

BGL Group Limited

Payday Lending Market Investigation

Response to Consultation on amendments to the price comparison website and statement of borrowing remedies¹

1 Introduction

- 1.1 This document sets out BGL Group Limited's (**BGL's**) preliminary response to the CMA's proposed amendment to its 'price comparison website (**PCW**) remedy' published on 19 December 2014 (the **Amended PCW Remedy**).
- 1.2 The Amended PCW Remedy updates the CMA's original proposal affecting PCWs (the **Original PCW Remedy**) published as part of the CMA's Provisional Decision on Remedies (**PDR**) on 9 October 2014.
- 1.3 BGL welcomes the opportunity to comment on the Amended PCW Remedy. That said, much of the remedy's detail is still missing insofar as any enhanced FCA authorisation standards are concerned and how such standards or permissions might apply to PCWs.
- 1.4 It follows that while BGL understands that the CMA cannot formulate such standards for the FCA, it is difficult for BGL, at this stage, to provide a definitive view on the merits or otherwise of the Amended PCW Remedy. Further consultation is therefore anticipated. At the same time, various issues arise from the remedy and BGL would urge the CMA and the FCA to consider the general feedback and questions outlined in this response as part of its ongoing development.

2 Executive Summary

- 2.1 By way of summary, BGL would refer to the CMA's core remit, as noted in its draft Annual Plan 2015/16:

With our primary duty to promote competition, both within and outside the United Kingdom, for the benefit of consumers, it is essential that the CMA puts consumers at the heart of everything we do.²

- 2.2 BGL very much appreciates the significant challenge faced by the CMA as regards payday lending. However, as a responsible business with a variety of trusted consumer brands (and one that has chosen not to list payday loans previously), it is incumbent on BGL to consider whether the Amended PCW Remedy proposed by the CMA (and FCA):
 - 2.2.1 is practicable and attractive; and
 - 2.2.2 will actually have the effect of improving consumer welfare.
- 2.3 BGL has reservations on both of these counts and considers that the following issues are relevant:
 - 2.3.1 the likelihood that the association by consumers of payday loans with trusted PCWs might be seen as an endorsement of the product itself, which could drive the take up of payday loans amongst vulnerable

¹ This response does not address that aspect of the CMA's consultation on the 'statement of borrowing remedies'

² Published for consultation in November 2014, paragraph 1.14

- consumers (over other more sustainable solutions) and is not necessarily a positive outcome;
- 2.3.2 the extent to which the positive consumer effects of recent measures implemented by the FCA (and lenders) to improve lender practices will, in fact, manifest themselves (ie the need to prove that the product/sector is improved before promoting it further);
 - 2.3.3 BGL's inexperience (and that of other leading PCWs) of the payday loan sector³ and how one measures success in this market;⁴
 - 2.3.4 the extent of investment needed to introduce new and adapt existing systems and process, agree terms with lenders and launch and market the service (including via a new website given the reputational risk to existing sites), which is likely to be significant based on BGL's experience with other products (although BGL has not conducted any return on investment analysis in view of its past concerns about the product);
 - 2.3.5 whether enhanced regulatory conditions envisaged by the CMA or FCA for PCWs comparing payday loans will, in fact, create excessive barriers to entry (when measured against investment requirements and reputational risk) and, because of their prescriptive nature, actually result in pages/sites that are infrequently used by consumers needing payday loans
- 2.4 Put simply, payday loans are controversial financial products that, social welfare issues aside, present real risks for PCWs. It is therefore vital to get the regulation of the underlying product and associated lender practices right, before encouraging PCWs to get involved. BGL would remind the CMA and the FCA that it is not the responsibility of PCWs to regulate lenders, and prescriptive measures (enhanced authorisation standards etc) designed to achieve this outcome are not only inappropriate, but more importantly, will constrain PCWs from offering a service that consumers actually find relevant and useful.
- 2.5 BGL investigates different markets on a continuous basis to identify potential opportunities. BGL would therefore be happy to engage in further dialogue with both the CMA and FCA on the issue of payday loans. That said, BGL has a number of concerns as regards the CMA's approach which underpins the Amended PCW Remedy. These concerns centre around the balance between additional prescriptive regulation for PCWs which may have the unintended consequence of deterring market entry or innovation, and the encouragement of a market-led solution encouraging product and service differentiation to drive competition.
- 2.6 BGL supports proportionate and relevant regulation that:
- 2.6.1 promotes and protects consumer interests;
 - 2.6.2 is practicable and cost-effective;
 - 2.6.3 fosters product and service innovation; and
 - 2.6.4 recognises the freedom of each business to choose their trading partners, and agree commercial terms, freely.

³ Most products currently displayed by PCWs are those which are either mandated by law (private motor insurance) or otherwise necessary/commonplace (buildings and contents, travel insurance, credit cards etc). Payday loans are quite different and would require significant investment in know-how, alongside other investments in systems etc.

⁴ Most businesses seek to drive sales; however, this may not be the priority for payday loans, in that customers should not take such loans who do not need them (or where more suitable alternatives are available), nor should they borrow more than they need.

3 General observations

- 3.1 BGL endorses some aspects of the Amended PCW Remedy in principle, such as the desire on the part of the CMA and the FCA to avoid regulatory duplication (as a result of a two-tiered accreditation/authorisation regime). Nevertheless, taking the above considerations into account, BGL is concerned that other aspects of the remedy would:
- 3.1.1 create a disproportionate regulatory burden (and cost) for PCWs, particularly for those PCWs (i) who, as introducers, are not currently obliged to operate under as wide a range of conditions as traditional credit brokers, or (ii) with little appetite to compare payday loans;
 - 3.1.2 oblige PCWs wishing to display payday loans to contract with all applicant lenders, unless they can reasonably justify not doing so; or
 - 3.1.3 prevent interested PCWs from displaying payday loans (and differentiating their own services) in such a manner as they consider will be most appealing and useful to their customers (because of the prescriptive nature of the remedy).
- 3.2 As regards paragraph 3.1.1 above, the CMA and FCA's proposal to raise PCW compliance standards across the board is without clear foundation given the high standards that these operators already satisfy and their proven track record in enhancing competition.
- 3.3 Moreover, while any FCA proposals are still unformulated, the implications for any PCW involved in comparing payday loans has to be considered carefully, for example, in terms of whether the PCW simply offers a list of comparisons (as it might do with credit cards) or whether (in line with any higher compliance standards) it will be involved in submitting applications to lenders, which although potentially more helpful for the customer may affect the customer's credit rating (as a result of running multiple checks on their credit record).
- 3.4 As regards paragraph 3.1.2 above, it is difficult to see the justification for requiring a private undertaking to contract with all suppliers in a market. Any proposal to this effect by the CMA or FCA will increase administration and legal costs and risk to PCWs. In such a controversial sector, PCWs should be selective and discriminating. The ability of PCWs to choose reputable lenders whose products they are willing to display (without the risk of subsequent disputes or threatened complaints from those they decline) will benefit consumers.
- 3.5 Moreover, PCWs should be free to decide their means of market entry, including the use of new brands/websites which are distinct from their existing brands.
- 3.6 As regards paragraph 3.1.3 above, alongside differentiating their services, PCWs must also be free to select and contract with trading partners on the basis that the PCW's investment is commercially sound. If the CMA wishes to create a 'competitively neutral' environment for the display of payday loans and limit PCWs' ability to agree terms with lenders, the enhanced competition that the CMA anticipates is unlikely to materialise.
- 3.7 If a *lenderscompared.org.uk* type offering is the competitively neutral or fully independent solution that the CMA seeks, then the Amended PCW Remedy may well require further adjustment. In our opinion, stimulating sustainable market conditions for PCWs in the payday lending sector will only be achieved if there is some level of alignment of the interests of customers, providers and PCWs. Such alignment will drive better customer outcomes and will also have the added benefit of encouraging consumer education.
- 3.8 In those markets where PCWs have, subject to proportionate regulatory measures, been allowed to develop and structure their own offering, significant consumer benefits have materialised. In its report on private motor insurance, Ernst & Young acknowledges that:

The Customer is the winner – There is no question that the advent of aggregators has done a great deal to educate personal motor customers about price and the choice of provider. Our interviewees have differing views on their benefits to the industry as a whole; however, they are fairly unanimous in seeing customers as the main beneficiary of the rise of the aggregator.⁵

- 3.9 In BGL's view, if the CMA (and the FCA) does not strike the right balance, PCWs may be further dis-incentivised from offering comparisons of payday loans, which defeats an important underlying objective of the CMA's review.
- 3.10 As highlighted in the CMA's Provisional Findings Report (**PFR**) the general absence of popular and trusted PCWs from the payday loan sector is already contributing to consumer harm, hence the creation of further barriers to entry will only maintain the (unsatisfactory) status quo:

It can often be difficult for customers to identify the best-value loan product on offer given their borrowing requirements. Despite information on headline rates generally being available on lenders' websites or in the shops of high-street lenders, customers' ability to use this information to identify the best-value payday loan is impeded by the complexity associated with making effective price comparisons given variation in product specifications and pricing structures across lenders, and the limited usefulness of the annual percentage rate in facilitating comparisons between payday loans. Existing price comparison websites, which might otherwise help customers compare loans, suffer from a number of limitations and are infrequently used.⁶

4 Specific questions

- 4.1 In addition to the general comments outlined above, the Amended PCW Remedy gives rise to a number of observations/questions that BGL would raise with the CMA (and FCA) as follows⁷:
- 4.1.1 In view of the fact that (i) it is the practices of certain payday lenders that has prompted the present investigation; and (ii) greater PCW involvement is regarded as solution to the problems identified, the CMA's confirmation that enhanced authorisation standards would only apply to PCWs engaged in the comparison of payday loans is, in principle, sensible. That said, BGL would question whether further regulation of PCWs displaying payday loans is necessary provided payday lenders are regulated appropriately (and it is difficult to offer further comment until the relevant standards are clear)(12)
- 4.1.2 In other words, given that the focus of the CMA's investigation has been payday lenders, any remedy intended to raise standards amongst PCWs should, at best, only capture those PCWs electing to display payday loans. We acknowledge the CMA's confirmation of this point, as there is no clear foundation, on the basis of this investigation, to implement a more wide-ranging remedy around authorisation which captures those PCWs that do not compare payday loans. It is particularly important that the further regulation of PCWs engaged in the comparison of payday loans does not result in more onerous regulation spreading to those not active in this specific sector (17 and 18)
- 4.1.3 How has the CMA arrived at the conclusion that the proposed change in the standards applying to PCWs will not materially increase the costs

⁵ Ernst & Young in 2011 ('bringing profitability back from the brink of extinction – a report on the UK retail motor insurance market'), page 21

⁶ PFR, page 11

⁷ The number following each question references the relevant paragraph in the Amended PCW Remedy where the issue appears

incurred by them (whether or not the PCWs engage in the comparison of payday loans)? Is the CMA able to share its analysis in this area? (18)

4.1.4 As regards the CMA's specific remedy proposal (Figure 1, page 6 of the Amended PCW Remedy), it is not clear what is intended by the CMA's reference to ensuring that "*loan product information*" is presented "*to customers on a competitively neutral basis, such that the presentation of product information, or its ranking on price comparison tables, is not affected by any commercial relationship the operator may have with lenders included in the PCW's panel*". BGL would be grateful if the CMA would elaborate on this recommendation, as its extent and scope are unclear and it would, in any event, seem to curtail freedom of contract, gold-plate existing FCA rules and discourage new market entry. Provided consumers are not misled, there seems little if any justification for this recommendation.

4.1.5 The same observation applies to restrictions proposed by the CMA in the context of 'secondary sort criteria' (48). What does the CMA mean when it suggests that listings should be "*independent of any commercial relationship*"? The *raison d'être* of PCWs such as Comparethemarket.com is to provide its customers with transparency and best value (and to elicit the optimum terms from its panel members which it can pass on). PCW's are not dominant undertakings based on any credible market definition, and so should be entitled to agree different terms with different providers as they see fit.

The effect of the CMA's proposal may be to relegate any PCW to the role of a basic shop window (displaying a list of highly standardised information in the same way as every other PCW), which is unlikely to prove popular with PCWs or ensure the optimum consumer outcome.

As regards paragraphs 4.1.4 and 4.1.5 above, if the CMA's intention is that payday loan products should be ranked on the basis of objective criteria selected by the customer (eg cheapest product first etc) then the CMA should confine the text of its remedy to this specific point (without further amplification). To use the term "competitively neutral" and to suggest that listings should be "independent of any commercial relationship" will result in confusion among providers. It may also discourage product innovation, say, in circumstances where the PCW might otherwise agree to share some of its commission with a lender to subsidise the cost of the loan to the consumer, which might affect rankings, but the PCW does not do so for fear of such an arrangement conflicting with the obligation to ensure a 'competitively neutral' proposition.

4.1.6 The CMA's specific remedy proposal (Figure 1, page 7 of the Amended PCW Remedy) under the section 'Openness', recommends that payday loan PCWs only display loans from direct providers and do not include brokers and other intermediaries in their listings.

In BGL's view, while the CMA may, with some justification, have reservations about the activities of certain credit brokers and other intermediaries in the payday loan sector, to prohibit them from PCWs would, intuitively, appear to reduce competition, rather than enhance it. BGL is not convinced that the CMA can afford to exclude these potential competitors (assuming they can achieve acceptable levels of regulatory compliance) if, as suggested in paragraph 2.7, the number of payday lenders will reduce significantly over time. In a market with fewer and fewer competitors, the focus surely should be on addressing the shortcomings of non-compliant participants, rather than excluding them altogether.

To follow the CMA's own logic as regards the potential ability of lenders to ask PCWs to justify why they will not list them (in respect of which BGL's concerns are listed in paragraph 4.1.8 below), it would seem difficult to resist appointing a reputable broker if the broker demonstrated its commitment to good practice and transparency etc. The CMA seems to be applying a double standard, the rationale for which, in the circumstances, is not clear.

It is possible that brokers or other intermediaries (whose identity is not defined in the remedy) might, depending on how the payday lending market evolves, seek to offer payday loans under their own broker/intermediary brands but with the underlying finance provided by a traditional lender. The underlying lender might not wish for its own brand to be closely linked to this type of loan, hence the desire to use the broker's/intermediary's brand etc (ie white labelled loans). If the remedy is very bland and simply prohibits PCWs from displaying these products because of their association with a broker or other intermediary, this will result in less competition.

- 4.1.7 In terms of other prescriptive standards with regard to the display of payday loans on PCWs, such as how products should be ranked and by what criteria, while the CMA is well-intentioned and some aspects of the proposals are feasible, it is possible that such requirements will lead to homogenous and nondescript displays/listings. These will not engage consumers' interest, and will therefore not be used by them. In BGL's view, while rankings and features should be clear, relevant and not misleading, it should be up to each PCW to present their listings in a way that they believe their users will relate to most effectively. (25)

Similarly, certain standards proposed by the CMA are unlikely to cause problems, for example, the requirement on PCWs to state how many lenders they have on their panel (53); however, if consumers associate the largest selection of lenders with the most comprehensive/desirable PCW offering, this may disadvantage those PCWs that are more selective and demand higher quality standards of those lenders they list.

- 4.1.8 The CMA has also raised the issue of how the FCA might "*ensure that PCWs do not unreasonably exclude a lender*" (43). Although the CMA's intent is not entirely clear, BGL would urge the FCA not to pursue any proposal that cuts across existing competition law.

There are all manner of reasons why a PCW might not wish to contract with a payday lender, ranging from:

- (i) the PCW's own lack of knowledge of the payday sector;
- (ii) the lender's reputation;
- (iii) the lender's willingness/ability to provide information and meet the PCW's service levels;
- (iv) the lender's record of regulatory compliance; and
- (v) how the lender advertises its products and whether this reflects badly on the PCW's brand; to
- (vi) the lender's financial standing;
- (vii) customer complaints regarding the lender;
- (viii) the commercial terms that can be agreed by the parties (including commission); and

(ix) a basic decision on the part of the PCW to limit its panel.

There are all manner of reasons why a PCW might not wish to contract with a lender, and vice versa; however, most importantly, there is no compelling legal basis to require a PCW to justify its decision at all.