

COMPETITION INSURANCE INQUIRY FEEDBACK

Motor insurance

GNCR Submission to the European Commission Directorate General for Competition

1. French association of body repairers, whose name is Groupement National des Carrossiers Réparateurs (GNCR), have been conducting an inquiry in close cooperation with their counterparts in Denmark, Ireland, Spain and United Kingdom.

2. Body repairers' interest in this Inquiry arises from their direct and natural relationships with policyholders, that are their customers. These ones often report that they have been instructed through insurers' intermediaries to take their vehicle for repair to a member of insurer's network.

3. Besides these unfair practices which represent undue interference in the functioning of the marketplace, body repairers have also experienced that the forms of horizontal cooperation regarding calculation of cost risk among insurers are hindering competition.

4. GNCR members see considerable value in having this matter examined by an independent statutory authority and thus welcome the decision to hold an inquiry and equally the opportunity to express their view and experiences in that regard. They hope that the careful consideration given to the issues addressed by this submission is of some assistance to the European Commission. General Secretariat of GNCR stands ready to offer any further assistance that may be required of it.

5. French body repairers represented by GNCR, in cooperation with their counterparts in Denmark, Ireland, Spain and United Kingdom,

- Having regard to the Sector Inquiry into Business Insurance aimed at analysing the provision of insurance products and services to businesses within the European Union and understanding the functioning of the sector, which would ultimately allow to detect distortions of competition;
- Considering that insurance claim management is a core issue for the protection of insurance policyholders and a key element in the competition between insurance companies;
- Whereas insurance intermediaries play a central role in the distribution of insurance and especially in the claim management;
- Recognizing that horizontal cooperation among insurers in calculation of cost of risk are arising doubts about the justifications of such cooperation and the scope of the exemption granted by the present Block Exemption Regulation,

Provide the following submission and authorise the European Commission to publish it.

6. Insurers and their intermediaries in achieving agreed targets are reducing consumer choice

6.1. As pointed out in the European Commission Inquiry in the Business Insurance, the so-called "Spitzer" investigation conducted in 2004 and 2005 in the United States, which involved the world's largest insurance broking firms and several insurance companies, gave evidence that insurers are "stimulating" their intermediaries to steer, for instance, high volume or profitable business to selected insurance companies. This might not necessarily be in the interest of customers.

6.2. Reports and complaints from motor insurance policyholders show that insurers and their intermediaries also steer of the claimant to specific body repairers of their choice. Unfair practices consist in lack of information and undue pressure in persuading policyholders to accept the insurer's body repairer. If policyholders want to exercise their right to choose, they are confronted by a barrage of subtle allegations about the repairer they have chosen, such as, "Well, he's not recognised by us." or "I wouldn't use him if I were you." and other statements designed to create doubt in policyholders' minds about the repairer they have selected. Body repairers of car

manufacturer networks as well as independent repairers raised these matters. For example in Ireland, a Ford Dealer complaining that a customer's insurer had insisted the customer's car be brought for repair to a competing Nissan garage. This represents undue interference and influence in the functioning of the market. In Denmark, most of insurers have inserted a clause in the insurance policy whereby insurance companies can choose which repairer to use, as long as insurance companies are paying for the repairs.

6.3. Motor insurance claims management services are provided through the use of direct marketing, i.e., call centres. In France, for example, AIS platform is an important interface shared by four insurers, MAAF, MMA, AZUR and GMF. By this strategic partnership insurers represent about 25 –30% of the French car accident market. In the next years this market share could easily increase to 30 – 35%. Three other major French insurers (MACIF, MAIF and a bank who is a French leader "Caisses d'Epargne") set up another interface whose market share is also about 25%. Major insurers, such as Groupama use their own in house call centres to deal with claims. There are also leader accident companies like Motorcare, Nobilas and WNS working on behalf of numerous insurers. Motorcare is the leader in the United Kingdom and well established in France and in Germany. Nobilas Claims & Fleet solutions belongs to Akzo Nobel multinational group. WNS Assistance is a specialist insurance business outsourcing service provider. With over 17 years in the field, they have established themselves as one of the leading service providers to many top insurers and international brokers. WNS is the largest non-insurer purchaser of repair services in the UK.

6.4. A survey evaluated the results that insurers can reach via these accident management structures: "38% of policyholders who address to the insurance agent are directed to the insurers' own repairer network, when they are 60 to 70% in the case of a helpline services like Motorcare¹." Call centres use efficient telephone scripts that are carefully worded to coerce consumers into following their recommendations, since steering methods are being experienced and improved not only in Europe but also in United States and Australia. Last February 2007, for example, in Bedford Hills (New York state) a body repairer that is a certified aluminum structural repair facility for the Mercedes Benz CL Class, and the Jaguar XJ8 explained tricks and games that are being played by a majority of the insurance companies, their appraisers and adjusters, as a result of a lawsuit he has filed against an insurer². He detailed some specific practices as follows:

- the insurance company caller intimidates and bullies claimants into the mistaken belief that they shall be required to make substantial out of pocket payments for the repair of their vehicle unless they follow their recommendation;
- caller also knowingly makes misleading and false or exaggerated statements pointing out that body repairers outside insurer's schemes might not be guaranteed, or fully covered, or overpriced, or that the work will be unduly delayed;
- insurer rewarded those employees who were successful at steering and penalized those who were not.

The New York state Auto Collision Technicians Association (NYSACTA) issued a statement in support of this suit saying NYSACTA strongly believes in the enforcement of steering laws calling illegal steering by insurers *"the major defect in the current system of claims handling."*

6.5. Intermediaries involved in illegal steering are not only insurers' agents, brokers and specialist insurance business outsourcing service providers. Appraisers and adjusters are also taking part. For example, in France some cases show that experts lower the repair cost and comment that they will pay from their insurer's referred shops estimate. As a result policyholders have to assume the supplement cost if they decide to exercise their right to have the repair done by a trusted shop of their choice³. Spanish representatives of repairers confirm that appraisers are following insurers' instructions acting as if they were their agents⁴.

¹ Association Nationale pour la Formation Automobile – Observatoire – la réparation-collision, quelles problématiques pour la formation initiale et continue ? 15.12.2000, p. 24.

² North State Custom of Bedford Hills New York against Progressive Insurance and several of its appraisers and adjusters for illegally steering collision repair customers to the insurer's Direct Repair Program (DRP) shops.

NY Shop Files \$40 Mil Suit against Progressive for Illegal Steering – Collision Week – Monday, 26 Feb 2007.

³ Tribunal de Grande Instance de Nanterre, 1^{ère} Chambre section A – jugement du 22.11.1995, aff. N°10569/94, « *Société carrosserie Parizot / Monsieur Bernard Zingg* ». Le jugement souligne que l'expert missionné par l'assureur ne peut se référer au tarif des garages agréés mais au prix publics pratiqués.

Tribunal de Grande Instance de Lille – jugement du 27.05.1999, aff. 97/6252, « *Toyota Jean-Pierre Grosso Automobiles c/ BCA* ». Le jugement rappelle que l'assuré, qui avait choisi de faire réparer son véhicule TOYOTA pratiquement neuf et encore sous garantie chez le concessionnaire de la marque, comme son contrat d'assurance l'y autorisait, était en droit d'y parvenir sans conserver de frais à sa charge, dès lors que ce dernier affichait des prix au taux du marché.

⁴ Ramón Marcos Fernández, Presidente de CONEPA : « *la falta de independencia del perito que actúa dentro de los márgenes que las compañías establecen en función y a favor de sus intereses es el cuarto factor que incide negativamente en*

6.6. There may be efficiencies for insurers in streamlining the claim process. However, these systems restrict consumer choice and have little proven benefit to the customer as assessed by criteria such as reduced premiums and quality of repair. Therefore, GNCR members call upon the European Commission to investigate the motor insurance mediation market involved in the claim process and remain vigilant to ensure that insurers' customers be informed of their rights and provided with fair services. A fair chance to compete on a level playing field is what they are pleading for.

6.7. The best way to promoting a strong and smash repair sector that best meets the needs of insurers and consumers is through competition. Increased competition is only delivered through increased choice which results in improved productivity and lowest possible market prices. To this end, the hereafter proposals are submitted to EU officials as undertakings that they could adopt to restrict insurance companies practices throughout Europe.

(a) Insurers' policyholders have to be informed they have a rightful choice of selecting a company to repair their vehicle. This right is to be included in marketing material and in their insurance policies and call centre/helpline procedures. Insurers should clearly state, upfront in product disclosure documents, repairer choice. Where they inform policyholders of the benefits of using their own services they are also required to confirm that policyholders can use repairers of their choice without any inference to any unsubstantiated 'slurs' on any business that customers prefer.

(b) When signing the insurance contract, the policyholder also signs a voluntary assignment⁵ to the body repairer of his choice. A voluntary assignment is a legal form whereby the chosen body repairer is being entitled by the policyholder to have the repair directly paid by the insurer.

In France this solution is used by GNCR members although insurers' refusal to pay directly independent body repairers. French courts stated that voluntary assignment is a legal solution which gives independent body repairers a right against insurers, i.e the right to be paid directly by insurers, because they have been entitled by policyholders showing their willingness in this way when signing the voluntary assignment.

(c) When contacting an insurer call centre the caller listens to preamble recordings before being connected to a person. A message on the policyholder's choice of repairer has to be inserted because of insurers' commitment of treating policyholders fairly.

(d) In addition, the insurers undertake for the purpose of the European Competition rules not to put obstacles to delay the repair process.

7. Horizontal cooperation regarding calculation of cost risk among insurers

EU Commission has highlighted the following set of issues for consultation regarding horizontal cooperation on calculation of cost risk among insurers.

Q.11 The inquiry's data concerning the various forms of cooperation among insurers shows substantial differences among Member States. How can these differences be explained?

Q.12 Which sorts of benefits have you experienced, as a business insurance customer, from the forms of cooperation among insurers described in the present Report?

Q.13 As a business insurance customer, have you ever experienced that the forms of cooperation among insurers described in the present Report were hindering competition?

la supervivencia del taller. En las actuales condiciones, el perito no actúa por lo general como un tasador independiente e imparcial. » - El Foro del sector de la reparación de la automoción : primeras medidas – 21.11.2006.

⁵ The mutual obligations of assignor, i.e the policyholder, and assignee, i.e the body repairer, under a voluntary assignment of a right against another person, who is the debtor, i.e. the insurer, in this case.

The voluntary assignment is called in Danish : “ Overdragelse af Fordringer ” and in German : “ Übertragung der Forderung ”.

7.1. As a result of the inquiry that has been conducted by GNCR in coordination with their counterparts in some European Member States, the various forms of cooperation among insurers can be explained by the national market structure.

7.1.1. In Denmark all insurance companies are member of the Insurance trade association F&P, that runs and holds exclusively the license for a specific calculation system, namely Audatex. F&P has access to all the information in the calculation system. Repairers can only use Audatex calculation system.

7.1.2. In Spain, about 20 insurers set up a calculation system within an insurance research institute whose name is Centro Zaragoza. Timeframes from this system are 15% until 38% below car manufacturers timeframes for car paints. Spanish repairers are complaining about this unfair practice⁶.

7.1.3. In Ireland the Competition Authority received a complaint on 13 November 2001 alleging that, from 26 November 2001, four insurance, Allianz, Axa, Hibernian (Aviva) and Royal & Sun Alliance were to introduce a motor vehicle repair estimation system that “seems to be solely designed to enable the insurance industry to dictate the price they will pay for all crash repair, comprehensive or third party, in the State”. The complainant claimed that the introduction of the new Glassmatix system (“Glassmatix”) places a cost burden of IR£4,120 upon motor vehicle repairers by requiring them to purchase computer software to operate the new system. Furthermore, it was argued that it takes up to 70 minutes longer to obtain estimates using the Glassmatix system than opinion time based methods. The complainant also alleged that a spokesperson for the insurance undertakings, at a meeting held on 5 November 2001, confirmed that the insurance undertakings met all the paint suppliers and agreed a price structure for car paints.

7.1.4. In its decision, the Irish Competition Authority pointed out that *“in the context of discussing input prices competitors should exercise special care not to discuss output prices. For example, an internal document produced by one of the Consortium members which appears to be related to a meeting held in July 2000 states, under the heading “PROPOSAL FOR PROGRESSION”, that “any agreement should be phased in to allow for ‘Premium Catch Up’”. Co-ordination with respect to premium catch up, for example, would be unlikely to meet the requirement that consumers should be allowed a fair share of any benefits associated with the co-ordinated introduction of Glassmatix and would not therefore satisfy the test under Section 4(5) as it fails to meet the conditions that consumers have a fair share of the benefits*⁷. “

7.2. The relationship between smash repairers and insurers since the early 1980s could generally be characterised as ‘adversarial’. There have been ongoing disputes regarding hourly rates paid to repairers, the development by insurance companies of accredited or preferred repairer schemes and slow or late payments to repairers. These issues have been exacerbated as a result of ongoing structural changes in the industry, including improvements in technology and training, together with changes in the market for insurance products and heightened consumer expectations regarding the quality and efficiency of repairs.

7.3. The sustainability of business body repairers that have invested a great deal of time, effort and money in creating a loyal and trusting customer base on which their future depends, is essential; and in the wider community interest, to ensure there is a competitive and efficient market for repair work. In such a market consumers will be the ultimate beneficiaries of reliable, safe and prompt repair work and competitively priced premiums. Viable and harmonious working relationships between insurers and repairers are essential to deliver these desired outcomes. It is in the interests of repairers and insurers alike that contractual arrangements entered into between them are perceived to be equitable and fair by both sides, with mechanisms in place to ensure transparency and accountability across the whole commercial relationship.

⁶ CETRAA, CONEPA, FACONAUTO y GANVAM han puesto en marcha el Foro del Sector de la Reparación de Automoción para promover la competitividad del Sector de la Reparación – 31.10.2006.

⁷ Decision of the Competition Authority N° E/03/001, 26th August 2003 (Case COM/202/01).

7.4. GNCR members call upon the European Commission to investigate further the horizontal cooperation regarding calculation cost risk among insurers, especially in motor insurance. They recommend the following undertakings:

- (a)The right of insurers to mandate particular repair estimating software should be removed;
- (b)Databases of repair times and repair estimating software using such databases should be subject to independent audit;
- (c)The obligation for insurers not to co-ordinate on current and /or future levels of and/or changes in labour rates and /or other costs;
- (d)The obligation for insurers not to prevent the benefits of a system from being passed on to consumers.

Body repairers within GNCR appreciate the opportunity for input into the Commission's inquiry and look forward to a chance for further comment later this year. Should you wish to discuss these issues further please contact Mr Pierre VEROT, General Secretary , phone 0033 1 44 29 71 29, email: pierre.verot@gncr.org.

Dr. Brigitte CASTELL BORRAS
Lawyer registered with Barcelona Bar Association

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