COMPETITION COMMISSION PAYDAY LENDING MARKET INVESTIGATION

INITIAL SUBMISSION ON BEHALF OF MEM CONSUMER FINANCE LIMITED, INSTANT CASH LOANS LTD AND EXPRESS FINANCE (BROMLEY) LTD

1. We welcome the opportunity to provide high level and initial comments on the OFT's reasons for referring this case to the Competition Commission ("CC"). We hope that in doing so, we can assist the CC to frame the scope of its review.

2. **Regulatory framework**

2.1 Regulation of payday lenders in the UK has been in a constant state of flux since prior to 2001. It is therefore difficult to assess the effectiveness of any specific regulatory changes on the payday lending market due to the ever-changing regulatory landscape. It has also made it difficult for any payday lender active in the market over the longer term to ensure compliance. Additionally, enforcement by the OFT in respect of non-compliance has been ineffective. As a result, compliant payday lenders are put at a competitive disadvantage by comparison with non-compliant and/or transient payday lenders as well as other lenders not required to comply with the same regulatory regime.

2.2 The transfer of regulatory powers from the OFT to the Financial Conduct Authority ("FCA"), in April 2014 will result in further changes to the regulatory environment. The FCA will have wider powers of enforcement than the OFT, and has said its regime will focus on 'higher risk firms, such as payday lenders'. In particular, the FCA has said it will take a robust approach to tackling the problems identified by the OFT in its compliance review and will identify any gaps in the rules that need to be filled. The FSA[1] has announced that it will undertake consultation in the autumn of 2013 to codify significant parts of the OFT's existing guidance, for implementation in April 2014.

3. **Market definition**

3.1 The analysis of the appropriate market definition is an exercise that will require detailed factual, legal and economic input. We would submit, however, that the market definition exercise should take account of the many other credit products that place a competitive constraint on payday lenders.

3.2 For consumers wishing to obtain small amounts of liquid funds in a relatively short space of time, alternative credit products that might be said to impose a competitive constraint on payday loans include, but are not limited to, authorised and unauthorised overdrafts, revolving credit, short-term instalment loans (3 to 6 month terms), rent-to-own and possibly, pawn broking and home credit.

[1] As the predecessor to the FCA – the announcement was made prior to the FCA coming into existence.

4. **Competition in the market**

Price competition

4.1 Competition in the market is generally robust, having regard to the various competitive constraints felt by payday lenders (see above) and the elements on which lenders compete. There is no lack of transparency as to pricing at the point at which a loan is taken out. The wide variety of distribution channels and credit-scoring methodologies is pro-competitive. Research by the University of Bristol Personal Finance Research Centre, published in March 2013, indicates that consumers value speed, convenience and anonymity above price alone and that consumers are aware of the relative cost of their loans, indeed that 46% of consumers had compared prices prior to taking out their most recent payday loan.

4.2 Although the concept of the payday loan is a simple one (receive an advance and repay it in full on or around the consumer's next payday) there are significant variations amongst products in the market in terms of factors such as cost of credit, term of the loan, methods of applying interest (if applicable), transfer speed and fees, verification methods, and application of default fees. There is competition between payday lenders on all these factors.

4.3 Any assessment by the CC of competitiveness on the market must take into account all elements on which lenders compete, including speed, convenience, anonymity and ability to accommodate limited and/or impaired credit histories, as well as price and the above factors. Any such assessment should not ignore the demands of consumers for lenders to compete on these other elements.

Barriers to switching

4.4 Consumers face no explicit switching costs in refinancing from one lender to another; costs of shopping around or comparing prices and products, particularly amongst online borrowers, are nil. Lenders generally do not treat the refinancing applications of customers of a competitor any differently from those of their own new applicants. Nevertheless, because consumers value convenience and speed, and because in our experience our research establishes that consumers have overwhelmingly favourable experiences with their lenders, actual switching is infrequent. This is a function of customer loyalty and good customer service, not of excessive difficulty or (explicit or implicit) costs facing would-be switchers.

5. **Barriers to entry and expansion**

5.1 Barriers to entry and expansion are low as evidenced by the number of new entrants into the UK market over the last 3 years. The OFT has identified up to 131 firms that issued payday loans in 2011/12. Of these, only 106 were operating in the previous year and only 77 were operating in 2009/10 (paragraph 3.102 of OFT's final decision on making a market investigation reference).

6. **Other comments**

6.1 The information on which OFT based its referral relates to the year ending 31 March 2012. It therefore pre-dates the CFA Lending Code for Small Cash Advances (the "Code") dated July 2012, the Good Practice Customer Charter for Payday and Short-term Loans and the Addendum to Industry Codes of Practice, and the changes made by the industry in order to meet the requirements of the Code and the Charter and Addendum. Most importantly, the OFT information will not take account of changes in business practices implemented in the last calendar quarter in response to the OFT compliance review. A review of more current data will reveal that many, if not all, of the market features raised by the OFT, and on which this investigation is predicated, no longer exist. These facts will emerge during the investigation.

6.2 In certain respects the OFT has misunderstood the mechanics of a payday loan or has made incorrect assumptions. By way of example only, the OFT has assumed that because payday lenders make a timely and efficient determination of affordability/credit quality, they must not be carrying out a proper assessment. That is not the case. In this instance, speed does not equate to poor quality. In common with many other industries (motor finance, major product purchases through retail outlets, credit cards etc), it is possible for payday lenders to offer 'instant credit checks' and determine credit quality on the spot at the point of sale. In fact, credit reference agency checks and affordability assessments are completed in minutes, if not seconds. Our loan application process is robust, comprehensive and thorough. For that reason, a high proportion of applications for payday loans are rejected by us since they fail to meet the assessment criteria.

12 July 2013