PAYDAY LENDING MARKET INVESTIGATION

Notice of provisional findings made under Rule 11.3 of the Competition and Markets Authority Rules of Procedure (CMA 17)

On 27 June 2013, pursuant to section 131 of the Enterprise Act 2002 (the Act) the Office of Fair Trading (OFT) referred to the Competition Commission (CC) for investigation and report the supply of payday lending in the UK.

On 1 April 2014, the Competition and Markets Authority (CMA) took over many of the functions and responsibilities of the CC and the OFT. Accordingly, the functions of the CC in relation to the reference were transferred to the CMA, under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6, Transitional Provisions and Savings) Order 2014 (the Order).

Provisional findings

1. The CMA inquiry group (the Group) appointed to consider this reference has provisionally found that there are features of the supply of payday lending in the UK that, either alone or in combination, prevent, restrict or distort competition such that there is an adverse effect on competition (AEC).

2. In particular, the Group has provisionally found that price competition between payday lenders is weak, that competition from other forms of credit only imposes a weak constraint on payday lenders' prices and that the following features of the UK payday lending market contribute to, and help to explain, the failure by many payday lenders to compete on price and give rise to an AEC.

3. First, the Group has provisionally identified the following combination of structural and conduct features, which limit the extent to which customer demand is responsive to the price of payday loans, and so reduce the pressure for lenders to compete to attract customers by lowering their prices:

    (a) The context in which customers take out payday loans – in particular customers' perceived urgency of need and uncertainty of access to credit – is often not conducive to customers shopping around to find a good-value loan.

(b) It can often be difficult for customers to identify the best-value loan product on offer. Making comparisons across products which differ in their duration and/or other characteristics can be difficult and existing price comparison sites suffer from a number of limitations and are infrequently used.

(c) Customer demand is particularly insensitive to fees and charges incurred if a customer does not repay their loan in full on time. Customers tend to be less aware of these potential costs of borrowing when choosing a payday loan provider than they are of the headline interest rate. Given short-comings in the information provided about such fees and charges, it can be difficult for customers to estimate, and so make effective comparisons about, the likely cost of borrowing if they do not repay their loan in full on time.

(d) Many online customers take out their first loan with a lender via a lead generator's website, and the value for money represented by different lenders' loan offerings is not taken into account in the auction process used by these intermediaries, who instead sell customer applications to the highest bidder. Furthermore, there is often a lack of transparency in how the service that lead generators provide is described on their websites – particularly the basis on which applications are matched with lenders – and many customers do not understand the nature of the service offered by lead generators.

(e) Where their choice of lender is not dictated by concerns about credit availability, customers can be dissuaded from looking at alternative suppliers by the perceived risks associated with using an unknown lender, particularly in light of the negative reputation of the payday lending sector. Customers may perceive a loss of convenience associated with applying to a new lender, particularly if the alternative is rolling over or topping up an existing loan with an existing lender.

4. Secondly, the Group has provisionally found that the competitive constraint that might otherwise be imposed on payday lenders' prices by the prospect of new entry or expansion is weakened by the following structural features:

(a) New entrants will face certain disadvantages relative to more established lenders, in particular:

(i) The ability of new entrants to expand and establish themselves as effective competitors is likely to be obstructed by the difficulties associated with raising customers' awareness of their product in the face of the barriers to shopping around and switching summarised above, the strength of the well-established brands that already exist and the costs associated with advertising on a sufficient scale to be effective in overcoming these obstacles.

(ii) Because of their greater reliance on new customers and the role of learning in credit risk assessment, new entrants are likely to face some disadvantages in their ability to assess credit risk for a period, which would put them at an initial cost disadvantage relative to more established providers.

(b) The history of non-compliance and irresponsible lending by some payday lenders and the resulting negative reputation of the sector are likely to reduce the constraint imposed on payday lenders' pricing by the prospect of new entry, reducing the likelihood of entry by parties with the capability to transform the nature of competition in the market. Potential entrants may also be dissuaded by the difficulty – itself linked to the current reputation of the sector – in establishing banking relationships, and the very small number of suppliers currently willing to provide banking services to payday lenders.

5. Taken together, these features give rise to an AEC in the UK market for payday loans. The AEC is likely to lead to customer detriment of higher prices and reduced innovation in pricing structures, relative to a situation in which price competition was more effective.

6. The Group's reasons are set out in full in the provisional findings report and are summarised in the summary of the provisional findings report (see note below).

The next steps

7. The Group now invites interested parties to submit reasons in writing as to why these provisional findings should not become final (or, as the case may be, should be varied).

8. Unless otherwise specified to a party, these reasons should be received by the Group no later than 5pm on Friday 4 July 2014.

9. Unless a different date is agreed with any party, the Group will have regard to any such reasons provided by this date in making its final decisions in this investigation.

10. The Group is today also publishing a Notice of possible remedies which it considers might be taken by the CMA or others to remedy the AEC it has provisionally identified, comments upon which should be received no later than 5pm on Friday 4 July 2014 unless otherwise agreed with any party.

11. The CMA is also publishing today a Notice of a request to vary the terms of reference.

(signed) SIMON POLITO
Group Chairman
11 June 2014

Note: A copy of this notice and the summary of the provisional findings report will be placed on the CMA website on 11 June 2014. The CMA expects to publish the full provisional findings report on its website by 13 June 2014. The published version of the provisional findings report will not contain any information which the Group considers should be excluded from the report, having regard to the three considerations set out in section 244 of the Act. These omissions are indicated by [✂].

Comments should be made by email to paydaylending@cma.gsi.gov.uk or in writing to:

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