

CASHEURONETUK, LLC:

RESPONSE TO PROVISIONAL DECISION ON REMEDIES PUBLISHED BY THE COMPETITION AND MARKETS AUTHORITY ON 9 OCTOBER 2014

1 EXECUTIVE SUMMARY

Introduction

- 1.1 CashEuroNetUK, LLC (**CashEuroNet**) appreciates the opportunity to comment on the Competition and Market Authority's (**CMA's**) Provisional Decision on Remedies (**PDR**) report published on 9 October 2014.
- 1.2 CashEuroNet sets out below selected comments on:
- recent market developments and FCA regulation;
 - the operation of PCWs;
 - disclosure of late fees and other charges;
 - quotation searches and real time data sharing;
 - summary of costs of borrowing; and
 - transparency of lead generators.
- 1.3 The effectiveness and practicability of some of the CMA's proposals will depend very much on the detail. We look forward to having a further opportunity to comment on the details of subsequent FCA proposals arising from the CMA recommendations.

Recent market developments and FCA regulation

- 1.4 Recent lender data shows that applications, approvals, loans and gross loan books remain depressed in 2014.
- 1.5 Market conditions, FCA regulation, the pending rate cap and the political climate are all having a major impact on the availability of payday loans and the sustainability of payday lending businesses.
- 1.6 CashEuroNet is concerned about customers who will no longer be able to access payday products going forward and the lack of a sound policy to provide options to these displaced individuals. Unmet demand will shift to other sources of credit not presently subject to the same rigorous regulatory controls as payday lending and to unlicensed lenders to the detriment of consumers.

Price comparison websites

- 1.7 CashEuroNet welcomes the CMA proposals for introducing a system of accredited price comparison websites (**PCWs**).

- 1.8 Overall, our view is that if one adopts the model of having multiple 'accredited' PCWs, then the proposed approach of the CMA will assist in addressing various alleged features of the market, as identified by the CMA.
- 1.9 However, we wish to highlight to the CMA the risk that PCWs may be able to exploit market power in this market, even if there is more than one PCW. We believe that the CMA should take into account the findings of its assessment of PCWs in the recent private motor insurance investigation. A successful system of PCWs would change the nature of customer acquisition in this market, just as it did in private motor insurance (PMI), and could become a key acquisition channel and therefore also a key driver of costs for the sector, and hence consumers.
- 1.10 We therefore recommend that the CMA should set out new measures (such as those described below in Section 3) to ensure that the PCW market works well and does not result in excessive charges, which will ultimately be borne by consumers.

Disclosure of late fees and other charges

- 1.11 CashEuroNet supports the CMA recommendation for the FCA to take steps to improve the disclosure of late fees and other additional charges.
- 1.12 CashEuroNet has always maintained a policy of charging only a simple £12 late fee for a missed payment, with no post-default interest being applied. We believe that all customers should take all additional charges and fees into account when selecting a payday loan.
- 1.13 Whilst we believe that customers currently do not tend to take late fees into account when applying for a loan, increasing their prominence (through the PCW and elsewhere) should (start to) influence customer behaviour.

Quotation searches and real-time data sharing

- 1.14 CashEuroNet already uses quotation searches for our customers, and we do not envisage any significant difficulties for the industry in implementing FCA proposals arising from the CMA recommendations. Indeed, we believe that a requirement to use quotation searches should apply to all consumer credit products.
- 1.15 We have also been at the forefront of developments to share real-time data with CallCredit, the credit reference agency, to improve the quality of creditworthiness checks. We also support the CMA recommendation for the FCA to encourage the development and use of real-time data across the industry.
- 1.16 CashEuroNet believes that credit reference agency data could be further improved if other credit providers (credit card, overdraft and personal loan providers) were subject to similar requirements regarding real time data sharing. Credit and affordability modelling are more effective when informed by complete, timely and accurate data.

Summary of cost of borrowing

- 1.17 CashEuroNet customers are already able to access similar summaries of the cost of borrowing (as proposed by the CMA) on their account page on our websites, and from our experience, we do not envisage any particular difficulties for online providers in implementing the CMA proposals, assuming the relevant information can be provided electronically.

Transparency of lead generators

- 1.18 CashEuroNet [redacted] the measures proposed to increase the transparency of the role of lead generators in the payday lending market.

2 RECENT MARKET DEVELOPMENTS AND FCA REGULATION

- 2.1 CashEuroNet loan data supplied to CMA on 30 October 2014 shows that [redacted] trends in applications, approvals, loans issued and loan balances (as documented by the CMA¹) have [redacted] since July 2014. Our forward looking predictions for all products inform our belief that [redacted] in 2015 and 2016.
- 2.2 We expect that demand for loans will remain the same and that unmet demand will shift to other sources of credit not presently subject to the same rigorous regulatory controls as payday lending, or to unlicensed lenders. There is no evidence to suggest that credit unions will service the least creditworthy segment of the payday loan market which now struggles to access credit.
- 2.3 Market circumstances, FCA regulation, the pending rate cap and the political climate are all having a major impact on the availability of payday loans and the sustainability of payday lending businesses. Zebit² and Cash Genie³ have both announced market exit in the short term. Lending Stream⁴ and Wonga have publicly acknowledged substantially reduced loan volumes caused by the aforementioned reasons. Multi-line firms and marginally profitable producers⁵⁶ have already left the market or plan to do so. FCA foreshadowed this market exit⁷ but perhaps under-estimated the magnitude of the regulatory impact that preceded the eventual cap impact.

3 PRICE COMPARISON WEBSITES

- 3.1 The CMA has expressed concerns about the difficulties faced by customers in identifying the best-value or most appropriate loan product on offer for them. Consequently, the CMA has proposed measures to promote the greater use of PCWs by customers.
- 3.2 CashEuroNet believes that if one adopts the model of having multiple 'accredited' PCWs, then the proposed approach of the CMA will assist in addressing various alleged features of the market, as identified by the CMA. In particular, we support:
- providing information that is most relevant to the consumer, which in this context means the total cost of credit for the loan in question;
 - highlighting late fees and charges;
 - displaying results in accordance with criteria selected by the customer, such as lowest price or other product or service features;
 - maximising the number of consumers that access a PCW before selecting a provider;

¹ See Appendix 6.2 of the Provisional Decision on Remedies

² https://assets.digital.cabinet-office.gov.uk/media/542c03a140f0b61342000bd6/Summary_of_a_response_hearing_with_Global_Analytics.pdf

³ EZ Corp Form 8-K September 30, 2014

⁴ https://assets.digital.cabinet-office.gov.uk/media/542c03a140f0b61342000bd6/Summary_of_a_response_hearing_with_Global_Analytics.pdf

⁵ https://assets.digital.cabinet-office.gov.uk/media/5435a640ed915d1336000005/Payday_lending_PDR_and_appendices.pdf

⁶ https://assets.digital.cabinet-office.gov.uk/media/5329df7bed915d0e5d00032b/140131_companies_background_working_paper.pdf

⁷ FCA Consultation Paper CP14/10 July 2014 – numerous references

- CMA/FCA accreditation available to multiple PCWs, supporting the effectiveness of the websites and the competition between them; and
- limiting access to the PCWs to authorised lenders only.

Potential for PCW market power

3.3 The CMA investigation into PMI concluded that:

"Overall we found that PCWs appeared to enjoy a significant degree of market power against PMI providers by virtue of their single-homing consumers."⁸

3.4 Whilst competition between products on a PCW is fierce, competition between the various PCWs is less fierce. Consequently, PCWs may be able to charge high fees to the companies that list on them (the CMA's PMI investigation 'found that the profitability of the four large PCWs was high'⁹), without greatly damaging the success of the PCW. This is the case if the consumer is only using one PCW, so they are simply comparing prices that are all affected by the PCW's fees (on the basis that insurers are likely to pass on the cost of PCW commissions to consumers).

3.5 Furthermore, the CMA found that the 'negotiation and enforcement of MFN (most favoured nation) clauses in contracts with PMI providers'¹⁰ could reinforce market power. In particular, the CMA have proposed to ban 'wide MFNs', which are clauses that state that the price that an insurer quotes through the PCW to consumers will not be higher than the price charged for the same insurance anywhere else online. This means that if a PCW were to increase the commission it charged to an insurer, this insurer would not be able to respond to this cost increase by increasing the premium of its insurance policy on that PCW alone; it would have to increase premiums on all PCWs. And similarly, if a PCW were to reduce the commission, the insurer would not be able to translate this into lower premiums on that PCW only. This reduces the normal competitive pressure on PCW commission rates, allowing them to increase and ultimately increasing the price of car insurance.

3.6 Wide MFNs were banned in order to stop PCWs being able to raise their fees without damaging the competitiveness of the prices on their website. 'Narrow MFNs,' which require insurers not to price insurance cheaper on their own website than the PCW in question, are still allowed.

3.7 Arguably, differences in the market dynamics could mean that PCWs have even more market power with regard to payday loans than they do with motor insurance, because the payday lender's bargaining position with the PCW could be weaker:

- payday lenders will be obliged to list on a PCW, reducing their ability to delist if commission charges are too high;
- PCWs may be less concerned about an individual payday lender delisting (compared to an insurer), as payday lender brands are generally less strong than insurers; and
- a payday lender charging at the price cap (8% per day) cannot threaten to raise their price on a PCW that raises its commission fees.

⁸ Paragraph 8.26. CMA Final Report: https://assets.digital.cabinet-office.gov.uk/media/5421c2ade5274a1314000001/Final_report.pdf

⁹ See paragraph 5.36 of CMA Final Report

¹⁰ Paragraph 8.26. CMA Final Report of the PMI market investigation.

- 3.8 CashEuroNet recommends that the CMA should consider restricting the use of MFN clauses by PCWs in the payday lending / consumer credit sector. These clauses restrict price competition between PCWs and between lenders, and are not necessary to support the development of PCWs in this sector (in particular due to lenders being obliged to list on PCWs).

Monitoring of the PCW market

- 3.9 The CMA proposes that additional monitoring of the commercial terms will be required if there is only one accredited PCW:

“However, in the less likely scenario in which only one PCW applied for accreditation we considered that there was a potential for the PCW to exploit this position. Given this, we considered that the accreditation in these circumstances, which we judge are unlikely to arise, may require some additional scrutiny of commercial arrangements to ensure that PCWs are contracting with lenders on fair, reasonable and non-discriminatory terms.”¹¹

- 3.10 We would urge the CMA to consider monitoring the extent of commissions charged by PCWs in this market even if there are multiple PCWs. This monitoring could include, for example:

- assessing PCW profitability: This would be difficult, however, as most PCW costs are fixed marketing costs, which need to be shared across the products listed on the website; and
- benchmarking PCW fees for payday lenders against other PCW fees, such as those for insurance: This could be done on the basis of the lifetime value of the customer to the provider, for example.

Lead generators and PCWs

- 3.11 The CMA may also wish to consider whether lead generators should be required to provide a hyperlink to PCWs. The current proposals do not require lead generators to do so. [§]. However, there may be a risk that this creates a loophole in the regulation. A lender could, perhaps, be able to set up a broker that channels customers to the lenders website, but without having to provide a hyperlink.

- 3.12 Arguably, consumers using [§] could benefit the most from having a greater understanding of the options available to them. Overall, we believe that it would be in the best interests of consumers if all providers and intermediaries in the payday sector were required to link through to the PCW.

- 3.13 Of course, some intermediaries may consider applying for accreditation to operate a PCW.

4 DISCLOSURE OF LATE FEES AND OTHER CHARGES

- 4.1 CashEuroNet supports the CMA recommendation for the FCA to take steps to improve the disclosure of late fees and other additional charges. We would welcome the opportunity to work with the FCA to identify the most effective ways to disclose this information to consumers, including on the PCWs.

¹¹ Paragraph 3.61, PDR

- 4.2 CashEuroNet has always maintained a policy of charging only a simple £12 late fee per missed payment (which is below the £15 cap proposed by the FCA), with no post-default interest being applied. We believe that all customers should take all additional charges and fees fully into account when selecting a payday loan.

5 QUOTATION SEARCHES AND REAL-TIME DATA SHARING

- 5.1 CashEuroNet supports the CMA recommendations to help borrowers to shop around without their access to credit being unduly affected. We already use quotation searches for our customers, and in principle at least, we do not envisage any significant difficulties for the payday industry arising from the CMA recommendations.
- 5.2 CashEuroNet has also been at the forefront of developments to share real-time data with CallCredit, the credit reference agency, to improve the quality of creditworthiness checks. We therefore support the CMA recommendation for the FCA to encourage the development and use of real-time data.
- 5.3 We would welcome the opportunity to work with the FCA to identify the most appropriate ways to promote real time data sharing.

6 SUMMARY OF COST OF BORROWING

- 6.1 CashEuroNet customers are already able to access similar summaries of the cost of borrowing (as proposed by the CMA) on their account page on our websites, and from our experience we do not envisage any difficulties for the industry in implementing the CMA proposals if information can be provided electronically.
- 6.2 We believe that this approach should, however, avoid creating unnecessary costs that would ultimately be passed on to customers. In particular, we request that any statements can be provided online or through email, as this is likely to be most appropriate for online payday customers and will also minimise costs.

7 TRANSPARENCY OF LEAD GENERATORS

- 7.1 CashEuroNet [redacted] the CMA recommendation for the FCA to take steps to increase transparency around the role of lead generators. [redacted].
- 7.2 See also our comments at Section 3.11- 3.13 above regarding lead generators and the PCWs.

8 CONCLUSION

- 8.1 In summary, we are broadly supportive of the remedies proposed by CMA. Implementation is left in many cases to FCA and we look forward to participating during FCA's anticipated consultation on the details. In this response paper, we have raised various issues which it may be helpful for the CMA already to address in its Final Report, in particular:
- use of wide MFN clauses by the PCWs;
 - ongoing monitoring of commercial terms between payday lenders and the PCWs; and
 - the requirement for all [redacted] payday intermediaries to advertise the PCWs.

8.2 Should you have any queries, please contact Andy LaPointe in the first instance.