PAYDAY LENDING MARKET INVESTIGATION

The Payday Lending Market Investigation Order 2015

Notice of intention to make an Order under section 165 of and Schedule 10 to the Enterprise Act 2002 and public consultation on the proposed Order

Background

1. On 27 June 2013, the Office of Fair Trading, in exercise of its powers under section 131 of the Enterprise Act 2002 (the Act) referred the supply of payday lending in the UK to the Competition Commission (CC) for investigation and report (the market investigation).

2. The CC investigated the matters referred to it pursuant to sections 131 and 133 of the Act and, on 1 April 2014, the remaining functions of the CC in relation to the market investigation were transferred to the Competition and Markets Authority (CMA) under Schedule 5 to the Enterprise and Regulatory Reform Act 2013 and the Schedule to the Enterprise and Regulatory Reform Act 2013 (Commencement No. 6 Transitional Provisions and Savings) Order 2014.

3. The CMA concluded:

   (a) in accordance with section 134(1) of the Act that there are features of the market for the supply of payday lending in the UK which prevent, restrict or distort competition; and

   (b) in accordance with section 134(2) of the Act that there is an adverse effect on competition (AEC). On 24 February 2015 the CMA published its findings in a report under section 136 of the Act entitled *Payday lending market investigation: final report* (the Report).

4. The CMA considered, in accordance with section 134(4) of the Act *(a)* whether action should be taken by it for the purpose of remedying, mitigating or preventing the AEC or any detrimental effect on consumers; *(b)* whether it should recommend the taking of any action by others for the purpose of remedying, mitigating or preventing the AEC or any detrimental effect on consumers; and *(c)* in either case, if action should be taken, what action should be taken and what is to be remedied, mitigated or prevented.

5. In the Report, the CMA decided on a package of remedies to be implemented by it in order to remedy, mitigate or prevent the AEC that it found arising from the following features:

(a) The context in which customers take out payday loans is often not conducive to customers shopping around to find a good-value loan and may amplify the adverse effects of other barriers to shopping around and switching lender.

(b) It can often be difficult for customers to identify the best-value loan product on offer given their borrowing requirements.

(c) Customer demand is particularly insensitive to fees and charges incurred if a borrower does not repay their loan in full on time.

(d) Many online customers take out payday loans via a lead generator's website. Lead generators generally sell customer applications on the most favourable commercial terms for the lead generator – often to the highest bidder.

(e) Where their choice of lender is not dictated by concerns about credit availability, customers can be dissuaded from looking at alternative suppliers by the perceived risks associated with using a new lender, particularly in light of the negative reputation of the payday lending sector.

(f) The ability of new entrants to expand and establish themselves as an effective competitor is likely to be obstructed by the difficulties associated with raising customers' awareness of their product in the face of the barriers to shopping around and switching, the strength of the well-established brands that already exist in the market, and the extensive advertising costs required to overcome these obstacles.

(g) While the ability to assess credit risk accurately is a necessary requirement for any provider of personal credit, it is likely to be a particularly important determinant of a provider's success in the payday lending sector, because of the high credit risk associated with payday loan customers. Because of their greater reliance on new customers and the role of learning in the credit risk assessment process, new entrants are likely to face some disadvantages in their ability to assess credit risk for a period, which would put them at an initial cost disadvantage relative to more established providers.

(h) The history of non-compliance and irresponsible lending by some payday lenders, and the resulting negative reputation of the sector, are likely to

reduce the constraint imposed by the prospect of new entry on payday lenders' pricing.

6. In accordance with section 165 and paragraph 2(1)(a) of Schedule 10 of the Act, the CMA hereby gives notice of its intention to make an Order on the terms attached to this Notice (the Draft Order) to address the relevant features and AEC identified, and invites representations on the Draft Order from any interested person or persons.

7. This Notice and the Draft Order, together with a draft Explanatory Note, have been published on the CMA website.

8. The draft Explanatory Note accompanying the Draft Order provides an explanation of how the proposed Order is expected to operate.

9. The CMA invites written representations on the proposed Order from any interested person or persons. The CMA will have regard to any representations made in response to this Notice. The CMA may also make modifications to the proposed Order as a result of any representations. If the CMA considers that any representation necessitates a material change to the proposed Order, the CMA will give notice of the proposed modifications.

10. Representations should reach the CMA by 5pm on Monday 1 June 2015. Representations should be in writing and should be addressed to:

Matthew Weighill
Project Manager
Payday lending market investigation
Competition and Markets Authority
Victoria House
Southampton Row
London WC1B 4AD

or by email to: paydaylending@cma.gsi.gov.uk.

(signed) SIMON POLITO
Group Chair
1 May 2015