restriction on the relevant home insurance providers which prevented them from quoting a lower retail price on other PCWs than the price they quoted on CTM. Unlike in *Pavlov*, the restriction imposed by CTM's wide MFNs was directly related to the retail price that providers are able to quote on rival PCWs.
- (c) BGL refers to the fact that in *Independent Media Support*, the CAT upheld Ofcom's decision that there were no appreciable effects because of, among other reasons, the existence of three credible suppliers.²⁵⁸¹ The CMA notes that this finding was made by Ofcom in a very different market context from the present case, and related to potential concerns about the foreclosure of the market for the supply of access services to UK television broadcasters. By contrast, the CMA's finding in this Decision is not limited to a foreclosure effect, as it relates to the CTM's wide MFNs having the appreciable effect of reducing price competition between PCWs and reducing price competition between home insurers competing on PCWs.

²⁵⁷⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 346.

²⁵⁷⁸ *Pavlov*, paragraph 99.

²⁵⁷⁹ *Pavlov*, paragraph 95.

²⁵⁸⁰ *Pavlov*, paragraph 96.

²⁵⁸¹ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 346.

Q.162 In relation to the evidence on the effects on competition,^{2582, 2583} as described in Section 9, the CMA has found that during the Relevant Period, CTM's network of wide MFNs had the appreciable effect of preventing, restricting or distorting:

- (a) competition between PCWs, by reducing price competition and restricting the ability of CTM's rival PCWs to expand, enabling CTM to maintain or strengthen its market power; and
- (b) competition between providers competing on PCWs, by reducing price competition.

Q.163 BGL, in criticising the CMA for not having undertaken a careful and considered analysis of appreciability, makes various additional submissions in which it refers to evidence that it considers does not support the CMA's finding that CTM's network of wide MFNs had an appreciable effect on competition.²⁵⁸⁴ The CMA has addressed each of these points in setting out evidence and findings elsewhere in the Decision. However, the CMA summarises below the points made by BGL and the CMA's assessment.

Q.164 BGL submitted in particular that its network of wide MFNs did not have appreciable effects on competition because:

- (a) Over half of sales made through PCWs were unrestricted²⁵⁸⁵ and that CTM's wide MFNs *'cannot be considered to have an appreciable*

²⁵⁸² BGL's specific representations on each theory of harm (see URN 8484.5, BGL's response to the SO dated 22 February 2019, paragraphs 370 to 392) are considered where relevant throughout this Decision.

²⁵⁸³ In its first submission, BGL stated that any harm arising from CTM's wide MFNs is small and likely to be outweighed by the benefits derived from CTM's wide MFNs. The CMA has considered BGL's representations on the benefits of CTM's wide MFNs in Section 10. In its representations on the size of the harm, BGL submitted that the CMA's analysis in the DCTs Market Study focused on a single metric (commission fees), and that the CMA considered that wide MFNs increased commission fees by 3 to 4%. Further, BGL noted that even if it was assumed that 100% of any increase in commission fees was passed through to retail prices this would only lead to a small change in retail prices (BGL estimated £1.40 or 0.5%). The CMA does not accept these submissions. In particular: (i) Promotional deals, where the reduction in the retail price is generally twice the size of the reduction in commission fee, are one of the main ways in which PCWs have tried to compete (including on commission fees) over the Relevant Period, see Section 7. Accordingly, any reduction in commission fee is magnified in terms of the impact on retail prices. (ii) It is misrepresentative only to consider the static impact on one consumer's retail price, since the effect of the wide MFN is magnified by the number of PCW sales such that the cumulative effect is material. (iii) BGL's submission does not take into consideration the dynamic impact of wide MFNs on competition between PCWs (i.e. its impact on expansion) and all home insurance providers, see Sections 9.B and 9.C. In addition, BGL's analysis underestimates the relative impact of the change in commission fees on new business retail prices. In this regard, BGL's analysis considers the relative impact based on the average retail price for all home insurance policies (including renewals). As outlined in Section 5.C.III.(c), renewals are materially more expensive than retail prices for new business sold through PCWs. See URN 5266A, First BGL Submission dated 21 December 2017, paragraphs 4.24 and 4.27, page 19 and URN 5266A, First Oxera Report dated 21 December 2017, pages 63 and 64.

²⁵⁸⁴ For example, as summarised at URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40.

²⁵⁸⁵ Specifically BGL stated that *'suggests that more than half of all PCW-based home insurance sales were entirely unrestricted, which provided considerable scope for PCWs and [home insurance providers] to pursue*

restriction of competition by effect as ‘a significant number of [home insurance providers] never agreed to [wide MFNs] in the first place or did so only for certain brands.’²⁵⁸⁶ The CMA disagrees. In particular, as described in Section 8.C, CTM’s network of wide MFNs covered providers accounting for a significant proportion of the Relevant Market. This includes several larger providers (in terms of sales through PCWs)²⁵⁸⁷ who were willing to and did seek to use differential pricing across PCWs and with which two of CTM’s three main rivals were attempting to implement their strategies, as described in Section 9.B.I.(a). Moreover, as set out in Section 9.B and Section 9.C the CMA has found that CTM’s wide MFNs had the market wide effects of reducing price competition between all PCWs and between all providers competing on PCWs.

- (b) *‘A significant number of [home insurance providers] had a policy of offering the same prices across all PCWs, whether there was a WMFN in place or not. The CMA has not established a causal link between the existence of a WMFN and the pricing policy of particular [home insurance providers] i.e. that, absent the [wide MFN], the relevant [home insurance provider] would have acted differently.’*²⁵⁸⁸ The CMA agrees that the observable behaviour of the relevant providers in the Relevant Period is relevant to the CMA’s assessment, but it is also necessary to consider whether such behaviour and competition more generally would have been different absent CTM’s network of wide MFNs. Similarly, the CMA does not disagree that many providers’ pricing strategies were to price uniformly across PCWs and that there are legitimate commercial reasons unconnected with CTM’s wide MFNs for the relevant providers wanting to adopt such a strategy.²⁵⁸⁹ However, the CMA disagrees that it can be assumed from the relevant providers’ actual or preferred strategies in the Relevant Period – or views as to what their preferred strategies would be absent CTM’s wide MFNs²⁵⁹⁰ – that providers’ strategies would have been the same

competitive strategies of the kind described in the [Statement of Objections], had they so wished to’. BGL also rely on the following statement from the CMA’s DCTs market study: ‘even a few suppliers without a wide MFN may be sufficient to maintain some competitive pressure on commissions and consequently prices’. The CMA notes that this statement does not say that the anti-competitive effects would fully unravel without full coverage, but that a lack of full coverage **may** be sufficient to maintain **some** competitive pressure. That is the quote is fully consistent with wide MFNs leading to an appreciable reduction in competition despite a lack of full coverage. SO response, para 398 and 399 and CMA, DCTs Market Study: [Appendices to update paper](#) dated 28 March 2017, ‘Appendix 5: Competition (Chapter 7)’, paragraph 12.

²⁵⁸⁶ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 40, bullet (ii).

²⁵⁸⁷ See Annex E.

²⁵⁸⁸ URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 40, bullet (iii).

²⁵⁸⁹ Including the existence of narrow MFNs.

²⁵⁹⁰ For example, several providers stated in response to statutory information notices that they were unwilling to engage in promotional deals during the Relevant Period, but have since gone on to agree promotional deals since CTM stopped enforcing its wide MFNs. See Section 9.A.III.

absent CTM's network of wide MFNs. The strategies used by providers reflect (and may be facilitated by) the competitive pressure to which such providers are subject in the presence of CTM's network of wide MFNs, which would have been different in the counterfactual absent CTM's wide MFNs. The CMA finds, as set out in Section 9.A, that absent CTM's wide MFNs the relevant providers would have had not only a greater ability to, but importantly, greater incentives to differentiate their prices across PCWs. Their behaviour in the Relevant Period, or views as to their likely behaviour absent CTM's wide MFNs, while relevant are therefore not determinative, and the CMA needs to consider all the evidence in the round to determine whether on the balance of probabilities competition would have been appreciably stronger in the counterfactual, as it has done in this Decision.²⁵⁹¹

- (c) *'There is considerable evidence in the [home insurance providers'] responses to the CMA, and in the data room to which both the CMA and BGL's advisers have had access, that the [wide MFNs] had at most a negligible effect, even in respect of the eight [home insurance providers] who in one way or another had told the CMA the contrary'.*²⁵⁹² The CMA disagrees with this characterisation of the evidence from providers for the reasons set out in this Decision. In particular, the CMA has found that there was widespread compliance by the relevant providers with their wide MFN obligations.²⁵⁹³ Such compliance included providers taking specific actions (such as adjusting their prices or rejecting offers of promotional deals from CTM's rivals) in order to comply with their wide MFNs. CTM also considered that its network of wide MFNs was important and effective in securing lowest prices.²⁵⁹⁴
- (d) *The evidence shows that the appetite of [home insurance providers] for promotional deals – a key part of the CMA case – was extremely limited' and that 'there is no evidence of [home insurance providers] wishing to pursue differential pricing on base retail prices.'*²⁵⁹⁵ The CMA disagrees with this characterisation of the role of differential pricing in

²⁵⁹¹ As set out in section 3.A., it is necessary to assess whether the body of evidence viewed as a whole (referred to by the CAT as the 'totality of evidence') meets the required standard of proof (see *Agents' Mutual v Gascoigne Halman* [2017] CAT 15, paragraph 203).

²⁵⁹² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullets (iii), (xi) and (xii).

²⁵⁹³ See section 8.C.

²⁵⁹⁴ See section 8.B.

²⁵⁹⁵ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (iv).

providers' pricing strategies for the reasons set out in Section 7.D.II and Annex K.

- (e) *'Even from the point of view of the PCWs, the incentives for promotional deals are more limited than the CMA supposes, as Oxera demonstrates. For example, GoCompare did not generally consider promotional deals worthwhile, and neither did CTM itself. The evidence from other PCWs is meagre, and since the abolition of [wide MFNs], promotional deals have not become more frequent.'*²⁵⁹⁶ The CMA disagrees with this for the reasons set out in Section 7.C and Annex K (in relation to the appetite of PCWs to agree promotional deals) and Section 9.B and this Annex, Q (in relation to the impact of CTM's wide MFNs on the use of promotional deals by PCWs).
- (f) *'The chief parameters of competition between PCWs are marketing, advertising and the functionality and ease of use of the website, as customers take for granted the fact that they will be shown the best prices on PCWs, due to the intrinsic nature of their business. Promotional deals play, at most, a small part in that mix, even for the small number of HIPs prepared to enter into them.'*²⁵⁹⁷ The CMA disagrees with this characterisation of competition between PCWs for the reasons set out in Section 7.C, finding that price is an important parameter of competition.
- (g) *'No adverse inferences can be drawn from the existence of price monitoring by CTM' as it 'is a standard and unobjectionable activity undertaken by all PCWs.'*²⁵⁹⁸ The CMA agrees that monitoring prices on rival PCWs is not itself inherently anti-competitive. However, monitoring can be used to facilitate anti-competitive behaviour.²⁵⁹⁹ In the present case, CTM considered it worthwhile to expend the time and resources in systematically monitoring insurance providers' offerings on other PCWs as a core part of its pricing strategy in which its wide MFNs played an integral role. Importantly, the CMA finds, as described in

²⁵⁹⁶ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (v). In its first submission BGL also stated that the CMA's theory of harm, as set out in the DCTs Market Study is unlikely to be a material concern for reasons including the extent to which discounted commissions are passed through to the retail prices consumers pay. The CMA disagrees and considers that discounted commission fees are passed through to consumers in the context of promotional deals as set out in Section 7.E. URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.7(d), page 16.

²⁵⁹⁷ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (vi). Similarly, BGL stated in its first submission that the CMA's theory of harm, as set out in the DCTs Market Study is unlikely to be a material concern for reasons including the dimensions on which PCWs can and do compete. URN 5266A, First BGL Submission dated 21 December 2017, paragraph 4.7(c), page 16.

²⁵⁹⁸ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (vii).

²⁵⁹⁹ For example, the Vertical Guidelines refer, in paragraphs 48 and 50 respectively, to the relevance, and potential effectiveness, of a monitoring system in the context of resale price maintenance (RPM) and restrictions on the territory into which or the customers to whom the buyer may sell goods or services.

Section 8.B, that CTM's systematic monitoring of the prices providers were offering on other PCWs: (i) incentivised and motivated the relevant providers to comply with CTM's wide MFNs; and (ii) where necessary, enabled CTM to take action to secure compliance with its wide MFNs.

- (h) *'[Wide MFNs] are intrinsically ineffective in most cases because they only operate on a like for like basis and because of the difficulty in comparing offers, differences in question sets, mapping difficulties, time lags and changes in the underlying pricing of policies, all of which can, and do, change very frequently. In addition, a WMFN can be easily circumvented by offering slightly different terms (e.g. as to an excess, additional cover etc.) or using different brands.'*²⁶⁰⁰ The CMA disagrees that CTM's wide MFNs were '*intrinsically ineffective*' for the reasons set out in Section 8.B and Annex P. Furthermore, if – as BGL has now submitted – it considered that its wide MFNs were '*intrinsically ineffective*', it is surprising that CTM retained them throughout the Relevant Period, despite the awareness on the part of senior management of the legal risks involved and requests from home insurance providers to remove wide MFNs from their contracts.²⁶⁰¹ It is also surprising that it invested time and resources in monitoring and securing compliance and repeatedly refused their removal from contracts.
- (i) *'Throughout the Relevant Period BGL maintained significant tolerances, the level of which was generally unknown to the HIPs, that gave significant flexibility for prices on the CTM website to be above those on other websites for considerable periods and to a material extent.'*²⁶⁰² As set out in Section 8.A.II.(d), CTM's compliance thresholds reflected the imperfect nature of the Consumer Intelligence data it used for monitoring and the complexity in comparing providers' pricing across PCWs. However, the CMA does not consider that the fact that CTM applied internal tolerance thresholds undermines the evidence that there was widespread compliance with CTM's wide MFNs or that CTM used its systematic monitoring to enforce its wide MFNs. Further, as set out in Section 8.A.II, CTM's wide MFNs were integral to its competitive strategy in home insurance and effective in achieving its objectives, and CTM believed that, in the absence of its

²⁶⁰⁰ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (viii). Similarly, BGL stated in its first submission that the CMA's theory of harm, as set out in the DCTs Market Study, is unlikely to be a material concern for reasons including the scope of CTM's wide MFNs which operate on an exact like-for-like basis. URN 5266A, First BGL Submission dated 21 December 2017, paragraph 47(b), page 16.

²⁶⁰¹ See Section 8.B.

²⁶⁰² URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (ix).

network of wide MFNs, it would be subject to greater price competition, increasing pressure on commission fees and reducing its profits.

- (j) *'The evidence is that, on average, over a quarter of the brands covered by a WMFN were pricing more than 30% of risks more expensively on CTM each month over the period January 2016 to November 2017. There is nothing to suggest that this percentage would have been higher in any presumed counterfactual.'*²⁶⁰³ First, the CMA disagrees with BGL's interpretation of the results of Oxera Coverage and Compliance analysis. The CMA does not consider that the analysis shows *'a situation of widespread disregard'* as claimed by BGL,²⁶⁰⁴ but if taken at face value the proportion of brands, risks and policies that Oxera considered to be 'compliant' with CTM's wide MFNs are significant (see paragraph 8.95). Second, the CMA does not consider that it is appropriate to place any weight on the results of Oxera's Coverage and Compliance analysis as it is subject to a number of significant limitations that affect its robustness (see paragraph 8.95 and Annex N).

²⁶⁰³ URN 8484.5, BGL's Response to the SO dated 22 February 2019, paragraph 40, bullet (x).

²⁶⁰⁴ URN 8484.5, BGL's Response to the SO dated 22 February 2019, section 4.15.

ANNEX R: ASSESSMENT OF OXERA'S ECONOMETRICS

R.I. Introduction

R.1 This Annex assesses the quantitative analyses into the impact of the wide MFNs included in the four Oxera Reports BGL has submitted to the CMA during the Investigation:

- (a) an analysis of the impact of the prohibition of wide MFNs in private motor insurance, submitted in December 2017;²⁶⁰⁵
- (b) two analyses of the impact of CTM's decision to stop enforcing its wide MFNs on relative and absolute prices in home insurance, submitted in February 2019;²⁶⁰⁶ and
- (c) an analysis of the impact of wide MFNs on the commission fees charged by PCWs to providers in home insurance, submitted in February 2020.²⁶⁰⁷

R.2 In all of these analyses Oxera concludes that there is no evidence of CTM's wide MFNs having a significant negative (if any) impact on competition.

R.3 Following a careful review,²⁶⁰⁸ the CMA considers that these analyses are affected by important methodological and data-related issues, as well as general market features which were not taken into account by Oxera. These issues materially undermine both the robustness of the results and Oxera's interpretation of the results, as explained below. Further, the CMA has concluded that reliable econometric modelling is unlikely to be possible in this market, as explained below. Overall, this means that the CMA places no evidential weight on Oxera's analyses as they do not provide reliable evidence of CTM's wide MFNs having no harmful effect on competition.

²⁶⁰⁵ See URN 5266A, First Oxera Report dated 19 December 2017, section 4.4. The First Oxera Report provides an assessment of the prohibition of wide MFNs in private motor insurance.

²⁶⁰⁶ See URN 8484.3, Third Oxera Report dated 22 February 2019, section 9. The Third Oxera Report provides an assessment of the impact of CTM's wide MFNs on CTM's relative prices in section 9.D and on providers' absolute prices in section 9.E. The CMA notes that the former represents an update of the analysis submitted pre SO in URN 6641, Second Oxera Report dated 31 July 2018, section 3.

²⁶⁰⁷ See URN 10460, Fourth Oxera report dated 14 February 2020, section 7.

²⁶⁰⁸ The CMA has validated the results of these analyses, except for the one in the private motor insurance sector, for which the CMA's assessment exclusively relies on what is included in the report rather than on an in-depth review of the data and the code underlying the analysis. Given the less developed nature of this analysis and its limited relevance for the case (i.e. it applies to the motor insurance sector), the CMA considers this approach to be appropriate for the analysis presented in the First Oxera Report.

R.II. BGL's representations on the impact of wide MFNs in private motor insurance

R.II.(a). Summary of the First Oxera Report

- R.4 In December 2017, BGL submitted an analysis carried out by Oxera of the impact of the prohibition of wide MFNs on PCW competition in the private motor insurance sector after the PMI Order 2015.²⁶⁰⁹ In its analysis Oxera considered different competitive metrics over different time periods. Except for one metric for which information is available only until June 2016, Oxera's analysis covers at least the period from January 2014 to June 2017.
- R.5 Oxera's starting point for the analysis is that, if wide MFNs were having an adverse impact on PCW competition, one would expect the PMI Order 2015 to have had a stronger and negative impact on the performance of CTM, as the last PCW to remove wide MFNs, relative to other PCWs. In an attempt to control for other factors that may influence the relative competitiveness of each PCW, Oxera assessed CTM's performance in private motor insurance alongside its performance in home insurance, where CTM's use of wide MFNs remained unchanged until 30 November 2017.
- R.6 Oxera used a twofold approach to assess whether wide MFNs had an adverse impact on PCW competition in private motor insurance:
- (a) It performed a graphical analysis looking at trends in the following metrics for private motor insurance and home insurance:
 - (i) CTM's price competitiveness (i.e. the frequency with which CTM offered the best retail price in the market overall - rather than by brand - as measured in a top-of-screen analysis).
 - (ii) CTM's share of the total number of quotes generated through PCWs.
 - (iii) The share of new business policies acquired through the PCW channel.
 - (iv) CTM's share of new and switched policies and CTM's average commissions.

²⁶⁰⁹ See Section 2.C.II, the PMI Order 2015 came into force on 19th April 2015 and prohibited the use of wide MFNs in private motor insurance, following the PMI Market Investigation.

- (b) It carried out a statistical analysis looking at changes in CTM's brand-specific competitiveness of prices in private motor insurance compared to home insurance before and after the ban.

- R.7 The results for the different metrics were mixed, showing that, since the PMI Order 2015 came into force, CTM's share of new business sales or quotes and CTM's average commissions have not been significantly affected by the prohibition, while the relative competitiveness of CTM's prices may have improved, decreased or stayed unchanged depending on the scenario considered. In relation to PCWs' share of new business sales, Oxera's results show that there was only limited growth in private motor insurance after the PMI Order 2015 which is in contrast with significant growth in home insurance. According to Oxera, one possible explanation of this is that the prohibition of wide MFNs in motor insurance had a negative effect on consumer confidence in PCWs.
- R.8 Overall, Oxera interprets these findings as indicative that the prohibition of wide MFNs did not have any discernible positive impact on PCW competition in private motor insurance.

R.II.(b). The CMA's assessment

- R.9 The CMA considers that, overall, the First Oxera Report does not provide evidence of CTM's wide MFNs having had no harmful effect in private motor insurance. This is because the approach taken by Oxera, namely, focussing on CTM's relative price competitiveness, cannot robustly establish the impact of the prohibition of wide MFNs on competition between PCWs. In particular, an increase in CTM's price competitiveness after the PMI Order 2015 would be consistent with CTM having started to compete more strongly following the prohibition of wide MFNs and would not be conclusive evidence that the wide MFNs in the private motor insurance sector had no harmful effects on competition.
- R.10 In addition to this important limitation, the CMA considers that Oxera's analyses are likely to be affected by other material methodological issues. These are discussed in turn below.

R.II.(b).(i). Assessment of Oxera's graphical analysis

- R.11 In relation to the graphical analysis described in paragraph R.6(a) above, the CMA considers that the chosen metrics may not be directly responsive to the prohibition of the wide MFNs for one or more of the following reasons:

- (a) The level of aggregation of the metric (in particular, combining brands which were and were not affected by the removal of the wide MFNs);
- (b) Confounding factors that could affect the metric but that the analysis does not control for;
- (c) The volatility of the metric; and
- (d) The limited length of the period covered by the analysis since the PMI Order 2015 prevented the use of the wide MFNs in the private motor insurance sector.

R.12 The relevant reasons are discussed for each metric in turn.

R.13 In relation to the metric 'CTM's price competitiveness', the CMA considers that:

- (a) By measuring the proportion of risks which are priced equally or lower on CTM relative to other PCWs across all brands (combining brands which were and were not affected by the removal of wide MFNs), the analysis of this metric overlooks that wide MFNs seek to require parity at the brand level and the way this would consequently affect the relevant providers' pricing and PCW competition.²⁶¹⁰
- (b) This metric is not suitable for isolating the effect of the prohibition of wide MFNs on CTM's performance because it is influenced by factors which are independent of the use of wide MFNs, such as insurance providers' listing behaviour (as highlighted by Oxera itself).
- (c) The degree of volatility of the metric both before and after the ban, due at least partly to the limitation of the data used for the analysis,²⁶¹¹ suggests that the metric is unlikely to be a good measure for assessing the impact of the removal of wide MFNs, because volatility makes it very difficult to identify (visually or analytically) any impact in the data.

R.14 Although the above factors explain why the metric 'CTM's price competitiveness' may fail to capture the effect of the prohibition of wide MFNs, the CMA notes that the private motor insurance trends depicted in figure 4.1,

²⁶¹⁰ In particular, focussing on the cheapest quote across PCWs for each risk profile, this version of the metric 'CTM's price competitiveness' masks the variation which is important to assess the impact of the wide MFNs on the pricing behaviour of the relevant providers. For example, if wide MFN providers changed behaviour following the removal of the wide MFN, but prior to the PMI Order never offered the cheapest quote for the risk profile (for example because offering high quality service in general) then 'CTM's price competitiveness' metric would not register any change. The same would occur if, following the removal of the wide MFNs, overall all brands became cheaper due to a general increase in competition.

²⁶¹¹ For a discussion of the limitations affecting the Consumer Intelligence data see Annex O.

figure 4.2 and figure 4.3 of the First Oxera Report are consistent with an initial reduction in competitiveness around the date of the PMI Order 2015 followed by a competitive response from CTM. Oxera's analysis may therefore suggest that the removal of the wide MFNs had at first a negative impact on CTM's performance.

- R.15 As regards the metrics 'CTM's share of new and switched policies' and 'CTM's share of total number of quotes' the CMA notes that they are likely to be materially influenced by factors other than the use of wide MFNs, like the level of marketing spend by PCWs. The fact that Oxera's graphical analysis cannot control for the influence of these other factors means that the graphs at figure 4.4, figure 4.5 and figure 4.8 of the First Oxera Report are highly unlikely to capture the impact from the removal of wide MFNs. In addition, CTM is not the only PCW which removed wide MFNs from its contractual agreements in 2015 as GoCompare also removed them in the same year. While this may be indirectly controlled for in graphs at figures 4.2 and 4.3 in relation to CTM's price competitiveness where GoCompare is excluded from the analysis, Oxera's graphical analysis of CTM's shares does not take this into account.
- R.16 Similarly, the lack of increase in the 'share of new private motor insurance policies acquired through PCWs' relative to home insurance can be explained by multiple factors and therefore cannot be confidently attributed to the removal of wide MFNs following the PMI Order 2015. For example, the trends depicted at figure 4.6 and figure 4.7 of the First Oxera Report are also consistent with PCWs growing faster as a source of new business in sectors where they are relatively less developed (such as home insurance).
- R.17 In relation to the metric 'CTM's average commissions', the CMA has identified two factors which could explain why Oxera's analysis cannot effectively identify any potential effect of the ban:
- (a) Oxera's analysis does not control for any confounding factors determining the levels of the commissions charged (e.g. negotiating power); and
 - (b) the limited length of the period covered by Oxera's analysis since the PMI Order 2015 prevented the use of wide MFNs in the sector. Oxera's analysis relies on yearly data on CTM's commission fees charged to insurance providers over the period 2011 to 2016, which involves only one period after the PMI Order 2015 came into force. In light of the fact that commission fees are only negotiated once a year, the CMA considers that observing only one period of data since the ban may not be sufficient to identify an effect.

R.II.(b).(ii). Assessment of Oxera's statistical analysis

R.18 In relation to the statistical analysis described in paragraph R.6(b) above, the CMA considers that Oxera's analysis is affected by the following data and methodological issues:

- (a) As discussed in Annex O, there are limitations in Consumer Intelligence's data, which mean that a provider can still be seeking to set the same retail price on each PCW even if this does not appear to be the case purely based on Consumer Intelligence's data. Indeed, these factors were taken into account by CTM when it was seeking to monitor and enforce its wide MFNs (e.g. in its monthly snapshots), (see Section 8). Given this, the CMA does not consider that Consumer Intelligence's data alone is sufficiently robust to conduct a comparison of base retail prices and changes in the level of price parity.
- (b) The CMA considers that the fact that Oxera could not find a statistically significant impact of the PMI Order 2015 on CTM's price competitiveness could be due to further data issues affecting the metric used for the statistical testing (CTM's competitiveness scores), in particular possible measurement error and volatility.²⁶¹²
- (c) Home insurance is unlikely to be a good comparison group (in statistical terms) to isolate changes in CTM's brand-specific price competitiveness due to the removal of wide MFNs in private motor insurance. While the CMA agrees that competitive trends in home insurance and private motor insurance can to some extent be compared, there are important differences between the two sectors (including dynamics in shopping behaviour as highlighted by Oxera itself).²⁶¹³

R.19 For the reasons above, the CMA concludes that the results of Oxera's statistical analysis are unlikely to be robust and should therefore not be interpreted as evidence of a lack of competitive impact of wide MFNs in private motor insurance.

²⁶¹² Measurement error and volatility affecting CTM's competitiveness scores for home insurance is discussed at paragraphs R.43 to R.45 below.

²⁶¹³ Differences between the home insurance and private motor insurance sectors are discussed at paragraph P.17 of Annex P.

R.III. BGL's representations on the impact of wide MFNs in home insurance

R.III.(a). An overview of Oxera's econometric analyses included in the Third Oxera Report and the Fourth Oxera Report ²⁶¹⁴

- R.20 As part of its representations on the SO and on the First LoF, BGL submitted three econometric analyses of the effects of CTM's wide MFNs in home insurance. Based on these models BGL concludes that the empirical evidence is not consistent with the CMA's theory of harm.
- R.21 The Third Oxera Report, submitted in response to the SO in February 2019, includes two econometric models focussing on the impact of CTM's wide MFNs on prices. The first model (Model 1) looks at relative prices across PCWs and is aimed at testing whether CTM's wide MFNs led to:
- (a) a reduction in the proportion of risks priced more expensively on CTM than other PCWs; and/or
 - (b) an increase in the proportion of risks priced the same on CTM as on other PCWs.
- R.22 The second model (Model 2) looks at the impact of CTM's wide MFNs on absolute prices across all PCWs and aims at testing whether CTM's wide MFNs led to higher absolute prices across PCWs.
- R.23 The Fourth Oxera Report, submitted in response to the First LoF in February 2020, includes a third econometric model (Model 3) aimed at assessing the impact of wide MFNs on PCW commission fees in home insurance in general.
- R.24 After a high-level description of the approach adopted by Oxera for its econometric analyses, the next section also provides a detailed description of the methodology used for each model. This Annex then continues with a summary of Oxera's findings and interpretation and then the CMA's assessment.

²⁶¹⁴ The Second Oxera Report (URN 6641 Second Oxera Report dated 31 July 2018, section 3) was submitted by BGL before the CMA issued its SO and included a preliminary version of Oxera's econometric analysis into the effects of CTM's wide MFNs on relative prices, presented in section 3 of the Second Oxera Report. However, given that the same analysis was extended and refined for BGL's representations on the SO (see URN 8484.3, Third Oxera Report dated 22 February 2019, section 9.D, the econometric analysis presented in the Second Oxera Report was superseded by the updated version presented in the Third Oxera Report. For this reason, the Second Oxera Report is not directly discussed in this Annex.

R.III.(a).(i). The methodology

- R.25 Although these models rely on different data²⁶¹⁵ and ultimately aim at identifying different effects, the methodology adopted by Oxera is broadly similar and relies on exploiting the presence of a natural experiment in the data.
- R.26 The estimation technique used is a *difference-in-difference* approach which aims at identifying the causal effect of the wide MFNs on the outcome of interest (like retail prices or commission fees) by looking at the differential impact the removal of the wide MFNs had on such outcome for two distinct groups of home insurance brands: the brands which used to be subject to the wide MFN (the *treated* group) and the other brands (the *control* group). Not being affected by the change, the latter group provides the counterfactual outcome against which it becomes possible to estimate the effect.
- R.27 In the Third Oxera Report, Oxera conducts a *fixed-effects difference-in-difference* estimation to test the extent to which, with the disapplication of CTM's wide MFNs in November 2017, relative and absolute prices of home insurance brands listed on CTM have changed. In doing so,
- (a) For Model 1, Oxera looks at the proportion of risk profiles priced
- (i) equally on CTM relative to other PCWs;
 - (ii) more expensively on CTM relative to other PCWs;
 - (iii) cheaper on CTM relative to other PCWs;
- and estimates the following model:²⁶¹⁶

$$Y_{it} = \alpha + \beta * wide_MFN_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (1)$$

Where Y_{it} is either a weighted average of each metric above for brand i in month t across all PCWs or its unweighted equivalent measuring CTM's performance against each of CTM's rivals. $Wide_MFN_{it}$ is a binary variable indicating whether brand i was subject to CTM's wide

²⁶¹⁵ For Model 1, looking at relative prices, Oxera uses monthly information on CTM's price competitiveness metrics (i.e. the proportion of risks priced equally, more expensive and cheaper on CTM relative to other PCWs) constructed by using Consumer Intelligence's monthly data and covering the period from January 2016 to September 2018. For Model 2, looking at absolute prices, Oxera uses the raw monthly retail pricing data provided by Consumer Intelligence. The dataset used for Oxera's analysis covers the period from February 2015 to December 2018. Finally, Model 3 relies on the 'PCW Commission fees Dataset' shared with BGL's advisors within the CMA's confidentiality ring. As described in Annex D this dataset contains data on the effective commission fees paid by providers to the Big Four PCWs every year during the period from 2012 to 2018.

²⁶¹⁶ See URN 6641, Second Oxera Report dated 31 July 2018, section 3.2 and URN 8484.3, Third Oxera Report dated 22 February 2019, section 9.D.

MFN in month t or not. The parameters α, β, δ_i and γ_t are the coefficients estimated by the model, and respectively represent the constant term, the impact of wide MFNs, the brand fixed effects (controlling for all unobserved factors which affect relative prices of one brand on CTM compared to another PCW and do not vary over time) and the time fixed effects (which allow to control for any market-wide factors affecting relative prices over time). ε_{it} is the error term.²⁶¹⁷

- (b) For Model 2, Oxera focuses on the level of retail prices offered by home insurance brands to consumers on PCWs and extends the model above as follows:²⁶¹⁸

$$Y_{it} = \alpha + \beta * wide_MFN_{it} + \theta * X_{it} + \delta_i + \gamma_t + \varepsilon_{it} \quad (2)$$

Where Y_{it} is the average price for the PCW-brand combination i in month t ; $wide_MFN_{it}$ is a dummy variable indicating if brand i was subject to CTM's wide MFN in month t ; and X_{it} is the average excess value for the PCW-brand combination i in month t . The parameters δ_i and γ_t respectively represent the PCW-brand fixed effects, controlling for unobserved time-invariant heterogeneity which may affect the price for each PCW-brand combination, and the time fixed effects, controlling for any shocks affecting the level of home insurance prices in general over time. ε_{it} is the error term.

- R.28 In the Fourth Oxera Report in order to investigate the causal effect of the wide MFNs on PCWs' commission fees, Oxera presents Model 3, an autoregressive panel data model involving the simultaneous use of ID *fixed-effects* and, among other controls, a lagged dependent variable. Oxera illustrates its methodology as follows:²⁶¹⁹

$$C_{ijp,t} = \alpha + \beta * wide_MFN_{ijp,t} + \partial C_{ijp,t-1} + \vartheta Vol_{i,t-1} + \gamma trend_t + \delta_{ijp} + \varepsilon_{ijp,t} \quad (3)$$

Where C_{it} is the commission fee charged by PCW i to brand j and provider p in year t ; $wide_MFN_{ijp,t}$ is a dummy variable indicating whether the PCW-

²⁶¹⁷ Please note that Oxera's approach to hypothesis testing in Model 1 differs depending on whether, Oxera says, the CMA's theory of harm predicts the effect of CTM's wide MFNs to point in a clear direction. Oxera uses a one-sided test in relation to the metrics 'proportion of risks priced equally on CTM as on other PCWs' (which the wide MFNs are expected to increase) and 'proportion of risks priced more expensively on CTM relative to other PCWs' (which the wide MFNs are expected to reduce). Oxera uses a two-sided test for the metric 'proportion of risks priced cheaper on CTM relative to other PCWs' because, Oxera argues, the effect of the wide MFNs on this metric to be unclear since the wide MFNs are not technically binding in this case.

²⁶¹⁸ See URN 8484.3, Third Oxera Report dated 22 February 2019, section 9.E.

²⁶¹⁹ See URN 10460, Fourth Oxera Report dated 14 February 2020, section 7.B(2) and Appendix A3.

provider-brand combination was subject to a wide MFN in year t ; $C_{ijp,t-1}$ is the level of commission fee at time $t - 1$ which, Oxera says, allows it to control for time-dependency in commission fees; $Vol_{i,t-1}$ indicates the volume of sales made through PCW i at time $t - 1$ which according to Oxera controls for PCW's time-varying bargaining power; $trend_t$ is a market-wide linear trend and controls for the general trend followed by PCW commission fees on average each year. δ_{ijp} is the ID fixed effects which controls for any unobserved time-invariant heterogeneity which may affect the commission of each PCW-provider-brand combination and $\varepsilon_{ijp,t}$ is the error term.²⁶²⁰

- R.29 For each model Oxera presents a set of sensitivity checks either relying on different cuts of the dataset or on a different estimation technique in order to show its results are robust and its methodology reliable.

R.III.(a).(ii). Oxera's findings and interpretation

- R.30 Based on the results of its econometric analyses, Oxera submitted that:
- (a) There is no evidence of CTM's wide MFNs constraining the pricing strategies of the brands with the wide MFN across PCWs and therefore no scope for them to appreciably harm PCW competition. This is because based on Model 1:²⁶²¹
 - (i) CTM's wide MFNs had no statistically significant effect on the proportion of risks priced the same on CTM as on other PCWs, and
 - (ii) Oxera's baseline results do not show CTM's wide MFNs to have had the statistically significant effect of reducing the proportion of risks priced more expensively on CTM relative to other PCWs.²⁶²²
 - (b) In addition, Oxera submitted that the fact that, in Model 1, CTM's wide MFNs appear to have had the statistically significant effect of increasing the proportion of risks priced cheaper on CTM relative to all other PCWs is not informative for this assessment as, being the provider's choice to

²⁶²⁰ Oxera also notes that it would be appropriate to control for providers' time-varying bargaining power, but the dataset does not allow to do so. Oxera argues however that it does not expect it to have a significant impact on the results as provider's bargaining power is not expected to change much over time and time-invariant bargaining power is already controlled thanks to the ID fixed-effects. The CMA however notes that information on the yearly volume of sales by provider is available in the dataset.

²⁶²¹ See Table R.1 of the Appendix which as explained below (footnote 2632) represents a corrected version of Table 9.1 and Table 9.2 URN 8484.3, Third Oxera Report dated 22 February 2019, section 9D.2, whose results were affected by a coding error subsequently addressed by Oxera by submitting a new set of codes with the correct standard errors.

²⁶²² Although the CMA notes that Oxera's sensitivity analysis finds the CTM's wide MFNs to have the statistically significant effect of reducing the proportion of risks priced more expensively on CTM compared to MSM, the second largest PCW and CTM's main competitor.

list its cheapest price on CTM, this finding concerns cases where CTM's wide MFNs were not binding.

- (c) There is no evidence of CTM's wide MFNs having an appreciable adverse effect on PCW competition or on the home insurance market more broadly since, based on Model 2, wide MFNs are not found to have had a statistically significant impact on the retail prices of relevant home insurance brands during the Relevant Period.²⁶²³
- (d) There is no evidence of the wide MFNs having an adverse impact on competition by way of commission fees more generally because, based on Model 3, wide MFNs are not found to have had a statistically significant impact on the level of commission fees charged by PCWs to home insurance providers.²⁶²⁴

R.31 Given the consistency across the set of sensitivity checks presented, Oxera presents its results as reliable and argues that, by relying on data from all brands listed on CTM, its econometric work *'is likely to provide a more robust analysis of the effects of CTM's wide MFNs than relying on anecdotal responses from insurers as the CMA appears to have done'* in the SO. ²⁶²⁵

R.III.(b). The CMA's assessment

R.32 The CMA considers that none of the pieces of econometric analysis submitted by BGL in response to the SO and the First LoF provides reliable evidence of CTM's wide MFNs having no harmful effect on competition. This is because, despite the presence of a natural experiment in the market, reliable econometric modelling is not possible in this market and the models proposed by Oxera fail to deliver robust results.

R.33 As described above, Oxera has adopted a *difference-in-difference* design in its analysis which aims at establishing the effect of CTM's wide MFNs on competition by comparing outcomes observed for providers subject to wide MFNs and other providers without wide MFNs before and after CTM stopped enforcing these clauses. However, in this case the CMA considers that such a methodology is affected by two main limitations:

- (a) The post-removal period does not provide an appropriate counterfactual to identify and estimate the effects of CTM's wide MFNs; and

²⁶²³ See URN 8484.3, Third Oxera Report dated 22 February 2019, tables 9.3 and 9.4.

²⁶²⁴ See URN 10460, Fourth Oxera Report dated 14 February 2020, table A4.1.

²⁶²⁵ See URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 9.14.

- (b) The observed changes in the behaviour of providers and PCWs, including CTM, since CTM stopped enforcing its wide MFNs suggest the *difference-in-difference* methodology is flawed in this case.

Each of these limitations is discussed below in turn.

- R.34 First, as discussed in Section 9 at paragraph 9.75, evidence on trends in promotional deals is consistent with the market gradually moving to a more competitive equilibrium since CTM stopped enforcing its wide MFNs. Therefore the period observed since CTM stopped enforcing its wide MFNs is likely to exhibit a lower level of competition than would have been observed in the hypothetical counterfactual.²⁶²⁶ In terms of econometric analysis this means that, even in a situation where the model used is appropriate and is correctly specified, any attempt to estimate the effects of CTM's wide MFNs by comparing the levels of competition during and after the Relevant Period would lead to an underestimation of such effects.
- R.35 Second, the observed changes in the behaviour of the providers not bound by CTM's wide MFNs as well as in the behaviour of PCWs, including CTM, since CTM stopped enforcing its wide MFNs suggest that a *difference-in-differences* methodology is flawed in this case. In particular, the CMA expects such behavioural responses to undermine this econometric approach as follows:
- (a) The fact that providers not subject to CTM's wide MFNs have started changing strategy and engaged more in differential pricing since CTM stopped enforcing its wide MFNs (see Section 9.C.II) indicates that the treatment has affected not only the treated group but also the control group in this case. Whilst consistent with the CMA's theory of harm (as set out in Section 9.C), this contamination effect represents a clear violation of one of the standard *difference-in-difference* assumptions which requires that there are no interactions between units across the treated and control groups to deliver reliable estimates;²⁶²⁷
 - (b) The fact that, since CTM stopped enforcing its wide MFNs, PCWs have started to compete more strongly to attract the lowest quotes from all providers regardless of whether they were subject to CTM's wide MFNs (see Section 9.B) indicates that PCWs have engaged in competitive responses in light of CTM's decision to stop enforcing its wide MFNs.

²⁶²⁶ Where wide MFNs would not have existed and CTM would have had only narrow MFNs with all providers.

²⁶²⁷ The SUTVA (stable unit treatment value assumption, Rubin (1978)) or '*no general equilibrium effects*' assumption indeed requires that the treatment does not affect the behaviour of the untreated observations within the control group for a standard *difference-in-difference* methodology to deliver reliable estimates of the causal impact of the treatment on the treated group. See for example Woolridge and Imbens (2008), Recent Developments in the Econometrics of Program Evaluation, NBER Working Paper No. 14251, section 2.3

Whilst consistent with the CMA's theory of harm (as set out in Section 9.B), PCWs' competitive reactions to CTM ceasing to enforce its wide MFNs are likely to introduce a bias into the *difference-in-difference* analysis.²⁶²⁸

- R.36 Since it is not possible to adequately correct for the presence of contamination and behavioural responses in this case, the CMA considers that these aspects invalidate the natural experiment approach proposed by Oxera across all its econometric analyses and mean it is not possible to robustly identify the effect of CTM's wide MFNs in the data.
- R.37 In addition to these main limitations the CMA considers that, given the observed pricing behaviour of providers during the Relevant Period (including the episodes of non-compliance by some providers subject to wide MFNs, which triggered targeted enforcement actions by CTM),²⁶²⁹ quantifying the effects of CTM's wide MFNs via econometric analysis is unlikely to provide a more robust assessment of the effects of CTM's wide MFNs in this case than relying on a review of providers' and PCWs' responses and contemporaneous documentary evidence.²⁶³⁰
- R.38 In particular, the fact that providers subject to CTM's wide MFNs did not always show a pricing behaviour consistent with their contractual agreements during the Relevant Period and punctually faced enforcement actions by CTM (see Section 8.B.III) suggests not only that CTM's wide MFNs had the effects of restricting competition, but also that a *difference-in-difference* econometric analysis cannot adequately capture the effects of CTM's wide MFNs and therefore may not be appropriate in this case. The heterogeneity of pricing practices observed within the treated group during the Relevant Period undermines the clarity of the comparison between the treated group and the control group and in practice reduces the likelihood of any econometric analysis identifying an effect in the data.
- R.39 Overall, the CMA considers that these significant limitations collectively mean that reliable and credible econometric modelling is not possible in this case. Hence, the CMA has decided:
- (a) not to conduct any econometric analysis in its assessment of the effects of CTM's wide MFNs.

²⁶²⁸ The evidence of PCWs' competitive reactions to the removal of CTM's wide MFNs indeed suggests that the Oxera's econometric analysis is affected by endogeneity bias and therefore the results are not reliable.

²⁶²⁹ See Section 8.B.III and Annex M.

²⁶³⁰ See paragraph R.31 above and URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 9.14.

- (b) not to place evidential weight on the econometric analyses conducted by Oxera, which, in addition to the fundamental limitations already set out, suffer from other material issues which further undermine their reliability as set out in detail below.

R.III.(c). The CMA's in-depth assessment of Oxera's Model 1, an econometric analysis of the impact of CTM's wide MFNs on CTM's relative price competitiveness.

- R.40 With Model 1, Oxera tries to assess the effect of CTM's wide MFNs on PCW competition by testing whether the presence of CTM's wide MFNs resulted in a reduction in price differentiation by providers and led to an improvement in CTM's price competitiveness relative to its rivals. Although the results published in the Third Oxera Report - where statistically significant - appear consistent with the CMA's position that CTM's wide MFNs had the effect of improving CTM's price performance relative to its rivals during the Relevant Period, Oxera presents its analysis as evidence of CTM's wide MFNs having had no impact on competition.²⁶³¹
- R.41 The CMA has considered the analysis in detail and has concluded that Oxera's Model 1 does not provide evidence of CTM's wide MFNs having had no harmful effect on competition. In addition to the fundamental issues discussed above (see Section R.III.(b)), this is because of important methodological and data-related limitations affecting the analysis as well as Oxera's narrow interpretation of the results.²⁶³²

²⁶³¹ During the Oral Hearing to the SO, Oxera stated that, while in the sensitivity analysis results were significant when considering MS (and the weighted regression), '[w]e do not think that is due to the wide MFN because the wide MFN will apply to all PCWs, GoCompare, Confused, MoneySupermarket. So, if you can attribute an impact, or if there is an impact that you should attribute to the wide MFN, you should see it across 25 all competitors, not just one. What this makes us -- what we have learnt from that is that something else is going on at the same time, which is MoneySupermarket driven, not wide MFN driven, that the analysis is picking up.' URN 8933, transcript of the Oral Hearing with BGL held on 4 April 2019, page 98 lines 2 to 25 and page 99 lines 1 to 3.

²⁶³² When reviewing the material underlying the Third Oxera Report, the CMA noted that Oxera did not account for the presence of autocorrelation of the errors when calculating its standard errors. This mistake implies that while the results published in Section 9.D still hold, their statistical significance has been overstated. Being this point potentially favourable to BGL's line of argument, the CMA has flagged the issue to its advisors at the stage of issuing the Letter of Fact and invited them to resubmit the analysis if they wanted to. In February 2020, Oxera provided a corrected version of the code of the analysis without any additional accompanying comments. The CMA has re-run the analysis and included an updated version of the results at Table 1 in the appendix. These results in practice supersede those displayed in Table 9.1 and Table 9.2 of URN 8484.3, Third Oxera Report dated 22 February 2019, which were produced by a code including an error. As expected, by adjusting for intragroup autocorrelation, the updated results are even less statistically significant than those published in the Report. In particular, according to the updated analysis, only 4 out of the 60 specifications presented by Oxera return statistically significant results: CTM's wide MFNs appear to have increased the proportion of quotes priced cheaper on CTM compared to all other PCWs and to have reduced the proportion of quotes price more expensively on CTM compared to MSM. The CMA notes that these findings are consistent with the CMA's conclusion that CTM's wide MFNs had a harmful impact on PCW competition in home insurance.

R.42 In relation to the methodological and data-related limitations, the CMA takes issue with the following aspects of Oxera's approach:

- (a) The fact that the dependent variables are affected by measurement error and the data is volatile, which both reduce the likelihood of an econometric model to find an effect in the data and return statistically significant results; and
- (b) The fact that the *difference-in-difference* methodology adopted by Oxera does not appear to be generally supported by the data in this case, which confirms Oxera's analysis is not reliable.

R.43 In particular, the CMA has found that the CTM price competitiveness scores used to test the effect of the wide MFNs on providers' relative prices across PCWs are affected by measurement error. When measuring CTM's price performance against its rivals, Oxera has looked at the absolute price offered to each risk profile by each brand on different PCWs without fully accounting for differences in the excess levels of the policy.²⁶³³ Since different excess levels may lead the same provider to price significantly differently across PCWs, CTM's price competitiveness scores have been wrongly measured.

R.44 This measurement error in the dependent variables is likely to introduce noise in the econometric model, which in turn reduces the likelihood of the analysis returning statistically significant results.

R.45 Further to this, the CMA notes that the way in which CTM's price competitiveness scores are calculated means they are inherently quite volatile metrics²⁶³⁴ and Oxera itself acknowledges concerns over the data volatility affecting its analysis in the Second Oxera Report by saying '*insurer [sic] pricing behaviour is volatile, and this volatility makes it less likely to find CTM's wide MFNs to have a significant effect.*'²⁶³⁵ Similar to measurement error

²⁶³³ See URN 9162, BGL's response to follow-up questions to section 26 notice dated 10 May 2019, question 16. Oxera has confirmed that CTM's price competitiveness scores used for Model 1 (as well as for its compliance analysis) are constructed by controlling for the level of voluntary excesses but disregard the level of compulsory excess levels which although also vary across the different PCWs.

²⁶³⁴ In particular, because by being proportions ranging between zero and one, CTM's price competitiveness scores can be significantly affected by changes unrelated to CTM's performance like changes in the number of comparable quotes returned by each brand from one month to the other (that corresponds to changes in the sample size from one month to the other).

²⁶³⁵ See URN 6641, Second Oxera Report dated 31 July 2018, paragraph 3.5.1. In the Second Oxera Report Oxera submitted that the results of its analysis based on a shorter and symmetric time period are more reliable as they are less subject to the data volatility problem and consequently Oxera present them as the baseline. The CMA notes that this is in contrast with the approach subsequently adopted in the Third Oxera Report where Oxera presents the results over the longer and asymmetric period as its baseline with no explanation for the change in its approach. The CMA considers that, due to the data volatility issue, using a shorter time window before the disapplication of the wide MFNs is likely to be a better approach in this case. Indeed, rather than helping identify the effect of CTM's wide MFNs, using a longer time period may simply introduce additional noise into the analysis.

issues, high volatility in the data makes econometric analysis generally less likely to pick up an effect.²⁶³⁶

- R.46 Turning to the empirical methodology adopted by Oxera, to deliver reliable results a *difference-in-difference* analysis heavily relies on the key assumption that the outcome of interest, in this case relative prices, would have followed the same trend over time for the treated and control groups in the absence of the treatment, in this case CTM's wide MFNs. This is known as the *common trend assumption*. Whenever this assumption does not hold, a difference-in-difference model will provide biased estimates.
- R.47 The CMA has assessed the validity of the common trend assumption in Oxera's analysis by using an approach commonly used in the literature which involves including additional interaction terms (known as '*leads*') in the regression to test whether the event had any effects in the data before the time it actually occurred (anticipatory effects). For the common trend assumption to hold, no anticipatory effects should be found meaning that these *leads* coefficients should be not statistically different from zero.²⁶³⁷
- R.48 The results of the CMA's statistical testing are displayed in Table R.2 to Table R.6 in the Appendix.²⁶³⁸ Despite the data limitations discussed above, the

²⁶³⁶ The CMA disagrees with Oxera's comment (at URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 9.26, fourth bullet) that the problem of the data being volatile would also affect the quality of the CMA's analysis of the impact of promotional deals on retail prices and rankings which is presented in Annex J. In particular, the CMA considers the volatility of the data to be a specific concern of the CTM price competitiveness metrics used by Oxera in its econometric analysis (i.e. the proportions of risk profiles priced equal, more expensive or cheaper on CTM compared to other PCWs) which as explained above, by the way they are constructed are more exposed to the volatility problem. The CMA's analysis of the impact of promotional deals as presented in Annex J is unlikely to be affected by the data volatility problem as it directly uses information on actual prices rather than relying on ad-hoc constructed metrics. Also, although differences in question sets and data mapping issues affect the quality of the Consumer Intelligence data in general (see Annex O), the methodology adopted by the CMA in its analysis of the impact of promotional deals was designed to take these issues into account to the extent possible and is carefully considered alongside other evidence as described in Section 7.E and Annex J.

²⁶³⁷ An established way to test the identifying assumption of a common counterfactual trend between the treatment and control groups in a *difference-in-difference* methodology is to interact the treatment variable with the time dummies and include such interaction terms for all pre-treatment periods (known as *leads* in the literature) but the one just before the treatment occurs (so as to avoid the dummy variable trap) into the model. If the outcome variable follows a common trend for the treatment and control groups during the pre-treatment period (meaning that the common trend assumption underpinning the *difference-in-difference* model holds), the *leads* coefficients will be not statistically different from zero. Due to the frequent conjoint use of both leads and lags, this test is often referred to as the *leads and lags* test, however, only the leads are needed to verify the validity of the common trend assumption. The full set of results of this test is provided in Table R.2 to Table R.6.

²⁶³⁸ Please note that the CMA's results tables include the variable 'removal' instead of the variable 'wide MFN' as in Oxera's approach. This is because, to conduct this statistical testing as well as all its sensitivity analysis in general, the CMA has modified Oxera's definition of the variable identifying the event (or treatment) focus of the analysis such that it takes value 1 after the change has occurred (rather than before as in Oxera's approach) as it is standard practice in *difference-in-difference* models. Please note that, besides making testing for the common trend assumption possible, switching the definition of the treatment variable has the only implication of reversing the interpretation of the results: if Oxera's approach involves looking at the impact of the wide MFN on various economic output, the CMA's approach involves looking at the impact of the removal of the wide MFNs. This means that the sign of the coefficients of interest will be reversed but its magnitude as well as accompanying standard errors will stay the same (as the approaches are indeed mathematically equivalent).

leads coefficients are often statistically different from zero suggesting that the parallel trend assumption does not hold for most of the specifications preferred by Oxera.²⁶³⁹ In view of this, the CMA concludes that Oxera's Model 1 should not be considered reliable.

- R.49 Based on these methodological and data-related limitations and the fundamental issues described above, the CMA concludes that Model 1 is not sufficiently robust to support Oxera's conclusions that CTM's wide MFNs had no effect on competition and therefore has placed no weight on this analysis.
- R.50 Finally, notwithstanding the limitations discussed above, the CMA considers that Oxera has provided a one-sided interpretation of the results of Model 1, which, if interpreted in the round, appear instead broadly consistent with the CMA's case. Specifically, whenever the results of Model 1 are statistically significant, they are supportive of the CMA's case as they indicate that:
- (a) CTM's wide MFNs had the effect of reducing the proportion of risks priced more expensively on CTM relative to MoneySuperMarket, CTM's nearest competitor; and
 - (b) CTM's wide MFNs had the effect of increasing the proportion of the risks priced more cheaply on CTM relative to all other PCWs.
- R.51 The CMA therefore concludes that Oxera's results, even if robust, do not undermine the CMA's finding that CTM's wide MFNs had an adverse on PCW competition.

R.III.(d). The CMA's in-depth assessment of Oxera's Model 2, an econometric analysis of the impact of CTM's wide MFNs on absolute prices.

- R.52 The focus of Oxera's Model 2 is to assess whether CTM's wide MFNs had an impact on the level of home insurance prices of the brands subject to the clause. Since the analysis returns coefficients that are never statistically significant,²⁶⁴⁰ Oxera concludes that there is no evidence of CTM's wide MFN having an effect on prices of the relevant providers and on the market in general.

²⁶³⁹ The CMA notes that the test results of the analysis looking at the impact of CTM's price competitiveness relative to GoCompare (see Table R.5) and Confused (see Table R.6) are generally less statistically significant (as when they are significant they typically are at a weaker 10% significance level) or not statistically significant. It is unclear why this result may occur, however, in light of the issues with the data and the general considerations of why the market is not suitable for econometric analysis (see section R.III.(b) above), the CMA still does not place any evidential weight on these specifications.

²⁶⁴⁰ See URN 8484.3, Third Oxera Report dated 22 February 2019, tables 9.3 and 9.4.

- R.53 As retail prices are an important dimension of competition for consumers, the CMA has carefully reviewed the analysis and concluded that it does not address the core legal question of the case that is whether CTM's wide MFNs had an appreciable adverse effect on competition (as opposed to whether they led to consumer harm due to higher prices). Furthermore, the model of relative prices does not consider the absolute level of prices and therefore in any event it does not provide a full picture of the level of consumer harm. Following its review, the CMA considers that Oxera's Model 2 should be given no evidential weight as Oxera's methodological approach is severely flawed.
- R.54 This is because, in addition to the fundamental issues discussed above (see Section R.III.(b) above),²⁶⁴¹ the CMA has identified the following issues with Oxera's approach:
- (a) the use of aggregated data for the analysis;
 - (b) the presence of confounding factors which Oxera's econometric model does not control for and are likely to bias the results;
 - (c) the sensitivity of Oxera's results to small and justifiable changes to the methodology; and
 - (d) the fact that the *difference-in-difference* methodology does not appear to be generally supported by the data.
- R.55 The first concern the CMA has about the analysis involves Oxera's use of aggregated data and its impact on the results. In particular, to deal with the fact that the Consumer Intelligence data relies on a sample of risk profiles that is updated every month, Oxera has chosen to average premiums and excess levels across all risk profiles to obtain a unique observation for each PCW-brand combination in a given month.²⁶⁴²

²⁶⁴¹ The CMA notes that the evidence about a larger number of narrow MFN providers engaging in differential pricing strategies (including promotional deals which involve retail price discounts) since CTM's wide MFNs were removed and the increase in the number of promotional deals available in the market overall (see Section 9.C.II) confirms that the contamination issue discussed above (see paragraph R.35(a)) is particularly problematic for Oxera's Model 2. This is because this analysis aims at capturing the impact of CTM's wide MFN on the absolute prices charged by wide MFN providers (treated group) by comparing them to the prices charged by the other providers (control group). However, since the evidence shows that the pricing strategies of the latter have changed since the disapplication of CTM's wide MFN (i.e. there are *general equilibrium effects* in this market as the *treatment* is likely to have directly affected the observations in the control group), the prices offered by the control group providers do not provide an adequate comparison in this case and Oxera's *difference-in-difference* approach is irreparably flawed.

²⁶⁴² Oxera argues that this approach is valid because, being based on the full sample of risk profiles, the risk underlying the brand average price (on each of the four PCWs) is representative of the UK home insurance market in the month. Further, Oxera considers that any shock in average prices due to the churn in risk profiles can be expected to be addressed by the *difference-in-difference* approach as brands that did not have a wide MFN with CTM (i.e. the control group) and brands that did have a wide MFN with CTM (i.e. the treated group)

- R.56 The CMA considers that this data aggregation process is likely to contribute to the results being not statistically significant because it significantly reduces the variance in the data and, as acknowledged by Oxera itself, is likely to introduce noise in the model.²⁶⁴³ Although, as Oxera argues, it is not clear-cut that this approach would introduce a bias into the analysis, both aspects reduce the likelihood that the model will identify an effect.
- R.57 Another weakness of the analysis is that Oxera's methodology does not control for time-varying factors (like changes in commission fees, changes in the providers' appetite for volume and changes in the parties' bargaining power) which directly feed into retail prices. The lack of accounting for these confounding factors is expected to adversely affect Oxera's analysis and make the results unreliable.
- R.58 In order to assess the robustness of Oxera's findings, the CMA has carried out a sensitivity analysis and some statistical testing to verify the validity of the common trend assumption underlying the difference-in-difference methodology.²⁶⁴⁴ In particular, Oxera's baseline model has been modified to control for the time-varying factors discussed above (paragraph R.57) as follows:
- (a) Controlling for brand-specific changes over time (like changes in the brands' appetite for growth and bargaining position) by adding brand-year interactions to Oxera's baseline model; and
 - (b) Controlling for both brand-specific and PCW-specific changes overtime (like changes in brands' appetite for growth, the bargaining positions of both PCWs and home insurance brands) by including brand-year as well as PCW-year interactions in a slightly modified version of Oxera's baseline model.²⁶⁴⁵

would be equally affected by the issue. The CMA however notes that both arguments rely on the assumptions that all insurers return quotes for all risk profiles every month, which an inspection of the Consumer Intelligence data reveals to be untrue (see Annex O). Indeed, in practice, insurers may choose to quote for different risk profiles during the period according to internal profitability considerations. The CMA therefore considers it unlikely that Oxera's aggregated version of the data is representative of UK home insurance risk in a given month and that the *difference-in-difference* approach would mechanically account for the price shocks due to the churn in the risk profiles and the change in risk underlying the Consumer Intelligence data overall.

²⁶⁴³ See URN 8484.3, Third Oxera Report dated 22 February 2019, paragraph 9.46.

²⁶⁴⁴ See paragraphs R.46 and R.47

²⁶⁴⁵ As highlighted in Table R.7 of the Appendix (see fixed-effects legend towards the bottom of the table), the specifications in columns 3 and 4 depart from Oxera's baseline model (reported in column 1 of the same table for comparison) in how market-wide time shocks are controlled for. In particular, in order to try and avoid overfitting the model by including too many dummy variables while at the same time controlling for brand- and PCW-specific time varying factors which may affect retail prices, the CMA has substituted Oxera's monthly date fixed effects (amounting to over 40 dummies and controlling for market-wide shocks occurring each month) with the inclusion of year-fixed effects and a set of monthly dummies (amounting to less than 15 dummies and controlling for yearly market-wide shocks and seasonality).

- R.59 As displayed in Table 7 in the Appendix, CMA's sensitivity analysis shows that that reasonable changes to Oxera's methodology lead to opposite findings to those reported by Oxera. In particular, by controlling for time-varying brand- and PCW- specific unobserved factors, the analysis suggests that the removal of CTM's wide MFNs had the positive and statistically significant effect of reducing prices which would be consistent with the CMA's case. The CMA has however decided not to rely on these findings due to their limited robustness and the fundamental issues described above (see section R.III.(b)).
- R.60 The results of the test of the common trend assumption, reported in Table R.8 of the Appendix, further show that for Oxera's baseline specifications the leads coefficients are often statistically significant meaning that the key identifying assumption underpinning the Oxera's *difference-in-difference* approach does not hold in general and the Oxera's analysis is not reliable.
- R.61 Due to the significant methodological limitations affecting Model 2 and the fact that Oxera's results are not robust, the CMA concludes that no evidential weight should be put on this econometric analysis nor on the results produced by its sensitivity analysis.²⁶⁴⁶

R.III.(e). The CMA's in-depth assessment of Oxera's Model 3, an econometric analysis of the impact of wide MFNs on PCW commission fees.

- R.62 Oxera's Model 3 seeks to assess the impact of the wide MFNs on the commission fees charged by PCWs to home insurance providers. Since its analysis returns coefficients that are never statistically significant,²⁶⁴⁷ Oxera concludes that *'this presents strong evidence that the wide MFNs did not have an impact on the commissions paid by a HIP [home insurance provider].'*²⁶⁴⁸
- R.63 The CMA has considered the analysis in detail and has concluded that Oxera's Model 3 is not probative of CTM's wide MFNs having had no harmful impact on competition and does not affect the strength of CMA's findings. This is because, in addition to the fundamental issues discussed above (see Section R.III.(b)),²⁶⁴⁹ the CMA considers that the analysis suffers from the following methodological and data-related limitations:

²⁶⁴⁶ In light of the market limitations for conducting robust econometric analysis as well as the concerns over the methodology and the data used for this analysis, the CMA indeed does not consider the results of its sensitivity analysis to be necessarily robust or probative of CTM's wide MFNs having an adverse effects on competition.

²⁶⁴⁷ See URN 10460, Fourth Oxera Report dated 14 February 2020, table A4.1.

²⁶⁴⁸ See URN 10460, Fourth Oxera Report dated 14 February 2020, paragraph 1.29.

²⁶⁴⁹ The CMA notes that Oxera's Model 3 is likely to be severely affected by the problem of contamination between treated and control groups. Oxera's Model 3 indeed aims at capturing the impact of the wide MFNs on

- (a) the limited length of the period covered by the data since the last wide MFNs present in home insurance were removed (namely CTM's wide MFNs);
- (b) the fact that different PCWs have removed their wide MFNs at different points in time which hinders the reliable quantification of the effect of CTM's wide MFNs on competition; and
- (c) the unduly complicated methodology adopted and the sensitivity of Oxera's results to small and justifiable changes to the approach.

R.64 First, Oxera's Model 3 relies on the PCW commissions dataset (i.e. yearly data covering the period 2012 to 2018) which covers only one period after CTM stopped enforcing its wide MFNs and the market was fully released from the presence of the wide MFNs. In light of the market dynamics, including the fact that commission fees are only negotiated annually (see Section 2.F), the CMA considers that observing only one period of data since the removal of the wide MFNs may not be sufficient for a robust identification of an effect.

R.65 Further, the fact that within the period covered by the analysis different PCWs have removed their wide MFNs at different points in time,²⁶⁵⁰ represents an important challenge for an econometric analysis aimed at capturing the effects of such clauses on competition. This is because wide MFNs relate to pricing on all PCWs such that if a provider has wide MFNs in its contracts with PCW A and PCW B then the effect of the wide MFN being removed by PCW A is likely to be muted or at least softened by the fact that the provider still has a wide MFN in its contract with PCW B, as rival PCWs would still not be able to incentivise a lower price from the provider than the one quoted on PCW B.

the commission fees charged by PCWs to wide MFN providers (treated group) by comparing them to the commission fees PCWs charge to the other providers (control group). However, the CMA considers that the commission fees charged to narrow MFN providers are unlikely to provide an accurate comparison in this case because, as the evidence suggests, after the wide MFNs have been removed PCWs and providers who did not have a wide MFN have changed behaviour (for example by agreeing more co-funded promotions involving a temporary discount on commission fees for the provider or potentially by offering improved data-related products for no charge). Since, based on CMA's current understanding of the market, the removal of the wide MFNs is likely to have had *spillover effects* on the control group, the CMA considers that the commission fees charged to the control group do not provide an adequate comparison in this case and Oxera's *difference-in-difference* approach is irreparably flawed.

²⁶⁵⁰ As discussed in section 7.C.II, before the Relevant Period two other PCWs used to have wide MFNs in their contracts with home insurance providers. Both PCWs however got rid of their wide MFNs in home insurance at the same time they removed them in private motor insurance. In particular, Confused removed its wide MFN in December 2012 following internal legal advice while the PMI Market investigation was still ongoing whereas GoCompare removed them in March 2015 in compliance with the PMI Order 2015.

- R.66 This is likely to prevent econometric analysis from identifying an effect on PCWs' commission fees and reduce the likelihood that the effect of CTM's wide MFNs can be isolated.
- R.67 Finally, the CMA has found that the results presented by Oxera are not robust to small changes to the approach and considers Oxera's methodology to be unduly complex.
- R.68 Specifically, differently from Oxera, the CMA has used a logarithmic transformation of the variables for its sensitivity analysis in order to allow for non-linear relationships between dependent and independent variables.²⁶⁵¹ Following this change, the coefficient of the (removal of the) wide MFN becomes statistically significant and the same simple fixed effects specification adopted by Oxera shows that the removal of the wide MFNs led to a 2.1% reduction in the commission fees on average.²⁶⁵² This finding, which – if relied upon – would be supportive of the CMA's case, appears robust across several alternative specifications.²⁶⁵³
- R.69 A further weakness of Oxera's Model 3 is the methodology adopted which, involving the use of fixed effects and dynamic panel data techniques, appears unduly complex especially given the lack of an appropriate explanation of Oxera's identification strategy.²⁶⁵⁴
- R.70 Given the significant degree of complexity (and loss of data) that controlling for past outcomes adds to the analysis and the lack of a clear need to include a lagged dependent variable to improve the reliability of the model in this setting,²⁶⁵⁵ the CMA considers that Oxera's methodological choice is not

²⁶⁵¹ For example, given Oxera's choice to control for a market-wide linear trend in commission fees, this approach allows to relax the assumption that the evolution of commission fees would actually increase by the same amount every year by assuming a smoother path.

²⁶⁵² See Table R.9 in the Appendix and contrast the results of Oxera's simple FE model reported in column (2) of the table on the left-hand side with the analogous results produced by the CMA's sensitivity analysis in column (1) of the table on the right-hand side.

²⁶⁵³ The CMA's sensitivity analysis aims at controlling for (i) changes in the size of providers and PCWs with the inclusion of the total volume of sales of each of them in the year (a proxy for changes in the parties' bargaining position, see table 9, columns (2) to (5) of the table on the right-hand side) and for (ii) the presence of market-wide shocks throughout the period with the inclusion of year fixed effects in the model (see table 9, column 5 of the table on the right-hand side). These results show that the removal of the wide MFN is on average associated with a 2% decrease in the commission fees charged by PCWs to those providers which used to be covered by the wide MFN. The sign of the other coefficients also appear in line with what would be expected, with an increase in size of the PCW and the provider being respectively associated with a positive and a negative impact on the commission fees, in line with what a change in the bargaining position of the parties would be expected to have.

²⁶⁵⁴ While Oxera says that the chosen approach allows to control for time-dependency in commission fees, the CMA notes that it is unclear why the inclusion of a lagged dependent variable would help with the identification of the causal effect of the wide MFNs on commission fees in this setting and therefore why it needs to be included in the model.

²⁶⁵⁵ On the challenge of including both ID fixed-effects and a lagged-dependent variable in a model aimed at identifying the causal effect of a variable on an outcome of interest see Angrist and Pischke, *Mostly harmless econometrics* (2009), chapter 5.3. Given the structural endogeneity the approach brings in and the difficulty of

adequately substantiated and is likely to contribute to the finding a non-statistically significant impact of the wide MFNs on PCWs commission fees.^{2656, 2657}

- R.71 Based on these methodological and data-related limitations (which add to the fundamental issues discussed above), as well as the fact that Oxera's results are not robust the CMA concludes that no evidential weight should be put on Model 3 nor on the results produced by the CMA's sensitivity analysis.

resolution, the authors even suggest applied researchers to possibly avoid the problem by relying on the bracketing property of the fixed effects estimator and the simple dynamic panel models in order to overcome a frequent conundrum. In the context of Oxera's Model 3, the CMA however notes that it is not clear why controlling for the evolution of commission fees over time would help for the analysis (i.e. with identification of the causal effect of the wide MFNs) as the impact of the PCWs' decisions to remove the wide MFNs appear unlikely to be affected by the evolution over time of the negotiated commission fees.

²⁶⁵⁶ As suggested by the CMA's sensitivity analysis which relies on a simpler methodology and finds the wide MFNs to have a statistically significant and adverse effect on commission fees.

²⁶⁵⁷ The CMA also notes that Oxera's *difference-in-difference* setup of Oxera's Model 3 does not appear to be supported by the data because, as shown in Table R.10 in the Appendix, the *common trend assumption* does not hold in this case. Testing for anticipatory effects of the treatment by including *leads* in the model returns statistically significant coefficients meaning that the commission fees paid by the providers covered by the wide MFNs and those paid by the other providers did not follow a common trend before various PCWs removed their wide MFNs. There is therefore no reason to believe that the commission fees paid by the narrow MFN providers provide a reliable counterfactual for the commission fees paid by the wide MFN providers after treatments occurred. Oxera's Model 3 is therefore unlikely to be unreliable.

R.IV. Appendix

Table R.1: Results reported in table 9.1 and table 9.2 of the Third Oxera Report updated by using the correct (clustered) standard errors

[✂]

[✂]

Table R.2: Results of CMA's statistical testing of the common trend assumption of Oxera's analysis of the impact of wide MFNs on CTM's price competitiveness relative to its rivals as a weighted average (i.e. Oxera's Model 1, Table 9.1 or Table 1 in this Annex, row 1

[✂]

Table R.3: Results of CMA's statistical testing of the common trend assumption of Oxera's analysis of the impact of wide MFNs on CTM's price competitiveness relative to all PCWs (i.e. Oxera's Model 1, Table 9.1 or Table 1 in this Annex, row 2

[✂]

Table R.4: Results of CMA's statistical testing of the common trend assumption of Oxera's analysis of the impact of wide MFNs on CTM's price competitiveness relative to MoneySuperMarket (i.e. Oxera's Model 1, Table 9.1 or Table 1 in this Annex, row 3)

[✂]

Table R.5: Results of CMA's statistical testing of the common trend assumption of Oxera's analysis of the impact of wide MFNs on CTM's price competitiveness relative to GoCompare (i.e. Oxera's Model 1, Table 9.1 or Table 1 in this Annex, row 4)

[✂]

























































































Table R.6: Results of CMA's statistical testing of the common trend assumption of Oxera's analysis of the impact of wide MFNs on CTM's price competitiveness relative to Confused (i.e. Oxera's Model 1, Table 9.1 or Table 1 in this Annex, row 5)

[✂]

Table R.7: CMA's robustness checks of Oxera's analysis of the impact of CTM's wide MFNs on home insurance prices on PCWs (i.e. Oxera's Model 2)

[✂]

Table R.8: Results of CMA's statistical testing of the common trend assumption of Oxera's analysis of the impact of wide MFNs on the level of prices on PCWs (i.e. Oxera's Model 2, Table 9.3)

VARIABLES	(1) All PCWs				
removal	8.061* (4.353)				
volxs_buildings	-0.181*** (0.062)				
volxs_contents	-0.037 (0.110)				
comxs_buildings	-0.466*** (0.104)				
comxs_contents	0.385*** (0.110)				
1.lead_1	2.765 (3.005)				
1.lead_2	4.977* (2.968)				
1.lead_3	4.808 (3.138)				
1.lead_4	5.902* (3.410)				
1.lead_5	5.146* (3.085)				
1.lead_6	6.385** (3.052)				
1.lead_7	6.689** (3.010)				
1.lead_8	7.530** (3.307)				
1.lead_9	9.083*** (3.328)				
1.lead_10	5.692* (3.367)				
1.lead_11	5.786* (3.448)				
1.lead_12	5.645 (3.475)				
1.lead_13	8.220** (3.412)				
1.lead_14	11.467*** (3.201)				
1.lead_15	11.772*** (3.253)				
1.lead_16	11.142*** (3.224)				
1.lead_17	13.915*** (3.197)				
1.lead_18	14.357*** (3.260)				
1.lead_19	14.808*** (3.524)				
1.lead_20	13.016***				

	(4.120)	[X]	[X]	[X]	[X]
1.lead_21	11.550***	[X]	[X]	[X]	[X]
	(4.204)	[X]	[X]	[X]	[X]
1.lead_22	9.294**	[X]	[X]	[X]	[X]
	(4.107)	[X]	[X]	[X]	[X]
1.lead_23	6.971*	[X]	[X]	[X]	[X]
	(3.879)	[X]	[X]	[X]	[X]
1.lead_24	5.026	[X]	[X]	[X]	[X]
	(3.413)	[X]	[X]	[X]	[X]
1.lead_25	4.237	[X]	[X]	[X]	[X]
	(3.378)	[X]	[X]	[X]	[X]
1.lead_26	4.498	[X]	[X]	[X]	[X]
	(3.528)	[X]	[X]	[X]	[X]
1.lead_27	2.106	[X]	[X]	[X]	[X]
	(3.162)	[X]	[X]	[X]	[X]
1.lead_28	1.515	[X]	[X]	[X]	[X]
	(3.108)	[X]	[X]	[X]	[X]
1.lead_29	0.699	[X]	[X]	[X]	[X]
	(2.390)	[X]	[X]	[X]	[X]
1.lead_30	-1.317	[X]	[X]	[X]	[X]
	(2.451)	[X]	[X]	[X]	[X]
Constant	248.401***	[X]	[X]	[X]	[X]
	(12.828)	[X]	[X]	[X]	[X]
Observations	12,897	[X]	[X]	[X]	[X]
R-squared	0.312	[X]	[X]	[X]	[X]
Number of ID	404	[X]	[X]	[X]	[X]

Robust standard errors in brackets

*** p<0.01, ** p<0.05, * p<0.1

Table R.9: Results of Oxera’s analysis of the impact of wide MFNs on PCWs commission fees (i.e. Oxera’s Model 3 with modified treatment variable) and CMA’s robustness checks

[✂]

Table R.10: Test of common trend assumption for Oxera's analysis of the impact of wide MFNs on PCW commission fees (i.e. Oxera's Model 3)

[✂]

ANNEX S: BGL's FURTHER REPRESENTATIONS ON THE CMA's ACTION

S.I. Introduction

S.1 BGL has made a significant number of representations on the CMA's action. The CMA has addressed some of these representations where appropriate in Section 11 and sets out its more detailed considerations in this Annex.

S.2 In this Annex, the CMA's considers BGL's representations in relation to:

(a) The CMA's finding that BGL committed the Infringements either intentionally or negligently;

and, in relation to the CMA's penalty calculation:

(b) the starting point;

(c) the adjustment for aggravating and mitigating factors; and

(d) the adjustment for specific deterrence or proportionality.

S.II. BGL's representations on the CMA's finding that BGL committed the Infringements intentionally or negligently

S.II.(a). BGL's representation on the primary and secondary effects of CTM's wide MFNs

S.3 BGL made submissions about why the CMA would be wrong to find that the Infringements were committed either intentionally or negligently on the basis that, in BGL's view, it is necessary to distinguish between (a) what BGL described as the '*primary effect*' of CTM's network of wide MFNs and (b) what BGL described as the '*alleged second order effects*' on competition.²⁶⁵⁸ BGL submitted that the objective and primary effect of CTM's network of wide MFNs was to offer its own customers the best prices and was therefore pro-competitive.²⁶⁵⁹ By contrast, BGL submitted that there is no evidence that it knew or ought to have known that CTM's network of wide MFNs would result in '*second order, longer run effects*' on competition or '*that in*

²⁶⁵⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 352 to 379.

²⁶⁵⁹ See, for example, URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 358 and 364.

competition law these secondary effects would be deemed to prevail over the immediate benefit to CTM's customers of seeing lower prices'.²⁶⁶⁰

- S.4 The CMA disagrees that it is relevant for the purposes of establishing intention or negligence to distinguish between what BGL describes as the 'primary effect' and 'second order effects' of CTM's network of wide MFNs. Making such a distinction is entirely artificial and the CMA makes no such distinction. This is apparent from CTM's own submission that *'the primary objective of CTM's WMFNs was to use it as one tool to seek to ensure it offered the best possible price to consumers, and hence to strengthen its competitive position vis-à-vis rivals'*, which BGL submits are other PCWs and home insurance providers.²⁶⁶¹
- S.5 Given that BGL accepts that CTM's network of wide MFNs helped strengthen its competitive position, it must have known or at least ought to have known that CTM's network of wide MFNs would restrict competition from its rivals. Moreover, in view of BGL's involvement in the PMI Market Investigation and DCTs Market Study, and its awareness of the regulatory activity by competition authorities in relation to wide MFNs, it is not tenable for BGL to maintain that it was not aware of at least the potential for CTM's network of wide MFN clauses to have anti-competitive effects or risk being found to infringe competition law (as BGL appears to suggest in its submissions about its lack of awareness of 'second order effects').
- S.6 As set out in Section 11.C, BGL was aware, or at least ought to have known, that its network of wide MFNs gave CTM a significant competitive advantage over rival PCWs, particularly in view of its strong market position. Unlike its rivals, CTM was able to secure the lowest prices from the relevant providers without needing to invest anything itself (for example, by lowering its commission fees) to secure those prices. In particular, BGL's submission that the *'outcome that BGL sought in agreeing WMFNs, and saw repeatedly in its interactions, was that good prices and special offers would be extended to CTM, and therefore made available to a wider range of customers'* makes it clear that BGL must, or at least ought to, have been aware that CTM's network of wide MFNs affected competition.²⁶⁶²
- S.7 Because home insurance providers with wide MFNs were required as a matter of contract not to undercut the prices offered on CTM, BGL knew that other PCWs could not gain a competitive price advantage, which was an important dimension of competition. Indeed, as BGL stated, CTM could

²⁶⁶⁰ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 348 and 349.

²⁶⁶¹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 364.

²⁶⁶² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 358.

instead rely on its network of wide MFNs to ensure the favourable outcome to CTM that home insurance providers ‘extended’ the same offers to CTM on its platform. While consumers using CTM’s platform may in some cases have benefitted in the short term from lower prices than they would otherwise have done in the absence of CTM’s wide MFN, this is on the assumption (which is implicit in BGL’s argument) that in the absence of its wide MFNs, CTM would not have competed on the merits to secure such lower prices (for example, by lowering its commission fees).²⁶⁶³

S.II.(b). BGL’s representation relating to the PMI Market Investigation, the DCT Market Study and the conduct of other players in the market

S.8 BGL submitted that there is no basis for the CMA to suggest that the various regulatory activity by the CMA or other competition authorities listed in the SO and in Section 11.C.I.b (iii) should or did alert BGL to any anti-competitive consequences of its wide MFNs. More specifically, BGL submitted in relation to the PMI Market Investigation and the DCTs Market Study that:

- (a) the fact that the CMA ‘expressly declined to make a finding under Article 101 / Chapter 1’ in the PMI Market Investigation and was carrying out an econometric analysis to assess the impact of the PMI Order 2015 ‘reasonably and actually suggested to BGL that it was too soon to draw any conclusions on PMI, let alone any potential read across to home or other verticals’²⁶⁶⁴; and
- (b) the CMA’s conduct during the DCT Market Study ‘reasonably and actually suggested to BGL that the impact of WMFNs was an open question’ and ‘gave BGL comfort that the CMA had drawn no conclusions regarding WMFNs in home, and that if it did conclude that these clauses were undesirable it would look to a regulatory solution’.²⁶⁶⁵

S.9 The CMA disagrees. As explained in Section 11.C.I.b.(iii), BGL sought external advice regarding its continued use of wide MFNs in home insurance in the light of the PMI Order 2015 and the DCTs Market Study – and so was clearly alive to the competition law risks. However, it is not clear on what basis BGL reached a conclusion that its wide MFNs in home insurance did

²⁶⁶³ See Annex Q addressing BGL’s submissions regarding the effects of CTM’s network of wide MFNs.

²⁶⁶⁴ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraph 391.

²⁶⁶⁵ URN 10459, BGL’s response to the First LoF and DPS dated 14 February 2020, paragraphs 392 and 413.

not restrict competition, despite the findings of the PMI Market Investigation, or why the DCT Market Study gave it ‘comfort’ that the CMA would ‘look to a regulatory solution’ (or indeed what ‘regulatory solution’ BGL anticipated).²⁶⁶⁶

- S.10 Contrary to BGL’s submissions regarding the PMI Market Investigation, the CMA made it clear in its final report that it had found that wide MFNs had material adverse anti-competitive effects which were not outweighed by efficiencies within the scope of Article 101(3) TFEU.²⁶⁶⁷ In the final report, the CMA also stated that it could not be ruled out that wide MFNs of the kind assessed in the final report might restrict competition ‘by object’.²⁶⁶⁸ Given that the CMA was using its powers under Part 4 of the Enterprise Act 2002, it would not have been appropriate for the CMA to make an express finding of infringement under either Chapter I or Article 101 TFEU in the PMI Market Investigation. However, the statements made in the final report, which specifically addressed submissions made by BGL²⁶⁶⁹, made it very clear that the CMA considered that wide MFNs in the private motor insurance sector had the effect of restricting competition within the meaning of Article 101 TFEU.
- S.11 In relation to the DCTs Market Study, it should have been clear to BGL – or BGL at least ought to have known – that a potential outcome was for the CMA to open an investigation under the Act in relation to CTM’s continued use of wide MFNs. The CMA’s Update Paper, dated 28 March 2017, indicated the CMA was considering the competition concerns and potential harm arising from the use of wide MFNs.²⁶⁷⁰ It also clearly stated in relation to the possible outcomes of the market study in respect of the competition issues that: *‘[m]ost of the specific issues we are investigating further relate to contracts between suppliers and DCTs, which means that a combination of advocacy work and competition enforcement is likely to be the most*

²⁶⁶⁶ BGL submitted that it was ‘firmly convinced of the lack of anti-competitive effects’ of CTM’s network of wide MFNs in home insurance (URN 8484.5, BGL’s Response to the SO dated 22 February 2019, paragraph 448). However, the CMA is not aware on what basis BGL reached this view. At the oral hearing on the SO on 4 April 2019, the CMA asked if BGL undertook any risk assessment, following the PMI Market Investigation, to reach the firm conclusion that its wide MFNs did not have anti-competitive effects. BGL indicated that the CMA’s question ‘might be interpreted as potentially trespassing into questions of what legal advice did the business have’ and has claimed privilege in relation to any legal risk assessments relating this matter (URN 8933, transcript of the Oral Hearing with BGL held on 4 April 2019, pages 63 to 67; URN 8665, BGL’s response to follow-up questions to the Oral Hearing dated 5 April 2019, paragraph 2.4.). The CMA does not draw any inferences from BGL not disclosing privileged legal advice.

²⁶⁶⁷ See PMI Market Investigation, final report, Appendix 12.1, paragraphs 24 and 34.

²⁶⁶⁸ See PMI Market Investigation, final report, Appendix 12.1, paragraph 20.

²⁶⁶⁹ See PMI Market Investigation, final report, Appendix 12.1, paragraphs 2 and 3.

²⁶⁷⁰ DCT Market Study, Summary of the update paper, paragraph 1.30(a); Update Paper, paragraphs 7.46 to 7.49; and Update Paper, Appendix 5, paragraphs 8 to 17. As explained above at paragraph 11.31, BGL had also faced ‘tricky questions on why [CTM] still enforced wide MFNs on Home insurance’ at a meeting with the CMA in November 2016 and so was aware the CMA was looking at this issue.

appropriate means to make progress'.²⁶⁷¹ That competition law enforcement action may be an outcome of the DCTs Market Study was also made clear in the CMA's press statement at the time of the Update Paper, which identified '*certain practices and contractual arrangements that could limit healthy competition between DCTs*' as an area of possible concern.²⁶⁷²

- S.12 While the PMI Market Investigation and DCTs Market Study (along with other enforcement by competition authorities in relation to the use of wide MFNs and narrow MFNs) do not establish that a network of wide MFNs like CTM's is necessarily unlawful, they do mean that BGL was aware (or at least ought to have known) that CTM's network of wide MFNs in home insurance risked being found to infringe competition law.
- S.13 In that regard, BGL also submitted that another reason the CMA cannot establish it acted intentionally or negligently is because other industry players did not regard wide MFNs as illegal.²⁶⁷³ The CMA disagrees. It considers that the views of providers or other PCWs as to the legality of wide MFN clauses are of limited relevance, particularly in circumstances where there is clear evidence that BGL was aware, or at least ought to have known, CTM's network of wide MFNs would restrict competition. In any event, BGL's submission is inconsistent with the fact that, as set out in Section 8.A.II.(c), several providers requested removal of CTM's wide MFN clause from their home insurance contracts, including by highlighting the anti-competitive effects of such clauses as a reason for CTM to do so, or otherwise questioned their enforceability following the PMI Order 2015. It is also inconsistent with the fact that the two other PCWs that used wide MFN clauses in home insurance (GoCompare and Confused) had stopped doing so in light of the CMA's PMI Market Investigation by the time of the PMI Order 2015.²⁶⁷⁴

²⁶⁷¹ DCTs Market Study, Update Paper, paragraph 10.27. Similarly, the DCT Market Study, Summary of the update paper, stated in relation to '*Next steps*' that in order to '*Resolve competition issues*' the CMA '*will consider whether we should launch competition law enforcement cases in any of the areas we are looking at, as well as whether there are other steps that could be taken to make competition law more effective*' (paragraph 1.43(c)). It is also clear from the CMA's guidance on Market Studies that one of the outcomes of a market study may be the CMA taking competition enforcement action. See Market Studies and Market Investigations: Supplemental guidance on the CMA's approach (CMA3, January 2014 (revised July 2017), paragraph 1.6) (the same point was made in the previous version of CMA3 (revised September 2015)), and Market studies, Guidance on the OFT approach (OFT519, June 2010), adopted by the CMA Board, paragraph 5.12.

²⁶⁷² CMA Press release, Digital comparison tools could offer even greater benefits', 28 March 2017.

²⁶⁷³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 33(vii) and 417 to 420.

²⁶⁷⁴ In relation to the PMI Order 2015, BGL submitted that providers and PCWs '*could hardly have been expected to deduce that the PMI Order was unnecessary all along, since WMFNs were already illegal under competition law*', which BGL suggests '*is the logical conclusion of the CMA's reasoning*'. BGL refers to evidence from [HIP] that BGL suggests shows that [HIP] was '*not particularly surprised or alarmed that CTM had decided to keep WMFNs in home insurance*' and to a submission by [HIP] during the PMI Market Investigation, which BGL suggests shows that '[HIP] conceded that the remedies would logically only apply to PMI products'. It is unclear

S.14 As explained above, the CMA is not required to show that BGL knew or ought to have known that CTM's wide MFNs infringed competition law; only that it cannot have been unaware of the anti-competitive nature of its conduct.²⁶⁷⁵ However, BGL's awareness of the potential for such clauses to be found to breach competition law supports the fact that BGL committed the Infringements intentionally or, at the very least, negligently. Contrary to what BGL appears to suggest, the making of an order in the context of a market investigation under Part 4 of the Enterprise Act 2002 does not preclude the CMA from taking enforcement action under the Competition Act 1998 in respect of the same practices, whether the enforcement action concerns the adoption of those practices in the same or (as in the present Investigation) a different market. The CMA's powers under the two Acts are not mutually exclusive; they are simply different tools the CMA may use to tackle practices that restrict competition.

S.III. BGL's representations on the starting point of the CMA's penalty calculation

S.15 BGL made the following representations on the seriousness of the Infringements and the need for general deterrence:

- (a) 18% is a disproportionately high starting point for a novel, effects-based case and it leaves very limited headroom for a wide variety of more serious infringements.
- (b) The CMA's analogy with RPM is wholly inappropriate.
- (c) There is a striking, unexplained and unjustifiable contrast between the 18% point applied in this case and recent European Commission fining decision on RPM cases where the European Commission has imposed a starting point of 7 or 8%.
- (d) In assessing the extent or likelihood of harm caused, the CMA has not properly accounted for the relevance of two key factors: the limited

how the evidence from [HIP] supports BGL's submission given that this related to circumstances in which [HIP] was querying whether CTM would be retaining its wide MFNs in home insurance following the PMI Order 2015. Similarly, it is not clear how [HIP]'s submission supports BGL's point, given that in the same document [HIP] stated that it agreed 'with the [Competition] Commission's provisional finding that the use of wide MFN clauses by PCWs in contracts between PCWs and insurers gives rise to adverse competitive effects, in particular reduce entry, innovation and competition between PCWs. [HIP] also agrees with the [Competition] Commission's provisional finding that wide MFNs can result in, and likely already have resulted in, higher premiums for consumers', and goes on to state that '[HIP] agrees that wide MFNs should no longer feature in contracts between PCWs and insurers' (see URN 9847, [HIP]'s response to the CMA's provisional findings of the PMI Market Investigation dated 7 February 2014, paragraphs 5.1 and 5.2).

²⁶⁷⁵ See paragraphs 11.9 to 11.12.

market coverage of CTM's network of wide MFNs and the De Minimis Notice.²⁶⁷⁶

- (e) The CMA is required to take into account that BGL pursued a legitimate aim in its infringing conduct; and
- (f) The need for general deterrence.²⁶⁷⁷

S.III.(a). BGL's representations on the need for headroom in deciding on the starting point

- S.16 BGL submitted that the CMA must ensure that it leaves sufficient '*headroom*' within the relevant range or band under the Penalty Guidance to accommodate higher starting points for more serious infringements, so as to reflect the difference in culpability of the infringing undertakings.²⁶⁷⁸ In BGL's view, '*the CMA's ... guidance indicates that it considers the object/effect distinction is a critical one for such a classification*'²⁶⁷⁹ and '*the 10-20% space must accommodate both the lower range of object cases, and all cases of infringement by effect*'.²⁶⁸⁰
- S.17 BGL submitted that the CMA in recent years has used the 10-20% range for a number of the most serious, well established breaches of competition law ranging from resale price maintenance to horizontal price fixing,²⁶⁸¹ and therefore it is '*hard to understand how 18% can be justified for an effects case*', particularly in a case that falls within a novel and evolving area of

²⁶⁷⁶ Representations on the application of the De Minimis notice and the coverage of CTM's wide MFNs have been addressed in Section 11.C.I.b.ii.

²⁶⁷⁷ Representations on general deterrence were addressed above in Section 11.D.I.

²⁶⁷⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 438 to 439; URN 10535, transcript of the DPS Oral Hearing with BGL held on 9 March 2020, page 49, lines 10 to 14 and page 61, lines 3 to 8. BGL refers to Kier, paragraph 114: '*With that preamble the Tribunal considers that in a case of "simple" cover pricing 5% of relevant turnover is, in principle, too high a starting point where the current maximum for the most heinous infringements of the competition rules is 10%. In the light of all the factors discussed above, we consider that the appropriate level is lower than the mid point of that range, since the difference between 5% and 10% does not in our opinion adequately reflect the distinction in culpability between cover pricing as practised in the construction industry in the relevant period and, say, a multi-partite horizontal price fixing or market sharing cartel. Greater headroom is required to accommodate the latter type of offence within the range currently provided by Step 1 of the Guidance*'.

²⁶⁷⁹ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 439; BGL further submitted at the penalty oral hearing that the distinction between effect and object-based infringements is a '*vital distinction*', URN 10535, transcript of the DPS Oral Hearing with BGL held on 9 March 2020, page 49, line 23.

²⁶⁸⁰ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 437.

²⁶⁸¹ BGL refers to the starting points applied in previous CMA cases involving the following: horizontal agreements against advertising fees (17%); information exchange infringement involving galvanised steel tanks for water storage (18%); market sharing involving cleanroom laundry services and products (16%); online sales ban in the golf equipment sector (12%); price fixing in relation to facilities at airports (18%); online resale price maintenance in the guitar sector (19%), URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 437; URN 10509, Power Point presentation submitted by BGL for the DPS Oral Hearing held on 9 March 2020 between BGL and the CMA, slide 44.

law.²⁶⁸² BGL further submitted that the penalty proposed in the DPS *'would place BGL at number 4 in the list of highest penalties the CMA has ever imposed'*, above certain cartel and RPM cases.²⁶⁸³

- S.18 The CMA disagrees with BGL's submission that the Penalty Guidance makes a *'critical'* or *'vital'* distinction between cases by object and cases by effect. The Penalties Guidance clarifies that there is no pre-set 'tariff' of starting points for different types of infringement given the range of conduct that will be encountered in different cases and to which the CMA must have regard in setting an appropriate penalty for the case in question.²⁶⁸⁴
- S.19 While under the Penalties Guidance a starting point of 10-20% is stated to be more likely to be appropriate for certain less serious object infringements and infringements by effect, it is not the case that all cases by effect will necessarily attract lower starting points than all cases by object. In making its assessment, the CMA must have regard to the seriousness of the infringements in the specific circumstances of the case, such as their market coverage, the effect on competitors and third parties, and the harm caused to consumers, taking into account the need for general deterrence. The CMA has done so as described above and considers that a starting point of 18% is appropriate in this case.
- S.20 The CMA considers that BGL's comparison with starting points and financial penalties imposed by the CMA in previous cases is of limited relevance. As mentioned in Section 11.C.II. above, the CMA is not bound by its decisions in relation to the calculation of financial penalties in previous cases and as confirmed by the CAT *'other than in matters of legal principle there is limited precedent value in other decisions relating to penalties, where the maxim that each case stands on its own facts is particularly pertinent'*.²⁶⁸⁵ The CMA makes its assessment on a case-by-case basis in accordance with the Penalty Guidance.

²⁶⁸² URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 439; URN 10535, transcript of the DPS Oral Hearing with BGL held on 9 March 2020, pages 48 to 49; URN 10509, Power Point presentation submitted by BGL for the DPS Oral Hearing held on 9 March 2020 between BGL and the CMA, slides 43 to 45.

²⁶⁸³ URN 10535, transcript of the DPS Oral Hearing with BGL held on 9 March 2020, page 50; URN 10509, Power Point presentation submitted by BGL for the DPS Oral Hearing held on 9 March 2020 between BGL and the CMA, slides 43 to 45.

²⁶⁸⁴ Penalties Guidance, paragraph 2.6.

²⁶⁸⁵ Kier Group Plc v OFT [2011] CAT 3. See also, for example, Eden Brown and Others v OFT [2011] CAT 8 (Eden Brown), at [78]. See also Ping Europe v CMA [2018] CAT 13, paragraph 233.

S.III.(b). BGL's representations that the CMA's analogy with RPM is wholly inappropriate

- S.21 BGL submitted that the CMA's reference to the '*nature of the effects*' and to RPM cases is very surprising and indicative of the CMA running an object case in disguise.²⁶⁸⁶ In BGL's view, the '*analogy with RPM*', which BGL defined as '*one of the main drivers of how the CMA views the seriousness of the WMFN*'²⁶⁸⁷ is misconceived: unlike RPM, the purpose of which is to directly fix prices,²⁶⁸⁸ CTM's efforts were focused on trying to ensure that consumers using its website were able to access the lowest possible prices, while CTM itself strove to be as competitive as possible vis-à-vis other PCWs and the providers' direct channels. BGL reiterated that those are wholly pro-competitive intentions.²⁶⁸⁹
- S.22 The CMA considers that BGL has misconstrued the CMA's reference to RPM in this context. Moreover, it is incorrect to assert that the '*analogy with RPM*' was '*one of the main drivers*' for assessing seriousness of the Infringements or that the CMA has treated the Infringements as a 'by object' case.²⁶⁹⁰
- S.23 As set out in Section 11.D.I above, the CMA has referred to RPM for the purpose of illustrating that vertical agreements can have serious effects on competition. The CMA also considers that like RPM, wide MFNs can have a particularly significant restrictive effect on competition. It considers that, like RPM, wide MFNs can have an impact by softening price competition between competitors.²⁶⁹¹ Indeed, in the present case, as set out in Section 9,

²⁶⁸⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 440 to 448; URN 10535, transcript of the DPS Oral Hearing with BGL held on 9 March 2020, pages 50 to 53; URN 10509, Power Point presentation submitted by BGL for the DPS Oral Hearing held on 9 March 2020 between BGL and the CMA, slide 46.

²⁶⁸⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 428.

²⁶⁸⁸ In particular, BGL submitted that contrary to RPM, under a wide MFN '*a supplier is still free to set its price: it just has to set the same prices for each distribution channel*' and that a wide MFN can function as a price ceiling as well as a price floor. Further BGL submitted that the literature cited by the CMA does not support a finding that every wide MFN has the same effects on horizontal competition as RPM cases. Other economic literature also compares MFN and RPM and recommend a fact-specific analysis in each case.

²⁶⁸⁹ The argument that wide MFNs have 'pro competitive' effects was addressed in footnote 68 in Section 11.C.I.(b).(iii) above. In addition BGL further reiterated its arguments on 'effective coverage' (addressed in Section 8.C.II.), monitoring and enforcement of its wide MFNs (addressed in Section 8.B.), competition from providers' direct channels (addressed in Section 5.C.V), pass-through of savings in commissions (addressed in Section 7.D.) and 'the risk of price increase on other PCWs' (which the CMA takes to refer to BGL's submissions on providers increasing prices on other PCWs when implementing promotional deals, which are addressed in Section 7.E.). URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraphs 443 to 447.

²⁶⁹⁰ BGL's reference to the purpose of RPM cases as '*to directly fix prices*' is incorrect. RPM is defined in the Vertical Guidance as 'agreements or concerted practices having as their direct **or indirect** object the establishment of a fixed or minimum resale price or a fixed or minimum price level to be observed by the buyer', Vertical Guidance, paragraph 48, emphasis added.

²⁶⁹¹ The CMA disagrees with BGL that under a wide MFN a supplier is still free to set its price. The CMA finds in section 8 that the relevant providers were prevented from quoting prices that were lower on CTM's rivals, and so

the CMA finds that CTM's network of wide MFN restricted competition between PCWs as well as between providers competing on PCWs. The CMA notes that these horizontal effects are broadly similar to the way in which RPM may soften horizontal competition.²⁶⁹²

S.III.(c). BGL's representations on the contrast with the starting point in this case and the starting point used in decisions by the European Commission

- S.24 BGL further referred to the financial penalties framework relevant to the European Commission, which it stated is similar to that of the UK as it includes a starting percentage based on the gravity of the infringement, in a range from 0-30%. In the absence of European Commission fining decisions about wide MFNs, BGL referred to a number of RPM cases, for which the European Commission imposed a starting point of 7 or 8% and submitted that *'[w]hile the CMA is not obliged to seek consistency with the fining decisions of the European Commission, the contrast in the present case is striking, unexplained and unjustifiable'*.²⁶⁹³
- S.25 The CMA considers that there is no merit in BGL's submissions about a perceived lack of consistency between the CMA's assessment of seriousness in the present case and the Commission's fining decisional practice. Indeed, BGL itself recognises that the CMA is not obliged to seek consistency with the fining decisions of the European Commission. Pursuant to section 38(8) of the Competition Act 1998, in fixing the level of penalty the CMA is required to have regard to its own Penalties Guidance, applying each assessment to the facts of that case and it is well established that, other than in matters of legal principle, there is limited precedent value in other penalty decisions since, ultimately, each case turns on its own facts.²⁶⁹⁴ In addition, the European Commission guidelines are for the European Commission to apply, and the CMA is not required to apply its Penalties Guidelines in a way that mirrors the European Commission's guidelines.

CTM's rivals were prevented from gaining a pricing advantage over CTM from the relevant providers. As a result, wide MFNs restrict the providers' freedom of pricing with the third party competitors of the beneficiary of the wide MFNs and therefore may soften horizontal competition between competitors.

²⁶⁹² The CMA's view of the analogous horizontal effects of wide MFNs and RPM is consistent with economic literature which consistently finds that wide MFNs can lead to anti-competitive effects on competition between PCWs. (see section 9.B).

²⁶⁹³ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 449.

²⁶⁹⁴ *Kier Group plc v OFT* [2011], CAT3, para 116; *Eden Brown Ltd v OFT* [2011], CAT 8, paras 78 and 97.

- S.26 In this case, the CMA is satisfied that it has applied the Penalties Guidance appropriately in reaching the starting point.

S.III.(d). Legitimate aim of CTM's wide MFNs

- S.27 Finally, BGL referred to '*the Tribunal ma[king] it clear that, even in object cases, the CMA is required to take into account the fact that the undertaking in question pursued a legitimate aim in its infringing conduct*²⁶⁹⁵ and went on to argue that in the present case, where there is good evidence that BGL's purpose in entering wide MFNs was to secure better deals for its own customers, '*the case for a reduction is overwhelming*'.²⁶⁹⁶
- S.28 The CMA disagrees. The CMA considers that BGL's reference to *Ping Europe v CMA* ('Ping') is misplaced. The CAT held in Ping that the CMA rightly recognised that Ping's promotion of custom fitting constituted in principle a legitimate aim and that the internet policy was a suitable means to promote custom fitting (albeit that it was not '*objectively justified*').²⁶⁹⁷ In the present case, the CMA has found that the means by which CTM pursued its commercial objective was anti-competitive. In other words, the CMA does not consider that imposing a contractual provision preventing CTM being undercut was '*a suitable means*' to secure lowest prices. CTM's desire to ensure that prices on other PCWs were not lower than on CTM should and could have been achieved through competition on the merits, in the same way as its rivals. Moreover, as set out in Section 10.B.III, BGL has not made submissions or adduced evidence to the effect that there are any pro-competitive efficiencies meeting the conditions for exemption under section 9 of the Act or Article 101(3) TFEU.²⁶⁹⁸ Nor has it submitted that its wide MFNs were objectively necessary such that they should not be considered to restrict competition.

²⁶⁹⁵ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 458; BGL refers to *Ping Europe v CMA* [2018] CAT 13, paragraph 241.

²⁶⁹⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 458.

²⁶⁹⁷ *Ping Europe v CMA* [2018] CAT 13, paragraphs 2, 154, 163, 241.

²⁶⁹⁸ According to Article 2 of Council Regulation (EC) No 1/2003 of 16 December 2002 the burden of proof under Article 101(3) TFEU rests on the undertaking(s) invoking the benefit of this provision. Therefore, the factual arguments and the evidence provided by the undertaking(s) must enable the Commission to arrive at the conviction that the agreement in question is sufficiently likely to give rise to pro-competitive effects or that it is not. See, for example, Joined Cases C-501/06 P and others, *GlaxoSmithKline*, paragraphs 93–95.

S.IV. BGL's representations on the adjustment for aggravating and mitigating factors at Step 3 of the CMA's penalty calculation

- S.29 As set out in Section 11.D.III the CMA may reduce the penalty at Step 3 to reflect termination of an infringement as soon as the CMA intervenes.
- S.30 BGL submitted that despite being '*firmly convinced*' of the lack of anti-competitive effects of its wide MFNs, as soon as the present proceedings were launched, BGL offered commitments to abandon all wide MFNs in its contracts and subsequently voluntarily stopped enforcing all wide MFNs in its contracts.²⁶⁹⁹ It added that a discount of 5% is '*extremely low*' in light of this offer of commitments and of the fact that '*other competition authorities have invariably accepted commitments to remove the MFN clause, when it was found to have infringed competition law, thereby resulting in no fine being imposed*'.²⁷⁰⁰
- S.31 The CMA does not consider that the practice of other competition authorities operating under their own national laws constrains the CMA from using its discretion to impose a penalty or the level of penalty that it seeks to impose. The CMA's decision to reject the offer of commitments by BGL reflected its concern that to accept commitments would undermine the CMA's duty to deter anti-competitive behaviour (by BGL or by any other companies) through the effective enforcement of competition law.²⁷⁰¹
- S.32 BGL further submitted that there was genuine '*uncertainty as regards the legality of wide MFNs in the home insurance sector*'.²⁷⁰² For the reasons set out in Section 11.C.I.b.iii, the CMA does not consider that there was genuine legal uncertainty about the treatment of wide MFNs under the Act or Article 101(1) TFEU such that it would be appropriate to decrease the penalty for this mitigating factor.²⁷⁰³
- S.33 BGL submitted that it has acted co-operatively and in good faith throughout the present proceedings, and since before the launch of the PMI Market Investigation. It noted that the European Commission has shown readiness

²⁶⁹⁹ URN 8484.5, BGL's Response to the SO dated 20 February 2019, paragraph 448.

²⁷⁰⁰ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 464.

²⁷⁰¹ URN 9850, CMA's response to BGL's letter of 19 October 2017.

²⁷⁰² URN 8484.5, BGL's Response to the SO dated 20 February 2019, paragraphs 414 to 438 and URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 465 (iv).

²⁷⁰³ BGL also in this context reiterated its arguments relating to the De Minimis Notice and the coverage of the wide MFNs, addressed at section 11.C.I.(b)(ii) above.

to reward effective co-operation by a company even in vertical cases which may not benefit from horizontal leniency procedures.²⁷⁰⁴

- S.34 The Penalty Guidance states that a relevant mitigating factor is cooperation which enables the enforcement process to be concluded more effectively and/or speedily. In that regard, it explains that (i) respecting the CMA's time limits specified or otherwise agreed will be a necessary but not a sufficient criterion in itself to merit a reduction at Step 3 and (ii) cooperation over and above this will be expected, such as the provision of staff for voluntary interviews and/or arranging for staff to provide witness statements.²⁷⁰⁵ Further, cooperation is not assessed in relation to the type of infringements, and the CMA is equally ready to reward co-operation in vertical or horizontal cases, whether or not leniency procedures are available.
- S.35 The CMA does not dispute that BGL has acted in good faith during the Investigation. However, the CMA considers that BGL has not gone beyond the level of cooperation that the CMA would expect from a party under investigation, for example in relation to time limits or cooperating during the with notice inspection under section 27 of the Act, such that it would be appropriate to decrease the penalty at Step 3.
- S.36 The CMA notes that the cases cited by BGL where the European Commission granted a cooperation discount involved the party receiving the reduction acknowledging the infringement, providing documents substantiating the existence of the infringement (helping prove the facts of the case), or waiving certain procedural rights, resulting in administrative efficiencies. It is therefore not clear how these decisions of the European Commission support BGL's argument, given that BGL has not admitted liability, voluntarily provided additional evidence that strengthened the CMA's case, or waived procedural rights resulting in administrative efficiencies.
- S.37 BGL submitted that *'the evidence, taken at its highest, is no more than slight' and that any such alleged effects 'would plainly lead to lower prices for many consumers.'*²⁷⁰⁶
- S.38 BGL's submissions relate to the degree of harm to competition. The degree of harm to competition, including the effect of the wide MFNs on competitors, third parties and consumers, has been taken into account when setting the

²⁷⁰⁴ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 465 (vi). BGL quotes a number of EU cases in support of its submission, including PO/Nintendo (AT.35706), Consumer Electronics (Asus, Denon & Marantz, Philips) (AT.40465, AT.40469, AT.40181 and AT.40182) and AT.40428 (Guess).

²⁷⁰⁵ Penalties Guidance, footnote 35.

²⁷⁰⁶ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 465 (i) to (iii).

starting point for the penalty (see Section 11.D.I). For the reasons set out in Section 9.C and above, the CMA has found that CTM's wide MFNs had an appreciable effect on competition and that they are likely to have resulted in higher retail prices.

- S.39 BGL submitted that CTM is a '*consumer champion*' and its objective was to ensure the best prices for its customers.²⁷⁰⁷ The CMA does not dispute the value to consumers brought by PCWs in general. However, this is not a factor that warrants a reduction of the penalty as bringing value to customers does not exonerate companies from complying with competition law.

S.V. BGL's representations relating to adjustment for specific deterrence or proportionality at Step 4 of the CMA's penalty calculation

- S.40 BGL submitted that the imposition of a penalty would be disproportionate.²⁷⁰⁸
- S.41 First, BGL disagreed with the CMA's conclusion that BGL acted at least negligently. The CMA rejects this submission for the reasons set out in Section 11.C.I.
- S.42 Second, BGL submitted that the CMA should take into account the recent and contemporary practices of other competition authorities in setting a penalty and in particular that (i) a discount of 5% for BGL's removal of the wide MFNs is too low in light of precedents and (ii) the practice of other competition authorities in the context of investigations into MFN clauses was to accept commitments, or where an infringement was found, not to impose a fine. This submission has been addressed above in Section S.III.(c).
- S.43 Third, BGL submitted that the CMA is punishing the wrong player in the insurance market, and that it is wrong from a policy perspective to impose any penalty on CTM, whilst not imposing any fine on large and powerful multinational insurance companies who also were party to these agreements. Whilst the CMA does not dispute the value to consumers of PCWs in the sector; like any other market participants, BGL is required to comply with competition law and, where it is found not to have done so, to be subject to the consequences.

²⁷⁰⁷ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 465(iii).

²⁷⁰⁸ URN 10459, BGL's response to the First LoF and DPS dated 14 February 2020, paragraph 466.