PAYDAY LENDING MARKET INVESTIGATION

Statement of issues

Introduction

1. On 27 June 2013 the Office of Fair Trading (OFT) in exercise of its powers under sections 131 and 133 of the Enterprise Act 2002 (the Act), made a reference to the Competition Commission (CC) for an investigation into the supply of payday lending in the UK.

2. The CC is required to determine whether any feature or combination of features of each relevant market prevents, restricts or distorts competition in connection with the supply or acquisition of any goods or services in the UK or a part of the UK.[1] If the CC decides that there is such a prevention, restriction or distortion of competition, there will be an 'adverse effect on competition' (AEC).[2]

3. This issues statement draws on the OFT's decision on making a market investigation reference ('the OFT's decision document'[3]) and on our initial consideration of an appropriate framework for the investigation. We are publishing this statement now to assist those submitting evidence to focus on the competition issues we envisage being most relevant to this investigation.

4. We now invite parties to provide us with their views on the issues raised in this document, covering the background to the market investigation, the characteristics of the sector and the theories of harm that we have identified. Theories of harm are by definition theories and their identification does not in any way imply that we have reached views on whether they apply. Also, their identification in this statement does not preclude us from finding an AEC on another basis.

5. We ask parties to support their views with relevant evidence (including original documentation and analysis). We also invite parties to tell us if they believe either that *(a)* the issues we have identified should not be within the scope of our investigation or are mischaracterized, or *(b)* there are further issues not identified or issues which we have indicated we are not minded to pursue which we should consider. If parties wish to make such representations, we ask that they indicate clearly why the issues they identify either should or should not form part of our investigation.

6. As our thinking develops, we expect to issue further documents for consultation prior to the publication of our provisional findings. If we find provisionally that there is an AEC, we will at that point begin a consultation on possible remedies.

7. We have also published an administrative timetable which provides parties with an overview of our process and our intended timetable.

8. We plan to hold hearings with interested parties in due course.

9. To submit evidence, please email paydaylending@cc.gsi.gov.uk or write to:

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[1] See section 134(1) of the Act.
[2] As defined in section 134(2) of the Act.
[3] See the final decision on making a market investigation reference to the Competition Commission, June 2013, OFT1492ref, www.oft.gov.uk/shared_oft/markets-work/payday-MIR.pdf.

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Background

10. The demand for relatively small, unsecured short-term loans to meet temporary gaps in cash flow is not a new phenomenon and has long been a feature of people's formal and informal financial arrangements. However, what appears to be a relatively recent development, in the UK at least, is the development of companies primarily providing specific credit products to meet this demand. Payday lending is defined in our terms of reference as 'the provision of small-sum cash loans marketed on a short-term basis, not secured against collateral, including (but not limited to) loans repayable on the customer's next payday or at the end of the month and specifically excluding home credit loan agreements, credit cards, credit unions and overdrafts'. As noted in the OFT reference, the term payday loans is not used exclusively to refer to loans linked to the borrower's payday. For the purpose of this issues statement, and based on our initial research, we consider payday loans to be unsecured loans which are generally taken out for less than 12 months, and where the amount borrowed is usually less than £1,000.[4]

11. The development of companies offering these loans appears to have originated abroad, particularly in the USA, from related services, such as cheque cashing. The USA experienced significant growth in the provision of payday loans from the 1990s though the growth in the UK has been more recent. We note a number of the current larger providers in the UK are part of US companies and that some also operate in related businesses, such as pawnbroking.[5]

12. In the UK, the supply of payday loans has grown significantly in recent years. The OFT estimates that in 2011/12 payday lenders' turnover was £860 million. According to the OFT's estimates, payday lenders experienced a four-fold increase in turnover between 2009/10 and 2011/12.

13. Despite this growth, payday loans appear to represent a relatively small proportion of total consumer borrowing in the UK. For example, UK gross lending across all types of consumer credit excluding student loans was £176.2 billion in the financial year 2011/12, of which credit cards accounted for £136.8 billion.[6] In comparison, the OFT estimates the total value of new payday loans issued in 2011/12 to be between £2.0 billion and £2.2 billion.

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[4] Excluding home credit loan agreements, credit cards, credit unions and overdrafts.
[5] Our initial investigations suggest a high proportion of the largest payday lenders identified by the OFT are subsidiaries or business units of large corporations, principally based in North America, with payday lending and pawnbroking activities in North and South America. In several cases these corporations are listed on North American stock exchanges.
[6] Bank of England Consumer Credit statistics (table A5.6) www.bankofengland.co.uk/statistics/Pages/bankstats/current/default.aspx. These figures do not include student loans or mortgages.

14. Payday lending has been, and continues to be, a sensitive issue which has attracted a large amount of political and media attention. We note that our investigation takes place against this background and ongoing scrutiny of the sector from other public bodies. We set out below a brief summary of related work that is being undertaken in parallel with our investigation.

Regulation enforcement and scrutiny of payday lending

15. The OFT has said that payday lending remained 'a top enforcement priority'.[7] In February 2013 it launched a review of compliance in the sector. As part of this review the OFT wrote to 50 payday lenders requiring information from them to demonstrate that they are complying fully with their legal obligations. The OFT is analysing the evidence of compliance by lenders and published an update on its review on its website on 30 July.[8]

16. The Financial Conduct Authority (FCA) will take over responsibility from the OFT for the regulation of consumer credit, including payday lending, from April 2014. It aims to introduce a stronger, more flexible regime that is better resourced to deal with problems in the market. The FCA will consult in September 2013 on its proposed rules for consumer credit firms, including new requirements where there is evidence of harm being caused to consumers.

17. The Department for Business, Innovation and Skills (BIS) has also announced that it is carrying out two surveys of customers and lenders 'to address concerns in the payday lending market' both of which it expects to close in mid-August 2013.[9] The aim of these surveys is to check how well payday lenders are meeting the standards set out in the industry codes adopted in November 2012. BIS has also appointed Ipsos MORI to conduct qualitative research into how payday lending advertising affects customer behaviour.

18. Payday lending is continuing to attract political scrutiny. For example, the Public Accounts Select Committee reported in May 2013 on Regulating Consumer Credit in which it highlighted the growth in what it described as high-cost credit including payday lending. More recently a Private Member's Bill on payday lending received its second reading in the House of Commons on 12 July 2013. The Bill would, among other things, restrict the amount of credit that can be advanced; limit the level of default charges; end charges connected with the use of 'continuous payment authority'; and restrict 'rollover' and repeat lending.

The CC's market investigation

19. The focus of our market investigation is how competition works in the market and whether there are features of payday loans that prevent restrict or distort competition in the UK. It is not our role to enforce compliance with the existing regulatory regime or, subject to ensuring a competitive environment in which customers are able to make informed choices, to reach judgements on the affordability of short-term credit for individual consumers and people's access to it.

20. However, by using our statutory powers to undertake an in-depth investigation of the way the market works, we anticipate that our findings will inform wider debate on the payday loans sector. We will also take into account the work of other public bodies

[7] OFT press release, 27 June 2013.
[8] See www.oft.gov.uk/OFTwork/credit/payday-lenders-compliance-review/.
[9] 'Government continues strong action on payday lending', BIS press release, 17 July 2013.

during our investigation and the experience of payday lending and its regulation in other countries.

21. As our guidance states, a phase 2 market investigation 'casts a fresh pair of eyes able to look more deeply at new evidence and analysis of the market'. The CC is an independent body with its own statutory duties.[10] The CC will therefore reach its own conclusions in relation to the matters covered by the market investigation on the basis of the evidence we receive and the analysis we undertake.

Presentation of the issues

22. The approach that the CC takes to assessing the effectiveness of competition in the markets it investigates is set out in *Guidelines for market investigations: Their role, procedures, assessment and remedies*, CC3 revised (The Market Investigation Guidelines). The CC will normally look at three basic issues: *(a)* main characteristics of the market and the outcomes of the competitive process; *(b)* the composition of the relevant market within which competition may be harmed (market definition); and *(c)* the features, if any, which are harming competition in the relevant market (the competitive assessment—which the CC frames using 'theories of harm'). This assessment will also consider possible countervailing factors, such as efficiencies, which may remove or mitigate the competitive harm of the features.[11] Our examination of competition will take into account, as necessary, constraints from outside the relevant market, segmentation within the relevant market, or other ways in which some constraints are more important than others.[12]

23. In order to understand the nature and extent of competition, we will examine a range of issues with the aim of identifying any features that might adversely affect competition. This range of issues will include observed outcomes (indicators of the extent of competition) and observed behaviour (both supplier and customer) that might explain those outcomes, as well as evidence of structural or other factors that influence that behaviour.[13] Features that may have the effect of preventing, restricting or distorting competition include the structure of the market, the conduct of firms whether as sellers or buyers, or the conduct of customers.[14]

24. We set out below the information available at this stage on market characteristics and outcomes; issues relevant to the definition of the relevant market(s); and our proposed theories of harm which are the basis for our analysis of competition. We also set out the possible nature of detriment that might arise if there were any AEC.

Market characteristics and outcomes

25. As part of our investigation we will collect and analyse information about the main characteristics of the market[15] for the supply of payday lending and the outcomes of the competitive process. This evaluation will go on throughout our investigation and will continuously inform our assessment of what might be causing any adverse effects in the market for payday lending or in related markets.

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[10] In April 2014, the CC and the OFT will be replaced by the Competition and Markets Authority (CMA). The CMA will undertake phase 1 and phase 2 investigations.
[11] Market Investigation Guidelines, paragraph 94.
[12] Market Investigation Guidelines, paragraph 133.
[13] Market Investigation Guidelines, paragraphs 103–129
[14] Market Investigation Guidelines, paragraphs 154–161.
[15] We have not yet concluded that this is a discrete market but we are using the term for convenience at this stage.

26. Our current theories of harm are informed by our initial view of the characteristics of, and outcomes in, the payday loans sector. In the following paragraphs we describe the regulatory environment as well as our initial understanding from existing research into the characteristics of borrowers, the structure of the payday loan market and some observed market outcomes.

Regulatory environment

27. Under the Consumer Credit Act 1974 (CCA), most businesses that provide goods and services on credit or for hire, lend money or provide debt collecting, debt counselling or debt adjusting services to consumers need to have a credit licence.[16] Payday lenders have to comply with this legal requirement.

28. The CCA does not provide for restrictions on the interest rates payday loan companies can charge. However, advertising of payday lending is subject to the Consumer Credit (Advertisements) Regulations 2004; this means that the 'typical APR' must be stated in all advertisements.

29. The OFT administers the licensing system and is required to ensure that lending takes place responsibly. It sets out in guidance (the Irresponsible Lending Guidance[17]) the standards of conduct it expects from all lenders that it licenses. Lenders should undertake proper and appropriate checks on the potential borrower's creditworthiness and ability to repay the loan and to meet the terms of the agreement. The checks should be proportionate and should take into account: the type of agreement, the amounts involved, the nature of the lender's relationship with the consumer and the degree of risk to the consumer.

30. The OFT can impose a range of penalties for breaches of a consumer credit licence which will be guided by the level of actual or potential harm to debtors and by the scale or frequency of identified misconduct.[18]

31. As noted in paragraph 17, from April 2014, responsibility for regulating consumer credit will transfer from the OFT to the FCA and the FCA will have additional powers. We will consider the role of current and future regulation of payday lending in the UK. In particular, we will consider whether any aspects of regulation may influence competition for payday loans.

The supply of payday loans

32. Although there are a large number of licensed payday lenders, the OFT found that the largest three companies represent about 70 per cent of the market (by turnover) and the top 15 firms account for about 90 per cent. The three largest firms are Wonga (wonga.com), Cash America (Pounds to Pocket and Quickquid) and Dollar Financial Corp (Paydayuk and The Money Shop).

33. There are two principal distribution channels for payday lenders: from retail premises and via the Internet. Different firms have different business models, some with

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[16] The Act was recently amended by the Consumer Credit Regulation 2010 and came into force on 01 February 2011 to take into account the Consumer Credit EU Directive requirements.
[17] www.oft.gov.uk/about-the-oft/legal-powers/legal/cca/irresponsible.
[18] See section 39A (Power to impose civil penalties), section 39B (further provision relating to penalties) and section 39C (statement of policy in relation to Civil Policies) CCA. Where a licensee fails to comply with a requirement prescribed by the OFT a civil penalty of £50,000 may be imposed in respect of each breach. The power to suspend has been given to the OFT through changes to the CCA in 2006, brought about through section 108 of the Financial Services Act 2012 (new sections 32A and 32B).

Internet-only offers, some with retail-only offers and others with a mix of both Internet and retail.

34. Basic lending fees and charges, including the initial interest, account for the greatest proportion of payday lenders' revenue, between 59 and 64 per cent according to the OFT compliance review.[19] This means that between 36 and 41 per cent of payday revenue would have derived from other sources such as revenue from rolling over[20] or refinancing[21] and other fees and charges.[22]

Payday loan customers

35. We are aware of a number of studies that seek to understand customers' motivations for taking out payday loans and which informed the OFT's work. According to the research conducted by the Personal Finance Research Centre at the University of Bristol,[23] payday loans are mainly used for household expenses (including emergency expenses) and bills, or to pay for a special occasion such as Christmas or birthday.

36. In this same study, the main reason given by customers for choosing payday loans over other types of borrowing are convenience and speed, followed by the self-reported inability to borrow from anywhere else. Based on its in-depth interviews, the study highlighted that the relative anonymity offered by an Internet-based service was a particular consideration for online payday loan customers. A large proportion of payday loan customers say that they use payday loans because they are less likely to get into financial difficulty using it compared with a credit card or overdraft.

37. The study also provides evidence of repeat borrowing among payday loan users. On average in the 12 months prior to the interview, retail customers took out five payday loans and online customers took out three. The OFT compliance review found that customers taking out more than one new payday loan in 2011/12 accounted for around 80 per cent of total revenue from payday loans.

38. The OFT found that a majority (68 per cent) of loans are repaid on time and that 18 per cent of loans are repaid late and 14 per cent are never repaid.

Prices and total costs of payday loans

39. The OFT's compliance review found that the average value of a payday loan is between £265 and £270. It noted that loans were marketed to consumers as one-off short-term loans. Assuming the loans were repaid on time, the OFT found that the costs were on average £25 per £100 borrowed for 30 days.

40. The total cost to a customer of taking out a payday loan may depend on a number of factors including: the amount borrowed; the length of the loan; the lender's pricing policy, including the interest charged; whether the customer agrees to pay for a same-day transfer; and whether the customer is late with repayments. The different

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[19] OFT compliance review—Annexe A (Quantitative findings), www.oft.gov.uk/shared_oft/Credit/oft1481a.pdf.
[20] 'Rollovers' were defined as 'loans that can be 'rolled over' beyond the original repayment date so the duration of the credit is extended but the amount of the credit and the terms and the conditions are unchanged'.
[21] 'Refinancing' was defined as 'a situation where a payday loan is refinanced on different terms and conditions; the outstanding loan amount is repackaged into a new loan, possibly with additional borrowing and/or over a longer term'.
[22] Most of the quantitative findings of the OFT compliance report are based on the information provided to the OFT by 21 payday lending companies, accounting for 85 per cent of the market by turnover. Source: Annexe A—Quantitative Findings, of the Payday lending compliance report, www.oft.gov.uk/shared_oft/Credit/oft1481a.pdf.
[23] The impact on business and consumers of a cap on the total cost of credit, Bristol University, March 2013.

components added to the original loan (the principal) include interest, transmission fees, late payment fees, and other charges relating to the recovery of the principal.

41. We are examining the evidence to assess the extent to which interest charges and other fees have changed significantly in recent years. There appears to have been some product innovation within the broad criteria of loans we describe in paragraph 11. This includes, for example, the introduction of a product that allows the customer to choose a repayment date instead of tying this to their payday and the introduction of new products with agreed credit limits that allow customers to choose when to draw down funds and enable them to repay early and/or repay via instalments.

Ongoing work on market characteristics and outcomes

42. As part of our ongoing analysis of market characteristics and outcomes we will consider a range of possible indicators of the extent of competition. These are likely to include:

- prices, aspects of innovation and service;
- margins; and
- whether concentration and market shares change over time.

43. It appears from our initial observations that, regardless of whether they are sold online or in stores, the pricing of payday loans is not straightforward, potentially involving daily or monthly interest, fixed fees and charges for late payments. We also note that, taken at face value, APRs are very high relative to other types of credit. We will investigate further the extent to which these observations are accurate reflections of the industry.

44. We will examine evidence as to whether competition or the threat of entry or expansion results in effects on prices and other aspects of lenders' offering, and how such competition has manifested itself in practice. We will consider whether competition is effective across different aspects of the product that are likely to matter to customers, including speed of approval and price. We will take into account relevant differences between products offered from retail premises and over the Internet.

45. We will also consider the profitability of payday lending and the extent to which the pricing of payday loans can be explained by the costs of providing the service. As part of such an analysis we may look at the costs and revenues associated with offering specific types of loan and/or with lending to particular customer segments.

46. If we find that the characteristics and outcomes we identify are indicative that the market could be more competitive, we will consider what features of the market might be driving them. As described in our theories of harm (see below), these features may include impediments to customers' ability to search, switch and identify the best value product. Another possibility is that there may be significant barriers to successful entry or expansion, that, coupled with high concentration, mean that firms in the market enjoy significant market power.

Market definition

47. As set out in the Market Investigations Guidelines (CC3 revised), in defining the relevant market, the CC identifies the participating firms and customers and the

traded products in the market(s) that are the subject of the reference. This enables the CC to focus on the sources of any market power and provides a framework for its assessment of the effects on competition of features of a market.[24]

48. Market definition is thus a useful tool, but not an end in itself, and identifying the relevant market involves an element of judgement. The boundaries of the market do not determine the outcome of the CC's competitive assessment of a market in any mechanistic way. The competitive assessment will take into account any relevant constraints from outside the market, segmentation within it, or other ways in which some constraints are more important than others.[25]

49. We will consider whether there is a market for payday loans separate from other types of credit. In doing so we will assess the extent to which there may be effective alternatives for payday loan customers, including, for example, bank overdrafts and other types of unsecured credit. We will assess whether borrowers have access to these other forms of credit, and the extent to which any alternatives which are available meet the requirements of payday loan customers. We will consider the extent to which any direct evidence exists of competition between payday lenders and other credit providers.

50. We will also consider whether it is appropriate to segment the payday lending sector further by type of customer, for example by risk or length of loan. In addition, we will assess the ease with which providers of other forms of credit can start offering payday loans and the constraint this imposes on payday lenders. We note that payday loans are sometimes supplied through third parties such as 'brokers' or 'lead generators' as well as direct from payday loan companies. We will consider whether there are separate markets for payday loans sold from retail premises and sold over the Internet.

51. A related question is the extent of geographic markets. The terms and conditions for online customers are the same across the UK and our initial investigations suggest the large chains of lenders operating from retail premises also generally offer a uniform product across their stores. We will consider whether the relevant geographic market is national or whether there are a number of distinct local markets with different conditions of competition.

Analysis of competition and theories of harm

52. To provide focus and structure to its assessment of the way competition is working in a market the CC sets out one or more 'theories of harm'. A theory of harm is a hypothesis of how harmful competitive effects might arise in a market and adversely affect customers. The use of the term does not imply any prejudgement of an AEC in a given market.[26]

53. Focusing the competitive assessment on the testing of theories of harm helps the CC to understand the market and to evaluate evidence so as to be able to decide the statutory question of whether or not there is a prevention, restriction or distortion of competition and, if so, identify what features are causing it. The use of theories of harm also helps the parties by identifying the issues that will be addressed and indicating the information that will be gathered.[27]

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[24] Market Investigation Guidelines, paragraphs 132–152.
[25] Market Investigation Guidelines, paragraph 133.
[26] Market Investigation Guidelines, paragraph 163.
[27] Market Investigation Guidelines, paragraph 164.

54. Our investigation is at a very early stage, and the purpose of identifying these hypotheses or 'theories of harm' is to present some early thinking on how issues might fit together, so as to help frame our investigation. Their identification does not mean that we have reached any conclusions on whether these hypotheses apply, nor have we yet reached conclusions on any of the issues set out in this statement. The identification of these theories of harm does not preclude an AEC being identified on another basis following further work by us or the receipt of additional evidence. These theories are not necessarily mutually exclusive.

Theory of harm 1: impediments to customers' ability to search and identify the best value product, and switch supplier

55. To drive effective competition customers need to be both willing and able to: access information about the various offers available in the market; assess these offers to identify the good or service that provides the best value for them; and act on this assessment by switching to purchasing the service from their preferred supplier.

56. We will consider whether impediments exist in the market that are restricting customers from exercising effective choice.[28] Specifically, we will examine barriers to:

- accessing information;
- identifying best value offers; and
- switching suppliers.

57. Our assessment of these issues will be informed by a number of general considerations of customer behaviour based, in part, on primary research we intend to commission.[29] This will include: who payday loan customers are and what they are buying; how responsive customers are to changes in prices; how much shopping around or switching is observed; and, whether there is any evidence of firms being disciplined by customer switching.

Accessing information

58. To drive effective competition, customers require access to the information needed to make informed choices about different firms' offerings. Where it is difficult to obtain information, or where the cost of obtaining information is high, customers may not search for the best offer available. Firms may respond by setting their prices (or other aspects of their offering) with only limited regard to competition. Search costs are likely to be substantial where the information that could possibly affect purchasing decisions is relatively complex, or difficult to obtain or process, or where the opportunity cost of time spent browsing different firms' products is high.

59. We will consider whether observed market outcomes are indicative of the existence of search costs. We will seek to understand the information that customers need in order to assess offers, including information on the various charges which may be incurred when taking out a payday loan (including default charges or rollover terms) and information about whether or not the lender would approve their loan application. We will examine what, if any, barriers customers face to accessing information and

[28] Market Investigation Guidelines, paragraphs 295–318.
[29] See www.competition-commission.org.uk/assets/competitioncommission/docs/2013/payday-lending/130807_payday_lending_itc_on_research_agencies.pdf.

the costs they incur when searching for products. This will include the ease of finding the right information, the financial costs of getting that information and the time required to search it out. We will seek information to understand how well informed customers are at the time of purchase and to assess the extent to which customers shop around. We will consider how this varies according to whether the customer takes out the loan from a physical retailer or on the Internet and how this is affected by lead generators or brokers.

60. We will examine whether payday loan firms engage in practices that increase search costs for customers. The presentation of information needed for customers to assess offers may be affected by the extent of compliance with regulation and we will consider how this is likely to be affected by the changes in the regulatory landscape. We note that, in its decision document, the OFT said it considered that the basis on which payday lenders competed created incentives for non-compliance with relevant law and guidance.[30]

Identifying best value offers

61. To drive effective competition, customers also need to be able to identify their preferred product. Where customers struggle to accurately assess the value of a product—or what importance to attach to different aspects of a product—then firms may be able to exercise market power without fear of a customer response.[31]

62. We will seek to understand how customers identify best value offers and whether there is any evidence of customers struggling to establish which product is best for them, which might create an impediment to effective competition.

63. Our initial observations suggest that differences between lenders in products offered and in the presentation of those products may mean it is not straightforward to compare products between lenders, even when the necessary information is available. The task customers face may be further complicated by the need to forecast future income and expenses in order to choose correctly. We will investigate how easy it is to evaluate payday loan products and, in doing so, will examine whether limitations to borrowers' ability to assess what weight to attach to different charges leads to borrower inertia and dissuades firms from competing on prices to win customers.

64. There are other factors which may affects borrowers' ability to identify best value offers:

- when assessing the value of a payday loan, some customers may not fully take account of the cost of future repayments, giving undue weight to the present and underestimating the importance that they will later attach to the charges they incur;[32] and

- some customers may assess inaccurately their ability to repay a loan because, even where they have taken into account the cost of future repayments, they may systematically overestimate their ability to meet them.[33]

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[30] Paragraph 3.7.
[31] The barriers to customers identifying best value offers which are discussed in this section are related to the broader topic of behavioural biases affecting consumer decision-making in financial markets—see, for example, *Applying behavioural economics at the Financial Conduct Authority*, Occasional Paper no 1, April 2013.
[32] Often referred to as 'present bias'.
[33] Often referred to as an 'optimism' or 'overconfidence' bias.

65. We will examine the extent to which these factors are observed among payday loan customers, and—if they are relevant—whether they might give rise to AECs. In particular, we will consider how, at the point at which they consider taking out a loan, customers attach relative weight to the importance of speed and availability with the cost of borrowing; and their perspective on the relative importance of these factors at other points in the life of the loan. We will also consider whether customers systematically underestimate their likelihood of wanting or needing to rollover, allowing firms to set high charges if they do then seek to rollover.

66. We will assess the impact of lenders' behaviour on borrowers' ability to identify best value offers. For example, this could be in the way firms encourage new or repeat customers to take out a loan; in the way they set the prices for their products including charges for late repayment; or in the way that firms frame or present information (for instance operating multiple brands).

Switching suppliers

67. Finally, to drive effective competition, repeat customers must be able to switch suppliers so as to respond to attractive offers. If switching is difficult for customers, because of the costs of doing so, there may be AECs.

68. We will consider the length of customer relationships with their lenders. We will assess whether there is scope for customers to take out a new loan with a different provider rather than rolling over an existing loan, and if so what switching barriers or costs customers face when rolling over an existing loan. We will also consider what switching barriers or costs repeat customers of a payday loan supplier face if they take out a new loan some time after having repaid a previous one.

69. Possible switching costs might include, for example, a lack of information about alternative products; inconvenience or administrative obstacles; contractual terms; customer sense of obligation; and concerns about the need for multiple credit checks and losing future access to credit.

Theory of harm 2: Market power and barriers to entry[34]

70. The OFT observed that the market for payday loans was concentrated and was close to the point at which the OFT would regard the market as 'highly concentrated'.[35] In a concentrated market, competition between firms may be subdued. This may not give rise to an AEC if the constraint from entry, or from substitute products, is strong. However, if significant barriers to entry and expansion exist and substitute products are not available, then incumbent firms may have the ability to exercise market power for certain products and/or in certain geographic markets and set higher prices or reduce the quality of other aspects of their offer.

71. While the OFT found that the supply of payday loans is concentrated, it also noted that there are a large number of lenders and consumer credit licences. We will undertake our own investigation of industry structure, including consideration of the number of lenders, their areas of activity, market shares and market concentration, and whether market shares have remained stable over time. We will also consider the strength of the competitive constraint between firms within the market(s), and from firms outside the relevant market(s). If we find that firms are likely to exert

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[34] Market Investigation Guidelines, paragraphs 178–236.
[35] See paragraph 3.101 of the OFT Final decision on making a market investigation reference www.oft.gov.uk/shared_oft/markets-work/payday-MIR.pdf.

market power as a result of the concentration of the market(s), we will consider what impact this has on customers.

72. If significant barriers to entry or expansion exist, we would expect to see evidence of the existence of such barriers and limited examples of successful entry on any significant scale. We will seek to understand whether there are barriers to successful entry or expansion. In our assessment, we will consider issues including:

- the role of advertising expenditure by large incumbents or other costs associated with gaining customers, such as acquiring leads from third parties;
- whether regulation represents a barrier; and
- the technology investment required.

73. We will consider whether there are relevant differences in these possible barriers for lenders operating from retail premises or online. We will also investigate entry and expansion in the supply of payday loans in recent years. We will consider, where entry has been observed, whether it has had a beneficial effect on the terms offered to customers.

Possible detriment

74. We will seek to identify any detrimental effect on customers which might result from any AEC, whether or not in the markets to which the features relate. These could take the form of higher prices or contracts that are less suited to the customer's needs, reduced service quality, and reduced choices of product and supplier or less innovation in relation to products.

75. If we provisionally conclude that there is an AEC, then in considering remedies we will also consider whether any relevant customer benefits arise from the features that prevent, restrict or distort competition, within the meaning set out in the Act (see paragraphs 355 to 366 of the Market Investigation Guidelines (CC3 revised).

14 August 2013