

COMPETITION AND MARKETS AUTHORITY

PAYDAY LENDING MARKET INVESTIGATION

RESPONSE OF WONGA GROUP

**TO CMA'S CONSULTATION ON VARIATION OF TERMS OF
REFERENCE OF 11 JUNE 2014**

4 JULY 2014

1. SUMMARY

- 1.1 By Notice dated 11 June 2014, the Group has requested the CMA to vary the terms of reference as follows:

*"For the purposes of this reference, the definition of suppliers of payday loans and the associated definition of the market or markets in paragraph 2 above shall also include credit-brokers (and other intermediaries) such as lead generators who collect and pass on to providers of payday loans (generally for a fee) details, including personal contact information, of individuals seeking loans."*¹

- 1.2 Wonga considers that the CMA's terms of reference should be varied to include the activities of credit brokers, such as lead generators. This is because their activities give rise to a number of concerns, including:

- (a) the difficulties faced by customers in distinguishing between payday lenders and lead generators;
- (b) the provision of incomplete information to customers;
- (c) a lack of transparency in the service being provided by lead generators; and
- (d) the disregard in the auction process of the value for money of lenders' offerings, such that customers do not necessarily obtain the best value loan for them.

2. LEAD GENERATORS SHOULD BE INCLUDED WITHIN THE TERMS OF REFERENCE

- 2.1 The CMA is consulting on the proposal to vary the terms of reference to include the activities of credit brokers, such as lead generators.

- 2.2 The CMA proposes that a new paragraph 4 is inserted into the existing terms of reference to state that the definition of suppliers of payday loans and the associated definition of the market shall include credit brokers and intermediaries, such as lead generators. Wonga has no comments on the CMA's proposed wording.

- 2.3 Wonga notes that "credit brokers" are defined by reference to persons holding permission under Part 4A of FSMA 2000 in respect of regulated credit broking activities set out in Article 36A(a) to (c) of the FSMA 2000 (Regulated Activities) Order 2001.² Wonga's understanding of the legislation is that price comparison websites may be engaged in regulated credit broking, particularly where the websites contain 'click throughs' to creditors' websites, and would therefore fall within the CMA's varied terms of reference.³ Although Wonga considers that the terms of reference 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 the terms of reference and how the market investigation and any remedies which may subsequently be adopted should apply to these websites.

- 2.4 However, Wonga has always maintained that the initial terms of reference were too narrow and should not be restricted solely to "payday lenders" as defined by the CMA. Wonga has consistently argued that the CMA should adopt a broader definition, in particular the CMA should take into account activities of other credit providers and should

¹ Notice of request for a variation of the terms of reference, Annex, paragraph 4

² Notice of request for a variation of the terms of reference, footnote 7.

³ This view was also expressed by the OFT in its guidance paper OFT1388 "Credit brokers and intermediaries", dated November 2011.

encompass a range of products which compete with payday lenders, such as credit cards and overdrafts, as well as the activities of credit brokers such as lead generators.⁴

2.5 It is important that lead generators are included in the scope of the market investigation. As Wonga explained in its response of 28 February 2014 to the CMA's Annotated Issues Statement,⁵ the issues arising from the use of lead generators by customers, which the CMA identified in its Annotated Issues Statement and working papers, warrant further investigation by the CC, not least as over a third (approximately 40 per cent) of all new customers apply for payday loans via lead generators.⁶

2.6 These issues include the following:

[CONFIDENTIAL]

2.7 In leaving open the possibility of expanding the terms of reference, the OFT's final decision identified concerns from third parties regarding the role of lead generators. The OFT therefore clearly envisaged that the CC (now the CMA) may consider it necessary to include lead generators in its market investigation.

2.8 Moreover, given the references to lead generators in the CMA's published documents, it has been evident that lead generators have in fact formed part of the CMA's market investigation. For example, the CMA considered the activities of lead generators and the role they play in the market in the following documents published prior to the Provisional Findings:

(a) Issues Statement published on 14 August 2013, in particular:

- (i) paragraph 59, as regards the information available to customers when searching for or taking out a payday loan, states: "*We will consider how this varies according to whether the customer takes out the loan from a physical retailer or on the Internet and how this is affected by lead generators or brokers*"; and
- (ii) paragraph 72 confirms that the CMA would consider whether the costs of gaining customers, including acquiring leads from third parties, are a barrier to entry or expansion;

(b) Annotated Issues Statement published on 31 January 2014, in particular:

- (i) paragraph 3 confirms that the CMA gathered evidence from lead generators; and
- (ii) paragraph 90 explains that the prevalence of lead generator websites may make it difficult for comparisons between lenders' products;

(c) Review of the websites of payday lenders and lead generators working paper published on 31 January 2014;

(d) Shopping around working paper published on 19 February 2014; and

(e) Entry and Expansion working paper published on 21 February 2014.

⁴ For example, please refer to section 3 of Wonga's Initial Submission dated 12 July 2013, section 3 of Wonga's Response to the Statement of Issues dated 23 September 2013 and section 2 and 3 of Wonga's Response to the Annotated Issues Statement dated 28 February 2014.

⁵ Paragraph 4.6 of Annex 4.

⁶ Provisional Findings, paragraph 6.97.

2.9 In this connection, in light of the issues arising from the use of lead generators, Wonga has consistently commented on lead generators in its submissions (which have been made public on the CMA's website).