# COMPETITION AND MARKETS AUTHORITY

# PAYDAY LENDING MARKET INVESTIGATION

# RESPONSE OF WONGA GROUP

# TO REMEDIES NOTICE OF 11 JUNE 2014

**4 JULY 2014**

**CONTENTS**

**SECTION** **PAGE**

## 1. INTRODUCTION AND GENERAL OBSERVATIONS

### Introduction

1.1 Wonga sets out below its initial response to the Competition and Market Authority's ("**CMA**") "Notice of possible remedies" of 11 June 2014 in connection with the CMA's market investigation into payday lending ("**Remedies Notice**") following the CMA's Provisional Findings of 11 June 2014 ("**PFs**"). Wonga has responded separately to the PFs, and its reply should be read in conjunction with this memorandum. Wonga's comments in this memorandum are without prejudice to its arguments set out in its reply to the PFs.

1.2 In the short time available to review and respond to the lengthy PFs, as well as to respond to the Remedies Notice, Wonga has been unable to consider in detail the full implications of the proposed remedies and to prepare a comprehensive response. Accordingly, these observations are subject to Wonga reserving the right to comment further on any proposed remedies as the CMA's investigation proceeds.

### The need for a holistic regulatory approach

1.3 The PFs outline the various regulatory developments which have operated and continue to run in parallel with the CMA's investigation, in particular:

(a) the Financial Conduct Authority's ("**FCA**") new Rules and Guidance in respect of consumer credit which include specific rules relating to high-cost short-term credit ("**HCSTC**") which capture payday lending. The new regime includes:

(i) rules governing the number of times that a loan may be rolled over – from 1 July 2014, payday lenders will be precluded from rolling over a loan more than twice;

(ii) limits on the use of continuous payment authorities ("**CPA**") to recover outstanding loans from a customer's bank account - from 1 July 2014, payday lenders will be limited to two failed CPA attempts. In addition, lenders will be prohibited from using CPAs to take part payments from the customer's account unless the customer expressly authorises this; and

(iii) a requirement on lenders to insert a risk warning in financial promotions for payday loans and to provide consumers with information on where they can access free debt advice before they rollover a payday loan.[1]

Most of the FCA's rules and guidance relating to consumer credit came into effect on 1 April 2014, with a transitional period until 1 July 2014 for the additional rules relating to HCSTC.

(b) in December 2013, the government imposed an obligation on the FCA to impose a cap on the cost of payday loans by January 2015. The FCA is expected to consult on its initial price cap proposals in July; and

(c) continuing FCA engagement with the payday lending industry to encourage real-time data sharing.

1.4 The Remedies Notice states "*In reaching a provisional decision on remedies, we will have regard to recent and future developments in the market including regulatory changes. We*

[1] Payday lenders are required, under rule CONC 3.4.1 of the FCA Handbook, to provide customers with the following warning: "Warning: Late repayment can cause you serious money problems. For help, go to moneyadviceservice.org.uk". CONC 3.4.1.(4) provides that "The risk warning must be included in a financial promotion in a prominent way".

*welcome comment on how these changes would interact with the possible remedies listed below and with any other remedies that parties may wish to suggest*".[2]

1.5 Wonga considers that there is a clear need for a holistic and coherent regulatory approach, which requires a consideration of:

(a) the consistency of the objectives being pursued; and

(b) the cumulative impact of all current and planned initiatives.

Consistency of objectives

1.6 The PFs identify a combination of structural and conduct features which are considered to limit the extent to which customer demand is responsive to the price of payday loans and which thereby reduce pressure on lenders to compete to attract customers by lowering their prices.

1.7 Wonga has explained in its PFs Response why it considers that price competition is effective,[3] in particular:

(a) Wonga has pioneered a simple, transparent and easy-to-use product as well as a straightforward and flexible pricing structure based on a daily interest rates. This allows the customer to exercise control and choose the loan amount and loan duration that is most suitable. Wonga's customers have responded to this by taking loans which are shorter (15 to 18 days) than the industry average (22 days) where Wonga's product is less expensive than most competing offers. This is entirely consistent with strong price competition;

(b) products have been launched with significantly lower headline prices (e.g. Flexcredit) or risk-based pricing structures (e.g. Sunny) and there have been competitive responses to these initiatives by competitors (including Wonga);

(c) [CONFIDENTIAL];[4] and

(d) the CMA's own analysis shows that there is significant variation in the prices charged by lenders across a number of different loan scenarios (i.e. lenders compete on price, in particular through different pricing and fee structures).[5]

1.8 In summary, Wonga considers that competing offers are established through a strong competitive dynamic in relation to both price and product structure, as well as quality.

1.9 Against this backdrop, Wonga notes that the proposed remedies package outlined by the CMA is designed to address perceived customer insensitivity to prices in order to increase the pressure on lenders to compete to attract customers by lowering prices. There is a potential tension, however, between this objective and the role of a price cap which is typically adopted in circumstances where price competition is considered to be very limited (or non-existent) and where there is little prospect of competition developing.

1.10 Wonga has explained to the FCA the potential risks which arise where a price cap is implemented in a market which is competitive. In particular, Wonga considers that substituting the formation of price though a competitive mechanism for an administratively-set maximum price will inevitably lead to distortions and adverse effects. For example, in circumstances where prices are on a downward trajectory due to intense

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2 Remedies Notice, paragraph 13.

3 Wonga's response to the PFs of 4 July 2014 ("**PFs Response**"), paragraphs 2.2 and 2.5-2.6

4 [CONFIDENTIAL]

5 PFs, paragraph 31.

price competition (as is currently the case), an administrative price-cap mechanism which is unable to replicate this dynamic might create an artificial price point which could reduce incentives for firms to become more efficient and thus drive prices down further. Wonga is also concerned that this effect could distort the effectiveness of any package of remedies which the CMA might seek to implement with the aim of stimulating price competition still further.

1.11 It is essential, therefore, that the consistency of objectives is carefully considered and that the price cap is implemented in a manner which allows any remedies aimed at increasing price competition to operate effectively. Moreover, the CMA should consider making a recommendation to the FCA (and the Government, as appropriate) that the price cap should be subject to a periodic review so that there is an opportunity to remove the capping mechanism if any package of CMA remedies is successful in stimulating additional price competition such that the price cap is no longer needed and/or deemed disproportionate in light of the changed market conditions.

1.12 The CMA should also consider whether certain of the issues it has identified are likely to be addressed in the near future through parallel regulatory initiatives. For example, the FCA may act to bring about industry-wide participation in the current initiatives to share real-time data, which is one of the measures which the CMA has identified as potentially facilitating the ability of customers to better establish their likelihood of acceptance by a lender whilst shopping around (i.e. Remedy 3).

**Cumulative impact of all current and planned regulatory initiatives**

1.13 Competitive pressures and regulatory changes to date have already significantly reduced Wonga's profitability and are expected to have negative effects on current and future lending volumes. More specifically:

(a) **Regulatory costs**: The impact of the move to FCA regulation is still to be fully assessed but the requirement to appoint Approved Persons, the need for a skilled and experienced compliance and monitoring function, together with the ongoing costs of FCA compliance, which include specialist legal and accounting services, will impose additional costs on businesses. [CONFIDENTIAL]

(b) **Competitive pressures**: As discussed above, [CONFIDENTIAL].

1.14 Whilst the above changes are intended to lead to better customer outcomes, they will also have an impact on Wonga's business and profitability as a whole.

1.15 The impact of a price cap has the potential to compound this effect and create further pressure on lending volumes and profitability. Wonga can be expected to make further changes to its business in response to the price cap such as re-evaluating its product and pricing structure and operations.

1.16 The impact of the CMA's proposed remedies package needs to be considered against this backdrop and, in particular, whether the associated costs, when added to those arising from the FCA measures (which are also, to some extent, intended to address perceived competition issues), are likely to be proportionate.

1.17 Wonga also notes the provisions of the Consumer Credit Directive 2008/48/EC and the UK implementing regulations, which relate to the advertising of consumer credit agreements, the disclosure of certain information prior to entering into a consumer credit agreement, and the disclosure of certain information in the consumer credit agreement itself. Wonga considers that these provisions cover to some degree the information required to be disclosed under the proposed remedies. Given that the Directive prescribes for maximum harmonisation, the UK cannot introduce national provisions diverging from those in the Directive in relation to matters falling within the scope of the Directive. In this connection, Wonga notes that Article 5(q) of the Directive (requiring that where a credit application is rejected after consultation with a CRA database, the creditor must inform the prospective borrower of the results and the particulars of the database consulted) may apply to the initial quotation/eligibility check and "indication" of the likelihood of granting credit proposed under Remedy 3.

1.18 Although, given the early stage of the CMA's remedy consultation process, it is not clear to Wonga whether the CMA's proposed remedies (in particular Remedy 3) are incompatible with the Directive, in light of the necessity to amend the remedies imposed in the Review of the Northern Ireland Personal Current Account Banking Market Investigation following the entry into force of the Consumer Credit Directive, Wonga wishes to draw the CMA's attention to the existing rules on the disclosure of information to consumers as its consideration of potential remedies progresses.

## 2. RELEVANT FRAMEWORK FOR CONSIDERATION OF REMEDIES

2.1 Section 138(2) of the Enterprise Act 2002 (the "**Enterprise Act**"), requires that, where the CMA concludes that there is an adverse effect on competition ("**AEC**"), the CMA shall, in relation to each AEC, take such action as it considers to be reasonable and practicable:

(a) to remedy, mitigate or prevent the AEC concerned; and

(b) to remedy, mitigate or prevent any detrimental effects on customers so far as they have resulted from, or may be expected to result from, the AEC.

2.2 In making a decision under section 138(2) of the Enterprise Act the CMA, *inter alia*, shall:

(a) be consistent with its reported findings;[6]

(b) have regard to the need to achieve a comprehensive a solution as is "*reasonable and practicable*" to address the AEC concerned and any adverse effect on customers;[7]

(c) have regard to the effect of the remedial action on "*any relevant customer benefits of the feature or features of the market concerned*";[8] and

(d) take no action to remedy, mitigate or prevent any detrimental effect on customers if no detrimental effect on customers has resulted from the AEC.[9]

2.3 Paragraph 66 of the Remedies Notice observes that the CMA will take into account the "*<u>effectiveness</u> of different possible remedies, and their associated costs, and will have regard to the principle of <u>proportionality</u>*" (emphasis added):

(a) With regard to "<u>effectiveness</u>", the CMA's Guidelines[10] state that relative factors for consideration include:

(i) the extent to which a remedy is "*clear to the persons to whom it is to be directed*";

(ii) the "*ease of monitoring and enforcing*";

(iii) the "*timescale over which a remedy is likely to have effect*";

(iv) "*existing laws or regulations either currently applicable or expected to come into force in the near future*"; and

(v) "*the way in which the measures are expected to interact with each other*".

(b) With regard to "<u>proportionality</u>", consistent with the Competition Appeal Tribunal's judgment in *Tesco v Competition Commission*,[11] the CMA's Guidelines[12] state that a proportionate remedy is one that:

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6 Enterprise Act, section 138(3).

7 Enterprise Act, section 138(4).

8 Enterprise Act, section 138(5). Such customer benefits include lower prices, higher quality, greater choice and greater innovation (Enterprise Act, section 134(8)).

9 Enterprise Act, section 138(6).

10 CC3 (Revised) - Guidelines for market investigations: Their role, procedures, assessment and remedies, April 2013, paragraphs 336-341.

11 *Tesco v Competition Commission*, [2009] CAT 6, 4 March 2009, paragraph 137.

(i) is effective in achieving its legitimate aim;

(ii) is no more onerous than needed to achieve its aim;

(iii) is the least onerous if there is a choice between several effective measures; and

(iv) does not produce disadvantages which are disproportionate to the aim.

2.4 Finally, at paragraph 67 of the Remedies Notice, the CMA observes that it will consider the effects of any remedial action on any customer benefits (such as lower prices, higher quality or greater choice of goods or services or greater innovation in relation to such goods or services) arising from the feature(s) of the market concerned. In this regard, consistent with the Competition Appeal Tribunal's judgment in *Tesco v Competition Commission*, the CMA must conduct a full and proper assessment of the economic/welfare costs and benefits of any potential remedy in order to assess the effects of any customer benefits and to assess whether a remedy option is proportionate.[13]

2.5 Accordingly, in light of the FCA's recently introduced remedies whose effects are yet to be assessed, the introduction of the proposed price cap and, given the (at worst) finely balanced nature of the evidence in support of the CMA's provisional views as to the existence of any AECs (see Wonga's PFs Response), it is incumbent upon the CMA to be particularly cautious in imposing remedies as part of its Payday Lending market investigation. This is particularly so because there is a real risk that any further regulatory intervention could have disproportionate and negative unintended consequences, distorting competition in the medium- to long-term.

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12 CC3 (Revised) - Guidelines for market investigations: Their role, procedures, assessment and remedies, April 2013, paragraph 344.

13 *Tesco v Competition Commission*, [2009] CAT 6, 4 March 2009, at, *inter alia*, paragraphs 111 and 163.

## 3. REMEDY 1: PRICE COMPARISON WEBSITE

### Introduction

3.1 The CMA is consulting on the adoption of a remedy requiring the "*creation of a comprehensive and trusted price comparison website for payday loans which would help customers to compare the cost of a loan for specific borrowing scenarios relevant to the customer's requirement*" (referred to as "**Remedy 1**").[14]

3.2 Remedy 1 is intended to address the CMA's provisional concern that "*customers are unable to make effective comparisons of the prices of payday loans or easily to compare the prices of loans in different scenarios*".[15] Specifically, the CMA refers to the general lack of, and the limited functionality of, existing payday loan price comparison websites. This concern is related to the CMA's provisional view that there is insufficient shopping around by payday loan customers. In this connection, Wonga refers to section 5 of its PFs Response, which explain why the CMA's analysis in the PFs understates the extent to which customers do currently shop around.

3.3 Remedy 1 is also intended to address the CMA's provisional concerns that new entrants are impeded in their ability to raise customers' awareness of their products.[16] In this regard, Wonga refers to section 6 of its PFs Response which explains why the CMA's provisional findings on barriers to entry are inconsistent with the available evidence.

3.4 When considering the reasonableness and proportionality of Remedy 1, the CMA must take into account the magnitude of the AEC which is being addressed. In this regard, Wonga is not convinced that a mandated price comparison website is necessary, particularly if the existing commercial comparison sites could be developed to include payday loans. Nevertheless, if the CMA continues to consider that a price comparison website is an appropriate and proportionate remedy, given the (at worst) finely balanced nature of the evidence in relation to the AEC underpinning Remedy 1, it is incumbent upon the CMA to ensure that the costs and obligations arising in connection with any price comparison website are reasonable and proportionate.

3.5 Against this background, Wonga sets out below relevant considerations which it would urge the CMA to take into account when considering the nature and scope of a price comparison website. Wonga then sets out below its responses to the CMA's specific questions.

### Key features of an effective price comparison website

3.6 In Wonga's view, in order to appeal to customers, an effective price comparison website should be:

(a) **simple**: potential applicants should be able to input the necessary information on the duration and value of the loan they are contemplating and obtain results relatively quickly and easily. Potential applicants will be discouraged from using a complex and time-consuming website;

(b) **comprehensive**: the website should include information from all legally-compliant providers of payday loans (including both online and high street lenders) on the key product features, including total cost of borrowing, whether the loan providers offers instant payment (and any fee in this regard) and the scope for flexible/early repayment. In this regard, the website must have the inherent flexibility to deal with loans of different values and durations;

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[14] Remedies Notice, paragraph 18.

[15] Remedies Notice, paragraph 19.

[16] PFs, paragraphs 21.

(c) **accurate**: the results should reflect up-to-date pricing and terms;

(d) **comparable**: the results should be presented in a way which enables the total cost of borrowing of the specific loan being contemplated to be compared easily;

(e) **visible and easily accessible**: potential applicants should be able to find relatively easily and quickly the comparison website online via payday lenders' websites and via search engines, including on Google;

(f) **unbiased**: the website should be operated independently from payday lenders and related financial organisations. Further, results should be ordered by reference to objective metrics only; and

(g) **permanent**: the website should be enduring in order to facilitate on-going and repeat use.

3.7 The above characteristics give rise to a number of specific issues which the CMA should consider carefully.

User-friendly and comprehensive

3.8 First, there is a clear tension between making any price comparison website user-friendly (i.e. simple and quick to use) and making it comprehensive. A website that requires customers to input large amounts of personal information is less likely to be used by repeat and new customers on a regular and on-going basis (potential applicants may consider it more efficient to proceed directly to a loan application with a payday lender rather than inputting detailed information at the price comparison stage). In this regard, Wonga foresees considerable difficulties arising from an obligation to include information on the likelihood of acceptance by payday lenders in relation to a specific loan query. Wonga refers to Section 5 below which explains in more detail the difficulties in estimating the likelihood of acceptance of any particular loan query. Wonga observes that in order to provide a meaningful indication of the likelihood that a particular loan application will be successful, a potential applicant will need to input into the comparison website reasonably detailed personal information. Given the value of many of the loans being sought, if such detail is required, applicants might be discouraged from using the comparison website. Further, it will be costly and difficult to maintain a website with the necessary functionality to be able to provide a meaningful indication of an applicant's likelihood of acceptance.

3.9 Moreover, Wonga observes that a move to more risk-based pricing may make it more difficult and costly for a price comparison website to undertake the necessary permutations to compare prices of payday loans effectively and efficiently.

Which loan cost measurement to use

3.10 Secondly, there is a tension between providing the most useful cost measurement and the statutory obligations on payday lenders to provide APRs. Wonga has consistently stated that the most appropriate measurement for the cost of a payday loan is the total cost of credit.[17] This is supported by the CMA, which has itself concluded that "*the most useful basis for customers to make comparisons between payday loans is likely to be on the basis of the total cost of credit in relation to specific scenarios of relevance to the customer 's own analysis*".[18]

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17 For example, please refer to Response of Wonga Group to Annotated Issues Statement of 28 February 2014, paragraph 5.19

18 PFs, paragraph 6.76.

3.11 Wonga has also maintained throughout the CMA's investigation that APR is not useful for customers.[19] In this regard, as the CMA's own qualitative research demonstrates, APR is not a useful measurement for customers in comparing the cost of payday loans. According to the CMA's own survey, customers found it difficult to compare financial concepts such as APRs.[20] Indeed, the CMA itself has concluded "*that the regulatory obligations on lenders to disclose representative APRs were unlikely to be of much, if any, assistance to customers in making comparisons between payday loans.*"[21]

3.12 The CMA concludes in paragraph 6.77 of the PFs that "*the disclosure of an APR can provide an indication of the cumulative cost of taking out multiple payday loans over the course of a year, or of repeatedly extending a short-term loan over a longer period*." Wonga considers that this justification is also unsupportable. By way of example:

(a) a £200 loan from Wonga borrowed over 30 days and repaid on time in full would have a total cost of credit of £67.15 (33.58 per cent of principal borrowed), which amounts to an APR of 3,294 per cent;

(b) if this loan is "repeat borrowed" (i.e. repaying the loan in full and then taking another loan for the same amount) 12 times during the course of a year, the customer would have borrowed £2,400 in total at a total cost of £805.80. This means that the customer will have paid charges equal to 33.58 per cent of the total amount borrowed, despite borrowing at an APR almost 100 times larger than the actual cost of borrowing; and

(c) if this loan were to be extended twice for an additional 30 days in each case, making the term a total of 90 days, the customer would be asked to pay a total of £213.15. This is made up of the original cost of £67.15 plus the cost of two extensions at £73.00 a time. The total cost of credit of £213.15 amounts 106.58 per cent of the original £200 borrowed, which is some 30 times smaller than the associated APR.

3.13 These examples illustrate that APR is not even a useful indicator of the cumulative cost of taking out multiple loans over the course of a year.

3.14 Against this background, Wonga considers that the inclusion of APRs on the comparison website (even alongside total cost of credit information) could give rise to considerable customer confusion and undermine the efficacy of the comparison website. In this regard, Wonga also has concerns about customers being able to filter or order results by reference to APR. Accordingly, Wonga would urge the CMA to consider carefully how reference to APRs should be included in the comparison website. This may require the CMA to make a recommendation to amend the statutory obligations on payday lenders to publish APRs (for example, rules on prominence).

<u>Commercially viable on a standalone basis in the medium-to long-term</u>

3.15 Thirdly, in order for the comparison website remedy to be reasonable and proportionate, and to ensure that the costs of the website do not escalate unreasonably, the website must be established and operated with a view to becoming commercially viable on a standalone basis in the medium-to long-term. Given the nature of the AECs as provisionally found by the CMA (and also noting Wonga's concerns about the weak evidence base underlying the AECs), it would be appropriate and proportionate for payday lenders to provide specified upfront funding to cover expenses only for a defined period, particularly in light of the increasing cost and revenue pressures faced by payday lenders

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19 For example, please refer to Response of Wonga Group to Statement of Issues of 23 September 2013, paragraph 5.33(d)

20 PFs, paragraph 6.26.

21 PFs, paragraph 6.76.

as a result of the plethora of current and proposed regulatory initiatives, including the forthcoming price cap.[22] Against this background, Wonga considers that, in the medium- to long-term, the most proportionate mechanism by which to fund the comparison website would be on a "cost per acquisition" basis.

3.16 Funding the website on a "cost per acquisition" basis has a number of benefits, including incentivising the website operator to drive traffic to the website, ensuring that the costs of the website are fairly distributed amongst payday lenders actually benefiting from the website (and not creating any new upfront costs for new entrants). In order for a "cost per acquisition" funding approach to be adopted, the comparison website would need to provide for "click through" from the website to the websites of payday lenders. Wonga notes that a "click through" approach was not considered to be inappropriate in relation to the Home Credit price comparison website ordered by the Competition Commission.[23]

3.17 As regards the proportionality of costs associated with establishing and operating the comparison website, Wonga would urge the CMA to explore whether it would be more cost effective, efficient and expeditious for an existing comparison website company to operate the payday lending price comparison website.[24] An existing price comparison website company would already have the necessary expertise and experience. In addition, an existing price comparison website would already have a brand presence which could increase the reach of the website at launch. In this regard, it would be appropriate for the CMA to open up the running of the website to commercial tender in order to ensure that the most cost-effective website operator is selected.

<u>Promotion</u>

3.18 Fourthly, careful consideration needs to be given as to how the website could be promoted. It occurs to Wonga that there are a number of ways in which promotion costs for a comparison website could be minimised, for example:

(a) payday lenders could be required to remind customers about the price comparison website, for example, on their websites and in-store (for high street operators) before the loan application is processed and when a customer receives confirmation of a loan being repaid, as well as in relation to any annual statement adopted pursuant to Remedy 4;

(b) all lead generators could be required to include on their websites links to price comparison website; and

(c) the appointed website provider could be an established price comparison website company with existing high customer awareness.

3.19 Wonga considers that the steps set out above would be particularly effective in relation to a payday lending price comparison website given the short-term nature of the product (and scope for repeat borrowing) as well as the high level of internet use by existing customers.

3.20 In addition, there are certain external factors which may make it difficult for a payday loan comparison website to promote itself. By way of example, search engines should not

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22 Please refer to PFs Response, section 3 regarding market profitability.

23 Competition Commission *Understanding post-market Investigation remedies* – Home Credit February 2013 ("**Home Credit Review**"), paragraph 145.

24 Wonga observes that the CMA ruled out using a third party to operate the Home Credit price comparison website because the website "*was to be funded by lenders and was intended to be a non-commercial website*" (Home Credit Review, paragraph 124). A website operated by a third party could still be funded by lenders (i.e. on a "cost per acquisition" basis supplemented by start-up capital). Further, it is not clear why a website must be non-commercial. A commercial website is more likely to be successful on an ongoing basis.

put in place rules which restrict the ability of the appointed website operator to promote itself. In this regard, Wonga understands that Google's Consumer Advisory Match ("**CAM**") policy can make it very difficult for a generic price comparison website to include payday lending comparison services. It is suggested that the CMA should discuss with price comparison websites the extent to which this might constitute an obstacle for them.

3.21 Wonga submits that the adoption of the above strategies would eliminate the need for a material advertising budget for the comparison website.

<u>Additional matters relevant to comparison website design</u>

3.22 Finally, Wonga would urge the CMA to consider the following additional matters in developing Remedy 1:

(a) the need to build into the timetable sufficient time to enable the website operator to trial the website before use (Wonga routinely trials website and other developments before full launch and finds that the trial process is important in supporting the launch of a more attractive and successful offering to the mass market);

(b) the need to work with payday lenders to ensure that the website is easily inter-operable and user-friendly from their perspective. This would also assist in ensuring that creation of the website does not give rise to unanticipated costs;

(c) the need to have regard to the interplay of Remedy 1 and other proposed remedies, not least Remedy 3 on the measures to assist customers self-assess creditworthiness (see paragraph 3.8 above) and annual statement requirements. In relation to the latter, Wonga would suggest that information should be presented on the comparison website in a way that enables customers easily to compare the information; and

(d) the need to review the operation of the website in order to ensure that, first it is operated consistently with the CMA's objectives (this may be as part of a five year review) and whether the website continues to be required in light of market developments.

**Responses to the CMA's questions**

***(a) What are the main challenges in establishing an effective price comparison website in this market and how might these be overcome?***

3.23 Wonga refers to paragraphs 3.8 to 3.22 above. In summary, the main challenges include ensuring the comparison website:

(a) is simple yet comprehensive;

(b) is visible and accessible;

(c) provides customers with accurate and meaningful information on the total cost of credit; and

(d) is a proportionate remedy, i.e. it does not give rise to unreasonable (and recurring) costs for payday lenders.

(b) ***What features should a customer be able to specify when searching for a loan using the website? For example, should a customer be able to specify:***

(i) ***the duration and value of loan required;***

(i) ***the repayment structure of the loan (instalment loans vs traditional single repayment payday loans);***

(iii) ***inclusion of faster payment options, or the date on which customers wish cash to be received by; and***

(iv) ***other characteristics of the loan or provider (and what those might be).***

3.24 In Wonga's view, customers should be able to specify the duration, value and structure (i.e. instalment vs traditional) of the loan. In addition, customers should be able to filter results in order to ascertain which loans are available online, which loans are paid instantly to successful applicants and which loan can be repaid early. Basic information on the level of default fees and extension fees could also be included separately (bearing in mind the need to keep the design and content simple, although it would be inappropriate to include these in the total cost of credit.

(c) ***What is the best way of providing a comparative cost of a loan and how should the price of payday loans be disclosed for any given scenario – for example, should the total cost of credit and/or the total amount to be repaid be included?***

3.25 Wonga considers that the most appropriate way to provide the comparative cost of a loan would be to provide the total cost of credit for the specific loan (i.e. taking into account loan amount and duration).

3.26 For reasons set out in paragraphs 3.10 to 3.14 above, subject to any EU legal requirements, Wonga considers that the CMA should consider carefully how information on the APR should be included on the website.

(d) ***In which order should products be ranked (eg based on total cost of credit, or other metrics), and should customers be able to specify this ordering?***

3.27 By default, products should be ranked by total cost of credit. Potential applicants should be able to filter out certain results, i.e. those not available online, those with instant payment and those with faster repayment options. Wonga does not consider it appropriate for customers to be able to order results by reference to APRs as APRs are likely to mislead customers (see paragraphs 3.10 to 3.14 above).

(e) ***How should repayment scenarios in which a borrower does not repay the loan on the originally agreed date be treated on the website – for example, should borrowers be informed of the possible cost of rolling over the loan, the costs associated with repaying the loan late and/or other scenarios in which additional fees or charges might apply?***

3.28 Although it might be helpful to include information on extension fees and default fees, Wonga observes that in relation to other credit products it is not standard practice for equivalent information on fees etc. to be disclosed on price comparison websites. Notwithstanding the above, if this information is set out on the website, it must be presented in a clear and simple manner (to avoid customer confusion).

***(f) Which lenders and products should be included on the website?***

***(i) Should all authorised lenders be required to participate?***

***(ii) Should any non-payday lenders or products (for example, credit unions or instalment loans of longer than 12 months) be allowed to participate?***

***(iii) Should lead generators or other intermediaries be excluded from being listed on the price comparison site?***

3.29 All payday lenders (both online and high street) should be available on the website.

3.30 Given the fungibility of other credit products with payday loan products,[25] Wonga considers that it could be helpful to include a broader set of credit products on the website. However, payday lenders should not be required to fund website developments necessary to support the inclusion of such products. Wonga would observe that, to a certain extent, this could be achieved by having an existing price comparison website company as the website operator, as customers would be able easily to find information on alternative credit products.

3.31 The advantages of including lead generators and other intermediaries on the comparison website are not clear to Wonga and Wonga would suggest that they should therefore not be included.

***(g) How should the website be operated and governed?***

***(i) Who should maintain the website and make decisions about its ongoing development?***

***(ii) How should the website be funded (eg by payday lenders, and, if so, in what proportion)?***

3.32 The website should be operated by an independent website operator as appointed by the CMA. The website operator should have the appropriate expertise and financial resources to enable effective operation of the website on a long-term basis. The CMA should consider whether there are existing comparison website operators which have the expertise, and existing brand awareness to operate the website cost effectively and efficiently (including bringing the website to market more quickly).

3.33 Although a limited amount of initial funding might be required from payday lenders, this funding should be fixed and should only be available in the short-term. This initial funding should be split in equal shares amongst the top 12 providers by revenue. It is important that, in the medium- to long-term, the website is commercially viable on a standalone basis. This will require the website to be self-funded, for example, on a "cost per acquisition" basis.

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25 For example, please refer to Response of Wonga Group to Statement of Issues of 23 September 2013, Section 3,

***(h) How should the website be promoted?***

***(i) Should lenders be required to include a link to the website on their own websites and in other communications with their customers? Should the website advertise through television and other offline channels?***

***(ii) How could search engines be encouraged to display a link to the site when certain search terms are used?***

***(iii) Should the website operator have a budget for advertising and promotion? How large a budget should be allocated for this purpose?***

3.34 Please refer to paragraphs 3.18-3.19 above.

3.35 In order to ensure that the Remedy 1 is as proportionate and reasonable as possible, promotion costs should be minimised and should, in the medium- to long-term, be entirely funded by the comparison website's revenue (from "cost per acquisition" charges to payday lenders). Wonga does not believe that any upfront advertising funding needs to be provided, but in any event, any such costs funded by payday lenders should be strictly limited (in both value and time).[26]

3.36 In order to ensure effective promotion, Wonga would suggest that payday lenders could be required to promote the comparison website on their own websites, in their high street shops, and in certain communications with customers.

3.37 The CMA should consider whether any measures are necessary to ensure that search engines do not maintain or adopt any policies which raise promotion costs for the comparison website. Please refer to paragraph 3.20 above.

***(i) What should be the relationship between this website and other relevant websites, offering independent information or advice about short-term loan products, such as lenderscompared.org.uk (which offers price comparisons for home credit products and certain other cash loans) and moneyadviceservice.org.uk (which offers general advice about using payday lenders)?***

3.38 Wonga can see the potential benefit of the comparison website including details of, and potentially links to, a limited number of organisations which can provide information and advice to potential loan applicants, in particular debt charities. Wonga considers that although it would be appropriate to include references to some organisations, including links to a large number of different organisations could lead to customer confusion.

***(j) What are the likely costs of this measure and how do they vary with the design of the remedy?***

3.39 Wonga is unable to provide details of the likely costs of this measure as those cost will vary significantly depending on the precise speculation of this remedy. Moreover, the impact of such costs on pay day lenders will depend critically on the specification of the FCA's proposed price cap. The costs of the remedy could be minimised if:

(a) the CMA appoints a website operator with appropriate expertise and, ideally, pre-existing brand presence as a comparison website;

(b) payday lenders are required to promote the website on their own websites, in-store, and in certain communications with customers;

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26 Wonga observes that the total advertising budget for the Home Credit comparison website is £40,000 (increased from an initial £20,000); Home Credit Review, paragraph 141.

(c) although payday lenders may be required to provide a limited amount of pre-defined start-up funds, the website is funded on a "cost per acquisition" basis in the medium- to long-term;

(d) any advertising budget is specified in advance and is limited for a certain period which cannot be subsequently increased without agreement by payday lenders;[27]

(e) the website operator works closely with payday lenders in order to take advantage of their expertise and maximise inter-operability; and

(f) potential problems associated with the operation of search engines are addressed.

27 Wonga observes that the total advertising budget for the Home Credit comparison website is £40,000; Home Credit Review, paragraph 141.

## 4. REMEDY 2: MEASURES TO IMPROVE CUSTOMER AWARENESS OF ADDITIONAL CHARGES AND FEES

### Introduction

4.1 The CMA is consulting on the adoption of a remedy requiring "*lenders to provide a clear upfront disclosure to customers of the total amount repayable if they failed to repay the loan in full on time*"[28] ("**Remedy 2**"). The CMA states that Remedy 2 "*may also interact with Remedy 1 (Price comparison website) by requiring this information to be included on any price comparison website established as part of that remedy*".[29]

4.2 Remedy 2 is intended to address the CMA's provisional view that "*customers' over-confidence about their ability to repay their loans on time may cause them to pay only limited attention to late payment and default fees when taking out a loan. This is reinforced by the fact that the information provided by lenders on such fees can be less complete and/or prominent than information on headline rates*".[30]

4.3 In the PFs, the CMA states that the evidence collected by the CMA "*suggests that customers are in general less well informed about fees and charges incurred if they do not repay a loan in full on time than other aspects of the cost of the loan, and are less likely to factor them into their choice of lender*".[31]

4.4 As explained in paragraphs 5.25 to 5.27 of Wonga's response to the PFs, Wonga does not agree with this conclusion, which is unsupported by the evidence. In fact, the CMA's own survey evidence shows that a sizeable proportion of customers look at late repayment costs when taking out a loan (67 per cent).[32] A similar proportion of customers who shopped around reported collecting information on late payment fees (64 per cent).[33] Moreover, although the PFs claim that overconfidence about the ability to repay a loan on time "*can cause*" some customers to pay limited attention to these costs when taking out their loan,[34] the evidence shows no such causal relationship.

### Disclosure of the total amount repayable if customers fail to repay on time

4.5 Wonga considers that it already meets the CMA's desired level of disclosure as its website currently provides information on the additional charges and fees payable if a customer fails to repay the loan in full on time. It is Wonga's policy to disclose to each customer the total cost of repayment very clearly and prominently before the customer applies for a loan.[35] This is illustrated, for example, by the following features of the Wonga website:

(a) Wonga's website makes it clear to customers on the very first page how much a customer will pay back (i.e. the total cost of borrowing) before they commence the application process;

(b) information on the costs payable in the event that the customer does not have sufficient funds to repay on the due date is provided in the "*What does it cost?*" table and the "*What happens on your promise date*" section on the "*How It Works*" page of Wonga's website; and

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28 Remedies Notice, paragraph 27.

29 Remedies Notice, paragraph 27.

30 Remedies Notice, paragraph 28.

31 PFs, paragraph 6.91.

32 TNS BMRB, page 109.

33 TNS BMRB, page 100.

34 PFs, paragraph 6.117(c).

35 Please refer to Wonga's Code of Practice available at www.wonga.com/money/downloads/code-of-practice.pdf

(c) Wonga's website confirms that interest will accrue after the repayment date and that, once a loan is overdue, the interest bearing balance includes the principal and the interest outstanding on the original repayment date. This information is found at www.wonga.com/money/cpa/, which is only two clicks away from the wonga.com homescreen, and states:

> "*Will Wonga charge me? If we haven't received full payment by 5pm on your repayment date, you'll be charged a £20 missed payment fee and this may impact your credit rating. Interest will also continue to accrue on your balance. We'll add interest to your balance each month which means you'll pay interest on interest if you don't repay the loan. Your bank may also charge you for refusing our payment requests*"

4.6 Nevertheless, if the CMA were minded to pursue Remedy 2, Wonga would make the following preliminary comments:

(a) Wonga already provides substantial information on additional charges and fees payable as explained in paragraph 4.5 above. If required on a sector-wide basis, further information on the charges and fees associated with late and/or partial repayment of the loan for which the customer is applying could be incorporated as part of the user journey prior to the customer accepting the loan; and

(b) although indicative charges and fees associated with late repayment could be disclosed to a customer, these could only ever be indicative as the actual interest charged depends on the parameters of the original loan and how late the repayment is.

4.7 Against this background, Wonga sets out below its comments on the CMA's specific consultation questions.

**Responses to the CMA's questions**

***(a) Should additional fees and charges for late payment and/or rolling over of loans be made more prominent?***

4.8 To the extent that a payday lender does not provide clear information on the additional fees and charges for late payment and/or rolling over of loans, Wonga considers that these lenders should be required to display such information more prominently and transparently to customers.

***(b) How and when should any notification of charges be presented in the borrowing process?***

4.9 Wonga considers that charges and fees associated with a payday loan should be notified to customers prior to a customer making an application, as is Wonga's current policy as outlined in paragraph 4.5 above. Moreover, information on the charges and fees based on the specific loan amount applied for in the event that the customer fails to repay in full on the repayment date could be provided during the application process before the customer accepts the loan.

***(c) Should fees and charges be demonstrated using one or more example scenarios? How should such scenarios be specified?***

4.10 Although charges and fees for late repayment on the basis of standardised scenarios could be disclosed to customers upfront, these could only ever be indicative, as the actual interest charge associated with late repayment depends on the loan amount and how late the repayment is. While specific industry-wide scenarios may be useful to some extent when comparing the costs of lenders' products, these are unlikely to inform the customer of the actual costs associated with late repayment of the specific loan amount for which they are applying.

***(d) Should any information on fees for late payment or rolling over loans be included on any price comparison site, if one were created under Remedy 1?***

4.11 Although providing information on fees for late payment and/or rolling over loans on a price comparison website established under Remedy 1 would increase transparency for customers in relation to the total cost of borrowing and assist customers in comparing lenders' products, as explained in relation to question (c) above, such information could only ever be indicative as the actual interest charged would depend on the loan amount and how late the repayment is.

***(e) What are the likely costs of this measure and how do they vary with the design of the remedy?***

4.12 Wonga considers that updating its IT systems to disclose such information would be possible without a major re-design. However, it has not in the time available calculated the likely cost.

## 5. REMEDY 3: MEASURE TO HELP CUSTOMERS ASSESS THEIR OWN CREDITWORTHINESS

### Introduction

5.1 The CMA is consulting on adopting a remedy "*to ensure that customers are better able to establish their likelihood of acceptance by a lender*"[36] (referred to as "**Remedy 3**"). Remedy 3 is intended to address perceived concerns about the lack of shopping around by customers and in particular the CMA's belief that customers may be choosing lenders based on whether they believe a lender will offer them a loan rather than on the basis of the loan which offers best value.[37]

5.2 As is clear from paragraphs 5.17 to 5.19 of Wonga's PFs Response, there is no firm evidence in the PFs to support the CMA's view that customers are choosing lenders based on whether they believe a lender will offer a loan. In particular, the CMA's survey evidence does not indicate that uncertainty about loan approval is a significant concern. The fact is that:

(a) only 4 per cent of borrowers who have not considered going to a different lender for a loan indicate that this is because the current lender is regarded as more likely to approve their application; and

(b) only 10 per cent of borrowers who had considered switching, but had not actually done so, indicated that this was because the current lender was considered to be more likely to approve their application.[38]

5.3 Moreover, there is no compelling evidence in support of the suggestion that uncertainty might arise because an alternative lender "*<u>may</u> take different factors into account in its credit assessments, and will generally not have access to detailed information on that customer's repayment history*".[39] It is very unlikely that this would have a bearing on a customer's attitude and willingness to shop around or switch because, although customers generally understand that credit checks are undertaken, they will not generally be aware of any asymmetries between lenders in this regard. In any event, any such asymmetries are becoming much less significant and relevant as real-time data sharing becomes widespread in the industry.

5.4 Critically, the CMA has not explored customers' current perceptions of which lenders would lend to them prior to the point of application and there is no evidence in the PFs that customers are aware of and/or concerned about the possible impact of multiple credit searches on their ability to access credit.

5.5 The lack of evidence supporting the CMA's provisional finding in this regard undermines the objective need for Remedy 3. Implementation of Remedy 3 would therefore be unreasonable and disproportionate.[40] Notwithstanding the lack of an evidential basis to support the need for Remedy 3, Wonga sets out its preliminary views on Remedy 3 below.

### The role of credit checks in the loan acceptance process

5.6 In order to determine whether Remedy 3 is appropriate, proportionate and reasonable, the CMA will need to consider:

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36 PFs, paragraph 35.

37 PFs, paragraph 36.

38 TNS, BMRB Survey, page 136.

39 PFs, paragraph 6.61.

40 Section 138(6) of the Enterprise Act provides that, in making a decision to remedy an AEC the CMA, inter alia, shall take no action to remedy, mitigate or prevent any detrimental effect on customers if no detrimental effect on customers has resulted from the AEC. Please refer to section 2 above.

(a) **the types of credit checks available**: In this regard, Wonga currently uses [CONFIDENTIAL] when a customer applies for a loan or when Wonga obtains a customer referral from a lead generator (in order to check the quality of that lead). Given that Wonga caches the data from an [CONFIDENTIAL], it does not need to use [CONFIDENTIAL]. Wonga understands that only [CONFIDENTIAL]. Further, to the extent that any other searches leave a footprint, [CONFIDENTIAL]. Subject to any special arrangements reached with CRAs, every time a payday lender or other credit provider undertakes a form of credit check (whether "enquiry", "quotation", "application" or "credit") the provider will incur a search fee;[41]

(b) **the decision-making processes of payday lenders:** For each loan application, Wonga undertakes a bespoke and detailed credit risk and affordability analysis based on a myriad of data points from CRAs, Wonga's own data and other external data sources (such as the electoral roll); and

(c) **the role that credit checks play:** The credit search undertaken for Wonga by CRAs forms only part of the risk analysis undertaken by payday lenders when determining whether to offer a loan. In Wonga's case, only [CONFIDENTIAL] per cent of the loan applications it currently declines are rejected on the basis of credit risk assessments. The majority of the declines are based on other criteria, in particular, those relating to identity and fraud verification.

**Credit check results only a limited indicator of the likelihood of loan approval**

5.7 Against this background, Wonga considers that there is limited benefit in providing customers with an indicative credit score or confidence index ahead of an application, because it will not be sufficiently reliable as an indicator of the likelihood of ultimate loan approval.

5.8 First, in order to provide a more accurate assessment of the likelihood of a specific loan application being accepted, Wonga would need to supplement the "quotation" check with additional checks using its internal data and other external data sources. This would require more detailed information to be provided by customers in order to obtain an indication of likelihood of being accepted.

5.9 There may be little difference in terms of the level of effort expended by the customer (and Wonga) between the customer: (a) requesting an assessment of the likelihood of a specific loan application being accepted; and (b) making a full loan application. Therefore, Remedy 3 would not be effective in remedying any concerns the CMA may have in relation to facilitating shopping around for customers that are concerned about their likelihood of acceptance.

5.10 Secondly, Wonga considers that the level of technical development work (and associated costs) which would be required to create an eligibility indicator would be disproportionate given the lack of evidence that there is a problem which needs to be remedied. In this regard, splitting the quotation credit risk assessment and subsequent affordability checks into a two-stage process would require a significant re-design of Wonga's existing credit risk and affordability assessment, which would be both costly and time consuming, and may give rise to negative unintended consequences.

5.11 In terms of costs, Wonga also observes that a two-stage process involving the provision of an initial indication of creditworthiness will increase CRA search costs materially because payday lenders would need to undertake both "quotation" and "application" searches for all applications and also "quotation" searches for each customer requiring an indication as

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41 [CONFIDENTIAL]. Accordingly, Wonga would suggest that the CMA approach CRAs directly for more detailed information on the content and implications of each type of [CONFIDENTIAL].

to their likelihood of acceptance. In this regard, CRAs charge separately for "quotation" and "application" searches.

5.12 Thirdly, providing customers with such an indicator will raise a number of customer relationship issues. For example:

(a) customers with a poor credit search result might be told that they have a low likelihood of being accepted when, in fact, if a full application were to be made, their loan application might be accepted (in these circumstances, disclosure of the credit search result could result in the loss of a potential customer and a prospective borrower being declined a loan); and

(b) alternatively, customers might be given an inaccurate impression that their application is likely to be accepted on the basis of a good credit search result and be disappointed if that application is ultimately rejected, for example, on the basis of identity and fraud verification.

5.13 In view of the practical and technical difficulties associated with Remedy 3 as summarised above, and in light of the weak evidential basis for Remedy 3, Wonga does not consider that Remedy 3 would be an effective, appropriate or proportionate remedy. Nevertheless, if the CMA considers mandating initial eligibility checks or indications on the likelihood of credit being granted, Wonga considers that it is essential that the CMA should first market test whether costumers want such measures and would find such measures useful and, further whether they would lead to the changes in customer behaviour as sought by the CMA.

5.14 Notwithstanding the above comments, Wonga sets out below its responses to the CMA's specific questions.

**Responses to the CMA's questions**

***(a) Which of the above approaches, or which combination of approaches, is most likely to achieve the objectives of this remedy? Are there alternative approaches which would be more effective?***

<u>Disclosure of credit check policies</u>

5.15 In paragraph 39(a) of the Remedies Notice the CMA suggests requiring lenders to state explicitly on their website (and on any form requiring customers to enter their details) whether they will undertake a form of credit check and at what stage. Wonga already informs customers that it will undertake a credit check. Customers are required to tick a checkbox to confirm prior to the submission of their application *inter alia* that they understand that Wonga will use their personal information to verify their identity and carry out a credit check. In addition, there is further information on Wonga's "The Help" portal explaining that Wonga undertakes a credit check. Moreover, the privacy policy on Wonga's website (which customers are required to confirm that they have read prior to an application being submitted) explains what information Wonga collects when a customer applies for a loan and the CRAs with whom Wonga consults. The privacy policy also states that large numbers of applications by a customer in a short period of time may affect their ability to obtain credit (whether their application has been accepted or declined).

5.16 Wonga considers that prior disclosure to applicants as to the type of credit check and when it will be undertaken might assist customers in understanding the relationship between payday loans and credit checks. However, it is not clear the extent to which the publication of this information will encourage customers to shop around.

Real-time data sharing and visibility of credit searches

5.17 In paragraph 39(b) of the Remedies Notice, the CMA suggests requiring lenders to provide CRAs with a real-time update of any new credit facility granted and also prohibiting the visibility of a credit search by a lender.

5.18 Wonga is fully supportive of moves to improve real-time data sharing between CRAs and payday lenders and considers it beneficial for all payday lenders to be required to share data on a real-time basis. This is because it will enable payday lenders to conduct more accurate credit risk and affordability assessments, thereby promoting responsible lending to the benefit of consumers. This obligation should relate not only to details of any new credit facility, but also to details on defaults and late payments. Further, Wonga observes that the quality of the CRA data could be further improved if other credit providers (credit card, overdraft, mortgage, personal loans providers) were subject to similar requirements.

5.19 Wonga is already working closely with CallCredit and Experian to improve real-time data sharing. Wonga is contributing data to CallCredit on a daily basis and understands that Experian's real-time data initiative should be launched in July/August. For more detail Wonga refers to paragraph 6.23(a) of its PFs Response.

5.20 Notwithstanding Wonga's support for real-time data sharing, it is not obvious how such initiatives address the AEC that has been provisionally identified, i.e. customers not shopping around due to concerns about applications with alternative payday lenders potentially being rejected.

5.21 Wonga does, however, have significant concerns about prohibiting the visibility of a credit check by a lender. First, it is not clear whether the CMA intends to block visibility of "enquiry", "quotation", "application" or "credit" searches. The CMA should clarify which type of credit checks it is considering blocking visibility of. Secondly, it would be inappropriate for the CMA to block visibility of "application" searches. [CONFIDENTIAL].

5.22 Wonga observes, however, that blocking the visibility of other searches, i.e. "enquiry", "quotation" and "credit" would have a far less significant effect on Wonga's ability to undertake robust credit risk and affordability assessments. In this regard, [CONFIDENTIAL].

Ability to discover whether a lender would be willing to offer credit

5.23 In paragraphs 39(c) of the Remedies Notice, the CMA suggests increasing customers' abilities to discover whether a lender would be willing to offer them credit without an "application" or "credit" search being undertaken. The CMA then refers to three separate initiatives:

(a) improving clarity of the types of credit check: it is not clear to Wonga how this would address the AEC the CMA has identified, i.e. encourage customers to shop around (please refer to paragraphs 5.15 and 5.16 above); and

(b) prohibiting the use of "application" searches by lenders prior to conducting an initial eligibility assessment: it may be technically possible for Wonga to introduce an initial eligibility assessment prior to an application, however this raises a number of significant issues as set out in paragraphs 5.7 to 5.13 above.

(c) requiring lenders to provide an indication of the likelihood that they would grant credit to a customer prior to a full application (i.e. an indicative credit score): this initiative is very similar, in effect, to requiring lenders to undertake an initial eligibility assessment and therefore the observations set out in paragraph 5.23(b) apply equally in relation to this proposal.

Integration with price comparison website

5.24 Integrating an initial creditworthiness check with price comparison website gives rise to a number of issues. For example:

(a) a creditworthiness check is bespoke to each payday lender and is tailored to the payday lender's specific risk appetite. Against this background, and given the bespoke lender-specific nature of creditworthiness checks, those checks will most likely need to be undertaken by the payday lenders themselves (i.e. not by the price comparison website);

(b) the additional information to supplement data obtained from a "quotation" is likely to vary for each payday lender and it is unclear how that information would be collated and fed through to payday lenders via a price comparison website;

(c) CRAs charge for "quotation" searches and it is not clear who would pay for that search (i.e. the price comparison website or whether each payday lender need to undertake its own "quotation" search, thereby each incurring a "quotation" search charge);

(d) it is not obvious how the creditworthiness results would be presented (i.e. how they could be presented uniformly in circumstances where each payday lender undertakes a bespoke assessment);

(e) the development costs in ensuring that the price comparison website interoperates with payday lenders are likely to be significant given the bespoke nature of each payday lender's assessment; and

(f) in any event, it is not clear how useful the actual results would be to customers (please refer to paragraph 5.12 above).

***(b) To what extent are credit checks undertaken before the submission of a formal application for credit?***

***(i) Where searches are made, are these typically quotation or application searches? What further benefit does an application search give to a lender over a quotation search?***

***(ii) Would there be any benefit to the reference in the FCA's handbook on the ability of a customer to undertake a quotation search without affecting their ability to access credit being elevated in status from guidance to a rule?***

***(iii) Is there any benefit to other lenders and/or customers from searches leaving a footprint if a lender provides real-time CRA data updates of newly-issued loans?***

5.25 [CONFIDENTIAL].

5.26 Given that [CONFIDENTIAL] as part of its credit risk and affordability assessments, and given that it is not aware of other payday lenders using or having access to such information, it is not obvious to Wonga that there would be any benefit to the reference in the FCA's handbook on the ability of a customer to undertake a quotation search without affecting their ability to access credit being elevated in status from guidance to a rule.

5.27 As discussed in paragraph 5.21 above, [CONFIDENTIAL].

***(c) How can customers' understanding of which lenders would lend to them prior to the point of application be improved?***

***(i) Where an initial eligibility check is performed by a lender and the customer is deemed "eligible", should the lenders be required to ensure that all deemed eligible customers are approved should they make a formal application in the absence of evidence?***

***(ii) Should lenders be required to present an indicative "credit score" (from one or more CRAs) that a certain proportion (eg 90%) of their respective customers have at the point of application?***

5.28 Wonga refers to paragraphs 5.7 to 5.13 above which set out Wonga's views in connection with providing an initial eligibility assessment. Given the limitations of an initial eligibility assessment, Wonga considers it to be completely inappropriate (and indeed irresponsible) for lenders to be required to ensure that all customers deemed to be eligible are approved. Such a requirement would have the effect of undermining payday lenders' credit risk and affordability assessments, potentially leading either to higher default rates or a restriction of credit (to the detriment of customers).

5.29 As discussed in paragraphs 5.7 to 5.13 above, a number issues arise in connection with providing an indicative credit score. Wonga considers that, even if it were possible to provide an indicative credit score (perhaps on a simple "green", "amber" and "red" basis indicating high, medium and low likelihood of being accepted), the associated costs and unintended negative consequences render such an initiative unreasonable and disproportionate.

***(d) To what extent are customers aware of and/or concerned about the possible impact of multiple credit searches on their ability to access credit?***

5.30 Wonga refers to paragraph 5.15 and 5.16 above. Wonga does not have further insight into customers' awareness of the possible impact of multiple credit searches on their ability to access credit. Wonga notes that this is a broader issue that is not confined to the payday lending sector.

***(e) What are the practical challenges of integrating an eligibility check into a price comparison site?***

5.31 There are a number of practical issues associated with integrating an eligibility check into a price comparison website as discussed in paragraph 5.24 above.

***(f) What are the likely costs of this measure and how do they vary with the design of the remedy?***

5.32 Given the lack of clarity as to the substance and form of Remedy 3 (and in particular the wide range of initiatives being considered), Wonga is unable to provide an indication of likely costs. Notwithstanding this, Wonga observes that the costs of more intrusive initiatives, in particular the imposition of a compulsory pre-application eligibility assessment or a requirement to provide an indication of creditworthiness, will give rise to a number of direct and indirect costs, including significant development costs (in particular those related to necessary consequential changes to Wonga's credit risk and affordability assessments) and increased CRA search costs. Wonga refers to paragraphs 5.10, 5.11 and 5.24 above.

## 6. REMEDY 4: PERIODIC STATEMENTS OF THE COST OF BORROWING

### Introduction

6.1 The CMA is consulting on the imposition of a remedy requiring the "*lenders to send customers periodic statements outlining the extent of the customers' borrowing activity to inform customers better about the long-term cost of their borrowing activities*"[42] ("**Remedy 4**").

6.2 Remedy 4 is intended to address the CMA's provisional view that "*most customers use payday loans repeatedly … and may not be aware of the total cost of borrowing relatively small amounts of money over an extended period. By increasing the visibility to customers of the total amount paid by a customer in a given period, this measure could increase the pressure on lender to offer competitive prices to existing customers so as discourage them from switching to alternative*".[43]

### Periodic statements of the cost of borrowing

6.3 In Wonga's case, every customer has access to loan information through the "My Account" section of Wonga's website. As explained at paragraph 4.24(b) of Wonga's Response to the Issues Statement, Wonga implemented the "My Account" section on its website within a year of operating in response to customer demand for such a service. Although initially limited to reviewing loan details and changing customer details, additional functionality was subsequently added to allow customers to manage their loans. For example:

(a) customers can check their eligibility to make an application to top up or extend a loan;

(b) customers wishing to take advantage of Wonga's early repayment policy may repay anytime online. The information available via "My Account" allows customers to compare interest accrued at any stage with the total cost of credit on the agreed repayment date. Customers are clearly shown, therefore, how much they could save by repaying early; and

(c) customers can use online self-service tools to create their own repayment plan which is affordable given their financial situation.

6.4 Nevertheless, if the CMA were minded to pursue Remedy 4, Wonga sets out below its comments on the CMA's specific consultation questions.

### Response to the CMA's questions

#### *(a) Should lenders be required to send a regular statement of borrowing costs to customers?*

6.5 Wonga considers that providing regular statements of borrowing costs to customers is a sensible approach to increase transparency and awareness of the total cost of borrowing. However, to ensure that customers fully understand the statements and are able readily to compare the total cost of borrowing across lenders, standard wording and formatting for the periodic statements may be required.

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42 Remedies Notice, paragraph 41.

43 Remedies Notice, paragraph 42.

(b) ***The period of the statement (for example, quarterly, twice a year or annually), in light of the typical timescale of a payday lending relationship.***

6.6 Wonga considers that twice yearly or annual statements would be more suitable than quarterly statements. Quarterly statements would be too frequent and customers may disregard such regular statements, particularly if they are receiving similar statements from a number of lenders at around the same time.

(c) ***Which customers should receive a statement and at what point and when should they cease to receive a statement?***

6.7 Wonga considers that statements are only relevant for active customers who have a loan outstanding at the date of the statement or have taken out a loan during the period covered by the statement. For customers who have not borrowed during the period covered by the statement, information on historical loans would be covered by previous statements, and for Wonga customers their borrowing history is also be available online in the "My Account" section of Wonga's website.

(d) ***The method of distribution of the statement, for example by post, email, online or through other channels.***

6.8 Given that the vast majority of Wonga's customers apply for a loan online, and that Wonga's customers are currently able to view their loan history and information in "My Account", Wonga considers that the most appropriate method of distribution of the statement to its customers would be online. However, Wonga notes that:

(a) in order to encourage customers to view their online statements, customers could be prompted by email that their most recent online statement is available to view in "My Account". However, in light of the regulation of marketing materials, a significant number of customers have opted-out of receiving marketing messages. Sending "prompt" emails to these customers without notice may give rise to complaints from customers; and

(b) online distribution may not be the most appropriate method for all payday lenders, such as high street lenders, where distribution by post may be more appropriate.

(e) ***The date on which the statement should be sent and whether this should be the same for all lenders.***

6.9 Wonga has no strong views in relation to the date on which the statement should be sent in relation to existing customers, given that significant amounts of lending occur throughout the month (as indicated in the PFs).[44] However, it appears sensible for the date on which the statement is sent to be the same for all lenders. Receiving statements from payday lenders on or around the same date will enable the customer readily to compare their loans by lender across the period covered by the statements.

(f) ***What information should be included on the statement (for example, the number of loans, number of days that loans were taken out, total cost of interest, fees and charges over the period?***

6.10 To provide meaningful information to the customer, the statement could contain the following information:

(a) the number of loans taken out during the statement period;

(b) the number of loans outstanding as at the date of the statement;

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[44] PFs, paragraph 2.32.

(c) the duration of each loan during the statement period;

(d) the amount of each loan during the statement period;

(e) the total cost of borrowing for all loans taken out during the statement period, including a breakdown of interest, fees and charges for each loan; and

(f) the amount outstanding on any loans (including those which are past their repayment date) as at the date of the statement, including a breakdown of interest, fees and charges for each outstanding loan.

***(g) What further material should be included with the statement – for example, where financial advice can be obtained or a link to a price comparison website should one be introduced under remedy 1?***

6.11 Wonga considers that it would be prudent to require lenders to provide information in the periodic statements on where financial advice can be obtained to encourage sensible borrowing and responsible lending. In line with its policy and commitment to responsible lending, and the FCA's requirement that payday lenders must provide consumers with information on where they can receive free debt advice,[45] the homescreen of Wonga's website clearly states "*Warning: Late repayment can cause you serious money problems. For help, go to moneyadviceservice.org.uk*" and further debt advice is given at www.wonga.com/money/debt-advice/.

***(h) What are the likely costs of this measure and how do they vary with the design of the remedy?***

6.12 Given that Wonga already enables customers to view their loan information online, including aggregated information over periods chosen by the customer, Wonga considers that the cost of providing all customers with periodic online statements containing information on the number of loans, number of days that loans were taken out, total cost of interest and fees/charges over the period via the "My Account" section of Wonga's website is likely to be modest.

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[45] Rule CONC 3.4.1 of the FCA Handbook.

## 7. REMEDY 5: MEASURES TO INCREASE THE TRANSPARENCY OF THE ROLE OF LEAD GENERATORS

### Introduction

7.1 As previously explained to the CMA,[46] Wonga is concerned by the lack of transparency in relation to the way in which some lead generators operate. It therefore welcomes the CMA's proposal to improve the transparency of how lead generators interact with customers and lenders ("**Remedy 5**"). In particular, Wonga has concerns in relation to the following issues concerning lead generators:

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### Lead generators should be subject minimum transparency standards

7.2 Wonga, together with other short-term credit providers, is subject to particularly high transparency standards regarding the content and form of their websites and other customer-facing literature following the OFT's Compliance Review of 2013 and as required under the FCA's Consumer Credit sourcebook ("**CONC**"). Given the importance of lead generators in the payday loan segment (around 40 per cent of customers taking out their first loan with a major online lender in the 12 months to August 2013 came via a lead generator[47]), Wonga considers that lead generators should be subject to the same transparency standards that apply to payday lenders, although the application of those standards might differ in certain respects reflecting the fact that lead generators are not themselves lenders.

7.3 In particular, Wonga submits that, as a minimum:

(a) lead generators should be obliged to make clear to customers the nature of the service they provide, that they are not lenders and the relationship they have with lenders;

(b) this information should be published in a prominent manner both in terms of font size and in terms of positioning for example, on the lead generator's homepage and on advertising materials. In addition, the information should be displayed when the customer's details are submitted, and on the webpage requiring the customer's acceptance of the lead generators terms/loan offer; and

(c) given that lead generators introduce customers to payday loan products, the lead generators should also be obliged to publish the same financial "risk warnings"[48] that payday lenders must provide on their websites and in other promotional material.

### Responses to the CMA's questions

***(a) Is existing regulation sufficient to ensure that clear information is provided to customers on the relationship between brokers and lenders?***

7.4 As outlined above, Wonga does not believe that existing regulation is sufficiently effective to:

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46 Paragraphs 4.6-4.7 of Annex 4 of Wonga's Response to the Annotated Issues Statement.

47 PFs, paragraph 6.97.

48 As described above, payday lenders are required, under rule CONC 3.4.1 of the FCA Handbook, to provide customers with the following warning: "Warning: Late repayment can cause you serious money problems. For help, go to moneyadviceservice.org.uk".

(a) ensure that clear information is provided to customers on the relationship between brokers and lenders; and

(b) restrict the selling of customer data between lead generators.

***(b) Are there any additional compliance activities that the FCA should undertake?***

7.5 As explained in paragraph 7.2 above, Wonga considers that lead generators should be subject to the same transparency standards as payday lenders.

***(c) How should any such remedy be implemented?***

7.6 Wonga submits that the implementation of any such remedy must strike a balance between two key considerations:

(a) the remedy should be implemented in a way that avoids lead generators "flexing" the nature of their activities in order to fall outside the scope of the remedy's application thereby undermining the effectiveness of the remedy. A sufficiently broad definition of lead generator activity will be required to address this risk; and

(b) any such broader definition will need to considered carefully as it may encompass the activities of comparison websites. This is because the term "credit broker", to which CONC currently applies and the CMA refers to in paragraphs 53 and 54 of the Remedies Notice, could potentially include certain comparison companies (and their websites).[49] Consistent with Wonga's response to the CMA's consultation on variation of terms of reference (at paragraph 2.3), although Wonga considers that the terms of reference (and scope of Remedy 5) must be sufficiently broad to ensure that lead generators are caught, the CMA might wish to consider whether price comparison websites should be included within such scope and how Remedy 5 may subsequently apply to price comparison websites given how they differ in operation to lead generators.

7.7 Wonga submits that implementation of Remedy 5 by way of CMA Order, as opposed to the proposed conversion of CONC 3.7.4 from guidance into a rule, would permit the CMA greater flexibility to determine the scope of the Order (i.e. to which intermediaries it applied), thus avoiding Remedy 5 being inadvertently applied to forms of "credit brokers" (as defined by CONC) which are not relevant to the CMA's investigation. It would also introduce a degree of consistency in the regulation of payday lenders and lead generators.

***(d) Which classes of credit broker or other intermediary should any additional requirements apply to?***

7.8 See response to question (c) above.

***(e) Should lead generators, affiliates and brokers be required to make a declaration as to the service they provide to customers and the relationship they have with lenders?***

7.9 See response to question (f) below.

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49 Credit-brokers are defined as "*persons who hold a permission under Part 4A of FSMA in respect of the regulated activity in Article 36A(a) to (c) of the FSMA 2000 (Regulated Activities) Order 2001 (SI 2001/544) introducing potential borrowers to potential lenders*". Article 36A specifies that credit-brokers effect introductions of an individual who wishes to enter into a credit agreement to a lender, with a view to the parties entering into a regulated credit agreement. Therefore, some price comparison websites may be considered as effecting introductions to the extent they have a click through from their websites to the lender's website. A price comparison website may therefore only fall within the current proposal for Remedy 5 to the extent it is a regulated credit-broker under FSMA 2000 and the FSMA 2000 (Regulated Activities) Order 2001.

***(f) What content should the declaration include, for example:***

***(i) the basis on which a customer is introduced to a lender (for example, by selling to the highest bidder in an auction process);***

***(ii) what the cost of credit would be from the cheapest and most expensive lenders that the intermediary sells details to; and***

***(iii) an explicit statement that cheaper loans may be available from other lenders?***

7.10 As explained above, Wonga believes that lead generators should be obliged to make clear to customers, as a minimum, the following with regard to the services they provide as far in advance as possible prior to a loan being granted and in a simple and prominent manner:

(a) the fact that they are an intermediary and not a lender;

(b) the means by which the customer has been matched to a lender, explained in clear and easily understandable language;

(c) the identity of the lender that the customer has been matched with and the terms of the loan that they are being offered;

(d) the lenders included on lead generator's panel(s);

(e) the commercial terms between the lender and the lead generator. In particular, how the lead generator is remunerated by the lender;

(f) the cost of credit from <u>all</u> the lenders that the intermediary sells details to, enabling customers to choose from amongst those listed. This would incentivise lenders to offer customers lower prices; and

(g) an explicit statement that the lead generator's results, and panel, do not represent all lenders in the market and that other options are available to the customer.

***(g) How should any declaration be enforced:***

***(i) by requiring intermediaries to make a declaration; and/or***

***(ii) by prohibiting lenders from using intermediaries that do not display an appropriate declaration?***

7.11 Wonga considers that remedial obligations should be placed on intermediaries. It would be disproportionate to require lenders to monitor the extent to which such intermediaries adhere to a declaration obligation before they engage with a particular intermediary.

***(h) How should the declaration be presented:***

***(i) on a landing page or initial pop-up or frame; and***

***(ii) at the point at which details are entered?***

7.12 Wonga submits that the information referred to in response to question (f) above should be published in a prominent manner both in terms of font size and in terms of positioning.

7.13 With regard to positioning, the declaration should be published in a manner analogous to the financial "risk warning" that payday lenders are required to publish under CONC

3.4.1.[50] This should require that the lead generator's declaration is included in all promotional material, which should include a message on the front page of a lead generator's website, at the point at which a customer's loan requirements are entered, at the point at which a customer's details are entered, and at the point where a loan is offered to a customer.

***(i) Should lenders be prohibited from selling or providing customer details to third parties?***

7.14 Wonga does not object to the provision of customer details to third parties, such as lead generators, *per se*. If this data is used appropriately by intermediaries and the customer is made fully aware of the role of the intermediary and how it uses this data, then such information sharing can help to:

(a) facilitate shopping around (particularly if the intermediary is obliged to provide the cost of credit for all lenders that the intermediary has sold details to and the lead generator has received a quote in relation to); and

(b) widen access to credit for those customers that have been already refused access to credit by one lender.

7.15 Moreover, a general prohibition on lenders selling or providing customer details to third parties would have the unintended consequence of precluding lenders from sharing data with credit rating agencies.

7.16 Wonga therefore believes that such a prohibition would be disproportionate. It would also be unnecessary if the remedial measures outlined by Wonga above in relation to transparency are adopted.

7.17 However, Wonga does believe that there should be restrictions placed on intermediaries, such as lead generators, from selling or providing customer details between themselves as this activity can result in customers receiving numerous unsolicited emails from intermediaries, as explained in paragraph **Error! Reference source not found.** above.

***(j) Is there any risk that the business model of lead generators could be amended to avoid supervision by the FCA if any proposed remedy was implemented?***

7.18 As outlined in response to question (c) above, Remedy 5 should be implemented in a way that avoids lead generators "flexing" the nature of their activities in order to fall outside the scope of the remedy's application thereby undermining the effectiveness of the remedy. A sufficiently broad definition of lead generator activity will therefore be required to address this risk, while taking into account its potential application to other forms of credit-broker.

***(k) What are the likely costs of this measure and how do they vary with the design of the remedy?***

7.19 Based on Wonga's experience of implementing the "risk warnings" introduced under CONC, Wonga considers that the costs of introducing the transparency measures Wonga has outlined above would be relatively low.

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50 CONC 3.4.1.(4) provides that "The risk warning must be included in a financial promotion in a prominent way".

## 8. REMEDIES THAT THE CMA IS NOT MINDED TO CONSIDER FURTHER

8.1 Wonga notes the alternative remedy options referred to at paragraphs 59-65 of the Remedies Notice that the CMA is minded not to pursue, namely:

(a) prohibition of additional fees; and

(b) accreditation of lender websites.

**Prohibition of additional fees**

8.2 With regard to the prohibition of additional fees, Wonga agrees with the CMA that there is no merit in the CMA considering additional restrictions on fees and charges for the following main reasons.

8.3 First, Wonga does not consider that the CMA's reason for considering such a remedy in the first place is well founded. The Remedies Notice refers to the CMA's provisional finding that customers are not able effectively to compare prices of loans in different scenarios and that therefore prohibiting additional fees might further simplify any comparison of the price of loans, thus potentially facilitating further shopping around. In this regard, as explained in section 5 of Wonga's Response to the PFs (and in previous submissions[51]), Wonga considers that a sizeable proportion of customers do shop around, which is consistent with its view that there is competitive pressure on lenders to attract and retain customers.

8.4 Secondly, Wonga agrees with the CMA that, as the FCA is considering the most appropriate way of implementing its obligation to establish a price cap, there is no merit in the CMA considering additional restrictions on fees and charges.

8.5 Thirdly, remedies aimed at directly controlling outcomes, such as a prohibition on additional fees, not only create specification and circumvention risks, but also create significant monitoring and enforcement risks for the CMA. Given the very large number of lenders in the sector, it would be inappropriate and expensive for the CMA to monitor such a pricing remedy on an ongoing basis in addition to the FCA (presumably) monitoring a price cap.

8.6 Finally, not only are such remedies costly to implement and monitor, they also risk creating distortions in the competitive process, in addition to those which may result from the FCA price cap. Wonga therefore submits that such a pricing remedy would be both ineffective and disproportionate at remedying the AEC.

**Accreditation of lender websites**

8.7 With regard to the potential accreditation of lender websites, Wonga agrees with the CMA that such an accreditation system would not be effective for the reasons outlined by the CMA in paragraph 65 of the Remedies Notice, i.e.:

(a) consumers' expectations of supervision and authorisation might differ from the scope and nature of the FCA's regulatory activities which could be a potential, and unnecessary, cause of confusion; and

(b) an FCA accreditation badge for a lender's website may have a restrictive effect on the FCA's ability to adopt different regulatory approaches to different lenders.

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[51] See, for example see Section 6 of Wonga's Response to the Annotated Issues Statement.