RESPONSE OF WONGA GROUP

TO THE COMPETITION & MARKETS AUTHORITY'S

CONSULTATION ON AMENDMENTS TO THE PRICE COMPARISON WEBSITE AND THE STATEMENT OF BORROWING REMEDIES

15 JANUARY 2015

1. INTRODUCTION

1.1 In this paper, Wonga sets out its response to the Competition & Market's Authority's (**"CMA"**) Consultation on amendments to the price comparison website and the statement of borrowing as published on 19 December 2014 (**"Consultation Paper"**).

1.2 The Consultation Paper sets out changes to two of the remedies contained in the CMA's Provisional Decision on Remedies of 9 October 2014 (**"PDR"**).[1] The CMA is proposing to make a significant number of changes to the price comparison website (**"PCW"**) remedy and a more limited change to the statement of borrowing remedy.

PCW remedy

1.3 As regards the PCW remedy, although Wonga supports some of the changes proposed by the CMA, it has very real concerns in relation to other changes. In summary, Wonga considers that:

(a) high street lenders should not be excluded from the scope of the PCW remedy;

(b) more careful consideration needs to be given to the timing and operation of:

(i) the authorisation process; and

(ii) the obligations on lenders to commission a PCW and to be listed on an authorised PCW; and

(c) greater clarity is required as to the meaning of "unreasonable exclusion" and how disputes about exclusion will be determined.

1.4 Wonga considers that the following amendments should be made to the PCW remedy in order to address these concerns:

(a) high street lenders should be included within the scope of the remedy and should be listed on an authorised PCW;

(b) payday lenders should be afforded 12 months to commission a PCW and apply for authorisation if, 12 months after the FCA sets its additional authorisation criteria, no PCW has been authorised;

(c) the FCA should adopt an "authorisation window" for PCW authorisation applications and grant authorisations simultaneously for all successful applications at the end of that window;

(d) guidance should be provided on the interpretation of "unreasonable exclusion". The FCA, upon application by a PCW or lender, should determine whether a lender has been unreasonably excluded and, during the FCA's review, the requirement on the lender in question to be listed on a PCW should be suspended; and

(e) the requirements for a lender to be listed on a PCW should only come into effect 6 months after the requisite number of PCWs has been authorised.

Summary of borrowing remedy

1.5 [✂].

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[1] Wonga refers to its response of 30 October 2014 to the PDR (**"PDR Response"**).

1.6 Wonga does agree, however, that the revised definition of the relevant 12 month period might assist customers in understanding the cost of their borrowing over the preceding 12 months (by making it easier to aggregate information from different lenders).

2. PCW REMEDY

2.1 The CMA is proposing to make a number of changes to the PCW remedy as set out in the PDR, including:

(a) the exclusion of high street lenders from the PCW remedy;

(b) the embedding of the "accredited PCW" criteria within the FCA's general authorisation standards for credit brokers (including PCWs);

(c) changes to the timing as to when payday lenders would be obliged to set up their own PCW and how long they would have to commission and apply for authorisation of that PCW; and

(d) requiring cost information to be displayed on the PCW by reference to total amount payable.

2.2 Wonga's views on each of these changes are set out in turn below.

Exclusion of high street lenders

2.3 The CMA has decided that "*lenders who only offer loans on the high street should not be obliged to have the details of their loans published on an authorised PCW but may nonetheless seek to be listed*",[2] for the following reasons:

(a) the existence of potential difficulties associated with listing high street lenders on PCWs which might disincentivise PCW operators from offering payday loan comparison services; and

(b) the likelihood that high street lenders would face competitive pressure in any event.

2.4 Wonga notes that the high street currently meets a significant proportion of customer demand: 29 per cent of customers have taken out a payday loan on the high street (compared to 83 per cent of customers who have taken out a loan online).[3]

2.5 As discussed in turn below, Wonga considers that:

(a) the proportionality of the CMA's decision on scope must be assessed in relation to the harm to competition which the PCW remedy seeks to address. In this regard, a number of indicators from the CMA's own analysis point to greater harm in relation to the high street segment of the market. Further, Wonga does not agree with the CMA's suggestion that the high street operators will face competitive pressure in any event; and

(b) the views expressed by certain PCW operators on potential difficulties are not uniformly held, and there may be practical solutions to the issues identified.

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2 Consultation Paper, paragraph 34.

3 There is some overlap, with 12% of customers having used both channels. CMA Payday Lending Market Investigation: Provisional Findings Report published on 13 June 2014 (**''Provisional Findings''**), paragraph 10.

Exclusion of the high street is not proportionate in light of the harm to competition identified by the CMA's own analysis

2.6 The purpose of the PCW remedy is to enable customers to shop around more effectively when choosing a payday loan and to improve the ability of customers to identify the most appropriate loan for their needs. This is expected to lead to greater price competition between payday lenders and make it easier for new entrants with attractive propositions to enter the market.

2.7 There are several indicators from the CMA's own analysis that the problems which the remedy is seeking to address (in particular an alleged lack of demand-side pressure and price competition) are particularly acute in relation to the high street segment. In particular, the CMA has found that high-street customers are "*particularly unlikely*" to compare different lenders' products before taking out a loan.[4] Only 13 per cent of high street customers reported shopping around for their most recent loan compared to 32 per cent for online customers.[5] The barriers to shopping around and switching identified by the CMA were considered to affect both online and high customers.[6] Moreover, around half of high street customers have <u>only</u> used high street providers.[7]

2.8 The CMA indicates that high street operators who are not listed would still face competitive pressure as a result of customers using "*good-quality PCWs to shop around and to compare prices offered by other lenders, including online providers*".[8] This is supported by reference to the CMA's survey findings that "*among customers who used only high street lenders and who shopped around in the past, the majority relied on online sources to compare lenders*".[9]

2.9 What this statement does not convey, however, is how few high street-only customers shop around in the first place - only 13 per cent (i.e. 66 respondents) - of which only 22 per cent used PCWs (i.e. 14 respondents). A very significant majority of high street customers do not shop around and therefore the PCW remedy (which is specifically intended to stimulate greater, and more effective, shopping around) cannot reasonably exclude high street operators.

2.10 The need for a remedy which increases competitive pressure on high street operators is further reinforced by the likelihood of greater concentration in this segment due to the impact of the price cap. Although the FCA considers that a viable market remains for high street distribution, it is very likely that customers will have much less choice and an effective tool for making comparisons (and exerting competitive pressure) will be required.

2.11 Any detriment to high street customers from a lack of price competition is of particular concern given the following specific features of this customer group identified by the CMA:

(a) differences in income profile, with high street borrowers typically having incomes well below the UK average (in contrast to online customers where income is broadly in line with the UK average);[10] and

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4 Provisional Findings, paragraph 6.27(a).

5 Provisional Findings, paragraph 6.18(b).

6 Provisional Findings, paragraph 6.47. With the exception of issues relating to lead generators which affected only online customers.

7 Provisional Findings, paragraph 5.59.

8 Consultation Paper, paragraph 35

9 Consultation Paper, paragraph 35.

10 Provisional Findings, paragraph 2.20

(b) high street customers were found by the CMA to be less likely to repay loans in full and on time than online customers and a greater proportion (26 per cent) of high street loans were rolled over in 2012 as compared to online loans (16%).[11]

Potential difficulties facing PCWs in listing high street lenders

2.12 Wonga is unable to comment in detail on the practical issues raised by PCW operators but would note that these issues have not been raised by all PCW operators and, indeed, one PCW said "*listing high street lenders provided an additional challenge but it did not anticipate that this would, of itself, decrease its likelihood seeking accreditation*".[12]

2.13 Given the likely detriment if high street operators are excluded from the remedy, the CMA should consider whether practical solutions exist which might address or mitigate the concerns which have been raised.

2.14 For example, potential difficulties in realising income from high street customers (and in particular concerns about maintaining an audit trail[13]) might be addressed by requiring high street operators to pay a listing fee which would reduce the reliance of the PCW operator on referral revenue. In this regard, Wonga also observes that many high street operators have a related website (which provides basic information on their services and the location of their outlets). PCWs could generate click-through revenues by directing traffic to these sites instead of through lead generation fees.

2.15 Similarly, Wonga is not persuaded that customers would need to provide post code information to ensure effective matching with a particular high street outlet. The PCW listing could simply list the regions/localities where a particular high street operator is active.

One-step compulsory authorisation by the FCA

2.16 In the PDR, the CMA consulted on an authorisation regime whereby a PCW could apply to the FCA to become an "accredited-PCW". Given that PCWs already need authorisation from the FCA (as they are credit brokers), in order for a PCW to be an accredited PCW for the purposes of the CMA's remedy, a PCW would need to satisfy two separate authorisation/accreditation criteria.

2.17 The FCA has proposed a change to this process whereby the FCA would supplement its existing authorisation criteria for PCWs with the accreditation requirements for the CMA's remedy. As a result, PCWs would only have to satisfy a single set of FCA authorisation criteria in order both to operate as a credit broker and to be an accredited PCW for the purposes of the CMA's PCW remedy. Accordingly, all FCA-authorised PCWs will be accredited PCWs for the purposes of the CMA's remedy.

2.18 Wonga agrees that this one-stop authorisation process might have advantages. However, given the uncertainty as to the specific additional criteria that the FCA will adopt (the CMA observes that "*it would be for the FCA to determine the standards it requires for payday loan PCWs*"[14]), Wonga cannot be certain whether, as observed by the CMA "*a change in the status of the standard applied to PCWs would not materially increase the costs incurred by PCWs of complying with this remedy, and for most PCWs might decrease them*".[15] In light of this uncertainty, it would be appropriate for the FCA to publish information on the criteria it proposes to adopt (to date, although the CMA has set out its provisional recommendations

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11 Provisional Findings, paragraph 2.53.

12 Consultation Paper, footnote 6.

13 Consultation Paper, footnote 6.

14 Consultation Paper, page 6.

15 Consultation Paper, paragraph 18.

on those criteria [16] Wonga is not aware of the FCA providing any details of the criteria it intends to adopt).

Timing of implementation of remedy

2.19 The CMA is proposing that lenders will be required to be listed on at least one FCA-authorised PCW within 12 months of the FCA's additional authorisation standards coming into effect. If there are no authorised PCWs after this 12 month period, online payday lenders will have a further period of 6 months to commission a website and to apply for FCA authorisation.

2.20 Wonga has a number of concerns in relation to this revised proposal.

2.21 First, in circumstances where at least one PCW is authorised before the expiry of the 12 month period following the FCA's new standards coming into effect, it is not clear by when lenders must be listed on an authorised PCW. Lenders must be afforded a commercially viable period in which to negotiate terms with a newly authorised PCW (i.e. at least 6 months following authorisation) and to enable their listing to go live on the specific PCW. During this period, Wonga would need to agree terms with the PCW operator, and to develop and test the necessary protocols and IT systems to share the required information with the PCW.

2.22 Secondly, Wonga disagrees with the requirement for lenders to be listed on a PCW as soon a <u>one</u> PCW has obtained the necessary FCA-authorisation. As set out in the PDR Response (see paragraphs 2.17 to 2.24), if only one PCW is authorised (or a second or third PCW is only authorised at a later date), the first/sole-authorised PCW will effectively be a monopoly PCW provider and might exploit this market power by charging unreasonably high fees (or withholding access).

2.23 This concern has not been addressed in the Consultation Paper. The CMA states that *"[w]here an online lender can demonstrate that it has been unreasonably excluded from all authorised payday loan PCWs, this prohibition will not apply*."[17] Wonga considers that this exception provides inadequate protection for lenders because:

(a) there is no guidance on what amounts to "unreasonably excluded";

(b) the burden on lenders is high, especially in circumstances where there are a number of PCWs, as lenders will be required to exhaust every possible opportunity before benefitting from the exemption; and

(c) it is not clear to whom lenders must demonstrate unreasonable exclusion and which entity would adjudicate any dispute between lenders and PCWs on whether conduct amounts to an unreasonable exclusion.

2.24 Against this background, Wonga considers that the PCW remedy should specify that the FCA will, upon application from a PCW, determine whether a lender has been unreasonably excluded and the obligation on lenders to be listed on an authorised PCW should be suspended until the FCA reaches a determination on this issue.

2.25 Thirdly, the timetable proposed by the CMA implies that the FCA could authorise applications from PCWs on an ad hoc basis, in which case PCWs might be authorised at irregular intervals. In order to minimise the risk of a single authorised PCW having disproportionate bargaining power with lenders (especially if it is authorised before other PCWs and lenders have an obligation to agree terms with, and list on, a PCW within a short period), the CMA should consider requiring the FCA to run an authorisation process whereby the FCA opens an initial window in which PCWs must apply for authorisation, with the first tranche of

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16 Consultation Paper, pages 23 to 26.

17 Consultation Paper, page 21.

authorisations granted simultaneously after the expiry of that window. The FCA has run similar authorisation programmes, for example, in relation to payday lending.

2.26 Fourthly, although the CMA proposes to afford PCWs a period of 12 months to obtain FCA authorisation, if no such commercial PCW is launched payday lenders are only given a 6 month period in which to commission a website and to apply for authorisation. Wonga considers that this 6 month period is too short. In this regard, Wonga observes that:

(a) payday lenders cannot be expected to start commissioning a website (and thereby incurring potentially superfluous costs) prior to the expiry of the initial 12 month period. Accordingly, payday lenders would only have, from a standing start, 6 months to run a PCW commissioning process and to apply for authorisation;

(b) there are a number of steps involved in a website commissioning process which could take a significant period of time, including design and issue of the invitation to tender, consideration of proposals from tenderers, feasibility assessments and, upon choosing a successful tenderer, agreeing contractual terms;[18] and

(c) it might take a considerable period of time to prepare an authorisation application. Given that the additional authorisation criteria for PCWs have not yet been compiled by the FCA, it is difficult to comment on precisely how long would be required to prepare a PCW authorisation application. Wonga would note, however, that a new PCW commissioned from scratch would not have pre-existing authorisation by the FCA and therefore would need to meet and confirm compliance with both the pre-existing and the new FCA authorisation criteria (in contrast, an existing PCW might only need to satisfy the additional criteria imposed by the FCA and therefore its authorisation application might be simpler).

2.27 Accordingly, Wonga considers that payday lenders should be afforded a 12 month period in which to commission a website and to apply for authorisation.

2.28 Fifthly, in circumstances where payday lenders are required to commission a PCW, it appears that payday lenders will be required to be listed on that website immediately upon the PCW being authorised. This is unlikely to be practical for a number of reasons:

(a) it is unlikely that the PCW operator will be able immediately to launch the PCW upon authorisation. In this regard, the PCW would probably want to minimise costs and reduce risk by not building the actual website (or by building as little as possible) before being granted authorisation. Wonga would not be surprised if PCWs only started building the website upon being granted authorisation. Building the website in these circumstances might take up to 9 months;

(b) the terms of the authorisation granted might require changes to be made to the PCW before launch and therefore the PCW operator will need time to implement and test any such changes;

(c) payday lenders are unlikely to be able to interoperate with the PCW immediately, especially given that payday lenders will need to implement protocols and run tests on the provision of the necessary information to the PCW; and

(d) if a specific payday lender was not part of the consortium (or not the individual payday lender) commissioning the PCW, it will require a sufficient period of time to negotiate the terms of its inclusion on the PCW.

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18 This process would be more complicated if PCWs acted as a consortium in commissioning a PCW.

2.29 Against this background, Wonga considers that the prohibition should only come into effect 6 months after authorisation of the payday lender-commissioned PCW.

Total amount payable

2.30 As a result of a suggestion from the FCA, the CMA is now proposing that the cost of borrowing a payday loan to be shown on the PCW should be the total amount payable (including principal). Wonga has no concerns about costs being displayed and ranked by reference to total amount payable and observes that it already provides information to borrowers on this basis.

Summary of further amendments required to the PCW remedy

2.31 In summary, Wonga considers that the following amendments should be made to the CMA's PCW remedy as proposed in the Consultation Paper:

(a) high street lenders should be included in the scope of the remedy and should therefore be obliged to be listed on an authorised PCW;

(b) payday lenders should be afforded 12 months to commission a PCW and apply for authorisation if, 12 months after the FCA sets its additional authorisation criteria, no PCW has been authorised;

(c) the FCA should adopt an "authorisation window" for PCW authorisation applications and grant authorisations for all successful applications at the end of that window;

(d) guidance should be provided on the interpretation of "unreasonable exclusion". The FCA, upon application by a PCW or lender should determine whether a lender has been unreasonably excluded and, during the FCA's review, the requirement on lenders to be listed as a PCW should be suspended; and

(e) the requirements for a lender to be listed as a PCW should only come into effect 6 months after the requisite number of PCWs has been authorised.

3. SUMMARY OF BORROWING REMEDY

3.1 In the PDR, the CMA proposed to require lenders to provide a summary to borrowers of all costs incurred and monies borrowed during the 12 months period preceding the date on which they repaid their last loan with that specific lender.

3.2 As set out in the Consultation Paper, a number of concerns have been raised about the definition of the relevant 12 month period (i.e. the 12 months preceding the date on which the last loan with that lender was repaid):

(a) first, it would require lenders to create a static version of summary for preceding 12 months each time a loan was repaid and they would be required to keep that summary potentially for a long time (i.e. until the borrower took out a new loan or asked for a copy of their most recent statement). It has been suggested that this would be costly and technically difficult; and

(b) secondly, it would be difficult for borrowers to compare and/or aggregate costs across lenders because, unless multiple loans were repaid on same date, the borrower will have summaries for different periods.

3.3 Accordingly, the CMA is consulting on whether the definition of the relevant 12 month period should be changed to the 12 months immediately preceding the date on which the borrower requests a summary. It has been suggested that such a change would reduce IT costs associated with the remedy and make it easier for a borrower to compare and/or aggregate costs across lenders.

3.4 Wonga agrees that the CMA should ensure that the CMA's remedies are no more onerous than needed to achieve their aim.[19]

3.5 [✂].

3.6 Wonga agrees that the revised definition of the relevant 12 month period might assist customers in understanding the cost of their borrowing over the preceding 12 months (by making it easier to aggregate information from different lenders).

15 JANUARY 2015

19 Consultation Paper, paragraph 63.